

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: 11/25/2014

**ORDER RE: POST-CERTIFICATION REVIEW AND
APPROVAL OF THE OLD STAGE ROAD RE-ROUTE**

I. INTRODUCTION

On December 23, 2013, the Vermont Public Service Board (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"). In the December 23rd Order we found that moving a portion of the Project along Old Stage Road in Monkton across the road and closer to an existing Vermont Electric Power Company, Inc. ("VELCO") corridor would reduce the potential impacts of the pipeline on agricultural properties while not materially increasing the construction cost and directed VGS to re-route the Project accordingly. In this Order we approve the Old Stage Road Re-Route plan proposed by VGS on February 25, 2014, and otherwise deny two motions filed by the Hurlburts.¹

1. The Hurlburt family is an adjacent landowner and a party to this Docket represented *pro se* by Michael Hurlburt.

In the December 23rd Order we determined that certain landowners of properties on Old Stage Road would be newly affected by the re-route and therefore would need to be given notice of the Project. Accordingly, we provided those landowners with an opportunity for comment on the re-route as well as an opportunity for additional process as warranted. Two affected landowners, Mr. Michael Hurlburt for the Hurlburts and Ms. Kristin Lyons, have availed themselves of this review following certification of the Project in the December 23rd Order. The post-certification review of the Old Stage Road Re-Route included a discovery process, a site visit, and the presentation of evidence by the Company and the parties at a technical hearing, as well as the filing of briefs and response briefs by the parties to assist us in informing our determination.

II. PROCEDURAL BACKGROUND

On January 17, 2014, the Board issued an Order providing notice to the landowners newly affected by the re-route announced in the December 23rd Order.

On February 25, 2014, the Hurlburts filed a request that the Board clarify the precise location of the re-route (the "Hurlburt February 25th Request").

On February 25, 2014, VGS filed its proposed post-CPG plans for the re-route (the "February 25th VGS Re-Route Plan"). The February 25th VGS Re-Route Plan deviated from the conceptual re-route announced at the technical hearings in September 2013 and addressed in the December 23rd Order by changing the re-route by 720 feet so that it crosses on to the Hurlburts' property north of the point shown in the conceptual plan, thus leaving more of the line on the Hurlburts' property.

On March 3, 2014, Ms. Lyons filed a motion to intervene, a motion for a brief additional hearing, and a motion to alter or amend the December 23rd Order (the "Lyons March 3rd Motion").

On March 12, 2014, VGS filed a response to the Hurlburt February 25th Request and the Lyons March 3rd Motion.

On April 2, 2014, the Board issued an Order granting Ms. Lyons permissive intervention under Rule 2.209(B). Consistent with Rule 2.209(C), her participation was restricted to only the visual and land-use impacts on her land.²

On April 10, 2014, the Hurlburts filed a Motion to Enforce the Board's December 23rd Order (the "Hurlburt Motion to Enforce"). This motion requested that the Board "stand by its final order and order Vermont Gas Systems to follow this re-route as depicted in the re-route drawings presented before the Public Service Board at the technical hearings. Exh. Pet. Surr. JH-1; tr. 9/17/13 at 81-82 (Heintz)."³

On April 16, 2014, the Board issued an Order (the "April 16th Order") denying the Hurlburt Motion to Enforce because the general re-route plan announced in the December 23rd Order reflected a preliminary determination subject to further modification as part of the post-certification review process.⁴

On April 25, 2014, the Hurlburts filed a request for post-certification review and a technical hearing to address site-specific concerns pertaining to the February 25th VGS Re-Route Plan.

On April 28, 2014, Ms. Lyons filed comments on the need to schedule discovery prior to scheduling the post-certification hearing requested by the Hurlburts.

On May 1, 2014, VGS filed a status report regarding communications among VGS, Ms. Lyons, and the Hurlburts in which the Company anticipated providing a further status update to the Board after a site visit.

On May 9, 2014, the Hurlburts filed a motion asking the Board to deny and dismiss the February 25th VGS Re-Route Plan (the "Hurlburt Motion to Dismiss").

On May 16, 2014, the Board issued an Order directing the parties to file any comments on the Hurlburt Motion to Dismiss by May 27, 2014.

On May 27, 2014, the Department of Public Service ("DPS" or the "Department") and VGS filed comments opposing the Hurlburt Motion to Dismiss.

2. As specifically addressed in the Lyons March 3rd Motion at 11, these include findings 448, 450, 454, 455, 456, and 458 and the Conclusions on pp. 125-127 of the December 23rd Order.

