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 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)
In Re: Second Remand)

CONSERVATION LAW FOUNDATION'S BRIEF

The Vermont Public Service Board (Board) should re-open the proceedings and reconsider its approval for the proposed project. Since the project was initially approved in September 2013 there have been a number of changes to the project and to the facts and circumstances affecting the proposed project that clearly demonstrate the proposed project does not "promote the general good of the State." 30 V.S.A. § 248(a)(3). Fundamentally, if the Board knew in 2013 all the information it knows now, it would not have approved the project.

As demonstrated by Conservation Law Foundation (CLF) and others, the proposed project failed to promote the general good of the State in 2013. (7970 CLF Proposed Findings of Fact and Brief at 1-14 (10/11/13)). Although the Board rejected some of CLF's claims, it acknowledged the need for the project to provide actual benefits in order to meet the statutory requirements. (7970 Final Order at 137 (12/23/13)). The increased project costs, availability of other energy resources, and the failure of the proposed project to advance Vermont's climate change needs all combine to show that this project falls far short of demonstrating required benefits sufficient to support approval of a Certificate of Public Good (CPG). The facts presented during the two days of hearings demonstrate clearly that many things have changed since 2013 and a full and thorough evaluation is required.

Since the CPG was granted in 2013, the cost of the project increased significantly, good management of the project has been lacking, significant changes in the energy resources and markets occurred, and the greenhouse gas (GHG) emissions impact are more negative. These combine to demonstrate that the proposed project continues to be a bad bet for Vermont customers and the environment.

1. Significant Cost Increases

Since the proposed project was initially approved, the proposed project cost has nearly doubled. (Testimony of E. Simollardes at 3 (1/15/15)). Vermont Gas Systems (VGS) was clear that it expects to recover all the costs of the proposed project from ratepayers. (Tr. 6/22/15 at 52, 56 (Rendall)). The expected cost increase could leave customers with rates nearly 20% higher, and would not reach a break-even point until more than 30 years from now. (Testimony of D. Dismukes at 31 (5/6/15); Tr. 6/22/15 at 252 (Simollardes)).

The Board cannot rely on the cost evaluation presented by VGS. It only compared the cost of natural gas to oil or propane. (Tr. 6/22/15 at 49 (Rendall)). In fact, going forward, especially 30 years into the future, Vermont can expect to be relying far more on renewable energy, including solar and wind, and less on fossil fuels. (Tr. 6/22/15 at 255-56 (Simollardes)). The VGS analysis failed to recognize this and instead presented faulty and unreliable analysis that should be rejected by the Board.

The initial Board review of the proposed project evaluated costs and benefits looking forward twenty years. (7970 Final Order at 75, 143 (12/23/13)). Evaluating impacts farther in the future is speculative. (Tr. 6/22/15 at 252 (Simollardes)). The proposed expansion will saddle future generations with the excessive costs of expanding fossil fuels now. VGS provided no commitment about how it would manage rates, and instead offered platitudes and empty promises about affordability. (Tr. 6/22/15 at 19, 27, 52 (Rendall)). It is unreasonable for the Board to approve a project without a clear understanding and acceptance of how the project will be paid for by customers. The very significant cost increase alone justifies a re-evaluation of the Board's approval of the proposed project.

2. Poor Project Management

The poor management of the proposed project by Vermont Gas Systems requires re-opening. Over the past year, VGS has poorly managed the proposed project. First, it failed to provide reliable cost estimates, not once, but twice. (Tr. 6/22/15 at 59-64 (Rendall); Testimony of Dismukes at 7 (5/6/15)). Second, it failed repeatedly to keep the Board and the parties informed about very significant cost and budget changes. It failed to disclose the first cost increase for more than three months. (Tr. 9/26/14 at 138 (Gilbert). It repeated that same behavior with the second cost increase. VGS knew in September of 2014 of the significant cost increase and again did not notify parties or the Board until months later. (Tr. 6/22/15 at 110 (Roam). VGS has repeatedly provided inaccurate information and has shared information only when it is convenient for them. VGS has not demonstrated that it has the ability to responsibly manage a proposed project of this magnitude. VGS failed to demonstrate why its current cost estimates are reliable when its previous two estimates were very wrong. (Tr. 6/22/15 at 59-64 (Rendall)).

VGS's poor management of the proposed project fails to instill confidence in the analysis it has presented, and demonstrates the need to re-open the case to undertake a full and thorough evaluation of the proposed project.

