

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: 2/3/2016

**PROCEDURAL ORDER RE: VGS’S REQUEST FOR A FOURTH NON-SUBSTANTIAL CHANGE
DETERMINATION**

I. INTRODUCTION

On November 5, 2015, Vermont Gas Systems, Inc. (“VGS” or the “Company”) filed a request for a fourth non-substantial change determination in this Docket (the “VGS Request”). In this Order, the Vermont Public Service Board (“Board”) assigns a hearing officer, pursuant to 30 V.S.A. § 8, to conduct a post-certification¹ proceeding to assess and make recommendations as to whether the proposed alignment reroute in the vicinity of Rotax Road in Monkton, Vermont (the “Reroute”) has the potential to have a significant impact with respect to 30 V.S.A. § 248(b)(5).

II. BACKGROUND

On December 23, 2013, the Board issued a final order (the “Final Order”) granting a certificate of public good (“CPG”) to VGS authorizing the construction and operation of the Addison Natural Gas Project (the “Project”).

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

On November 5, 2015, VGS filed the VGS Request.

On November 12, 2015, the Board requested that the parties file any comments on the VGS Request by November 30, 2015.

On November 25, 2015, Nathan and Jane Palmer (the “Palmers”) filed comments on the VGS Request (the “Palmer Comments”).

On November 30, 2015, the Vermont Agency of Natural Resources (“ANR”) and the Town of Monkton (“Monkton”) each filed comments (the “ANR Comments” and the “Monkton Comments,” respectively) on the VGS Request.

On December 3, 2015, VGS filed comments in response to the Palmer, ANR, and Monkton Comments (the “VGS Comments”).

On December 4, 2015, the Vermont Department of Public Service (“DPS” or the “Department”) filed comments (the “DPS Comments”) addressing the Palmer, ANR, Monkton and VGS Comments.

On December 14, 2015, VGS filed an update to its comments of December 3, 2015 (the “VGS Comments Update”).

No other comments on the VGS Request were filed with the Board.

III. PARTY COMMENTS

The Palmers

The Palmers object to the VGS Request and submit the affidavit and recommendations of a hydrogeologist, Craig Heindel, to address concerns related to the potential impact on groundwater because of the proposed relocation of the pipeline off the Palmers’ property. Specifically, the Palmers request that the Board:

- (1) Adopt Mr. Heindel’s recommendations in exhibit C and deny the VGS request for a non-substantial change determination with respect to the portion of the reroute addressed by the Heindel affidavit.
- (2) Conclude that the proposed reroute, to the extent addressed in the Heindel affidavit, constitutes a substantial change under Board Rule 5.408 as there is the potential for significant impact with respect to 30 V.S.A. §248(b)(5)(water purity and the natural environment), and 10 V.S.A. §§ 6086(a)(1)(undue water

pollution); (1)(B)(discharge to groundwater); and (4)(soil erosion and reduction in the capacity of the land to hold water).

- (3) Order VGS to conduct additional investigation and design work to implement Mr. Heindel's recommendations set forth in exhibit C.²

The Palmers conclude by arguing that in order to “properly mitigate the potential for significant impact, VGS should be required to adopt and comply with the recommendations made by Mr. Heindel, and obtain an amendment to the CPG.”³

ANR

ANR requests that the Board stay its consideration of the VGS Request until VGS submits and ANR reviews proposed amendments to four permits⁴ that were issued by ANR on June 9, 2014. ANR also notes that it anticipates VGS to submit another non-substantial change determination request that will be grouped with the Rotax Road Reroute for the purposes of permit amendment and that it would be an efficient “use of limited Agency resources” to review all the VGS permit amendments together.⁵

Monkton

Monkton notes that while the current Rotax Road route calls for a horizontal directional drill (“HDD”) to avoid a significant archeological site, “the proposed change now calls for the installation of the pipeline by open trenching as opposed to HDD.” Therefore, Monkton “is concerned that the potential impacts of open trenching through significant archeological site VT-AD-456 have not been thoroughly examined” and requests that “the Board take the steps necessary to ensure that VGS has adequately examined potential impacts to the area in advance of approving the reroute.”⁶

2. Palmer Comments at 2.

3. *Id.* at 6.

4. Vermont Individual Wetland Permit No. 2012-0184, Vermont Stream Alteration Permit SA 5 9029, Vermont Construction Stormwater Permit No. 6949-INDC, and Section 401 Water Quality Certification.