3. Hurlburt Motion to Enforce at 2.

4. April 16th Order at 2-3.

On June 12, 2014, the Board issued an Order taking the Hurlburt Motion to Dismiss under advisement and noted that the motion was not ripe for a decision in advance of post-certification review. The Order also directed VGS to consult with the other parties and to propose a schedule for the post-certification review process no later than June 30, 2014.

On July 1, 2014, VGS filed a proposed post-certification schedule including a discovery process and a technical hearing.

On July 7, 2014, consistent with its proposed schedule, VGS filed the testimony and exhibits of four witnesses.

On July 18, 2014, Ms. Lyons filed discovery questions on VGS. A corrected version of these questions was filed on July 22, 2014.

On July 23, 2014, the Agency of Natural Resources ("ANR") filed discovery requests on VGS.

On August 8, 2014, VGS filed responses to Ms. Lyons' and ANR's discovery requests.

On August 12, 2014, VGS filed a notice that lead counsel for this matter had changed, necessitating a delay in the proposed technical hearing date.

On August 21, 2014, the Board issued an Order approving VGS's proposed schedule for the post-certification review with one change extending the date of the technical hearing to September 23, 2014.

On August 27, 2014, Ms. Lyons and DPS filed the testimony of Ms. Lyons and David Raphael, respectively.

On September 2, 2014, VGS served discovery requests upon Ms. Lyons and the DPS.

On September 12, 2014, the Hurlburts filed the testimony of Michael Hurlburt and a motion to alter and amend the February 25th VGS Re-Route Plan (the "Hurlburt Motion to Alter").

On September 15, 2014, VGS served discovery requests on the Hurlburts.

On September 16, 2014, Ms. Lyons and the DPS served discovery responses on VGS.

On September 22, 2014, the Hurlburts served discovery responses on VGS.

On September 23, 2014, the Board conducted a technical hearing in Montpelier, Vermont.

On October 16, 2014, the Hurlburts filed a brief on the Old Stage Road Re-Route (the "Hurlburt Brief").

On October 17, 2014, VGS filed a proposal for decision on the Old Stage Road Re-Route (the "VGS PFD") and the DPS filed comments ("DPS Comments") on the Old Stage Road Re-Route.

On October 20, 2014, Ms. Lyons filed comments on the Old Stage Road Re-Route (the "Lyons Comments").

On October 31, 2014, VGS filed a reply brief responding to the comments of Ms. Lyons, the DPS, and the Hurlburts (the "VGS Reply Brief"). Also on October 31st, the Department filed a response to the Lyons Comments clarifying the testimony of the DPS's witness, Mr. Raphael.⁵

III. POSITIONS OF THE PARTIES

Ms. Lyons

Ms. Lyons maintains that the Board should require VGS to implement "generally available mitigation measures which a reasonable person would take to improve the harmony of the project with its surroundings."⁶ Specifically, Ms. Lyons wants to ensure "that the topography of the landscape will remain the same as before."⁷ To this end, Ms. Lyons requested that the Board condition approval of the re-route on VGS's commitment to engage in post-construction mitigation that will return the contours of the land to pre-construction conditions to the extent that is feasible.⁸ Additionally, Ms. Lyons negotiated an agreement with VGS stipulating that "if the VELCO corridor becomes visible from Old Stage Road across her land, then VGS will plant mature trees to block the visibility of the VELCO corridor"⁹ on the Lyons property in the area adjacent to Old Stage Road.¹⁰

5. Letter from Louise Porter, Esq., to Susan Hudson, Clerk of the Board, dated October 31, 2014. Specifically, the DPS clarifies that "Mr. Raphael did not recommend the planting of mature trees on Ms. Lyons' property or elsewhere. Instead, Mr. Raphael recommended that a post-construction aesthetics review should be conducted and that it should not be restricted to Ms. Lyons property."

6. Lyons pf. at 2.

7. *Id.* at 4.

8. Lyons Comments at 1.

9. *Id.*

10. *See* VGS Reply Brief at 2.

