



500 Consumers Road
North York, Ontario M2J 1P8
PO Box 650
Scarborough ON M1K 5E3

Lorraine Chiasson
Regulatory Coordinator
Regulatory Affairs
phone: (416) 495-5499
fax: (416) 495-6072
Email: egdregulatoryproceedings@enbridge.com

February 28, 2014

VIA RESS, EMAIL and COURIER

Ms. Kirsten Walli
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario
M4P 1E4

**Re: EB-2012-0459 - Enbridge Gas Distribution Inc. ("Enbridge")
2014 – 2018 Rate Application
Undertaking Responses**

Further to Enbridge Gas Distribution's filing of February 26, 2014, enclosed please find the following undertaking responses:

Exhibit J1.5;
Exhibit J2.4; and
Exhibit J4.4.

This submission was filed through the Board's RESS and is available on the Company's website at www.enbridgegas.com/ratecase.

Yours truly,

(original signed)

Lorraine Chiasson
Regulatory Coordinator

cc: Mr. F. Cass, Aird & Berlis
EB-2012-0459 Intervenors

UNDERTAKING J1.5

UNDERTAKING

TR 95

To make best efforts to provide information about the standalone impact of the increase in system integrity spending on Enbridge's application.

RESPONSE

The forecast incremental System Integrity costs included within the fiscal years 2014 & 2015 is \$47.6M and \$50.4M respectively and for each of 2016 – 2018 is \$56.4M. The cumulative net and gross required increases in Allowed Revenue in each year are shown in rows 15 & 16 in the table provided on page 2.

Witness: K. Culbert

ALLOWED REVENUE
INCREMENTAL SYSTEM INTEGRITY CAPITAL (2014 - 2018 Cap. Structure)

(\$000's)					
Line No.	2014	2015	2016	2017	2018
Cost of capital					
1. Rate base	9,857.3	55,178.3	107,757.5	161,423.2	212,689.0
2. Required rate of return	<u>6.76%</u>	<u>6.90%</u>	<u>7.02%</u>	<u>7.04%</u>	<u>7.10%</u>
3. Cost of capital	666.4	3,807.3	7,564.6	11,364.2	15,100.9
Cost of service					
4. Gas costs	-	-	-	-	-
5. Operation and Maintenance	-	-	-	-	-
6. Depreciation and amortization	206.4	1,303.7	2,727.5	4,340.7	5,933.8
7. Municipal and other taxes	-	-	-	-	-
8. Cost of service	<u>206.4</u>	<u>1,303.7</u>	<u>2,727.5</u>	<u>4,340.7</u>	<u>5,933.8</u>
Misc. & Non-Op. Rev					
9. Other operating revenue	-	-	-	-	-
10. Other income	-	-	-	-	-
11. Misc. & Non-operating Rev.	-	-	-	-	-
Income taxes on earnings					
12. Excluding tax shield	(235.5)	(860.0)	(1,681.3)	(2,498.4)	(3,245.4)
13. Tax shield provided by interest expense	<u>(87.5)</u>	<u>(485.5)</u>	<u>(942.3)</u>	<u>(1,411.7)</u>	<u>(1,871.2)</u>
14. Income taxes on earnings	<u>(323.0)</u>	<u>(1,345.5)</u>	<u>(2,623.6)</u>	<u>(3,910.1)</u>	<u>(5,116.6)</u>
Taxes on (def.) / suff.					
15. Gross (def.) / suff.	(748.3)	(5,120.0)	(10,438.5)	(16,054.4)	(21,645.0)
16. Net (def.) / suff.	<u>(550.0)</u>	<u>(3,763.2)</u>	<u>(7,672.3)</u>	<u>(11,800.0)</u>	<u>(15,909.1)</u>
17. Taxes on (def.) / suff.	198.3	1,356.8	2,766.2	4,254.4	5,735.9
18. Allowed Revenue	748.1	5,122.3	10,434.7	16,049.2	21,654.0
Revenue at existing Rates					
19. Gas sales	0.0	0.0	0.0	0.0	0.0
20. Transportation service	0.0	0.0	0.0	0.0	0.0
21. Transmission, compression and storage	0.0	0.0	0.0	0.0	0.0
22. Rounding adjustment	<u>(0.2)</u>	<u>2.3</u>	<u>(3.8)</u>	<u>(5.2)</u>	<u>9.0</u>
23. Revenue at existing rates	<u>(0.2)</u>	<u>2.3</u>	<u>(3.8)</u>	<u>(5.2)</u>	<u>9.0</u>
24. Gross revenue (def.) / suff.	<u>(748.3)</u>	<u>(5,120.0)</u>	<u>(10,438.5)</u>	<u>(16,054.4)</u>	<u>(21,645.0)</u>

Witness: K. Culbert

UNDERTAKING J2.4

UNDERTAKING

TR 97

To provide calculation of what a \$90 million underspend would produce in overearnings on the assumption it continues in years 1 to 5 of the IRM plan and on the assumption that rate base return is grossed up for taxes at of 7 percent.

RESPONSE

The following table summarizes a calculation to determine the approximate impact that a capital expenditure reduction of \$90 million, in each year of the customized incentive regulation "CIR" term, would have on the Company's forecast allowed revenues and earnings. This illustration assumes that the capital expenditure reduction occurs in system integrity related asset categories, and as such the reduction in spending and closeouts to assets in-service follows the timing profile for those categories. As can be seen at Line No. 18, this assumed \$90 million reduction in system integrity capital expenditures would result in an approximate total reduction in required allowed revenues of \$99.9 million. Assuming EGD's CIR plan was approved and this scenario were to occur in actual results, where the Company was able to avoid all costs associated with \$90 million in planned annual capital expenditures, particularly financing related costs, the increase to earnings over the 5 year term would be approximately \$73.4 million as shown at Line No. 16 (Line 18 - \$99.8M less \$26.5M taxes). This approximate result would also assume that all other forecast and eventual Board Approved capital expenditures and operating costs would occur at the same magnitude as what the Board ultimately approves.

The Company notes that it in no way does it believe this a plausible scenario. As the Company has indicated in evidence it will be challenged to hold actual capital expenditures and related revenue requirement impacts such as costs of capital, depreciation and taxes to the associated levels forecast in this proceeding.

Witness: K. Culbert

ALLOWED REVENUE
\$90M ANNUAL CAPITAL EXPENDITURE UNDERSPEND (2014 - 2018 Cap. Structure)

Line No.	(\$000's)	2014	2015	2016	2017	2018	Total
Cost of capital							
1. Rate base		(20,676.1)	(104,395.6)	(189,763.9)	(272,335.1)	(352,109.7)	
2. Required rate of return		<u>6.76%</u>	<u>6.90%</u>	<u>7.02%</u>	<u>7.04%</u>	<u>7.10%</u>	
3. Cost of capital		(1,397.7)	(7,203.3)	(13,321.4)	(19,172.4)	(24,999.8)	
Cost of service							
4. Gas costs		-	-	-	-	-	
5. Operation and Maintenance		-	-	-	-	-	
6. Depreciation and amortization		(581.3)	(3,233.5)	(6,030.5)	(8,827.0)	(11,623.6)	
7. Municipal and other taxes		-	-	-	-	-	
8. Cost of service		(581.3)	(3,233.5)	(6,030.5)	(8,827.0)	(11,623.6)	
Misc. & Non-Op. Rev							
9. Other operating revenue		-	-	-	-	-	
10. Other income		-	-	-	-	-	
11. Misc. & Non-operating Rev.		-	-	-	-	-	
Income taxes on earnings							
12. Excluding tax shield		478.9	1,644.6	2,976.9	4,229.2	5,406.5	
13. Tax shield provided by interest expense		<u>183.5</u>	<u>918.5</u>	<u>1,659.5</u>	<u>2,381.6</u>	<u>3,097.9</u>	
14. Income taxes on earnings		662.4	2,563.1	4,636.4	6,610.8	8,504.4	
Taxes on (def.) / suff.							
15. Gross (def.) / suff.		1,792.0	10,709.4	20,009.1	29,086.1	38,277.0	
16. Net (def.) / suff.		<u>1,317.1</u>	<u>7,871.4</u>	<u>14,706.7</u>	<u>21,378.3</u>	<u>28,133.6</u>	73,407.1
17. Taxes on (def.) / suff.		(474.9)	(2,838.0)	(5,302.4)	(7,707.8)	(10,143.4)	
18. Allowed Revenue		(1,791.5)	(10,711.7)	(20,017.9)	(29,096.4)	(38,262.4)	(99,879.9)
Revenue at existing Rates							
19. Gas sales		0.0	0.0	0.0	0.0	0.0	
20. Transportation service		0.0	0.0	0.0	0.0	0.0	
21. Transmission, compression and storage		0.0	0.0	0.0	0.0	0.0	
22. Rounding adjustment		<u>0.5</u>	<u>(2.3)</u>	<u>(8.8)</u>	<u>(10.3)</u>	<u>14.6</u>	
23. Revenue at existing rates		0.5	(2.3)	(8.8)	(10.3)	14.6	
24. Gross revenue (def.) / suff.		<u>1,792.0</u>	<u>10,709.4</u>	<u>20,009.1</u>	<u>29,086.1</u>	<u>38,277.0</u>	<u>99,873.6</u>

Witness: K. Culbert

UNDERTAKING J4.4

UNDERTAKING

TR 82

To provide appendix with details of Vermont's mechanism for annual reporting and adjustment.

RESPONSE

The appendix referred to by Mr. Coyne is attached in the "Memorandum of Understanding on Alternative Regulation", dated July 28, 2006 (Attachment 1). This Memorandum describes in greater detail the agreement reached between Vermont Gas Systems, Inc. (VGS, or the Company) and the Vermont Department of Public Service (DPS), approved by the Vermont Public Service Board (Board) on September 21, 2006. Mr. Coyne served as an expert on models of incentive regulation jointly for the DPS and the Company, provided research and facilitated a series of workshops on these topics for the parties which led to the agreement. He also provided expert testimony on behalf of the Company pertaining to the proposed plan which was approved by the Board.

