

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: 3/25/2015

PROCEDURAL ORDER RE: SECOND REMAND

I. INTRODUCTION

In today's Order, the Vermont Public Service Board (the "Board") establishes a schedule for the review of the final order issued in this proceeding on December 23, 2013 (the "December 23rd Order") on remand from the Vermont Supreme Court. Further, the Board provides general guidelines as to the scope of its review.

On December 19, 2014, Vermont Gas Systems, Inc. ("VGS") filed notice to the Board that, for the second time, it projected a significant increase in its estimated cost of the Project,¹ which has now reached \$154 million (the "second VGS Cost Estimate Update").

On January 16, 2015, the Board provided notice to the parties of its decision to seek a second remand of the December 23rd Order from the Vermont Supreme Court in light of the second VGS Cost Estimate Update. The Board also sought comments from the parties as to the scope of the investigation if a remand should be granted as well as the amount of time the Board should take to conduct any further investigations.

1. 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.

On January 23, 2015, the Board filed a motion with the Vermont Supreme Court seeking a second remand of the case in light of the second VGS Cost Estimate Update.

On February 9, 2015, the Vermont Supreme Court remanded this case to the Board. The Court's Order in its entirety provides that:

The Public Service Board seeks a second remand in the above appeal for the Board to determine whether to reopen its December 23, 2013, final order and, if it does so, to reconsider whether and on what terms to authorize the project that is the subject of the final order. Appellant supports the Board's second motion for remand, but requests that the matter be remanded without limitation to its scope or, in the alternative, with explicit authority to consider certain motions filed by her and others. The Board's motion is granted. Regarding appellant's motion, the Board on remand may entertain appellant's request that it consider certain specified motions in determining whether to reopen the final order.²

On March 2, 2015, the Board sought additional comments from the parties regarding the scope of the proceeding, in particular addressing the specific language of the Court's Order, and proposed a schedule for the proceeding including a status conference on March 18, 2015.

Many of the parties provided comments about scope and schedule both in January and in March. At the status conference, the parties proposed an agreed-upon schedule with variance only as to the date of the technical hearing, and the Board heard additional comments as to the impact of the two hearing dates.

II. SCHEDULE

The Board appreciates the parties' various scheduling concerns and comments and hereby orders the following schedule for the proceeding:

VGS files supplemental prefiled testimony	March 27, 2015
One round of discovery questions on VGS	April 8, 2015
Response to discovery from VGS	April 22, 2015
Non-petitioners file prefiled testimony	May 6, 2015
Opportunity to conduct depositions	May 6-13, 2015
Parties file rebuttal prefiled testimony	May 27, 2015
Technical hearing	June 22-23, 2015
Briefs due	July 6, 2015

2. Vermont Supreme Court Docket No. 2014-135, *Entry Order*, dated February 9, 2015.

III. SCOPE

The threshold determination on remand is to determine whether to reopen the December 23rd Order or not.³ Parties have suggested that we should evaluate this question based upon V.R.C.P. 60(b)(1)(mistake, inadvertence, surprise), 60(b)(2)(newly discovered evidence), and 60(b)(3)(fraud, misrepresentation, or other misconduct). In deciding whether the proceedings in this case should be reopened, we will permit parties to present evidence related to each of these provisions. In doing so, we seek to address both the particulars and background of the new cost estimate information noticed in the second VGS Cost Update and the impact of that new information on any other factors relied upon in our December 23rd Order that similarly require factual updates. Parties may also present new information related to any criteria that may be affected by the updated cost estimate information.

In our decision in the first remand of this case, we specifically addressed the general good (§ 248(a)), need for the Project (§ 248(b)(2)), and economic benefit (§ 248(b)(4)) criteria.⁴ In their comments, many of the parties asked that the Board articulate here which of the specific Section 248 criteria will be included in our second review on remand. We refrain from doing so at this time. It appears likely that the criteria we addressed during the first remand proceeding are the ones most affected by the increase in the Project's estimated costs. However, we do not preclude parties from seeking to present testimony on other criteria if they can show a reasonable relationship of the testimony to the updated cost estimates.

As noted above, in order to make our threshold determination, we will seek to address both the particulars of the new cost estimate information noticed in the second VGS Cost Update and the impacts of that new information on any other factors addressed in the December 23rd Order that may similarly require factual updates. The Board will consider any evidence that is relevant to its determination as to whether the December 23rd Order should be reopened or not.

In a related matter, the Palmers filed a motion to admit evidence from Docket 8328 (the investigation into VGS's compliance with Board Rule 5.409 in response to the first cost estimate

3. Should we conclude that the evidence presented requires us to re-open the December 23rd Order, we will then consider additional evidence, as appropriate, to reconsider whether and on what terms to authorize the Project.

4. See *Petition of Vermont Gas Systems, Inc.*, Docket 7970, Order of 10/10/14 at 15-30.

update) into this Docket.⁵ The Board hereby defers its ruling on this motion until after the completion of the technical hearing in Docket 8328, scheduled for March 25, 2015. Any party may file responsive comments to the Palmers' motion by March 31, 2015.

SO ORDERED.

Dated at Montpelier, Vermont, this 25th day of March, 2015.

<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: March 25, 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)

5. Letter from Nathan Palmer to Susan Hudson, Clerk of the Board, dated March 10, 2015.