

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-2630-PET

Petition pursuant to 30 V.S.A. §§ 208 and 209 for injunctive relief regarding Vermont Gas Systems, Inc.'s operation of the Addison Natural Gas Pipeline	
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Order entered: 08/22/2024

PROCEDURAL ORDER

I. INTRODUCTION

On July 31, 2024, Kristin Lyons, Jane Palmer, Nate Palmer, Lawrence Shelton, Rachel Smolker, and Jeffrey Everest (“Petitioners”) filed a petition pursuant to 30 V.S.A. §§ 208 and 209 asserting that Vermont Gas Systems, Inc. (“VGS”) is violating 30 V.S.A. §§ 248(a), (b), and (k) and seeking a permanent injunction, pursuant to Commission Rules 2.206, 5.401 through 5.404, and 5.413, to compel VGS to either obtain a temporary waiver under Section 248(k) or cease operation of the Addison Natural Gas Pipeline (the “Project”). In today’s order, I establish a deadline for motions in response to the petition.

II. BACKGROUND

In Case Nos. 17-3550-INV and 18-0395-PET, the Commission determined that VGS made substantial changes to the approved Project in violation of the Project’s certificate of public good (“CPG”). The Commission assessed a penalty of \$150,000 and determined that VGS must obtain an amended CPG.¹ The Commission further determined that an adequate record existed in the investigation case to amend the CPG to accommodate those changes and ordered VGS to submit a compliance filing that included proposed language for amendments to the CPG.²

The Vermont Supreme Court affirmed the Commission’s findings of CPG violations and the monetary penalty. However, the Court reversed the Commission’s determination that a CPG amendment could be issued in the investigation proceeding. The Court held that “the Commission may effectuate amendments to a CPG only in a manner that satisfies the

¹ Case Nos. 17-3550-INV and 18-0395-PET, Order of 4/06/23 at 3.

² *Id.*

requirements of a § 248 proceeding.”³ Accordingly, the Court vacated the Commission’s findings regarding the revised Project’s impacts under the Section 248 criteria. The Court remanded the matter to the Commission for further proceedings consistent with the Court’s decision.

On June 25, 2024, the Commission issued a procedural order directing next steps to implement the Court’s remand. The Commission stated that Case No. 17-3550-INV and 18-0395-PET would be closed upon the payment of the \$150,000 penalty. The Commission directed VGS to file a 45-day notice consistent with the requirements of Rule 5.400, followed by a new petition for an amended CPG pursuant to Section 248.

On June 1, 2024, the Petitioners filed a motion in Case Nos. 17-3550-INV and 18-0395-PET seeking the same relief as sought in the petition.

The Commission responded in an Order dated July 3, 2024, directing the Petitioners to file their request for an injunction as a new petition because VGS had paid its monetary penalty and Case Nos. 17-3550-INV and 18-0395-PET were closed. The Petitioners then filed this petition.

III. DISCUSSION AND SCHEDULE

The petition raises threshold legal questions that should be addressed at the outset of this proceeding. First, it is not clear whether the relief sought by the Petitioners, specifically the filing of a Section 248(k) petition, is required in cases where a person has constructed a facility in a manner inconsistent with a certificate of public good. It is not unprecedented for a Section 248 facility to be constructed in a manner inconsistent with a CPG or without a CPG. The Commission routinely responds to such violations of Section 248 by assessing a financial penalty.⁴ In its remand of this matter, the Vermont Supreme Court has also instructed the Commission that in cases where a person undertakes unauthorized substantial changes, Rule

³ *In re Vermont Gas Sys., Inc.*, 2024 VT 19, ¶ 56.

