

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 26, 2020

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APPLICATION OF

VIRGINIA NATURAL GAS, INC.

CASE NO. PUR-2019-00207

For approval and certification of natural gas facilities, the Header Improvement Project, and for approval of Rate Schedules and Terms and Conditions for Pipeline Transportation Service

PRELIMINARY ORDER ON APPLICATION

On December 6, 2019, Virginia Natural Gas, Inc. ("VNG" or "Company"), filed an Application with the State Corporation Commission ("Commission") for approval and certification of natural gas facilities pursuant to Virginia Code ("Code")

§§ 56-265.1 and 56-265.2.<sup>1</sup> VNG also seeks approval to implement Rate Schedules HP-TRFT, HP-FT, HP-LFT, and HP-IT and Terms and Conditions for Pipeline Transportation Service.<sup>2</sup>

The Company seeks approval and certification as requested to provide new service to an independent power producer, C4GT, LLC ("C4GT"), for an electric generation facility to be located in Charles City County, Virginia, to provide incremental transportation capacity to existing customers, including Columbia Gas of Virginia ("CVA") and Virginia Power Services Energy ("VPSE"), and to help maintain reliable service in the area.<sup>3</sup> VNG's Application includes the following:

- (1) Transco Interconnect Pipeline: construct approximately 6.2 miles of 30-inch diameter steel pipeline in new right-of-way ("ROW") extending north from the Company's existing natural gas transmission system located

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<sup>1</sup> Ex. 4 (Application) at 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2, 3.

near Quantico, Virginia, and interconnecting with the Transcontinental Gas Pipe Line ("Transco") via an interconnect station in Catlett, Virginia.

- (2) Transco Interconnect Compressor Station: construct a compressor station in Prince William County, Virginia.
- (3) Quantico Parallel Pipe: construct approximately 3.3 miles of 30-inch diameter steel pipeline in new ROW that runs parallel and adjacent to the Company's existing Joint Use Pipeline located in Fauquier County, Virginia.
- (4) Mechanicsville Parallel Pipe: construct approximately 14.6 miles of 30-inch diameter steel pipeline in new ROW that runs parallel and adjacent to the Company's existing VNG Lateral Pipeline in the Counties of Hanover, New Kent, and Charles City, Virginia.
- (5) Ladysmith Compressor Station Expansion: construct a compressor station by expanding the existing footprint of the existing Ladysmith Compressor Station in Caroline County, Virginia.
- (6) Gidley Compressor Station: construct a compressor station in the existing Gidley Gate Metering and Regulation Station located in the City of Chesapeake, Virginia.<sup>4</sup>

The Transco Interconnect Pipeline, Transco Interconnect Compressor Station, Quantico Parallel Pipe, Mechanicsville Parallel Pipe, Ladysmith Compressor Station Expansion, and Gidley Compressor Station are herein referred to as the "Project."

The Application requests that the Commission:

- (a) direct that notice of this Application be given as required by Code §§ 56-237 and 56-265.2:1;
- (b) approve pursuant to Code § 56-265.2:1 the construction of the Project;
- (c) grant a certificate of public convenience and necessity ("CPCN") for the Project under the Utility Facilities Act, Code § 56-265.1 *et seq.*;
- (d) approve Rate Schedules HP-TRFT, HP-FT, HP-LFT, and HP-IT and Terms and Conditions for Pipeline Transportation Service; and,
- (e) grant such other relief as deemed necessary and appropriate.<sup>5</sup>

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 6.

On December 23, 2019, the Commission issued an Order for Notice and Hearing that, among other things: (1) directed VNG to provide public notice of its Application; (2) permitted any interested person to file written or electronic comments with the Commission on or before April 28, 2020; (3) scheduled a public hearing for May 12, 2020, in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive testimony from public witnesses; and (4) scheduled an evidentiary hearing for May 13, 2020, in the same location, to receive the testimony and evidence offered by the Company, any respondents, and the Commission's Staff ("Staff").

