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December 17, 2015

Susan Hudson, Clerk
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05602-2707

HAND DELIVERED

Re: 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

Dear Sue:

Enclosed please find the original and seven (7) copies of the Direct Brief on behalf of Nathan and Jane Palmer. A copy will be served to electronic copy recipients upon electronic service with the Board. In addition, a copy will be mailed to those attorneys noted below.

Thank you for your assistance.

Sincerely,

David L. Grayck

David L. Grayck, Esq.

cc: Electronic Service
Louise C. Porter, Esq.
Kimberly K. Hayden, Esq.
Peter H. Zamore, Esq.
Jim Dumont, Esq.
Sandra Levine, Esq.
Richard H. Saudek, Esq.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7970

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together with three new gate stations in	)
Williston, New Haven and Middlebury,	)
Vermont	)

DIRECT BRIEF BY NATHAN AND JANE PALMER
PROCEDURAL ORDER RE: SUPPLEMENTAL EVIDENTIARY HEARING

Introduction

Nathan and Jane Palmer (Palmers) submit this Direct Brief as provided for in the Board's Order of November 2, 2015 (the "November 2 Order") in the above referenced matter, as modified at the hearing held on December 9, 2015. The November 2 Order pertains to the submission to Board by Vermont Gas Systems, Inc. (VGS) and the Department of Public Service (DPS) of a Memorandum of Understanding entered into by and between VGS and DPS on October 7, 2015 (the "MOU"). Because the October 7, 2015 submission of the MOU violated the Board's rules, VGS subsequently complied with the Board's rules and filed a motion to admit the MOU on October 15, 2015 (the "VGS Motion").

Discussion

The November 2 Order states at Page 4 with respect to the VGS Motion and the hearings held on December 1 and 9, 2015:

> [W]e have concluded that the public interest will best be served by our ruling on the VGS Motion after we have held an evidentiary hearing, followed by briefing. This process will help us to more fully understand the nature of the commitments contained in the MOU and the weight, if any, that the Board should accord those commitments. Furthermore, this process will afford the parties a fair opportunity to cross-examine and to present evidence on the questions of whether and how the MOU might relate to our ultimate ruling on the pending Rule 60(b) motions in the Second Remand. Accordingly, we will conduct a further evidentiary hearing to consider the MOU. In addition to permitting inquiry into the documents at issue in the AARP Motion as discussed above, the scope of this hearing will be to examine the nature, relevance, and materiality of the MOU as it relates to the record of (1) the First Remand hearings of September 2014 and subsequent briefing, and (2) the Second Remand hearings of June 2015 and subsequent briefing.

I. THE NATURE OF THE COMMITMENTS CONTAINED IN THE MOU

Dr. Hopkins testified that:

(i) The rate cap in the MOU would reduce the expected period of cross subsidy by approximately year, that is, instead of ending between years 33 and 34, it would now be expected to end between years 32 and 33 (Hopkins Pft. 11/6/15 page 10, line 19).

(ii) He had never heard of a situation where this cross subsidy has lasted this long in order to bring in some new customers to a company (Tr. 12/1/15 131:14-18).

(iii) Even though a cross subsidy of 32 to 33 years was "longer than might be desired, is reasonable" (Tr. 12/15/15 130:23-24), he could not say what he thought would be too many years because such a question was "too hypothetical for me to be able to give you a concrete answer." (Tr. 12/1/15 131:7-9).

Ms. Simollardes testified:

(i) There is no interplay between used and useful and the $134 million cap provided for in the MOU (Tr. 12/1/15 104:5-12).

(ii) The cross subsidy from existing ratepayers to build the proposed Project as authorized by the CPG is in the range of 32 to 33 years, if the assumed cost is $134 million (Tr. 12/1/15 104:13-17).

(iii) The benefit of the MOU is it reduces the amount of the crossover that otherwise would have been absent the MOU by up to two years where the cost decreases from $153 million to $134 million such that the crossover goes down 34 years to 32 years "Thereabouts" (Tr. 12/1/15 105:7-14).

(iv) She did not attempt to do a broader reanalysis of the overall benefits of the project, but rather, "simply took the analysis we had done before, some of which had been done in response to Board questions, and reflected the cost recovery cap of 134 million in there in lieu of the 153.6." (Tr. 12/1/15 115:1-11).

