STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Vermont Gas Systems, Inc., for a certificate of public good, pursuant to 30 V.S.A. § 248 , authorizing the construction of the "Addison Natural Gas Project" consisting of approximately 43 miles of new natural gas transmission pipeline in Chittenden and Addison Counties, approximately 5 miles of new distribution mainlines in Addison County, together with three new gate stations in Williston, New Haven and Middlebury, Vermont	)	Docket No. 7970

REPLY BRIEF
SUBMITTED ON BEHALF OF NATHAN AND JANE PALMER

Now come Nathan and Jane Palmer, by and through the Law Office of James A. Dumont, Esq., PC, and they submit this Reply Brief in response to the Briefs submitted by the Department of Public Service, Vermont Gas Systems and the Town of Monkton.

SECTION 248(B)(1) – ORDERLY DEVELOPMENT OF THE REGION

i. Department of Public Service.

The Department's Initial Brief takes the position that there is no undue adverse impact on the orderly development of the region. This position is based on the Department's proposed findings stating that there are eleven affected towns, that each town plan is either silent as to pipeline location or seeks co-location with existing rights of way or placed underground, and that the proposal complies with these standards.

The Department's proposed findings allege that the project is consistent with the Monkton Town Plan, "thus avoiding promotion of sprawl." (Finding 3.)

In the Department's "Discussion," section, the Initial Brief acknowledges that the proposed project deviates from the VELCO right of way in the area of Rotax Road and the

Palmers' property. In fact, as the Board knows, the proposal is to depart from the VELCO right of way and instead use the Palmers' property, occupying much of their property either for the pipeline or for access and construction. The Department's Initial Brief does not explain why this deviation from any established right-of-way meets the legal standard set by § 248(b)(1). The "Discussion" simply concludes "It is the Department's belief that this Project is consistent with the orderly development of the region." Initial Brief pp.4-5.

ii. Vermont Gas Systems

VGS summarizes the evidence that the Palmers' property was selected, outside the VELCO right of way, to accommodate VELCO's concerns, save money, and avoid close proximity to other residences. VGS Proposed Findings pp.15-16. Proposed Finding 95 alleges that the evidence is that the west side of the VELCO corridor contains wetlands. Proposed Finding 96 alleges that the added cost of drilling horizontally under the west side of the corridor would add $1.2 to $1.3 million to the cost of the project. Proposed Finding 97 alleges that there are more residential structures within 300 feet of the pipeline, were it to remain within the VELCO corridor, than would be impacted using the Rotax Road alternative. Proposed Finding 99 alleges that the evidence is that if pipeline were laid 10 feet within the west side of the VELCO corridor, it would be within approximately 85 feet of one residence and 110 feet of another. VGS Proposed Finding 103 alleges that Rotax Road is "better" than remaining within the VELCO corridor.

VGS Proposed Findings 104-09 alleged that the evidence is that the pipeline would impair the potential for their land to be organically certified, which VGS disputes because it will not use herbicides or other chemical controls.

VGS' Proposed Findings 110-112 alleged that it submitted testimony that a route that would not impact the Palmers' home, or any other homes, would require permission from the Palmers to file an application to modify a federal conservation easement, and the Palmers have refused to give permission. Vermont Gas summarizes its evidence that this route also would take 1 to 3 years, because of the delay in obtaining federal permission.

VGS Proposed Finding 113 alleges that the HDD drilling alternative would use Palme land without impacts to the soils and without cutting trees adjacent to the residence

VGS Proposed Finding 114 alleges that the town of Monkton is 'very concerned with any proposed late changes to the route alignment, such as deviating from the Rotax Road Re-route, because of the fact that new landowners now would be impacted by the project."

VGS also summarizes the Town of Monkton's Town Plan as silent on pipeline placement, other than seeking locations that would not adversely affect the rural nature of the community and the rural-residential character of the town. VGS alleges that the Town Plan is silent as to natural gas pipelines and that the Selectboard has submitted a letter expressing "a strong interest in extending natural gas service to the community.' Proposed Findings 170-176 p.28.

