

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7970

Amended 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 (In Re: Limited Remand from)
Vermont Supreme Court)

Order entered: 9/25/2014

ORDER RE: MOTIONS TO INTERVENE

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") grants permissive intervention status to AARP in this proceeding and denies the intervention request of Vermont Public Interest Research Group ("VPIRG").

II. PROCEDURAL BACKGROUND

On December 23, 2013, the Board issued a Final Order (the "December 23rd Order") granting Vermont Gas Systems, Inc. ("VGS") 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"). On April 9, 2014, the December 23rd Order was appealed to the Vermont Supreme Court. On September 11, 2014, on motion from the Board, this matter was remanded to the Board by the Vermont Supreme Court in order to determine whether the proceedings should be reopened in light of new cost information for the Project that VGS disclosed on July 2, 2014.

On September 22, 2014, VPIRG and AARP filed motions to intervene in this proceeding on remand (respectively, the "VPIRG Motion" and the "AARP Motion"). On September 23, 2014, the Conservation Law Foundation filed comments supporting the intervention of VPIRG and the Department of Public Service ("DPS" or the "Department") filed comments opposing the intervention of both VPIRG and AARP. On September 24, 2014, VGS also filed responses opposing both intervention motions. Also on September 24, 2014, VPIRG made a filing that responded to comments opposing its intervention. On September 25, 2014, AARP filed a response to comments opposing its intervention.

No other objections or comments were filed.

III. THE STANDARD

PSB Rule 2.209 governs intervention in proceedings before the Board. Rule 2.209(A) provides that upon timely application a person shall be entitled to intervene in a proceeding in three circumstances:

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or
- (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Board the power to grant intervenor status on a permissive basis, when an applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding." In exercising the discretionary authority reserved in Rule 2.209, the Board considers three factors:

- (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.

Rule 2.209(C) further provides that the Board may impose certain restrictions on an intervenor in participating in the proceeding. Specifically, 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.

IV. PARTY COMMENTS

CLF supports the VPIRG Motion and urges the Board to admit testimony offered by VPIRG because this testimony compares the costs and benefits of residential conversion to natural gas with cold climate heat pumps. CLF believes this information will be helpful to the Board's analysis of the economics of the Project in light of the cost increase.

DPS opposes both the AARP Motion and the VPIRG Motion as untimely because the intervention deadline for this case was March 29, 2013. According to the Department, neither motion provides any justification for the extraordinary relief of granting intervention at this late stage in the proceedings.

VGS opposes both the AARP Motion and the VPIRG Motion, arguing that: (1) both motions are untimely; (2) AARP and VPIRG did not demonstrate a substantial interest in the outcome of the proceeding; and (3) the interventions will unduly delay the proceeding and prejudice the interests of existing parties and the public.

V. DISCUSSION

This proceeding on remand is limited in scope. By order of the Supreme Court, the scope of the remand is limited to an initial determination of whether to reopen the proceedings in light of the new cost information. Our disposition of the two intervention motions has been guided by this limitation.

AARP

AARP's motion seeks to intervene to "solely address issues pertaining to cost."¹ We agree with the Department and VGS that AARP should have filed its intervention request promptly after the remand. Nonetheless, we find it is appropriate to grant AARP permissive intervention in order to afford AARP the opportunity to conduct cross-examination to explore the implications of the increased cost estimate as these relate to the substantial interest articulated in the AARP Motion. Consistent with Rule 2.209(C), AARP's participation is restricted to the issue of whether the new cost information provided in the VGS Cost Update requires reopening the proceedings in this Docket. AARP is therefore permitted to participate through counsel in the September 26, 2014, hearing as requested.

VPIRG

VPIRG has requested to intervene in order to further its organizational mission but has not articulated a specific or persuasive basis that would justify its participation in this limited remand proceeding, given the narrow scope of the issues before the Board.

The VPIRG Motion does not demonstrate a basis for intervention as of right under PSB Rule 2.209(A) or permissive intervention under PSB Rule 2.209(B). VPIRG has cited no statute that confers upon the organization an unconditional right to intervene, nor has VPIRG set forth any statutory conditional right to intervene that has been satisfied.

We further find that VPIRG has failed to make a showing that would justify granting permissive intervention at this stage in the proceeding. VPIRG states in general terms that its substantial interest lies in opposing the Project at issue in this Docket because "it will use fracked gas, and it will continue Vermont's unsustainable reliance on fossil fuels for decades to come. Some of VPIRG's members also will be directly harmed by the proposed pipeline, because they live or commute near its proposed path, and they use Lake Champlain."² However, VPIRG's more specific and concrete description of its interest in this proceeding makes clear that it wishes to participate to show that "the general good of the State would be served by considering the

1. AARP Motion at 1.

2. VPIRG Motion at 2.

increased cost of the project in the context of *the information now available that households can obtain the same savings and society can obtain the same or greater greenhouse gas reductions, without this ever-more expensive project.*"³

The scope of this remand is limited to determining whether the Board should reexamine the December 23 in light of the new cost information for constructing the project.⁴ It is not a general invitation to reopen the record in light of other facts that may have changed subsequent to the issuance of the final order in this proceeding. Thus, the new information and argument that VPIRG seeks to bring forward are beyond the scope of the remand. Moreover, other parties to this proceeding have capably represented the interests articulated in the VPIRG Motion.⁵ Finally, VPIRG's desire to advance its organizational mission of opposing hydraulic fracturing will not be served by intervening in this proceeding. We have already comprehensively considered and rejected the argument that the project "will not promote the general good of the state because it proposes to use and deliver gas from hydraulically-fractured sources."⁶ For these reasons, VPIRG's intervention request is denied.

SO ORDERED.

3. Letter from James A. Dumont, Esq., on behalf of VPIRG, to Susan M. Hudson, dated September 22, 2014, at 2 (italicized emphasis added).

4. In petitioning the Vermont Supreme Court, the Board specifically represented that it was seeking a remand "for the limited purposes of determining whether (1) *in light of new information regarding an increase to the cost of the pipeline project* the proceeding should be re-opened and, (2) if so, to address the new information in our final decision whether to authorize the project." *Motion for Expedited Remand by the Vermont Public Service Board*, Supreme Court Docket No. 2014-135 at 1 (italicized emphasis added).

5. December 23rd Order at 20 (describing the position of CLF), 22 (describing the position of the Palmers), and 23 (describing the position of the Hurlburts). *See also* VPIRG Motion at 2, in which VPIRG acknowledges that Ms. Lyons is a party "who shares VPIRG's interests but lacks VPIRG's history." VPIRG does not explain the connection between its history and Ms. Lyons' alleged inability to represent their shared interests adequately in this proceeding.

6. December 23rd Order at 141.

Dated at Montpelier, Vermont, this 25th day of September, 2014.

s/ James Volz)

) PUBLIC SERVICE

s/ John D. Burke)

) BOARD

s/ Margaret Cheney)

) OF VERMONT

OFFICE OF THE CLERK

FILED: September 25, 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)