STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Procurement Energy for a Declaratory Ruling Regarding Regulation of Compressed Natural Gas Filling Stations and Related Facilities.

Case: 13-__-_____

PETITION FOR DECLARATORY RULING

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Dated: April 26, 2013

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Case: 13-G-_____

PETITION FOR DECLARATORY RULING

Pursuant to Part 8 of the Public Service Commission's ("Commission") Rules (16 NYCRR Part 8), Procurement Energy, LLC ("PE"), hereby petitions the Commission for a declaratory ruling finding that PE's proposed siting and operation of compressed natural gas ("CNG") facilities in the State of New York will not be subject to Commission jurisdiction.[1] PE's CNG facilities will provide natural gas to commercial consumers, not served by a traditional pipeline, through a turnkey delivery service. PE will truck CNG to end users in Department of Transportation and American Society of Mechanical Engineers ("ASME") certified tube trailers, which have long been the standard for storage and transportation in the industrial gas industry, where it will be pressure-regulated, metered, and consumed.

The CNG facilities will be owned and operated by PE, whose ownership interests are held by Matheson Tri-Gas Latin America, an industrial gas company with a 22-year track record and operations in eight countries throughout North America.

The proposed location for the CNG facilities is an industrial-zoned area on Kings Highway in Saugerties, NY, subject to a pending supply agreement with Central Hudson Gas & Electric Corporation ("Central Hudson"), the LDC serving the Hudson Valley region. The CNG

[1] PE will comply with all other applicable statutes and regulations of federal, state and local agencies having jurisdiction and apply for all requisite permits for its proposed CNG operations.

facilities will take the natural gas from Central Hudson, condition it to remove excess moisture, and compress the gas to load it into tube trailers for delivery to the consumer.

Initial deliveries are scheduled to begin this fall to meet demand for the upcoming 2013-2014 heating season. Due to equipment lead times, PE respectfully requests the Commission expeditiously issue a declaratory ruling that PE's CNG delivery service will not be subject to Commission regulation.

I. BACKGROUND

A. Procurement Energy

PE is a sister company of Matheson Tri-Gas Latin America ("MTLA"), an industrial gas company formed in 1992 with operations in eight countries including Central and South America. MTLA has significant expertise in the production and distribution of liquid and compressed gases, including: oxygen, argon, nitrogen, ethylene, hydrogen, and methane (the primary component of natural gas). MTLA has constructed and operated cryogenic air separation plants for various liquid gases and has significant expertise in the production and distribution of compressed gases, with the compressed hydrogen model mirroring the same exact process and equipment that will be used for CNG.

B. Overview of CNG and Equipment

The CNG facility site setup is identical to that of a CNG refueling station for natural gas vehicles ("NGV"), with the primary components comprised of a compressor and dispenser. Pipeline quality gas will be delivered to the facility via Central Hudson at a line pressure between 400-600 psig. The gas will be conditioned and dried, if necessary, to remove excess moisture. The natural gas compressors, likely manufactured by Norwalk Compressors (*see* Attachment I), will compress the gas up to 3,600 psig, where it will be dispensed into tube

trailers, likely provided by Fiba Technologies (*see* Attachment II), and delivered to consumers. The trailers are DOT and ASME certified. The facility will be equipped with metering, flexible hose connections, and overpressure protection devices according to the safety standard provided by National Fire Protection Association ("NFPA") 52, the national fire code framework for CNG.

The setup, equipment, and business model for CNG is identical to that used by MTLA, and the industrial gas business overall, for compressed hydrogen. The compression equipment and tube trailers are provided by the same manufacturers involved in the hydrogen market in the United States. Both Norwalk Compressors and Fiba Technologies have been reputable providers of equipment in the industrial gas industry for many years.

PE's model of storage and distribution to consumers has been successfully and safely implemented in the New York throughout multiple industries, including the propane industry. Propane marketers have safety stored and transported liquid petroleum gas ("LPG") via tractor trailers throughout the state of New York. PE will leverage its industrial gas expertise, to safely deliver an affordable supply of CNG, while providing consumers with an additional fuel choice to consider for the energy needs.

C. Safety Standard

NFPA fire codes provide a sufficient regulatory and safety framework in New York for various compressed and liquid gases. As the propane industry in New York has successfully been monitored by local officials adhering to the NFPA framework, the NFPA 52 fire codes for CNG provide adequate framework for safety precautions.

The two major applicable chapters from NFPA 2013 edition:

i) NFPA 52 (2013) Chapter 5: General CNG Requirement and Equipment Qualifications

- Section 5.2: Natural gas provided by Central Hudson is pipeline quality gas meeting composition requirements.
- Section 5.4 & 5.5: Fiba tube trailers are DOT ASME certified and comply with guidelines for design and use of containers.
- Section 5.6 – 5.9: Gauges, regulators, fuel line, and valves selected for use at site will be manufactured and compliant with NFPA guidelines.
- Section 5.10 – 5.11: Hose and trailer connections will be selected and installed based on guidelines.

ii) NFPA 52 (2013) Chapter 7: CNG Compression, Gas Processing, Storage, and Dispensing Systems

- Section 7.4: Compressors will be protected from the weather and will be sited to comply with outdoor guidelines, including: minimum distances, ventilation, and warning signs.
- Section 7.5: Tube trailers are chassis mounted and meet outdoor container storage requirements.
- Section 7.6-7.9: Pressure relief devices, regulators, gauges, and hosing will be manufactured, installed, and operated to meet stated standards.
- Section 7.10: System testing will be conducted to meet minimum NFPA standards.

