

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

**ORDER RE: GRANTING INTERVENTION IN CONNECTION WITH VGS’S REQUEST FOR A  
THIRD NON-SUBSTANTIAL CHANGE DETERMINATION**

**I. INTRODUCTION**

On August 25, 2015, Vermont Gas Systems, Inc. (“VGS” or the “Company”) requested a third non-substantial change determination in this Docket (the “VGS Request”). In today’s Order, the Vermont Public Service Board (“Board”) grants the motion filed *pro se* on November 3, 2015, by Louise Selena Peyser (the “Intervention Motion”) requesting permission pursuant to Board Rule 2.209 to intervene and be heard. Specifically, the Board: (1) grants Ms. Peyser permissive intervention in this Docket restricted to the post-certification<sup>1</sup> issue of whether VGS’s proposed relocation of Main Line Valve 4 (“MLV-4”) has the potential to have a significant impact with respect to 30 V.S.A. § 248(b)(5)( health and safety); (2) assigns 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 proposed relocation of MLV-4 has the potential for significant impact with respect to 30 V.S.A. § 248(b)(5)( health and safety); and (3) directs VGS

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

to coordinate with the other parties and propose a schedule for a hearing on whether the proposed relocation of MLV-4 has the potential for significant impact with respect to 30 V.S.A. § 248(b)(5)(health and safety).<sup>2</sup>

## 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”).

On August 25, 2015, VGS filed a request for the Board to find that eighteen proposed modifications to the Project do not constitute a substantial change to the Project (the “VGS Request”).<sup>3</sup> The relocation of MLV-4 was one of the proposed modifications. The VGS Request was VGS’s third request for a non-substantial change determination in this Docket.

On October 14, 2015, the Board directed the parties to comment on the VGS Request by October 30, 2015.

On November 3, 2015, Ms. Peyser filed the Intervention Motion.

On November 4, 2015, the Board set a deadline of November 10, 2015, for VGS to respond to the Intervention Motion and a deadline of November 16, 2015, for the other parties to respond.

On November 10, 2015, VGS responded to the Intervention Motion (the “VGS Comments”).

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2. See Board Rule 5.408, which 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 a change in the approved proposal 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).

3. The Board has previously 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 November 13, 2015, the Board partially granted the VGS Request by authorizing two of the eighteen changes in the VGS Request, those associated with the Rocky Ridge Golf Course in St. George, Vermont. See *Order Re: Request for a Third Non-Substantial Change Determination*, Docket No. 7970, Order of 11/13/15 at 5. This Order addresses one of the remaining sixteen changes in the VGS Request.

On November 16, 2015, the Vermont Department of Public Service (“DPS” or the “Department”) commented on the Intervention Motion (the “Department Comments”).

Also on November 16, 2015, Nathan and Jane Palmer (the “Palmer”) filed comments on the Intervention Motion (the “Palmer Comments”).

On November 18, 2015, Ms. Peyser filed additional comments clarifying her request to be heard and to comment about the proposed relocation of MLV-4.

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

On January 15, 2016, VGS filed a proposed order granting the VGS Request. VGS indicated that it was authorized to advise the Board that DPS concurred with the proposed order.

On January 28, 2016, Robert E. Woolmington, Esq., Witten, Woolmington, Campbell & Bernal, P.C., filed a notice of appearance on behalf of Ms. Peyser. Also, Ms. Peyser filed a motion requesting either oral argument on her intervention request or permissive intervention as a party (the “2d Intervention Motion”).

On February 3, 2016, VGS filed comments objecting to the 2d Intervention Motion.

No other parties filed comments on the Intervention Motion.

### **III. PARTY COMMENTS**

#### **VGS**

VGS recommends that the Board treat the Intervention Motion as a public comment because Ms. Peyser previously had the opportunity to intervene in this proceeding in 2013 but chose not to do so.<sup>4</sup> The Company also addresses Ms. Peyser’s concerns about the relocation of MLV-4, arguing that her concerns were “unfounded”<sup>5</sup> and providing an affidavit from the project engineering manager supporting its conclusion.

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4. VGS Comments at 2.

