

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Salisbury AD 1, LLC for a certificate	)	Case No. 18-3449-PET
of public good, pursuant to 30 V.S.A. § 231, to	)	
own and operate a renewable natural gas facility	)	
in Salisbury, Vermont, and for <i>de minimis</i>	)	
regulation, and to address motions to transfer and	)	
amend the 30 V.S.A. § 248 CPG for the facility	)	
that was issued in Docket 8596	)	

**VERMONT AGENCY OF NATURAL RESOURCES COMMENTS IN
RESPONSE TO MOTION TO AMEND CERTIFICATE OF PUBLIC GOOD**

The Vermont Agency of Natural Resources (“Agency”) provides the following comments in response to Salisbury AD 1, LLC’s (“Salisbury”) motion to amend its certificate of public good (“CPG”).

In general, the Agency does not oppose Salisbury’s motion to amend. However, the Agency believes it is important to point out the distinction between, and relevance of, a proposed change which has the *potential* to have a significant impact (and therefore necessitates conditioned approval to ensure that the change will not result in an *actual* significant impact), and a proposed changed which does not present such potential at the outset.

Salisbury’s Exhibit SAD1-MTN-1¹ appears to miss this important distinction. Table I in that exhibit is titled “Proposed Project Changes that are ‘Material’ or ‘Substantial’”. The column on the far right of the table then states that the changes described in the table have “no potential for significant impacts.”² If these changes truly

¹ Exhibit SAD1-MTN-1, at page 1.

² *Id.*

did not have the *potential* for significant impact, they would not be substantial changes.

In this regard, the table misinterprets these changes.

The below discussion is limited to proposed changes which the Agency has reviewed in the context of their potential to impact the natural environment under Section 248(b)(5). The Agency does not take any position on changes which are in the purview of the Department of Public Service or the Agency of Agriculture Food and Markets and defers to those agencies concerning their areas of expertise.

DISCUSSION

Substantial Changes

Public Utility Commission Rule 5.408 defines a substantial change as “a change in the approved proposal that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the state under Section 248(a).”³ Salisbury now proposes changes to certain elements of the Project that was approved by the Vermont Public Utility Commission (“Commission”) by final order dated March 14, 2019.

Salisbury represents that three of the changes (biogas upgrader, combined heat and power unit, and emergency generator) require an amendment to the VT DEC Air Pollution Control Permit (“Air Permit”) previously issued for the Project.⁴ As indicated in the draft amended Air Permit, the Project is classified “as a source of air contaminants” and must obtain the amended permit before commencing “construction, installation, modification or operation of an air contaminant source.”⁵

³ PUC Rule 5.408.

⁴ *See*, Exhibit SAD1-MTN-3.

⁵ *Id.*, at pages 4-5.

Salisbury also represents that its now proposed emergency generator requires that an SPCC Plan be prepared in accordance with 40 CFR Part 112.⁶ The purpose of the SPCC Plan is to prevent the release of oil into water or other sensitive receptors.⁷ As shown on the Project's site plan, there is a state significant Class II wetland located in the middle of the Project area.⁸

The changes described above are changes that have the *potential* to have a significant impact on the natural environment, namely air, wetlands, and water, under Section 248(b)(5). They are, therefore, substantial changes. In order for these changes to avoid *resulting in* a significant impact on the natural environment their approval by the Commission should be subject to compliance with the representations made by Salisbury and conditioned on Salisbury obtaining and complying with the amended Air Permit and developing and implementing the SPCC Plan and other containment measures described in its filing.

Material Changes

Should Salisbury construct and operate the Project as it appears in its revised Project site plan (Exhibit SAD1-MTN-2), major elements of the Project would be located in areas different than where they were proposed to be located by the Project as approved in March of 2019. This would be inconsistent with the requirement in Salisbury's CPG which requires that construction, operation, and maintenance of the Project "be in accordance with the plans and evidence submitted" to obtain the CPG and that "any

⁶ Exhibit SAD1-MTN-1, at page 1.

⁷ Exhibit SAD1-MTN-4, at page 4.

⁸ Exhibit SAD1-MTN-2.

material deviation from [those] plans” must be approved by the Commission.⁹ In addition, condition 42 of the CPG allows the Agency and the Agency of Agriculture Food and Markets “to enter upon and inspect the Amended Project’s infrastructure, equipment, and operations upon reasonable notice, in a reasonable manner, and at reasonable times during ordinary business hours to determine compliance with the above conditions.”¹⁰

Salisbury has presented these changes as “not ‘material’ or ‘substantial’”.¹¹ However, the newly proposed locations of major elements of the Project are materially different than the locations that were approved by the Commission. Infrastructure located in areas which differ from where that infrastructure was located on approved plans creates the potential for confusion when state agencies enter the Project area to inspect its “infrastructure, equipment, and operations.” Because of this, the changes in locations of Project infrastructure are material changes which must be approved by the Commission and made a part of the record evidence in this matter.

CONCLUSION

The Agency concludes that the proposed changes discussed above constitute both substantial changes and material changes. The substantial changes (biogas upgrader, combined heat and power unit, and emergency generator) require approval by the Commission and issuance of an amendment to Salisbury’s CPG. The material changes (changes to the Project site plan) require approval by the Commission and entry into the

⁹ March 14, 2019 CPG condition 1.

¹⁰ *Id.*

¹¹ Exhibit SAD1-MTN-1, at page 2.

evidentiary record in this case where they may be relied upon by state agencies and the Commission for future inspection and compliance purposes.

The Agency does not object to the Commission approving these changes provided that such approval is conditioned on compliance with the representations made in Salisbury's July 7, 2020 filing (including but not limited to obtaining the amended Air Permit and developing the SPCC Plan) and the conditions contained in Salisbury's current CPG.

Dated July 24, 2020, at Waterbury, Vermont.

Respectfully submitted,
State of Vermont
Agency of Natural Resources



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