

**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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**VERMONT GAS SYSTEMS, INC.'S MOTION TO DISMISS PETITION**

Vermont Gas Systems, Inc. (“VGS”) moves the Vermont Public Utility Commission (“Commission”) to dismiss the Petition filed in the above-captioned case pursuant to Commission Rule 2.220.<sup>1</sup> This Petition parrots the same allegations about the Addison Natural Gas Project (“Project,” “ANGP,” or “pipeline”) that have been exhaustively litigated and completely debunked over the seven-year course of an unprecedented extensive investigation conducted by the Commission in Case Nos. 17-3550-INV and 18-0395-PET (the “Investigation”). Petitioners are intent upon ignoring the overwhelming evidence that the pipeline is safe, and instead continue to push legal arguments that have been expressly rejected by the Commission.

As set forth herein, the Petition should be dismissed because (A) the Commission has already expressly rejected Petitioners’ calls for both (i) closure of the pipeline and (ii) a new proceeding under Section 248(k); (B) the Petition does not meet the requirements for a valid complaint under 30 V.S.A. § 208 because it (i) does not identify any “unlawful act or neglect”

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<sup>1</sup> Commission Rule 2.200 no longer incorporates the Vermont Rules of Civil Procedure and does not mirror the provisions of Vermont Rule of Civil Procedure 12, under which a Motion to Dismiss would typically be filed. Rule 2.220 tracks V.R.C.P. 41 regarding dismissal of actions and provides that “an action shall not be dismissed except by order of the Commission and on such terms and conditions as the Commission deems proper.” Accordingly, this appears to provide the avenue for a Motion to Dismiss. In the alternative, VGS moves for summary judgment under Commission Rule 2.219 or requests that the Commission apply V.R.C.P. 12 pursuant to Commission Rule 2.103.

and (ii) fails to identify how operation of the pipeline results in any “adverse effect” on Petitioners; (C) the Petition seeks a remedy under Section 248(k) that does not apply to a Section 248 project that already has a Certificate of Public Good (“CPG”) and already has been constructed; and (D) the Petition fails to articulate any irreparable injury to Petitioners that would warrant a preliminary injunction. In summary, the Petition is not warranted by existing law or by a nonfrivolous argument to modify existing law and can only be viewed as an attempt to unnecessarily delay and needlessly increase the cost of amending the Project’s CPG in accordance with the Vermont Supreme Court’s remand order.

## I. BACKGROUND

The Petition in this case seeks the same relief that Petitioners<sup>2</sup> sought in the Investigation: (1) an order requiring VGS to cease operation of the pipeline or (2) an order requiring VGS to seek temporary authority to operate the pipeline under 30 V.S.A. § 248(k). Petitioners lost on both points when the Commission soundly denied these remedies. During the Investigation, Petitioners repeatedly moved to broaden the scope of the case claiming that “potentially catastrophic violations of critical public safety requirements” had occurred and the ANGP should be shut down.<sup>3</sup> The Commission granted Petitioners’ motions to expand the Investigation.

After every one of the Petitioners’ alleged concerns about safety and natural resources had been investigated—including a thorough on-site inspection by independent and renowned pipeline safety expert William R. Byrd—it was revealed that not one of the allegations identified a meaningful concern about actual pipeline safety or impacts on the environment. Instead, the

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<sup>2</sup> Petitioners Kristin Lyons, Jane Palmer, Nate Palmer, Lawrence Shelton, and Rachel Smolker were all intervenors in the Investigation. While they have added Jeffrey Everest as a petitioner here, the group is referred to herein as “Petitioners” regardless of whether it refers to the prior group of intervenors or the present petitioners.

<sup>3</sup> *See, e.g.*, Intervenor’s Motion to Broaden Scope of Investigation at 1 (filed Feb. 28, 2018).

evidence overwhelmingly demonstrated that while there were changes that amounted to “substantial change[s]” under Rule 5.400, not a single one of them presented any actual harm to public safety or the environment.<sup>4</sup> Based on expert analysis and extensive evidence, the Commission concluded that the pipeline was adequately installed and safe—and it expressly determined that it would not order VGS to cease operating the pipeline.<sup>5</sup>