As noted above, in addition to NFPA regulation, PE will also seek and obtain all other requisite federal, state and local approvals necessary before commencing commercial operation. Further regulation by the Commission in this area is unnecessary.

II. PETITION

The PSL provides that a declaratory ruling may be issued with respect to, "the applicability to any person, property, or state of facts of any rule or statute enforceable by the Commission…." 16 NYCRR § 8.1(a)(1) A declaratory ruling is appropriate in this instance as PE seeks a ruling from the Commission regarding the applicability of the PSL to, and the Commission's jurisdiction over, PE's proposed operation of the CNG facilities described herein.

PE does not satisfy the definition of a *gas corporation* under the PSL. The PSL basically defines a *gas corporation* as "every corporation… owning, operating or managing any gas plant." PSL § 11[2] *Gas plant*, in turn, is defined by the PSL as "all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the manufacture, conveying, transportation, distribution, sale or furnishing of gas (natural or manufactured or mixture of both) for light, heat or power, *but does not include property used solely for or in connection with the business of selling, distributing or furnishing of gas in enclosed containers*." PSL § 10 [emphasis added] As PE will be utilizing property for the sale of natural gas in enclosed containers, PE will not own or operate *gas plant* and should not be considered a *gas corporation* under the PSL.

The Commission recently intimated that it would not have jurisdiction over CNG facilities. In Case 12-G-0297, the Commission initiated a proceeding to investigate, *inter alia*, its policies concerning the use of natural gas and to consider whether it should take steps to foster the use of natural gas through expansion of the delivery system.[3] In this proceeding the Commission stated:

[2] PE's operations do not meet any of the exceptions in the definition of gas corporation.
[3] Case 12-G-0297: *Proceeding on Motion of the Commission To Examine Policies Regarding the Expansion of Natural Gas Service*, Order Instituting Proceeding and Establishing Further Procedures (Nov. 30, 2012).

> Some areas of the State that are not currently franchised by natural gas utilities feature remote, rocky or mountainous terrain which make extension of the existing natural gas distribution system difficult and extremely expensive. In those areas, it may make sense to site a compressed natural gas (CNG) or liquefied natural gas (LNG) storage facility, which could be used to supply a local distribution system. This method is already employed by some communities in New England. Current New York statutes and regulation, however, do not appear to allow for the siting of LNG storage facilities within the state for use in this way. This proceeding shall also consider, and develop an estimate of, the extent to which technologies such as CNG or LNG could be used to provide natural gas service in these hard to serve communities. Barriers for projects such as these should also be identified.[4]

The Commission further noted, "it is likely that the siting of LNG storage facilities in New York would involve the jurisdiction of state agencies *other than the Department of Public Service*."[5]

Sufficient regulation over the safety of CNG facilities exists without Commission oversight. In the propane industry, NFPA fire codes have provided a regulatory framework that has been successfully implemented by local officials and resulted in a strong safety track record. NFPA 52 codes for CNG have also been successfully implemented in New York for compressor sites serving as refueling stations for NGV. To date, according to the Department of Energy's website, there are 35 active CNG refueling stations in New York. The equipment and setup of a refueling station is identical to PE's proposed facility, and therefore existing NFPA codes provide an effective and sufficient regulatory framework to promote safe operations.

Rate regulation is also unnecessary. PE will not be constructing or operating facilities using a source of revenue from captive ratepayers who are dependent upon PE's facilities for the delivery of PE's product. CNG would be an additional alternative available to consumers and would be subject to the competing economics of substitute fuels, such as fuel oil and propane. The availability of alternate fuel options restricts PE from the pricing power associated with

[4] Id. at 1.
[5] Id. at 11, fn 13.

traditional LDCs. Accordingly, rate regulation of PE's proposed operations would be unwarranted.

As the Commission recognized in Case 12-G-0297, the CNG business model has been introduced in other New England states. For example, on July 12, 2012, a memorandum of understanding ("MOU") was signed by the Vermont Department of Public Service, NG Advantage ("NGA") and Vermont Gas Systems. The MOU states that the parties agree that neither NGA's compression facility in Vermont nor the customer facilities to which NGA will deliver CNG are subject to regulation by the Vermont Public Service Board ("PSB") under State law. In a declaratory ruling on the MOU, entered October 10, 2012 (*see* Attachment 3), it was concluded that the [PSB] ought to refrain from exercising its § 203 jurisdiction to regulate NG Advantage as a non-pipeline gas retail distributor."[6] It was reasoned that the PSB "should encourage new CNG technology and industry to develop" and that "[p]erhaps a regime of minimal regulation will encourage deployment of this innovative business model and expand availability of CNG…."[7] PE requests that its proposed CNG operations be afforded similar treatment.

[6] Docket No. 7866: *Petition of NG Advantage LLC for a Declaratory Ruling*, Declaratory Ruling re: regulatory Status of NG Advantage LLC (Oct. 10, 2012), at 8.
[7] *Id*.

III. CONCLUSION

For the reasons set forth herein, PE respectfully requests a declaratory ruling from the Commission stating that the CNG facilities proposed by PE will not be subject to Commission jurisdiction.

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/s/

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Dated: April 26, 2013
Albany, New York

Attachment I

ABOUT NORWALK

Originally known as the Norwalk Iron Works, the Norwalk Compressor Company, Incorporated had been located in South Norwalk, Connecticut since 1864. In 2005, Norwalk relocated its operations to Stratford, CT, and modified its name to Norwalk Compressor Company. Since its first patent in January 1876, Norwalk Compressor Company has designed, manufactured, and serviced its own positive displacement reciprocating gas compressors. Norwalk Compressor has also made many significant contributions to the advancement of compressor technology, such as a patent for the world's first multi-stage compressor in July 1881. Our application capabilities and expertise have been unquestioned in compressing high pressure air and chemically active or inert gases such as Acetylene, Ammonia, Chlorine, Carbon Dioxide, Helium (including radioactive Helium), Hydrogen, Natural Gas, Nitrogen, Nitrous Oxide, Oxygen, and Sulfur Hexafluoride.