The following parties filed notices to participate as respondents: (1) Appalachian Voices and Virginia Interfaith Power & Light ("Environmental Respondents"); (2) Chesapeake Bay Foundation, Inc. ("CBF"); and (3) Sierra Club and Chesapeake Climate Action Network ("Sierra Club and CCAN").

On April 27, 2020, the Commission issued an order informing the parties and the public as to how the scheduled proceedings would be conducted in response to the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and extending the deadline for filing public comments.

On May 5, 2020, the Commission issued an order denying a motion by CBF, Sierra Club and CCAN to suspend the previously-noticed procedural schedule in this matter.<sup>6</sup>

On May 12, 2020, to protect members of the public from the health risks associated with travel to Richmond and appearing in person, the Commission received via telephone electronic public witness testimony in this matter.<sup>7</sup> At the conclusion of such hearing, the Commission

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<sup>6</sup> That order also granted an unopposed motion to file supplemental rebuttal testimony.

<sup>7</sup> Thirty (30) public witnesses testified at this hearing.

determined that a subsequent order would be issued scheduling additional public witness testimony.<sup>8</sup>

On May 13, 2020, consistent with practices being followed in courts and administrative agencies throughout the country during the COVID-19 health crisis, the Commission convened the evidentiary hearing in this matter via Skype for Business, with no party present in person in the Commission's physical courtroom. The electronic evidentiary hearing included participation by Staff and all of the parties to this case: VNG; Environmental Respondents; CBF; and Sierra Club and CCAN.

On May 27, 2020, the Commission issued an order that scheduled additional public witness testimony on, and extended the filing date for written or electronic public comments to, June 8, 2020.

On June 8, 2020, the Commission received via telephone additional electronic public witness testimony in this matter.<sup>9</sup> The Commission also received over 1,400 written or electronic public comments in this proceeding. Finally, all of the parties and Staff filed post-hearing briefs.<sup>10</sup>

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.<sup>11</sup>

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<sup>8</sup> Tr. 114. *See also* Tr. 85-86.

<sup>9</sup> Thirteen (13) public witnesses testified at this hearing.

<sup>10</sup> The Commission hereby accepts, *sua sponte*, Sierra Club and CCAN's Post-Hearing Brief, which was filed one day out-of-time.

<sup>11</sup> The Commission has fully considered the evidence and arguments in the record supporting and opposing VNG's requests. *See also Bd. of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

Code of Virginia

The Commission is required to implement the plain language of the Code, which serves as both a source, and a limitation, of the Commission's authority.<sup>12</sup> In the instant case, VNG requests approval of the Project under Code §§ 56-265.2 and 56-265.2:1.

Code § 56-265.2 provides in part:

A. 1. Subject to the provisions of subdivision 2, it shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties....

D. Whenever a certificate is required under this section for a pipeline for the transmission or distribution of natural or manufactured gas, the Commission may issue such a certificate only after compliance with the provisions of § 56-265.2:1. As used in this section and § 56-265.2:1, "pipeline for the transmission or distribution of manufactured or natural gas" shall include the pipeline and any related facilities incidental or necessary to the operation of the pipeline.

Code § 56-265.2:1 further provides in part:

A. Whenever a certificate is required pursuant to § 56-265.2 for the construction of a pipeline for the transmission or distribution of manufactured or natural gas, the Commission shall consider the effect of the pipeline on the environment, public safety, and economic development in the Commonwealth, and may establish such reasonably practical conditions as may be necessary to minimize any adverse environmental or public safety impact. In such proceedings, the Commission shall receive and consider all reports by state agencies concerned with environmental protection; and, if requested by any county or municipality in which the pipeline is proposed to be constructed, local comprehensive plans that

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<sup>12</sup> See, e.g., *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286, 307 (2013) ("It is well established that the [Commission] 'has no inherent power simply because it was created by the Virginia Constitution.'") (quoting *VYVX of Va., Inc. v. Cassell*, 258 Va. 276, 290 (1999)); *Commonwealth v. Virginia Elec. & Power Co.*, 214 Va. 457, 465 (1974) ("[T]he authority of the [Commission] . . . is subordinate to the power of the General Assembly to command otherwise."); *Potomac Elec. Power Co. v. State Corp. Comm'n*, 221 Va. 632, 636 (1980) ("The [Commission's] regulatory jurisdiction is not plenary.").

have been adopted pursuant to Article 3 (§ 15.2-2223 *et seq.*) of Chapter 22 of Title 15.2.