⁴ *See, e.g., Green Mountain Power Corps. Request for Approval of A Stipulated Memorandum of Understanding Regarding the Certificate of Pub. Good Issued in Docket 8322.*, Case No. 19-4929-PET, Order of 8/14/20 (assessing penalty of \$11,500 for conducting work without a CPG); *Investigation Pursuant to 30 V.S.A. Ss 30, 209, & 248 Regarding the 2.2 Mw Solar Plant Owned by Charlotte Solar, LLC in Charlotte, Vermont.*, Case No. 8638, Order of 10/23/17 (assessing penalty of \$30,000 for failure to install aesthetic mitigation in accordance with CPG); *Investigation Pursuant to 30 V.S.A. Ss 30 & 209 Regarding the Alleged Taking of Harsh Sunflower Plants by Vermont Gas Sys., Inc. in Monkton, Vermont.*, Case No. 8791, Order of 5/25/17 (assessing penalty of \$19,000 for violations of conditions of a CPG).

5.408 and the Commission's precedent require the filing of a new 248 petition.⁵ In this case, the Commission has already assessed a financial penalty and, in response to the Vermont Supreme Court's remand, has directed VGS to make a new filing pursuant to Section 248. The petition does not explain or provide citations supporting why the Commission must also require a Section 248(k) petition in this case.

The text of Section 248(k) suggests that the statute is intended to temporarily bypass the full Section 248 process to give a pathway for prior authorization for construction of facilities only in the case of emergencies.⁶ Examples of cases processed under Section 248(k) include emergency work needed to respond to unexpected substation failures, corrective action necessary to ensure compliance with national safety codes, and damaging ice storms.⁷ It is unclear how the facts of this case would fit the statute. The Project was constructed several years ago, and the Petitioners have not articulated what emergency situation exists. Therefore, it would be helpful for the parties to address whether a waiver pursuant to Section 248(k) is legally required for VGS to continue to operate the Project while the Commission reviews any request for an amended CPG.

Second, the alternative relief sought by the Petitioners, the cessation of the operation of the Project unless and until VGS obtains an amended CPG, is extraordinary. While the Commission has the authority to restrain utilities from unlawful activities, including violations of Section 248,⁸ the Commission does not routinely enjoin the operation of facilities that are out of compliance with their CPG, particularly when such facilities are fully operational.⁹ Despite the Petitioners' characterization of its request as one for a permanent injunction, the petition is more akin to a request for a preliminary injunction because the Petitioners are requesting that the Commission temporarily enjoin the operation of the Project until the Commission rules on the merits of VGS's forthcoming petition for an amended CPG. Notwithstanding the

⁵ *In re Vermont Gas Sys., Inc.*, 2024 VT 19, ¶ 41.

⁶ 30 V.S.A. § 248(k)(4)(A).

⁷ *See, e.g., Petition of Green Mountain Power Corp.*, Case No. 23-0300-PET, Order of 1/27/23 (granting waiver to replace failing transformer); *Petition of Vermont Elec. Power Co., Inc. & Vermont Transco LLC*, Case No. 7740, Order of 7/20/11 (granting waiver to bring structures into compliance with safety codes); *In Re Vermont Elec. Power Co., Inc.*, Case No. 6038, Order of 4/2/98 (granting waiver to construct a temporary line to restore power following an ice storm).

⁸ 30 V.S.A. § 209(a)(6).

⁹ Footnote 4, *supra*.

characterization of the Petitioners' request, "injunctive relief should be no more burdensome to the defendants than necessary to provide complete relief to the plaintiffs."¹⁰ The petition does not explain why the requirement — as set out by the Supreme Court — that VGS file a new Section 248 application is inadequate. The petition also does not address how the Commission should balance any potential harm to the Petitioners against the potential harm to VGS and its customers if the pipeline ceases to operate.

In light of these threshold legal issues, I am establishing a date of September 23, 2024, for any dispositive motions in response to the petition. The Petitioners may file a response to any motions by October 23, 2024. Replies to the responses are due by November 6, 2024.

To further clarify, nothing about the filing of this petition should delay VGS's obligation to file a 45-day notice and full Section 248 petition.

SO ORDERED.

¹⁰ *Richardson v. City of Rutland*, 164 Vt. 422, 427 (1995) (quoting *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994) and *Califano v. Yamasaki*, 442 U.S. 682 (1979)).


Dated at Montpelier, Vermont, this 22nd day of August, 2024.



Jake Marren, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: August 22, 2024

Attest: 

Deputy Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 24-2630-PET - SERVICE LIST

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