While not requested, it is useful to note that the plan covered under this Memorandum was followed by a "Successor Plan" on August 21, 2012. That Order "7803-7483 Final Order" is also attached (Attachment 2). Changes from the original plan to the Successor Plan are summarized on pages 10-11.

Witness: J. Coyne - Concentric

STATE OF VERMONT
PUBLIC SERVICE BOARD

In Re Petition of Vermont Gas Systems, Inc.,)	
pursuant to 30 V.S.A. § 218d, for authority to)	Docket No. 7109
implement an Alternative-Regulation Plan)	
And Tariff Filing Requesting a 16.7% or a)	Docket No. 7160
18.3% Rate Increase)	

MEMORANDUM OF UNDERSTANDING ON ALTERNATIVE REGULATION

This Memorandum of Understanding, dated as of July 28, 2006 (the “MOU”), is between the Vermont Department of Public Service (“DPS”) and Vermont Gas Systems, Inc. (“VGS” or “the Company”).

Background

On September 1, 2005, VGS filed a petition (Docket No. 7109) for approval of an alternative-regulation plan (“ARP”) pursuant to 30 V.S.A. § 218d. On March 10, 2006, VGS filed revised tariffs (Docket No. 7160) reflecting a 16.7% increase in its rates, to take effect April 25, 2006, and to be implemented on a service-rendered basis commencing October 1, 2006 (Tariff Filing No. 7591). On March 15, 2006, the Company filed a letter asking the Public Service Board (“Board”) to consolidate, for purposes of hearings and administrative efficiency, Docket Nos. 7109 and 7160.

On March 15, 2006, DPS, pursuant to 30 V.S.A. § 225, informed the Board that it had reviewed the tariff filing and recommended that an investigation be opened. By letter dated March 23, 2006, the Department supported the Company’s request for consolidation of the proceedings, and on April 13, 2006, the Board consolidated the two dockets, suspended the Company’s tariff filing and opened an investigation into VGS’s proposed rate increase.

Throughout both dockets, the parties have engaged in far-reaching discovery. On January 25, 2006, and May 4, 2006, the Board held public hearings on the proposed ARP and the proposed rate change, respectively. The Board held a technical hearing regarding the Company's proposed ARP on June 5, 2006. The DPS and VGS have previously engaged in settlement negotiations and have settled certain matters pertaining to the Company's cost of service ("COS"), and they have subsequently engaged in settlement negotiations on the ARP.

Summary of Agreement

The subsequent negotiations between VGS and the DPS resulted in the agreement, set forth in this MOU, that the ARP should take effect, commencing on October 1, 2006, subject to the conditions contained herein.

AGREEMENT

VGS and DPS hereby stipulate to the settlement of the remaining issues between them in Docket Nos. 7109 and 7160 and specifically to the terms of the ARP as follows:

1. VGS agrees to amend Exhibit VGS-CWA-3 to modify the PGA (or "Purchased Gas Adjustment") mechanism described therein, and DPS will support implementation of the PGA as part of an ARP, if so amended, as follows:
 - a. The PGA shall be amended by VGS so that the Company will adjust rates quarterly on a bills-rendered basis.
 - b. The PGA shall be amended by VGS to provide that the "Adjustment" (as defined in Exhibit VGS-CWA-3), as modified by Subparagraph 1a of this MOU, will be the difference between the previous month's "Actual Gas Costs" (as so defined and net of interruptible and off-system revenue) and the "Actual Firm Gas Charge Revenue" (as so defined) but shall exclude

the first \$50,000, positive or negative, in each quarter or up to \$200,000 cumulatively in a gas year (the “PGA Deadband Amounts”).

- c. The PGA shall be amended by VGS to provide that the Company shall increase or decrease rates to share 90% of the gains or 90% of losses (as the case may be) that exceed the Deadband Sharing Amounts.
- d. The PGA shall be amended by VGS to provide that gains or losses to the Company under the PGA, resulting from the provisions added to the PGA as required by Subparagraphs 1b and 1c of this MOU, shall further be capped by the Earnings Sharing Mechanism proposed as part of the ARP, as amended in accordance with Paragraph 2 of this MOU.
- e. The methods and sources employed in developing the adjusted test year’s COS shall be used to guide calculation of the “12-Month Cost Forecast” (as defined in Exhibit VGS-CWA-3).
 - i. The PGA shall be amended by VGS, after review and with the advice of the DPS, to provide greater specificity regarding the methods and sources employed in developing the adjusted test year’s COS, and the amended PGA shall be filed with the Board within 30 days of this MOU’s approval.
 - ii. If the Company alters the methods or sources for calculating the 12-Month Cost Forecast during the term of this MOU, the Company agrees to amend the PGA to reflect changes in such sources or methods after review with the DPS and submit the amended PGA to the Board for its approval.

- iii. DPS agrees to recommend changes to the proposal (if any) within three weeks of such filing.
- 2. VGS agrees to amend Exhibit VGS-CWA-4 to modify the ESM or “Earnings Sharing Mechanism,” and DPS will support implementation of the ESM as part of the ARP, if so amended, as follows:
 - a. The ESM shall be amended by VGS to allow the Company annually to include increases or decreases associated with an “Over-earnings” or an “Earnings shortfall” (both as defined in Exhibit VGS-CWA-4) only to the extent that such Over-earnings or Earnings shortfall results in the Company earning a return, in a given fiscal year (ending on September 30), that exceeds or falls short of (as the case may be) the return on equity allowed in the COS by 50 basis points (the “ESM Deadband”).
 - b. The ESM shall also be amended by VGS to provide that annually the Company shall adjust its rates through the ESM to recover from firm customers 50% of the earnings that fall short of and return to firm customers a 75% share of earnings that exceed the ESM Deadband, provided that such sharing shall not apply to earnings that exceed or fall short of (as the case may be) the Company’s allowed return on equity (the “ROE”) by 200 basis points (the “ROE Cap”).
 - i. For clarity, if the Company’s earnings are 210 basis points above the allowed ROE, then 50 basis points would flow directly to the Company’s earnings as part of the deadband surrounding the ROE, 112.5 basis points or (75% of 150 basis points) would be returned

to ratepayers associated with the earnings-band sharing beyond the deadband, and 10 points would be returned to ratepayers as part of any earnings above the 200-basis-point ROE Cap, so that, all included, the Company would only earn 87.5 basis points above the allowed ROE.

- ii. Conversely, if the Company's earnings are 210 basis points below the allowed ROE, then 50 basis points would flow directly to the Company's earnings as part of the deadband surrounding the ROE, 75 basis points or (50% of 150 basis points) would be collected from ratepayers associated with the earnings-band sharing beyond the deadband and 10 points would be collected from ratepayers as part of any earnings below the 200-basis-point ROE Cap, so that, all included, the Company would have earnings that are 125 basis points below the allowed ROE.

- c. The ESM shall further be amended by VGS to change the definition of Authorized Revenue so that when Required Revenue is greater than the Revenue Cap, VGS shall return to or recover from its firm customers (as the case may be) one-half of the amount by which its Required Revenue exceeds or falls short of the Revenue Cap in accordance with Exhibit VGS-CWA-4, page 3.

- i. For clarity, the only difference between the Required Revenue and the Revenue Cap is in the calculation of operating expenses.

(a) For the ESM's Revenue Cap calculation, operating expenses

shall be calculated as provided in the definition of Operating Costs Operating Costs in the ESM.

(b) For the ESM's Required Revenue calculation, operating

expenses shall be calculated in accordance with traditional, cost-based ratemaking practices.

d. VGS confirms that the concepts of Required Revenue and Revenue Cap used in this MOU shall be as presented in the Company's Exhibit VGS-CWA-4.

e. Last, the ESM shall be amended by VGS to provide that the Company shall not have the right to adjust its rates through the ESM to recover costs resulting from Exogenous Factors (as defined in the ARP) until such costs exceed \$50,000 within any twelve-month fiscal year period during the ARP's term.

3. If the Board approves this MOU, the ARP as amended by this MOU and the COS stipulated in a separate MOU for Docket No. 7160, VGS and DPS agree:

- a. that the customer addition during the ARP's term shall be rebuttably presumed to be the additional customers forecast by the Company over the next three years shown on Schedule 1;
- b. that the customer additions shown on Schedule 1 depend on certain capital-expansion plans, that the Company shall notify the Department of the relationship between its customer forecast and capital-expansion plans at the onset of the ARP and inform the Department of any modifications to

those expansion plans that could impact estimates of customer additions

and that notice of these adjustments shall be made by VGS with its annual COS filing;

- c. that DPS and VGS shall, however, in good faith negotiate a different forecast of customer additions if the Company or the DPS can demonstrate good cause therefor and, if they are unable to agree, that VGS or the DPS may, based on changed circumstances, submit for Board review and approval a different forecast of customer additions; and
 - d. that VGS shall amend the ESM to adjust its Authorized Revenue annually to reflect the customer addition as so forecast.
4. VGS and DPS agree that the COS of VGS under the ARP shall be determined based on traditional ratemaking policy, as established by Board precedent, including specifically that:
- a. the COS will be based on an historic and adjusted test year and will include the concept of weather normalization;
 - b. adjustments to costs from the historic to adjusted test year will be based on known and measurable changes;
 - c. VGS shall be entitled to recover expenses deferred in an Account Correcting for Efficiency (“ACE”) for prior demand-side-management (“DSM”) program measures implemented before the effective date of the ARP but shall only be entitled to recover ACE for DSM measures implemented after such date if the Board affirmatively concludes in this docket that the continuation of ACE for such programs is appropriate;

- d. expenses for DSM shall be amortized over a three-year period;
 - e. certain expenses, such as outside services and legal expenses, shall be determined using a three-year average; and
 - f. the COS shall exclude donations, lobbying expenses and other expenses not traditionally allowed in rates, as established by previous Board decisions.
5. VGS and DPS agree that the ARP shall be amended to provide:
- a. that quarterly, no later than the fifth-to-last business day of the month, VGS shall notify DPS and the Board of the PGA adjustment (if any) to be made beginning two months forward; by way of illustration, if VGS provides such notice on November 25 of any plan year, the adjustment would take effect on January 25;
 - b. notwithstanding Subparagraph 5a of this MOU, the first such notification shall not occur until February 2007 and quarterly thereafter (*i.e.*, May, August, November and February) to align the rate adjustments described in Paragraph 5d thereof;
 - c. that annually, no later than November 25 of any plan year, VGS shall notify the DPS and the Board of an increase or decrease (if any) in rates charged to firm customers to reflect changes to VGS' rates under the ESM, and the change in rates shall take effect on a bills-rendered basis no sooner than 60 days following such notice;
 - d. that annually, no later than August 15 of any plan year, VGS shall update estimates of actual customer additions for the current fiscal year, and

notify the DPS of any changes in its capital plans that would impact

forecasts of customer additions and whether its estimates of customer

additions adopted pursuant to Schedule 1 of this MOU should remain the

forecast of customer additions.