### Need

The Project is not needed without C4GT. As succinctly observed by Staff, "[i]f C4GT does not achieve financial close, there is no need for the Project."<sup>13</sup> Indeed, VNG emphasizes that, "[t]o be clear, the Company is not requesting approval of a Project *without* C4GT."<sup>14</sup> C4GT was approved over three years ago.<sup>15</sup> At the current time, however, C4GT: (i) has yet to obtain financing for construction costs;<sup>16</sup> (ii) has asked VNG not to incur any expenses for the Project (other than for the instant proceeding);<sup>17</sup> and (iii) has *indefinitely* delayed financial close "until these markets resume their normal functioning."<sup>18</sup>

VNG testified that one of the reasons for C4GT's current plight was market uncertainty in the PJM Interconnection, LLC ("PJM") capacity market over the past several years.<sup>19</sup> As a body that continually monitors closely the operations of the PJM markets, we certainly agree that the PJM capacity market has been characterized by uncertainties during recent years, but market uncertainty is a regular factor in obtaining financing for any construction project, from shopping centers to housing subdivisions to manufacturing plants. Further, there is no reason to conclude,

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<sup>13</sup> Staff's Post-Hearing Brief at 14.

<sup>14</sup> VNG's Post-Hearing Brief at 26 (emphasis in original).

<sup>15</sup> *Application of C4GT, LLC, For certification of an electric generating facility in Charles City County pursuant to § 56-580 D of the Code of Virginia*, Case No. PUE-2016-00104, 2017 S.C.C. Ann. Rept. 378, Final Order (May 3, 2017).

<sup>16</sup> *See, e.g.*, Ex. 21 (Yagelski Rebuttal) at Schedule 1.

<sup>17</sup> *See, e.g., id.*

<sup>18</sup> *See, e.g., id.*; Tr. 238.

<sup>19</sup> *See, e.g.*, Tr. 311.

based on the instant record, that the uncertainties in the PJM capacity market will not continue in one form or another, to one degree or another, in the future.

Examples of such uncertainties include, without limitation, the unknown effects of federal regulations such as the Federal Energy Regulatory Commission's Minimum Offer Price Rule ("MOPR") applicable to the PJM capacity market,<sup>20</sup> as well as new state laws and regulations such as the law putting Virginia into the Regional Greenhouse Gas Initiative ("RGGI"), which will raise the cost of all carbon-emitting generating resources located within Virginia.<sup>21</sup>

Considering the lingering questions attendant to the continued viability of C4GT, it is thus understandable that VNG would address the possibility of C4GT not achieving financial closure.<sup>22</sup> Specifically, the Company indicates that if C4GT does not close in approximately six months, VNG will come back to the Commission and request a different CPCN, for a different project, designed only to serve remaining customers.<sup>23</sup> In this regard, when asked at the hearing about what happens without C4GT, the Company acknowledged that if C4GT were removed

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<sup>20</sup> *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019).

<sup>21</sup> *See, e.g.*, 2020 Va. Acts ch. 1280 and ch. 1219; Environmental Respondent's Post-Hearing Brief at 2-3, 6-10; CBF's Post-Hearing Brief at 10, 12; Staff's Post-Hearing Brief at 4-5, 13-14. Sierra Club and CCAN also note that, as to C4GT specifically, in the Virginia General Assembly's most recent session, the House Labor & Commerce Committee voted unanimously to strike proposed legislation that would have automatically allocated carbon emission allowances to C4GT, which would have supported its potential economic viability. Sierra Club and CCAN's Post-Hearing Brief at 5 n.19 (citations omitted). *See, e.g., Luttrell v. Cucco*, 291 Va. 308, 315-317 (2016) (discussing proposed legislation that failed to clear a House committee).

