

STATE OF VERMONT  
PUBLIC SERVICE BOARD

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Petition of Vermont Gas Systems, Inc. for )  
authority to condemn easement rights in )  
property interests of the Town of Hinesburg, )  
Vermont and Green Mountain Power )  
Corporation, relative to property located in ) Docket No. \_\_\_\_\_  
Hinesburg, Vermont in order to construct and )  
operate Phase 1 of the Addison Rutland Natural )  
Gas Project )

REVISED STIPULATION REGARDING CONDEMNATION

NOW COMES Vermont Gas Systems, Inc., a Vermont corporation with its principal place of business at 85 Swift Street, South Burlington, Vermont (“Vermont Gas”), and the Town of Hinesburg, a Vermont municipality, and its successors and assigns (“Town of Hinesburg”), and hereby stipulate and agree as follows:

I. INTRODUCTION

1. Vermont Gas provides natural gas service to Vermonters via a network of approximately 750 miles of underground transmission and distribution pipelines, systems, and related appurtenances located in northern Vermont.

2. Vermont Gas intends to expand its network by installing new underground transmission and distribution pipeline and related facilities in order to extend natural gas service to additional Vermont communities in furtherance of the Addison Natural Gas Project (the “Project”).

3. Vermont Gas seeks to compensate the Town of Hinesburg for constructing, installing, maintaining, and operating its natural gas service utility corridor on a portion of the Town of Hinesburg’s property known as “Gepregs Community Park,” located on Shelburne Falls Road in Hinesburg, Vermont and identified by Town of Hinesburg as Parcel ID # 16-20-26.1 (alternatively “Gepregs Park” or the “Property”).

4. Gepregs Park is situated on the northerly side of Shelburne Falls Road in the Town of Hinesburg, and is all and the same land premises decreed to the Town by Partial Decree of Distribution for the Estate of Dora E. Gepregs, dated December 2, 1991, and recorded on January 14, 1992 at Book 80, Page 106 of the Town of Hinesburg Land Records.

5. The Property is subject to a covenant that it “. . . shall be used only as a public park or school for public recreational or educational purposes, and the Town of Hinesburg shall properly maintain and care for the property decreed hereby.” (Hereinafter, the “Covenant”.)

38 6. The parties are in Agreement that based on the Covenant, it is not possible for the  
39 Town to convey to Vermont Gas any interest in and to Geprags Park through the conveyance  
40 process set forth in 24 V.S.A. § 1061.  
41

42 7. The Town of Hinesburg has determined that while the easement rights sought by  
43 Vermont Gas has the potential to directly interfere with the purpose of the public trust imposed  
44 by the Covenant during and after construction of the pipeline, unless addressed through  
45 conditions and appropriate compensation. Moreover, pipeline development on the Property may  
46 restrict consideration of new recreational or educational structures within the easement corridor  
47 without Vermont Gas' consent, thereby necessitating that Vermont Gas take measures to  
48 enhance the value of the Project for Geprags Park and for the Town.  
49

50 8. Since Geprags Park is subject to the Covenant, and based on the foregoing  
51 determinations, condemnation is the only means for Vermont Gas to acquire the necessary  
52 easement rights across the Property. This conclusion is consistent with the Town of Hinesburg's  
53 position on other past projects affecting the Property,<sup>1</sup> bearing in mind the potential interference  
54 with prior public use absent the terms and conditions of this Stipulation and accompanying  
55 documents.  
56

57 II. DEED OF EASEMENT  
58

59 9. Vermont Gas and the Town have agreed upon the Deed of Easement attached  
60 hereto as Exhibit A, which provides for a non-exclusive utility corridor encumbering Geprags  
61 Park and a temporary easement for additional workspace during Project construction  
62 (collectively, the "Easement"). The location of the area(s) of the Property to be conveyed to  
63 Vermont Gas by the Town of Hinesburg in the Easement are set forth as an exhibit to the Deed  
64 of Easement (see "Easement Plan, Property of Town of Hinesburg, Shelburne Falls Road, Town  
65 of Hinesburg, Chittenden County, Vermont," dated November 4, 2014).  
66