The Commission *also* expressly rejected Petitioners’ request that VGS be required to file for a Section 248(k) waiver for temporary authority to operate the pipeline. Petitioners sought three remedies at the close of the Investigation: (Remedy #1) an order requiring VGS to file an application for an amended CPG; (Remedy #2) an order requiring VGS to obtain temporary authority to operate the ANGP under Section 248(k); and (Remedy #3) an order to show cause why VGS should not be placed on regulatory probation.<sup>6</sup> The Hearing Officer granted Remedy #1 and expressly denied Remedy #2 and Remedy #3.<sup>7</sup>

Petitioners did not ask the Commission to reconsider the denial of Remedy #2 or Remedy #3 and did not challenge the Commission’s adoption of the Proposal for Decision—or the underlying denial of their Section 248(k) request—on appeal to the Vermont Supreme Court. Thus, the Commission has already decided that VGS should not be required to seek a waiver under Section 248(k) or shut the pipeline down, and both issues were finally settled in the Investigation.

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<sup>4</sup> Final Report from the Independent Investigation of the Vermont Gas Systems Addison Natural Gas Project, January 8, 2020, by William R. Byrd (the “Byrd Report”); Case Nos. 17-3550-INV and 18-0395-PET, Final Order (issued Apr. 6, 2023).

<sup>5</sup> Final Order at 20 (“We have assessed the safety evidence throughout this proceeding. Had the evidence shown that the pipeline was unsafe, we would have ordered the pipeline’s closure.”).

<sup>6</sup> Intervenors’ Corrected Proposed Findings of Fact and Conclusions of Law at 19-27 (filed Jan. 11, 2022), Case Nos. 17-3550-INV and 18-0395-PET.

<sup>7</sup> Proposal for Decision at 18-24 (issued Oct. 3, 2022), Case Nos. 17-3550-INV and 18-0395-PET.

Notwithstanding, this Petition is unconcerned with actual evidence about public safety and the environment and preoccupied with what procedural machinations can be devised to enable continued litigation over the pipeline, even after it has been conclusively demonstrated that the pipeline is safe and was adequately installed. Tellingly, Petitioners did not even appeal the Commission’s findings of fact in the Investigation<sup>8</sup>—which concluded that the pipeline is safe and was adequately installed and that there were no impacts on safety and the environment based on the extensive evidentiary record.<sup>9</sup> And now, Petitioners demand that the Commission ignore the facts, claiming somehow that the Court struck down all factual findings and conclusions about the safety of the pipeline.<sup>10</sup> This claim mischaracterizes the Court’s decision.

While this Petition can and should be dismissed on other grounds, as discussed below, Petitioners’ claims about the scope of the Supreme Court’s remand order contort the Court’s narrow procedural ruling regarding the appropriate procedure for amending a CPG into an all-out rejection of the Commission’s conclusion that the pipeline is safe. Nothing could be further from the Court’s order, which never called into question the Commission’s conclusions on safety. Instead, the Court’s narrow ruling vacated only the 13 specific findings the Commission made to

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<sup>8</sup> Supreme Court Docket No. 23-AP-244, Brief of Appellants at 17 (filed Sept. 13, 2023) (“Neither the Appellants-Intervenors nor Vermont Gas challenge any of the factual findings or legal conclusions about the substantial changes. Those issues are settled.”).

<sup>9</sup> Intervenors did challenge the Commission’s determination that no violation had occurred in connection with whether a Vermont-licensed engineer was required to sign AC mitigation plans. Although Intervenors framed it as a legal issue, the Court resolved the question by concluding there was no clear error in the Commission’s findings of fact on that issue. *In re Vermont Gas Systems, Inc.*, 2024 VT 19, ¶¶ 30-33, 316 A.3d 231, 248, *reargument denied* (May 3, 2024) (hereinafter “Final Opinion”).

