

148 FERC ¶ 61,234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Vermont Gas Systems, Inc.

Docket No. CP14-86-000

ORDER ISSUING SERVICE AREA DETERMINATION

(Issued September 26, 2014)

1. On February 19, 2014, Vermont Gas Systems, Inc. (Vermont Gas) filed an application¹ under section 7(f) of the Natural Gas Act (NGA) requesting that the Commission determine a service area within which Vermont Gas may, without further Commission authorization, construct, enlarge, and expand its facilities. Vermont Gas also requests that it be considered a local distribution company (LDC) for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA). Further, Vermont Gas requests a waiver of the accounting and reporting requirements, as well as other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA. For the reasons discussed below, we will grant Vermont Gas' requests.

I. Background

2. Vermont Gas is engaged in the business of transporting, distributing, and selling gas in Vermont and is the only LDC² authorized to do business in Vermont. It serves over 47,000 customers in Franklin and Chittenden Counties in northwestern Vermont. Vermont Gas holds a Certificate of Public Good issued by the Vermont Public Service Board (Vermont Board) to serve customers throughout the State and its rates, terms and

¹ Vermont Gas submitted additional information to supplement its application on September 10 and 15, 2014.

² The NGA does not include a definition of an LDC. However, "local distribution company" is defined in section 2(17) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. § 3301(21)(6) (2012), as an entity "engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption."

conditions of service are regulated by the Vermont Board. Vermont Gas is not directly connected to any interstate natural gas pipelines in the United States, but it is interconnected with TransCanada PipeLines, Ltd. (TransCanada) at an interconnection point at Highgate, at the Vermont-Quebec border.

3. Vermont Gas' system consists of approximately 770 miles of pipeline, including approximately 69 miles of larger diameter, higher pressure transmission pipeline which forms the backbone of the Vermont Gas distribution system. Distribution lines are built off the transmission system to serve communities and towns along the pipeline. Vermont Gas states that transmission pipeline is necessary on its system because most of the load on the system is located at the southern end, farther from the interconnection with TransCanada, and the transmission pipeline ensures adequate pressure for reliable operation of Vermont Gas' integrated pipeline system.

4. Vermont Gas contemplates a "multi-phased pipeline expansion" to reach additional communities that do not currently have natural gas service, ultimately extending its system southward to Rutland County, Vermont. In Phase 1, which was approved by the Vermont Board on December 23, 2013, Vermont Gas will extend its system approximately 43 miles to the south to the communities of Monkton, Ferrisburgh, Vergennes, New Haven, Bristol, East Middlebury, and Middlebury, in Addison County, Vermont.

5. Vermont Gas states that while Phase 1 plans were under development, International Paper inquired about an expansion of the Vermont Gas system into New York to provide interruptible distribution service to its Ticonderoga paper mill (Ticonderoga Mill), located in Ticonderoga County, New York. Vermont Gas states that the Ticonderoga Mill currently does not have natural gas service and there is no franchised service area that includes the Ticonderoga Mill.

6. In Phase 2, which is pending before the Vermont Board, Vermont Gas would construct, among other things, approximately 19 miles of 10-inch diameter pipeline from Middlebury, Vermont, to the Vermont-New York border to serve the communities of Cornwall and Shoreham in Addison County, Vermont, as well as International Paper's Ticonderoga Mill. In addition, Vermont Gas would construct approximately 1,830 feet of 10-inch diameter line from the Vermont-New York border to a meter and regulator (M&R) station to be located inside an approximately 16,500 square foot fenced area on

the Ticonderoga Mill property and two low pressure service lines, each extending approximately 3,600 feet from the M&R station to the Ticonderoga Mill.³

7. Vermont Gas requests a section 7(f) service area determination for the 1,830 feet of pipeline that it will construct from the Vermont-New York border to the M&R station on the Ticonderoga Mill property. Vermont Gas contends that its current operations and rates are regulated by the Vermont Board and that its facilities in New York will be regulated by the New York Public Service Commission (NYPSC),⁴ that it does not have an extensive transmission system, that there are no other LDCs providing service in the proposed service area, and that it does not currently make sales for resale in the proposed service area.

8. Vermont Gas also requests a determination that it qualifies as an LDC for purposes of section 311 of the NGPA. Finally, Vermont Gas requests a waiver of all reporting, accounting, and other rules and regulations under the NGA and NGPA that are normally applicable to natural gas companies.

