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James A. Dumont, Esq.

September 22, 2025

Owen McClain, Esq.
Sheehey Furlong & Behm, PC
30 Main St., 6th Floor, PO Box 66
Burlington, VT 05402

Re: Discovery in Petition of Vermont Gas Systems, Inc., for an Amended CPG, Case No. 25-0055-PET

Dear Owen:

The discovery produced thus far in Case 24-0055-PET has revealed significant additional violations of, and substantial changes from, the Commission's final order in Docket No. 7970.

As you well know, the Commission has held that departure from the four-foot depth of cover standard in the VELCO ROW set forth in Docket 7970 order was a substantial change from the CPG regardless of the fact that VGS and VELCO's engineers did not believe the change affected safety. The Commission has imposed a fine on VGS for this violation, and the Supreme Court has held that VGS must comply with the standard permit application process in order to obtain a CPG for this change.

The same sentence in the Commission's order in Docket No. 7970 that mandated a four-foot depth of cover within the VELCO right-of-way also mandated four-foot depth of cover for all agricultural soils. This was Finding 62(e), which stated, in relevant part: "The pipeline will have four feet of cover in agricultural areas and within the VELCO ROW, generally five feet of cover at road crossings, and seven feet of cover at open cut streams..." Other findings repeated this expectation. Finding 268 stated: "In agricultural areas, Vermont Gas will install the pipe with a minimum of 4 feet of cover. Berger reb. pf. at 7." Finding 423 stated: "The Project will primarily consist of underground infrastructure that, in areas of farming and PAS, will be buried 4 feet deep, and is expected to cause only temporary disturbance. Nelson pf. supp. at 35; exh. Pet. Supp. JAN-11 (2/28/13); exh. Agricultural Interests Group 1-AAFM-1 at 3."

These standards apply to all agricultural areas, regardless of whether the areas are currently being actively cultivated. Agricultural soils that are not being farmed this year may be farmed next year or in ten years. Some large farm equipment has axle weight similar to that of an HS20 truck axle.

The Commission's findings were based, in part, on the testimony of the Department's expert on pipeline safety, Mr. Berger. He testified at page 1 of his supplement rebuttal

prefiled that VGS had agreed to a number of safety measures. He testified on page 7 that four-foot depth of cover for all agricultural areas was one such safety measure.

Documents produced by VGS in discovery have revealed widespread violations of this safety standard. See, e.g., Discovery Attachment NH 1.03.3, the 2023 Agricultural Depth of Cover Survey. This agricultural DOC survey states (p.2) that it was conducted “to confirm that agricultural activities with the actively cultivated agricultural areas will not impact the pipeline.” It was not conducted to determine whether four feet of cover was being maintained on all agricultural areas. Nonetheless, it reveals numerous violations.

Location 6. At page 18, DOC of 3.8' was found at station 922+00; on page 5 this is reported as 3'8" and on page 134 this is reported as 3'10". Actually, 3.8' is 3 feet and 9.6 inches. The tool they used was a Vivax-Metrotech vLoc3 RTK-Pro GNSS. This is a highly accurate device. Its technical specifications state that its accuracy in determining depth is +/- 5%. An accuracy of +/- 5% means that a measured depth of 3.8' is between 3.61 and 3.99 feet. 3.61' is 3'7.35", well below 4 feet of cover. VGS dismissed the 3.8' as “within tool tolerance.” VGS conducted no follow-up study with a manual tool, such as the fiberglass wand that Mr. Byrd used, that has no tool tolerance issue.

Location # 10. At page 31 at stations 1042+40 to 1046+62, eight depths were less than 4 feet, one as little as 3.1' and another as little as 3.2'. Because of the +/-5% accuracy, the actual depth could be as little as 2.945', that is, as little as 2 feet 11.34 inches. The CPG requires 4 feet.

