

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: 11/2/2015

PROCEDURAL ORDER RE: SUPPLEMENTAL EVIDENTIARY HEARING

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") sets a schedule for further process to resolve several pending motions to reopen and supplement the evidentiary record for this second remand proceeding (the "Second Remand").

II. DISCUSSION

The AARP Motion

On August 5, 2015, AARP¹ filed a motion requesting that the Board reopen the evidentiary record of the Second Remand to admit certain documents relating to a civil lawsuit that commenced this summer in Chittenden Superior Court between Vermont Gas Systems, Inc. ("VGS" or the "Company") and Over and Under Piping Contractors, Inc., a pipeline construction firm. The AARP Motion also seeks to admit a press release issued by VGS on July 24, 2015, announcing it had selected a mainline construction contractor.

1. Joined by Kristin Lyons.

The Board set a deadline of August 21, 2015, for party comments on the AARP Motion. Nathan and Jane Palmer (the "Palmer"), the Conservation Law Foundation ("CLF"), the Vermont Department of Public Service ("DPS" or the "Department"), and the Company filed comments on the AARP Motion. There were no objections to the Board entering the items proffered by AARP for admission into evidence.

To date the Board has not ruled on the AARP Motion. During the supplemental evidentiary hearing that we are ordering today, the Parties may examine the nature, relevance, and materiality of the documents AARP has moved to admit into the record of the Second Remand. Following the hearing, the Parties may brief the issue of what weight, if any, the Board should give these documents in issuing a final order that resolves the pending Rule 60(b) motions in the Second Remand.

The VGS Motion

On October 7, 2015, the Company filed a Memorandum of Understanding ("MOU") between VGS and the Department. On October 15, 2015, VGS filed a motion to admit the MOU into the evidentiary record of the Second Remand (the "VGS Motion").

The Board set a deadline of October 27, 2015, for parties to file written comments responding to the VGS Motion and a deadline of November 2, 2015, for VGS to respond to any party comments on the VGS Motion. Comments were received from the Palmers, CLF, AARP, the Vermont Fuel Dealers Association ("VFDA"), and the Department. The Company responded to those comments on October 28, 2015.

The Palmers recommend that the Board disregard the MOU and instead issue a final order that rules on the pending Rule 60(b) motions. If the Board denies the Rule 60(b) motions, the Palmers argue that the VGS Motion will be moot. If the Board grants the Rule 60(b) motions and sets aside the final Order of December 23, 2013, the Palmers suggest that the VGS MOU can be addressed as part of the re-opened proceeding. In the alternative, the Palmers recommend that the Board deny the VGS motion because it violates due process. The Palmers also argue that the Board should treat the MOU as an admission by a party-opponent that VGS had previously filed misleading testimony.

CLF objects to the admission of the MOU because it is irrelevant to the pending Rule 60(b) motions and because the VGS Motion violates due process. CLF argues in the alternative that, should the Board admit the MOU, the Board should first require VGS to submit evidence in support of the MOU followed by discovery by the parties on that evidence. CLF also contends that if the Board decides to admit the MOU into evidence, the Board should appoint independent counsel to "evaluate the MOU."

AARP² requests that the Board deny the VGS Motion unless the Board orders VGS and DPS to disclose certain analyses relating to the economic and rate impacts of the MOU, as well as other information AARP believes is necessary to resolve ambiguities in the MOU.³

VFDA recommends that the Board deny the VGS Motion because the MOU is conclusory. VFDA agrees with AARP that the Board should conduct fact-finding into the MOU. Finally, VFDA recommends that the Board "consider appointing" an independent expert to assist the Board.

The Department comments that the VGS-DPS MOU is relevant and should be admitted into evidence.⁴ The Department argues that there is no need for an evidentiary hearing into the MOU. Instead, the Department recommends that the Board afford the parties an opportunity to brief the appropriate evidentiary weight to be given to the MOU. The Department further recommends that, if the Board determines that an evidentiary hearing is appropriate, the Board should specify the scope of the hearing and a schedule so that the Second Remand may come to a swift resolution.