<sup>10</sup> Corrected Petition at ¶ 63 (arguing “Supreme Court vacated the findings and reversed the conclusions of law regarding the safety of the ANGP”). The Court’s order expressly states, “The Commission’s supplemental findings of fact concerning whether the substantial changes actually affected the substantive criteria of 30 V.S.A. § 248 are vacated and remanded for further proceedings consistent with this opinion. *In all other respects, the decision of the Commission is affirmed.*” Final Opinion ¶ 56 (emphasis added). Accordingly, the Court did not disturb the Commission’s decision not to shut down the pipeline or its refusal to require a Section 248(k) waiver, both of which were premised on the conclusion that the pipeline is safe. *See* Proposal for Decision at 20 (“This 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).”).

facilitate amendment of the CPG in the investigative proceeding under specific Section 248 criteria.<sup>11</sup> That procedural ruling does not question the factual validity of those findings or assert that the remainder of the Commission’s decision improperly considered safety. On the contrary, after expressing its narrow holding regarding the CPG amendment procedure and the specific Section 248 criteria finding, the Court expressly held that, “In all other respects, the decision of the Commission is affirmed.”<sup>12</sup> Thus, the Petitioners’ suggestion that the general safety of the pipeline is still an open question is preposterous given the time and expense all the parties, the Commission, the Department of Public Service, and the independent investigator spent carefully reviewing every detailed allegation.

The applicable and appropriate process for addressing the five unapproved substantial changes identified in the Investigation is found in the Court’s Final Opinion and the Commission’s subsequent Post-Appeal Order Outlining Next Steps, which require VGS to issue a 45-day advanced notice and file a new Petition to Amend the Docket 7970 CPG. On September 12, 2024, VGS filed its 45-Day Advanced Submission in accordance with the Commission’s direction. And consistent with the Court’s Final Opinion, VGS’s proposed amendments to the Docket 7970 CPG will be reviewed in the upcoming CPG amendment proceeding when it is initiated in late October 2024 following the notice period. Petitioners have provided no reason why this process is insufficient to address their concerns.

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<sup>11</sup> Final Opinion ¶ 56.

<sup>12</sup> *Id.*

## II. DISCUSSION

The Petition should be dismissed for four reasons: (1) the Commission has already expressly rejected the two remedies sought by the Petition of (a) closure of the pipeline and (b) a waiver proceeding under Section 248(k); (2) the Petition fails to state a claim under 30 V.S.A. § 208 because it (a) does not identify any unlawful act and (b) does not identify how Petitioners are adversely affected by the operation of the pipeline; (3) the requested Section 248(k) relief does not apply to a Section 248 project with an existing CPG and no emergency situation; and (4) the Petition fails to establish any irreparable harm that would warrant a preliminary injunction.

**A. The Petition Should Be Summarily Dismissed Because The Commission Has Already Decided That The Pipeline Should Not Cease Operation and That No Section 248(k) Waiver is Required.**

The Commission issued a Final Order in the Investigation on April 6, 2023, rejecting both remedies sought by this Petition. In particular, the Commission expressly decided not to order the ANGP to cease operation, stating, “We have assessed the safety evidence throughout this proceeding. Had the evidence shown that the pipeline was unsafe, we would have ordered the pipeline’s closure.”<sup>13</sup> The Commission also expressly rejected Petitioners’ request for more process under Section 248(k), stating: “This 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).”<sup>14</sup>

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<sup>13</sup> Final Order at 20.

<sup>14</sup> Proposal for Decision at 20; *see also* Final Order at 24 (“Except as modified above, the findings, conclusions, and recommendations of the hearing officer are adopted.”). The full text of the decision on this issue reads:

The Intervenor’s argue that there is good cause to require Vermont Gas to seek the Commission’s authorization to operate the pipeline under the emergency authority available in 30 V.S.A. Section 248(k) until the matter is fully reviewed and CPG amendments are issued. I do not agree. This investigation has found that the pipeline was

Petitioners did not appeal either decision to the Vermont Supreme Court. Accordingly, the issues raised here have already been addressed and the Commission is not required to entertain a Petition that effectively asks it to reconsider the merits of a prior final order.

First, the Petition is barred by res judicata. “As a general principle, res judicata bars the litigation of a claim or defense if there exists a final judgment in an earlier litigation in which the parties, subject matter, and causes of action are identical or substantially identical; and, it bars litigation of claims or causes of action which should have been raised in the former litigation.”<sup>15</sup> In this case, the parties, subject matter, and causes of action are all identical or substantially identical. A substantially identical group of Petitioners sought the same relief on the same subject matter and the Commission expressly addressed<sup>16</sup>—and denied—that relief in a final order. Moreover, Petitioners sought no reconsideration of or appeal from that decision. Accordingly, the Petition is barred by res judicata. Section 208 cannot be invoked to seek reconsideration of two claims that were specifically decided in a prior final order.