VGS alleges that it has shown that it has shown tens of millions of dollars in benefits to the county, from reduced energy costs. It also alleges that the $90 million it would spend on "preconstruction activities, including environmental assessments and mitigation, right-of-way acquisitions, and land purchases" will benefit the residents of Addison County. Proposed Findings 228-262.

iii. The Town of Monkton

The Town submitted proposed findings that summarize its direct examination and cross-examination as demonstrating that a 300-foot setback from the pipeline is the generally recognized safe distance, and that the Palmers residence falls well short of that out of the need to avoid similar impacts to four other homes. The Town asks the Board to rely on the MOU it entered into with Vermont Gas, adopting the Rotax Road alternative. Monkton Brief pp.2-8.

iv. Response of the Palmers.

There is no basis in the record for the Department's findings or its conclusions. Proposed Finding #3 is against the evidence, because adding gas distribution lines, as Vermont Gas proposes to do, well beyond the town center, virtually circling Monkton Pond, will encourage growth outside the town center.

VGS's allegations that the evidence is that the Palmers' property was selected, outside the VELCO right of way, to avoid wetlands, save money, and avoid close proximity to other residences are inaccurate or misleading. There are no wetlands on the western side of the right of way. The evidence was that the added cost of HDD drilling would be half of what VGS alleges (Exh. JH-15). More importantly, the evidence is that the other residences, that the Rotax Road route would avoid, were either purchased or constructed by their owners knowing they would be close to the VELCO high voltage right of way. They came to the nuisance, unlike the Palmers. While it is true that if pipeline were laid 10 feet within the west side of the VELCO corridor it would be within approximately 85 feet of one residence and 110 feet of another, the owners of both residences have written to the Board (and the Town and VGS) to state they do not object.

VGS Proposed Findings 104-09 that allege that the evidence is that the pipeline would not impair the potential for the Palmers' land to be organically certified, because VGS will not

use herbicides or other chemical controls, also is misleading. Witnesses Heindel and Darby testified that the soil may no longer be appropriate for organic farming for non-chemical reasons – the high water table, the ineffective of trench dams, and the problems caused by soil compaction.

VGS' Proposed Findings 110-112 allege that it submitted testimony that a route that would not impact the Palmers' home, or any other homes, would require permission from the Palmers to file an application to modify a federal conservation easement, and the Palmers have refused to give permission. Vermont Gas has not alleged, and there is no basis for any finding, that the Palmers have agreed to allow them to use any part of their property, in any location. VGS's proposed findings do not explain why resort to eminent domain would suffice to obtain the needed rights to the Palmers property adjoining their home but not for their wetlands property.

VGS Proposed Finding 113 alleges that the HDD drilling alternative would use Palmer land without impacts to the soils and without cutting trees adjacent to the residence. But the evidence was that this alternative would require use of a drilling pad that would use about an acre of land, which would be the same amount of land impacted by a trench, and it would continue to impact much of the Palmers' improved garden area.

VGS Proposed Finding 114 alleges that the town of Monkton is "very concerned with any proposed late changes to the route alignment, such as deviating from the Rotax Road Re-route, because of the fact that new landowners now would be impacted by the project." All of these landowners were on the original route and received timely notice.

VGS also summarizes the Town of Monkton's Town Plan as silent on pipeline placement, other than seeking locations that would not adversely affect the rural nature of the

community and the rural-residential character of the town. VGS alleges that the Town Plan is silent as to natural gas pipelines and that the Selectboard has submitted a letter expressing "a strong interest in extending natural gas service to the community.' Proposed Findings 170-176 p.28. The Palmers point out that the Town Plan actually says that there are no existing natural gas pipelines in Monkton (p.23) and the existing situation is adequate to meet the needs of the Town (p.23). The Town Plan (p.25) also contains strong language urging the town to curb its dependency on fossil fuel. The pipeline would contradict this clear town goal. VGS has not objected that the Town Plan is too vague to be enforceable. On the contrary it has urged the Board to rely on the Plan, but VGS has failed to explain why increased dependency on fossil fuels complies with the Plan.

VGS alleges that there will be tens of millions of dollars in benefits to the county, from reduced energy costs. VGS has not submitted evidence that the net effect, to this region or to the state as a whole, of taking private land for a pipeline, interfering with private landowners' planned use of their own lands, and using ratepayer funds from another county to artificially reduce energy costs for some residents and some businesses, provides a net benefit to the region or the state.

