STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 18-3449-PET

Petition of Salisbury AD 1, LLC for a certificate of public good, pursuant to 30 V.S.A. § 231, to own and operate a renewable natural gas facility in Salisbury, Vermont, and for *de minimis* regulation, and to address motions to transfer and amend the 30 V.S.A. § 248 CPG for the facility that was issued in Case 8596	

Order entered: 12/05/2018

ORDER GRANTING 30 V.S.A. § 231 CERTIFICATE OF PUBLIC GOOD ("CPG"), CERTAIN *DE MINIMIS* REGULATION, AND MOTION TO TRANSFER 30 V.S.A. § 248 CPG

In this Order, the Vermont Public Utility Commission ("Commission") adopts the following proposal for decision.

PROPOSAL FOR DECISION

I. INTRODUCTION

This case involves a petition filed by Salisbury AD 1, LLC ("Salisbury AD 1"), with the Vermont Public Utility Commission ("Commission") requesting: (a) a certificate of public good ("CPG") under 30 V.S.A. § 231 authorizing Salisbury AD 1 to conduct a natural gas production business through the ownership and operation of a renewable natural gas facility in Salisbury, Vermont; (b) *de minimis* regulation as specified in the petition; (c) transfer of the Section 248 CPG for the Salisbury renewable natural gas production facility approved by the Commission in Case 8596 (the "Project");[1] and (d) an amended Section 248 CPG to address proposed changes to the Project.

In this proposal for decision, I recommend that the Commission grant Salisbury AD 1's request for a Section 231 CPG, grant its request for *de minimis* regulation in regard to the requirements of 30 V.S.A. § 108, and consent to the transfer of the unamended Section 248 CPG

[1] Salisbury AD 1 and Lincoln Renewable Natural Gas, LLC, the Section 248 CPG Holder, are co-movants of this motion.

from Lincoln Renewable Natural Gas, LLC ("Lincoln RNG"), to Salisbury AD 1, subject to conditions.

The motion to amend the Section 248 CPG describes Salisbury AD 1's proposed changes to the Project's physical layout, equipment selection, and feedstock. That motion remains pending, and I recommend that the Commission keep this case open until that motion is resolved.

II. PROCEDURAL HISTORY

On October 4, 2018, Salisbury AD 1 filed the Section 231 petition with request for *de minimis* regulation, a motion to transfer the Section 248 CPG ("Motion to Transfer Section 248 CPG"), and a motion to amend the Section 248 CPG, with supporting testimony and exhibits.

On October 31, 2018, the Vermont Agency of Natural Resources ("ANR") filed a response to the motions to transfer and amend the Section 248 CPG. ANR did not comment on the Section 231 CPG and did not state any objections to the proposal to transfer the Section 248 CPG. ANR contends that the proposed amendments to the Section 248 CPG constitute a substantial change under Commission Rule 5.408 and requests additional process to evaluate the motion to amend the CPG.

On November 7, 2018, the Vermont Department of Public Service ("Department") filed comments stating that the petition confirms that issuance of the Section 231 CPG will serve the public good without the need for a hearing, and that the Department has no objections to the request for *de minimis* regulation and no objections to the motion to transfer the Section 248 CPG. The Department states that it needs additional information to determine if the proposed amendments to the Section 248 CPG constitute a substantial change and concurs with ANR's request for additional process to resolve that matter.

On November 9, 2018, Vermont Gas Systems, Inc. ("VGS") filed public comments stating that it is working with Salisbury AD 1 to finalize and execute a facilities development agreement, an operating agreement, and a renewable natural gas sales agreement for the Project. VGS will also be filing a separate request for approval under 30 V.S.A. § 229 for the transport of renewable natural gas from the Project to Middlebury College.

No other comments on the Section 231 petition or the motion to transfer the Section 248 CPG were received by the Commission.

The Department did not recommend a hearing pursuant to 30 V.S.A. § 231(a). Based on the Department's recommendation and a review of the petition, I recommend that the Commission find that a hearing is not required on the request for a Section 231 CPG.

Therefore, I recommend that the Commission enter the following testimony, exhibits, and information as if presented at a hearing: Petition for a CPG under 30 V.S.A. § 231, Maria Sol Ucciani ("Ucciani") Affidavit, and the Motion to Transfer Section 248 CPG.

III. Findings

1. Salisbury AD 1 is a Vermont limited liability company. Salisbury AD 1 is a special purpose entity created for the purpose of developing, owning, and operating the Project, and is wholly owned by Vanguard Renewables, LLC ("Vanguard Renewables"), a Massachusetts limited liability corporation with a principal business address of 20 Walnut Street, Suite 308, Wellesley, Massachusetts 02481. Petition at 2; Ucciani Affidavit at ¶ 6.

2. Lincoln RNG has agreed to transfer the Section 248 CPG for the Project to Salisbury AD 1, and Salisbury AD 1 agrees to be fully bound by, and comply with, all terms and conditions of the Section 248 CPG. Petition at 2; Motion to Transfer Section 248 CPG.

