

**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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**VERMONT GAS SYSTEMS, INC.’S MOTION FOR PROCEDURAL ORDER
REGARDING REMAND PROCEEDING**

By this filing, Vermont Gas Systems, Inc. (“VGS”) moves the Public Utility Commission (“Commission”) to issue a procedural order setting forth the process the Commission will require regarding approval of amendments to the Docket No. 7970 2013 Certificate of Public Good (“CPG”), consistent with the Vermont Supreme Court’s April 12, 2024 Final Opinion in Supreme Court Docket No. 23-AP-244, 2024 VT 19 (“Final Opinion”). In support of this motion, VGS submits the following background and discussion.

Background

On April 6, 2023, the Commission issued a Final Order in the above-captioned proceedings.¹ In that Order, the Commission adopted the hearing officer’s conclusion that VGS’s construction of the Addison Natural Gas Pipeline (“ANGP”) involved five substantial changes and also adopted the hearing officer’s proposed penalty under 30 V.S.A. § 30. The Commission

¹ *Investigation Pursuant to 30 V.S.A. §§ 30 and 209 Regarding the Alleged Failure of Vermont Gas Sys., Inc. to Comply with the Certificate of Public Good*, Case Nos. 17-3550-INV, 18-0395-PET, 2023 WL 2929610, at *1 (Vt. P.S.B. Apr. 6, 2023) (hereinafter “Final Order”).

stated that it “agree[d] with the hearing officer that the record in this case supports the conclusion that the pipeline is, in fact, safe, and that subject to specified remedial actions discussed below, will continue to be safe in its future operations.”²

The Commission modified the hearing officer’s recommendation regarding the CPG amendment process, stating, “While we agree with the hearing officer that an amendment to the CPG issued in Docket 7970 is required to conclude this case, we modify his recommendation on the process needed to reach that conclusion.”³ The hearing officer had recommended that the Company file a separate petition for amendments to the CPG within 60 days of a final order, “mak[ing] the existing record from this proceeding and Docket 7970 available to the parties as evidence in the Vermont Gas amendment petition proceeding.”⁴ The Commission concluded that a separate proceeding was not necessary, explaining:

This investigation has been ongoing for almost six years, and there is an extensive and detailed record before us that describes: (1) the unapproved changes Vermont Gas made to the Project during construction; (2) the potential for significant impacts from those changes under the relevant criteria of Section 248; (3) the absence of any actual harm from those changes under those same criteria; and (4) the remedial actions that Vermont Gas must take to ensure that operation of the as-built pipeline will not, in the future, result in any undue impacts under the relevant Section 248 criteria and will remain in the public good.⁵

The Commission further explained that the evidentiary record includes both “detailed expert analysis that was subject to discovery, cross-examination, and the opportunity for rebuttal, on both the potential impacts from the unapproved changes to the pipeline and the lack of actual impacts from those changes” and “detailed expert analysis on the remedial actions needed to prevent undue impacts from the pipeline going forward.”⁶

² Final Order at 2.

³ *Id.* at 3

⁴ *Id.* at 45; Proposal for Decision at 20.

⁵ Final Order at 4.

⁶ *Id.*

The Commission also supplemented the hearing officer’s factual findings and directed VGS to “make a compliance filing that proposes amendments to its CPG that address the pipeline as actually constructed, addressing each of the five changes that [it] found to be violations of the 2013 Final Order and CPG and Commission Rule 5.408” and “include specific proposed conditions that address each of the five violations . . . and account for the remedial actions recommended by the expert witnesses in this proceeding.”⁷ On April 27, 2023, VGS submitted the compliance filing and, consistent with the Commission’s Final Order, an explanation of why the experts’ proposed conditions “will prevent any future instances of undue impacts under the criteria identified as relevant to potential significant impacts in the proposal for decision based on evidence already in the record of this case.”⁸

On May 24, 2023, the Department of Public Service (“Department”) and Intervenors filed comments on VGS’s proposed CPG conditions. The Department’s comments supported the Commission’s adoption of VGS’s proposed conditions.⁹ Intervenors’ comments objected to the proposed CPG amendments and conditions and proposed their own CPG conditions. On July 14, 2023, VGS filed reply comments opposing Intervenors’ proposed conditions on grounds that Intervenors (1) sought to relitigate factual issues that were already investigated, (2) asked the Commission to impose conditions that were not supported by any expert recommendations, and (3) made assertions that were not supported by any evidence.

The Commission took no action on the VGS compliance filing pending Intervenors’ appeal to the Vermont Supreme Court. On April 12, 2024, the Vermont Supreme Court issued a

⁷ *Id.* at 22.

⁸ *See id.*

⁹ The Department’s comments did include a recommendation to ensure the timing of the over-the-line survey (“OTL”) satisfies both expert William Byrd’s and the Department’s recommendations. As discussed in VGS’s July 14, 2023 reply comments regarding the proposed CPG amendments, it is VGS’s understanding that OTLs performed approximately every 2.5 years comports with both the Department’s proposed timeline as well as Mr. Byrd’s recommendations.

Final Opinion affirming in part and reversing the Commission’s decision to include CPG amendments in this proceeding.¹⁰ VGS filed a motion for reargument to the Supreme Court on April 26, 2024, asserting that vacatur of the supplemental findings made by the Commission was not required to effectuate the Court’s principal holding regarding the process for amending the CPG. The Supreme Court denied the motion for reargument on May 3, 2024 and issued the mandate on May 24, 2024.