- e. that VGS shall sequence the filing of any PGA adjustment to rates for the fourth quarter of any plan year and any annual adjustment to rates under the PGA such that both adjustments take effect on the same date; and
- f. that VGS shall provide customers with notice of each annual adjustment to rates under the ARP not less than thirty days before such adjustment.

6. VGS and the Department recognize that the implementation of this MOU will require the development of an effective and efficient format for timely reporting of and reviewing the information VGS is required to file periodically with the Department or with the Board during the term of the ARP.

- a. Accordingly, VGS and DPS agree that within 30 days of issuance of a final Board order approving this MOU, VGS shall submit to the Department a sample of each filing due to be made to the Department or the Board under the terms of the ARP as provided in this MOU.
- b. Thereafter, the Department shall have 30 days to comment on these proposed filing formats.
- c. VGS agrees to make such changes to the sample filing formats as the Department deems to be reasonably necessary to complete an efficient and meaningful review of the filings due under the ARP as provided in this MOU.

- d. Thereafter, VGS agrees to make such changes to the filing formats in the future as the Department deems to be reasonably necessary to complete an efficient and meaningful review of the filings due under this MOU.
7. VGS and DPS agree that under the ARP VGS shall offer by tariff an annual, fixed-price service to up to 30% of its firm customers, including up to 30% of its residential customers, no later than for the gas year commencing on November 1, 2007.
8. By January 31, 2007, VGS and DPS agree to develop jointly criteria to be used by DPS and VGS in assessing the ARP's effectiveness at the end of its initial term.
 - a. The criteria so developed shall be submitted to the Board.
 - b. Neither VGS nor DPS shall be bound to support termination or extension of the ARP beyond its initial term based solely on the criteria so developed.
9. This MOU provides a final resolution of all issues in Docket No. 7109, shall become effective upon the issuance of an order approving the MOU by the Board and shall be effective and binding on the parties only if the Board issues an order in this docket that is consistent in all respects with the terms of this MOU.
10. The parties agree that:
 - a. this MOU and any order approving this MOU relates only to these parties and shall not be construed as having precedential or any other impact on proceedings involving other utilities;
 - b. the parties have made compromises on specific issues to reach agreement on this MOU; and

c. the MOU and any order approving this MOU shall not be construed by any party or tribunal as having precedential impact on any future proceedings involving the parties, except as necessary to ensure VGS's performance of this MOU or to enforce an order of the Board resulting from this MOU.

11. The parties agree that should the Board fail to approve the MOU in its entirety or in the event any modification or condition is made to this MOU by the Board, the parties' agreements set forth herein shall terminate, each party shall be placed in the position that it enjoyed in this proceeding before entering into the MOU and all negotiations and proceedings connected therewith shall be without prejudice to the rights of the parties.

Dated at Montpelier, Vermont this 28th day of July, 2006.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: _____
June E. Tierney

Dated at St. Johnsbury, Vermont, this 28th day of July, 2006.

VERMONT GAS SYSTEMS, INC.
By its attorneys, Downs Rachlin Martin PLLC

By: _____
John H. Marshall

Docket 7109/7160
Alternative Regulation Plan
Memorandum of Understanding
Schedule 1

Anticipated
Customer Growth (1)

Fiscal 2008	1,158
Fiscal 2009	1,290
Fiscal 2010	1,210

(1) Growth figures per VGS' 2006-1010 5 Year Plan

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7803

Petition of Vermont Gas Systems, Inc.,)
for approval of a Successor Alternative)
Regulation Plan)

Hearing at
Montpelier, Vermont
June 26, 2012

Docket No. 7843

Investigation into tariff filing of Vermont Gas)
Systems, Inc. re: proposed Cost of Service)

Order entered: 8/21/2012

PRESENT: James Volz, Chairman
 David C. Coen, Board Member
 John D. Burke, Board Member

APPEARANCES: Louise Porter, Esq.
 for Vermont Department of Public Service

John Marshall, Esq.
Lisa Fearon, Esq.
Downs Rachlin & Martin PLLC
for Vermont Gas Systems, Inc.

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I. INTRODUCTION

In this Order, the Vermont Public Service Board (the "Board") approves, subject to modifications and conditions, a settlement between Vermont Gas Systems, Inc. ("VGS" or the "Company") and the Vermont Department of Public Service ("Department" or "DPS") that provides for a successor alternative regulation plan (the "Successor Plan") to be implemented pursuant to 30 V.S.A. § 218d, effective October 1, 2012. The initial term of the Successor Plan will be for three years and will expire on September 30, 2015. The Board further approves an

increase of 3.03% in the Company's base rates to take effect for bills rendered on or after November 1, 2012.

II. PROCEDURAL HISTORY

On October 4, 2011, VGS filed a proposed alternative regulation plan (the "Successor Plan") pursuant to 30 V.S.A. § 218d.¹ In its filing, the Company indicated that at a later date it would supplement its filing with a proposed cost-of-service to be used as a base line for the rates to be charged and the calculations to be made going forward under the Successor Plan.

On November 16, 2011, a prehearing conference was convened by a Board Hearing Officer in Docket 7803 to set a procedural schedule for investigating the Successor Plan. Appearances were entered by John H. Marshall, Esq., Downs Rachlin Martin PLLC, on behalf of VGS; and Louise Porter, Esq., on behalf of the Department.

On December 6, 2011, a scheduling order was issued in Docket 7803 informing the Parties that a separate docket would be established for investigating the Company's anticipated cost-of-service filing.

On January 24, 2012, VGS filed with the Board a proposed cost-of-service to serve as the base line for the Company's initial rates under the Successor Plan.

On February 9, 2012, the Department, pursuant to 30 V.S.A. § 225, informed the Board that it had reviewed the tariff filing and requested that it be suspended and investigated.

On February 10, 2012, the Board issued an order in Docket 7843 to suspend the rate filing under Section 226 and to initiate an investigation into the Company's cost-of-service filing.

Over the next several months, the Parties engaged in extensive discovery in Docket 7803 and Docket 7843, both formally and informally. Also during this period, Board staff conducted workshops in both dockets to familiarize themselves with the Successor Plan and the supporting, benchmark cost of service.

On April 12, 2012, a joint public hearing for Docket 7803 and 7843 was held in South Burlington, Vermont. One member of the public attended and provided comments criticizing the

1. The Board has regulated VGS since October 2006 under an alternative regulation plan that was approved in Docket No. 7109 on September 21, 2006, and was modified in Docket 7537 on September 23, 2009 (the "Original ARP"). As a result of our approval today of the Successor Plan, the Original ARP will expire on October 1, 2012 — one year earlier than provided for under the extension that was granted in Docket 7537.

manner and substance of the Board's published notice regarding the description of the factual context for the public hearing.

After the public hearing and the filing of several rounds of testimony, the Department and VGS reached a unified and comprehensive settlement in Docket 7803 and Docket 7843 as reflected in a Memorandum of Understanding filed with the Board on June 18, 2012 (the "MOU").²

On June 26, 2012, the Board convened a technical hearing in Docket 7843. At the outset of that hearing, the Board consolidated Docket 7803 with Docket 7843.³

III. FINDINGS AND ANALYSIS

Based on the prefiled testimony and exhibits and the evidence of record, we hereby make the following findings of fact.

A. The Successor Plan

(1) Factual Findings

1. VGS is a "company" within the meaning of Section 201 of Title 30 of the Vermont Statutes Annotated, it transmits and distributes natural gas within the meaning of subsection (2) of Section 203 thereof and, as such, it is subject to the Board's jurisdiction. Docket 7109, Order of 9/21/06 at 3.

2. Pursuant to the MOU, the Successor Plan will commence October 1, 2012, and will have an initial term of three years that expires on September 30, 2015; it may be extended for two successive, two-year terms, but it will not continue in effect after September 30, 2019. Exh. Joint-1, attachment 1 at ¶¶ 1(a), (b).

2. The MOU was offered into evidence at the technical hearing as Exhibit Joint-1. On July 5, 2012, the parties filed with the Board a revised version of the MOU and attachments 1 and 2, as well as an additional page for attachment 3. The revisions to the MOU and attachments 1 and 2 were made to reflect the Company's responses to several record requests from Board staff that were made during the technical hearing. Hereinafter, all references in this Order to Exhibit Joint-1 (the MOU), attachment 1 (the Successor Plan), attachment 2 and attachment 3 should be understood to refer to these revised versions, which we hereby admit into the record.

