

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 17-3550-INV

Investigation pursuant to 30 V.S.A. §§ 30 and 209 regarding the alleged failure of Vermont Gas Systems, Inc. to comply with the certificate of public good in Docket 7970 by burying the pipeline at less than required depth in New Haven, Vermont	
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Case No. 18-0395-PET

Notice of Probable Violations of Vermont Gas Systems, Inc. for certain aspects of the construction of the Addison natural gas pipeline	
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**VGS’S MOTION FOR HEARING OFFICER TO REVISE PROCEDURAL SCHEDULE
TO ALLOW FOR MOTIONS FOR INTERLOCUTORY REVIEW**

Vermont Gas Systems, Inc. (“VGS”) respectfully moves the Hearing Officer to stay the current procedural schedule and deadline of February 19, 2021 to file proposed penalty phase schedules to accommodate a VGS motion for interlocutory review by the Vermont Public Utility Commission (“Commission”) no later than February 26, 2021 and for the parties to respond to that motion by March 12, 2021.

VGS has conferred with Intervenors, the Department of Public Service (“Department”) and the Agency of Natural Resources (“ANR”). VGS understands that the Department plans to make its own filing regarding this scheduling request. ANR has represented that it agrees to this proposed schedule. Intervenors do not agree. VGS respectfully requests a decision on this Motion as soon as possible to allow adequate time to anticipate upcoming deadlines.

In support of this Motion, VGS states the following:

1. On January 29, 2021, the Hearing Officer issued in this Case an Order Re: Liability and Lifting the Stay of Proceedings in Case No. 18-0385-PET (the “Liability Order”).

2. In that Order, the Hearing Officer stated, that, “[t]his order is not a proposal for decision. This Order is also not a final judgment, and the parties may request that I reconsider my conclusions or that the Vermont Public Utility Commission (‘Commission’) conduct an interlocutory review of this Order.” Liability Order at 2.

3. The Commission has not adopted procedures for interlocutory review of a hearing officer’s decision prior to the submission of a Proposal for Decision, however, the Commission has generally looked to the Vermont Rules of Appellate Procedure for substantive guidance regarding when the Commission should conduct such a review.¹

4. Procedurally, requests for interlocutory review under the Vermont Rules of Appellate Procedure are filed with the Superior Court within 14 days of the order from which an appeal is sought. See V.R.A.P. 5(b)(5)(A) (“The motion must be filed within 14 days after entry of the order or ruling appealed from...”); V.R.A.P 5.1(a)(2) (“A request for permission to appeal must be filed within 14 days after entry of the order or ruling appealed from.”).

5. If permission for appeal is granted by the Superior Court, briefs on the merits or motions to dismiss the appeal are subsequently filed with the Supreme Court. See V.R.A.P. 5.

6. The Commission’s practice appears to differ from the Appellate Rules in that the Commission, rather than the hearing officer, decides whether to allow an appeal on an interlocutory basis.² Additionally, parties seeking interlocutory review have typically combined their request for review with the merits of their arguments on appeal, whereas parties have

¹ Investigation into Meteorological Tower at 700 Kidder Hill Rd. in Irasburg, Vermont., Docket No. 8585, 2019 WL 5963317, at *1 (Vt. Pub. Serv. Bd. Nov. 6, 2019)(“The Commission looks to the Rules of Appellate Procedure for guidance in deciding whether to engage in an interlocutory review of a hearing officer's interim decision, in particular rules 5(b) and 5.1(a).”).

² See e.g., Docket No. 8585, supra Fn 1 (Commission deciding interlocutory motion).

additional time to prepare briefs on the merits of the appellate issues under the Vermont Rules of Appellate Procedure.

7. This case meets the standard for interlocutory review under Rule 5(b), which requires the courts to allow an interlocutory appeal when an “order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion” and “an immediate appeal may materially advance the termination of the litigation.”

8. The Liability Order did not establish any deadline for requesting interlocutory review by the Commission, and the 14-day period contemplated under V.R.A.P. 5 does not strictly apply in Commission proceedings. Additionally, VGS would request more time to review the 53-page Liability Order as well as the extensive evidentiary record in order to prepare a motion that addresses both the V.R.A.P. 5 standard as well as the merits of any issues appealed, as appears to be Commission practice.

9. Accordingly, VGS respectfully requests that the Hearing Officer issue a scheduling order in this matter that allows VGS to file a motion for interlocutory review of the Liability Order with the Commission no later than February 26, 2021, allows parties to respond to that motion by March 12, 2021, and permits the parties to propose a schedule for any penalty phase of the proceeding two weeks following the Commission’s resolution of VGS’s request for interlocutory review.

DATED at Burlington, Vermont, on this 4th day of February, 2021.

VERMONT GAS SYSTEMS, INC.

By: /s/ Owen J. McClain

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