On pages 134 and 135 these findings were dismissed because the “site is usually wet,” which “could affect surface level elevation.” VGS also wrote that there is a zinc ribbon here, which “will affect the accuracy of the line locator.” In fact, zinc ribbons can affect the accuracy of the Vivax-Metrotch vLoc3 RTK-Pro GNSS device. In the presence of a zinc ribbon, a reliable depth of cover reading requires use of a manual device such as a fiberglass wand. However, these readings were in the midst of 6 other readings all less than four feet, which would suggest they were all basically accurate in reporting depth of cover less than four feet.

On page 134, VGS also noted that this field is currently a soybean field, *i.e.*, it is being actively cultivated. The report states that this site was “a candidate” for excavation, but the report does not state whether excavation occurred or what it found.

At Location # 11, the depth indicator found less than four-foot depth but “...the low depth of cover readings from the locating equipment were likely due to the zinc ribbon installed along the pipe.” This is correct but it is equally correct that the actual depth of cover could be less than the reported value, as noted above. Manual measurement was required.

Location #14, on page 136, had depths of 3.0 feet and 3.9 feet. VGS reports that there was no cause for concern because although these were agricultural soils (which is why they were being surveyed), they were on a hill that separates an active hayfield from an active agricultural field. The fact that this is on a hill is irrelevant; the CPG requires 4 feet of cover

for all agricultural soils, and this was measured because it is agricultural soil. Tractors and other heavy farm equipment travel from one field to another.

VGS also “determined that this location’s depth reading is within tool tolerance levels...” That is, VGS asserts, without citation to any source, that the Vivax-Metrotch vLoc3 RTK-Pro GNSS device is not accurate enough to distinguish three-foot depth from four-foot depth. This is false. As noted above, the technical specifications for this tool state that it is accurate to within 5%. The 3-foot depth therefore is no deeper than 3.15’ and could be as shallow as 2.85 feet, *i.e.*, 2’10.2”. It is inconceivable that the location where the Vivax-Metrotch vLoc3 RTK-Pro GNSS device reported 3.0 foot depth of cover complies with the CPG.

Similar findings and similar justifications are set forth for five other locations, on pages 135 through 139.

VGS has never reported these departures from the CPG to the Commission and the parties. There may have been follow-up excavations of some of the areas, but not of others. For example, the report does *not* suggest a follow-up excavation at Location #14 where the Vivax-Metrotch vLoc3 RTK-Pro GNSS reported 3’ of cover.

Therefore, I am writing to you with five requests.

First, if any excavations to determine depth of cover were conducted subsequent to the reports you produced in discovery, please complete the discovery response by providing documents showing those excavations, their dates, and their results. The discovery rules require this.

Second, if any other method of measuring depth of cover was conducted, that you have not produced in discovery, such as measuring with a fiberglass wand as Mr. Byrd did, please provide documents showing those methods, their dates, and their results. The discovery rules require this as well.

Third, if there exists any objectively reasonable, good faith reason to believe that these depth of cover departures are not violations of the CPG and substantial changes, please share that with me forthwith.

Fourth, we ask that VGS self-report to the Commission these additional substantial changes from the CPG. The most fair and efficient manner of proceeding would be: a) VGS will report these changes forthwith to the Commission as substantial and request an amended CPG to authorize them; b) VGS will consent to broadening Case No. 25-0055-PET to include these changes; and c) VGS will forthwith provide notice to every affected landowner and every Selectboard and Planning Commission in an affected town, so that they have an opportunity to participate in this proceeding with regard to these changes.

Fifth, regardless of whether VGS believes that self-report to the Commission is necessary, the fact remains that the owners of these lands have not been notified. Nor have the Selectboards, or the Fire Departments. Each landowner, Selectboard and Fire Department

believes that the pipeline is four feet deep in every agricultural area and is acting accordingly—with potentially dangerous results. Please notify every landowner who owns agricultural land with less than four feet of cover forthwith, and notify each Selectboard, Planning Commission and Fire Department.

It is reasonable to expect that you reply within 7 days of today. Thanks.

Sincerely,
Jim
James A. Dumont, Esq.

On behalf of the Town of New Haven, I concur with and join in this letter.