The Hurlburts

The Hurlburts actively participated as a party in the proceedings that resulted in the December 23rd Order. The Hurlburts successfully advocated for the Board to require VGS to "shift the pipeline from the east side of the road (on the Hurlburts property) to the west side of the road (and into the VELCO corridor) in order to avoid the agricultural properties (sugar bush) on their property on the east side of Old Stage Road."¹¹ In this post-certification review, the Hurlburts' position is that the February 25th VGS Re-Route Plan deviates significantly from the re-route announced in the December 23rd Order because 720 feet of the pipeline will return to the Hurlburts' property. The Hurlburts request that the Board specifically enforce the December 23rd Order and disapprove the 720-foot deviation. In the alternative, the Hurlburts propose a re-route that removes the re-routed portion of the pipeline entirely from their property and into the VELCO corridor (the "Hurlburt Alternative"). Additionally, the Hurlburts make certain technical requests if the re-route does enter their property, which include: (1) using horizontal directional drilling ("HDD") on their property; (2) installing the pipeline at a depth of 8 feet; (3) cutting ledge without blasting; (4) more soil testing for pentachlorophenol at the sites of removed VELCO power line poles on their property; and (5) installing a gas distribution station so that they might receive gas from the pipeline a mile of which they are hosting on their property.¹²

11. December 23rd Order at 57-58. The February 25th Re-Route Plan is within the VELCO corridor for approximately 1000 feet while the remainder is adjacent to the corridor. *See* finding 3.

12. Hurlburts Brief at 1, 3, 6, and 7. The Hurlburts also suggest, at 4, that "[p]erhaps the Public Service Board should re-open the record to reconsider the December 23rd Certificate of Public Good order" to address new technology related to compressed natural gas that "could be an alternative" to the pipeline. The scope of this post-certification review does not encompass a reconsideration of the final decision issued on the merits of the Project as set forth in the December 23rd Order.

DPS

The Department recommends that "the Board approve the re-route as proposed by VGS."¹³ The Department further observes that the February 25th VGS Re-Route Plan deviation makes "reasonable and appropriate accommodations to other competing interests such as landowner interests, issues of constructability, and preservation of natural resources."¹⁴ To avoid any potential adverse aesthetics impact of the re-route, the DPS recommends that "this approval be conditioned upon a requirement that Vermont Gas employ best management practices with respect to necessary tree clearing and that a post-construction review of this area be undertaken for purposes of verifying the impacts and assessing if all appropriate mitigation measures have been employed."¹⁵

VGS

The Company recommends that the Board approve the February 25th VGS Re-Route Plan because the proposed re-route "meets all the requirements for approval under 30 V.S.A. § 248(b)(5), in that the reroute will not have an undue adverse impact on aesthetics, historic sites, air and water purity, the use of natural resources, the natural environment, and the public health and safety."¹⁶ As conditions of approval, VGS agrees to: (1) return Ms. Lyons' land impacted by the construction of the pipeline to its original contours to the extent reasonably possible; (2) conduct a post-construction aesthetics review; and (3) plant mature vegetation if additional buffer is necessary in order to screen the VELCO corridor from view.¹⁷ The Company further requests that the Board deny both the Hurlburt Motion to Dismiss and the Hurlburt Motion to Alter.

13. DPS Comments at 1.

14. *Id.* at 2.

15. *Id.* at 2-3.

16. VGS PFD at 1.

17. *Id.* at 13.

IV. SCOPE OF POST-CERTIFICATION REVIEW

In Section 248 proceedings the purpose of post-certification review is to allow the development and review of site-specific plans after the Board has evaluated general route considerations in conjunction with approving a CPG for a project.¹⁸ Prior to the September 2013 technical hearings on the merits of the Project, the Hurlburts introduced information about the site-specific characteristics of the Old Stage Road section of the proposed pipeline route, in particular the presence of a sugar bush on the eastern side of Old Stage Road on the Hurlburts' property. Based on this information, the Hurlburts advocated moving the pipeline route from the eastern side of Old Stage Road to the western side and into the VELCO right-of-way. The Hurlburts' argument prompted the Board to re-assess the Company's proposed route in that area during the technical hearings. VGS responded during the hearings by presenting a potential pipeline re-route plan that generally conformed to what was proposed by the Hurlburts. Unlike the route re-alignment plans presented by VGS in its amended petition of February 28, 2013, and rebuttal testimony of June 28, 2013, this re-route plan had not been fully investigated to assess site-specific aesthetic, construction, and environmental impacts. Therefore, while the December 23rd Order generally approved the re-route proposed by the Hurlburts and reflected in VGS's testimony during the technical hearings in September 2013, the Board also determined it would conduct a post-certification review to allow for more detailed planning of the Old Stage Road re-route as well as to allow for notice and comment by the newly affected landowners.

