

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: 6/12/2014

**ORDER RE: HURLBURT MOTION TO DENY AND DISMISS**

**I. INTRODUCTION**

In today's Order, the Vermont Public Service Board (the "Board") takes under advisement the request of Michael Hurlburt that the Board reject the filing by Vermont Gas Systems, Inc. ("VGS" or the "Company") on February 25, 2014, describing its Old Stage Road post-certification re-route. The Board also orders VGS to either propose a post-certification technical hearing date or to otherwise provide an Old Stage Road re-route status update to the Board no later than June 30, 2014.

**II. PROCEDURAL BACKGROUND**

On December 23, 2013, the Board issued a final Order (the "December 23<sup>rd</sup> Order") granting the Company a certificate of public good ("CPG") pursuant to 30 V.S.A. § 248 to construct a natural gas pipeline extension into Addison County, Vermont (the "Project"). In the December 23<sup>rd</sup> Order, the Board directed the Company to file a specific proposal for a re-route in the vicinity of Old Stage Road based on the general guidance that the re-route "shift the pipeline

from the east side of the road (in the Hurlburt property) to the west side of the road (and into the VELCO ROW)."<sup>1</sup> This re-route was intended to be considered as part of post-certification review along with any comments from newly-affected landowners.

On February 25, 2014, VGS filed a "Post-CPG Plan" for the Old Stage Road re-route (the proposed "February 25<sup>th</sup> re-route"). The Company's filing was in response to Condition 7 of the CPG which directed VGS to file a specific proposal for a re-route. The Company's filing depicted a re-route proposal that shifted much of the pipeline off of Mr. Hurlburt's land but left approximately 720 feet of pipeline on Mr. Hurlburt's property.

On April 2, 2014, the Board granted a motion to intervene in this case to Ms. Kristin Lyons, Mr. Hurlburt's neighbor and a landowner newly affected by VGS's proposed February 25<sup>th</sup> re-route. In that Order, the Board also directed that Ms. Lyons, in consultation with all of the parties to this Docket, propose a procedural schedule that would culminate in a hearing date to consider the interests for which she was granted leave to intervene.<sup>2</sup>

On April 10, 2014, Mr. Hurlburt filed a Motion to Enforce the Board's December 23<sup>rd</sup> Order ("Hurlburt Motion to Enforce"). This motion specifically requested that the Board "stand by its final order" and order VGS to follow the re-route depicted in the re-route drawings presented before the Public Service Board at the technical hearings.<sup>3</sup>

On April 16, 2014, the Board issued an Order (the "April 16<sup>th</sup> Order") denying the Hurlburt Motion to Enforce. The April 16<sup>th</sup> Order reiterated the finality of the December 23<sup>rd</sup> Order and the utility of post-certification review as a means to assess site-specific design details of the Project.<sup>4</sup>

On April 25, 2014, Mr. Hurlburt requested a post-certification technical hearing.

On April 28, 2014, Ms. Lyons filed a status report with the Board regarding the scheduling of a post-certification technical hearing and indicated that it was premature to schedule a technical hearing given the ongoing discussion among herself, VGS, the Department

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1. *See* Docket 7970, Order of 12/23/13 at 57-58, finding 149.

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

3. Letter from Michael Hurlburt, to Susan Hudson, Clerk of the Board, filed April 10, 2014, attached motion at 1.

4. Docket 7970, Order of 4/16/14 at 4.

of Public Service ("DPS" or the "Department"), and Mr. Hurlburt regarding "site-specific information about the potential impacts on Ms. Lyons' land."<sup>5</sup>

On May 1, 2014, VGS filed a status report regarding communications among VGS, Ms. Lyons, and Mr. Hurlburt in which it anticipated providing a further status update to the Board after a site visit to be conducted by the parties in the next several weeks.<sup>6</sup>

On May 9, 2014, Mr. Hurlburt filed a Motion to Deny and Dismiss Vermont Gas Monkton Old Stage Road Re-route Proposal Exhibit Petitioner Post-CPG ("May 9<sup>th</sup> Motion"). This Order responds to the May 9<sup>th</sup> Motion.

On May 16, 2014, the Board ordered that any comments on the May 9<sup>th</sup> Motion be filed with the Board no later than May 27, 2014.

On May 27, 2014, the Board received comments from VGS and the Department. Both VGS and the DPS recommended that the Board deny the May 9<sup>th</sup> Motion.

No other comments were received.

### **III. DISCUSSION AND CONCLUSION**

In our April 16<sup>th</sup> Order we stated that:

[T]his proceeding [has] progressed to the post-certification phase of the regulatory review of the Project. Post-certification review is focused on the design details of the construction and may result in additional changes to the route. Post-certification review would allow for the acceptance or rejection of the re-designed re-route proposed by the Company in its February 25<sup>th</sup> "Post CPG Plan."<sup>7</sup>

We also informed Mr. Hurlburt that he could request a technical hearing to address his site-specific concerns<sup>8</sup> and on April 25, 2014, Mr. Hurlburt requested a post-certification technical hearing.

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5. Letter from James A. Dumont, Esq., on behalf of VPIRG, to Susan Hudson, Clerk of the Board, filed April 28, 2014.

6. Letter from Danielle M. Changala, Esq., on behalf of VGS, to Susan Hudson, Clerk of the Board, filed May 1, 2014.

7. Docket 7970, Order of 4/16/14 at 4.

8. Mr. Hurlburt is similarly situated with his neighbor Ms. Lyons, who was also granted a post-certification hearing by the Board as a landowner directly affected by the Old Stage Road re-route. The Board therefore encouraged Mr. Hurlburt to consult with Ms. Lyons, so that the timing of the future hearings might be coordinated.

In the May 9<sup>th</sup> Motion, Mr. Hurlburt requests that the Board order VGS to re-draft its post-CPG plan to reflect siting the Old Stage Road re-route entirely within the Vermont Electric Power Company, Inc. right-of-way and not on his property. Along with arguing that the February 25, 2014 re-route proposal does not comply with Section 248, the May 9<sup>th</sup> Motion articulates a number of "adverse and undue impacts" of the re-route proposal.<sup>9</sup>

The alleged "adverse and undue impacts" to which Mr. Hurlburt referred in the May 9<sup>th</sup> Motion as yet have not been substantiated in the evidentiary record of the case. Rather, the purpose of convening the post-certification hearing Mr. Hurlburt has requested is to create an evidentiary record on the re-route issues Mr. Hurlburt referred to in the May 9<sup>th</sup> Motion. For this reason, the May 9<sup>th</sup> Motion is not yet ripe for a decision and we are taking it under advisement pending the outcome of the technical hearing.

The Board appreciates the efforts of the parties to address site-specific concerns and coordinate the scheduling of the requested post-certification technical hearing.<sup>10</sup> The Board also wishes to act as promptly as practicable to resolve the site-specific details of the Old Stage Road re-route plan. Therefore, VGS, in consultation with the other parties, is directed to either propose a technical hearing date or otherwise provide a status update to the Board no later than June 30, 2014.

**SO ORDERED.**

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9. May 9<sup>th</sup> Motion at 1.

10. *See* letter from Louise C. Porter, Esq., DPS, to Susan Hudson, Clerk of the Board, filed May 27, 2014, at 1.

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of June, 2014.

s/James Volz )

) PUBLIC SERVICE

s/John D. Burke )

) BOARD

s/Margaret Cheney )

) OF VERMONT

OFFICE OF THE CLERK

FILED: June 12, 2014

ATTEST: s/Susan M. Hudson  
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)*