Second, the Petition raises two issues that were already litigated in the Investigation:

(1) whether the pipeline should be shut down and (2) whether VGS should be required to obtain

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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). I am unpersuaded by the Intervenors’ argument and recommend that the Commission act consistent with its precedent and give much the same direction it did in *Kirchheimer Drive*.

I recommend that the Commission not require Vermont Gas to seek the Commission’s authorization to operate the pipeline under the emergency authority available in 30 V.S.A. Section 248(k), but that the Commission instead direct Vermont Gas to petition for amendments to its CPG reflecting the Project as built. Those amendments should also reference the findings in this proceeding and create new conditions reflecting Vermont Gas’s compliance with the additional safety measures agreed to by Vermont Gas.

<sup>15</sup> *Re Ehv-Weidmann Industries, Inc.*, Docket No. 6333, 2000 WL 33175718, at \*3 (Vt. P.S.B. Dec. 15, 2000).

<sup>16</sup> In particular, on January 11, 2022, Intervenors submitted a post-hearing brief requesting several remedies. In addition to “Remedy #1” requiring VGS to file for an amended CPG in a new case, Intervenors moved for “Remedy #2,” which asserted that, “Because there has been a substantial change from the project that was permitted, the ANGP as constructed lacks a CPG.” Intervenors’ Corrected Proposed Findings of Fact and Conclusions of Law Re: Load-Bearing IN VELCO Right-of-Way and Remedies at 21 (filed Jan. 11, 2022).

a Section 248(k) waiver. Accordingly, even if the entire Section 208 claim is not barred by res judicata, the issues it raises are barred by collateral estoppel, which “bars the relitigation of an issue, rather than a claim, that was actually litigated by the parties and decided in a prior case.”<sup>17</sup>

The elements of collateral estoppel are: (1) preclusion is asserted against one who was a party in the prior action; (2) the same issue was raised in the prior action; (3) the issue was resolved by a final judgment on the merits; (4) there was a full and fair opportunity to litigate the issue in the prior action; and (5) applying preclusion is fair.<sup>18</sup>

All the elements of collateral estoppel are met here. Collateral estoppel is asserted against Petitioners,<sup>19</sup> the Petition raises the same two issues, both issues were resolved by a final judgment on the merits, and Petitioners had a full opportunity to litigate both issues.

Finally, applying preclusion is fair. Petitioners have been afforded a seven-year comprehensive investigatory process in which to raise issues and seek closure of the ANGP. During that time, Petitioners expressly requested the same relief. And finally, Petitioners made a successful bid to mandate a separate CPG amendment proceeding in which they will be able to participate. It is therefore fair to apply issue preclusion to dismiss this Petition.

**B. The Petition Must Be Dismissed Because It Fails to State a Claim Under 30 V.S.A. § 208 In That It Fails To Articulate An Unlawful or Neglectful Act and Fails to Identify How Petitioners Are Adversely Affected.**

Even if the Petition is not barred by the Commission’s prior Final Order rejecting both remedies sought here, it must be dismissed for failure to state a claim under 30 V.S.A. § 208. At a minimum, a Section 208 complaint must assert (1) that a company subject to Commission jurisdiction (2) is engaged in “unlawful act or neglect” and (3) that unlawful act or neglect is one

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<sup>17</sup> *In re Tariff Filing of C. Vermont Pub. Serv. Corp.*, 172 Vt. 14, 20, 769 A.2d 668, 673 (2001) (citing *Berlin Convalescent Ctr.*, 159 Vt. at 56, 615 A.2d at 144).

<sup>18</sup> *Id.* (citing *State v. Dann*, 167 Vt. 119, 126, 702 A.2d 105, 110 (1997)).

<sup>19</sup> Petitioners cannot avoid collateral estoppel on the basis that they are not the “same parties” to the Investigation merely because Mr. Everest has joined the Petition.

that “adversely affect[s] the complainant.”<sup>20</sup> The Petition here fails to state a valid claim because it fails to articulate any unlawful or neglectful act and fails to identify how the Petitioners are adversely affected by operation of the pipeline.

1. The Petition Fails Under Section 208 Because It Does Not Identify Any Unlawful Act or Neglect Regarding Operation of the Pipeline.

