

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7970

Petition of Vermont Gas Systems, Inc. for a)
certificate of public good, pursuant to)
30 V.S.A. § 248, authorizing the construction of)
the “Addison Natural Gas Project” consisting of)
approximately 43 miles of new natural gas)
transmission pipeline in Chittenden and)
Addison Counties, approximately 5 miles of)
new distribution mainlines in Addison County,)
together with three new gate stations in)
Williston, New Haven, and Middlebury,)
Vermont)

Order entered: 8/23/2016

ORDER DENYING MOTION FOR ORDER TO SHOW CAUSE

I. INTRODUCTION

On December 23, 2013, the Vermont Public Service Board (the “Board”) issued a final Order (the “2013 Final Order”) in Docket 7970, in which the Board authorized Vermont Gas Systems, Inc. (“VGS” or the “Company”) to construct a natural gas transmission line from Chittenden County into Addison County, Vermont (the “Project”). In today’s Order, the Board denies a motion filed by Kristin Lyons on July 8, 2016, a party in this proceeding, requesting that the Board issue an order requiring that the Company show cause as to why the Board should not open an investigation into whether the Company is in compliance with the 2013 Final Order (the “Motion”).¹

1. On July 28, 2016, Ms. Lyons also moved that the Board consider another alleged violation of the 2013 Final Order related to the Company’s disturbance of state-threatened harsh sunflower plants during pipeline construction in Monkton. The Board separately ruled on this request for relief by opening an investigation in Docket 8791, *Investigation into the Alleged Taking of Harsh Sunflower Plant by Vermont Gas Systems, Inc.*, Order of 8/23/16.

II. BACKGROUND

On July 8, 2016, Ms. Lyons moved that the Board “issue an order that VGS show cause why construction should not cease and why it should not be held in contempt for past and ongoing violations, that the Board conduct an investigation of this matter and that the Board impose appropriate sanctions.”² Ms. Lyons alleges that the Company is in violation of condition 3 of the 2013 Final Order by failing to obtain both an accurate wetland permit and an endangered species takings permit for its pipeline work at Geprags Park in Hinesburg, Vermont. Also on July 8, the Board set a deadline of July 15, 2016, for the parties in Docket 7970 and Docket 8643³ to file responses to the Motion.

On July 15, 2016, responses to the Motion were filed by the Conservation Law Foundation (“CLF”), Nathan and Jane Palmer (the “Palmers”), the Vermont Agency of Natural Resources (“ANR”), the Company, and the Vermont Department of Public Service (the “Department”).

CLF supports the Motion and recommends that if the Company cannot demonstrate compliance with all of its permits the Board should order the Company to cease construction of the Project and to pay penalties.

The Palmers request that the Board grant the Motion.

ANR responds that prior to beginning construction, the Company possessed three wetland permits authorizing construction of the pipeline in wetland areas along the route of the pipeline. ANR represents that the Company recently informed ANR that the wetlands delineation in the Geprags Park section of the pipeline route was inaccurate because the wetlands there extend beyond what was previously delineated. ANR states that it conducted field visits to Geprags Park on July 8 and 12, 2016, confirming the Company’s re-delineation of the wetlands.

2. Motion at 5.

3. The Motion was also filed in Docket 8643, *Petition of Vermont Gas Systems to Condemn Easement Rights in Hinesburg*, by seven intervenors in that Docket. Ms. Lyons and the Docket 8643 intervenors are jointly represented by Attorney James Dumont. The Motion questions VGS’s compliance with the final order in Docket 7970. While the bases for the allegations in the Motion arose in Geprags Park while the Docket 8643 condemnation proceeding for that part of the pipeline route was being conducted, the relief sought by the Motion cannot be provided in Docket 8643. Therefore the Board has determined that it will respond to the Motion solely in Docket 7970.

