

**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 REPLY IN
SUPPORT OF MOTION FOR PROCEDURAL ORDER**

Vermont Gas Systems, Inc. (“VGS” or the “Company”) provides the following Reply in Support of its May 28, 2024 Motion for Procedural Order Regarding Remand Proceeding (the “Procedural Motion”). This Reply responds to Intervenors’ Response to the Procedural Motion, as Intervenors were the only party that filed a response to VGS’s motion.

The Procedural Motion requests an order from the Commission setting forth the expected procedural requirements needed to amend the 2013 Docket No. 7970 Certificate of Public Good (“CPG”) on remand from the Vermont Supreme Court’s Final Opinion.¹ In particular, the Procedural Motion proposed the following process:

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.²

¹ *In re Vermont Gas Sys., Inc.*, 2024 VT 19, ¶ 56, --- A.3d ---, 2024 WL 1591066, at *13 (Vt. Apr. 12, 2024) (hereinafter “Final Opinion”).

² Procedural Motion at 4.

The Department of Public Service (“Department”) did not file any response and Intervenor do not object to (1) VGS serving advance notice under Rule 5.400, (2) VGS filing a petition based on the existing evidence, or (3) the Commission convening a status conference thereafter to determine whether any further process is necessary. Accordingly, no party appears to object to the basic procedural framework proposed by VGS.

Additionally, there are no objections to VGS’s proposed reliance on the evidentiary record in this case. As the Commission contemplated in its April 6, 2023 Final Order, VGS is seeking approval of the proposed CPG amendments in this case based on the existing extensive evidentiary record. After VGS files the advance notice and petition to amend, the procedural requirements of the Court’s Final Opinion will be satisfied. The Commission can then hold a status conference to determine whether any further process is needed. Since no party objects to either the proposed procedural steps or VGS’s reliance on the evidentiary record in this case, VGS requests that the Commission adopt VGS’s proposed process on remand.

Intervenor raise other tangential issues in their Response related to (1) the content of the advance notice and (2) the effect of the Court’s Final Opinion. Each of these is addressed below.

1. Content of Advance Notice

VGS proposes that the 45-day letter in this context notify 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.”³ The proposed 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

³ Procedural Motion at 5.

and publicly available record in this case may be accessed via ePUC, including the Commission's prior orders in this case."⁴

This proposal is consistent with the intent of Commission Rule 5.402(C)(2) because it provides "sufficient information for a reader to understand the proposed amendments" and gives a reader express reference to the materials in this case that are most informative about the proposed amendments. Through access to the record of this case, readers will be able to review expert William Byrd's report and proposed conditions as well as the hearing officer's and Commission's findings. Accordingly, VGS believes this advance notice is consistent with Commission Rule 5.413 governing CPG amendments because it will provide notice and access to the best evidence and most relevant information regarding the proposed amendments.

Contrary to Intervenor's Response, Rule 5.413 does not define the contents of a notice regarding proposed CPG amendments for a project that has already "been commissioned at the time the change is proposed."⁵ Moreover, the specific content requirements of Rule 5.402(C)(2) do not apply to projects that have already been commissioned, as that rule expressly refers to "proposed project[s]." Nor do the specific items enumerated under Rule 5.402(C)(2) make sense for a project, like this one, that was constructed more than seven years ago and has been in operation since. For example, Rule 5.402(C)(2) discusses information about how equipment and materials will be transported to the site and what alternatives to the proposed project were considered. None of these subjects is relevant to the substantial changes in this case—they were all subjects addressed in the initial CPG proceeding and Rule 5.400 only requires this kind of notice for a new CPG.⁶

⁴ *Id.*

⁵ Commission Rule 5.413.