5. VGS Comments at 5.

VGS contends that the Peyser residence is more than 1,200 feet from the proposed relocation of MLV-4 onto property adjoining the Peyser property and that “the issues raised by Mrs. Peyser are adequately addressed by other parties to this proceeding.”<sup>6</sup>

In the alternative, VGS requests that, if the Board grants the Intervention Motion, Ms. Peyser’s participation in the Docket be “strictly limited . . . to the proposed relocation of MLV-4.”<sup>7</sup>

### The Department

The Department recommends that the Intervention Motion be denied, arguing that the allegations contained therein are “without merit.”<sup>8</sup> The Department represents that it consulted with a safety expert who advised that “the new location of MLV-4 does not pose an added risk to the general public, the pipeline, or the environment.”<sup>9</sup>

### The Palmers

The Palmers recommend that the Board “grant the Peyser Motion or, alternatively, allow Ms. Peyser the opportunity to respond to the [VGS] affidavit” because “the Peyser Motion has properly challenged the issuance of a non-substantial change determination with respect to the criteria at 30 V.S.A. § 248(b)(5).”<sup>10</sup>

## **IV. DISCUSSION**

The Intervention Motion was filed pursuant to Board Rule 2.209, which provides as follows:

(B) Permissive intervention. Upon timely application, a person may, in the discretion of the Board, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the

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6. *Id.*

7. *Id.* at 2.

8. Department Comments at 1.

9. Department Comments attachment at 2.

10. Palmer Comments at 1.

Board shall consider (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

(C) Conditions. Where a party has been granted intervention, the Board may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

(D) Procedure. An application to intervene shall be by motion made in accordance with these rules. The motion shall be made within a reasonable time after the right to intervene first accrues and shall specifically state the manner in which the condition[s] of this rule are satisfied.

The Intervention Motion meets the requirements of Board Rule 2.209(D) because it was made just after the comment period on VGS's request for a third non-substantial change determination proposing the relocation of MLV-4 and because it is limited in scope – namely, the impact of that proposed relocation. Therefore, we are not persuaded by VGS's argument that the intervention motion is untimely.

In this instance, we have decided to grant Ms. Peyser permissive intervention pursuant to subsection (B) of Rule 2.209.<sup>11</sup> We do so because as an adjoining landowner Ms. Peyser has articulated a particularized substantial interest in the potential health and safety impacts on her property of the proposed relocation of MLV-4.

Pursuant to subsection (C) of the Rule, the scope of Ms. Peyser's intervention shall be limited to the post-certification issue of whether VGS's proposed modification of MLV-4 has the potential for significant impact with respect to 30 V.S.A. § 248(b)(5)(health and safety). Given this limited scope, Ms. Peyser's intervention is not likely to cause delay or prejudice to the interests of the existing parties or the public.

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11. In light of our decision to grant Ms. Peyser's intervention, her alternative request for oral argument on the 2d Intervention Motion is now moot.

Ms. Peyser argues that VGS's proposed change has the potential to have a substantial impact under Section 248(b)(5)(health and safety). The Company and the Department have made arguments, supported by statements from experts, to the effect that Ms. Peyser's concerns are "unfounded" and "without merit," respectively. Those expert opinions are based on facts that Ms. Peyser challenges. Additionally, in the 2d Intervention Motion, Ms. Peyser argues that VGS is not permitted to move MLV-4 because this would violate the terms of the Monkton MOU.<sup>12</sup> The hearing will provide a forum in which to address this issue. A hearing will also help us understand whether or not Ms. Peyser's concerns constitute grounds to deny the non-substantial change determination that VGS has requested. Therefore, we will appoint a hearing officer to promptly conduct an evidentiary hearing limited to these issues.

In conclusion, we hereby: (1) grant Ms. Peyser permissive intervention in this Docket restricted to the post-certification issue of whether VGS's proposed modification of MLV-4 has the potential for significant impact with respect to 30 V.S.A. § 248(b)(5)( health and safety); (2) assign a hearing officer, pursuant to 30 V.S.A. § 8, to conduct a post-certification hearing to assess and make recommendations as to whether the proposed relocation of MLV-4 has the potential for significant impact with respect to 30 V.S.A. § 248(b)(5)(health and safety); and (3) direct VGS to coordinate with the other parties and propose a schedule for a hearing on whether the proposed relocation of MLV-4 has the potential for significant impact with respect to 30 V.S.A. § 248(b)(5)(health and safety).

**SO ORDERED.**

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12. On June 12, 2013, the Town of Monkton and VGS entered into an Memorandum of Understanding related to the Project. *See* Final Order at 12.

Dated at Montpelier, Vermont, this 3<sup>rd</sup> 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.*