3. Tr. 6/26/12 (vol. I) at 4-5.

3. Pursuant to the Successor Plan, VGS's annual base-rate filing will be moved from October to August; the implementation date will move from January to November. Docket 7803 Prefiled Direct Testimony of Eileen Simollardes at 7, 9.⁴

4. No later than June 30 of each year of the Successor Plan, VGS will provide the Board and the Department with a preliminary assessment of the anticipated increase or decrease in rates. Exh. Joint-1, attachment 1 at ¶ 5(e).

5. Under the Successor Plan, no later than August 28 of any year, VGS will notify the Board and the Department of any increase or decrease in rates (if any) to be charged to firm customers to reflect changes in rates under the Earnings Sharing Mechanism ("ESM"). It will also provide a summary of the major variances in costs between its preliminary assessment and the increase or decrease in rates reflected in its Annual Notice⁵. Exh. Joint-1, attachment 1 at ¶ 5(a) and (e).

6. The Successor Plan requires VGS to provide notice to the Board and the Department 60 days before any rate adjustment; the Successor Plan further requires VGS to give individual notice to customers of not less than 55 days before bills are rendered and not less than 25 days before service is rendered. Exh. Joint-1, attachment 1 at ¶ 5(g).

The Annual Base-Rate Adjustment Mechanism

7. Under the Successor Plan, VGS will be entitled to annually set rates based on the revenue required to recover its cost of providing jurisdictional products and services using traditional ratemaking principles, with the exception of the ESM and the purchased gas adjustment mechanism ("PGA"). Exh. Joint-1, attachment 1 at p. 1 and ¶ 3(a).

8. The terms of the MOU provide that VGS will be permitted to recover its reasonable operating and non-operating costs (i.e., non-gas costs) through an annual base-rate adjustment mechanism. Exh. Joint-1, attachment 1 at ¶¶ 3(a), 5.

9. The Successor Plan's annual base-rate adjustment mechanism consists of three steps:

4. Hereinafter cited as "Simollardes 7803 at ___."

5. See page 17, below, for discussion of "Annual Notice".

(1) determining the revenue cap (the "Revenue Cap"); (2) determining the required revenue (the "Required Revenue"); and (3) adjusting the Company's rates based on any difference between the Required Revenue and the Revenue Cap. Exh. Joint-1, attachment 1 at ¶ 5(b).

10. The Revenue Cap is determined using a formula that, among other things, takes into account certain exogenous factors ("Exogenous Factors") and exclusions ("Exclusions"). Exh. Joint-1, attachment 1 at ¶ 5(b)(i).

11. Exogenous Factors include adjustments such as changes in taxes or accounting rules that affect VGS's costs and are beyond the Company's control. Exh. Joint-1, attachment 1 at ¶ 5(b)(vii); Simollardes 7803 pf. at 4.

12. Exclusions are items that affect VGS's costs and which are under VGS's control, but for which there is justification for inclusion when setting rates. Exclusions serve two objectives: (1) to avoid creating an incentive for VGS to avoid expenses that would otherwise be considered desirable; and (2) to adjust rates for over-earnings or shortfalls pursuant to the ESM. An example of an Exclusion would be demand-side management expenses. Exh. Joint-1, attachment 1 at ¶ 5(b)(viii).

13. The Required Revenue element will be determined using a budget estimate based on the forward test year covering the following expenses: operating expenses; depreciation; amortization; property and other taxes; deemed income taxes; return on projected rate base (using a 13-month average); and other income. Exh. Joint-1, attachment 1 at ¶ 5(b)(ix).

14. The operating-cost cap for the initial year of the Successor Plan will be set to reflect a cost of \$319 per customer and adjusted annually thereafter, using a predetermined formula as reflected in the plan. In turn, this operating-cost-cap formula includes a productivity "X" factor that reduces the inflation factor in the formula. Exh. Joint-1 at 2; tr. 6/26/12, (vol. I), at 21-26 (Simollardes/Fish), 44-49 (Fish).

15. The MOU provides that the productivity "X" factor for the Successor Plan will be 0.39%. Exh. Joint-1 at 2 and attachment 1 at ¶ 5(b)(I) and (iii).

16. The MOU provides that the "ROE will be indexed to the 10-Year Treasury Note; the initial U.S. Treasury Note rate will be based on the average rate from July 15 to August 15, 2012. See exh. Joint-1 at 2 and attachment 1 at ¶ 3(c).

The PGA Mechanism

17. Under the PGA of the Successor Plan, all gas costs will be collected through the gas charge to be collected from firm customers. The gas charge will be calculated and re-set quarterly, as an average cost per ccf based on forecasted costs and volumes for the next 12 months, beginning two months forward and to correct for any under- or over-collection of costs during the previous quarter. The gas costs to be recovered through the gas charge are costs related to the purchasing, storing, production, and transportation of natural gas to serve the Company's sales customers. Exh. Joint-1, attachment 1 at ¶ 4(d).

18. Under the Successor Plan, VGS will notify the Board and the Department each quarter, no later than the third-to-last business day of the month, of the PGA adjustment (if any) to be made commencing with the first billing cycle beginning three months forward. Exh. Joint-1, attachment 1 at ¶ 4(a).

19. Unlike under the Original ARP, the Successor Plan does not provide for a gas-cost-sharing component in the PGA. Simollardes 7803 pf. at 13-16; tr. 6/26/12 (vol. I) at 88 (Simollardes).

The Earnings-Sharing Mechanism

20. The Successor Plan provides that any over-earnings or shortfalls incurred by the Company are shared with customers through the ESM. Exh. Joint-1, attachment 1 at ¶ 5(b)(xi).

21. The intent of the ESM methodology for calculating the earnings-sharing-adjustment is to create a dead band: 25 basis points above and 50 basis points below VGS's authorized return. Within the dead band, no earnings sharing occurs. Below the dead band, earnings sharing occurs at a rate of 50% to customers and 50% to VGS. Above the dead band, earnings-sharing occurs at a rate of 75% to customers and 25% to VGS. However, such sharing of over-earnings and losses is capped. If over-earnings or losses diverge from the authorized return on equity ("ROE") by 200 basis points, any such over- or under-earnings are to be fully reflected in rates through either a rate decrease or increase, respectively. Exh. Joint-1, attachment 1 at ¶ 5(b)(xi).

Weather Normalization of Earnings

22. Under the Successor Plan, the ESM will have a new feature in that earnings sharing will be determined on a weather-normalized basis. Exh. Joint-1 at 4 and attachment 1 at ¶ 5(b)(xii).

23. Weather normalization avoids periods of over-earning when the weather is colder than normal and avoids periods of under-earning when the weather is warmer than normal. Tr. 6/26/12 (vol. I) at 39 (Coyne).

24. Weather normalization is a ratemaking principle used by other utilities across the country. Tr. 6/26/12 (vol. I) at 37 (Simollardes), 38 (Coyne), 40 (Foley); Docket 7803 exh. EMS-8.

Miscellaneous Plan Administration Issues

25. Under the Successor Plan, annual adjustments will take effect on a bills-rendered basis and be effective with the first billing cycle beginning three months forward. Exh. Joint-1, attachment 1 at ¶ 5(c).

26. Under the Successor Plan, VGS will remain subject to its existing Service Quality and Reliability Plan (the "Service Quality Plan"). VGS and the Department will submit recommendations to the Board for including benchmarks to measure VGS's service quality and reliability performance by June 30, 2013. Exh. Joint-1, attachment 1 at ¶¶ 6(a), (b).

27. VGS and the Department will work cooperatively to develop benchmarks for measuring VGS's operational efficiency, with the objective of establishing such benchmarks by no later than the end of the Successor Plan's initial term. This commitment to develop additional operational and/or financial benchmarking information is distinct from the commitment to develop benchmarks for the Service Quality Plan. Exh. Joint-1, attachment 1 at ¶ 3; tr. 6/26/12 (vol. I) at 86-87 (Simollardes).

28. The Successor Plan provides that VGS and the Department will meet annually (no later than March 15) to discuss the investments made by VGS in system expansion in the previous calendar year and VGS's preliminary plans for expansion in the current calendar year. Exh. Joint-1, attachment 1 at ¶ 8(a).

29. The Successor Plan requires that VGS provide notice to the Board and the Department on a quarterly basis, by the fifteenth of February, May, August and November, of any changes to VGS's contracts for the supply, storage, transmission or hedging of its gas supply or exchange rates. Exh. Joint-1, attachment 1 at ¶ 7(b).

30. The Successor Plan contains provisions for evaluating its effectiveness, including a process by which VGS and the Department will evaluate the existing criteria used to assess the effectiveness of the Original ARP and determine whether these or additional criteria will be used to evaluate the Successor Plan. *See* Exh. Joint-1, attachment 1 at ¶1(b)(I).

31. The Successor Plan requires VGS and the Department to submit their assessments of the Successor Plan's effectiveness to the Board (and each other) prior to the expiration of the initial or any renewal terms of the Successor Plan. In particular, VGS will submit to the Board its assessment of the Successor Plan's effectiveness twelve months before expiration of the initial or any extended terms of the plan. The Department will submit to the Board its assessment eleven months before expiration of the initial term or any extended term. Exh. Joint-1, attachment 1 at ¶¶ 1(b)(ii) and (iii).

32. Pursuant to the Successor Plan, VGS or the Department, either jointly or separately, may request that the Successor Plan be amended. Exh. Joint-1, attachment 1 at ¶ 10.

33. The Successor Plan also contains provisions governing the informal resolution of disputes. Exh. Joint-1, attachment 1 at ¶ 9.

34. The Successor Plan does not prevent the Department or the Board from initiating an investigation into any rate adjustments made pursuant to the plan, and in particular into the prudence of the gas costs charged to VGS's customers. Exh. Joint-1, attachment 1 at ¶¶ 4(g) and (j).

Miscellaneous MOU Terms

35. Pursuant to the MOU, the Department will retain and bill back to the Company the expense for a third party consultant (the "DPS Consultant") to assist the Department with auditing and reviewing each base-rate filing under the Successor Plan, as well as the quarterly purchased gas adjustments and the annual earnings-sharing-mechanism filings. Exh. Joint-1 at 3 and attachment 4.