VGS also alleges that the $90 million it would spend on "preconstruction activities, including environmental assessments and mitigation, right-of-way acquisitions, and land purchases" will benefit the residents of Addison County. Proposed Findings 228-262. This argument should be rejected by the Board. There is no evidence that VGS' expenditures on environmental assessments such as the reports by Mr. Buscher and its other witnesses somehow benefit the residents of Addison County. Nor is it logical, reasonable or fair to argue that paying

landowners for the rights taken away from them constitutes a benefit to the region or its economy.

The Palmers disagree with the position of the Town of Monkton that the evidence leaves the route across the Palmers' homestead as the lesser of two evils. Other reasonable alternatives exist which would not include placing a 12-inch natural gas pipeline within 300 feet of *any* residence. These include adoption of the efficiency alternative advocated by the Conservation Law Foundation, and horizontal drilling under the wetland in the federal conservation program. The Palmers also submit that under Vermont law, the Selectboard had no lawful authority to enter into the MOU with Vermont Gas insofar as the MOU decides which lands will be subject to pipeline development and which will not. Vermont has a detailed zoning and planning process. Selectboards lack the authority to act as *uber*–Planning Commissions and create MOU's or other documents outside of the statutory zoning and planning process that decide the location of a natural gas pipeline. The Town's actions outside of the statutory process -- if relied on by the Board – would transgress the limits of the common benefits clause of the Vermont Constitution. See In re Town Highway 20, Town of Georgia (Petition of John Rhodes), 2012 VT 17, 45 A.3d 54 (3/23/12).

SECTION 248(B)(2) -- PRESENT AND FUTURE DEMAND IN ACCORD WITH § 218C

i. The Department of Public Service

The Department's Proposed Findings state that the project is the most cost-effective means to service the Addison County market. Proposed Finding #4. However, the Proposed Findings do not include any proposed findings addressing the life-cycle costs of natural gas

service, as compared to energy conservation, load management, energy efficiency or renewable sources.

The Department of Public Service's Initial Brief acknowledges that the reference to § 218(c) within § 248(b)(2) requires the applicant to prove that the project would be the least cost alternative according to the terms of § 218c, citing Petition of Vermont Gas Systems, Inc., Docket 7929, Order of 5/31/13 at 6-8. DPS Initial Brief p. 7. Least-cost alternative analysis requires the applicant to demonstrate that the project, when considering all of its component parts as a whole, and its life-cycle environmental and economic costs, would be the least-cost alternative to energy conservation, load management, energy efficiency or renewable sources. In re Vermont Electric Power Company, Inc., Docket No. 6860 (1/28/05) pp.3-5; aff'd, In re Vermont Electric Power Company, Inc., 2006 VT 69 ¶ 12, 179 Vt. 370, 378-79, 895 A.2d 226. 232-233.

The Department of Public Service's Initial Brief *explicitly* asks the Board to conclude that the project meets subsection (b)(2) *without compliance* with the least-cost standard of Petition of Vermont Gas Systems, Inc. and thus without compliance with 30 V.S.A. § 218c. The Department asks for the exception because this is an expansion project and Vermont Gas is not under any obligation to serve the Addison County region. The standard that the Department advocates, instead of the statutory standard, is that a project may be approved if the applicant has "reasonably estimated" the market for its services, planned its project for that market, and done so in a reasonable way that shows that the need could not be eliminated through efficiency measures or demand side management. Compare 30 V.S.A. § 218c (requiring full analysis of all economic and environmental life-cycle costs of the project and alternatives, including consideration of renewable sources pursuant to § 8001). DPS Brief p.9.

The Department of Public Service's Initial Brief also *implicitly* asks the Board to conclude that the project meets subsection (b)(2) without regard to whether the project as a whole meets the statutory test. The witnesses agreed that "Phase 1" of the project, the 12-inch pipeline to Middlebury, is being designed to meet the needs of "Phase 2," pipeline extensions to Rutland and to the International Paper Company plant at Fort Ticonderoga, N.Y. Funds from International Paper Company will be used to help pay for Phase 1 (along with funds raised in rates from Chittenden and Franklin County ratepayers). That is, both the design of and the funding of Phase 1 are dependent upon and affected by Phase 2. Simollardes PFT p.8; Simollardes letter to Public Service Board dated 9/12/13. Nonetheless, the Department asks for Board approval without any least-cost analysis, under either the traditional standard or the DPS' newly proposed standard, for the project as a whole, including Phase 2 of the project.