II. Notice, Interventions, Comments and Protest

9. Notice of Vermont Gas' application was published in the *Federal Register* on March 10, 2014 (79 Fed. Reg. 13,288-01).⁵ The Vermont Public Interest Research Group (VPIRG), the Nature Conservancy, and the Vermont Department of Public Service filed timely, unopposed motions to intervene.⁶ The Nature Conservancy and the following Vermont landowners filed comments to the application: Donna and Andrew Marks,

³ The project cost for Phase 2 will be approximately \$64.4 million. International Paper will be responsible for all but \$2.4 million of the cost. Vermont Gas states that its proposed service to the Ticonderoga Mill will facilitate its Phase 3 plans and enable it to expand to the Rutland County, Vermont area much sooner than would otherwise be possible, since International Paper has agreed to pay for most of the costs of the Phase 2 facilities.

⁴ On September 9, 2014, Vermont Gas made the required filings with the NYPSC, including an application to construct facilities and for authority to provide natural gas distribution service to the Ticonderoga Mill.

⁵ On March 12, 2014, the Commission issued an errata notice, extending the deadline for comments to March 21, 2014.

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2014).

Renee McGuinness, Jason Kaye, Mary Martin, Barbara Clearbridge, and Raphael Worrick.

10. VPIRG protested Vermont Gas' application. Vermont Gas filed an answer to VPIRG's protest. While answers to protests are not allowed under the Commission's rules, the Commission will permit Vermont Gas' answer because the answer will assist the Commission in its decision making.⁷

III. Discussion

11. Section 7(f)(1) of the NGA provides:

The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization.

12. The Commission has consistently recognized that a section 7(f) service area determination is appropriate for a company primarily engaged in the business of local distribution of natural gas, but which is subject to the Commission's NGA jurisdiction because its facilities cross state lines.⁸ The purpose of section 7(f) is to enable a company to enlarge or expand its distribution facilities to supply market requirements without prior Commission approval. Among the factors considered in determining if a company qualifies for a service area determination are whether (1) state or local agencies regulate the company's rates; (2) the company has an extensive transmission system; (3) authorizing the service area will have a significant effect on neighboring distribution companies; and (4) the company makes sales of gas for resale in the designated service area.⁹

⁷ See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,152 (2013).

⁸ E.g., *City of Toccoa, Georgia*, 125 FERC ¶ 61,048 (2008); *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078 (2001); *Northern Lights, Inc.*, 84 FERC ¶ 61,117 (1998).

⁹ See *City of Clarksville, Tennessee*, 146 FERC ¶ 61,074 (2014); *Natural Gas Processing Co.*, 90 FERC ¶ 61,209 (2000).

13. We find that Vermont Gas meets the criteria of all four factors considered by the Commission in issuing a section 7(f) service area determination. With respect to the first factor, Vermont Gas' retail sales and services in Vermont are regulated by the Vermont Board, and its service in New York will be regulated by the NYPSC. In addition, Vermont Gas has applied to the Vermont Board to construct the facilities in Vermont required to serve the Ticonderoga Mill and has submitted the necessary applications to the NYPSC to construct the lateral in New York necessary to serve the Ticonderoga Mill. Second, the 69-mile long transmission pipeline that forms the backbone of Vermont Gas' system delivers gas into distribution lines located along its entire length to serve Vermont Gas' retail customers. The approximately 62-mile long extension of the system backbone that Vermont Gas plans to construct will also be used to deliver gas into new distribution lines that Vermont Gas will construct to serve additional retail customers. Third, granting Vermont Gas' request for designation of the proposed section 7(f) service area in New York will have no significant effect on neighboring distribution companies, since no other companies provide retail gas service in the service area of the Ticonderoga Mill. Fourth, Vermont Gas does not make sales for resale and has no plans to do so in the future.