On remand, the Court has ordered that the Commission conduct further proceedings consistent with its holding that a CPG can only be amended “in a manner that satisfies the requirements of a § 248 proceeding,”¹¹ including notice and public input.

Discussion

Based on the Court’s holding, VGS proposes that the Commission establish a process to amend the CPG in the following manner: (1) VGS to provide broad advance 45-day notice that VGS will petition the Commission to amend the CPG; (2) VGS to file a petition to amend the CPG, relying on the evidentiary record in this case; and (3) the Commission to convene a status conference after the petition is filed to determine what, if any, further process the Commission will require.

First, to ensure that the CPG amendments are effectuated in a proceeding that satisfies the notice and public participation provisions of Section 248 in accordance with the Court’s Final Opinion, VGS proposes to submit a 45-day notice letter to all persons that are currently entitled to notice of a regular Section 248 petition under Commission Rule 5.400,¹² to be served in the

¹⁰ *In re Vermont Gas Sys., Inc.*, 2024 VT 19, ¶ 56, --- A.3d ---, 2024 WL 1591066, at *13 (Vt. Apr. 12, 2024) (hereinafter “Final Opinion”).

¹¹ Final Opinion ¶ 56.

¹² This would include entities identified in PUC Rule 5.402(A), which include the municipal and legislative bodies in the towns where the ANGP is located; all adjoining landowners; host landowners; the Department of Public Service; the Agency of Natural Resources; the Natural Resources Board; the Division for Historic Preservation; and the Agency of Agriculture, Food and Markets. Notice would also be provided to all parties to Docket No. 7970.

manner currently required under Rule 5.402(B). The contents of the advance notice will inform recipients of VGS's intent to petition the Commission to amend the Docket No. 7970 CPG consistent with the expert recommendations in this case and VGS's already proposed CPG amendments submitted in this proceeding on April 27, 2023. The notice will also direct recipients to information to help provide context for the proposed CPG amendments, including: (1) VGS's proposed CPG amendments, (2) reference to the evidentiary basis for the amendments, and (3) how the extensive and publicly available record in this case may be accessed via ePUC, including the Commission's prior orders in this case.

Second, VGS proposes to file a petition asking the Commission to amend the Docket No. 7970 CPG and incorporating the entire evidentiary record from the above-captioned proceedings. That record includes evidence regarding the substantial changes, the potential impacts found under certain Section 248(b) criteria, the absence of actual impacts caused by those changes, and the remedial actions that were recommended by the experts to ensure there are no impacts in the future.¹³ Accordingly, the petition and existing record will provide the Commission "information sufficient to support positive findings" under the relevant Section 248(b) criteria to deem the amendment petition complete in a manner similar to what would occur for a regular Section 248 petition under Rule 5.406.

Moreover, the filing of a new petition that incorporates the extensive investigatory record in the above-captioned cases is consistent with the Court's Final Opinion. The Court mandated a CPG amendment process consistent with Section 248 but did not cast any doubt on the Commission's conclusion that the evidence in this case is sufficient to make positive substantive findings under the relevant Section 248 criteria to amend the CPG. While the Court vacated the supplemental findings that the Commission had made to facilitate a CPG amendment process in

¹³ Final Order at 4.

this proceeding, the Court did not conclude that those findings were in any way erroneous.¹⁴ In fact, those findings are supported by an ample evidentiary record, as the Commission itself explained in the Final Order. Further, the Court’s decision did not disturb—in any way—the most important conclusion of the hearing officer and Commission, namely, that “the pipeline is safe and was adequately installed.”¹⁵ For these reasons, a petition to amend the CPG based on the existing evidentiary record will provide the Commission sufficient evidence to make findings under each of the relevant Section 248 criteria in a Section 248-like proceeding consistent with the Court’s Final Opinion.

Finally, once VGS’s advance notice has been sent and its petition filed, VGS proposes that the Commission schedule a status conference to determine what, if any, further process is needed to amend the CPG.

Conclusion

This proceeding has involved a multi-year comprehensive investigation of nearly every aspect of construction of the ANGP. VGS is grateful for the significant work of the Commission, its independent pipeline expert William Byrd, and all the experts and witnesses in this case. The evidence has shown that not a single deviation or alleged change had any actual impact on safety, the environment, the future use of the right of way, or any other relevant Section 248 factor. VGS looks forward to bringing this case to its conclusion under the Court’s procedural mandate and requests that the Commission approve the amendment process proposed herein.

¹⁴ The Court’s vacatur of the supplemental findings was based on the need to reserve final resolution of the specific question of Section 248 amendments in a “248-like” proceeding after proper notice that the Commission would resolve that question. *See* Final Order ¶ 55.

¹⁵ Final Order at 29; Proposal for Decision at 4-5.

DATED at Burlington, Vermont, on this 28th day of May 2024.

VERMONT GAS SYSTEMS, INC.

By: /s/ Owen J. McClain

Debra L. Bouffard, Esq.

Owen J. McClain, Esq.

SHEEHEY FURLONG & BEHM P.C.

30 Main Street, 6th Floor

P.O. Box 66

Burlington, Vermont 05402-0066

(802) 864-9891

dbouffard@sheeheyvt.com

omclain@sheeheyvt.com