36. Pursuant to the MOU, VGS will file a rate design study with the Board and the Department no later than December 31, 2012. Exh. Joint-1 at 4.

37. VGS and the Department have agreed to work cooperatively to develop an alternative strategy for hedging by March 31, 2013. The MOU provides that if the parties agree on an

alternative approach, VGS will submit the strategy for review and possible approval by the Board. Exh. Joint-1 at 4.

(2) Discussion of Miscellaneous Successor Plan Issues

The Successor Plan is similar to the Original ARP first approved in Docket 7109. The Successor Plan contains the following elements that are familiar from the Original ARP: (1) an annual rate-setting mechanism featuring a cap on operating costs; (2) a quarterly gas-cost adjustment mechanism; and (3) an earnings-sharing mechanism that creates an incentive for the Company to realize cost savings and provides an opportunity for ratepayers to share in the benefit from those savings.

The Original ARP and the Successor Plan also differ from each other. Among other things, the Successor Plan contains the following new features: (1) the ROE will be indexed to U.S. Treasury Rates; (2) the Successor Plan calls for the earnings-sharing calculation to be performed on a weather-normalized basis; and (3) the Successor Plan eliminates the gas-cost sharing component of the PGA in tandem with an agreement between the Department and VGS to explore the possibility of jointly designing a hedging strategy for which VGS, with support from the Department, will seek pre-approval from the Board; and (4) the Department will bill back to the Company the expense of retaining a consultant to assist the Department with auditing and reviewing the rate-adjustment filings contemplated under the Successor Plan.

The provisions in the Successor Plan regarding ROE indexing and the DPS Consultant are new terms for VGS under alternative regulation. These plan features are outgrowths from other alternative regulation plans⁶ we have approved and reflect our experience over the last six years in regulating Vermont utilities pursuant to § 218d, Vermont's alternative regulation

6. See, e.g., Docket 7585, *Petition of Green Mountain Power Corporation for approval of an alternative regulation plan (Plan II)*, Order of 4/16/10 at 15-17 (discussing introduction of ROE indexing); Docket 7336, *Petition of Central Vermont Public Service Corporation for approval of an Alternative Regulation Plan pursuant to 30 V.S.A. § 281d*, Order of 9/30/08 at 53 (approving retention of third-party consultant to assist DPS with plan review); Dockets 7175/7176, *Tariff filing of Green Mountain Power Corporation requesting an 11.95% increase in rates, and Petition of Green Mountain Power Corporation for approval of an alternative regulation plan*, Order of 12/22/06 at 40 (same).

statute.⁷ The provisions in the Successor Plan relating to weather normalization of earnings and collaboratively devising a hedging strategy for possible Board pre-approval are new as well, both as elements that did not exist in VGS's Original ARP, and as techniques for alternative regulation that the Board has not previously employed.

a. The ROE Adjustment Mechanism

Under the Successor Plan, VGS's ROE will be set according to a formula whereby the return is adjusted annually with reference to the fluctuating yield of the 10-year Treasury bond. The ROE setting formula further includes an additional adjustment in the subsequent plan year in order to ensure that the ROE will track properly with changes in Treasury rates over time. This mechanism is conceptually similar to the ROE adjustment mechanisms we approved for Central Vermont Public Service Corporation ("CVPS") in Docket 7336 and Green Mountain Power Corporation ("GMP") in Docket 7585.⁸

As proposed, VGS's ROE will be adjusted for one-half of the change in the Daily U.S. Treasury Long-term Rate for each Successor Plan year. The index to be used will be the Long-term Composite 10-year Treasury Rate. In determining the amount of the adjustment, the average rate from July 15 to August 15 of each plan year will serve as the baseline. To guard against dramatic fluctuations in the ROE due to market swings in Treasury rates, VGS proposes to cap the change in ROE at 100 basis points. In addition, to make sure that the return tracks appropriately with variations in Treasury rates over the term of the Successor Plan, VGS proposes that each time the ROE is capped at the 100-basis point difference, at the start of each subsequent plan year the ROE will be adjusted further by one-half the difference between the capped rate and what the ROE would have been without the cap.⁹

This adjustment mechanism was agreed to by VGS and the Department in order to provide a greater degree of certainty for the Company and its investor as to what the ROE will be

7. The Original ARP, which we approved in September of 2006, in fact was the first alternative regulation plan to be implemented pursuant to § 218d.

8. See Docket 7336, Order of 9/30/08 at 18; Docket 7585, Order of 4/16/10 at 15-17.

9. Simollardes 7803 pf. at 8-9.

in a given year under the Successor Plan, and to be consistent with the intent of alternative regulation, which is to streamline regulatory proceedings and, when appropriate, to save the expense of litigation as a means of making regulatory determinations such as setting an ROE.¹⁰ We understand these objectives. We have noted in the past that alternative regulation by definition contemplates an evolving process for devising methods for setting just and reasonable rates.¹¹ We therefore conclude that it is appropriate to allow VGS an opportunity to use the proposed ROE adjustment mechanism as set out in the Successor Plan.

As we have previously observed, alternative regulation by definition contemplates an evolving process for devising new methods pursuant to Section 218d for setting just and reasonable rates.¹² Upon approving the Successor Plan, we will have completed a cycle of adopting initial and successor alternative regulation plans for VGS, CVPS and GMP. With the passage of time since we approved the first Section 218d plan in 2006, we have accumulated knowledge and experience from administering these plans. We also observe that, during this time, the landscape of Vermont's utility sector has been transformed materially as GMP, CVPS and VGS are now under common ownership. In this vein, we have noted with interest the provision in the parties' MOU that anticipates the possibility of initiating a policy inquiry into options for standardizing the establishment of authorized ROEs in Vermont.¹³ We commend the Department and VGS for recognizing of their own accord that there may be a need to examine this important policy matter, given that most of our decisional precedent on this issue was developed before the advent of alternative regulation in Vermont. We find this is an opportune moment to undertake such an inquiry, and therefore, to this end, we will convene a workshop in the near future — likely in early 2013 — with the Department and other stakeholders in Vermont's alternative regulation process.

10. *Id.*; tr. 6/26/12 (vol. I) at 21 (Simollardes).

11. Docket No. 7585, Order of 4/16/10 at 16; 30 V.S.A. § 218d(d).

12. Docket 7585, Order of 4/16/10 at 16; 30 V.S.A. § 218d(d).

13. *See* exh. Joint-1 at ¶ 2.b.

b. Weather Normalization of Earnings

The concept of weather normalization of VGS's actual earnings, also known as weather decoupling, is a departure from the previous VGS alternative regulation plan, and traditional ratemaking practice in Vermont. The intent of adjusting actual earnings to 10-year normal weather is to "correct" for abnormally warm or cold weather patterns that would otherwise swing the Company's earnings. For example, in colder-than-normal weather, the Company would have a larger volume of sales which would result in over-earnings. Conversely, in warmer-than-normal weather, the Company would have a smaller volume of sales and under-earnings or shortfalls. In theory, over time, the frequency and severity of warm and cold weather will balance out, and therefore VGS customers will be held harmless.

We conclude that it is reasonable to adopt the concept of weather decoupling for the purpose of calculating VGS's actual earnings. We realize that this substantially reduces VGS's earnings risk, and may be viewed as a shift of risk to ratepayers. This shift is offset by affording VGS a lower ROE than might otherwise have been granted to the company in a traditional ratemaking proceeding, and by shifting the ESM in favor of ratepayers, as described in Findings 21 and 22, above. In addition, we note that the statute governing alternative regulation, specifically Section 218d(a), requires that the Board find that the alternative regulation plan will "decrease the extent to which the financial success of distribution utilities between rate cases is linked to increased sales to end use customers and may be threatened by decreases in those sales". We find that the proposed weather decoupling mechanism is consistent with this statutory directive.

While it stands to reason that weather patterns over time will fall within a normal distribution and that customers therefore will neither over- nor under-pay, we find that it would be reasonable for the Company to track the outcomes of weather normalization of earnings. By following these outcomes over time, stakeholders will be able to determine how closely the theory of weather normalization matches up against its practical application. Therefore, we will require VGS to include in its annual base-rate filings two additional figures: (1) a showing in total nominal dollars of what the base-rate adjustment for that year would have been without

weather normalization, if all else were held equal; and (2) a showing in cumulative real dollars of the impact of weather normalization since its implementation pursuant to the Successor Plan.

In addition, while we have concluded that weather decoupling is a reasonable concept which we approve in this Order for application by VGS on terms consistent with the Successor Plan, we find that the evidentiary record does not provide sufficient information regarding its implementation. Section 5.b.xii of the Successor Plan states:

For purpose of determining weather-normalized earnings, the use per degree day, per customer, by firm rate class will be applied to the difference between actual degree days and degree days in the most recent base-rate filing times the actual number of customers. The resulting Mcf adjustment, by rate class, will be multiplied by the distribution charge, by rate class to determine the weather adjustment. The calculation, by firm rate class, by month will be as follows:

$$WV = (\text{Customers} * UDD * (DD_a - DD_n)) * DR$$

Where:

WV	=	Weather Variance
Customers	=	Actual number of customers
UDD	=	Use per degree day from base rate filing
DD _a	=	Actual Degree Days
DD _n	=	Degree Days per Base Rate Filing
DR	=	Distribution Rate

The resulting WV will be returned to or collected from customers in the annual ESM filing.