VPIRG's Protest and Landowner Comments

14. VPIRG¹⁰ protests Vermont Gas' application, contending that granting the 7(f) service area determination creates a "gap in regulatory jurisdiction" contrary to Congressional intent. VPIRG asserts that the Commission should conduct an environmental review process pursuant to its regulations,¹¹ since the Vermont Board cannot consider the New York environmental costs and benefits of supplying International Paper with natural gas from Vermont and the NYPSC cannot perform this function with respect to costs and benefits of the project in Vermont. The inadequacy of a review of the Vermont Board alone is demonstrated, states VPIRG, by the documents submitted to the Commission by Vermont Gas, which are silent about the need for fuel by International Paper, the greenhouse gasses and air pollutants that would be emitted from the completed project, or of the availability or environmental costs of alternatives such as solar power or the redesign of the plant to reduce its energy needs. VPIRG contends that Congress intended that the Commission perform this analysis, instead of creating a gap in regulatory jurisdiction. Moreover, VPIRG states that the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations do not contemplate deferral to

¹⁰ VPIRG is a nonprofit public interest organization with the stated mission of promoting and protecting Vermont's environment and, in particular, promoting renewable energy resources.

¹¹ 18 C.F.R. pt. 380 (2014).

state jurisdiction where state environmental review processes do not meet NEPA standards. VPIRG requests that the Commission reject Vermont Gas' 7(f) application, require that Vermont Gas submit a complete application to determine if the project is required by the present or future public convenience and necessity, and that an environmental assessment or environmental impact statement be prepared.

15. VPIRG also contends that the approval of Vermont Gas' service area determination herein would create another regulatory gap, or a departure from federal law, regarding the regulation of rates. It asserts that the Commission's policy is that the costs of new pipeline construction must be borne by the new customers served by the project.¹² VPIRG asserts that the Vermont Board's ruling sets aside funds for pipeline expansion to serve new customers, when such money should have been refunded to existing customers. VPIRG asserts that where state law allows such a cost shift, but federal law does not, a regulatory gap is created that would incentivize transmission companies to expand in a jurisdiction where existing ratepayers will fund the expansion. For the Commission to make a section 7(f) determination in such a situation, asserts VPIRG, would depart from the purpose of the statute by setting a less protective standard for the public than would arise if the Commission were to retain jurisdiction.

16. Finally, VPIRG states that the New York distribution market consists of a single industrial user, International Paper, and that International Paper, in addition to paying most of the project costs will have the option of purchasing gas from Vermont Gas or purchasing gas from a third party and using Vermont Gas to transport the gas to International Paper. This, asserts VPIRG, amounts to Vermont Gas providing interstate transmission service, rather than selling gas to a retail consumer or providing retail distribution service, and falls outside the intent of section 7(f), since Vermont does not regulate the interstate transmission of gas.

17. Landowners Donna and Andrew Marks, Mary Martin, Renee McGuinness, and Barbara Clearbridge request that the Commission prepare an environmental impact statement or thoroughly review the project so that the environmental effects, particularly to the lakebed under Lake Champlain, may be fully addressed. Donna and Andrew Marks are also concerned about the pipeline route and the Cornwall Swamp Wildlife Management Area in Vermont. Mary Martin objects that Vermont Gas is not acting as an LDC but is constructing a high-pressure transmission line that crosses state lines. Jason Kaye and Raphael Worrick request that Vermont Gas clarify whether it intends to provide service to additional consumers in New York in the future. The Nature Conservancy is concerned that the pipeline may cross its property in Vermont.

¹² Citing *Transcontinental Gas Pipe Line Co. v. FERC*, 518 F.3d 916 (D.C. Cir. 2008).

Vermont Gas' Answer

18. Vermont Gas states that its project is no different than many other service area determinations granted by the Commission in the past and that there is no gap in regulatory jurisdiction. Vermont Gas asserts that it is a Vermont LDC that will have a customer in New York, and that it squarely satisfies the criteria of the four-part inquiry the Commission makes when considering requests for granting service area determinations.¹³

19. Vermont Gas states there is no evidence that the Vermont Board is not competent to perform an environmental review of a natural gas project. Vermont Gas states that it has submitted to the Commission, to the Vermont Board, and to the NYPSC, extensive and complete environmental information that the Vermont Board and NYPSC are fully competent to review. Vermont Gas responds to VPIRG's claim that its application does not adequately describe International Paper's need for a fuel other than oil and the environmental benefits of burning natural gas rather than oil, by noting that these considerations are related to the New York portion of the project to be submitted to the NYPSC.