There is no “unlawful act” in this case because, consistent with the Commission’s Final Order and CPG in Docket 7970, the ANGP was approved to provide natural gas service to thousands of customers in Addison County. Additionally, the ANGP is a fully integrated part of VGS’s transmission and distribution system that also provides pipeline capacity to serve customers in Chittenden and Franklin Counties. Among other requirements, the Commission’s Final Order and CPG requires VGS to extend distribution service to Vergennes and Middlebury and operate the pipeline in conjunction with aggressive energy efficiency measures.<sup>21</sup> Thus, operation of the pipeline is lawful because extending distribution service to customers is an express requirement of the Final Order and CPG issued in Docket 7970.

Not only is VGS required to operate the pipeline pursuant to terms of the existing Docket 7970 CPG, operation of the pipeline is mandated under VGS’s service obligation pursuant to 30 V.S.A. § 231. VGS operates its entire transmission and distribution system—including the ANGP—subject to the general jurisdiction of the Commission under 30 V.S.A. § 203 and VGS’s statutory service obligation and Certificate of Public Good under 30 V.S.A. § 231. Section 231 provides that:

A company subject to the general supervision of the Public Utility Commission under section 203 of this title may not abandon or curtail any service subject to the jurisdiction of the Commission or abandon all or any part of its facilities if it would in doing so effect the abandonment, curtailment, or impairment of the service,

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<sup>20</sup> 30 V.S.A. § 208.

<sup>21</sup> Docket No. 7970, Final Order (issued Dec. 23, 2013) at 148.

without first obtaining approval of the Public Utility Commission, after notice and opportunity for hearing, and upon finding by the Commission that the abandonment or curtailment is consistent with the public interest.

Accordingly, VGS's operation of the pipeline is lawful because the Company has a statutory mandate under Section 231 to maintain its transmission and distribution network to provide customers with safe and reliable service.

The Petition rests on the theory that a substantial change to a project has the legal effect of nullifying the entire underlying CPG. This makes no legal or logical sense because (1) nullification would also deprive the Commission of the legal authority it relied upon to find a violation in the first place, and (2) it would absolve a CPG holder of all other mandates and obligations under a CPG, which, in the case of the ANGP, are extensive.

Moreover, the legal consequence of a Section 248 violation is expressly governed by 30 V.S.A. § 30, which provides that, "A person, company, or corporation subject to the supervision of the Commission or the Department of Public Service . . . who violates . . . section 231 or 248 of this title, or a rule of the Commission, shall be required to pay a civil penalty as provided in subsection (b) of this section after notice and opportunity for hearing." Accordingly, the proper remedy for a substantial change that violates the terms of a Section 248 CPG is an enforcement proceeding under Section 30, as occurred here during the Investigation. Section 30 does not contemplate revocation or nullification of a CPG.

Nor is there any other statutory support for Petitioners' legal theory that operation of the ANGP is unlawful. While the Commission may have general authority, after due notice and appropriate process, to restrain a utility from unlawful activities under 30 V.S.A. § 209(a)(6), exercise of that power is not contemplated anywhere in either Section 248 itself or Section 30.

The Petition fails to articulate any sound legal theory or cite any legal authority under which the operation of the pipeline could be considered unlawful.

Nor is the Petition supported by the plain language of Commission Rule 5.413, which governs the process for amending an existing CPG. Far from contemplating automatic revocation of a CPG, Rule 5.413 codifies the principle that a “substantial change” to a project may only implicate a “portion”<sup>22</sup> of that project rather than the entire underlying CPG. It also distinguishes between a substantial change that is merely a modification to a previously approved project from one that is more like a “new project.”<sup>23</sup> Accordingly, the plain language of the rule does *not* require a new CPG upon amendment as alleged by the Petition.<sup>24</sup>

Finally, the Petition’s theory that VGS lacks a CPG is not supported by the Vermont Supreme Court’s Final Opinion, which expressly rejected Petitioners’ claim that the ANGP needed a “new CPG.” The Court reasoned, “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.”<sup>25</sup> Accordingly, the notion that there is no existing CPG and that operation of the ANGP is therefore unlawful is also inconsistent with the Court’s Final Opinion.

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<sup>22</sup> PUC Rule 5.413 (“If the approved project, or the *portion* of it that will be subject to the change, has been commissioned at the time the change is proposed, the proposed change must be filed as a petition in a new case consistent with the requirements of this rule.”) (emphasis added).