Very truly yours,
Cindy Ellen Hill
Cindy Ellen Hill, Esq.
Hill Attorney PLLC

RE: Letter to VGS re depth of cover in agricultural areas

From : Owen McClain
<omcclain@sheeheyvt.com>

Subject : RE: Letter to VGS re depth of cover in
agricultural areas

To : James Dumont <dumont@gmavt.net>

Cc : Cindy Hill <lawyerhill@yahoo.com>,
dumont vt <dumont.vt@gmail.com>

Hi Jim,

Nothing in your letter is related to the five substantial changes that are the subject of this case and VGS is not obligated to explain why the CPG compliance theories you articulate in your letter are wrong. With respect to discovery, VGS has provided more than an adequate response to Q.NEW HAVEN.PETITIONER.1-03 and 1-04, which requested depth of cover information in the Towns of New Haven and Monkton. Under the Commission's rules, a party "may obtain discovery regarding any nonprivileged matter that is relevant to any party's legal arguments and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Notwithstanding these limitations on discovery, VGS produced the depth of cover surveys for agricultural areas even though they are not relevant to any area of "inquiry regarding how the five substantial changes [in this case] comply with the 248(b) criteria and the general-good standard of 248(a)." PUC Order re Scope (issued May 20, 2025) at 8. VGS has produced the depth of cover surveys for agricultural areas because it has voluntarily adopted Mr. Byrd's recommendation to perform depth of cover surveys in agricultural areas and has proposed that the

Commission adopt Mr. Byrd's recommendations as CPG conditions in this case. The legal arguments in your letter are not within the scope of this case, which you plainly admit, and VGS is not interested in your proposal to expand the scope of this case. Nor is VGS interested in voluntarily expanding the scope of its discovery obligations under Commission Rule 2.230. Accordingly, to the extent that you believe additional information about these reports is discoverable under the Commission's rules regarding the issues in this case, please explain what legal argument in this case the information pertains to and why your demand for even further information about the agricultural surveys is proportional to the needs of the case. Otherwise, VGS will stand on its objection to the extent the requests call for an extensive search of documents for any and all references to depth of the pipeline.

Best,

Owen

From: James Dumont <dumont@gmavt.net>
Sent: Friday, September 26, 2025 4:57 PM
To: Owen McClain <omcclain@sheeheyvt.com>
Cc: Cindy Hill <lawyerhill@yahoo.com>; dumont vt <dumont.vt@gmail.com>
Subject: EXTERNAL Re: Letter to VGS re depth of cover in agricultural areas

Dear Owen: Thank you for your prompt reply.

We would appreciate a more detailed response. When you say you disagree with the premise of our letter, are you stating that you disagree that the Commission's order requires depth of cover to be four feet in agricultural areas? Or are you disagreeing that the measurements taken by VGS show depth of cover to be less than four feet in agricultural areas?

Also, as to discovery, you have not stated whether VGS possesses excavation results or other depth testing results subsequent to the surveys that you provided. Are you saying you have adequately responded because there are no documents with subsequent results or are you saying that such documents exist but you believe you do not have an obligation to produce them?

Thanks.

Sincerely,

Jim

James A Dumont, Esq.

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From: "Owen McClain" <omcclain@sheeheyvt.com>
To: "James Dumont" <dumont@gmavt.net>
Cc: "Cindy Hill" <lawyerhill@yahoo.com>, "dumont vt" <dumont.vt@gmail.com>
Sent: Tuesday, September 23, 2025 11:29:29 AM
Subject: RE: Letter to VGS re depth of cover in agricultural areas

Hi Jim and Cindy,

VGS disagrees with the premise of your letter and believes that it has adequately responded to New Haven's discovery requests.

Best,

Owen

From: James Dumont <dumont@gmavt.net>
Sent: Monday, September 22, 2025 3:48 PM
To: Owen McClain <omcclain@sheeheyvt.com>
Cc: Cindy Hill <lawyerhill@yahoo.com>; dumont vt <dumont.vt@gmail.com>
Subject: EXTERNAL Letter to VGS re depth of cover in agricultural areas

Owen, please see the enclosed letter about depth of cover in agricultural areas.

Sincerely,

Jim

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