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March 14, 2016

William R. Marks
Charlotte Hinesburg Road
Hinesburg VT

Re: Whether the Public Service Board process would protect Geprags Park as well as Vermont Gas has offered – or would provide greater protection

Dear Bill:

I write to inform you, and any others in Hinesburg with whom you wish to share this letter, that the terms of the August 19, 2015 “Stipulation” on their face appear attractive – but, when compared to the Public Service Board’s published decisions and the court precedents, would protect Geprags Park less well than the PSB process would in the absence of the Stipulation. In other words, the Select Board’s Stipulation provides fewer benefits than if the Town had not settled.

1. What is being given up – not just a 50-foot corridor, but rights to protect the entire Park;, not just underground rights; and not just for this pipeline.

The “Property” referred to in the deed is the entire Park. The easement deed is designed so that the *entire Gepgras Park* is subject to restrictions. The deed states that the town (“Grantor”) reserves “the right to fully use and enjoy the Property in any manner that will not prevent or interfere with use of the Corridor by VGS.” Later sections spell out how the property outside of the Corridor is affected. For example, as discussed below, trees outside the corridor can be cut, and land outside the corridor can be used by heavy equipment en route to the corridor.

The easement deed gives VGS the right to *cut all trees and vegetation within the 50-foot corridor* or any substitute corridor, and also to *cut all trees and vegetation outside the 50-foot corridor* as it deems appropriate. In perpetuity.

The same rights apply to a second 50-foot corridor for temporary pipelines, in perpetuity, in connection with repairs, alterations or relocations.

The deed gives VGS the right to build any surface or subsurface buildings that it wants within these corridors.

The deed gives VGS the right to abandon the pipeline and the surface or subsurface buildings and facilities (which are defined as part of the “pipeline”) in place. There may be buildings within the first or second corridor, in perpetuity.

The deed gives VGS the right to use heavy equipment as it sees fit to cross any part of the Park and can “store materials and equipment” on the property immediately adjacent to the corridor, but outside the corridor, as part of installation or maintenance. VGS gets to choose its points of “ingress and egress.”

The deed appears to allow VGS to damage property outside the corridor without any duty to restore the property or pay any damages, because its liability is limited to uses that are not “contemplated herein.”

The deed gives VGS the right to alter the topography of Geprags Park outside of the corridor for purpose of erosion control.

The easement deed also states that the town, in perpetuity, cannot “construct, install or permit the construction or installation of any structures or objects of any kind upon or under the surface of the ground... nor to store or place any objects” nor to “change the elevation of the ground” in the 50-foot corridor, or in any substitute 50-foot corridor that VGS chooses. That means that no benches or picnic tables or shelters or even trail signs can be placed on the first corridor or the second corridor without VGS approval.

VGS also has the right to assign these rights to any other company, in perpetuity.

The use is not restricted to the pipeline that the PSB has approved. Any pipeline owned by any company can hold the Town to these terms, forever.

In short, 100 years from now, the Park may have a corridor in a different location, with buildings on it, serving a gas pipeline that may provide no service to anyone in Hinesburg or in Vermont for that matter. The town will have no control over what occurs within the corridor nor any ability to protect against cutting of trees or use of heavy equipment outside the corridor if the work is related to the corridor. And whatever company owns the pipeline and buildings may just walk away from the site, and leave the underground pipeline and the buildings in place.

One may reasonably question whether this is what Mrs. Geprags had in mind.

2. Not much money. The stipulation calls for payment of \$75,000. I have represented landowners across whose property the pipeline easement is far less intrusive. It passes a shorter distance. It crosses part of the yard that is unused by the public (or anyone). Much larger sums have been paid. You may or may not be aware that under the PSB process, the Board will determine a value and then a Chittenden County jury will decide. The likelihood that a Chittenden County jury would award less than \$75,000 to the Town of Hinesburg for private gas companies to use Geprags Park forever, precluding other uses of those parts of the property, is very remote.

3. The Public Service Board is unlikely to reject the Supreme Court’s decision in order to authorize eminent domain. The Supreme Court of Vermont has held that eminent domain

cannot be used to condemn a utility right of way through a public park. This is the 1928 decision in President and Fellows of Middlebury College v. Central Power. The highest courts of other states have reached similar conclusions. The Public Service Board lacks the authority to overrule the Supreme Court. Only the Supreme Court can reverse this holding. It is reasonably likely that the Board will do its job as authorized by law. VGS will have to appeal to the Supreme Court for a different ruling.

If VGS wants a route now, rather than awaiting a Supreme Court decision, it should seek a route that does not involve a public park.

So just letting the Board do its job is likely to protect the Park better than this agreement. VGS will have to look for non-Park lands. The Select Board, as the fiduciaries responsible for implementing Ms. Geprags' wishes, may wish to consider whether just doing nothing carries out her intent better than ratifying the Stipulation.

4. Warbler habitat protection would be ordered by the Board anyway. The idea that habitat can be protected only by an agreement is nonsense. The Board routinely imposes strict environmental protection standards on project developers without their agreement. A recent example is Green Mountain Power's Kingdom Community Wind project, in Lowell. GMP entered into agreements with ANR and others but the Board went beyond those agreements. It imposed strict noise protection standards that GMP had opposed. Later, GMP failed to meet those standards and the Board imposed fines on GMP.

The Board is highly likely to impose upon VGS any habitat protection standards supported by a knowledgeable witness, for example a witness from the Audubon Society. Unless VGS were to submit testimony from its own expert which stated that habitat protection is not needed, the Board is virtually certain to impose those standards.

5. The energy efficiency service promise is either meaningless or unlawful. I was surprised to read that VGS committed to provide energy efficiency services. This promise is either meaningless or unenforceable. It is meaningless if it pertains to existing or new distribution customers, since, by law, it has to provide those services anyway. It is unenforceable and unlawful if it pertains to households that are not gas distribution customers, since VGS lacks legal authority to provide efficiency services to anyone who is not a gas customer.

6. The low-income rate and new distribution promises need to be understood in context – switching to gas heat will cost household residents more than maintaining their oil heat and more than switching to heat pumps. The Stipulation promises low income rates to Hinesburg customers, but fails to mention that pursuant to Board rule that rate is available to all low-income gas customers anyway, and that customers who currently utilize LIHEAP for their oil heat will lose that benefit. More importantly, any customer who switches to gas will end up paying more for heating than if they maintain their oil heat or they switch to a cold climate heat pump. This is expected to be true for at least the next ten years, based on the

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federal government's projection of future oil and gas prices (published by the EIA). I have the figures and can provide them to you or the Select Board if there is any interest.

VGS has already testified that they intend to put the cost of adding new distribution lines into rate base. This means that existing ratepayers will be paying to build new distribution service in Hinesburg that would end up costing new residential users more than if they make no switch. VGS collects its profits based in part on the size of its rate base. The most accurate way of describing VGS's "offer" to the town is that VGS is offering to increase its profits by having existing ratepayers pay to add more gas customers to the system even though, for at least the next ten years, those new customers will lose money by switching.

Conclusion. Your Select Board appears to have based its decision on incomplete or misleading information provided by VGS. Unless the Board for some reason is confident that the Public Service Board will reject the precedent of our Supreme Court, and also ignore the testimony of an expert on what is needed to protect bird habitat in the event that the Public Service Board rejects the precedent, there is no reason to believe that the Stipulation provides *any* benefit to the town.

Sincerely,

Jim Dumont

James A. Dumont, Esq.