<sup>22</sup> We note that CBF further claims C4GT is subject to other relevant statutory requirements because "C4GT is considered a Phase I Utility as an investor-owned *incumbent electric utility* that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended its application beyond January 1, 2002." CBF's Post-Hearing Brief at 10 (emphasis added) (internal quotation marks omitted). Contrary to CBF's assertion, however, C4GT is not an incumbent electric utility under the Code. *See, e.g., Code* § 56-576 ("Incumbent electric utility' means each electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission.").

<sup>23</sup> *See, e.g.*, VNG's Post-Hearing Brief at 5, 25-26; Ex. 18 (Staff Exhibit PE-2) at 3-4, 7, 12, 13, 14; Ex. 22 (Yagelski Supplemental Rebuttal) at 5; Staff's Post-Hearing Brief at 3 n.6.

from the equation, VNG would be seeking an entirely different CPCN.<sup>24</sup> Furthermore, VNG subsequently confirmed that without C4GT, "the Company will need to redesign the Project, change the Project scope, and return to the Commission with a different application."<sup>25</sup>

With this backdrop, VNG asks the Commission to follow an uncertain and speculative path forward, to wit: the Commission would approve the *total* Project now, recognizing that C4GT may not close financially.<sup>26</sup> The Company would then use such approval to begin working on, and spending money for, the specific portions of the Project that VNG alleges are needed even without C4GT ("Non-C4GT Projects").<sup>27</sup> Then, if C4GT does not materialize in six months, the Company would file a new application with the Commission. That new application would – for the first time – ask the Commission to find, and require VNG to prove, that the Non-C4GT Projects are needed pursuant to statutory requirements. These would be the same Non-C4GT Projects, however, that the Commission already would have approved, and that VNG already would have commenced, as part of the instant case.

The Company notes that under Virginia law, "[a]s a regulated public utility, VNG is charged with the responsibility of delivering adequate natural gas service and facilities at just and reasonable rates established by the Commission to any person, firm or corporation along its lines desiring service."<sup>28</sup> As discussed above, however, the Company acknowledges that it does not need the Project requested in the instant Application in the absence of C4GT as a customer.

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<sup>24</sup> Tr. 316-317 ("So if C4GT is not there at all, we're talking about a different project, and we'll be back before you with what we have described as an amended CPCN application for an entirely new project.").

<sup>25</sup> VNG's Post-Hearing Brief at 26.

<sup>26</sup> See, e.g., *id.* at 24-26; Ex. 22 (Yagelski Supplemental Rebuttal) at 2-5.

<sup>27</sup> See, e.g., Ex. 22 (Yagelski Supplemental Rebuttal) at 3-4; VNG's Post-Hearing Brief at 25-26.

<sup>28</sup> VNG's Post-Hearing Brief at 15 (citing Code §§ 56-233 and 56-234 A).

Put simply, if C4GT is built, we find that the Project is needed. If C4GT is not built, the Project is not needed. Accordingly, we will not approve the Project as proposed in this proceeding absent confirmation that:

1. C4GT's financial close is scheduled, certain, and imminent;
2. C4GT has approved expenditures by the Company on the C4GT components of the Project; and
3. All relevant aspects of the agreements between C4GT and VNG remain in full force and effect.<sup>29</sup>

### Cost

In addition to "need," the Commission also considers cost-related issues in evaluating public convenience and necessity under Code § 56-265.2. The Company's current estimated capital cost for the Project is approximately \$345.9 million, which includes approximately \$202.4 million in pipeline-related costs and \$143.5 million in compressor station-related costs (2019 dollars).<sup>30</sup> Approximately 95% of the capital cost of the Project will be attributable to – and thus paid for by – C4GT, CVA, and VPSE.<sup>31</sup> The remaining \$15.8 million, or approximately 5%, of these costs will be attributable to VNG's other customers through base rates.<sup>32</sup>

Unlike a CPCN to construct facilities that are generally needed to serve a utility's customers as a whole (and for which the costs therefor are typically socialized across all customer classes), 95% of the costs of the instant Project will be incurred to serve three specific

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<sup>29</sup> See, e.g., Staff's Post-Hearing Brief at 3; Tr. 243.