The facts that we find as a result of post-certification review are limited to site-specific updates to aesthetic, construction, and environmental details.¹⁹ They are meant to augment the findings in the December 23rd Order. For example, as Ms. Lyons noted in her intervention motion, the site-specific elements of the December 23rd Order to be addressed in the post-certification review of her Old Stage Road Re-Route interests were specifically limited to the 10 V.S.A. § 6086(a) aesthetics review at findings 448, 450, 454, 455, 456, and 458 and the Conclusions on pages 125-127 of the December 23rd Order. While the Board has not limited its review to an update of just these specific findings in the December 23rd Order, the Board has

18. *In re Petitions of Vt. Elec. Power Co. & Green Mountain Power Co.*, 2006 VT 21, ¶ 21, 179 Vt. 3370, 895 A.2d 226.

19. *The Northwest Reliability Project*, Docket 6860, Order of 1/28/05 at 213-214.

limited itself to a review of site-specific aesthetics, construction, and environmental factors as reflected below.

V. FINDINGS

Based on the testimony of the parties and the evidence admitted during this post-certification proceeding, the Board makes the following findings in this matter.

A. Description of the Old Stage Road Re-Route

1. The re-route is located along an undeveloped stretch of Old Stage Road, approximately 1,925 feet in length. Old Stage Road is a class 3, dirt-surfaced, town highway. It appears to have relatively low use. For approximately the first 650 feet of the re-route, there are open agricultural fields to the east of Old Stage Road, and the area west of the road is wooded. For the remaining length of the re-route, Old Stage Road is wooded along both sides of the road. Michael J. Buscher, VGS ("Buscher") supp. pf. at 2.

2. The Old Stage Road Re-Route differs from the route submitted by VGS on June 28, 2013, which was entirely on the Hurlburt property starting at the northern end:

- a. The re-route leaves the Hurlburt property (LLN 181) on the east side of Old Stage Road, turns west and crosses Old Stage Road (LLN 182) at a perpendicular angle, and enters the Crandall property (LLN 188).
- b. On the west side of Old Stage Road the re-route turns south and generally parallels Old Stage Road for approximately 1,925 linear feet, all but approximately 200 feet of which is off of the Hurlburt property.
- c. The re-route leaves the Crandall property and enters the Lyons property (LLN 187).
- d. The re-route leaves the Lyons property and enters the Martin property (LLN 191).
- d. The re-route leaves the Martin property and re-enters the Hurlburt property (LLN 192).

Tyler Billingsley, VGS ("Billingsley") pf. at 2-3; exh. Pet. Supp. JAN-2.

3. Approximately 1,000 lineal feet of the re-route is located within the VELCO right-of-way on the Lyons, Martin, and Hurlburt properties. Billingsley pf. at 4; exh. Pet. Supp. JAN-2.

4. The re-route abuts the eastern, Old Stage Road border of the Lyons' 20.7-acre property. The re-route is not projected to be visible from the Lyons' residence, which is accessed from Monkton Road. Exh. Pet. Supp. JAN-2; tr. 9/23/14 at 74 (Lyons).

5. The Hurlburt Alternative would affect additional landowners who to date have not received notice that the pipeline would traverse their properties. Further, it would require a modification of the collateral permits issued by ANR and the U.S. Army Corps of Engineers and could introduce new construction and environmental issues. Tr. 9/23/14 at 50-51 (Simollardes).

6. The re-route consists of buried pipeline, running parallel to Old Stage Road, 10 feet outside of the road right-of-way. This location will accommodate a permanent 20-foot easement 10 feet either side of the pipeline adjacent to the road right-of-way. Buscher supp. pf. at 2-3.

B. Aesthetics

7. The 20-foot permanent easement area and areas within the road right-of-way, west of the roadway, will be cleared of vegetation for installation of the pipeline. This area will be seeded after construction and maintained open. Clearing along the west side of the road will be the only visual change within the area of the re-route. The roadway itself meanders within the approximately 50-foot roadway right-of-way. Therefore the width of clearing varies from approximately 20 feet to over 40 feet. Buscher supp. pf. at 3.

8. The trench for the placement of the pipeline will be four to five feet wide, and the topography impacted by the trench is generally expected to be returned to its original grade. The trench will be refilled with soil and stabilized per the required Erosion Prevention and Sediment Control ("EPSC") plan protocols and returned to the pre-construction grade. Tr. 9/23/14 at 35 (Nelson).

