

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7592

Petition of Monument Farms Three Gen, LLC)
("Monument Farms") for a Certificate of Public)
Good, pursuant to 30 V.S.A. Section 248(j),)
authorizing the installation and operation of a 100-)
kW agricultural-methane electrical generating)
facility at a dairy farm and milk-bottling plant)
owned by Monument Farms Dairy, Inc., located on)
Route 23 in Weybridge, Vermont)

Order entered: 10/22/2010

ORDER RE: REQUEST TO COMMENCE CONSTRUCTION

I. BACKGROUND

On May 6, 2010, the Vermont Public Service Board ("Board") issued an order in this Docket approving the request of Monument Farms Three Gen, LLC ("Monument Farms") for a Certificate of Public Good ("CPG") under 30 V.S.A. § 248 for construction of a 100 kW agricultural-methane electrical generation facility in Weybridge, Vermont (the "Project"). On October 8, 2010, Monument Farms filed a petition with the Board pursuant to 30 V.S.A. § 248(a)(2)(a) requesting that the Board adopt one of two proposed amendments to the May 6 Order and CPG allowing certain design changes to the physical plan and output of the Project. In its filing, Monument Farms represents that the Vermont Department of Public Service ("DPS") and the Vermont Agency of Natural Resources ("ANR"), which are the only other parties to this proceeding, do not object to the proposed amendments. The petition was supported by the prefiled testimony of Peter James, Member of Monument Farms Three Gen, LLC, and by accompanying exhibits.

In its filing, Monument Farms states that upon beginning sitework for the Project it encountered site conditions at the digester location that would require supporting the digester on

pilings driven deep in the ground to bedrock resulting in substantial increases in the construction costs for the Project. In addition, Monument Farms terminated its contract with CH-FOUR Biogas, Inc., and contracted with GHD, Inc. ("GHD"), to design and construct the Project. GHD has reviewed the Project design and has recommended the following changes to the physical plant: 1) a new and larger (35 ft. by 115 ft.) digester at a new location; 2) a new and larger (36 ft. by 86 ft.) genset building; 3) a new genset consisting of a Marathon Electric 155 kW generator (increasing the output from 100 kW to 155 kW); 4) three new power poles at the Project site: pole 13-1, which will contain the instrument transformer for the radio and recloser controls, pole 13-2, which will contain the recloser and radio equipment, and pole 13-3, which will contain a 167 kV single-phase transformer; and 5) reconfiguration of the general site plan.¹ In addition, Central Vermont Public Service Corporation ("CVPS") will install three new poles on James Road and there will be a fiber optic cable running back to the Weybridge Substation that will tie into fiber optic cable on different circuits that will be installed for the Dubois Farm project.² All other elements of the Project as set forth in the Board's Order and CPG of May 6 remain unchanged by the proposed redesign.³

The original Project was intended to be a Sustainably Priced Energy Enterprise Development ("SPEED") resource. Because of the output increase to 155 kW, Monument Farms has executed a new SPEED standard-offer contract. Monument Farms has also requested a system impact study ("SIS") from CVPS. ANR has determined that an Air Pollution Control Permit will not be required for the Project at this time.⁴

Monument Farms represents that time is of the essence for Board approval of the amendment request. Due to the delays experienced in constructing the Project, construction season is nearing an end and in order to have the digester filled with manure, heated and producing biogas by next spring, construction must begin as soon as possible. In addition, the delays potentially pose adverse implications for Monument Farms' eligibility to secure federal grant funding for the Project from the United States Treasury ("Treasury") since a certain amount

1. James 10/8/10 pf. at 1-3; exhs. A, B, C, D, E.

2. *Id.* at 3-4.

3. *Id.* at 5.

4. *Id.* at 4; exh. F.

of construction has to be completed in 2010 to qualify. Without federal grant money, the economic viability of the Project could be impaired.⁵ Also, Monument Farms expects that finalizing the SIS by CVPS could take a month or longer to complete. Based on these factors, Monument Farms requests that the Board approve one of the two following forms of relief:

- 1) The Board grant approval to commence construction of the redesigned and relocated digester;⁶ or
- 2) The Board approve the requested amendments to the Order and CPG in this Docket before the SIS is complete, on the condition that Monument Farms file the completed SIS with the Board, and comply with all recommendations contained in the SIS.

