

STATE OF VERMONT  
PUBLIC UTILITIES COMMISSION

Investigation Pursuant to 30 V.S.A. §§ 30 and )  
309 regarding the alleged failure of Vermont )  
Gas Systems, Inc. to comply with the Certificate )  
of Public Good in Docket 7970 )  
) Case No. 17-3550-INV  
Notice of Probable Violations by Vermont Gas )  
Systems ) Case No. 18-0395 INV  
)

RESPONSE TO VGS MOTION FOR PROCEDURAL ORDER

Kristin Lyons, Jane Palmer, Nate Palmer, Lawrence Shelton and Rachel Smolker, Ph.D.  
("Intervenors") hereby respond to Vermont Gas Systems' "Motion for Procedural Order  
Regarding Remand Proceeding."

Status Conference

The VGS Motion contains multiple requests. First, it seeks a status conference.  
Intervenors' counsel had informed VGS's counsel before the filing of the motion that Intervenors  
agreed that a status conference would be beneficial. Intervenors join in that aspect of VGS's  
Motion.

45-day Notice

Second, the VGS Motion seeks a procedural order authorizing it to provide the 45-day  
notice required by the Commission's Rule 5.402. The rule mandates detailed notice for all § 248  
petitions. The Supreme Court's order requires that VGS submit a § 248 petition. Therefore, no  
permission or authorization from the Commission is needed. The notice must be provided.

Intervenors object to the contents of the proposed notice that the Motion states will be  
provided. The Motion suggests that the notice will contain only the proposed CPG amendments,  
reference to the evidentiary basis for the amendments, and how to access the existing record.

The rule requires much more than what VGS proposes. The rule requires: “Sufficient information for the reader to understand the overall proposed project.” This must include at least each item specified in Rule 5.402(C)(2). Rule 5.402(C)(2)(a) & (b) states that each site location affected by the proposed amendments must be identified “in as much detail as the petitioner can reasonably provide” to show the approximate location and nature of the project, and so that the recipient has “sufficient detail” to make “an informed judgment as to any potential impact.”

In the context of this Petition, each location where there has been a substantial change must be specified, and the nature and impacts of the proposed changes must be described. Paragraphs 12-15 of the Supreme Court’s order outline the substantial changes. 30 V.S.A. §§ 30 and 209 Regarding the Alleged Failure of Vermont Gas Systems, Inc., 2024 VT 19 ¶¶ 12-15. For example, each location in New Haven where the sink-in-swamp method of construction was used (¶ 12) must be identified in the notice, and the nature of the changed method must be set forth in sufficient detail for the reader to understand the potential impacts of the change. Without this information, potentially affected landowners and towns will not be able to determine if, and the extent to which, they may be affected by the unauthorized construction method, as required by the rule.

The same specificity of location and the nature and potential impacts of the change is needed for each location where the pipeline is less than four feet deep within the VELCO right-of-way, Id. at ¶ 13, each location where VGS failed to comply with its specifications regarding pipeline burial and installation of trench breakers or to comply with soil compaction requirements, Id. at ¶ 14, and each location where a responsible charge engineer did not place his or her signature and seal upon the issued-for-construction plans prior to construction. Id. at ¶ 15.

### The Evidentiary Record

VGS also requests that the entire evidentiary record from Docket 7970 and the prior proceedings in the present docket be incorporated into the record. Intervenors have already stated that they agree with this.

#### Contrary to VGS's Motion, the Findings that the ANGP Is Safe Have Been Vacated

The VGS Motion asserts on page 6 that the Supreme Court decision did not disturb the hearing officer's and the Commission's finding that the pipeline is safe and was adequately installed. This is incorrect. The Supreme Court vacated all of the Commission's findings concerning whether the substantial changes affect § 248 criteria. As a result of the errors committed by the Commission, the Court held, "we vacate the Commission's supplemental findings that VGS's unauthorized substantial changes did not actually impact the implicated § 248 criteria." *Id.* at ¶ 56 (emphasis added).

#### No Waiver Pursuant to § 248(k)

VGS is operating a natural gas pipeline that, as constructed, was not authorized by the initial CPG, is not authorized by any amended CPG, and as to which the Commission has made no valid findings that the criteria that the legislature has dictated must be satisfied before operation have been satisfied—including safety.

If the rule of law and the integrity of the Commission's permitting process are to be upheld, VGS must either apply for a temporary waiver of the legal requirement of a CPG under § 248(k) or cease operation until it has obtained the necessary amendment permit. Intervenors' counsel has urged VGS to file an application for waiver pursuant to § 248(k). VGS's counsel has stated that VGS declines to do so. Therefore, before the status conference, Intervenors will file a

motion asking the Commission to order VGS to either file a petition for waiver pursuant to § 248(k) or cease operation of the unlawfully constructed, currently un-permitted Addison Natural Gas Pipeline.

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