(v) While she estimates that the potential rate impact of the project with the 134 million dollar cap over 10 years is "about 1.1 to 1.2 percent lower than what the 153 was" (Tr. 12/1/15 118:8-9), this analysis "is a very mechanical analysis given a specific set of assumptions. It is not a rate proposal" (Tr. 12/1/15 118:11-13) such that she agreed that her testimony regarding rate impact decrease "are all forecast based upon those costs, not actually what the rate making proposals are going to be." (Tr. 12/1/15 120:13-16).

Mr. Rendall testified:

(i) In response to the question, "Was it your intent with the filing on October 7 to influence the outcome of the pending Rule 60(b)(2) and Rule 60(b)(3) motions?" that "It was our

intent to assure our customers, to assure our stakeholders, to assure our regulators including the Department and the Board, that we were prepared to take the risk of the cost of this project over the cap for 134 million dollars, with respect to all of those pieces and parts of the project over which we have control; that is the estimating, the construction, the whole – the whole of the project." (Tr. 12/1/15 29:11-21).

(ii) When further asked, "Was the filing on October 7 intended to influence the outcome of the Board's decision on the pending Rule 60(b) motions?" his response was "The purpose of the filing was to make clear to the Board, among others, that the company was prepared to and had agreed with the Department to cap the amount of costs that it would seek to recover in rates under this project at 134 million. It was also our intent to make clear that it was important that this – that we have resolution of the pending regulatory proceedings in time to permit us to complete the project on time and on budget under the 153.6 million dollar budget estimate that we had provided to the Board and announced in December of 2014." (Tr. 12/1/15 29:24-30:11).

(iii) When further asked "is the cap of the MOU that's provide in the MOU, the 134 cap, is that relevant to the pending 60(b) motions," he responded "to the question is it relevant I think the answer is yes," (Tr. 12/1/15 30:12-18) and explained as follows: "You were here, as I was, for the extensive proceedings during June, the evidentiary proceedings where you and others made much of the 153.6 million dollar budget estimate. And this cost cap makes clear that when it comes time for us – for Vermont Gas to seek recovery of the project in rates, that the amount of that request will be limited in accordance with the cap in the Memorandum of Understanding." (Tr. 12/1/15 30:19-31:2).

(iv) He also explained the timing of the MOU was that VGS and DPS "didn't undertake those negotiations until the days before we reached agreement, that was when we began that effort . . . We didn't wait, we did not engage in the negotiation until the period contemporaneously with the filing of the Memorandum of Understanding . . . in the mid to late September time frame . .. Late September time frame. Latter half of September. (Tr. 12/1/15 31:9-32:2).

(v) As to how the negotiations commenced, he testified that "I don't recall exactly how the negotiations began. To be fair given all of the back and forth here, the – I had concerns about the – about our ability complete the project on time with the runway that we had and the runway that was shrinking as we waited for a resolution of the remand proceedings. And I shared that concern with Mr. Recchia, and ultimately, that discussion led to the discussion around the MOU." (Tr. 12/9/15 42:1-9).

(vi) With respect to the question, "Is the company [VGS] aware of any prior contract, MOU or proceeding in which the Department committed in advance that a project or investment would be used and useful regardless of this eventual cost," the response was "The company's [VGS'] not aware of any such commitment nor has the Department made such a commitment with this MOU." (Tr. 12/9/15 70:11-21).

(vii) As to the used and useful concept, he agreed with the Chairman Volz's explanation that "Under the doctrine of used and useful if it applied to the cost recovery for this case, for this project sometime in the future, the doctrine would say that you can't collect more of your costs for this project than was used and useful," such that he agreed that if the "used and useful amount was 154 million dollars" the cap would "mean you could only collect 134

million", and also agreed that "if the used and useful doctrine said all you can collect is a hundred million, even with the cap of 134 million you could only get a hundred million? Yes." (Tr. 12/1/15 42:25-43:16).

II. THE WEIGHT, IF ANY, THAT THE BOARD SHOULD ACCORD THOSE COMMITMENTS.

The commitments made by the MOU appear to be that the cross subsidy will prevail for 32 years, and that while the MOU speaks of "used and useful," what recovery, if any, relative to the "used and useful" inquiry remains to be determined. It appears that the sole purpose of the MOU was for VGS to have the Board decide the pending Rule 60(b) motions with the cost differential now being from approximately $121 million dollars to $134 million dollars, not $154 million dollars, and that VGS made this concession because it was getting concerned as to why the Board had not issued a decision following the hearings held in June.