3. Energy Resources & Markets

Since the Board's decision in October, 2014, the cost of oil has declined and heat pumps have become both more available and more affordable to meet customer thermal needs. (Testimony of M. Cota at 5 (5/6/15); Testimony of C. Neme at 4 (5/6/15); Testimony of Dismukes at 25 (5/6/15)). These facts undermine the claimed economic benefits of natural gas on which the Board relied in its earlier decisions. 7970 Order Re: Rule 60(B) Reconsideration at 16 (10/10/14); 7970 Final Order at 76, 83-85 (12/23/13). The evaluation presented by VGS failed to consider the effect of the use of heat pumps, which have become more popular, operate at a much higher efficiency than natural gas, and produce fewer GHG emissions. (Testimony of C. Neme at 4 (5/6/15); Tr. 6/23/15 at 149 (Neme); Tr. 6/22/15 at 194 (Sinclair)).

Some commercial customers (the largest users) are using compressed natural gas (CNG) now. As a result, the baseline for the proposed project has changed significantly. It is no longer a project that will replace only oil and propane. It is now a project that will replace oil, propane, CNG and heat pumps. As these are the largest users and are expected to account for nearly 40% of the total gas used, this is a very material factor. (Tr. 6/23/15 at 159-60 (Hopkins); AARP Cross Exh. 44); Testimony of M. Peyser at 27-30 (5/6/15). The Board cannot put its head in the sand and pretend that CNG does not exist. An evaluation of benefits of fuel switching would generally include what the current fuel use is. (Tr. 6/23/15 at 159 (Hopkins)). CNG is a supply that is being used now and the proposed project should be compared to what is currently being used. The availability and use of CNG now undermines the claimed economic and GHG emissions value of the proposed project. The Board should re-open the proceeding to allow a new analysis that evaluates the proposed project based on the current baseline that includes the current use of CNG and availability of heat pumps.

4. GHG emissions

The GHG emissions evaluation used to justify the proposed project only compared natural gas to oil and propane. (Tr. 6/22/15 at 49 (Rendall)). Going forward other resources, including renewable energy and heat pumps will also be used. (Tr. 6/23/15 at 150 (Neme)). Converting to gas now locks in a customer for 20 years or more, as the cost of conversion makes it unlikely to convert twice. (Testimony of B. Wilson at 34 (5/6/15); Tr. 6/23/15 at 41 (Simollardes)). During that time the customer may save more money, reduce GHG emissions more, and provide greater societal savings by instead using heat pumps or renewable energy. (Testimony of C. Neme at 4 (5/6/15); Tr. 6/23/15 at 152-53 (Neme)).

Since the previous evaluations by the Board, the IPCC also increased the global warming potential for methane confirming that it is a more potent greenhouse gas than it was previously thought to be, particularly in the near term, which is when Vermont needs to move away from fossil fuels. ((Testimony of J. Bluestein at 5; Exhibit Reb. 5/27/15 JB-9; Tr. 6/23/15 at 130 (Bluestein); Testimony of G. Gross at 3 (5/8/15); Testimony of M. Peyser at 31 (5/6/15)).

The proposed project asks Vermont to support investment in fossil fuels for 50-100 years, long past the time that Vermont needs to be moving away from fossil fuels in order to meet our climate change goals. The proposed project has a greater negative climate change impact and the Board should re-open the proceedings to allow a fair evaluation of the proposed project’s GHG emissions.

5. Failure to Satisfy 248 Criteria

The evidence presented demonstrates that the proposed project likely fails to satisfy the section 248 criteria. It fails to broadly "promote the general good of the State," 30 V.S.A. § 248(a), and fails to satisfy the 248(b) criteria addressing specific impacts and benefits of the proposed project. The significant cost increase affects whether the proposed project "will result in an economic benefit to the State and its residents; 30 V.S.A. § 248(b)(4), and whether the proposed project will "have an undue adverse effect on … the natural environment…." 30 V.S.A. § 248(b)(5). The changes in energy supply also demonstrate that the proposed project fails to be "required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures …." 30 V.S.A. § 248(b)(2). The proposed project should be evaluated based on how it compares as an energy resource with other energy resources, including combinations of energy efficiency and renewable energy. The information presented at the hearings demonstrates the proposed project falls far short of providing actual cost or environmental benefits over the life of the project. Based on these failures, it is unlikely the Board could approve the proposed project based on the new facts that have come to light since the initial approval. The Board should re-open the proceedings to allow a full and fair evaluation of the proposed project.

Dated at Montpelier, Vermont, this 8th day of July 2015.

CONSERVATION LAW FOUNDATION

By: Sandra Levine
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Sandra Levine, Senior Attorney
Vermont Advocacy Center
15 East State Street, Suite 4, Montpelier, VT 05602
(802) 223-5992, (802) 223-0060 (fax), slevine@clf.org