9. The required clearing for the re-route will result in a noticeable change to the present configuration of vegetation along the roadway, particularly along approximately 1,200 feet of Old Stage Road where both sides of the road are wooded. Buscher supp. pf. at 3.

10. The removal of the woods and vegetation on the west side of the road for the installation of the pipeline will alter the visual character of the roadway. This area will be seeded in accordance with the approved EPSC plan after construction and maintained as open space within the 20-foot permanent VGS right-of-way. Buscher supp. pf. at 3.

11. The vegetation that will be removed is particularly dense, screens the adjacent VELCO transmission line to the west, and consists of a variety of native deciduous and coniferous species. There are many mature trees included in this tree-lined environment that will be lost as a result of the construction. This will alter the current landscape character of the roadside, which currently has a rural, unfettered character with no view of utility lines. David Raphael, DPS ("Raphael") pf. supp. at 2.

12. The visual impact of the clearing will become less noticeable over time because border and understory vegetation will grow at the edge of the remaining woods, and the trees along the side of the clearing will generate new growth. Buscher supp. pf. at 3.

13. The new clearing will remove some of the woodlands buffering the VELCO corridor. However, at least 100 feet of woodlands buffer will be retained between Old Stage Road and the VELCO corridor. Tr. 9/23/14 at 46 (Buscher), 101 (Raphael).

14. To ensure the adequacy of the woodlands buffer, a post-construction aesthetics review will be conducted. Tr. 9/23/14 at 102 (Raphael).

15. The Project infrastructure in the area of the re-route is buried pipeline and will not be visible. Buscher supp. pf. at 4.

Discussion

In the December 23rd Order, we concluded overall that any undue adverse aesthetic impacts of the Project will be appropriately mitigated and that the Project meets the standards set in the Quechee analysis. The Old Stage Road Re-Route post-certification review has required us to consider the specific aesthetic impacts of the proposed re-route of the pipeline. Our conclusion about the Project overall has not been altered by our site-specific assessment – that is, that any undue adverse impacts of the Project will be mitigated, and the Project, including the re-route, meets the standard set in the Quechee analysis.

The primary site-specific aesthetic concern with the re-route is the impact of clearing the vegetation from the permanent 20-foot VGS easement on the western side of Old Stage Road. This has the potential adverse impact of reducing the woodlands shielding the view of the VELCO corridor. The testimony, however, persuades us that this concern can be effectively addressed through mitigation. Thus, in order to avoid potential adverse impact, we are conditioning our approval of the re-route on a requirement that the Company employ best

management practices with respect to necessary tree clearing and that a post-construction review of this area be undertaken for purposes of verifying the predicted impacts and assessing whether all appropriate mitigation measures have been employed. If the post-construction aesthetics review indicates that further mitigation is required to shield the view of the VELCO corridor, the Company shall take further measures to mitigate that impact.

A second site-specific aesthetics concern with the re-route is the impact of construction on the topography of the Lyons property. In response to this concern, VGS has agreed to: (1) return Ms. Lyons' land impacted by the construction of the pipeline to its original contours to the extent reasonably possible; (2) conduct a post-construction aesthetics review of the Lyons property; and (3) plant mature vegetation if additional buffer is necessary in order to provide screening of the VELCO corridor. Our approval of the re-route is conditioned on VGS's compliance with these agreed-upon mitigating conditions. To allow for seasonal variation, this site-specific woodlands clearing assessment shall be conducted in addition to the overall Project post-construction aesthetics review, as required by paragraph 14 of the CPG, within 120 days of the completion of the Project.

Any undue adverse impacts of the re-route will be appropriately mitigated, and the re-route will not be shocking or offensive to the average person. Therefore, the re-route plan has not caused the Project to deviate from the standards set in the Quechee analysis.

C. Construction Concerns

16. Open-cut trenching is planned along the entire length of the re-route. Billingsley supp. pf. at 4.

17. Horizontal directional drilling ("HDD") may be employed in any areas of the re-route that raise archeological concerns. Tr. 9/23/14 at 38 (Nelson).

18. If ledge is encountered during installation of the pipeline, it may be removed by excavator, trencher, or blasting, depending on the nature of ledge. Tr. 9/23/14 at 34 (Nelson).

19. Utility companies, including natural gas companies, try to avoid working with ledge due to costs and side effects of blasting. Tr. 9/23/14 at 78 (Lyons).