<sup>30</sup> Ex. 4 (Application) at 4.

<sup>31</sup> See, e.g., VNG's Post-Hearing Brief at 35-36; Ex. 20 (Armstrong Direct) at 3, 4 n.4, 17, and Attachment B at 1.

<sup>32</sup> *Id.* No party disputed the percentage attributable to other customers based on VNG's current cost estimate.

customers, with the significant majority of such costs attributable to a single customer: C4GT.<sup>33</sup> If any of these three customers cease to take service during or subsequent to their current contract term, the Company admits it may come back to the Commission in a future rate case and request that its other retail customers pay a significantly larger share of the Project's cost.<sup>34</sup> This risk to VNG's other customers is compounded by the fact that the Company's cost estimate is "high level" and very preliminary, and that it already assumes a high-end estimate of \$518.9 million.<sup>35</sup> VNG's other customers are further subject to the risk of potential cost overruns that exceed the Company's current estimate.<sup>36</sup>

Furthermore, while VNG's current contract with C4GT has a 20-year term, the Company proposes to depreciate the specific costs of this Project under 70- and 30-year depreciation schedules typically used for facilities intended to serve a utility's customers as a whole.<sup>37</sup> This means that at the end of the 20-year contract term, approximately 52.5% of the Project's cost could remain undepreciated and unrecovered.<sup>38</sup>

The Commission notes that C4GT is a "merchant" plant that will sell energy and capacity into the PJM regional wholesale markets. As a merchant plant, its construction costs will be borne by its owners, not by customers, as happens when a public utility "self-builds" a capital project and puts the asset into rate base.<sup>39</sup> However, while it is C4GT's *owners* who will bear the

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<sup>33</sup> See, e.g., Tr. 240; Ex. 17C (Staff Exhibit PE-1C); Staff's Post-Hearing Brief at 7-8, 17, 26.

<sup>34</sup> See, e.g., Ex. 21 (Yagelski Rebuttal) at 5; VNG's Post-Hearing Brief at 31; Staff's Post-Hearing Brief at 33-36.

<sup>35</sup> See, e.g., Ex. 4 (Application) at 4; Tr. 266-267; Ex. 20 (Armstrong Direct) at Attachment B at 23, 24.

<sup>36</sup> See, e.g., Ex. 20 (Armstrong Direct) at 17, Attachment B at 25; Tr. 266-267.

<sup>37</sup> See, e.g., Ex. 32 (Cogburn Rebuttal) at 2-3; Tr. 227.

<sup>38</sup> See, e.g., Ex. 20 (Armstrong Direct) at Attachment B at 3.

<sup>39</sup> In such scenario this means that, if recovered through a rate adjustment clause, the public utility typically gets to recover from ratepayers on a dollar-for-dollar basis the costs of construction, including financing costs and a return

construction costs of its plant, *VNG is a public utility* and, if a CPCN for the Project is granted, the costs of the Project would typically be eligible to be put into rate base and charged to VNG's other customers, including financing costs and a return on equity. As noted above, VNG claims that over 95% of these costs will be fully recovered by payments made primarily from C4GT to VNG for transportation and other services and not VNG's other customers, which include residential and business customers. As a merchant plant, C4GT may operate for some years but, if it becomes unprofitable, may shut down, as many other merchant generators nationally have shut down when they became unprofitable. So, it is imperative that VNG's other customers *not* be left "holding the bag" for the costs of the Project should C4GT cease operating before those costs have been fully recovered.

To protect customers from the risks discussed herein, the Commission will require strict provisions to "hold harmless" VNG's other customers. Specifically, as a result of these very real risks, the Commission finds that the Project is not required by the public convenience and necessity absent the following cost protections:

1. The capital cost of the Project shall be recovered over the 20-year initial contract term, subject to extension of the capital recovery period commensurate with contract extensions;<sup>40</sup> and
2. The maximum amount of capital costs that may be recovered from customers – other than from C4GT, CVA, VPSE, or other customers that may subsequently contract for service under the Project – shall be limited to \$15.8 million.