⁶ On appeal, and in their most recent filing, Intervenor's have continually referred to the need for a "new CPG" and suggested that the ANGP has no permit at all due to VGS's violation of the initial CPG. The Court rejected this suggestion on appeal, explaining the following: "Throughout their brief, intervenors describe the Commission's decision as amounting to the issuance of "a new CPG." However, the record establishes that the Commission sought to amend the existing CPG, not award a new CPG." Final Opinion ¶ 34, fn 5. Accordingly, while Intervenor's may argue there is no CPG at all to attempt to re-litigate the entire Section 248 process from the

Moreover, VGS's proposal to (1) direct the notice recipients to the proposed CPG amendments themselves, (2) provide recipients with specific references to the evidentiary record that supports those amendments, and (3) inform recipients about how they can access those references via the extensive record in this case is consistent with Rule 5.402(C), which expressly contemplates providing notice with a link to further information.⁷ In this context, VGS's proposed CPG amendments seek the formal adoption of conditions that were recommended by the experts in this case. Providing recipients with links to the actual content of those recommendations gives recipients the most complete access to the most relevant information about the proposed amendments, consistent with Rule 5.402(C).

Intervenors object to the content of the proposed notice, claiming that the "location and the nature and potential impacts" of each substantial change need to be provided in the notice. VGS's proposal, however, provides all necessary information because it refers recipients to the actual findings and conclusions of the hearing officer and Commission regarding each such change. Similarly, the notice will refer recipients to relevant evidence about whether those changes had any impact. VGS disagrees with Intervenors' objection to the notice because linking to the existing evidentiary record is the best way for recipients of the notice to understand the proposed CPG amendments.

beginning, the scope of this remand proceeding is limited to amending the "existing CPG," not issuing a new one. *See also* Proposal for Decision at 2 (discussing a petition for an amendment to the CPG specifically with regard to the substantial changes at issue in this case rather than an entirely new CPG process).

⁷ Specifically, Commission Rule 5.402(C) provides that, "Whenever service of the advance submission must be done by mail, the petitioner may elect to serve a document with information and a link that will allow the recipient to access the actual content of the advance submission electronically." (emphasis added).

2. The Supreme Court's Final Opinion.

Intervenors' claims about the Court's Final Opinion and the supposed "non-existence" of a CPG for the pipeline are not relevant to the proposed process on remand and are not supported by the law or the facts.

Intervenors first argue that the Court vacated all findings and conclusions that the pipeline is safe. But the Court only vacated the Commission's supplemental findings in paragraphs 1 through 13 on pages 17 through 19 of its Final Order from April 6, 2023.⁸ Those supplemental findings supported the Commission's conclusion that it could reach a final determination regarding each of the applicable Section 248 criteria without initiating a new Section 248 proceeding. Those findings were vacated because the Court held that a Section 248 determination can only be made in a Section 248-like process. In contrast, the hearing officer's findings did not support a final determination under the Section 248 criteria, as he expressly reserved such determination for a follow-on amendment proceeding. Accordingly, the hearing officer's conclusion that the pipeline is safe and was adequately constructed (and the Commission's adoption thereof) has not been vacated.⁹ Regardless, this issue does not impact the procedural steps that VGS proposes to comply with the Court's Opinion, so the Commission does not need to address Intervenors' claims about the effect of the Final Opinion on prior findings.

Moreover, neither VGS nor the Commission needs to address Intervenors' other claims that VGS must request a Section 248(k) waiver. That issue was already raised by Intervenors in this case and rejected by the hearing officer and Commission. The hearing officer wrote: "This

⁸ Final Opinion ¶ 56 (stating "we vacate the Commission's supplemental findings that VGS's unauthorized substantial changes did not actually impact the implicated § 248 criteria" (emphasis added)).

⁹ Final Order at 29; Proposal for Decision at 4-5.

investigation has found that the pipeline was adequately constructed and is safe. And, while the investigation also documents several shortfalls in the pipeline's construction, *there is no emergency prompting the use of Section 248(k).*"¹⁰ The Commission adopted the Proposal for Decision, including the hearing officer's conclusion on the Section 248(k) issue, which issue Intervenor did not appeal. The Commission's decision on that point is now final.

Conclusion

For the above reasons and those set forth in its initial Procedural Motion, VGS requests that the Commission issue an order establishing a simple process on remand. VGS believes the proposal comports with the Court's Final Opinion and Section 248. VGS is also prepared to submit a 45-day notice letter to the Commission for approval in advance of serving it on recipients if that would support a more efficient path forward.

DATED at Burlington, Vermont, on this 18th day of June 2023.

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¹⁰ Proposal for Decision at 20 (emphasis added).