20. VGS has entered into a Memorandum of Understanding with the Vermont Agency of Agriculture, Food and Markets that specifies how VGS is to work with agricultural landowners

to ensure protection of existing drainage tiles as the Project is being constructed and to repair any tiles damaged during construction. Tr. 9/23/14 at 28-29 (Nelson), 53, 57 (Simollardes).

21. Encountering agricultural drainage tiles during pipeline construction is not uncommon, and there are protocols in place to ensure their protection. Tr. 9/23/14 at 57 (Simollardes).

22. The deeper the pipeline is buried, the greater the cost and effort required to build the project. Burying the pipeline to a depth of eight feet to avoid tile is not a standard practice and would create an unnecessary increased cost. Tr. 9/23/14 at 41 (Billingsley) and at 60 (Simollardes).

23. Any blasting on the reroute would include, where applicable, pre-blasting and post-blasting testing of wells for quality and quantity of water. Tr. 9/23/14 at 12-13 (Billingsley), 34-35 (Nelson).

24. VGS is prepared to exercise standard protocols to respond to archeological concerns along the pipeline route. These protocols rely upon the University of Vermont Consulting Archeology Program to conduct a survey and make recommendations for disposition, which, along with the possible use of HDD to leave the artifacts undisturbed, may include recovering artifacts or realigning the pipeline to avoid them. Tr. 9/23/14 at 31-32, 38-39 (Nelson); *see* December 23rd Order at Findings 459-468 and the Discussion at 128.

25. The Hurlburts have not permitted access to their property to conduct an archeological assessment, so the extent of any archeologically sensitive areas along that portion of the re-route is not known. Once an assessment has been conducted, further adjustments to the construction of the re-route on the Hurlburts' property may be required to avoid archeologically sensitive areas. Tr. 9/23/14 at 31-32 (Nelson).

Discussion

There are no unique construction concerns associated with the Old Stage Road Re-Route. The topography and geological features of the re-route do not present construction challenges that have not otherwise been addressed elsewhere along the Project route. Construction protocols being exercised for the Project as a whole include: (1) the use of HDD as necessary to supplement open trenching in order to mitigate environmental impacts and to avoid archeologically sensitive areas; (2) installation of the pipeline at the minimum depth consistent with standard safety and pipeline construction practices; (3) limited blasting to cut ledge only if

necessary and consistent with the Project blasting plan; (4) soil testing consistent with the Project's soil management plan;²⁰ and (5) the installation of a gas distribution station in areas of appropriate population density to ensure its economic viability. The evidence presented in the post-certification technical hearing provides no basis to deviate from these standard Project practices. Further, VGS recognizes that if agricultural drainage tiles are damaged during pipeline construction, the Company has an obligation to repair any damaged tiles. The Hurlburts have asked for special accommodations but have not demonstrated any unique features of their property or any other reason to require special treatment that may further increase the costs of the Project.

The only remaining construction issue is whether there are areas of archeological sensitivity on the portion of the re-route that is located on the Hurlburts' property. As an archeological assessment of the Hurlburts' property has yet to be performed, it is not yet possible to determine what steps, if any, may be needed to protect any archeologically sensitive areas there. Therefore, no construction issues have been raised that weigh against our post-certification approval of the re-route plan. However, we remind VGS of its obligation to complete an archeological survey and to take any mitigating action consistent with Condition 15 of the CPG and with the protocols already established for the Project at the lowest appropriate additional cost.

D. Environmental Factors

26. There is a small Class III wetland, designated 2012-JB-11, along the west side of Old Stage Road, on the Lyons property. No other streams, wetlands, vernal pools, floodplains, or fluvial erosion hazard zones were found within the subject area. Class III wetlands exist along both the west and east side of Old Stage Road. Nelson supp. pf. at 3.

20. In the Hurlburt Brief, the Hurlburts request that the Board direct VGS to take extraordinary corrective action in response to VELCO pole removal activities on their property. We will not do so. We have found that VGS's soil management plan "sets forth protocols for identifying, avoiding, and mitigating potential sources of contamination that may exist in the vicinity of the Project route" and "is a reasonable approach to managing this risk." Docket 7970, Order of 8/26/14 at 3 and 8. There has been no evidence presented by the Hurlburts during the post-certification review to justify requiring VGS to comply with additional soil testing requirements.

27. Minor temporary and secondary impacts to the wetland on the west side of the road will result from the re-route. The re-route does, however, reduce the total temporary wetland impacts from approximately 1,800 square feet to 800 square feet. Nelson supp. pf. at 3; tr. 9/23/14 at 31 (Nelson).