67 10. The Deed of Easement is intended to give Vermont Gas the right to construct,  
68 maintain, and operate the Project in Geprags Park while protecting and enhancing park uses and  
69 qualities (including but not limited to restoration, remediation, coordination on trail impacts, and  
70 implementation of a Warbler-Protection Plan and a Conservation Plan described below);  
71 requiring annual meetings between Vermont Gas and the Hinesburg Conservation Commission;  
72 limiting access points, placement of above-ground structures, restricting changes to the  
73 pipeline's features and operating pressure once installed, as well as the duration for use of  
74 temporary areas; and prohibiting fences or gates.  
75

76 III. STATUTORY CRITERIA FOR EMINENT DOMAIN  
77

78 11. Necessity. Condemnation of easement rights across the Property is reasonably  
79 necessary for Vermont Gas to provide adequate service to the public. Vermont Gas has secured  
80 easements from property owners on the northerly and southerly boundaries of the Property.  
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<sup>1</sup> See *Town of Hinesburg v. Amestoy et al., Stipulation and Order*, Docket No. 1652-95CnC (1996).

82 12. Orderly Development. Condemnation of the Property will not unduly interfere  
83 with the orderly development of the region and scenic preservation, provided that the terms and  
84 conditions of this Stipulation and the Deed of Easement as described herein are implemented,  
85 together with any other relevant conditions in the Certificate of Public Good in Docket 7970,  
86 state and federal environmental permits, the permit issued by the Selectboard for Shelburne Falls  
87 Road pursuant 19 V.S.A. §1111, and any amendments to any or all of the foregoing.  
88

- 89 a. To confirm the absence of a preferable alternate route, as well as reduced impacts  
90 on wetlands, Vermont Gas agrees to work with the Town Administrator to  
91 coordinate delineation of wetlands and demarcation of the easement corridor for  
92 public viewing, timed to coincide with any site visit by the Public Service Board  
93 where feasible, with VGS to remove any flagging, ribbons, and other demarcation  
94 upon completion.  
95  
96 b. Vermont Gas and the Town agree that the relevant terms of the Deed of Easement  
97 concerning access, indemnification, and lawful activities in Geprags Park shall  
98 govern for the periods in which delineation of the wetland and demarcation of the  
99 corridor, and removal of flags, ribbons, and other demarcation, takes place.

100  
101 IV. COMPENSATION  
102

103 13. Easement Compensation. Vermont Gas has agreed to pay to the Town of  
104 Hinesburg compensation totaling Seventy Five Thousand U.S. Dollars (\$75,000.00) (the  
105 “Easement Compensation”) for the easement rights, which the Town of Hinesburg may use at its  
106 discretion. Vermont Gas shall also pay any Vermont Property Transfer Tax and other fees  
107 associated with the Deed of Easement at the time of recording. Said payment will be made  
108 within fifteen (15) days of the date of a final order in the eminent domain proceeding.  
109

110 14. Richmond Road Distribution Plan. As additional consideration for the Deed of  
111 Easement, Vermont Gas agrees to extend its distribution network as shown on the attached plan  
112 in Exhibit B to enable service for, at an estimated value of \$470,000 by 12/31/2016 if feasible  
113 in the reasonable determination of Vermont Gas based on fulfillment of the conditions in Section  
114 \_\_ below (and by no later than 12/31/2017 in any case) (hereinafter, the “Distribution Plan”). As  
115 part of the Distribution Plan:  
116

- 117 a. Vermont Gas will make available its energy efficiency programs to any  
118 Hinesburg home or business currently along the existing natural gas line, with  
119 existing customers in Hinesburg to pay the same rates as tarified for other  
120 Vermont Gas Customers by the Vermont Public Service Board, without regard to  
121 feasibility of service.  
122  
123 b. Vermont Gas will make its energy efficiency programs (including insulation and  
124 other heating-related efficiency improvements) available to at least 80% of mobile  
125 home owners shown on the map along the proposed future distribution network as  
126 shown on the map included as Exhibit B.  
127