5. ANR Comments at 2.

6. Monkton Comments at 1.

The Monkton Comments also include the filing of a letter of public comment to the Board from a Monkton resident, Jennifer Baker, dated November 20, 2015, addressing the archeological concerns at the site of the proposed relocation “in more detail.”⁷

DPS

The Department asserts that the proposed changes in the VGS Request are “non-substantial, and continues to believe a post-construction aesthetics review of the entire Project will be beneficial.” The Department concludes that “[s]ubject to the satisfactory resolution of the issues raised by ANR and the Palmers, the Department supports the VGS Request.”⁸

The Department further states that it “reviewed the VGS Request and consulted with its aesthetics consultant,” whose opinion that the Reroute “do[es] not rise to an unacceptable (undue, adverse) determination” is attached to the DPS Comments.⁹

VGS

VGS represents that it is reviewing the materials submitted by the Palmers and notes that “it intends to contact the Palmers and Mr. Heindel to work toward a possible resolution.”¹⁰ The VGS Comments Update represents that VGS is “continuing to work on the issues, including a meeting scheduled between the hydrological experts . . . and will file a substantive response with the Board once this work is complete.”¹¹

VGS does not oppose the ANR request to stay the Board’s consideration of the VGS Request and advises that VGS is “actively preparing the four permit amendments.”¹²

7. Monkton Comments at 1. Ms. Baker submitted an additional public comment on December 7, 2015, noting that the Vermont Division for Historic Preservation (“VDHP”) had not commented on the University of Vermont Consulting Archeology Program’s (“UVM CAP”) assessment (the “UVM CAP Memo”) that the relocation of the pipeline avoided the area of archeological concern. Ms. Baker requested that the Board rely on VDHP’s (rather than UVM CAP’s) conclusions regarding impacts on archeological sites just as the Board relies on ANR’s recommendations related to wetland issues.

8. DPS Comments at 2.

9. DPS Comments at 2 and Attachment.

10. VGS Comments at 1.

11. VGS Comments Update at 1.

12. VGS Comments at 1.

VGS responds to the Monkton Comments by citing the UVM CAP Memo in the VGS Request, which concludes that the Reroute would “not have an adverse impact on sensitive archeological resources.”¹³ To reiterate this conclusion, VGS submits a supplemental UVM CAP opinion memorandum¹⁴ stating that the Reroute avoids the site of sensitive archeological resources.

IV. DISCUSSION AND CONCLUSION

The Palmers and Monkton have raised factual issues regarding the potential for the Reroute to have a significant impact with respect to Section 248(b)(5)(water purity and the natural environment, water pollution, discharge to groundwater, soil erosion, and historic sites). ANR has expressed concern about the VGS Request in case the relevant ANR permit amendments are not issued and therefore requests a stay in the Board’s consideration of the VGS Request until the permit amendments are submitted and reviewed. The Department asserts that, once the issues raised by the Palmers, Monkton, and ANR are resolved, the Reroute will constitute a non-substantial change. The Company represents that (1) it is working with the Palmers and will file a substantive response to the Palmer Comments in due course, (2) the UVM CAP recommendation has satisfied Monkton’s archeological concerns, and (3) it will be submitting the ANR permit amendments shortly for review.¹⁵

In order to facilitate a timely resolution of the foregoing concerns and ultimately render a decision regarding the VGS Request, we are assigning a hearing officer, pursuant to 30 V.S.A. § 8, to conduct a post-certification proceeding to assess and make recommendations as to whether the Reroute in the vicinity of Rotax Road in Monkton, Vermont, has the potential to have a significant impact with respect to 30 V.S.A. § 248(b)(5)(water purity and the natural environment, water pollution, discharge to groundwater, soil erosion, and historic sites). After consultation with the parties as to the resolution of the factual issues addressed herein, the

13. *Id.*

14. The Board notes that Ms. Baker’s December 7 public comment reflects finding 467 and the subsequent discussion in the Final Order, which relied upon VDHP (rather than UVM CAP) to find that “there will be no adverse effects on . . . [t]hose sites that are not avoided using drilling.” Final Order at 128.

15. VGS Comments at 1.

hearing officer shall, if appropriate, schedule a supplementary evidentiary hearing in this matter. Should the parties resolve these factual concerns without an evidentiary hearing, the hearing officer shall so advise the Board and recommend any appropriate next steps regarding the VGS Request.

SO ORDERED.

Dated at Montpelier, Vermont, this 3rd day of February, 2016.

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

OFFICE OF THE CLERK

FILED: February 3, 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.