28. ANR has reviewed and concurred with the wetland delineations and classifications along the re-route. Nelson supp. pf. at 3.

29. The re-route will not significantly impact the deer wintering areas located on both sides of Old Stage Road. Nelson supp. pf. at 4.

30. No rare, threatened, or endangered plant species were identified along the re-route. Nelson supp. pf. at 4.

31. The re-route will not affect rare, threatened, or endangered animal species or any trees along Old Stage Road that could be used for bat maternity roosting habitat. Nelson supp. pf. at 4-5.

32. By moving the pipeline to the western side of Old Stage Road, the re-route avoids impacts to a significant natural community of Mesic Maple-Ash-Hickory-Oak forest located on the eastern side of Old Stage Road. This area has also been described as a sugar bush that is used for the production of maple syrup on the Hurlburts' property. Nelson supp. pf. at 5-6.

33. The EPSC plan for the Project has been updated to include appropriate best management practices, consistent with the Vermont Department of Environmental Conservation standards and specifications for erosion prevention and sediment control. Nelson supp. pf. at 7; exh. JAN-Supp-9.

34. On June 9, 2014, ANR issued the following collateral permits for the Project including the Old Stage Road Re-Route:

- Construction Stormwater Discharge Permit #6949-INDC;
- Vermont Wetland Permit #2012-184;
- Section 401 Water Quality Certification; and
- Stream Alteration Permit #SA-5-9029.

Nelson supp. pf. at 8.

35. On June 23, 2014, the U.S. Army Corps of Engineers issued the Section 404/Section 10 permit (#NAE-2012-0123) for the Project. Nelson supp. pf. at 9.

Discussion

The re-route plan does not create new adverse impacts requiring the Board to reconsider finding 257 of the December 23rd Order that the Project as conditioned will not have an undue adverse impact on the natural environment. VGS has exercised due diligence in conducting environmental review of the Old Stage Road Re-Route, as evidenced by the receipt of the permits noted above at findings 34 and 35. The receipt of these permits also provides evidence that the re-route meets environmental criteria of Section 248(b)(5).

The Board further notes that the re-route moves the pipeline from the Hurlburts' sugar bush on the eastern side of Old Stage Road to the western side, as contemplated in our December 23rd Order, and reduces the potentially adverse environmental impacts of the pipeline even as it ensures the continued agricultural viability of that asset for the Hurlburts.

VI. DENIAL OF THE HURLBURT MOTIONS

On May 9, 2014, the Hurlburts filed the Hurlburt Motion to Dismiss in which the Hurlburts request that the Board specifically enforce the December 23rd Order and disapprove the 720-foot deviation from the re-route presented at the technical hearing in September 2013. On June 12, 2014, the Board issued an Order taking the Hurlburt Motion to Dismiss under advisement, and noted that the motion was not ripe for a decision in advance of the post-certification review. On September 12, 2014, the Hurlburts filed the Hurlburt Motion to Alter in which the Hurlburts requested that the Board amend the re-route so that it is entirely in the VELCO right-of-way. Having now completed the post-certification review and approved the re-route as proposed by VGS on February 25, 2014, including the 720-foot deviation from the re-route presented at the technical hearing in September, the Board hereby denies both the Hurlburt Motion to Dismiss and the Hurlburt Motion to Alter.

We are not persuaded by the Hurlburts' argument in the Hurlburt Motion to Dismiss that the pipeline must be in the VELCO corridor because of VGS's Memorandum of Understanding with the Town of Monkton (the "Monkton MOU") which was approved as a condition of the December 23rd Order. Because the Monkton MOU requires a 300-foot setback from structures,

the Hurlburts argue that the setback would prohibit future development of their property. In the December 23rd Order the Board found that the 300-foot setback was a safety goal expressed in the Monkton MOU, rather than a requirement. In designing the Project route in Monkton, VGS observed that setback where feasible, but the Board found that it was not possible to achieve the 300-foot setback from structures throughout the entire Monkton route.²¹ We also note that the Monkton MOU requires that the pipeline be constructed "within or adjacent to" the VELCO corridor.²² The re-route approved here is within or adjacent to the VELCO corridor and hence consistent with the terms of the Monkton MOU, rather than in violation of it as argued by the Hurlburts.