ii. Vermont Gas System

Vermont Gas cites to the Board's order in Docket No. 7712, Request of Vermont Gas Systems, Inc., to establish a system Expansion and Reliability Fund with funds provided by reduction in the quarterly Purchase Gas Adjustment rate under the Alternative Regulation Plan, Order dated 9/28/11. This order approved, over the dissent of Board Member Burke, the use of funds from Franklin and Chittenden County customers to fund expansion into Addison County. VGS Proposed Findings pp.4-5. It cites to evidence that the Rutland area seeks gas service and that VGS' 'preliminary review of the market" suggests 11,000 potential customers. VGS Proposed Findings pp.6-7. It summarizes the evidence that the initially proposed 10-inch pipeline was changed to 12-inches to accommodate service to International Paper. VGS Proposed Findings pp.7-8.

iii. Response of the Palmers

The Department cites no statute or precedent authorizing departure from the requirements of § 248(b)(2). Full life-cycle analysis of the costs and benefits of the proposed pipeline, and its alternatives, is required. This has not been done.

Vermont Gas does not allege that it meets this standard. Vermont Gas's proposed findings effectively admit that Vermont Gas's evidence fails this standard: Proposed Finding 233, on page 38, explains that energy efficiency would not serve as an alternative to this project because the project "is driven by the desire to expand" natural gas service into Addison County. See also Proposed Finding 234 ("The need for the Project is based upon market demand to expand the system into a new geographic region.") Like the Department's Brief, Vermont Gas' proposed findings and conclusions do not cite any legal authority for their legal position.

Both memoranda fly in the face of Vermont law in three respects. First, the statute contains no exception for expansion projects. The standards the legislature set, in detail, in adopting the current version of subsection (b)(2), apply by their express terms to this project. Necessary proof must address full life-cycle environmental costs of the project and its alternatives. This Board explicitly so held, in addressing this very project, in its ruling in Docket No. 7712, Request of Vermont Gas Systems, Inc., to establish a system Expansion and Reliability Fund with funds provided by reduction in the quarterly Purchase Gas Adjustment rate under the Alternative Regulation Plan, Order dated 9/28/11 at p.3 (stating that the Board was not ruling upon whether the proposed Addison County project would meet the least-cost alternative test of § 248, which it described as "rigorous."). "When considering the societal benefits and costs of various investments, Board precedent calls for equal treatment among energy efficiency, renewable energy and distributed resources with supply-side options." In re Vermont Electric Power Company, Inc., Docket No. 6860, *supra*, p.23. The Board should reject the Department's

and Vermont Gas' attempt to rewrite the statute. Because the statutory standard has not been satisfied, the application should be denied.

Second, it has long been Vermont regulatory policy that customer rates must reflect the costs attributable to those customers. Unless supported by specific legislative language, or a distinct benefit to the subsidizing class, one group of customers should not subsidize others. Thus, it took specific legislative authority for this Board adopt a low-income rate, subsidizing low-income customers. Report and Closing Order, Docket No. 5308, March, 9, 1993, esp. fn 10; and Reduced Rates for Low-Income Customers, Petitioner AARP, Docket 7535, Order dated 7/22/2011, 261 P.U.R. 4th 244, 266-67. Absent legislative approval, it is only in those situations in which the subsidizing customers will enjoy a benefit from providing service to subsidized customers that Vermont law has authorized such subsidies. See Report and Closing Order, and Reduced Rates for Low-Income Customers, *supra* (explaining that subsidized costs to ensure that all Vermont customers have telephone service provides a benefit to higher income customers because it allows them to engage in telephone communications with subsidized users). Here, there is no evidence or allegation that there will be a benefit to existing Franklin and Chittenden County customers.

Remarkably, the Board's Order in Docket 7712 explicitly held that in any § 248 review of the Addison County expansion project, the issue of whether the project would impose an unlawful cross-subsidy would be addressed. Docket No. 7712, Order of 9/28/11 pp.12-13. The Board wrote: "We would expect to carefully consider whether unjust cross-subsidization occurs as part of any review of the project once filed." One reason for Board member Burke's dissent in Docket 7712 was the issue of subsidization. Yet both the Department and VGS, have chosen not to brief this issue.