20. Vermont Gas also disagrees with VPIRG that the rates derived by the Vermont Board and the NYPSC may be inconsistent with Commission policy, stating that pursuant to section 7(f), the jurisdiction over rates is expressly deferred to the states. In addition, Vermont Gas states that International Paper is paying for a significant portion of the Phase 2 facilities, which will also accommodate service to customers in Vermont.

21. In response to Jason Kaye's comments, Vermont Gas clarifies that the low pressure pipeline extends from the M&R Station to the Ticonderoga Mill, but that the 10-inch diameter line is a high pressure pipeline. In response to Jason Kaye and Raphael Worrick, Vermont Gas states that no additional proposals are in place to serve additional customers in New York. Vermont Gas states that its pipeline would not cross Nature Conservancy lands.

Commission Determination

22. Vermont Gas is an LDC engaged in the transportation, distribution, and retail sale of natural gas in Vermont. Its rates, terms and conditions of service in Vermont are

¹³ Citing *Interstate Utilities Co.*, 73 FERC ¶ 61,043, at 61,107-108 (1995); *Greeley Gas Co.*, 71 FERC ¶ 61,306, at 62,198-199 (1995); *Great Plains Natural Gas Co.*, 63 FERC ¶ 61,301, at 63,107 (1993); *Wisconsin Gas Co.*, 59 FERC ¶ 61,352, at 62,281 (1992).

regulated by the Vermont Board. Vermont Gas contemplates serving a customer in New York and has asked the Commission for a service area determination under section 7(f) encompassing the facilities in New York which will accommodate that service. The Commission has stated on a number of occasions that a section 7(f) service area determination is appropriate for a company primarily engaged in the business of the local distribution of gas, but subject to the Commission's jurisdiction because its [essentially local distribution] facilities cross state lines.¹⁴ As such, a section 7(f) determination is intended to "enable a company to enlarge or extend its facilities to supply market demand without prior Commission approval."¹⁵ Section 7(f) was designed to avoid duplicative and administratively burdensome regulation at the federal and state levels.¹⁶

23. We find, contrary to VPIRG's allegation, that there would be no regulatory gap created as a result of our issuance of a section 7(f) determination. The Vermont Board will have authority to examine the pleadings, including the environmental documents, and grant or deny Vermont Gas authorization to construct any facilities in Vermont. Likewise, the NYPSC will be able to do the same in New York. Vermont Gas will remain subject to applicable federal, state, and local environmental safety laws governing construction and operation of the planned new facilities in both states.¹⁷ Vermont Gas' project will not escape environmental review. Further, the Commission is not authorizing the construction or operation of any facilities here. Thus, we will deny VPIRG's and other commenters' requests that we prepare an environmental assessment or environmental impact statement on the pipeline facilities for which Vermont Gas is seeking construction approval from the Vermont Board and the NYPSC.

24. VPIRG relies on *Cincinnati Gas & Electric Company d/b/a Duke Energy of Ohio, Inc. (CG&E)*¹⁸ to support its request for Commission environmental review. This case,

¹⁴ *North Shore Gas Company*, 83 FERC ¶ 61,149 (1998); *Interstate Utilities Company*, 73 FERC ¶ 61,043 (1995).

¹⁵ Citing *City of Clarksville, Tennessee*, 146 FERC ¶ 61,074 at P 11 (2014).

¹⁶ 1988 U.S.C.C.A.N. 2694.

¹⁷ See *North Shore Gas Co.*, 83 FERC ¶ 61,149 (1998), where North Shore proposed to construct 12.4 miles of 10-inch diameter pipeline from Wisconsin to Illinois. The Commission approved a service area determination for North Shore stating that "North Shore is subject to applicable federal, state, and local environmental and safety laws governing the facilities."

¹⁸ 117 FERC ¶ 62,074 (2006).

however, does not support VPIRG's position. In *CG&E*, the company sought a section 7(f) service area determination to enable it to construct facilities to connect its existing distribution facilities in Ohio with KO Transmission Company's interstate pipeline facilities in Kentucky. In that case, while the Ohio Power Siting Board would conduct an environmental review of the CG&E facilities to be located in Ohio, there was no similar entity with jurisdiction under Kentucky law to review the potential environmental impacts of the contemplated Kentucky facilities. Therefore, the Commission prepared an environmental assessment of the project facilities located in Kentucky. In contrast, here, both the NYPSC and the Vermont Board have jurisdiction to perform the necessary environmental reviews and ensure that all state and federal permits are obtained and followed.