<sup>23</sup> In particular, Rule 5.413 contemplates both (1) a substantial change that “can reasonably be characterized as a modification to the previously approved and commissioned project,” and (2) a substantial change that “is more accurately characterized as a new project.”

<sup>24</sup> See Corrected Petition at 11 (erroneously asserting that Rule 5.413 provides that “when there has been a substantial change to an approved project and the project has been commissioned, the utility must apply for a new permit rather than an amended permit”).

<sup>25</sup> Final Opinion ¶ 34, n.5 (emphasis added).

2. The Petition Also Fails Under Section 208 Because It Does Not Identify How Operation of the Pipeline Results In Any Adverse Effect On Complainants.

To state a claim under Section 208, a complaint must also adequately plead facts under which the complainants are “adversely affected” by the alleged unlawful act or neglect. Yet the Petition fails to explain how Petitioners are adversely affected by operation of the pipeline.

The Petition merely repeats generalized concerns about any pipeline, such as Petitioners’ proximity to the “zone of impact” and the potential effect of a catastrophic event like a pipeline explosion. This type of speculative and generalized concern was investigated and debunked in the Investigation.<sup>26</sup> Not only has the safety of the pipeline been confirmed by multiple experts, the Petition’s generalized reference to a zone of impact does not even constitute a factual allegation that would support an adverse effect on Petitioners. The ANGP was permitted under Section 248 with full knowledge of the general risks of a natural gas pipeline. Petitioners fail to state a claim of an adverse effect based on such general statements, especially when their purported concerns about safety have been exhaustively investigated and determined to be unfounded.

Moreover, to the extent the Petition vaguely relies on the Petitioners’ rights to further process regarding the substantial change violations in the Investigation,<sup>27</sup> the Petition entirely fails to explain how proceeding with the CPG amendment process that Petitioners themselves sought on appeal translates into an “adverse effect” on the Petitioners. Petitioners have been afforded substantial process throughout the Investigation and will have even more opportunity for further process in the CPG amendment proceeding ordered by the Vermont Supreme Court

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<sup>26</sup> Byrd Report at 60-72; Final Order at 11.

<sup>27</sup> See Corrected Petition at ¶ 69 (“The relief requested would protect, or would provide the opportunity to protect, the interests and rights of Ms. Lyons, Mr. Palmer, Ms. Palmer, Dr. Smolker, Mr. Shelton and Mr. Everest, while VGS applies for a new CPG.”). This statement does not identify what interest the Petition is referring to or explain how they would be adversely affected if the relief were not granted.

and the Commission’s Post-Appeal Order Regarding Next Steps. Because Petitioners have failed to state a claim regarding both unlawful act and adverse effect, their petition should be dismissed.

**C. Section 248(k) Does Not Apply To Operation of the ANGP Because the Pipeline Already Has A CPG, Construction of the ANGP Is Complete, and There Is No Emergency Requiring Any Further Construction.**

The waiver provisions of Section 248(k) do not apply to a Project that has already been constructed and is in operation pursuant to the requirements of an existing CPG. That is because the purpose of Section 248(k) is to allow construction or site preparation to begin in advance of a grant of a CPG under special emergency circumstances. Specifically, Section 248(k) provides that the Commission can waive “the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility, a generation facility, or an energy storage facility as necessary to ensure the stability or reliability of the electric system or a natural gas facility.”<sup>28</sup> A waiver shall be granted upon showing, among other things, that “good cause exists because an emergency situation has occurred.”<sup>29</sup> This provision has no application here.

First, as discussed above, the ANGP was already granted a CPG more than ten years ago and is currently operating in accordance with the CPG’s requirements regarding the Project’s location, size, capacity, and compliance with federal safety regulations and VGS’s distribution service obligations. Because the Project already has a CPG, there is no legal basis for requiring a waiver from the requirements of Section 248, because those requirements have been met.

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<sup>28</sup> 30 V.S.A. § 248(k)(1).

<sup>29</sup> *Id.* § 248(k)(4)(A).

Second, construction on the Project has been complete for seven years and the ANGP has been operating safely since then. There is no legal basis for requiring a waiver under Section 248(k) when there is no need for any site preparation or construction.

