

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: 4/8/2015

ORDER RE: PALMERS MOTION TO ADMIT RECORDS FROM DOCKET 8328

I. INTRODUCTION

In today's Order, the Vermont Public Service Board (the "Board") denies a motion filed by Nathan and Jane Palmer (the "Palmer Motion") seeking the admission of the record of Docket 8328 into the evidentiary record in this proceeding.¹

II. PROCEDURAL BACKGROUND

On December 23, 2013, the Board issued a final Order (the "December 23rd Order") granting Vermont Gas Systems, Inc. ("VGS" or 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").

1. Docket 8328 is an investigation into VGS's compliance with Board Rule 5.409 which imposes a duty upon utilities to file project cost estimate updates under certain circumstances.

On December 19, 2014, VGS notified the Board that, for the second time, it projected a significant increase in the Company's estimated cost for the Project,² which has now reached \$154 million (the "second VGS Cost Estimate Update").

On January 16, 2015, the Board provided notice to the parties that it would seek a second remand of the December 23rd Order from the Vermont Supreme Court in light of the second VGS Cost Estimate Update.

On February 9, 2015, the Vermont Supreme Court remanded this case to the Board.

On March 9, 2015, Nathan Palmer, representing the Palmers *pro se*, filed the Palmer Motion.

On March 25, 2015, the Board issued an Order establishing a schedule for the review of the December 23rd Order and providing general guidelines as to the scope of its review (the "March 25th Order"). The Board also deferred its ruling on the Palmer Motion until after the completion of the technical hearing in Docket 8328, then scheduled for March 25, 2015, and requested that the parties file responsive comments to the Palmer Motion by March 31, 2015.

On March 31, 2015, the Board received comments from VGS and the Vermont Department of Public Service ("DPS"). Both VGS and the DPS recommended that the Board deny the Palmer Motion.

No other comments were received.

III. DISCUSSION AND CONCLUSION

The Palmer Motion requests that "for the purposes of efficiency, fairness and Vermont frugality" the Board "admit all prefiled testimony, discovery questions, responses to discovery, transcripts and any other records from Docket 8328." The Palmers argue that the prefiled testimony and discovery responses in Docket 8328 "explain the December 19, 2014 letter and January cost update (and corrected cost update) submitted by VGS to the Board."³

At this stage in the proceeding, the Palmer Motion is essentially requesting that the Board take administrative notice of the Docket 8328 record. However, under Vermont law, the Board

2. On July 2, 2014, VGS informed the Board that its projected costs had increased from the \$86.6 million set out in the December 23rd Order to approximately \$121 million.

3. Palmer Motion at 2-3.

is unable to admit the record of Docket 8328 into evidence in this proceeding as requested in the Palmer Motion.⁴ While we are permitted to take notice of the evidentiary record of Docket 8328 "to establish the fact of such litigation and related filings," we can not take administrative notice of that evidence "for the truth of the matters asserted."⁵

However, as the DPS noted in its comments, "the submissions made in Docket No. 8328 are a matter of public record and are therefore available to any party."⁶ The Palmers are free to use the record of Docket 8328 to inform their efforts in this Docket; this could include seeking to introduce particular items from Docket 8328 into evidence as exhibits subject to objection and cross-examination in this proceeding.

The Palmer Motion also requests that the Board realign the schedule in this proceeding "to accommodate inclusion of evidence from Docket 8328."⁷ Having already adjusted the schedule to reflect the timing of the technical hearing in Docket 8328 and having herein denied the Palmer Motion to admit the record of Docket 8328 into the evidentiary record of this proceeding, this scheduling alignment request is now moot.

SO ORDERED.

4. *Amended Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for amendment of their Certificate of Public Good*, Docket 7862, Order of 3/29/13, at 6, citing *Jakab v. Jakab*, 163 Vt. 575, 579 (1995). See also *Amended Petition of Vermont Electric Power Company, Inc. for authority to condemn easement rights*, Docket 7121, Order of 8/22/06.

5. Docket 7862, Order of 3/29/13, at 6-7, citing *Liberty Mutual Insurance Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388 (2d Cir. 1992), *on remand* 969 F.2d 1384 (2d Cir. 1992)(citing *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991)); accord *Jakab*, 163 Vt. at 578-579.

6. DPS Comments at 3.

7. Palmer Motion at 3.

Dated at Montpelier, Vermont, this 8th day of April, 2015.

s/James Volz)

) PUBLIC SERVICE

s/Margaret Cheney)

) BOARD

s/Sarah Hofmann)

) OF VERMONT

OFFICE OF THE CLERK

FILED: April 8, 2015

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)