

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: 4/16/2014

ORDER RE: HURLBURT MOTION TO ENFORCE

I. INTRODUCTION AND PROCEDURAL BACKGROUND

In today's Order, the Board denies the request of Michael Hurlburt for the Board to specifically enforce a re-route plan at Old Stage Road in Monkton that was generally addressed in the December 23rd Order.

On December 23, 2013, the Vermont Public Service Board (the "Board") issued a final Order (the "December 23rd Order") in which the Board determined that the general good of the State of Vermont would be served by 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, the Board directed the Company to file a specific proposal for a re-route in the vicinity of Old Stage Road based on the general guidance that the re-route "shift the pipeline from the east side of the road (in the Hurlburt property) to the west side of the road (and

into the VELCO ROW)."¹ This re-route was intended to be considered as part of post-certification review along with the comments of newly-affected landowners.

On February 25, 2014, Mr. Hurlburt filed a Request for Clarification of the December 23rd Order (the "February 25th Request"). Mr. Hurlburt indicated that he had reviewed a "new February 7th, 2014 draft route proposal" and that he objected to the proposal. There was, however, no specific request for relief or clarification articulated in the filing, so, while noting the objection, the Board did not respond.

Also on February 25, 2014, VGS filed a "Post-CPG Plan" for the Old Stage Road re-route. The Company's filing was in response to Condition 7 of the CPG which directed VGS to file a specific proposal for a re-route. The Company's filing illustrated a redesigned re-route that shifted much of the pipeline off of Mr. Hurlburt's land but left approximately 720 feet of pipeline on Mr. Hurlburt's property.

On March 12, 2014, VGS filed a response to Mr. Hurlburt's February 25th Request in which it argued that the redesigned re-route, though it differed from the general route addressed in the December 23rd Order, was consistent with the Order and was the most appropriate route for several reasons.

On April 10, 2014, Mr. Hurlburt filed a Motion to Enforce the Board's December 23rd Order ("Hurlburt Motion to Enforce"). This motion specifically 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)."

II. DISCUSSION AND CONCLUSION

Mr. Hurlburt's motion contends that the December 23rd Order adopted a specific plan for the Old Stage re-route as depicted in Exhibit Pet. Surr. JH-1. Therefore, according to the motion, the Board should order VGS to follow that specific re-route proposal.

We do not share Mr. Hurlburt's interpretation of the December 23rd Order and therefore deny his request for specific enforcement. The transcript of the hearing in which the Old Stage

1. See Docket 7970, Order of 12/23/13 at 57-58, finding 149.

Road re-route was presented supports our conclusion that the route described in Exhibit Pet. Surr. JH-1 was preliminary and that the Board did not intend to bind the Company to the details of that document. Specifically, when questioned by the Board whether the re-route presented at the hearing constituted the Company's proposal, the witness stated that VGS had not made a decision about a specific proposal but indicated that a proposal would be forthcoming.² For these reasons, we find no basis in the record to conclude that the Board intended to bind VGS to the re-route as shown in the exhibit.

The language of the December 23rd Order also does not support Mr. Hurlburt's position that the Board approved specific plans for the re-route based on the exhibit shown at the technical hearing. The language of the Order calls for "comment and additional process as warranted"³ and reflects the intent of the Board that the proposed alternative plan briefed by VGS at the technical hearing be further assessed and finalized as part of the post-certification review process. This was necessary in part because VGS had not proposed a specific route, but also because several landowners were newly affected by the re-route and deserved the opportunity for comment. The Order therefore approved a general re-route that allowed for later changes as needed as part of post-certification review. Notably, the Order does not state that the re-route shall be the specific route as shown on Exhibit Pet. Surr. JH-1. Accordingly, the Board included the following general condition of approval in the Project's CPG: "VGS shall construct pipeline re-routes at Rotax Road and Old Stage Road in Monkton consistent with the provisions of this Order."

Based on this language and the testimony at the technical hearing, we conclude that the December 23rd Order did not create an enforceable obligation for the Company to construct the Old Stage Road re-route in conformity with the route described in Exhibit Pet. Surr. JH-1. Instead, the December 23rd Order requires that the Company finalize the general re-route plan and present a specific re-route proposal which would be considered, along with the comments of newly-affected landowners, as part of post-certification review.

In closing, we reiterate that the December 23rd Order was the final resolution of the question of whether the construction of a natural gas pipeline would promote the general good of

2. Tr. 9/17/13 at 87 (Heintz).

3. Docket 7970, Order of 12/23/13 at 58.

the State.⁴ In that Order, we determined that Vermont Gas Systems, Inc., will be able to construct the Project in a manner that will not create an undue adverse impact under any of the relevant Section 248 criteria, and we established the general route for the proposed pipeline. After issuance of the December 23rd Order, this proceeding progressed to the post-certification phase of the regulatory review of the Project.⁵ Post-certification review is focused on the design details of the construction and may result in additional changes to the route. Post-certification review would allow for the acceptance or rejection of the re-designed re-route proposed by the Company in its February 25th "Post CPG Plan."

Post-certification review also allows for additional technical hearings into site-specific factual issues like the re-designed re-route proposed by the Company. A post-certification technical hearing would allow for the parties to develop evidence specific to the site without upsetting the general determinations made in the December 23rd Order.

Therefore, while we hereby deny Mr. Hurlburt's Motion to Enforce, we inform Mr. Hurlburt that he can request a technical hearing to address his site-specific concerns.⁶ The Board directs that any request for such a hearing should be filed by April 30, 2014.

SO ORDERED.

4. Docket 7970, Order of 12/23/13 at 145; Docket 7970, Order of 3/10/14 at 5.

5. We employed a similar post-certification process in the regulatory review of the Northwest Reliability Project. *See Northwest Reliability Project*, Docket 6860, Order of 1/28/05, *aff'd In re Petitions of Vt. Elec. Power Co. & Green Mountain Power Co.*, 2006 VT 21, ¶ 21, 179 Vt. 3370, 895 A.2d 226.

6. Mr. Hurlburt is similarly situated with his neighbor Ms. Lyons who has been granted a post-certification hearing by the Board as a landowner directly affected by the Old Stage Road re-route. Therefore, Mr. Hurlburt may also request a hearing. The Board also notes that Mr. Hurlburt may wish to consult with Ms. Lyons, so that the timing of any future hearings may be coordinated.

Dated at Montpelier, Vermont, this 16th day of April, 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: April 16, 2014

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@state.vt.us)