

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: 2/19/2016

**ORDER RE: SECOND PARTIAL RULING ON REQUEST FOR A THIRD NON-SUBSTANTIAL
CHANGE DETERMINATION**

I. INTRODUCTION

In this Order, the Vermont Public Service Board (“Board”) grants the February 11, 2016, request by Vermont Gas Systems, Inc. (“VGS” or the “Company”) for a determination that fifteen of eighteen changes proposed on August 25, 2015, to the Addison Natural Gas Project (the “Project”) approved for construction in this Docket do not constitute a substantial change that would require an amendment to the Project’s certificate of public good (“CPG”).¹

II. BACKGROUND

On December 23, 2013, the Board issued an Order granting a CPG to VGS authorizing the construction and operation of the Project.

1. Two of the eighteen changes in this request have already been ruled upon by the Board. *Order Re: Request for a Third Non-Substantial Change Determination*, Docket No. 7970, Order of 11/13/15. One proposed change now remains pending for review. VGS previously submitted, and the Board approved, two non-substantial change filings related to the first eleven miles of the Project. *See Order Re: Request for a Second Non-Substantial Change Determination*, Docket No. 7970, Order of 8/7/15 at 4; *Order Re: Request for Non-Substantial Change Determination*, Docket No. 7970, Order of 6/12/15 at 5.

On August 25, 2015, VGS filed a request that the Board find that eighteen proposed modifications to the Project do not constitute a substantial change to the Project (the “VGS Request”). This was VGS’s third request for a non-substantial change determination in this Docket. The VGS Request included a non-substantial change summary memorandum with supporting attachments documenting the proposed changes.

On October 13, 2015, VGS requested that the Board consider two of the changes, those associated with the Rocky Ridge Golf Course in St. George, Vermont (the “Rocky Ridge Changes”), on a stand-alone basis.

On October 14, 2015, the Board issued an Order soliciting comments on the VGS Request by October 30, 2015.

On October 30, 2015, the Vermont Department of Public Service (“DPS” or the “Department”) advised that it agreed that the eighteen proposed changes in the VGS Request were non-substantial, and that the Department supported the VGS Request. The Department also reiterated its position that “a post-construction aesthetics review of the entire Project would be beneficial to address any additional needs regarding impacts or necessary mitigation.”²

The Board received no other comments on the fifteen changes that are the subject of this order.

On November 3, 2015, Louise Selena Peyser filed a motion (the “Intervention Motion”) requesting permission pursuant to Board Rule 2.209 to be heard regarding one proposed change in the VGS Request concerning the relocation of Main Line Valve 4 (“MLV-4”).

On November 13, 2015, the Board issued an order determining that the Rocky Ridge Changes did not have the potential to create significant impacts under the Section 248 criteria and did not require that VGS file for an amendment to its CPG.

On December 22, 2015, the Company filed notice with the Board that it had received all amended collateral permits associated with the VGS Request.

2. Letter from Louise Porter, Esq., to Susan M. Hudson, Clerk of the Board, dated October 30, 2015.

On February 3, 2016, the Board issued an order granting the Intervention Motion and assigned a hearing officer, pursuant to 30 V.S.A. § 8, to conduct a post-certification proceeding³ to assess and make recommendations as to whether the MLV-4 change has the potential for significant impact with respect to 30 V.S.A. § 248(b)(5)(health and safety).

On February 11, 2016, VGS filed a request that the Board evaluate fifteen of the proposed changes in the VGS Request “on a stand-alone basis apart from the proposal to relocate MLV-4” because these proposed changes were “uncontested.”⁴ The Company enclosed a proposed order and represented that the Department supported its request.

As noted above, the VGS Request proposes a total of eighteen changes to the Project. We previously addressed the two Rocky Ridge Changes. As requested by the Company, in this Order we are making a determination about fifteen of those eighteen proposed changes. The remaining proposed MLV-4 change will be considered in a subsequent order.

III. NON-SUBSTANTIAL CHANGE DETERMINATION

Board Rule 5.408 states:

An amendment to a certificate of public good for construction of generation or transmission facilities, issued under 30 V.S.A. § 248, shall be required for a substantial change in the approved proposal. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the state under Section 248(a).