This section of the Successor Plan provides useful information as to how the weather adjustment will be calculated. However, it is unclear how certain of the terms in the formula will be determined, and what the source of weather data will be. In addition, it is unclear why the parties have stipulated to adjusting actual earnings based on 10-year normal weather, as opposed to some other length of time. Thus, while we approve VGS's application of weather normalization on terms consistent with the Successor Plan, we will require the Company, in consultation with the Department, to submit a compliance filing that: (1) identifies a transparent source of weather data to be used in the calculation of weather-normalized earnings; (2) describes in detail how the weather data will be incorporated into the calculation of weather-normalized earnings; and (3) provides an explanation for why actual earnings should be normalized for 10-year normal

weather, as opposed to some other length of time. Finally, any questions or concerns prompted by this compliance filing will be reviewed in a workshop that the Board staff will convene with VGS and the Department in advance of the first annual base rate filing made under this Plan.

c. Hedging

In the Successor Plan, the parties have agreed to cooperatively develop a gas-cost hedging strategy for VGS to use in its commodity procurement activities. If they reach agreement on such a strategy, VGS will "submit the new hedging strategy for review and possible approval by the Board."¹⁴ The parties envision that if the Board approves this proposed hedging strategy or declines to investigate it, then the Company will phase out its existing hedging positions and nonetheless implement the newly agreed-upon hedging strategy.¹⁵ In the alternative, should the Board choose to investigate the proposed strategy but decline to issue either an order of approval or disapproval, the Company would implement the proposed strategy, absent an express prohibition from the Board.¹⁶ Ultimately, regardless of whether the Board approves the proposed hedging strategy, the Department has agreed to support the Company's recovery of hedging expenses provided that VGS's hedging activities are consistent with the newly agreed-upon strategy.¹⁷

As we understand the applicable terms of the MOU, the parties recognize that our decision to approve this settlement does not also constitute a decision to approve or otherwise act upon any particular hedging strategy that may be submitted for our review by the Company in the future. During the technical hearing, the Department explained that it was now supporting the Company's desire to obtain a pre-approved hedging strategy because with the full pass-through of gas costs under the PGA of the Successor Plan, the Board may find a need for "prescribing hedging practices to protect ratepayers."¹⁸ In turn, VGS testified that while Board approval of a future hedging strategy would afford the Company comfort in making its hedging decisions,

14. Exh. Joint-1 at ¶ 4.a.

15. Exh. Joint-1 at ¶ 4.b.

16. Tr. 6/26/12 at 94 (Simollardes).

17. Exh. Joint-1 at ¶ 4.e.1.

18. Tr. 6/26/12 at 100 (Foley).

VGS understands that it would not be immune from any prudence review the Board might elect to conduct of the Company's execution of its hedging strategy.¹⁹ With these clarifications from the Department and the Company, we conclude that it is appropriate to approve the provisions of the MOU pertaining to the parties' agreed-upon process for exploring, designing and seeking Board approval of a future hedging strategy for VGS. In reaching this conclusion, we wish to make clear that we have made no decision in this Order with regard to whether, when or how the Company should employ a strategy to hedge its gas procurement costs. VGS remains fully accountable for exercising its managerial discretion in regard to its hedging decisions.

d. The Productivity "X" Factor

As in the case of the Original ARP, the Successor Plan establishes a productivity "X" factor of 0.39% to be used in calculating the annual operating cost cap under the plan.²⁰ The purpose of this productivity "X" factor is to induce operational efficiency by off-setting the inflation factor in the operating-cost-cap escalator that is a component of the annual revenue-cap calculation.²¹ In other alternative regulation plans we have approved, the "X" factor has been set at 1.0%. The 0.39% factor which the parties propose for use in the Successor Plan is a term of their settlement and is based on VGS's experience under traditional regulation with the escalation of its historical rates relative to inflation.²² For purposes of the initial 3-year term of the Successor Plan, we will permit the Company to use 0.39% as its productivity "X" factor because it is a term of the parties' settlement. However, should VGS seek to renew the Successor Plan at the end of the initial term, we hereby put the Company on notice that we will require a showing at that time as to why the "X" factor should not be changed to 1.0%, which would be in line with other alternative regulation plans now in effect in this jurisdiction.

19. Tr. 6/26/12 at 101- 102 (Simollardes).

20. Tr. 6/26/12 (vol. I) at 15 (Simollardes).

21. Under the Successor Plan, the revenue-cap calculation includes an operating-cost-cap escalator that is defined as $(1 + \text{Inflation} - X)$, wherein "Inflation" factor is defined as "the historical rate of inflation for New England for the most recent 12 months ending before VGS's rate filing. Inflation will be based on CPI data for the Northeast published by the US Department of Labor-Bureau of Labor Statistics." Exh. Joint-1, attachment 1 at ¶ 5(b)(iii).

22. Tr. 6/26/12 (vol. I) at 15 (Simollardes).

e. Administration

(a) DPS Consultant Review

Pursuant to the MOU, the Department will retain and bill back to the Company the expense for the DPS Consultant to audit and review each base-rate filing under the Successor Plan, as well as the quarterly purchased gas adjustments and the annual earnings-sharing mechanism filings. In the context of reviewing other alternative regulation plans, we have found this outside consultant review mechanism to be very useful; thus, we commend the parties for integrating this process into the Successor Plan. Furthermore, our experience has shown that such outside consultant services and reports are most helpful when they reflect that the consultant has reviewed the plan calculations, documentation and filings for: (1) accuracy; (2) completeness; (3) compliance with traditional ratemaking and existing Board Orders regarding cost-of-service filings, including the calculation of regulated earnings; and (4) consistency with the utility's actual costs and the alternative regulation plan. Accordingly, we strongly encourage the Department to ensure that the DPS Consultant's review and reports are directed toward addressing these criteria.

As a condition of our approval of the Successor Plan, the DPS Consultant's report shall be filed with the Board two weeks after the Company's annual base-rate filing is submitted to the Board. We recognize that the parties did not include this term in the Successor Plan, but we require it today as a condition of approval because it is consistent with other alternative regulation plans we have approved for Vermont utilities in recent years.

(b) Filing Deadlines

The Successor Plan provides that no later than June 30th of any plan year, VGS shall provide the Department and the Board with a preliminary assessment of the anticipated increase or decrease in rates.²³ The Successor Plan further states that annually, no later than August 28th of any plan year, "VGS shall notify the DPS and the PSB of any increase or decrease in its rates

23. Exh. Joint-1, attachment 1 at ¶ 5(e).

(if any) charged to firm customers to reflect the changes to VGS's rates determined in accordance with Paragraph 3 of this Plan (the "Annual Notice")."²⁴ Finally, the Successor Plan contemplates that in the absence of a Board Order to the contrary, the adjustment specified in the Annual Notice will be considered approved by the Board 60 days after filing.²⁵

In order to allow sufficient time for the Board to give due consideration to the recommendations of the Department with respect to the Annual Notice, we find it appropriate to set a firm deadline by which the Department must provide the Board with its recommendation regarding any rate changes. Accordingly, as discussed above, a copy of the DPS Consultant's report must be provided to the Board two weeks after VGS's base-rate filing is submitted to the Board. Thereafter, the Department's recommendation regarding any rate changes proposed in the annual base-rate filing shall be submitted to the Board no later than 30 days after the filing of the Annual Notice as required under the Successor Plan. This review period is reasonably sufficient given that VGS will provide the DPS with a preliminary assessment of its anticipated annual rate adjustment in June, and the Annual Notice will include a summary of major variances in costs between the preliminary assessment and the Annual Notice.

As for Paragraph 5(h) in the Successor Plan, we will require this provision to be struck as a condition of our approval of the Successor Plan because this term is inconsistent with other alternative regulation plans now in effect. Pursuant to Paragraph 5(h), in the absence of regulatory action within the 60-day window following the filing of the Company's Annual Notice, any rate change contained in that notice would automatically be deemed to be approved by the Board. While we understand the Company's desire to timely secure the clarity of finality for its noticed rate adjustments, we do not agree that such a self-executing Board approval mechanism outweighs the public interest in ensuring that rate adjustments are implemented with due transparency and regulatory awareness. Instead, given the largely summary and expedited nature of the alternative regulation review process, we find that VGS's finality interest is equally well protected by relying on the Company to contact its regulators, as warranted, for clarification as to the status of the rate adjustment set forth in the Annual Notice.

24. Exh. Joint-1, attachment 1 at ¶ 5(a).

25. Exh. Joint-1, attachment 1 at ¶ 5(h).

(c) Amendment Process

The Successor Plan provides that VGS and the Department may jointly or separately seek to amend the plan to modify its existing provisions or to add provisions by filing such proposed amendments with the Board for effect 45 days from the date of such filing.²⁶ The Successor Plan further contemplates that the Board may investigate such amendments formally or informally after written notice to VGS and the Department, and that the amendment will be deemed approved absent such a notice of investigation from the Board.²⁷

In general, we find the inclusion of an express agreement permitting amendments to the Successor Plan while it is in effect to be an improvement over the ambiguity that was created by the absence of such an agreement in the Original ARP. That said, we find that Paragraph 10(c) (in the entirety) implicates the same policy concerns we expressed in regard to the Annual Notice and a similarly self-executing approval provision. For those same reasons, we will require this provision to be struck from the Successor Plan as a condition of our approval of the plan because such self-executory terms are inconsistent with other alternative regulation plans now in effect. The record in this case contains no compelling explanation as to how the public interest is served by permitting a self-executing amendment mechanism to be included in an alternative regulation plan.

Instead, as has been our practice to date, we will continue to review proposed amendments to alternative regulation plans on a case-by-case basis.²⁸ We will rely on the proponent of any amendment to call our attention to the time-sensitivity of any proposed amendment that is filed for our review.

Finally, to follow up on a related discussion at the technical hearing, we hereby clarify that when a party files a proposed plan amendment with the Board for review and approval, the proposed amendment is not deemed to take effect in the absence of a Board order or notice

26. Exh. Joint-1, attachment 1 at ¶ 10(c).

27. Exh. Joint-1, attachment 1 at ¶ 10(c)(i) and (ii).

28. See, e.g., Docket 7712, Order of 9/28/11 (approving amendment to create the System Expansion and Reliability Fund.)

expressly to the contrary or during the pendency of any investigation the Board may open into the matter.²⁹ Rather, whenever a proposed amendment is filed with the Board for review, the terms of the Successor Plan remain in effect as approved in this Order until such time as a final Board Order is issued in regard to the proposed amendment under regulatory review.