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on equity (which is why a utility may prefer the self-build option over simply purchasing energy from the market or from a merchant generator through a purchased-power agreement in which the utility can only recover the actual costs of the energy with no return on equity).

<sup>40</sup> In addition, as testified to by Staff, it is not atypical for natural gas utilities to link the capital recovery period for particular projects with specific contract periods. *See, e.g.*, Tr. 447-448; Staff's Post-Hearing Brief at 26-29. Similarly, and as agreed to by VNG, Allowance for Funds Used During Construction, which may be accrued for this Project pursuant to Code § 56-235.9, shall likewise be recovered over no more than 20 years or any extended contract term. *See, e.g.*, Ex. 32 (Cogburn Rebuttal) at 6; VNG's Post-Hearing Brief at 42.

Environment, Public Safety, and Economic Development

The Commission also complies herein with the following statutory requirement: "[T]he Commission shall consider the effect of the pipeline on the environment, public safety, and economic development in the Commonwealth, and may establish such reasonably practical conditions as may be necessary to minimize any adverse environmental or public safety impact."<sup>41</sup>

Many commenters opposed to this Project expressed concerns about potential environmental impacts, and we acknowledge the sincerity of such concerns. As further required by statute, the Commission has also "receive[d] and consider[ed] all reports by state agencies concerned with environmental protection."<sup>42</sup> The Virginia Department of Environmental Quality ("DEQ") submitted a report that, among other things, lists approximately two dozen federal, state, or local environmental permits or approvals related to the Project.<sup>43</sup> For each permit or approval, DEQ discusses the applicable state or federal law, the purpose, and the governmental authority responsible therefor.<sup>44</sup> DEQ further identifies that such permits or approvals address the following environmental matters: Water Permits; Subaqueous Lands Management and Tidal Wetlands; Erosion and Sediment Control; Stormwater Management; Chesapeake Bay Preservation Act Compliance; Air Quality Permits or Approvals; Solid and Hazardous Waste Management; Protected Species Legislation; Historic and Archaeological Resources; Virginia

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<sup>41</sup> Code § 56-265.2:1 A.

<sup>42</sup> *Id.*

<sup>43</sup> Ex. 1 (DEQ Report). The Commission also received a Wetland Impacts Consultation from DEQ. *See* Ex. 2 (Wetland Impacts Consultation).

<sup>44</sup> Ex. 1 (DEQ Report) at 3-6.

Department of Transportation Right-of-Way; Open-Space Land Act; and Floodplain Management.<sup>45</sup>

In addition to the above permits and approvals, DEQ recommends (and provides its rationale therefor) that the Commission consider requiring VNG to comply with the following nine additional environmental recommendations:<sup>46</sup>

- Follow DEQ's recommendations regarding air quality protection, as applicable;
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable;
- Coordinate with the Department of Conservation and Recreation's Division of Natural Heritage regarding its recommendations on development of habitat in any proposed new right-of-way, protection of the aquatic ecosystem, reduction of forest fragmentation, protection of a conservation site and updates to the Biotics Data System database;
- Coordinate with the Department of Game and Inland Fisheries regarding its recommendations to conduct a mussel survey and habitat assessment, and protect listed species and other wildlife resources;
- Coordinate with the Department of Historic Resources regarding its recommendations to protect the easement on Pilgrim's Rest and other historic and archaeological resources;
- Coordinate as necessary with the Virginia Department of Health regarding its recommendations to protect public water supplies;
- Follow the principles and practices of pollution prevention to the maximum extent practicable;
- Limit the use of pesticides and herbicides to the extent practicable; and
- Coordinate with the Virginia Outdoors Foundation regarding its recommendation for additional consultation as necessary.

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 7.