II. DISCUSSION & CONCLUSION

It is apparent from its filing that Monument Farms has good reason to wish to commence construction of the digester immediately, namely: (1) Monument Farms is experiencing significant time constraints relative to qualifying for grant funding of the Project from the Treasury; (2) the grant funds promote the economic viability of the Project; (3) the digester is but one component of the Project and not only serves the purpose of generating electricity but also provides material for the farming operation itself; and (4) there would appear to be no potential for adverse land-use impacts or impacts to ratepayers if construction of the digester proceeds. We acknowledge and understand the legitimate real-world pressures that Monument Farms faces, and we wish to be as accommodating as possible. At the same time, we are constrained by the scope of our legal authority, and after careful consideration of Monument Farms' filing we conclude that we lack the legal authority to grant either of the alternative requests for relief, for the reasons explained below.

With respect to the first request for relief, we cannot affirmatively authorize the commencement of site preparation and construction of the digester for the simple reason that the

5. *Id.*; Amend. Petition at 2.

6. Monument Farms contends that there is a distinction between an "electric generating facility" and a methane digester that is used by the farm both to process manure and provide fuel for an engine that drives the electric generator. The digester also serves the function of transforming raw manure into clean solids to be used as bedding to replace sawdust and to provide nutrient-rich liquid to be used as fertilizer. As such, Monument Farms argues that the digester should not be considered solely as a part of the "electric generating facility," and that Board approval to commence construction of the digester should be allowed before full approval of the amended petition. *Id.*

project as amended does not yet have a CPG, and by statute a CPG is required prior to commencement of construction or site preparation of an electric generation facility. *See* 30 V.S.A. § 248(a)(2)(A).

Monument Farms appears to contend that it does not need a CPG under Section 248 to construct the digester because the digester serves non-electric-generation purposes on the farm, in addition to serving as a component of the electric generation facility. However, even if Monument Farms is correct, our authority to approve the construction of facilities is limited to those facilities that lie within our jurisdiction, which in this instance would be electric generation facilities. We have no authority to affirmatively approve construction of facilities that lie outside of our jurisdiction.⁷

We also cannot grant the second of Monument Farms' alternative requests for relief. Because the SIS is not yet complete, and therefore the conclusions and recommendations of the study are not yet known, we have insufficient evidence that the project as amended will comply with the criteria of 30 V.S.A. §§ 248(b)(3) and (b)(10), and we cannot issue a CPG for the amended project.⁸

Therefore, we cannot issue either of the forms of relief requested. At the same time, we are not ruling that Monument Farms is barred from proceeding with construction of the digester, again because we do not have the factual or procedural basis to issue such a ruling. Thus, if it wishes Monument Farms may proceed at its own legal and financial risk with construction of the digester.⁹ If Monument Farms chooses to do so, there is no assurance that the amended project will receive a CPG. That will depend on the evidence in the case, including the new SIS, demonstrating that all of the applicable criteria are satisfied. While the modified application will

7. In addition to the authority to authorize construction of electric generation facilities, we also have the authority to issue declaratory rulings in appropriate circumstances. However, we do not have before us a properly filed and sufficiently supported petition for a declaratory ruling pursuant to Board Rule 2.403. Thus, we lack both a sufficient factual record and a proper procedural foundation upon which to issue a declaratory ruling.

8. *See* Docket No. 7508 (Petition of Georgia Mountain Community Wind), Order re Necessity for Positive Findings Prior to Issuance of a CPG; Admission of Late-Filed Testimony; and Request to Commence Construction Prior to Completion of an SIS, Order issued 3/19/2010.

9. We note that at least one other applicant for an agricultural-methane electrical generating facility constructed its digester in advance of filing with the Board for a CPG. *See* Docket No. 6977(Petition of Blue Spruce Farm), Order issued 9/9/04 at 10.

stand on its own merits, it is fair to note that the original application sited on the same property had been granted a CPG.

SO ORDERED

Dated at Montpelier, Vermont, this 22nd day of October, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
<u>s/ David C. Coen</u>)	BOARD
)	
<u>s/ John D. Burke</u>)	OF VERMONT

OFFICE OF THE CLERK

FILED: October 22, 2010

ATTEST: s/ Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)