Third, if VGS were to seek a waiver, there would be no legal basis under Section 248(k) to grant such a waiver in the absence of an emergency situation. Under Section 248(k), “A waiver shall be granted only upon a showing that,” among other things, “good cause exists because an emergency situation has occurred.”<sup>30</sup> This is precisely why the Commission rejected this proposed remedy in the Investigation, stating: “This 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).*”<sup>31</sup>

The conclusion that Section 248(k) has no application here is also consistent with the Commission decisions under Section 248(k) cited by Intervenors—all of which required emergency construction.<sup>32</sup> There is no emergency construction required on the ANGP.

**D. The Petition Fails to Establish That a Preliminary Injunction Is Warranted.**

As an alternative to the requested Section 248(k) relief, the Petition seeks an order compelling VGS to “cease operation of the substantially changed ANGP unless and until it

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<sup>30</sup> 30 V.S.A. § 248(k)(4).

<sup>31</sup> Final Order at 45; Proposal for Decision at 20 (emphasis added).

<sup>32</sup> Corrected Petition at 13-14; *see also* *Petition of Green Mountain Power, Pursuant to 30 V.S.A. S 248(k), for the Emergency Installation of A 5/7 Mva Transformer at the Castleton Substation in Castleton, Vermont.*, Case No. 20-2252-PET, 2020 WL 5880225, at \*4 (Vt. P.S.B. Sept. 17, 2020) (addressing emergency installation of a higher capacity transformer that had not been approved under Section 248); *Petition of Town of Stowe Electric Department for A Waiver, Pursuant to 30 V.S.A. S 248(k), Authorizing Emergency Replacement of Two Transformers at Its Houston Substation.*, Docket No. 8386, 2014 WL 7169733, at \*2 (Vt. P.S.B. Dec. 12, 2014) (addressing emergency need to replace two failed 5 MVA transformers with higher capacity transformers that had not been approved under Section 248); *In Re Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6757, 2002 WL 31432753, at \*1 (Vt. P.S.B. Sept. 25, 2002) (approving emergency installation of transformer to avoid extended disruption of power output).

obtains a new CPG.”<sup>33</sup> This request lacks any foundation in law or fact and should be denied because the Petition fails to establish the basis for the requested relief.

Commission Rule 2.406(D) provides:

No preliminary injunction may issue unless the petitioner establishes that the irreparable injury that will be caused to the petitioner if a preliminary injunction is denied (discounted by the probability that the respondent will prevail in the proceedings on the permanent injunction) will be greater than any injury that the granting of the preliminary injunction will cause to the respondent.

The Petition in this case does not identify any injury at all. The Petition’s “Allegations Pursuant to rule 2.202(B)(1), 2.202(b)(3) and 2.206(K)” are mainly just procedural history from the Investigation. There is no allegation that any petitioner will be harmed if a preliminary injunction is denied. The Petition just repeatedly discusses the “catastrophic damage in the event of a pipeline leak and explosion,” but does not assert any factual basis to support the conclusion that anything of that kind will occur. In fact, the ANGP has been operating safely and reliably since it was put into service in 2017, a fact that was extensively confirmed by the experts in the Investigation. The Petition ignores the extensive evidence confirming the safety of the ANGP and offers no factual basis to conclude otherwise.

Additionally, the Commission has already concluded that the pipeline was adequately constructed and is safe.<sup>34</sup> Petitioners’ claim that the Court struck this finding down misrepresents the Court’s decision. Only the Commission’s thirteen specific Supplemental Findings were vacated—the Commission’s conclusion that the pipeline is safe was not disturbed on appeal and remains the law of the Investigation. There is therefore no legal or factual basis upon which to issue a preliminary injunction because the Petition fails to identify any injury to Petitioners based

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<sup>33</sup> Corrected Petition at 1.

<sup>34</sup> Final Order at 20; Proposal for Decision at 20.

upon continued operation of the pipeline. Instead, the Investigation has established that the Project is safe.

**Conclusion**

For the above reasons, the Commission should dismiss the Petition and proceed with a CPG amendment proceeding consistent with the Court's order on remand, the terms of current Commission Rule 5.413, and the Commission's June 25, 2024 Post-Appeal Order Outlining Next Steps.

DATED at Burlington, Vermont, on this 23<sup>rd</sup> day of September 2024.

**VERMONT GAS SYSTEMS, INC.**

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