The Commission has considered the effect of the Project on the environment, and we agree that there remain certain unanswered environmental questions at this time. The Commission finds, however, that the environmental effects will be reasonably addressed via the specific permits, approvals, recommendations and additional requirements discussed in the DEQ Report. Thus, the Commission finds that, as a condition attached to any CPCN in this matter, VNG shall: (1) obtain all of the necessary permits and approvals identified in the DEQ Report; and (2) comply with the additional DEQ recommendations listed above. Contrary to arguments by the respondents herein, this finding does not mean that the Commission has failed to consider environmental impact as required by statute. Rather, the Commission has independently considered environmental impact and has concluded, based on the record, that the above conditions represent "reasonably practical conditions as may be necessary to minimize any adverse environmental ... impact."<sup>47</sup>

Many commenters assert that because this Project is for the transportation of natural gas, it is therefore foreclosed by or inconsistent with recent legislation passed by the General Assembly, such as the Virginia Clean Economy Act ("VCEA").<sup>48</sup> The Commission recognizes that the impact of this and other recent legislation will affect many other proceedings before this Commission in the years to come. As always, however, it is the Commission's duty to follow the statutes applicable to the specific case before us. Even if the language of the VCEA gave it retroactive effect,<sup>49</sup> the VCEA does not contain any provision that would prohibit the

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<sup>47</sup> Code § 56-265.2:1 A. In addition, as to route and location, the Company "consider[ed] the feasibility of locating such facilities on, over, or under existing easements of rights-of-way" pursuant to Code § 56-259 and, further, noted that "[n]o party to the proceeding or Staff proposed alternative routes or locations for the Project components." *See, e.g., Ex. 5 (Appendix) at 36; VNG's Post-Hearing Brief at 26-28, 30.*

<sup>48</sup> 2020 Va. Acts ch. 1193 and ch. 1194.

<sup>49</sup> None of the respondents established, or cited to a single case, that would legally permit retroactive statutory application herein. To the contrary, the only citation was provided by Staff (Staff's Post-Hearing Brief at 4-5),

construction of this Project. The General Assembly knows how to prohibit certain commercial activities when it wants to, such as when it prohibited uranium mining,<sup>50</sup> and if it chooses it could prohibit the construction of facilities for the transportation and distribution of natural gas, or the use of natural gas in electric generating plants, but it has not done so. In addition, the most recent amendments to the Virginia Energy Plan also do not prohibit this Project but, rather, conclude that "it shall be the policy of the Commonwealth to: ... [e]nsure the adequate supply of natural gas necessary to ensure the reliability of the electricity supply and the needs of businesses during the transition to renewable energy."<sup>51</sup> In short, no party cited any provision in current law, *or* in laws scheduled to go into effect on July 1, 2020, that categorically prohibit the construction of natural gas transportation facilities such as those in the current Project.

Finally as to environmental impact, respondents and commenters address issues of environmental justice and note the General Assembly recently passed legislation strengthening environmental justice protections.<sup>52</sup> While the Commission may not apply statutes retroactively as explained above, we recognize that it is the current policy of the Commonwealth to "[e]nsure that development of new, or expansion of existing, energy resources or facilities does not have a

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noting the Commission has recently confirmed that "in accordance with the law of the Commonwealth as set forth by the Supreme Court of Virginia, this Commission will not apply a statute retroactively absent an express intent manifesting otherwise." *Petition of Constellation NewEnergy, Inc., For a declaratory judgment*, Case No. PUR-2020-00072, Final Order at 6 (May 29, 2020) (citing *Bailey v. Spangler*, 289 Va. 353, 358-359 (2015)). *See also Washington v. Commonwealth of Virginia*, 216 Va. 185, 193 (1975) ("The general rule is that statutes are prospective in the absence of an express provision by the legislature. Thus when a statute is amended while an action is pending, the rights of the parties are to be decided in accordance with the law in effect *when the action was begun*, unless the amended statute shows a clear intention to vary such rights.") (citation omitted) (emphasis added). Since this proceeding commenced on December 6, 2019, the laws governing this proceeding are the same whether our Order herein was issued before or after July 1, 2020.

<sup>50</sup> *See, e.g.*, Code § 45.1-283.

<sup>51</sup> 2020 Va. Acts ch. 1191 and ch. 1192 (*see* Code § 67-102 A 4).