(d) Successor Plan Assessment

VGS and the Department have agreed to jointly evaluate the criteria used under the Original ARP to assess the effectiveness of the plan. By January 31, 2013, the parties will advise the Board as to whether they will continue using these established criteria or devise different or additional standards to measure plan effectiveness under the Successor Plan. In turn, the parties will provide their respective assessments of the plan to the Board for review. We find these assessment provisions to be reasonable, with the clarification that the assessments filed with the Board shall specifically address how the Successor Plan has performed in achieving the regulatory goals reflected in the enumerated statutory criteria of 30 V.S.A. § 218d.

(3) Statutory Findings

Alternative regulation for electric and gas utilities is authorized by Section 218d of Title 30. That section also delineates a series of statutory findings that the Board must make before it may approve an alternative regulation plan. Specifically, Section 218d(a) requires that the Board find that an alternative regulation plan will:

- (1) establish a system of regulation in which such companies have clear incentives to provide least-cost energy service to their customers;
- (2) provide just and reasonable rates for service to all classes of customers;
- (3) deliver safe and reliable service;
- (4) offer incentives for innovations and improved performance that advance state energy policy such as increasing reliance on Vermont-based renewable energy and decreasing the extent to which the financial success of distribution utilities between rate cases is linked to increased sales to end use customers and may be threatened by decreases in those sales;

29. Tr. 6/26/12 (vol. II) at 46 (Volz) and 47-48 (Simollardes).

- (5) promote improved quality of service, reliability, and service choices;
- (6) encourage innovation in the provision of service;
- (7) establish a reasonably balanced system of risks and rewards that encourages the company to operate as efficiently as possible using sound management practices; and
- (8) provide a reasonable opportunity, under sound and economical management, to earn a fair rate of return, provided such opportunity must be consistent with flexible design of alternative regulation and with the inclusion of effective financial incentives in such alternatives.

In addition, subsection 218d(b) requires that "if savings result from alternative regulation, the savings shall be shared with ratepayers as determined by the board." Finally, Section 218d(h) permits the Board to establish, by rule or order, standards by which to assess the effectiveness of alternative regulation plans. What follows is our analysis of the evidentiary record relative to these mandatory statutory review criteria.

a. Incentives to Provide Least-Cost Energy Service (§ 218d(a)(1))

38. The Successor Plan will establish a system of regulation in which the Company has clear incentives to manage its costs and provide least-cost energy service to its customers. This finding is supported by findings 40 through 43, below.

39. The Successor Plan continues the reporting requirements of the Original ARP that are designed to ensure that the Company provides information to its regulators prospectively about its gas-procurement and system-expansion decisions. Simollardes 7803 pf. at 18; findings 29 and 30, above.

40. The Successor Plan also contains clear incentives for least-cost energy service in the form of the revenue-cap feature and the earnings-sharing provision that are not available under traditional regulation. Under the ESM, the Company will be effectively limited to its cost of service at the beginning of the Successor Plan, plus inflationary annual increases less a productivity adjustment, plus or minus the sharing between the cap and the actual cost of service. Should actual costs rise more rapidly than inflation, this will reduce future earnings. Conversely, should the Company drive costs lower than inflation, it will retain a portion of these gains. Thus,

the Company will be penalized for allowing costs to exceed inflation and rewarded for driving them lower. Simollardes 7803 pf. at 18-19; findings 7-17 and 21-22, above.

41. Also, under the Successor Plan, the Company is subject to periodic, full cost-of-service filings, so the Company is still expected to recover its prudently-incurred and reasonable cost of service. Simollardes 7803 pf. at 19.

42. Finally, under the PGA, the Company will recover prudently-incurred gas costs as it has in the past, but more efficiently than under traditional cost-of-service regulation. The incentives to purchase gas under the PGA at least cost remain: the negative consequences of a finding of imprudence in the periodic review of the Company's gas purchases and the loss of load to, or the inability to convert from, alternative fuels. In both cases, earnings would suffer. Simollardes 7803 pf. at 19; findings 18-20, above.

b. Just and Reasonable Rates (§ 218d(a)(2))

43. The Successor Plan will provide just and reasonable rates for service to all classes of customers. This finding is supported by findings 45 and 46, below.

44. The Successor Plan is based on the Company's cost of service, and thus the underlying regulatory objectives of both it and traditional regulation are essentially the same: the Company will be entitled to rates that provide an opportunity for the Company to recover its cost of service, including the opportunity to earn a reasonable return on its capital investments. Simollardes 7803 pf. at 20.

45. The following features of the Successor Plan will ensure the justness and reasonableness of VGS's rates: (1) the ESM, which ensures that any excess earnings will be returned to customers while providing a clear incentive for the Company to control costs; (2) a PGA which ensures that customers will pay only the Company's cost of gas, no more and no less; (3) periodic regulatory filings related to supply and the continuation of the Service Quality Plan, which offers regulators a timely opportunity to review VGS's procurement and operations; and (4) the fact that nothing in the Successor Plan reduces the regulators' authority to investigate the reasonableness of VGS's rates or the adequacy of its services. Simollardes 7803 pf. at 20; findings 18, 21, 22, 27, 30 and 35, above.

c. Safe and Reliable Service (§ 218d(a)(3))

46. The Successor Plan will result in the delivery of safe and reliable service. This finding is supported by findings 48 through 50, below.

47. The Company's Service Quality Plan, which measures the Company's performance against numerous safety and reliability standards, will remain in effect. Failure to achieve the benchmarks established in the Service Quality Plan will result in negative financial consequences to the Company. Simollardes 7803 pf. at 20-21; finding 27, above.

48. The MOU provides that VGS will work with the Department to further develop benchmarks to measure service quality and reliability. Exh. Joint-1, attachment 1 at 6b; finding 28, above.

49. Since capital investments and the Company's expenses related to both transmission and distribution integrity-management programs are excluded from the operating cost cap, any potential disincentive for investing in system reliability and safety is eliminated. Simollardes 7803 pf. at 21.

d. Incentives for Innovations and Improved Performance (§ 218d(a)(4))

50. The Successor Plan offers incentives for innovation and improved performance that advance energy policy. This finding is supported by findings 52 and 53, below.

51. The Successor Plan supports the expansion of natural gas service and the continuation of VGS's Demand-Side Management ("DSM") programs, both of which are supported by the Department's recently-issued Comprehensive Energy Plan. The Successor Plan also contains reporting provisions that will enable VGS's regulators to assess its progress regarding expansion. Further, since both capital investments and DSM investments are not subject to the operating-cost cap, the Successor Plan does not have any disincentives regarding expansion and DSM investments. Simollardes 7803 pf. at 21-22; finding 29, above.

52. In addition, the Successor Plan provides that annually, no later than November 1 of any plan year, VGS shall report to the Board and the Department on changes in energy markets or

customer demand that present an opportunity for VGS to offer new services. Exh. Joint-1, attachment 1 at ¶ 8(c).

e. Improved Quality of Service, Reliability, and Service Choices (§ 218d(a)(5))

53. The Successor Plan will promote improvements in VGS's quality of service, reliability and service choices because the Plan provides for the Company's performance to be measured and evaluated against the terms of a separate service quality plan (the "Service Quality Plan") that creates an incentive for VGS to deliver a high level of customer service and reliability. Simollardes 7803 pf. at 22-23; finding 27, above.

f. Encourage Innovation in the Provision of Service (§ 218d(a)(6))

54. The Successor Plan will encourage innovation in the provision of service. Under the Successor Plan, the operating-cost cap is calculated on a per-customer basis. This creates an incentive for VGS to grow its customer base. In turn, to grow its customer base, VGS must compete for customers with other fuel provisioners by being innovative in providing competitive services. Simollardes 7803 pf. at 22-23; finding 15, above.

g. Reasonably Balanced System of Risks and Rewards (§ 218d(a)(7))

55. The Successor Plan establishes a reasonably balanced system of risks and rewards that encourages the Company to operate as efficiently as possible using sound management practices because it contains several mechanisms that allow the Company to keep some of the earnings in excess of its allowed ROE while requiring it to absorb certain earnings shortfalls when these occur; additionally, the Board retains its ability to review and investigate all aspects of the Company's cost-of-service. Furthermore, the Service Quality Plan and DSM programs will ensure that savings do not come at the expense of customer service or energy efficiency. Simollardes 7803 pf. at 23; findings 21-22 and 35, above.

h. Reasonable Opportunity to Earn a Fair Rate of Return (§ 218d(a)(8))

56. The Successor Plan will provide a reasonable opportunity, under sound economic management, for VGS to earn a fair rate of return consistent with flexibility in the design of, and the inclusion of effective financial incentives in, the Successor Plan. Simollardes 7803 pf. at 23.

i. Reasonable Sharing of Savings with Ratepayers (§ 218d(b))

57. The Successor Plan includes an earnings-sharing mechanism to ensure that savings resulting from the implementation of the Successor Plan will be shared with customers. Simollardes 7803 pf. at 20; findings 20-21, above; exh. Joint-1, attachment 1 at ¶¶ 15-17.

B. VGS's Rate Request

(1) Findings

58. Upon approval of the MOU, VGS will file compliance tariffs reflecting a base-rate increase of 3.03% as provided for in the MOU, as well as a purchased-gas adjustment calculated pursuant to the PGA methodology under the Successor Plan. Exh. Joint-1 at 3 and attachment 3.

59. Under the Successor Plan, the equity component of VGS's capital structure will be set at 55%. Exh. Joint-1, attachment 1 at ¶ 3(c).