25. Further, we find no reason to deny Vermont Gas' request for a service area determination based on the fact, as alleged by VPIRG, that the Vermont Board's rate policies may differ from ours. As noted above, the Commission has determined that issuance of a section 7(f) service area determination is appropriate to accommodate situations where a company would be exempt from the Commission's jurisdiction by virtue of being engaged in the local distribution of natural gas, but for the fact that its facilities cross a state line. In such an instance, it is appropriate to allow the company's rates, which are primarily a matter of local concern and subject to regulation by the state, to be established pursuant to state policy. Finally, we reject VPIRG's argument that the fact that Vermont Gas will offer International Paper the option of obtaining its gas from a third party will somehow, in itself, prevent the Vermont Board from regulating the rate charged for transportation of that gas to the Ticonderoga Mill. The Vermont Board will regulate all rates and services provided by Vermont Gas within the State of Vermont whether those rates are for bundled city gate service or for third party transportation. In the event International Paper contracts to buy gas from a third party to supply the Ticonderoga Mill, the Vermont Board will regulate the rate to transport that gas in Vermont. Regardless whether International Paper purchases its gas for the Ticonderoga Mill from Vermont Gas or a third party, the NYPSC will have jurisdiction to approve the rate that Vermont Gas charges to transport the gas for International Paper in New York.¹⁹

¹⁹ See *Interstate Power Co.*, 47 FERC ¶ 61,347, at 62,230 (1989) ("Prior to passage of [the Uniform Regulatory Jurisdiction Act of 1988], section 7(f) companies which also transported customer-owned gas across state lines were required to obtain prior Commission authorization, thereby subjecting them to dual regulation by both their state utility authorities and the Commission. Section 7(f)(2) eliminate[d] this costly, duplicative and otherwise cumbersome regulatory scheme by restoring control over the rates, terms, and conditions of essentially local transportation service to the states in

(continued...)

Conclusion

26. For the reasons discussed above, we will deny VPIRG's protest and grant Vermont Gas' application for designation of a section 7(f) service area in New York to provide gas service for International Paper's Ticonderoga, New York area.²⁰

Evidentiary Hearing

27. VPIRG requests an evidentiary hearing. An evidentiary trial-type hearing is necessary only where material issues of fact are in dispute that cannot be resolved on the basis of the written record. No such issues of material fact exist here.²¹ VPIRG's request for an evidentiary hearing is denied.

Other Requests

28. As to Vermont Gas' request to be treated as an LDC for purposes of section 311 of the NGPA, the Commission has previously held that section 7(f) companies should be treated as such. Although Vermont Gas will own pipeline facilities that cross the Vermont/New York border, it will operate as an LDC within its service areas in Vermont and New York.

29. Vermont Gas requests a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA. There is no need to duplicate on the federal level requirements already imposed on Vermont Gas by the state regulatory agencies. The

which the gas is consumed, provided, however, such consumption is within the confines of the service area.”).

²⁰ As described in Vermont Gas' application, the section 7(f) service area in New York will include the Ticonderoga Mill and the corridor that will be used to construct the approximately 1,830 feet of pipeline in New York to serve the mill. If Vermont Gas decides it wants to serve additional retail customers in a larger area in New York, it will need to file an application seeking designation of an expanded section 7(f) service area in New York. *See, e.g., Corning Natural Gas Company*, 133 FERC ¶ 62,029 (2010) (authorizing expansion of LDC's previously designated section 7(f) service area in Pennsylvania).

²¹ *See Islander East Pipeline Co., L.L.C.*, 97 FERC ¶ 61,363 (2001).

requested waivers are consistent with those granted to applicants in similar circumstances and are granted to Vermont Gas in this proceeding.²²

30. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Vermont Gas is granted a service area in New York under section 7(f) of the NGA, as described more fully herein and in the application.

(B) Vermont Gas is determined to be an LDC for purposes of section 311 of the NGPA.

(C) Vermont Gas is granted a waiver of the reporting and accounting requirements, as well as all other rules and regulations under the NGA and NGPA that are ordinarily applicable to natural gas companies.

(D) VPIRG's request for an evidentiary hearing is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² *City of Toccoa, Georgia*, 125 FERC ¶ 61,048 (2008); *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078 (2001).