<sup>52</sup> In addition to an issue of environmental impact, CBF asserts that environmental justice also represents a public safety issue under the statute. *See, e.g.*, CBF's Post-Hearing Brief at 5-7.

disproportionate adverse impact on economically disadvantaged or minority communities...."<sup>53</sup>

The Company likewise acknowledges that environmental justice issues are applicable to the Project.<sup>54</sup>

In this regard, VNG has conducted an environmental justice screen analysis to gather information relevant to environmental justice concerns.<sup>55</sup> In addition, the Company "intends to build upon the preliminary environmental justice screening already conducted with a *formal investigation and review*" for other permitting processes.<sup>56</sup> Unlike the permits and approvals outlined in the DEQ Report for which the Commission found environmental impacts will be reasonably addressed, the instant record does not fully establish how the same will be accomplished attendant to VNG's formal environmental justice analysis. Accordingly, VNG shall file in this docket a listing of each governmental authority required to address environmental justice issues related to the Project and an explanation of the parameters attendant to each such review.

Next, the Commission has also considered the effect of the pipeline on public safety, including issues raised by participants and those submitting public comments. As discussed by Staff witness Govoni, the pipeline facilities associated with the Project must be designed, constructed, operated, and maintained according to the Commission's Pipeline Safety Standards, both during construction of the Project, and for as long as the Project remains in service.<sup>57</sup> In

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<sup>53</sup> Code § 67-102 A 11.

<sup>54</sup> See, e.g., Tr. 393-394.

<sup>55</sup> See, e.g., Tr. 384-385, 416-417; Ex. 29 (Sierra Club/CCAN Exhibit PE-7).

<sup>56</sup> VNG's Post-Hearing Brief at 29 (emphasis added).

<sup>57</sup> See, e.g., Ex. 14 (Govoni Direct); VNG's Post-Hearing Brief at 30.

addition, as committed to by VNG and as a further condition of any CPCN in this matter, the Company shall meet or exceed all applicable federal, state, and internal safety guidelines during and following construction of the Project.<sup>58</sup>

As also required by the above statute, the Commission has considered the effect of the pipeline on economic development in the Commonwealth. Both VNG and Staff discuss the positive economic impacts of the Project, and others, for example, assert that the economic benefits do not outweigh additional considerations.<sup>59</sup> The effects on economic development presented in this record, however, do not require rejection of the CPCN. We also find that construction of the Project – if all conditions precedent and ratepayer protections set forth herein are fully satisfied – will support economic development in the Commonwealth.

Preliminary Ruling

In accordance with the above findings, as conditions precedent for the issuance of the requested CPCN, the Commission herein orders as follows for purposes of the instant

Application:

- A. On or before December 31, 2020, the Company shall file, for review in this docket, confirmation that (i) C4GT's financial close is scheduled, certain, and imminent; (ii) C4GT has approved expenditures by the Company on the C4GT components of the Project; and (iii) all relevant aspects of the agreements between C4GT and VNG remain in full force and effect.
- B. If the Company submits the filing in A., above, it shall also file, for review in this docket, a listing of each governmental authority required to address environmental justice issues related to the Project and an explanation of the parameters attendant to each such review. VNG shall also certify that it will comply with the environment justice provisions required by such authorities.

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<sup>58</sup> See, e.g., VNG's Post-Hearing Brief at 30; Ex. 5 (Appendix) at 81-82.

<sup>59</sup> See, e.g., Ex. 5 (Appendix) at 83; VNG's Post-Hearing Brief at 30-31; Ex. 15 (Samuel) at 7-8; Sierra Club and CCAN's Post-Hearing Brief at 13-15.

- C. If the Company submits the filing in A., above, it shall also file confirmation attesting that it accepts the following "hold harmless" provisions as a condition of Project approval:
- a. The capital cost of the Project shall be recovered over the 20-year initial C4GT contract term, subject to extension of the capital recovery period commensurate with contract extensions; and
  - b. The maximum amount of capital costs that may be recovered from customers – other than from C4GT, CVA, VPSE, or other customers that may subsequently contract for service under the Project – shall be limited to \$15.8 million.

If the Company submits the filings, above, the Commission will issue a subsequent order establishing additional proceedings in this matter. Such additional proceedings shall be limited to A, B, and C above.

Accordingly, IT IS SO ORDERED, and this matter is CONTINUED.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.