One reason to avoid subsidies by one geographic class of customers to another geographic class is that artificially low prices distort the market. Burlington Telephone Company, Docket No. 4946, Order dated 2/21/86, 73 P.U.R. 4th 209, 228. Artificially low prices deter technological innovation that otherwise would provide benefits in the subsidized area. That rationale applies here. Because the full costs of natural gas production and transmission, including the costs of extending the line into Addison County, are not going to be internalized into the Addison County market price, otherwise cost-effective efficiency and demand side management measures, and renewable sources, may not be able to compete. The Palmers' home and farm, in other words, are going to be taken away from them where there has been no proof that there is actual need for the project under Vermont law.

Perhaps the subsidy would be good policy (the Palmers do not agree) -- but if so, that is the legislature's call. There is no statutory or other basis for approving a pipeline extension on the explicit basis of subsidy from other users.

Third, the Department's and Vermont Gas' briefs also ask the Board to engage in segmented review. It is a fundamental aspect of environmental review that project applicants should not be allowed to "segment" their proposals into separate pieces in order to avoid review of the cumulative impacts of the separate pieces. In Vermont, the pre-eminent decision on visual impact, the Quechee Lakes decision, relied on this concept:

> The record of this case readily demonstrates the pitfalls of segmented, 'piecemeal' review of a phased development. Since 1970, QLC has planned a large residential and recreational resort community comprising 6,000 acres. Development of that community has progressed on a project-by-project basis resulting in incremental loss of open space. However, the consumption of open space by any one such project has not been of sufficient magnitude to conclude that a project's impact on scenic beauty is 'undue.' In contrast, the collective impact of the open space intrusions which have occurred since 1974, and which are likely to continue as QLC works toward its 2,500 housing unit goal (including

> the Newton and Golf Course projects), may be sufficient to 'offend the sensibilities of the average person.'

In re Quechee Lakes Corp., 1986 WL 58689 (Vt.Env.Bd. No. 3W0411–A–EB 11/4/85, corrected Land Use Permit 1/13/86) p. 21 (emphasis in the original). The Board's recent decision in In re Blittersdorf, Docket No.CPG-NM991 10/21/10 n. 11 addressed the possibility of an applicant avoiding Board jurisdiction by splitting a single overall proposal into less-than-jurisdictional pieces. The Board rejected Mr. Blittersdorf's attempt to segment his proposal into two different net metering systems, and explained, by analogy, that allocation of output of a generating station among different purchasers does not deprive the Board of the ability to review the construction of the generating station in a single § 248 case. Otherwise "segmented review of the facility" would result. Similarly, in In re MacIntyre Fuels, Inc., 2002 WL 31840770 (Vt.Env.Bd. DR No. 402) p.6, the Environmental Board summarized a long history of Environmental Board precedents governing avoidance of the loss of jurisdiction (under the definition of "involved land") that would result if applicants were able to in partition an overall project into constituent pieces." See also In re: Defreestville Area Neighborhood Association, (3d Dept. 2002) 299 A.2d 631, 750 N.Y.S. 2d 164 (summarizing policy reasons against segmented review under New York's State Environmental Quality Review Act).

Section 248 contemplates a weighing of benefits against costs to arrive at what is in the "general good of the state." Even the weighing of what is an "undue" aesthetic impact requires consideration of the overall costs and benefits of the project. In re Vermont Electric Power Company, Inc., Docket No. 6860, *supra*, p.78. In this case, some of the purported benefits, and it may be that some of the greatest environmental costs, will arise from Phase 2. Phase 2 will require use of the public trust lakebed of Lake Champlain to be utilized for a private purpose.

Some of that lakebed, on the New York side, is Forest Preserve within the meaning of Article XIV of the New York State Constitution. By segmenting this matter into two parts, the Department and Vermont Gas are preventing the Board from considering whether the project, as a whole, meets the least-cost alternative test.

