

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7970

Amended 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)
Pipeline" 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: 8/4/2014

ORDER RE: VGS EMERGENCY MOTION TO DISSOLVE IN PART
THE STAY ON CONSTRUCTION IN THE VELCO CORRIDOR

INTRODUCTION

On July 25, 2014, the Vermont Public Service Board ("Board") issued an Order (the "July 25th Order") requiring that Vermont Gas Systems, Inc. ("VGS" or the "Company") temporarily halt all soil-disturbing activity associated with the construction of Phase I of the Addison Natural Gas Pipeline (the "Project") in the right-of-way owned by the Vermont Electric Power Company, Inc. ("VELCO") until after the Company had filed a soil management plan ("SMP") for consideration by the Board, following an opportunity for comment by parties to this Docket.¹ The requirement for VGS to file an SMP was intended as a precautionary post-certification measure to ensure that the Company's construction activities would be undertaken with a protocol in mind for addressing the potential of the Project to disturb soils that might be contaminated with Pentachlorophenol ("PCP") from VELCO's utility poles.

1. VGS filed the SMP on July 25, 2014. Pursuant to the July 25th Order, comments on that plan were due on August 1, 2014. To date, the Board has received comments from the Agency of Natural Resources ("ANR"), Kristin Lyons, Jane and Nathan Palmer and the Town of Monkton, and the Hurlburts.

On August 1, 2014, VGS filed an emergency motion for partial dissolution of the stay (the "VGS Motion"). In this Order, the Board grants the VGS Motion and authorizes VGS to construct the Project within the VELCO right-of-way in the Redmond Road area identified in the VGS Motion.

DISCUSSION

The VGS Motion states that the Company has begun construction of the Project but has not, to date, conducted soil-disturbing activities in the VELCO corridor. However, VGS states that it plans to construct in a number of locations within the VELCO corridor this construction season. Specific to the instant emergency motion, VGS states that it had expected to begin construction in the Redmond Road area on Monday, August 4, before the Board issued the construction stay in the July 25th Order. According to VGS, in this area the Project intersects with the VELCO right-of-way for roughly 160 feet. The nearest utility pole is roughly 90 feet from the Project Limit of Disturbance. VGS avers under oath that its consultant, Vanasse Hangen Brustlin, Inc. ("VHB"), conducted what VGS characterizes as "a conservative risk assessment" and determined that there is no risk of PCP contamination in the Redmond Road Project area.² VGS also represents that it has discussed this matter with ANR, the Agency of Agriculture, Food, and Markets, and the Department of Public Service ("DPS") and that those agencies support VGS's emergency Motion to lift the construction stay in the Redmond Road area because there are no utility poles in that area and therefore no risk of environmental or health impact and no need to prohibit construction activities.

VGS further represents under oath that it will suffer substantial financial injury under the current stay.³ VGS estimates that it will lose at least \$20,000 under the stay, with costs increasing each day that the stay remains in place due to "lost productivity, and the costs associated with VGS' contractor preparing the work area and beginning work on either side of the

2. Affidavit of Charles Pughe on behalf of VGS, dated August 1, 2014 (the "Pughe Affidavit").

3. Pughe Affidavit at 2.

VELCO right-of-way, progressing beyond the VELCO right-of-way, and then bringing equipment and crews back to the site once the stay is lifted."⁴

Later in the afternoon on August 1, 2014, after the VGS Motion was filed, ANR submitted comments on the SMP stating that it would be acceptable for the Board to partially lift the construction stay because construction at the Redmond Road Project location "does not pose a risk of contamination of soils or groundwater from PCP treated poles."⁵

The Board hereby grants the motion and lifts the stay in the Redmond Road area identified by VGS. The Company has presented credible information indicating that the construction of the Project in this area is 90 feet from the nearest pole. In addition, its consultant has reviewed the area and has not identified any areas of anticipated elevated risks to human health or the environment in the area.⁶ VGS has also consulted with state agencies⁷ with expertise on the PCP contamination issues. These agencies support the limited lift of the stay requested by VGS. Therefore, based on these considerations, we grant the VGS Motion.

Having ruled on the VGS Motion for the reasons stated above, there is no need for us to address at this time the legal arguments raised in the VGS Motion regarding the adequacy of the Hurlburt Motion filed on June 27, 2014, to delay construction of the Project (the "Hurlburt Motion"). Rather, we take this opportunity to clarify that, in staying the construction of the Project in the July 25th Order, the Board acted on its own initiative pursuant to its general supervisory jurisdiction as a precautionary measure to protect public health and safety. In so doing, the Board relied upon the views expressed by ANR and VGS to the effect that "it would be prudent for [VGS] to develop and implement an SMP for construction."⁸ Thus, the Board did not consider the Hurlburt Motion in issuing the limited construction stay, and the July 25th Order did not constitute a ruling upon the Hurlburt Motion, which remains pending before the Board for review and disposition in due course.

4. Pughe Affidavit at 2-3.

5. Letter from Judith Dillon, Esq., on behalf of ANR, to Susan M. Hudson, Clerk of the Board, dated August 1, 2014.

6. Pughe affidavit at 2.

7. ANR, DPS, and the Agency of Agriculture, Food, and Markets.

8. Letter of Kimberly K. Hayden, on behalf of VGS, to Susan M. Hudson, Clerk of the Board, dated July 21, 2014.

We note that VGS has now developed and filed an SMP. We appreciate VGS's efforts in undertaking what we consider to be a reasonable precautionary post-certification measure to address the potential construction impacts of the Project in regard to PCPs. Several comments have now been filed by other parties on the SMP, all of which we will carefully consider and promptly address by separate order. In the interim, the limited request made in the VGS Motion to lift the July 25th stay is granted for the reasons set forth in this Order.

SO ORDERED.

Dated at Montpelier, Vermont, this 4th day of August, 2014.

s/ James Volz)

) PUBLIC SERVICE

s/ John D. Burke)

) BOARD

s/ Margaret Cheney)

) OF VERMONT

OFFICE OF THE CLERK

FILED: August 4, 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.