With the assistance of global Manufacturer's Agent and Representative networks, Norwalk Compressor Company offers approximately 100 quality products, designed and built for some of the world's most discerning clients. Typical markets served are Alternate Fuels, Chemical Process, Manufacturing, Pharmaceutical, Science/Research, Nuclear, Specialty gases, Aerospace, Offshore, Petrochemical, petroleum, and Power Cogeneration.

While standard model compressors are available, Norwalk Compressor Company specializes in the conservative design of custom engineered applications. Our current frame limitation is a nominal 800 HP (600 kW); and the maximum pressures we have compressed to are 25,000 PSIG (1,755 kg/cm¾-ga) for lubricated service and 5,000 PSIG (350 kg/cm¾-ga) for non-lubricated service.

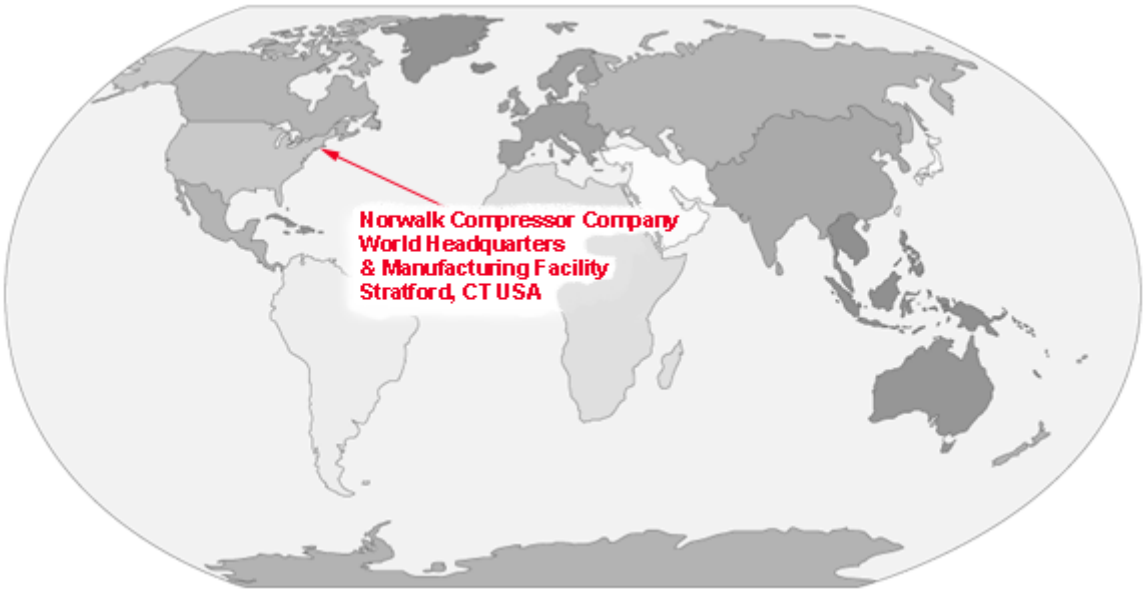
For General information, three compressor configurations are offered:

- SLIMLINE Series: Horizontal straight-line; to 500 RPM and 5 stages of compression
- CENTURY Series: Horizontal balance-opposed; to 1,200 RPM and 6 stages of compression
- CHARGER Series: Vertical in-line; to 900 RPM and 4 stages of compression. The majority of compressors shipped from our factory have electric motor drives, yet other prime drive arrangements are available such as engines or turbines. Packaging can range from a bare compressor block mount (foundation) design to a full skid, acoustic analog, failsafe controls, piping, Programable Logic Control (PLC) instrumentation, special materials, utility support consoles, wiring, and testing to various industry standards, such as ASTM, NEMA, IEC, ISA, API, etcetera.

In addition to Original Equipment Manufacturing (OEM), Norwalk Compressor Company offers equipment restoration/re-manufacturing to include a renewed 12 month warranty, rerates for existing equipment due to application or process changes, and repair services for Norwalk manufactured equipment. Spare parts are available from the factory although it is recommended that each client maintain an inventory of items to ensure maximum production via compressor on-line availability. Also, Service Engineers, Factory Service Supervisors, and factory trained Agent Organization Service Supervisors are available to visit any site on a 24 hour basis.

For more information on this versatile unit, contact your local sales representative or

Norwalk Compressor Company's factory Sales Department.

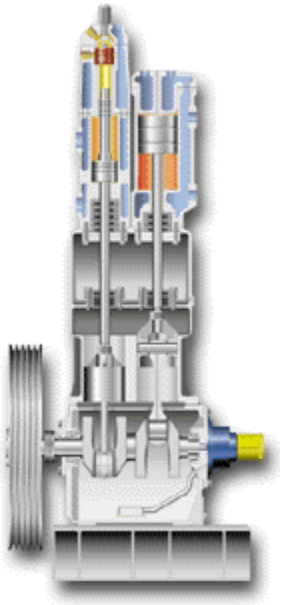


Norwalk Compressor Company
Box 447, 1650 Stratford Avenue
Stratford, CT 06615
Tel: 203-386-1234 Fax: 203-386-1300
Toll Free (Continental U.S): 1-800-556-5001

CHARGER SERIES

Two Throw Vertical Design Reciprocating Compressors For Air Or Gas Service

Relocating its factory operations to Stratford, CT, USA in 2005, Norwalk Compressor Company, Inc. continues designing and manufacturing its proprietary range of water cooled reciprocating compressors. Since its inception, in 1864, Norwalk Compressor Company has made many significant contributions to the advancement of compressor technology, including the patent for the world's first multi-stage compressor in 1880, and earned a worldwide reputation for long term reliability and efficiency.