- 128                   i. Residential programs include: 1. Retrofit program, 2. New Construction  
129                   program, and 3. Equipment Replacement Program. The programs include  
130                   financial assistance and installation support, and feature highly efficient  
131                   gas furnaces and boilers that save money and energy. The programs also  
132                   include financing the costs of removing a heating oil tank from a mobile  
133                   home unit, sometimes with zero-interest financing.  
134
- 135                   ii. Commercial programs include: (1) Workplace Equipment Replacement  
136                   and Retrofit program; and (2) Workplace New Construction program.  
137
- 138                   c. Vermont Gas will absorb the cost to bring distribution lines to the side of each  
139                   mobile home in the mobile home parks. Per its existing tariff, Vermont Gas will  
140                   pay the installation costs of the first 100' of those homes in Exhibit B that are  
141                   more than 100' from the public right of way.  
142
- 143                   d. Vermont Gas offers a low income rate for certain eligible customers in Town of  
144                   Hinesburg. The discount is 20% off of all components of the natural gas bill (the  
145                   daily access charge, natural gas charge, and distribution charge) and is available  
146                   to consumers with household incomes at or below 185% of the federal poverty  
147                   level. Income eligibility is determined by the Department for Children and  
148                   Families, Office of Energy Assistance. All customers, including low income  
149                   eligible customers, pay a modest monthly fee to support the program. For a  
150                   residential customer the fee is currently \$1.39 per month.  
151
- 152                   15. Conditions of Distribution Plan. Completion of the “Distribution Plan” by the  
153                   end of 2016 is subject to the following conditions:  
154
- 155                   a. Timely approval of all required Town permits for the work. The distribution pipe  
156                   will not be co-located with the Town of Hinesburg’s existing water main.  
157
- 158                   b. Timely approval of all required State and Federal permits for the work.  
159
- 160                   c. Approval and easements (as required) from each mobile home park owner,  
161                   offering each the opportunity of whether to connect.  
162
- 163                   16. Tax Revenue. Vermont Gas has further estimated that based on the proportional  
164                   value of the transmission pipeline being constructed in Hinesburg, Vermont Gas (including but  
165                   not limited to Geprags Park), it will pay an estimated \$465,000.00 per year in property taxes,  
166                   to be depreciated over a period of more than 60 years (“Tax Revenue”).  
167
- 168                   17. Road Preservation Measures. Vermont Gas will take appropriate measures to  
169                   video-document the existing road conditions for all roads and access points in the Town of  
170                   Hinesburg to be used for construction vehicles during initial installation of the pipeline, and to  
171                   ensure that any damaged roads or access points are restored, in accordance with the 19 V.S.A.  
172                   §1111 permits, Town of Hinesburg road requirements, and driveway access permits.  
173

174           18.    Vegetation and Habitat Management Plan. Vermont Gas has agreed to fully  
175 implement the applicable portions of the Addison Natural Gas Project Phase I Vegetation  
176 Management Plan for post-construction restoration of vegetation , which includes a plan for the  
177 protection and enhancement of Golden-Winged Warbler habitat in the vicinity of the pipeline,  
178 developed in collaboration with Mr. Mark LaBarr of Audubon Vermont (the “Warbler Protection  
179 Plan”). The Vegetation Management Plan is attached hereto as Exhibit C, and the Warbler  
180 Protection Plan is Attachment 1 to Exhibit C. Details of the Warbler Protection Plan include the  
181 following:

- 182
- 183           a. Scheduling of work (including survey & design) to avoid disruption of nesting;  
184           and a prohibition on construction between April 15 and July 31 unless site survey  
185           by Audubon Vermont in early July indicates no evidence of nesting activity.
  - 186
  - 187           b. Planting of woody shrubs at the boundaries of the permanent easement corridor to  
188           enhance the habitat specific to the Warblers. Plantings include additional shrubs  
189           inside the easement area as depicted in the “Vegetation Management Plan  
190           Planting Schematic Typical”), attached to Exhibit C as Attachment 3.
  - 191
  - 192           c. Implementing a corridor maintenance plan consistent with preservation and  
193           enhancement of the existing habitat to the greatest possible extent, taking into  
194           consideration requirements for monitoring and maintenance of the pipeline.
  - 195
  - 196           d. Ensuring that any mowing in the corridor is conducted outside of nesting season.
  - 197
  - 198           e. Executing a post-construction monitoring plan to determine impacts, if any, on  
199           the use of the area in the vicinity of the pipeline by Golden-winged Warblers.

