

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7970

Petition of Vermont Gas Systems, Inc. for a )  
certificate of public good, pursuant to 30 V.S.A. )  
§ 248, authorizing the construction of the )  
"Addison Natural Gas Project" consisting of )  
approximately 43 miles of new natural gas )  
transmission pipeline in Chittenden and )  
Addison Counties, approximately 5 miles of )  
new distribution mainlines in Addison County, )  
together with three new gate stations in )  
Williston, New Haven and Middlebury, )  
Vermont )

Order entered: 6/12/2015

**ORDER RE: REQUEST FOR NON-SUBSTANTIAL CHANGE DETERMINATION**

**I. INTRODUCTION**

In this Order, the Vermont Public Service Board ("Board") grants the request filed on April 3, 2015, by Vermont Gas Systems, Inc. ("VGS" or the "Company"), for a determination that certain proposed changes to the natural gas transmission pipeline (the "Project") approved for construction in this Docket do not constitute a substantial change to the Project. By this Order the Board also denies the motion by Nathan and Jane Palmer (the "Palmer Motion") that the Board open an investigation into whether the changes proposed by VGS are non-substantial.

**II. BACKGROUND**

On December 23, 2013, the Board issued an Order granting a Certificate of Public Good ("CPG") to VGS authorizing the construction and operation of the Project.

On April 3, 2015, VGS filed a motion requesting that the Board find that certain proposed modifications related to construction practices to be used at five sites (Sandplain 1 in Colchester, Sandplain 2 in Essex, and archeological mitigation sites 1, 2, and 3 in New Haven) along the route of the Project do not constitute a substantial change to the Project (the "VGS Motion").

The VGS Motion included a non-substantial change summary memorandum with supporting exhibits documenting the proposed changes.

On April 24, 2015, the Vermont Department of Public Service ("DPS" or the "Department), the Vermont Agency of Natural Resources ("ANR"), and Nathan Palmer, representing the Palmers *pro se*, each filed comments on the VGS Motion. The Department indicated that it conducted an aesthetics review of the proposed modifications and commented that the proposed changes were "non-substantial and may, in some instances, provide improvements."<sup>1</sup> ANR commented that the proposed changes did not have the "potential for significant impacts to the natural resource criteria" at the Sandplains sites and "if Vermont Gas obtains the requisite permits" the proposed changes "will not result in significant impacts to wetland resources, water quality, or the other natural resource criteria" at the archeological mitigation sites.<sup>2</sup> The Palmer comments on the VGS Motion included the Palmer Motion requesting that the Board "open an investigation into whether an amendment to the CPG is necessary"<sup>3</sup> based on the VGS request for a non-substantial change determination.

On April 31, 2015, the Board requested that the parties file responsive comments to the Palmer Motion by May 15, 2015.

On May 15, 2015, VGS and DPS both filed comments recommending that the Board deny the Palmer Motion.

On June 1, 2015, VGS filed a draft proposal for decision on the non-substantial change determination. VGS indicated that it was authorized to inform the Board that both DPS and ANR supported the draft proposal for decision.

On June 9, 2015, VGS filed a notice of its conveyance to ANR of a conservation easement on the parcel of land referenced in paragraph 2.1.g. of the Memorandum of Agreement (MOA) with ANR filed in Docket No. 7970 on September 13, 2013. Pursuant to the MOA, acquiring the conservation easement was a condition of construction in the sand plain area that is one element of VGS's request for this non-substantial change determination. VGS also requested that the Board either issue a determination of non-substantial change, or inform Vermont Gas

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1. Letter from Louise C. Porter, Esq., to Susan Hudson, Clerk of the Board, dated April 24, 2015.  
2. Letter from Judith L. Dillon, Esq., to Susan Hudson, Clerk of the Board, dated April 24, 2015.  
3. Letter from Nathan Palmer to Susan Hudson, Clerk of the Board, dated April 24, 2015.

that no such determination is necessary by virtue of its inclusion in the Board-approved MOA with ANR.