All of this experience is utilized in the CHARGER series compressor, which is probably best known as the heart of Norwalk's natural gas vehicle (NGV) fueling stations around the world. However, the CHARGER is a versatile unit which has also been used to compress a wide variety of other gases including Helium, Hydrogen, Nitrogen and Air to pressures as high as 4,000 PSIG (281 kg/cm2).

The CHARGER is a heavy duty, low speed, two throw, vertically configured compressor. It is a crosshead design unit with a nominal frame rating of 40 HP (30KW), and as standard equipment incorporates single compartment distance piece with oil scrapers and gas packings. Cylinder group options are available in 1 thru 4 stages of compression in both oil lubricated and non-lubricated configurations.

Every CHARGER compressor includes the following Standard Features:

- Designed for Continuous Service with Minimum Maintenance
- V-Belt Drive - Gear or Direct Drive Optional
- Force Feed Lubrication for Frame and Running Gear
- Crosshead and Distance Piece Assembly with Cylinder Packings and Oil Scrapers
- Piston and Packing Ring Materials Designed for Each Application
- Water Cooled Cylinders - Available in Lubricated or Non-Lubricated Configurations
- Available for Customer Packaging or Fully Factory Packaged

CHARGER compressors can be designed and engineered to suit the most rigorous specifications, and numerous packaging options are offered.

Attachment 2

FIBA's Pressure Vessel Manufacturing Process

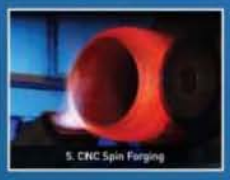
1. Raw pipe stock is inspected & stamped with a tracer number for tracking throughout the manufacturing process.
2. Ultrasonic examination verifies minimum wall thickness and insures integrity of the material.
3. If required, ID grinding removes imperfections and reduces tare weight of the finished product. It may also be used to smooth and polish the inside surface.
4. A band saw cuts the pipe to length needed for finished tube.
5. FIBA's state-of-the-art, CNC spin forges (we have two) utilize precise induction heating to form pipe ends.
6. After forming, the vessels are heat treated in our computer controlled and calibrated oven.
7. Liquid quenching of the vessels continues the heat-treating process of achieving product uniformity and required physical properties for regulatory compliance.
8. Hardness testing and other inspections confirm results of the heat-treating processes.
9. After heat treatment, the vessel ends are finished with threads or customer required ends using a CNC machining center.
10. Hydrostatic testing establishes a vessel's service pressure, verifies proper heat treatment, measures elasticity and inspects for leaks. The vessel's weight and water volume are also measured.
11. Internal steam cleaning and drying, while using an inverter, flushes out the machining residues and removes moisture.
12. The internal surface of the vessel is shotblasted to remove mill scale and further clean the interior surface. Enhanced cleaning processes or tumbling are also available.
13. Exterior shotblasting removes heat treatment scale and oxidation.
14. The pressure vessel is stamp-marked by a robot for unique identification and to verify regulatory specification compliance.
15. Exterior coating per customer specifications finishes the pressure vessels, which are then shipped or packaged.


1. Raw Steel Pipe Inspection


2. Ultrasonic Examination

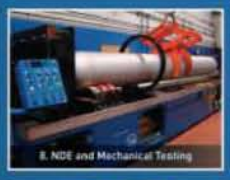

3. Interior Grinding and Cleaning


4. Saw Cutting


5. CNC Spin Forging


6. Heat Treating


7. Liquid Quenching


8. NDE and Mechanical Testing


9. CNC Tube Threading


10. Hydrostatic Testing


11. Internal Steam Cleaning


12. Internal Blasting and Cleaning


13. External Shotblasting and Cleaning


14. Robotic Stamp Marking


15. Coating and Finishing

FIBA Technologies, Inc. offers a complete line of seamless pressure vessels for storage and transportation of industrial and specialty gases and chemicals.

As a manufacturer of compressed gas tube trailers, ISO skid containers, and ASME receivers since 1958, we know that pressure vessel buyers require:

- Superior quality
- Light weight
- High pressure
- Timely delivery
- Code compliance
- Maximum payloads
- Electronic-grade finishing
- Attractive pricing

Our production facility for the manufacture of pressure vessels is located just yards from the Massachusetts Turnpike (I-90) in Millbury, MA. The facility is equipped with state-of-the-art tooling and equipment operated by skilled and trained personnel. Our factory will provide pressure vessel users worldwide with a wide selection of product specifications and certifications, including:

- DOT (3T, 3AAX, 3AA and UN)
- ASME (U, U3 and RP)
- NB
- ISO 11120
- SELO
- KGSC
- TC
- DNV
- BIE
- BV
- PED
- TPED

Seamless Pressure Vessels for Stationary Storage

FIBA stationary pressure vessels are manufactured and certified for safe storage of high-pressure gases at permanent installations in accordance with American Society of Mechanical Engineers (ASME) Division 1 and 3 codes.