200

201           19.    Contribution Towards Warbler Protection. At the time the Deed of Easement  
202 is recorded, in addition to the Easement Consideration, Vermont Gas will pay to the Town of  
203 Hinesburg the sum of One Thousand U.S. Dollars (\$1,000.00) to support the plantings as  
204 recommended by Audubon Vermont as part of the Warbler Protection Plan. In addition,  
205 Vermont Gas will make a donation of One Thousand U.S. Dollars (\$1,000.00) to Audubon  
206 Vermont to support the services provided to the Town of Hinesburg in connection with the  
207 pipeline Corridor as part of the Vegetation Management Plan and the Warbler Protection Plan.

208

209           20.    Environmental Inspector Reimbursement. During initial construction of the  
210 Project, Vermont Gas will reimburse the Town of engaging an environmental inspector /  
211 observer at the Town’s choosing, suitably credentialed in environmental engineering, to witness  
212 and report on construction and observance with the conditions of the Deed of Easement.  
213 Reimbursement shall be up to \$1,000 per week through to the end of the construction /  
214 restoration period.

215

216           21.    Conservation Plan. Vermont Gas acknowledges the importance of Geprags Park  
217 to the Town of Hinesburg for its recreational and ecological values. In addition to the Warbler  
218 Protection Plan, Vermont Gas agrees to collaborate with the Hinesburg Conservation  
219 Commission in addressing other concerns that may arise from time to time in connection with

220 the pipeline corridor. Specifically, Vermont Gas agrees to modify normal maintenance routines  
221 as needed to address concerns, provided that the modifications do not jeopardize the safety and  
222 integrity of the pipeline. Further, Vermont Gas will make payments to the Town in an amount  
223 ranging between \$2,000 and \$3,000 per year for a period of ten (10) years to benefit the ecology  
224 in and proximate to the corridor. The foregoing is referred to hereinafter as the “Conservation  
225 Plan.”

226  
227 22. Adequacy of Compensation. By signing this Stipulation, the Town of  
228 Hinesburg and Vermont Gas have agreed that although eminent domain is required for Vermont  
229 Gas’ acquisition of the Easement on the Property based on the Covenant, the Easement  
230 Compensation, the Distribution Plan, the Tax Revenue, the Environmental Inspector  
231 Reimbursement, the Vegetation Management Plan, the Warbler Protection Plan, the contribution  
232 towards Warbler protection, and the Conservation Plan, as described herein collectively  
233 constitute fair and reasonable compensation for the rights set forth in the Deed of Easement.  
234

235 V. MISCELLANEOUS  
236

237 23. Reasonable Assistance. In ensuring that Vermont Gas can implement this  
238 Agreement, the Deed of Easement, the Distribution Plan, the Vegetation Management Plan, and  
239 the Warbler Protection Plan, the Town of Hinesburg shall provide reasonable assistance to  
240 Vermont Gas where requested to ensure that construction, maintenance, and repair of the  
241 pipeline, together with exercise of VGS’s obligations to preserve and enhance habitat,  
242 vegetation, and roads in Hinesburg, can proceed without breach of the peace, unlawful  
243 interference, or other impediments, including through imposition of reasonable time, place, and  
244 manner restrictions on activities in Geprags Park in opposition to Vermont Gas’s exercise of its  
245 rights.

246 24. Jurisdiction. The parties agree that the Public Service Board will have  
247 continuing jurisdiction to enforce the terms and conditions of this Stipulation and the Deed of  
248 Easement based on the order issued in this Docket; provided, however, that the parties must first  
249 bring any bona fide disputes regarding the terms and conditions to the Department of Public  
250 Service for consultation prior to escalating the dispute to the Board.  
251

252 [Signatures Appear on Next Page]  
253  
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255 Dated at Burlington, Vermont this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

256

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VERMONT GAS SYSTEMS, INC.

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By: \_\_\_\_\_

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