### **III. NON-SUBSTANTIAL CHANGE DETERMINATION**

Board Rule 5.408 states:

An amendment to a certificate of public good for construction of generation or transmission facilities, issued under 30 V.S.A. § 248, shall be required for a substantial change in the approved proposal. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the state under Section 248(a).<sup>4</sup>

Additionally, the Project's CPG requires that:

Construction, operation and maintenance of the proposed Project shall be in accordance with the plans and evidence as submitted in this proceeding. Any material deviation from these plans or a substantial change to the Project must be approved by the Board.<sup>5</sup>

VGS proposes five modifications to the Project.

The first change, "Sandplain 1," extends a section of the Horizontal Directional Drill ("HDD") to reduce impacts to the Pine-Oak-Heath Sandplain Forest in Colchester, Vermont. To reduce impacts to the Sandplain Forest, the Company proposes to extend the length of the HDD beneath the Indian Brook by 950 feet and to shift the alignment approximately 5-10 feet to the south within the existing Project corridor. To accommodate the extended HDD, an HDD pullback area is to be added. The changes reduce impacts to the Sandplain Forest and are consistent with the Memorandum of Agreement between VGS and ANR, filed in this docket on September 13, 2013.<sup>6</sup>

The second change, "Sandplain 2," modifies a temporary access route to the construction corridor in Essex, Vermont. The modified temporary access uses an existing trail maintained by the Vermont Association of Snowmobile Travelers. This change will avoid a steep embankment

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4. The existing transmission line predates Section 248 and therefore is considered "grandfathered" under that statute. Accordingly, Board Rule 5.408 provides the appropriate framework for our analysis even though the transmission line is not subject to an existing CPG.

5. *Petition of Vermont Gas Systems, Inc.*, Docket 7970, Certificate of Public Good, 12/23/2013.

6. See Letter from Heidi Trimarco, Esq., to Susan Hudson, Clerk of the Board, dated June 9, 2015.

and will provide improved Project access by making the access more efficient and safer. With this change, VGS is also proposing to reduce tree clearing by narrowing the construction corridor from 75 feet to 50 feet in this area.

The final three changes proposed by the Company are “Arch Mitigation 1, 2, and 3,” and are changes to archaeologic mitigation measures at three locations. Instead of using HDD to avoid archaeological sites at these locations, VGS proposes to do a complete Phase III archaeological assessment within the areas to be subjected to soil disturbance, including data recovery for necessary archaeological mitigation. The total sample proposed to be recovered as part of the Phase III data recovery for each site has been reviewed by the Vermont Division for Historic Preservation (“DHP”) and DHP has agreed that the proposed changes provide sufficient archaeologic mitigation at each site.<sup>7</sup>

The Company has represented, through the opinions of three experts, that the five proposed Project changes will not have a significant impact under the applicable Section 248 criteria. Specifically, VGS has represented that the Project changes will not significantly impact any of the Section 248 natural resources criteria through the Environmental Consideration Memorandum from Jeffrey A. Nelson.<sup>8</sup> In that memorandum, Mr. Nelson concludes that “the proposed Project Changes do not result in any change to our conclusions with respect to the conformance with the natural resources criteria to which the Board must give due consideration.”<sup>9</sup>

Additionally, the Company has represented that the Project changes will not significantly impact any of the Section 248 aesthetic criteria through the Aesthetics Review Memorandum from Michael J. Buscher.<sup>10</sup> In that memorandum, Mr. Buscher concludes that “[t]he proposed Project Changes are minor in respect to aesthetic impacts.”<sup>11</sup> The Department also consulted with its aesthetics expert and concluded that “these changes are non-substantial, and may, in some instances, provide improvements.”<sup>12</sup>

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7. VGS Motion at Attachment 5.