Additionally, in the Hurlburt Brief, the Hurlburts make certain technical requests including: (1) using horizontal directional drilling on their property; (2) installing the pipeline at a depth of 8 feet; (3) cutting ledge without blasting; (4) testing more soil for pentachlorophenol at the sites of removed VELCO power line poles on their property; and (5) installing a gas distribution station so that they might receive gas from the pipeline, a mile of which they are hosting on their property. We are not persuaded that these additional technical requests are necessary for three reasons. First, conditioning our approval of the Project on these requests would probably increase the cost of the Project without achieving commensurate benefits under the criteria we apply. The Board notes that one factor considered in its decision to order the re-route out of the Hurlburts' sugar bush was testimony during the September 2013 technical hearings that the re-route would be cost-neutral.²³ Second, we have otherwise determined that the existing Project protocols for each of these technical areas are appropriate and adequately avoid adverse environmental impacts. Third, the Hurlburts have not provided any environmental justification for these requests. We note that no party presented site-specific information on these issues, in part because the Hurlburts have not permitted a survey of their property to verify the concerns that underlie these extraordinary, and costly, requests.

21. December 23rd Order at findings 119, 120, 141,143.

22. Exh. Monkton SP-2 at 2.

23. December 23rd Order at 57.

VII. CONCLUSION

Our approval of the Old Stage Road re-route has required an assessment of the same factors that we balanced in making the overall routing decision in this case. As we stated in the December 23rd Order:

Siting the proposed transmission line in this area reflects a challenging puzzle involving pieces that include property rights, engineering, land-use, and environmental concerns. In addressing issues of the public good, we strive to satisfy the concerns of all the affected parties. However, we are seldom presented with options which eliminate all impacts on all parties. Therefore, we endeavor to minimize and mitigate such impacts when possible bearing in mind that our statutory charge is to make decisions that best provide for the overall public good of the people and ratepayers of the State of Vermont.²⁴

Though focused on only a small part of the overall Project, our post-certification review and approval of the Old Stage Road Re-Route have similarly resolved a site-specific challenge that implicates multiple property rights, engineering, land-use, and environmental concerns. The re-route produces positive results: (1) for the Hurlburts, by reducing the impact on their sugar bush; and (2) for the environment, by reducing the wetlands impact by 1,000 square feet and removing the pipeline from a significant natural community of forest on the eastern side of Old Stage Road. The re-route does, however, compound property-rights concerns by affecting additional landowners. Effectively, by moving the route as recommended by the Hurlburts, the pipeline now also crosses the property of their neighbors, the Crandalls, the Martins, and Ms. Lyons. We adopted this change because it was cost-neutral and more beneficial to the environment. While we can justify this trade-off because of its overall benefits to the public good, we have not been presented any reason to alter the route further, which would entail further process to respond to yet other landowners who would be impacted by the Hurlburt Alternative, and require further costly engineering, planning, and permitting processes. However, no showing has been made as to how these costs and burdens attendant to the Hurlburt Alternative are warranted in order to promote the public good, as opposed to the Hurlburts' interests, which have already received significant consideration in this proceeding. Thus, finding the Old Stage Road Re-Route to have a net benefit, we approve it.

24. *Id.* at 56.

VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the design plans for the February 25th VGS Re-Route Plan are approved. Once all necessary permits have been obtained, construction may commence at these locations, subject to the following conditions:

1. Vermont Gas Systems, Inc. ("VGS") shall take those measures reasonably necessary to restore any lands disturbed by construction of the transmission pipeline to the original grade, landscaping, and vegetation.
2. VGS shall employ best management practices with respect to necessary tree clearing and conduct a post-construction aesthetics review of the woodlands buffer of the VELCO corridor along the re-route. To allow for seasonal variation, this site-specific woodlands clearing assessment shall be conducted in addition to the overall Project post-construction aesthetics review required by paragraph 14 of the CPG within 120 days of the completion of the Project.
3. VGS shall plant mature vegetation, including mature trees on the Lyons property if needed, if additional mature woodlands buffer is necessary in order to provide further screening of the VELCO corridor visible from Old Stage Road adjacent to the Lyons property on the re-route.
 4. VGS shall conduct soil testing consistent with the Project's soil management plan.
 5. In its construction of the re-route, VGS shall observe the construction protocols and conditions of the December 23rd Order and CPG except as otherwise modified herein.

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

<u>s/James Volz</u>)	PUBLIC SERVICE
)	
<u>s/John D. Burke</u>)	BOARD
)	
)	OF VERMONT
<u>s/Margaret Cheney</u>)	

OFFICE OF THE CLERK

FILED: November 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)

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.