Seamless Gas Containers for Intermodal Transportation

FIBA designs, manufactures, tests and marks its seamless gas containers for transportation in accordance with the requirements of the U.S. Department of Transportation (DOT) Federal Hazardous Materials Regulations, Title 49 Code of Federal Regulations and the requirements of the International Organization for Standardization (ISO) 11120. Other international markings can be applied as required by the customer.

Strict quality control processes are monitored by either a DOT recognized, Independent Inspection Agency (IIA) for domestic production or a Notified Inspection Body for ISO and UN pressure vessels. Authorized inspectors review our ASME designs and materials and witness various manufacturing processes.

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Attachment 3

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7866

Petition of NG Advantage LLC for a declaratory ruling)
that the installation and operation of its proposed)
compressed natural gas facility in the Town of Milton,)
Vermont, and the delivery of compressed natural gas to)
retail customers, is not subject to Public Service Board)
jurisdiction under 30 V.S.A. Sections 203, 231, and 248)

Order entered: 10/10/2012

DECLARATORY RULING RE:
REGULATORY STATUS OF NG ADVANTAGE LLC

I. INTRODUCTION

On April 11, 2012, NG Advantage LLC ("NG Advantage" or the "Company") filed with the Vermont Public Service Board (the "Board") a petition for declaratory ruling ("the Petition") regarding the Company's plans to construct and operate compressed natural gas ("CNG") facilities in Vermont.

In the Petition, NG Advantage sought a Board determination that: (1) neither 30 V.S.A. § 231 nor § 203 applies to the Company; (2) 30 V.S.A. § 248 does not apply to the Company's construction and operation of a CNG facility in Vermont; and (3) 30 V.S.A. § 248 does not apply to the facilities associated with the Company's delivery of CNG to customer sites or the use of such fuel source at the customer sites.

In this Proposal for Decision, I recommend that the Board conclude that it has jurisdiction to regulate NG Advantage's activities pursuant to § 203(1), but that the Board exercise its discretion not to require the Company to obtain a CPG pursuant to § 231. I further recommend that the Board find that NG Advantage does not need to obtain a CPG pursuant to § 248 for the

project described in the Petition because it does not constitute a "natural gas facility" pursuant to that statute.

II. PROCEDURAL HISTORY

In support of its Petition, NG Advantage also filed on April 11, 2012, a Brief in Support of Declaratory Judgment Petition, Proposed Order of Notice, and an Affidavit of Tom Evslin, the founder and a member of the Company.

The Petition, Brief in Support of Declaratory Judgment Petition, and the Affidavit of Tom Evslin were served on all of the statutory parties under 30 V.S.A. § 248, adjoining landowners, and the Natural Resources Board.

On May 10, 2012, I held a prehearing conference in this matter. Joslyn Wilschek, Esq., and William B. Piper, Esq., of Primmer Piper Eggleston & Cramer, PC, and Tom Evslin and Neale Lunderville attended for NG Advantage, along with Louise C. Porter, Esq., and GC Morris for the Department of Public Service (the "Department"), Judith Dillon, Esq., for the Vermont Agency of Natural Resources, and John H. Marshall, Esq., of Downs Rachlin & Martin, PLLC, and Eileen Simollardes for Vermont Gas Systems, Inc. ("VGS").

On May 16, 2012, Vermont Energy Investment Corporation ("VEIC") moved to intervene in this matter pursuant to Vermont Public Service Board Rule 2.209. On May 17, 2012, VGS moved to intervene in this matter pursuant to Vermont Public Service Board Rule 2.209(B).

On May 31, 2012, the Company responded to the motions to intervene.

On June 14, 2012, I issued an Order limiting VGS's party status to addressing the legal framework applicable to NG Advantage. I denied VEIC's Motion to Intervene.

On July, 6, 2012, the Company, the Department, and VGS entered into a Memorandum of Understanding ("MOU") agreeing that neither § 203 nor § 231 apply to the Company and that § 248 does not apply to the Company's facilities as proposed.

In accordance with the terms of the MOU, I hereby include the Petition, the Affidavit of Tom Evslin, and the MOU itself in the evidentiary record in this case.

Pursuant to 30 V.S.A. § 8(c), and based on the record and evidence before me, I present the following proposed findings of fact and conclusions of law to the Board.

III. FINDINGS OF FACT

1. NG Advantage is a Vermont limited liability company planning to provide natural gas to industrial and commercial customers not served by any pipeline. Pet. at 1, 2; Evslin Aff. at 3.

2. The proposed VGS pipeline expansion, if approved, will take years to build and, together with the currently existing VGS system, will cover only a fraction of the State. The Company's plans as described below will provide quicker access to natural gas for commercial and industrial customers along the line of the proposed VGS expansion as well as access to such businesses that are not near the pipeline. Pet. at 2; Evslin Aff. at 4.

3. NG Advantage plans to install and operate a CNG facility in Milton, Vermont, in the Catamount Industrial Park (referred to as the "Milton Facility"). The Company would be a VGS customer and would take natural gas on the customer side of a VGS meter. The Company clarified at the prehearing conference that its Petition seeks a ruling on its proposed CNG facilities generally, rather than its facilities at a specific location. The MOU also clarifies that NG Advantage may obtain gas from a company other than VGS for future facilities. Pet. at 3; Evslin Aff. at 6.