2. Joined by Kristin Lyons.

3. Specifically, AARP requests that the Board order VGS and DPS to disclose their analyses of the MOU's impact on the economy of the State and the "cross-subsidy and rates." AARP further seeks an order requiring VGS to prefile direct testimony concerning (1) the MOU's rate impacts, (2) the Company's representation that the Project "is on time and on budget and will be jeopardized by any material delay," and (3) explaining the limitations associated with the MOU provision that would allow VGS to recover costs above the \$134 million level due to material construction delays related to right-of-way access issues.

4. "All things equal, the existence of the MOU tends to make rate recovery of anything over \$134 million much less likely than it would be otherwise." Letter from Louise Porter, Esq., to Susan Hudson, Clerk of the Board, dated October 27, 2015, attached Comments at 4.

VGS maintains that the VGS-DPS MOU is relevant to deciding the pending Rule 60(b) motions and therefore should be admitted into evidence.⁵ The Company argues that there is no need for an evidentiary hearing into the MOU. The Company recommends that any process be limited to a round of written comments addressing the impact of the MOU on the Board's determination that the Project is consistent with the general good of the State under 30 V.S.A. § 248(a).

At this time, the Board is not ruling on the VGS Motion. Rather, having considered all of the comments we received from the Parties, we have concluded that the public interest will best be served by our ruling on the VGS Motion after we have held an evidentiary hearing, followed by briefing. This process will help us to more fully understand the nature of the commitments contained in the MOU and the weight, if any, that the Board should accord those commitments. Furthermore, this process will afford the parties a fair opportunity to cross-examine and to present evidence on the questions of whether and how the MOU might relate to our ultimate ruling on the pending Rule 60(b) motions in the Second Remand. Accordingly, we will conduct a further evidentiary hearing to consider the MOU. In addition to permitting inquiry into the documents at issue in the AARP Motion as discussed above, the scope of this hearing will be to examine the nature, relevance, and materiality of the MOU as it relates to the record of (1) the First Remand hearings of September 2014 and subsequent briefing, and (2) the Second Remand hearings of June 2015 and subsequent briefing.

With regard to AARP's request for an Order directing the Company and the Department (1) to provide certain information relating to representations in the MOU regarding the construction schedule and budget, and (2) to disclose "the analyses possessed by VGS and the DPS as to the impact of the MOU on the net present value of the effect of the Project on the state economy" and "on the cross-subsidy and rates," we find the information requested by AARP to be potentially relevant and material to our consideration of the MOU. Therefore, we hereby direct VGS and the Department to prefile direct testimony on these specific subjects, in addition

5. "The MOU is clearly relevant to the potential rate impact of the Project and should be admitted into evidence." Letter from Peter Zamore, Esq., Sheehey Furlong & Behm P.C., to Susan Hudson, Clerk of the Board, dated October 27, 2015, attached Legal Memorandum at 4.

to any other testimony that VGS or the Department believes to be relevant and material to matters within the scope of the supplemental evidentiary hearing as described in this Order.

With respect to CLF's argument concerning the appointment of independent counsel, we are not persuaded that CLF has demonstrated the existence of a need for such an appointment at this time.

To the extent any Party's comments included legal arguments that have not been resolved in this Order, such arguments may be renewed in the briefs to be filed following the evidentiary hearing on the MOU.

III. SCHEDULE

We hereby set the following procedural schedule for this proceeding. Upon issuance of this Order, the parties may commence discovery (to include depositions) into matters within the scope of the supplemental evidentiary hearing as defined in this Order. Additionally:

November 6, 2015:	VGS and DPS pre-filed testimony due to be filed
November 23, 2015:	Other parties' direct testimony, if any, due to be filed; discovery period ends ⁶
December 1-3, 2015:	Technical Hearings
December 14, 2015:	Direct Briefs due to be filed
December 23, 2015:	Reply Briefs due to be filed

SO ORDERED.

6. If VGS wishes to conduct discovery on other parties' testimony after this date, the Company may do so by making appropriate arrangements with those parties to serve interrogatories or conduct depositions, provided, however, that no such discovery activities may be conducted from November 26-29.

Dated at Montpelier, Vermont, this 2nd day of November, 2015.

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

A True Copy:
OFFICE OF THE CLERK

FILED: November 2, 2015

ATTEST: s/Judith C. Whitney
Deputy 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)