ANR states that VGS's existing wetland permits remain valid for the previously delineated areas in Geprags Park and elsewhere along the pipeline route, but that VGS will need to apply for new permit language to address the additional Geprags Park wetland areas identified in the new delineation. ANR indicates that a new permit would be required before VGS begins any work in Geprags Park. ANR further represents that VGS does not need a takings permit before working in Geprags Park because there are no rare, threatened, or endangered species located there. Finally, ANR does not request that the Board investigate the matter, but instead indicates that ANR "intends to examine the underlying issues which gave rise to the need for further delineation of the wetlands in this matter."⁴

The Company responds by opposing the Motion because:

Vermont Gas is constructing the Project fully in accordance with the CPG issued by this Board. The recent determination that a wetland in Geprags Park should be re-delineated because it is larger than originally delineated does not constitute a violation of the CPG or any other permit for the Project.⁵

Citing the emphasized language in condition 3 of the 2013 Final Order, below, the Company argues that the re-delineation of the Geprags Park wetland requires only an amendment to the ANR wetland permit prior to construction in that location.

The Petitioner shall obtain all necessary permits from the Agency of Natural Resources, the U.S. Army Corps of Engineers, and the Vermont Agency of Transportation *before commencement of construction or site preparation*. This includes the Vermont Stream Alteration Permit, Vermont Wetland Permit, Section 401 Water Quality Certification, NPDES Stormwater Permit, and Army Corps of Engineers Section 404 Permit. *Prior to proceeding with construction in any given area*, the Petitioner shall also obtain all other necessary permits and approvals required for the proposed construction activities in that area. Construction, operation and maintenance of the proposed Project shall be in accordance with such permits and approvals, and with all other applicable regulations, including those of the Vermont Agency of Natural Resources and the U.S. Army Corps of Engineers.

The Company asserts that it obtained the permits that were required to begin construction, and that condition 3 allows for site-specific modifications of those permits as needed to reflect conditions found prior to construction in any given area. The Company

4. Letter from Donald J. Einhorn, Esq., to Judith C. Whitney, Clerk of the Board, dated July 15, 2016, at 2.

5. Letter from William J. Dodge, Esq., to Judith C. Whitney, Clerk of the Board, dated July 15, 2016, at 2.

argues that it previously relied upon this interpretation of condition 3 when it received other site-specific wetland permit amendments required as part of three recent non-substantial change determinations for different sections of the pipeline.

The Department, having conferred with VGS and reviewed the Company's response to the Motion, states that: "[t]here is no need for the Board to issue an Order to Show Cause or open an investigation into this matter, and, therefore, the Show Cause Petition should be denied."⁶

On July 28, 2016, Ms. Lyons filed a reply to VGS's opposition to the Motion (the "Lyons Reply"). Ms. Lyons argues that the 2013 Final Order requires "that all ANR permits must be in hand for the entire [P]roject before construction can commence on any segment of the [P]roject. This requirement originated with ANR."⁷

III. DISCUSSION AND CONCLUSION

Having considered all the arguments made in response to the Motion, we are not persuaded that good cause has been shown to grant the Motion.

Ms. Lyons alleges that the Company is in violation of condition 3 of the 2013 Final Order because the wetland area recently documented in Geprags Park is larger than the wetland delineated in VGS's permits and because the Company is required to obtain a takings permit.

ANR, the permitting authority for both wetland and takings permits, does not support these allegations. Instead, ANR states that the Company remains in compliance with its current permits but requires an updated wetland permit prior to beginning any work in Geprags Park. ANR further states that the Company does not require a takings permit to begin any work in Geprags Park.

There has been no prima facie showing that condition 3 of the 2013 Final Order has not been complied with such that an order to show cause should be issued to initiate an investigation into whether VGS should be held in contempt or ordered to pay penalties. The Motion is therefore denied.

6. Letter from Louise C. Porter, Esq., to Judith C. Whitney, Clerk of the Board, dated July 15, 2016, at 2-3.

7. Lyons Reply at 4.

SO ORDERED.

Dated at Montpelier, Vermont, this 23rd day of August, 2016.

<u>s/James Volz</u>)	
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)	
<u>s/Margaret Cheney</u>)	PUBLIC SERVICE
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)	BOARD
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)	
<u>s/Sarah Hofmann</u>)	OF VERMONT

OFFICE OF THE CLERK

FILED: August 23, 2016

ATTEST: s/Holly R. Anderson
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@vermont.gov)