Additionally, the Project’s CPG requires that:

Construction, operation and maintenance of the proposed Project shall be in accordance with the plans and evidence as submitted in this proceeding. Any material deviation from these plans or a substantial change to the Project must be approved by the Board.⁵

VGS requests approval of fifteen changes in response to landowner requests, increasing efficiency, and/or decreasing construction risk. These changes include the following:

- Four minor pipeline alignment changes;

3. See Docket 7970, Order of 4/2/14 at 2.

4. Letter from Joshua D. Leckey, Esq., to Judith Whitney, Acting Clerk of the Board, dated February 10, 2016.

5. *Petition of Vermont Gas Systems, Inc.*, Docket 7970, Certificate of Public Good, dated 12/23/13.

- Three main line valve relocations;
- Seven adjustments/changes to access roads and workspace; and
- One update to natural resource mapping.

The Company represents that these fifteen proposed changes will not have a significant impact under the applicable Section 248 criteria. VGS also advises that the cost estimate for the Project of approximately \$153.6 million does not need to be modified as a result of the proposed changes.⁶

Specifically, VGS represents that the fifteen proposed changes will not have a significant impact on any of the Section 248 natural resource criteria.⁷ The locations of the fifteen proposed changes are within areas where full field investigations for natural resources have been completed and reviewed by Agency of Natural Resources (“ANR”) personnel. VGS concludes that “while resulting in minor changes to impacts,” the proposed changes do not alter its prior conclusions that the Project conforms with the natural resource criteria considered within the Section 248 review.⁸ ANR did not file comments on the fifteen proposed changes.

Additionally, the Company represents that the fifteen proposed changes will not significantly affect the Section 248 aesthetics criterion.⁹ VGS states that most of the proposed changes “relate to minor alignment and access road deviations” and concludes that “only minor changes to the visual landscape will occur as compared to the previously proposed plans.”¹⁰ The Company further explains that only two of the proposed changes, relocation of MLV-2 and MLV-3, would result in a noticeable difference to the visibility of the Project, but that an “assessment of these changes determined that the relocation of the MLVs would not result in an increase to the aesthetic impacts and may even slightly reduce visibility and impacts.”¹¹ The Company concludes that the changes “do not change [the] previous conclusion that the Project

6. VGS Request Attachment 1, Non-Substantial Change Summary Memorandum.

7. VGS Request Attachment 2, Natural Resource Assessment Memorandum.

8. *Id.* at 1, 5.

9. VGS Request Attachment 3, Aesthetics Review Memorandum.

10. *Id.* at 2.

11. *Id.*

will not result in an undue adverse impact.”¹² This conclusion was confirmed by the aesthetics consultant for the DPS, who concluded that the changes were minor and would not result in a substantial change in visual quality or aesthetics.¹³

Finally, VGS represents that the proposed modifications do not have the potential for significant impact on archaeological sites or historic properties.¹⁴ VGS concludes that with “regard to historic properties, the proposed non-substantial changes will have no effect.”¹⁵ With respect to archeological sites, two of the changes are in the vicinity of significant sites previously identified in the course of Phase I/II studies for the Project. Following established protocol, a detailed plan for Phase III Data Recovery was already in place for these two sites that is consistent with archeological mitigation that has been conducted at or is planned for other sites within the Project area. As a result, the fifteen proposed changes do not require any new or additional archaeological investigation beyond what has already been considered.

IV. CONCLUSION

Based on the Company’s representations, the support of the DPS, and the lack of other comments regarding the fifteen proposed changes (and, therefore the absence of information refuting the Company’s representations), we find that these changes to the Project do not have the potential to create significant impacts under the Section 248 criteria. Accordingly, we will not require VGS to file for an amendment to its CPG to seek approval for these fifteen proposed changes.

Furthermore, because the Project’s CPG requires that construction of the Project be done in accordance with the plans and evidence submitted, we hereby admit into the record in this Docket the revised plans submitted in support of the VGS Request that pertain to the fifteen proposed changes addressed herein.¹⁶

The remaining proposed MLV-4 change will be considered in a subsequent order.

12. *Id.*

13. Letter from Louise Porter, Esq., to Susan M. Hudson, Clerk of the Board, dated October 30, 2015.

14. VGS Request Attachment 4, Archeological and Historical Resources Memorandum.

15. *Id.* at 1.

16. The parties have ten days from the date of this Order to state any objection to the admission of this evidence. Any objection shall: (1) be in writing with notice to all the parties; (2) clearly state the evidentiary basis for the objection; and (3) articulate how the objecting party's interests are negatively affected by its entry into the record.

SO ORDERED.

Dated at Montpelier, Vermont, this 19th day of February, 2016.

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

OFFICE OF THE CLERK

FILED: February 19, 2016

ATTEST: s/Judith C. Whitney
Acting 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)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.