3. Salisbury AD 1 is a company as defined by 30 V.S.A. § 201, and once the Project is operational, Salisbury AD 1 will be a "company engaged in the manufacture, transmission, distribution, or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating, or power," and is therefore subject to the Commission's jurisdiction pursuant to 30 V.S.A. § 203. Petition at 2; Ucciani Affidavit at ¶ 7.

4. Salisbury AD 1 is not a retail distribution utility that could incur expenses to be passed on to ratepayers. Ucciani Affidavit at ¶ 7.

5. Salisbury AD 1 and the specialized consultants enlisted for the Project designed the proposed amended Project and will be responsible for construction, operation, and maintenance of the Project. Petition at 2-3.

6. Salisbury AD 1 will rely on the leadership and financial backing of Vanguard Renewables for the Project. Ucciani Affidavit at ¶¶ 14-18.

7. Vanguard Renewables develops, builds, owns, and operates anaerobic digesters on dairy farms producing renewable energy and other agricultural by-products such as liquid fertilizer and bedding. Ucciani Affidavit at ¶ 9.

8. Vanguard Renewables is currently the largest food waste recycler in Massachusetts with a current capacity of over 500 tons per day. Ucciani Affidavit at ¶¶ 9-10.

9. Vanguard uses CH Four Biogas in the design of its projects. CH Four Biogas is a design and consulting firm that has designed 19 digesters and provides operations support to many additional facilities, including two existing Vanguard Renewables facilities in Massachusetts. Ucciani Affidavit at ¶¶ 11-13.

10. Vanguard Renewables' operations support team will work closely with Salisbury AD 1's on-site Project operators, providing engineers, construction managers, and operations managers with regional expertise. Ucciani Affidavit at ¶¶ 14-16.

11. Salisbury AD 1 is financially stable. As a wholly owned subsidiary, Salisbury AD 1 is backed by the funding available to Vanguard Renewables. Ucciani Affidavit at ¶ 17.

12. Vanguard Renewables is fully funded by Tulum Trust, and has successfully financed projects through a strategic alliance with Farm Credit East and CoBank. Ucciani Affidavit at ¶ 18.

13. Vanguard Renewables has secured financing for its projects with over $72 million in project equity through CoBank and local farm credit banking partners. Vanguard Renewables has closed on over $35 million in debt and equity financing in connection with its five existing Massachusetts digester projects. Petition at 6; Ucciani Affidavit at ¶¶ 19-24.

14. Vanguard Renewables is a nationally recognized organics-to-energy business. By the end of 2018, its operating portfolio will represent the largest organics disposal destination in New England. Ucciani Affidavit at ¶ 27.

15. Vanguard Renewables was the 2018 National Waste and Recycling Association Organics Recycler of the Year, and was awarded the 2016 American Biogas Council Agricultural Project of the Year for one of its Massachusetts projects. Ucciani Affidavit at ¶¶ 18-19.

IV. Discussion and Conclusions

30 V.S.A. § 231 CPG

The statutory standard for Commission issuance of a CPG under Section 231 is whether the proposed ownership and operation of the business will promote the general good of the State. Toward that end, the Commission has established the following criteria to be used as guidelines when determining whether an entity should be granted a Section 231 CPG: (1) technical expertise, (2) adequate service, (3) facility maintenance, (4) balance between customers and shareholders, (5) financial stability, (6) company's ability to obtain finance, (7) business reputation, and (8) relationship with customers.[2]

The Commission has treated the above criteria as guidelines only, because the factors considered in making a general-good finding necessarily vary from case to case, depending on the specific circumstances. Section 203 of Title 30 permits the Commission to exercise its jurisdiction "so far as may be necessary to enable [it] to perform [its] duties and exercise the powers conferred upon [it] by law." Accordingly, the Commission's regulatory authority over Salisbury AD 1 may be applied to reflect the limited activities that Salisbury AD 1 plans to undertake in Vermont, and the Commission may issue a CPG that reflects those limited activities.

In this case, Salisbury AD 1 will conduct business consistent with the proposal presented by the CPG Holder, Lincoln RNG, and approved by the Commission by order dated April 8, 2016, in Docket No. 8596. Specifically, Salisbury AD 1 will deliver renewable natural gas output to two customers, Middlebury College and VGS. The Project will use VGS's established pipeline distribution system, and VGS will manage output delivery and be responsible for the metering and regulation station to ensure that its natural gas network remains safe and reliable. The Project will be funded through private equity and debt funding.

Salisbury AD 1 argues, and the Department agrees, that adequate service, balance between customers and shareholders, and relationship with customers (criteria 2, 4, and 8) are not relevant to this case because Salisbury AD 1 will not directly serve retail customers.

Salisbury AD 1 argues, and the Department agrees, that Salisbury AD 1's ownership by Vanguard Renewables fulfills most of the remaining criteria (criteria 1, 5, 6, and 7), specifically technical expertise (refer to findings 7 - 10, above), financial stability (findings 6, 11, and 12, above), ability to obtain financing (finding 13, above), and business reputation (findings 14 and 15, above).