4. The Milton Facility would consist primarily of a compressor station adjacent to VGS's natural gas pipeline. The compressor station would receive the natural gas coming in from VGS and compress it to higher pressures. As part of this process the gas goes through a dryer, which removes excess moisture. CNG is loaded directly into high pressure tube trailers from the compressor for delivery to customers. Pet. at 4; Evslin Aff. at 7.[1]

5. NG Advantage will also sell a small fraction of the CNG as vehicle fuel. Pet. at 5.

6. In order to fuel vehicles, the Milton Facility would also require a cascade storage array which is also filled from the compressor. There is similar buffer storage associated with the existing three private compressors now in operation in Vermont by VGS, Casella, and the City of Burlington. Pet. at 6; Evslin Aff. at 8.

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1. For purposes of this Proposal for Decision, the project elements identified in findings 3-4 together constitute the "Project."

7. The anticipated total capacity of the Company's cascade storage array amounts to approximately 60,000 standard cubic feet (scf), which is the energy equivalent of 400 gallons of #6 oil. Pet. at 6; Evslin Aff. at 9.

8. The Company will load most of the CNG directly into special trailers designed specifically for CNG transport and certified by the Department of Transportation for this purpose and will use a small fraction of the CNG for vehicle fuel. Evslin Aff. at 10.

9. NG Advantage anticipates that the Milton Facility will need to interconnect directly with VGS's transmission line as it needs high pressure gas and high volumes of gas. In this event, VGS will apply for a certificate of public good ("CPG") under 30 V.S.A. § 248 for the construction of VGS facilities necessary to interconnect VGS's transmission pipeline and the Company's Milton Facility. NG Advantage anticipates that the interconnection will involve the modification of an existing gate station or the construction of a new gate station to regulate natural gas that will be delivered to the Company. Evslin Aff. at 11.

10. NG Advantage will work with its customers to install an offload facility that includes hookups for the trailers, decompression capability, and a heating apparatus; usually this will include a small shed. If the customer would like to use the CNG to fuel vehicles, a cascade storage array may also need to be installed at the customer site. Pet. at 7; Evslin Aff. at 12.

11. The customer will use fuel directly from the trailers as burner fuel and, therefore, the customer site requires no additional storage other than a possible cascade storage array or similar buffer storage if the customer wants to fuel vehicles. Once a trailer is near empty, the Company will bring another trailer to the customer location and haul the empty trailer back for refueling. Drivers require HAZMAT certification as do drivers of other fuel trucks. Pet. at 7; Evslin Aff. at 14.

12. NG Advantage's trailers will hold no more than 355,000 scf of natural gas, which is the equivalent of 2400 gallons of oil. Evslin Aff. at 15; MOU at 3.

13. The Company faces competition for business in northeastern Vermont and northwestern New Hampshire from other businesses that offer CNG for heating and vehicle use, the oil and propane industry, and the liquefied natural gas ("LNG") industry. Pet. at 9; Evslin Aff. at 16.

14. Irving Oil has approached potential Vermont customers marketing a similar trucked CNG product and NG Advantage understands that Irving Oil plans to build a compressor in Groveton, New Hampshire, where a defunct paper mill already has a tap into the Portland Gas Natural Gas Transmission System line. Evslin Aff. at 17.

15. VGS also has plans to construct and operate a similar CNG facility in St. Albans and will directly compete with NG Advantage for customers. In fact, VGS is presently negotiating with a potential customer of the Company. Evslin Aff. at 19.

16. With respect to other fuel sources, oil and propane companies today present the most competition as NG Advantage's potential clients currently burn those fuels. For example, a major prospect in Newport, Vermont, will select either CNG from the Company or railroad-delivered propane. Evslin Aff. at 20.

17. LNG providers also compete with NG Advantage as it has already lost a major industrial customer to LNG. Evslin Aff. at 21.

18. NG Advantage will not use any ratepayer funds to construct or operate its proposed facilities. Evslin Aff. at 22.

19. Paragraph 4 of the MOU provides that, if NG Advantage materially alters any of the components of its facilities, changes the scope and purpose of its facilities, obtains firm service from VGS, serves multiple customers from a single decompression facility (other than operators where the Department maintains jurisdiction to regulate safety of these systems under the Accountable Pipeline Safety and Partnership Act of 1996, 40 U.S.C.S. § 60105), or contemplates serving residential (including multi-family dwellings) customers, the Company must notify the parties to the MOU, and those parties have the right to review the facilities or service changes for jurisdictional purposes. MOU at 3.

20. Paragraph 5 of the MOU provides that NG Advantage must make annual filings to the Department which will allow the Department to ensure that the Company's facilities and service do not trigger Title 30 jurisdiction. The annual filings will, at a minimum, contain all reports, inspection results, etc. from the Vermont Department of Public Safety Fire Safety Division (for both the facilities and the customer sites); all reports, inspection results, etc. from the Vermont Agency of Transportation and the U. S. Department of Transportation, if applicable; and

information that would potentially trigger Department review pursuant to Paragraph 4 of the MOU including representations that NG Advantage continues to serve commercial and industrial customers consistent with the terms of the MOU. MOU at 4.

IV. DISCUSSION

A. Section 203 Analysis

Section 203(1) grants Board jurisdiction over companies "engaged in the manufacture, transmission, distribution or sale of gas . . . directly to the public or to be used ultimately by the public for lighting, heating or power and so far as relates to their use or occupancy of public highways." If § 203 covers a company's operations, that company must obtain a certificate of public good under 30 V.S.A. § 231. NG Advantage is not engaged in manufacturing or transmitting gas. However, if § 203 is read literally, NG Advantage is distributing gas and selling it to the public.

The Legislature has granted the Board some latitude in exercising jurisdiction under § 203. Specifically, § 203 states that jurisdiction "shall be exercised by the Board and the Department so far as may be necessary to enable to them to perform the duties and exercise the power conferred upon them by law."[2]

With this statutory guidance in mind, and after examining the statutory purpose and context, the Board's historical application of § 203, and relevant case law, I conclude based on the totality of circumstances that the Board should exercise its discretion not to regulate NG Advantage because such regulation is not necessary at this time, though the Project falls within the definition of § 203(1).