SECTIONS 248(B)(4) AND (A)(3) --- ECONOMIC BENEFIT AND GENERAL GOOD.

i. The Department of Public Service

The Department's Initial Brief treats economic benefit under subsection (b)(4) as consisting solely of economic benefit narrowly defined so as to include reduced fuel costs paid by ratepayers. Initial Brief pp.12-17. Indeed, the Department's Brief asserts that the sole test is whether there is *some* benefit and "not whether it results in the highest possible economic benefit." P.15. The DPS Initial Brief, p. 14 also states ""The Department's analysis… focused solely on the Project and did not include Phase II." The Initial Brief treats the "general good of the state" standard as consisting of proof of compliance with the state's Comprehensive Energy Plan. Initial Brief pp. 27-31. No other factors are mentioned.

ii. Vermont Gas Systems

Vermont Gas Systems addresses economic benefit by noting that International Paper will pay half of the cost of the Addison project, which it calls the Addison Upgrade, half of the cost of extending into Rutland, and 100% of the cost of the lateral to Fort Ticonderoga, (p.43). If Phase 2 does not happen, rates will go up for both its Addison County customers and, apparently, all its other customers. (p.44; see also Simollardes letter to Public Service Board 9/13/13 and Simollardes prefiled testimony p.8) Like the Department, Vermont Gas argues that under Vermont law it need only show "some" benefit, whatever its amount. (p.45). By making

available natural gas that will cost customers less than the cost of present fuels, at a cost that may be subsidized by International Paper, argues Vermont Gas, it meets this "some" benefit test.

iii. Response of the Palmers

The Department and Vermont Gas have submitted memoranda that do not respect Vermont law, in two important respects. First, section 248(b)(4) states that the project applicant must demonstrate the project "will result in an economic benefit to the state and its residents." This does not mean just reduced fuel costs or "some" benefit. This Board has repeatedly held that this criterion requires proof of both the project's costs and its benefits to the state as a whole, and a finding that overall, the net effects of the project would be economically beneficial to the state. Entergy Nuclear Vermont Yankee, Docket No. 7082, 249 P.U.R.4th 1, 22 (April 21, 2006); Entergy Nuclear Vermont Yankee, Docket No. 6812, 232 P.U.R. 4th 219, 234 (March 15, 2004); In re Verizon New England, Docket No 7270, 2007 WL 4754254 *3, 6-8, 101-03, 137. The Department's and Vermont Gas' briefs, and the evidence they recite, do not meet this standard.

Second, consideration of economic benefit includes consideration of whether the project will result in just and reasonable rates; a project that would cause unjust or unreasonable rates would not meet the standard of subsection (b)(4). Unjust or unreasonable rates also violate the "general good of the state" standard in § 248(a)(3). In re East Georgia Cogeneration Partnership, 158 Vt. 525, 534, 614 A.2d 799 (1992) ("The assessment of 'economic benefit' under § 248(b)(4) ensures that the rates will be 'just and reasonable' to Vermont ratepayers."; In re East Georgia Cogeneration Partnership, Docket No. 5179, Decision and Order 6/25/91 (in § 248 case, finding that burdensome rates that would result from the project would violate § 248(b)(4) and be contrary to the "general good" of the state).

"Just and reasonable rates" have been held by this Board to be those which, in the absence of specific legislative approval, do not involve significant subsidies by one glass or category of ratepayers of another class or category. See Report and Closing Order, Docket No. 5308, and Reduced Rates for Low-Income Customers, Petitioner AARP, Docket 7535, *supra*.

The result of the Department's and Vermont Gas' evidence and argument, if accepted by the Board, would be that the Palmers will suffer permanent loss of their property because "some" benefit will be enjoyed by fellow county residents without evidence of net economic benefit to the state as a whole and without evidence that the subsidy intended to pay for the project would be just and reasonable because it has been legislatively authorized or because the subsidizing ratepayers will enjoy a benefit.

SECTION 248(B)(5) – HEALTH AND SAFETY.

i. Department of Public Service

The Department asserts that the project will meet all federal and state standards and therefore will satisfy subsection (b)(5) with respect to health and safety. Initial Brief pp.21-22.

ii. Vermont Gas Systems

Vermont Gas also relies on federal and state standards. VGS Proposed Findings pp.52.

iii. Response of the Palmers

The record evidence is that 300 feet is the prudent separation distance from homes, and that the proposed deviation from the VELCO right-of-way will place the pipeline less than half that distance from the Palmers' residence. See Monkton Proposed Findings pp. 2-8.

There is no proposed finding, no proposed conclusion, and no discussion in either the Department's brief or Vermont Gas' brief about the safety risks to persons who live in houses less than 300 feet from a 12-inch natural gas pipeline, or to persons with outdoor gardens, lawns,

or other regularly used areas less than 300 feet from a 12-inch natural gas pipeline. The Department's and Vermont Gas' submissions are silent as to *any* separation distance.