Salisbury AD 1 contends that it is capable of safely maintaining the facility (criterion 3) by virtue of its ownership by Vanguard Renewables and associated Project oversight and

[2] *See, e.g., Petition of Lincoln Renewable Gas, LLC*, Docket No. 8596, order of 4/8/2016 at 35-36.

involvement (finding 10, above). The Department concurs, and notes that there will be the opportunity to conduct an in-depth review of specific facility maintenance plans during review of the proposed Section 248 CPG amendment.

Therefore, I recommend that the Commission find that Salisbury AD 1 satisfies the relevant standards demonstrating that its ownership and operation of the Project will promote the general good of the State and that its request for a Section 231 CPG should be granted.

Request for *De Minimis* Regulation

Salisbury AD 1 argues that the Commission should assert full jurisdiction over Salisbury AD 1 with regard to those events contemplated in § 107 (acquisition of controlling interest) and § 109 (sales or leases of company property). However, Salisbury AD 1 requests that the Commission exercise § 108 authority (financial dealings pertaining to indebtedness) over Salisbury AD 1's financial dealings on a *de minimis* basis. Specifically, Salisbury AD 1 requests that it not be required to make any filings with the Commission pursuant to § 108. Salisbury AD 1 argues that this is appropriate because it is a merchant generator, not a retail utility, and it will not sell natural gas to retail customers or recover costs from ratepayers.

The Department has no objection to Salisbury AD 1's request for *de minimis* regulation of its financial dealings under § 108. Also, as discussed above, Salisbury AD 1 will be engaging in a limited set of activities in Vermont. If at some point Salisbury AD 1's activities in Vermont expand, we may revisit this issue. Based on Salisbury AD 1's status as a merchant generator and the concurrence of the Department, and in light of the limited nature of its activities, I recommend that the Commission grant Salisbury AD 1's request for *de minimis* regulation under § 108.

Transfer of 30 V.S.A. § 248 CPG

Salisbury AD 1 agrees to be bound by the terms and conditions of the unamended CPG, and Lincoln RNG consents to the proposed CPG transfer. Concurrent with the request for transfer of ownership and operation of the Project, Salisbury AD 1 has requested approval for modifications to the equipment, the physical layout, and feedstock for the Project. These modifications have been filed as a motion to amend the Section 248 CPG, with supporting testimony and exhibits, which are being reviewed for potential impacts under the applicable Section 248 criteria. No objections to the motion to transfer the unamended Section 248 CPG were filed. Therefore, I recommend that the Commission grant the motion to transfer the unamended Section 248 CPG.

V. Discussion and Conclusion

Based upon the evidence in the record, I recommend that the Commission conclude the following, subject to the conditions set forth herein:

(a) Ownership and operation of the Project by Salisbury AD 1 will promote the general good of the State, and a Section 231 CPG should be granted.

(b) Because Salisbury AD 1 will not sell natural gas to retail customers or recover costs from ratepayers, and because of the limited nature of its activities, granting Salisbury AD 1's request for *de minimis* regulation under 30 V.S.A. § 108 will promote the general good of the state and should be granted.

(c) Salisbury AD 1's and Lincoln Renewable, LLC's request to transfer the unamended Section 248 CPG for the Project to Salisbury AD 1 should be granted.

The motion to amend the Section 248 CPG for the Project is pending, and I recommend that this case be kept open until that matter is resolved.

This proposal for decision has not been circulated to the parties pursuant to 3 V.S.A. § 811 because it is not adverse to any party.

Monica Stillman

Monica Stillman
Hearing Officer

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are hereby adopted. All findings proposed by parties that are inconsistent with this Order were not adopted and are expressly rejected.

2. Ownership and operation of the Project by Salisbury AD 1 will promote the general good of the State, and a Section 231 CPG to that effect, subject to conditions, shall be issued.

3. Salisbury AD 1's request for *de minimis* regulation under 30 V.S.A. § 108 will promote the general good of the State and shall be granted.

4. The Commission consents to the transfer of the unamended Section 248 CPG from Lincoln Renewable Natural Gas, LLC, to Salisbury AD 1 and will issue a certificate of consent to that effect.

5. As a condition of this Order, the CPG Holder shall comply with all terms and conditions set out in the Section 231 CPG and the Consent to Transfer the Section 248 CPG issued in conjunction with this Order.

6. This case will be kept open until the matter of the motion to amend the Section 248 CPG is resolved. This case is remanded to the Hearing Officer.

Dated at Montpelier, Vermont, this 5th day of December, 2018.

Anthony Z. Roisman	)	PUBLIC UTILITY
Margaret Cheney	)	COMMISSION
Sarah Hofmann	)	OF VERMONT

OFFICE OF THE CLERK

Filed: December 5, 2018

Attest: Judith C. Whitney
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 18-3449-PET - SERVICE LIST

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