Traditionally, the Board has not required gas companies that sell gas in bottles or tanks to receive a § 231 CPG. Rather, the Board has exercised such regulatory supervision in the case of

2. 30 V.S.A. § 203.

gas companies who provide service to customers who are connected to a system of distribution pipes.[3]

In addition, the Board has not exercised jurisdiction over other non-pipeline companies that sell gas to the public such as propane companies or the other CNG facilities in Vermont that operate today to fuel vehicles. Nor has the Board exercised jurisdiction over companies selling small propane tanks used for gas grills such as gas stations, hardware stores, and pharmacies. The Board has opted not to exercise its jurisdiction over these non-pipeline gas companies, relying instead on competitive market forces to control rates, service quality, and reliability.

In the case of NG Advantage, exercising jurisdiction over the Company is unnecessary to enable the Board to perform the duties and exercise the power conferred on the Board by law because the Company lacks the physical monopoly characteristics that otherwise have led the Board to exercise its § 203 jurisdiction over companies that distribute gas to the public to generate heat or power.[4] NG Advantage will not have any physical connection between its operation and those of its customers: gas will be moved by truck over public streets. NG Advantage will not be constructing or operating monopoly facilities using a source of revenue from ratepayers who are dependent upon those monopoly facilities for the delivery of NG Advantage's product. Therefore, there is no need to regulate the Company's rates, financial viability, or management team. Further, NG Advantage will have nothing approaching an economic monopoly, because a competitive market already exists with fuel supply options that adequately protect consumers from monopoly pricing and give consumers a choice if service is inadequate. If any of its customers are dissatisfied with its service, those customers can switch to

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3. VGS is an example of such a gas company. In the past, there were many underground propane-air distribution companies in Vermont that served hundreds of customers and were regulated pursuant to 30 V.S.A. § 231. In the 1980s, several propane-air distribution companies sought and received Board approval to abandon service pursuant to 30 V.S.A. § 231(b) because their systems were deemed unsafe and these companies could not afford to upgrade their systems. *See, e.g., Petition of Rutland Gas Corp. for authority to abandon service*, Docket No. 4703, Order of 9/9/82; *Petition of Gas Company of Vermont, Inc., for authority to abandon service*, Docket No. 4604, Order of 11/11/81.

4. Generally speaking, regulatory supervision is considered necessary for "those enterprises which supply, directly or indirectly, continuous or repeated service through more or less permanent physical connections between the plant of the supplier and the premises of the consumer. . . ." JAMES C. BONBRIGHT, PRINCIPLES OF PUBLIC UTILITY RATES 4 (1961).

any one of a number of providers. "[T]here is less need for economic regulation in a competitive environment, where dissatisfied customers of one service provider are free to 'vote with their feet' by switching carriers . . . ."[5]

Further, the Board should encourage new CNG technology and industry to develop: "For more than a decade now, the Board has articulated a policy of promoting competition and minimizing regulation where competition (or even its potential) is better able to protect consumers, stimulate innovation, and more efficiently meet demand for service."[6] Perhaps a regime of minimal regulation will encourage deployment of this innovative business model and expand availability of CNG in a manner that benefits Vermonters.

In sum, after considering the pertinent statutory language, the Board's historical treatment of non-pipeline gas distribution companies and relevant case law and regulatory policies, I conclude that the Board ought to refrain from exercising its § 203 jurisdiction to regulate NG Advantage as a non-pipeline gas retail distributor.

B. Section 248 Analysis

Similarly, I recommend that the Board conclude that NG Advantage's proposed CNG facilities do not require a Section 248 CPG. Section 248 requires a CPG to construct a "natural gas facility," which the statute defines as "any natural gas transmission line, storage facility, manufactured-gas facility, or other structure incident to any of the above."[7] The Project does not constitute any of these jurisdictional facilities.

1. The Project is Not a Natural Gas Transmission Line

The statute defines "natural gas transmission line" to include any "feeder main or any pipeline facility constructed to deliver natural gas in Vermont directly from a natural gas pipeline

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5. *Investigation into New England Telephone and Telegraph Company's (NET's) tariff filing re: Open Network Architecture, including unbundling of NET's network, expanded interconnection, and intelligent networks in re: Phase II, Module One, Docket 5713, Order of 2/4/99* at 60.

6. *Id.* at 11.

7. § 248(a)(3)(A).

facility that has been certified" under the Natural Gas Act (NGA).[8] The Project does not include a transmission line or any other component that has been or needs to be certified under the NGA.

2. The Project is Not a Manufactured-Gas Facility

Section 248 does not define "manufactured-gas facility," but the common meaning of "manufactured gas" is "a gaseous fuel made from soft coal or various petroleum products."[9] "Manufactured natural gas" is "natural gas produced from coal [that] was used to light houses, as well as streetlights," and "was much less efficient, and less environmentally friendly, than modern natural gas that comes from underground."[10]

The Project is not a manufactured-gas facility as it is not manufacturing gas, coal, or any other substance. The Milton Facility is simply compressing a product, natural gas, which has already been extracted and delivering that product to customer sites.