60. The MOU provides that the ROE shall be initially set at 9.75%. See exh. Joint-1 at 2 and attachment 1 at ¶ 3(c).

61. VGS will account for plant not placed in service in a rate year, including the Addison County Expansion Project, by booking an Allowance for Funds Used During Construction ("AFUDC"). Exh. Joint-1 at 3.

62. VGS will be entitled to recover 50% of the expenses of VGS's Senior Executive Retirement Plan (the "SERP") and to place in rate base 50% of the difference between the cash value of the SERP and the SERP liability. Exh. Joint-1 at 3 and attachment 4.

63. VGS will include in its annual base-rate filing an adjustment to reflect the bill-back cost incurred by the Company to reimburse the Department for its expense in retaining a consultant to

review the Successor Plan and cost of service and to monitor VGS's performance under the Successor Plan. Exh. Joint-1 at 3 and attachment 3 at 2.

(2) Discussion of Cost-of-Service Issues

The cost of service filed by the Company in Docket 7843 in January of 2012 proposed an overall rate reduction of 2%. This proposed rate reduction was comprised of an 8.4% reduction in the natural gas charge and a 6.2% increase in base rates.³⁰ As part of their "bottom line" settlement, the parties have attached to the MOU a summary statement of the cost of service that will serve as the base line for setting initial rates under the Successor Plan.³¹ The summary cost-of-service statement reflects the parties' agreement that, upon receipt of a final Board Order approving the MOU, the Company shall adjust its base rates to reflect an increase of 3.03%.

a. ROE

Neither the law nor regulatory precepts prescribe a specific methodology for setting the appropriate return on equity. Instead, the Board has substantial discretion to weigh factors so as to achieve the overarching goal of authorizing a return on equity that is fair and reasonable to all stakeholders. The critical element is the reasonableness of the result, not necessarily the methodology used to achieve it.³² The basic standard is well-established:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.³³

30. Letter from Eileen Simollardes, on behalf of VGS, to Susan M. Hudson, dated January 24, 2012, at 1.

31. See exh. Joint-1, attachment 3.

32. In re *FPC v. Hope Natural Case Co.*, 320 U.S. 591, 602 (1944).

33. *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692-93 (1923). See also *Duquesne Light Company v. Barasch*, 488 U.S. 299, 310 (1989).

These principles are reflected in the statutes governing the Board's decisions, and have been endorsed repeatedly by the Vermont Supreme Court.

In this proceeding, VGS and the Department have agreed to an ROE of 9.75%, which represents a reduction of 50 basis points from the ROE originally proposed by VGS of 10.25%. This reduction in the ROE was driven by the fact that the Successor Plan transfers much of VGS's operating risk from the Company to its ratepayers as a result of the ESM mechanism, which reduces fluctuations in VGS's earnings, and by indexing VGS's authorized ROE to changes in the yield of the 10-Year Treasury Note. VGS presented evidence that the appropriate starting-point ROE should be 10.5% based largely on its assumptions concerning increased market risk and volatility. The Department provided evidence and analysis indicating that an initial ROE of 9.6% was more appropriate given the above-referenced mitigating effects of the Plan. In negotiating the MOU, the parties settled on an ROE of 9.75% as the baseline.

The analyses presented by both parties use three models. These are the discounted cash flow ("DCF"), bond yield risk premium ("RP"), and the capital asset pricing model ("CAPM") approaches. The parties differ, however, on certain of the inputs to these models. For example, the Department disputes VGS's conclusion that the results of the DCF model should be dismissed in favor the CAPM and RP approaches, arguing that VGS erred by inputting the current 30-year Treasury Bond rate as the risk-free rate component for the CAPM and RP models as opposed to using the 10-year Treasury Bond rate which is subject to substantially less maturity risk.³⁴ The Department also questions VGS's selection of some of the companies comprising VGS's proxy group (specifically, Atmos Energy, New Jersey Resources, Vectren Corp., and WGL Holdings Inc.), asserting that the proxy should only have included those companies that best represented the financial strength and risk profile of VGS.³⁵

We agree with the settlement reached by the parties in the MOU and find that a reasonable starting point for setting VGS's ROE is 9.75%. In reaching this conclusion, we have considered the various analyses presented by VGS and the Department and the criticisms each has leveled at the other's studies. The most significant disagreement involved the appropriate

34. Fish 7843 pf. at 28-29.

35. *Id.* at 24.

levels of business, market, and regulatory risk to be assigned to VGS and whether VGS overstated its ROE as a result. VGS's analysis relies heavily on risk factors such as the ongoing volatility in the capital markets, and the Company's small size (as compared with the proxy group and the industry as a whole);³⁶ however, the analysis failed to substantiate VGS's initially proposed ROE of 10.5%.³⁷ Based on the Department's analysis, we find that the risk-mitigating benefits afforded VGS under the Successor Plan (the ESM, weather normalization, indexing of ROE to the 10-year Treasury Bond rate), plus the fact that VGS is not a publicly traded company and enjoys favorable access to equity funding from its parent, Gaz Métro, we are persuaded that VGS overestimated its risk exposure and thus overestimated its initial ROE proposal.³⁸ Thus, we find that the lower ROE of 9.75% is a more reasonable representation of VGS's risk exposure and that this level of return is supported by the Department's modeling analysis.³⁹

b. Inflation as a Factor in VGS's Ratemaking Methodology

During this proceeding, it has come to the Board's attention that, in the past, VGS's cost-of-service ratemaking methodology has entailed applying an inflation factor as a "known and measurable" adjustment to the test year. The cost of service reflected in the MOU was computed without the use of an inflation factor as a "known and measurable change" for purposes of setting rates based on a cost-of-service basis.⁴⁰ Going forward, VGS will no longer calculate its cost of service by applying an inflation factor as a "known and measurable" adjustment to the test year.⁴¹

IV. CONCLUSION

For the reasons set out above, we approve the Successor Plan as modified by the MOU between the Department and VGS and subject to the further modifications and conditions discussed in this Order. We further authorize an increase in the Company's base rates of 3.03%,

36. Coyne 7843 pf. at 30-32, 47-49.

37. Fish 7843 pf. at 27.

38. *Id.* at 9-12, 14-15.

39. *Id.* at 5, 26.

40. Tr. 6/26/12 (vol. I) at 28 (Simollardes); exh. Joint-1, attachment 3.

41. Tr. 6/26/12 (vol. I) at 31 (Simollardes).

effective with bills rendered on and after November 1, 2012. With this increase, VGS's rates will be just and reasonable. The termination date of the Successor Plan as modified and approved in this Order shall be September 30, 2015, absent an extension approved pursuant to the terms of the plan.

Our review of the alternative regulation plan in this proceeding has been limited to the unique circumstances of VGS, and should not be interpreted more broadly as endorsing a similar alternative regulation plan for any other Vermont utility. Whether a similar plan would be appropriate for another utility is a determination that must be made based on the facts relevant to that particular utility. For this reason, and as the MOU provides, today's Order should not be construed as having any precedential effect, except as necessary to ensure VGS's performance under the MOU, or to enforce an order of the Board resulting from that document.

V. ORDER

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

1. The Memorandum of Understanding ("MOU") dated June 18, 2012, between the Vermont Department of Public Service (the "Department") and Vermont Gas Systems, Inc. ("VGS" or the "Company") is approved, subject to the terms as discussed in this Order.
2. The Company is entitled to rates that will produce additional retail revenues of \$1,139,145 or 3.03% above existing base rates for bills rendered on or after November 1, 2012.
3. VGS's alternative regulation plan (the "Successor Plan"), with the modifications approved in this Order, shall take effect on October 1, 2012. The Successor Plan shall terminate on September 30, 2015, absent an extension approved pursuant to the terms of the plan.
4. VGS shall file tariffs in compliance with this Order by August 28, 2012.
5. The annual report of the consultant retained by the Department to assist with reviewing the regulatory filings pursuant to the Successor Plan shall be filed with the Board two weeks after the Annual Notice is submitted to the Board. The Department's recommendation regarding any rate changes proposed in the annual base-rate filing shall be submitted to the Board no later than 30 days after the filing of the Annual Notice as required under the Successor Plan.

6. Within 30 days of the date of this Order, the Company shall file a revised version of the Successor Plan that incorporates all modifications required in this Order as a condition of Board approval and that otherwise is consistent with the terms of this Order.

7. VGS shall collaborate in good faith with the Department on its plan concerning customer information regarding the Successor Plan and the timing and substance of these customer communications.

8. After consultation with the Department, VGS shall submit a compliance filing, no later than April 1, 2013, that: (1) identifies a transparent source of weather data to be used in the calculation of weather-normalized earnings; (2) describes in detail how the weather data will be incorporated into the calculation of weather-normalized earnings; and (3) provides an explanation for why actual earnings should be normalized for 10-year normal weather, as opposed to some other length of time. As needed, the Board will convene a workshop with VGS and the Department in advance of the first annual base rate filing made under the Successor Plan to review any questions or concerns prompted by the weather-normalization compliance filing.

9. VGS shall file a rate-design study with the Board and the Department no later than December 31, 2012. In advance of that filing, VGS shall meet at least once with the Department to obtain guidance from the Department as to the methodology to be used in the study.

10. By January 31, 2013, VGS and the Department shall advise the Board of the criteria to be used in assessing the Successor Plan's effectiveness at the end of its initial term and any renewal term thereafter. The assessments filed with the Board pursuant to the Successor Plan shall specifically address how the plan has performed in achieving the regulatory goals reflected in the enumerated statutory criteria of 30 V.S.A. § 218d.

11. Not later than September 30, 2013, the Company shall file a report with the Board and the Department evaluating the effectiveness of the Successor Plan's performance in achieving the goals of 30 V.S.A. § 218d. In advance of filing the reports, the Company shall confer with the Department with respect to the measurement criteria to be used in the reports.

Dockets No. 7803/7843

Dated at Montpelier, Vermont, this 21st day of August, 2012.

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

OFFICE OF THE CLERK

FILED: August 21, 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.