

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: 5/12/2016

ORDER RE REQUEST FOR A FIFTH NON-SUBSTANTIAL CHANGE DETERMINATION

I. INTRODUCTION

In this Order, the Vermont Public Service Board (“Board”) grants the March 25, 2016, request by Vermont Gas Systems, Inc. (“VGS” or the “Company”) for a determination that a proposed alignment reroute to the Addison Natural Gas Project (the “Project”) in the vicinity of Old Stage Road in Monkton does not constitute a substantial change that would require an amendment to the Project’s certificate of public good (“CPG”).

II. BACKGROUND

On December 23, 2013, the Board issued an Order granting a CPG to the Company authorizing the construction and operation of the Project. The Board conditioned approval of the petition on rerouting the pipeline from the east side of Old Stage Road to the west side of Old Stage Road. Rerouting the pipeline from the east side to the west side of Old Stage Road was projected to create no increase in construction costs while it would reduce potential negative impacts to the agricultural use of the Hurlburt family property.

On September 23, 2014, the Board conducted a post-certification technical hearing to address the Old Stage Road reroute.

On November 25, 2014, the Board issued an Order approving the reroute of the pipeline from the east side to the west side of Old Stage Road.

On March 25, 2016, the Company filed a request that the Board find that a proposed alignment reroute to the Project back from the west side to the east side of Old Stage Road in Monkton (the “Reroute”) does not constitute a substantial change to the Project (the “VGS Request”). In its filing VGS represented that the Company reached an agreement with the Hurlburt family and that the Reroute would reduce the cost and schedule risks associated with the relocation approved on November 25, 2014. This was VGS’s fifth request for a non-substantial change determination in this Docket.¹ The VGS Request included a non-substantial change summary memorandum with supporting attachments documenting the proposed changes.

On April 21, 2016, VGS filed a supplemental natural resources memorandum (“Attachment 2 Supplement”). Also on April 21, the Board issued an Order directing the parties to comment on the VGS Request by April 29, 2016.

On April 29, 2016, the Vermont Department of Public Service (“DPS” or the “Department”) advised the Board that it agreed that the 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

On May 2, 2016, the Vermont Agency of Natural Resources (“ANR”) stated that the proposed changes in the VGS Request “do not have the potential for a significant impact to natural resources provided that VGS complies with the amended collateral permits” and complies

1. VGS has previously submitted, and the Board has approved, three 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; and *Order Re Third Non-Substantial Change Determination*, Docket No. 7970, Order of 4/21/16 at 2. Resolution of the fourth request for a non-substantial change determination is pending.

2. Letter from Louise Porter, Esq., to Judith C. Whitney, Clerk of the Board, dated April 29, 2016.

with the vegetation management provisions outlined in VGS's supplemental natural resources memorandum filed on April 21, 2016.³

On May 4, 2016, the Company filed a proposed order and notice that ANR has issued all the collateral permits associated with the VGS Request.

No other parties filed comments on the VGS Request.

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.⁴

The Reroute proposed in the VGS Request includes the following changes to the Project:

(1) minor lateral shifts in the proposed pipeline along Old Stage Road in Monkton, Vermont, due to right-of-way adjustments identified through a boundary survey; (2) rerouting a portion of the pipeline from the west side of Old Stage Road to the east side, and (3) removing one access road and introducing another together with a reconfigured temporary workspace. The Company has represented, through the opinions of three experts and its Project manager, that the VGS Request will not have a significant impact under the applicable Section 248 criteria. VGS has also

3. Letter from Donald J. Einhorn, Esq., to Judith C. Whitney, Clerk of the Board, dated May 2, 2016 ("ANR Comments").

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

advised that the cost estimate for the Project of approximately \$154 million does not need to be modified as a result of the proposed changes.⁵

Specifically, the Company has represented through a natural resource assessment memorandum and its supplementary memorandum that the VGS Request will not have a significant impact on any of the Section 248 natural resource criteria.⁶ The locations where these Project changes are proposed are within areas where full field investigations for natural resources have been completed and reviewed by ANR.⁷ The natural resource assessment memorandum concluded that the proposed changes in the VGS Request “are of limited scope and significance with respect to the natural resource criteria.”⁸ While resulting in minor impacts, the proposed changes do not alter VGS’s expert consultant’s prior conclusions that the Project conforms with the natural resource criteria considered within the Section 248 review.⁹

Additionally, based on its aesthetics consultant’s conclusions in an aesthetic review memorandum, the Company represents that the Reroute will have only a minor impact on the Section 248 aesthetics criterion.¹⁰ The memorandum states that the Project revisions “will not result in any change to the visual appearance of the Project.”¹¹ It further concludes that the changes “do not change [the] previous conclusion that the Project will not result in an undue adverse impact.”¹²

Finally, VGS represents that the proposed modifications do not have the potential for significant impact on archaeological sites or historic properties, based on the Company's archeological and historical resources memorandum.¹³ This memorandum concludes that the

5. VGS Request at 5.

6. VGS Request Attachment 2 and Attachment 2 Supplement.

7. VGS Request at 4 and ANR Comments.

8. VGS Request Attachment 2 at 6.

9. VGS Request Attachment 2 at 6 and Attachment 2 Supplement.

10. VGS Request at 5.

11. VGS Request Attachment 3 at 2.

12. *Id.*

13. VGS Request at 5.

proposed changes “do not have the potential for significant impacts to archeological sites and historic properties.”¹⁴

Therefore, based on the Company’s representations in its memoranda, the Company’s agreement with the Hurlburt family and its associated projected reduction in cost and schedule risks, the support of the Department, and the ANR Comments, we find that the three changes to the Project proposed in the VGS Request do not have the potential to create significant impacts under the Section 248 criteria. Accordingly, we will not require that VGS file for an amendment to its CPG to seek approval for these three proposed changes. We condition this conclusion on the Company: (1) obtaining any required permit amendments prior to construction within the areas of the Project to be affected by the changes; (2) conducting a post-construction aesthetics review of the entire Project including the Reroute to address any additional needs regarding impacts or necessary mitigation; (3) complying with amended collateral permits issued by the Vermont Department of Environmental Conservation; and (4) complying with the vegetation management type B1 and non-native invasive plant species monitoring and control plans specified in the Project’s vegetation management plan.¹⁵

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 Reroute.

SO ORDERED.

14. VGS Request Attachment 4 at 1.

15. Docket 7970, Order of 12/23/13, exh. VGS-ANR-Joint-1; *see* finding 477.

Dated at Montpelier, Vermont, this 12th day of May, 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: May 12, 2016

ATTEST: s/Judith C. Whitney
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.