3. The Project is Not a Storage Facility

The Project will neither store natural gas to respond to peak load requirements nor have as its primary purpose the storage of significant quantities of natural gas. Rather, the Milton Facility will compress gas for distribution and any "holding" of CNG in the tank is incidental to distribution of the gas by tank and does not constitute "storage." The Milton Facility is not capable of storing significant quantities of CNG as the anticipated total capacity of NG Advantage's buffer tanks at the Milton Facility amounts to approximately 60,000 standard cubic feet, which is the energy equivalent of 400 gallons of #6 oil. With respect to the delivery truck system, the customer will use fuel directly from the trailers and so the customer site requires no storage.

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8. 15 U.S.C. § 717 *et seq*.
9. *Webster's II New College Dictionary* 1995 at 667.
10. Naturalgas.org. http://www.naturalgas.org/overview/history.asp.

4. The Project is Not A Structure Incident to the Listed Natural Gas Facilities in § 248

The Project is not a structure incident to a natural gas transmission line, storage facility, or manufactured-gas facility. "Incident to" means "closely related to" or "appearing naturally therewith" and is similar to the standard the Board has developed for evaluating whether a particular improvement is "reasonably related" to electric-transmission or generation facilities such that it would be subject to Section 248 review.[11] The Board has found that the following projects were subject to Section 248 review pursuant to the "reasonably related" standard: (1) a remote lay-down area for electric transmission equipment[12]; and (2) wind-measuring towers[13]. The Milton Facility may require VGS to install and operate a new or modified gate station to interconnect with the Company through a pipe to bring the gas from VGS's system to the Milton Facility and NG Advantage and VGS will seek § 248 approval for this component if necessary. Once the gas goes through the VGS meter, however, the Project will not affect the VGS transmission system and has no relationship to any natural gas storage or manufactured-gas facility. Simply taking gas through a VGS meter does not trigger the language that a customer's project is incidental to a jurisdictional natural gas facility.

5. Other Regulatory Review of Milton Facility

While § 248 does not cover the Milton Facility, NG Advantage will be subject to several state and local reviews for the Milton Facility: (1) Act 250; (2) local zoning permits; (3) Division of Fire Safety Approval; and (4) applicable permits from the Vermont Agency of Natural Resources.

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11. *See* Attorney General Opinion, 1972 Op. Atty. Gen. Vt. 167, 1 (Aug. 5, 1971) (noting that an improvement that bears a reasonable relationship to an electric-generation or transmission facility can be considered part of that facility for purposes of determining jurisdiction under Act 250 or Section 248).

12. *Petitions of Vermont Electric Power Co., Inc., Vermont Transco LLC, Green Mountain Power Corp. and Central Vermont Public Service Corp.*, Docket No. 6860, Order of 8/15/07 (project considered to be a necessary component of a separately-certificated, electric-transmission project).

13. *Petition of UPC Wind Management, LLC, pursuant to 30 V.S.A. § 248(j), for a certificate of public good authorizing the installation of three temporary wind measurement towers on or in the vicinity of Hardscrabble Mountain in Sheffield, Vermont*, Docket No. 6884, Order of 4/21/04 (precursors to and essential for the construction of wind-generation facilities).

6. Other Regulatory Review of Delivery and Use at Customer Sites

Similarly, NG Advantage will be subject to state and local review of its delivery to customer sites and the facilities at the customer sites: (1) Act 250; (2) local zoning; (3) Division of Fire Safety; (4) Vermont Department of Transportation; (5) Vermont Department of Motor Vehicles; (6) Federal Department of Transportation; and (7) Federal Motor Carrier Safety Administration for transport of hazardous materials.

C. Reports to the Board

In Findings 19 and 20, above, I found that the MOU requires NG Advantage to provide reports to the Department (and other parties) if and when its business model changes, as well as annual reports "to ensure that the Company's facilities and service do not trigger Title 30 jurisdiction." I recommend that the Board include a requirement that the reports required by the MOU also be filed with the Board.

V. CONCLUSION

In sum, for the foregoing reasons, I have determined that the Board should not exercise its jurisdiction pursuant to 30 V.S.A. § 203 to require NG Advantage to obtain a CPG pursuant to § 231. In addition, I recommend that the Board find that the proposed Project does not constitute a "natural gas facility" under 30 V.S.A. § 248 and therefore does not require review or regulation pursuant to that statutory provision.

Pursuant to the Memorandum of Understanding between the parties, service of this Proposal for Decision on the parties to this proceeding in accordance with 3 V.S.A. § 811 has been waived. While this Proposal for Decision relies on reasoning that is different from the arguments and conclusions of law submitted by NG Advantage, the ultimate outcome is not adverse to the outcome agreed to by the parties in their MOU. Accordingly, I have not circulated this decision for comment to the parties. If the parties disagree with this procedural approach, they may appeal directly to the Board for reconsideration.

Dated at Montpelier, Vermont, this 10th day of October, 2012.

s/ John P. Bentley
John P. Bentley, Esq.
Hearing Officer

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings and Conclusion of the Hearing Officer are adopted.

2. The Public Service Board will refrain from exercising jurisdiction over the proposed Milton Project pursuant to 30 V.S.A. §§ 231 and 248.

3. NG Advantage LLC shall comply with the reporting requirements created by paragraphs 4 and 5 of the Memorandum of Understanding dated July 6, 2012, and executed by NG Advantage LLC, Vermont Gas Systems, Inc., and the Vermont Department of Public Service. Any reports filed pursuant to those requirements shall also be filed with the Public Service Board.

Dated at Montpelier, Vermont, this 10th day of October, 2012.

s/ James Volz)
)
) PUBLIC SERVICE
)
s/ David C. Coen) BOARD
)
) OF VERMONT
s/ John D. Burke)

OFFICE OF THE CLERK

FILED: October 10, 2012

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.