However, VGS is equally adamant that any recovery it may obtain from suing Over and Under not be considered relative to cost, although in real dollar terms VGS—and hence its sole shareholder— will certainly be economically advantaged if VGS is successful in its suit against Over and Under. It seems inequitable for VGS to gain real dollars in a suit against Over and Under but not be obligated to reduce the cost recovery cap by an equal amount.

III. THE SCOPE OF THIS HEARING WILL BE TO EXAMINE THE NATURE, RELEVANCE, AND MATERIALITY OF THE MOU AS IT RELATES TO THE RECORD OF (1) THE FIRST REMAND HEARINGS OF SEPTEMBER 2014 AND SUBSEQUENT BRIEFING, AND (2) THE SECOND REMAND HEARINGS OF JUNE 2015 AND SUBSEQUENT BRIEFING

The Palmers concerns regarding the MOU pertain to how they use and enjoy their property. It is all too easy for VGS, DPS, and the Board to dismiss the Palmers as inconsequential to the greater public good. But it is the Palmers who faced having their land

crossed by the project, and it is the Palmers who still have concerns over the impacts of the relocated pipe on their property, and it is the Palmers who still have to live with the safety concern of having a natural gas pipe within 300 feet of a substantial portion of their property.

The MOU has not altered or diminished the Palmers' assertion of rights as presented in their Rule 60(b)(3) motion. Even after VGS has proposed to re-locate the project off of their land, they remain concerned about cost, safety, and how the re-located pipeline will adversely impact their land and its agricultural use. The MOU appears to limit the cost to the rate payers, but by limiting the cost to rate payers, there is no assurance that the MOU will not diminish safety.

The submission of the MOU on October 7, followed by the VGS Motion, followed by a hearing schedule all designed to meet VGS's demand for a decision by January 8, 2016 has undermined the process before the Board, including the credibility and reliability of the MOU. Since October 7, 2015, there has been a series of orchestrated steps by VGS and DPS to make up for the mistakes made by VGS regarding the project's cost. But when the series of steps are taken as a single transaction, it is clear that they have served the sole purpose of overcoming the failure by VGS to accurately assess and report on the Project's cost.

The MOU is just one more step in the process where VGS dictates the terms to DPS, and then the technical hearings before the Board are used to give rubber stamp approval to what VGS wants according to the schedule required by VGS.

IV. SUMMARY

At the status conference held on October 15, 2015 Acting Chair Cheney asked the parties what they wanted to happen next. The Palmers requested that the Board promptly issue a ruling

on the pending Rule 60(b) motions without reference or consideration of the MOU. VGS opposed this request. Yet, as discussed above, the purpose of the MOU was to force the Board to make a decision. VGS cannot have it both ways.

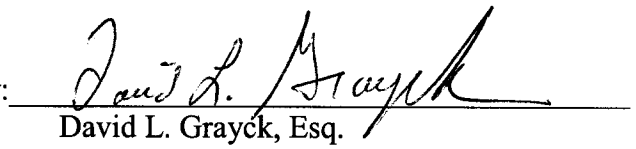
VGS demands that the Board issue a decision which meets its need for certainty and finality in the CPG permitting process. It would seem unconventional in the least, if not unprecedented, for a project applicant to demand of the Board that it issue a decision to meet its need for certainty and finality in the CPG permitting process. It would be unheard of for an applicant for a zoning permit, Act 250 permit, or Agency of Natural Resources permit to demand of the Environmental Division of the Superior Court that it issue a decision to meet the applicant's need for certainty and finality in the land use permitting process. Yet, evidently before the Board, this is not the case.

The filing of the VGS Motion has delayed the Board's issuance of a decision to the point where VGS now demands that the Board act to meet the needs of VGS, or else. Ultimately, it is the specter of the unknown, the vague "or else" which VGS seeks to leverage over the Board and parties. That was and is the purpose of the MOU and the VGS Motion.

WHEREFORE Nathan and Jane Palmer request that the Board (i) rule on the pending Rule 60(b) motions based upon the evidence and arguments presented as of August 21, 2015; and (ii) deny the VGS Motion to admit the MOU. In addition, the Palmers renew their legal arguments previously filed in this matter, as provided in the November 2 Order at page 5, and repeat, assert, and preserve all objections made at the hearing held on December 1, 2015.

Dated: December 17, 2015.

NATHAN AND JANE PALMER

By: 

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