8. VGS Motion at Attachment 3.

9. *Id.*

10. VGS Motion at Attachment 4.

11. *Id.*

12. Letter from Louise Porter, Esq., to Susan Howard, Clerk of the Board, dated April 24, 2015.

Finally, the Company has represented that the Project changes will not significantly impact any of the Section 248 criteria applicable to cultural and historic resources through the Archaeological and Historical Resources Memorandum from Dr. John G. Crock.<sup>13</sup> In that memorandum Dr. Crock concludes that the first two Project changes “will have no impact on cultural and historic resources.”<sup>14</sup> He further states that the three changes to archaeological mitigation measures “will have no undue adverse effect on cultural and historic resources.”<sup>15</sup>

In turn, ANR has concluded that the first two changes do not have the potential for significant impacts to the natural resource criteria of 248(b)(5). ANR further states that the three archaeological mitigation changes will require certain permit amendments, and with those permit amendments the changes will not have the potential for significant impact to the pertinent natural resource criteria of 248(b)(5). According to ANR, the three archaeological mitigation changes will require an amendment to the Individual Construction Stormwater Discharge Permit and the change to Arch 2 will require an amendment to Petitioner’s Individual Wetland Permit. The changes do not necessitate a stream alteration permit and do not have the potential for significant impact to other natural resources beyond the permit amendments discussed above. VGS has stated that it will obtain any required amendments to its permits. When the permit amendments are issued, the Project changes will not have the potential for significant impact to the pertinent natural resource criteria of 248(b)(5).

Therefore, based on the Company’s representations and the recommendations of the Department and ANR, we find that the five proposed changes to the Project do not have the potential to create significant impacts under the Section 248 criteria. Accordingly, we will not require that VGS file for an amendment to its CPG to seek approval for the changes described in the VGS Motion. We condition this conclusion on the Company obtaining any required permit amendments, prior to construction within the areas of the Project alignment to be impacted by the permit amendments.

Furthermore, because the Project’s CPG requires that construction of the Project be done

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13. VGS Motion at Attachment 5.

14. *Id.*

15. *Id.*

in accordance with the plans and evidence submitted, we hereby admit the revised plans submitted in the VGS Motion to the record in this Docket.

#### **IV. PALMER MOTION**

The Palmer Motion requests that the Board open an investigation to determine whether the five proposed Project changes amount to a non-substantial change requiring an amendment to the CPG. We decline to do so. While arguing that the proposed Project changes may create potential cost and aesthetic impacts, the Palmer Motion did not provide a *prima facie* showing that there was a potential for a significant impact on any of the Section 248 criteria. The materials presented in the VGS Motion as discussed above provide a sufficient basis for us to make a non-substantial change determination without further investigation.

In the VGS Motion, VGS states that the changes are relatively minor and will not have an impact on the Project budget. We concur. As presented, the proposed Project changes are minor changes and appear to fall within the current budget amount without a budget adjustment. The potential budgetary impacts argued in the Palmer Motion are not so significant as to require further investigation to determine whether an amendment to the CPG is needed.

The aesthetic concerns raised in the Palmer Motion also do not require further investigation to determine that they are non-substantial. The Palmer Motion argues that there is a "likelihood that there will be significant changes to the actual tree clearing and aesthetics,"<sup>16</sup> but does not explain whether these changes will have an undue adverse impact.<sup>17</sup> As discussed above VGS's Motion includes an Aesthetics Review Memorandum from Michael J. Buscher assessing the five proposed changes. Along with describing and photographing the sites of the potential changes, the memorandum includes an expert opinion that these proposed changes are minor and will not result in an undue adverse impact. The memorandum concludes by stating that the "[p]roposed revisions do not result in an increase in aesthetic impacts and do not change our previous conclusion that the Project will not result in an undue adverse impact."<sup>18</sup>

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16. Palmer Motion at 9.

17. In determining whether a proposed project would have an undue adverse impact on aesthetics, the Board applies the so-called "Quechee Test." See *In re UPC Vermont Wind, LLC*, 144 VT 2009 ¶ 24, 185 Vt. 296.

18. Buscher Memorandum at 2.

Given that the Palmers Motion contains no *prima facie* showing that the proposed changes will have an undue adverse impact on the aesthetics of the Project, there is no need for further investigation as requested in the Palmer Motion. Therefore the Palmer Motion is denied.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of June, 2015.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/Margaret Cheney</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/Sarah Hofmann</u>	)	

OFFICE OF THE CLERK

FILED: June 12, 2015

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.*