

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-2230-PET

Petition of Vermont Gas Systems, Inc., pursuant to 30 V.S.A. § 248(i), for approval of an out-of-state renewable gas purchase contract with a term exceeding five years	
--	--

Order entered: 09/28/2022

PROCEDURAL ORDER MODIFYING BRIEFING SCHEDULE

This case involves a petition filed by Vermont Gas Systems, Inc. (“VGS”) with the Vermont Public Utility Commission (“Commission”) seeking approval of an out-of-state renewable gas (“RNG”) purchase contract with Archaea Energy Marketing LLC (“Archaea”) under 30 V.S.A. § 248(i).

On September 21, 2022, following the evidentiary hearing, VGS filed a motion to modify the briefing schedule for this case. VGS requests that the briefing schedule be adjusted to allow for initial briefs to be filed by October 14, 2022, and reply briefs to be filed by October 21, 2022. As part of its motion, VGS also represents that it, the Vermont Department of Public Service (“Department”), and the Intervenor Catherine Bock all agree to waive, by two weeks, the 120-day statutory deadline under 30 V.S.A. § 248(i) by which the Commission must issue a final order in this case. That deadline is currently November 8, 2022. With the consent of the Department and Ms. Bock, VGS proposes to extend that deadline to November 22, 2022, to accommodate additional time for briefing and orders from the Commission.

In relevant part, 30 V.S.A. § 248(i) provides that:

The Commission shall conclude its investigation within 120 days of issuance of its notice of investigation, or within such shorter period as it deems appropriate. If the Commission fails to issue a decision within that 120-day period, the contract or investment shall be deemed to be approved.

In its motion, VGS cites to several legal authorities in support of its proposal to waive the Section 248(i) statutory deadline, including Commission orders and case law from the Vermont Supreme Court and other courts.

Having reviewed the authorities cited by VGS, I find that they are not dispositive on the issue of whether the Commission has authority to waive the Section 248(i) deadline. For

example, VGS cites to several Commission orders from rate cases filed under 30 V.S.A. §§ 225, 226, and 227. As noted in those cases, the Commission has historically relied on 30 V.S.A. § 11(a) as conferring discretion to waive deadlines in rate cases with the consent of the utility.¹ Section 11(a), which is limited to the process used for rate cases, allows for more flexibility in the procedures for resolving rate cases by noting that “[e]xcept *in the discretion of the Commission*, a utility shall not be permitted to introduce into evidence in its direct case exhibits which are not filed in accordance with this rule.”² Likewise, the Vermont Supreme Court cases cited by VGS involve statutes that expressly provide discretion for a deadline waiver. For example, *State v. Hawkins* involved a discussion of 23 V.S.A. § 1205(h)(1), which provided that “the final hearing may only be continued by the consent of the defendant or for good cause shown.”³

Unlike the authorities cited by VGS, Section § 248(i) does not expressly allow for a waiver of the 120-day deadline. Nor does it otherwise confer express authority for the Commission to waive that deadline or discretion to amend any applicable procedures. Therefore, I have decided to keep this case on a schedule that will allow for a final Commission order to be issued by November 8, 2022.

However, this case will benefit from thorough briefing from the parties. I am also mindful of the constraints on the parties’ abilities to meet the current briefing schedule. Therefore, I am modifying the briefing schedule to include a single round of briefing from all parties, which will be due by October 14, 2022. This timing is consistent with the deadline that VGS proposes for final reply briefs. Parties should expect that a proposal for decision will be issued by October 19, 2022, and comments on the proposal for decision and any requests for oral argument will be due by October 25, 2022. I note that because this case will include a proposal for decision, the parties will still have an opportunity to file a second round of written comments that address other parties’ direct briefs. However, any proposed findings of fact or legal

¹ See, e.g., *CVPS request to increase its rates in the amount of 12%*, Case No. 5132, Order of 7/10/86 at 4 (“[I]t is obviously appropriate to exercise our discretion, as 30 V.S.A. § 11(a) permits us to do so, to allow more time for the consideration of Seabrook issues.”).

² 30 V.S.A. § 11(a) (emphasis added).

³ *State v. Hawkins*, 2013 VT 5, ¶ 11, 193 Vt. 297, 67 A.3d 230.

arguments should be included in the parties' briefs that are filed no later than October 14, 2022.

Based on the foregoing, the schedule for this case is modified as follows:

October 14, 2022	Parties to File Post-Hearing Briefs
October 19, 2022	Proposal for Decision to Be Issued
October 25, 2022	Comments on Proposal for Decision and/or Request for Oral Argument
November 8, 2022	Conclusion of Section 248(i) 120-Day Review Period

SO ORDERED.

Dated at Montpelier, Vermont, this 28th day of September, 2022.



Daniel Burke, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: September 28, 2022

Attest: Pamela Lenahan
Deputy 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)

PUC Case No. 22-2230-PET - SERVICE LIST

Parties:

Catherine Bock, *pro se*
175 A North Prospect St.
Burlington, VT 05401
tinki.bock@gmail.com

Eric B. Guzman
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
eric.guzman@vermont.gov

(for Vermont Department of Public Service)

Owen McClain, Esq.
Sheehey Furlong & Behm P.C.
30 Main Street
P.O. Box 66
Burlington, VT 05402
omclain@sheeheyvt.com

(for Vermont Gas Systems, Inc.)

James Porter, Esq.
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
james.porter@vermont.gov

(for Vermont Department of Public Service)

Michael Swain
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
michael.swain@vermont.gov

(for Vermont Department of Public Service)