SECTION 248(B)(5) – GREENHOUSE GASSES.

The Initial Brief of the Department (pp.23-26) asserts that the project will displace oil and propane and result in reduced greenhouse gas emissions. VGS's proposed findings and conclusions make the same argument. The permitting of Phase 1 is intended to, and likely will, lead to permitting of Phase 2. The design of Phase 1 was changed to accommodate Phase 2. Phase 2 is being counted on to fund Phase 1. Yet, neither brief considers the cumulative impact of the introducing natural-gas dependency into Rutland County and to International Paper Company. Neither brief weighs the negative impacts of the resulting greenhouse gas emissions against the alternatives available in Rutland County and in New York. With regard to International Paper, there is no consideration of whether the fuel oil it now consumes will be replaced by natural gas or whether, once IP stops buying large quantities of fuel oil, the local price of fuel oil will decline and its local consumption will increase, resulting in a net cumulative increase in gas emissions.

SECTION *248(B)(6) AND VGS' IRP.*

I. Department of Public Service

Subsection (b)(6) requires proof that the project is consistent with the principles for resource selection expressed in the applicant's approved least cost integrated plan. The Department's Initial Brief notes that Vermont law authorizes approval of a project where there is no approved plan so long as the relevant environmental effects and the requirements of least-cost planning in general, as set forth in § 218c, are satisfied. Initial Brief p.27. However, as with § 248(b)(2), the Department advocates for a "tailored" application of the law, so that the standard

is more relaxed. No substitute standard is proposed, other than that which was set forth under § 248(b)(2). VGS makes the same argument (pp.82-83)

Mr. and Mrs. Palmer disagree. The Department's position and that of VGS contradict the precedents of this Board. In the Northwest Reliability Project decision, the Board explained:

> VELCO has not prepared a least-cost integrated resource plan. In the past, this Board has not required VELCO to do so, because VELCO is 'a non-distribution utility whose capital expenditures are already subject to Board review. Notwithstanding this Board precedent, New Haven contends that because VELCO is an electric utility regulated by the Board, it is required to have an approved least-cost plan, and that without a plan, VELCO cannot meet its burden under Section 248(b)(6) of proving the proposed Project's consistency with its plan. ACRPC presents a similar argument: it contends that 30 V.S.A. § 218c requires VELCO to have a least-cost integrated plan, and that VELCO's failure to do so is sufficient reason for the Board to reject the proposed Project.
>
> We are not persuaded by New Haven's and ACRPC's arguments, because both the legislature and this Board have recognized that lack of an approved least-cost plan should not, by itself, preclude issuance of a certificate of public good for a proposed project. When the legislature amended Section 248 to add criterion (b)(6), it expressly provided that the statute as amended:
>
> > does not prohibit the public service board from granting a certificate of public good under 10 V.S.A. § 248 for a utility which does not have an approved least cost integrated plan; provided that the board shall consider in its review under that section those environmental effects which the utility must consider in developing a least cost integrated plan.
>
> Consistent with this legislative intent, when utilities do not have approved integrated resource plans, the Board evaluates projects under Section 248(b)(6) according to their consistency with the principles of least-cost integrated planning. Those principles include consideration of the environmental impacts of the utility's resource decisions.
>
> The Vermont legislature and this Board have thus both concluded that it is appropriate to allow for approval of projects in the absence of an approved integrated least-cost plan. This allowance makes practical sense, in that it permits the Board to approve projects that are needed, beneficial to the public, and consistent with least-cost planning principles, even if the utility in question does not have an approved least-cost plan.
>
> The proposed Project is consistent with the principles of least-cost planning

> because, as explained in Section II.G, it has the lowest overall societal cost, including environmental costs, of all the alternatives that are reasonably assured of timely implementation. Thus, regardless of whether VELCO is legally required to, or otherwise should, have a least-cost integrated resource plan, we conclude that the proposed Project satisfies Section 248(b)(6).

Re: Vermont Electric Power Company, Docket 6860 (1/28/05) slip op at 25-26 (emphasis added). Neither the Department nor VGS, in their briefs, address this standard or allege that the project would satisfy it.

CONCLUSION

For the reasons set forth in the Initial Brief of Jane and Nate Palmer, the permit should be denied. For the reasons set forth in this Reply Brief, the positions of the Department of Public Service and VGS should be rejected.

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