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 Hinesburg, Vermont in order to construct and operate Phase 1 of the Addison Rutland Natural Gas Project

Docket No. ____________

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:

1. 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 “Geprags Community Park,” located on Shelburne Falls Road in Hinesburg, Vermont and identified by Town of Hinesburg as Parcel ID # 16-20-26.1 (alternatively “Geprags Park” or the “Property”).


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

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

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

II. DEED OF EASEMENT

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

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

III. STATUTORY CRITERIA FOR EMINENT DOMAIN

11. Necessity. Condemnation of easement rights across the Property is reasonably necessary for Vermont Gas to provide adequate service to the public. Vermont Gas has secured easements from property owners on the northerly and southerly boundaries of the Property.

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

   a. To confirm the absence of a preferable alternate route, as well as reduced impacts on wetlands, Vermont Gas agrees to work with the Town Administrator to coordinate delineation of wetlands and demarcation of the easement corridor for public viewing, timed to coincide with any site visit by the Public Service Board where feasible, with VGS to remove any flagging, ribbons, and other demarcation upon completion.

   b. Vermont Gas and the Town agree that the relevant terms of the Deed of Easement concerning access, indemnification, and lawful activities in Geprags Park shall govern for the periods in which delineation of the wetland and demarcation of the corridor, and removal of flags, ribbons, and other demarcation, takes place.

**IV. COMPENSATION**

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

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

   a. Vermont Gas will make available its energy efficiency programs to any Hinesburg home or business currently along the existing natural gas line, with existing customers in Hinesburg to pay the same rates as tariffed for other Vermont Gas Customers by the Vermont Public Service Board, without regard to feasibility of service.

   b. Vermont Gas will make its energy efficiency programs (including insulation and other heating-related efficiency improvements) available to at least 80% of mobile home owners shown on the map along the proposed future distribution network as shown on the map included as Exhibit B.
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
gas furnaces and boilers that save money and energy. The programs also
131  include financing the costs of removing a heating oil tank from a mobile
132  home unit, sometimes with zero-interest financing.
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134  ii. Commercial programs include: (1) Workplace Equipment Replacement
135  and Retrofit program; and (2) Workplace New Construction program.
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137  c. Vermont Gas will absorb the cost to bring distribution lines to the side of each
138  mobile home in the mobile home parks. Per its existing tariff, Vermont Gas will
139  pay the installation costs of the first 100’ of those homes in Exhibit B that are
140  more than 100’ from the public right of way.
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142  d. Vermont Gas offers a low income rate for certain eligible customers in Town of
143  Hinesburg. The discount is 20% off of all components of the natural gas bill (the
daily access charge, natural gas charge, and distribution charge) and is available
to consumers with household incomes at or below 185% of the federal poverty
level. Income eligibility is determined by the Department for Children and
Families, Office of Energy Assistance. All customers, including low income
eligible customers, pay a modest monthly fee to support the program. For a
residential customer the fee is currently $1.39 per month.
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151  15. Conditions of Distribution Plan. Completion of the “Distribution Plan” by the
end of 2016 is subject to the following conditions:
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153  a. Timely approval of all required Town permits for the work. The distribution pipe
will not be co-located with the Town of Hinesburg’s existing water main.
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158  b. Timely approval of all required State and Federal permits for the work.
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160  c. Approval and easements (as required) from each mobile home park owner,
offering each the opportunity of whether to connect.
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162  16. Tax Revenue. Vermont Gas has further estimated that based on the proportional
value of the transmission pipeline being constructed in Hinesburg, Vermont Gas (including but
not limited to Geprags Park), it will pay an estimated $465,000.00 per year in property taxes,
to be depreciated over a period of more than 60 years (“Tax Revenue”).
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167  17. Road Preservation Measures. Vermont Gas will take appropriate measures to
video-document the existing road conditions for all roads and access points in the Town of
Hinesburg to be used for construction vehicles during initial installation of the pipeline, and to
ensure that any damaged roads or access points are restored, in accordance with the 19 V.S.A.
§1111 permits, Town of Hinesburg road requirements, and driveway access permits.
18. **Vegetation and Habitat Management Plan.** Vermont Gas has agreed to fully implement the applicable portions of the Addison Natural Gas Project Phase I Vegetation Management Plan for post-construction restoration of vegetation, which includes a plan for the protection and enhancement of Golden-Winged Warbler habitat in the vicinity of the pipeline, developed in collaboration with Mr. Mark LaBarr of Audubon Vermont (the “Warbler Protection Plan”). The Vegetation Management Plan is attached hereto as Exhibit C, and the Warbler Protection Plan is Attachment 1 to Exhibit C. Details of the Warbler Protection Plan include the following:

a. Scheduling of work (including survey & design) to avoid disruption of nesting; and a prohibition on construction between April 15 and July 31 unless site survey by Audubon Vermont in early July indicates no evidence of nesting activity.

b. Planting of woody shrubs at the boundaries of the permanent easement corridor to enhance the habitat specific to the Warblers. Plantings include additional shrubs inside the easement area as depicted in the “Vegetation Management Plan Planting Schematic Typical”), attached to Exhibit C as Attachment 3.

c. Implementing a corridor maintenance plan consistent with preservation and enhancement of the existing habitat to the greatest possible extent, taking into consideration requirements for monitoring and maintenance of the pipeline.

d. Ensuring that any mowing in the corridor is conducted outside of nesting season.

e. Executing a post-construction monitoring plan to determine impacts, if any, on the use of the area in the vicinity of the pipeline by Golden-winged Warblers.

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

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

21. **Conservation Plan.** Vermont Gas acknowledges the importance of Geprags Park to the Town of Hinesburg for its recreational and ecological values. In addition to the Warbler Protection Plan, Vermont Gas agrees to collaborate with the Hinesburg Conservation Commission in addressing other concerns that may arise from time to time in connection with
the pipeline corridor. Specifically, Vermont Gas agrees to modify normal maintenance routines
as needed to address concerns, provided that the modifications do not jeopardize the safety and
integrity of the pipeline. Further, Vermont Gas will make payments to the Town in an amount
ranging between $2,000 and $3,000 per year for a period of ten (10) years to benefit the ecology
in and proximate to the corridor. The foregoing is referred to hereinafter as the “Conservation
Plan.”

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

V. MISCELLANEOUS

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

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

[Signatures Appear on Next Page]
Dated at Burlington, Vermont this _____ day of ________________ 2016.

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