

**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 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)**

**CONSERVATION LAW FOUNDATION’S
REPLY BRIEF**

Conservation Law Foundation (CLF) submits the following reply brief in the above captioned proceeding.

I. Introduction

The supporters of the proposed project have failed to demonstrate that it will promote the general good of the state, or that it satisfies all the 30 V.S.A. § 248 criteria. By presenting a very narrow and far too limited analysis of the project’s impacts, both Vermont Gas Systems (VGS or Petitioner) and the Public Service Department (PSD) fail to support a project that will allow Vermont to meet its aggressive and necessary clean energy goals. As a major new fossil fuel infrastructure that will be in place for decades, will cost over \$90 million, and will add

greenhouse gas emissions to the atmosphere, the project as proposed cannot advance the general good of Vermont.

The Board must deny approval of a certificate of public good for the project. In the alternative, the Board must approve the project only with specific conditions that reduce gas and overall fossil fuel use commensurate with the requirements of meeting 90% of Vermont's energy needs with renewable energy.

II. Greenhouse Gas Emissions

There is insufficient evidence in the record to support either the VGS or the PSD's conclusions that the project will reduce greenhouse gas emissions. As recognized by the PSD, "it is uncertain whether this Project will reduce greenhouse gases, depending on numerous variables." (PSD Brief at 25). In the face of this uncertainty, the Board cannot determine that the project will reduce emissions.

VGS failed to provide a full lifecycle greenhouse gas analysis of the proposed project. (PSD Brief at 24). No evidence specific to the VGS system was provided to determine the expected emissions over time.

Only the testimony of Dr. Stanton that is provided in her surrebuttal addresses the range of variables that affect emissions, including a range of leak rates, and a range of new uses. When these are considered, as they must be, the expected emissions increase significantly.

The PSD analysis falls far short of presenting a credible analysis of emissions impacts. It continues to rely on the faulty VGS assumptions that all gas use will replace other fossil fuels. Neither VGS nor PSD presented any testimony on the expected energy supplies over the next few decades or how increasing gas use fits with the broader goals of reducing fossil fuel use.

Their analysis simply assumes one dirty fossil fuel will be replaced with another, somewhat less dirty fossil fuel. This does not actually achieve the needed reductions, especially when it fails entirely to address the use of the excess capacity in the system.

By way of analogy, if a doctor recommends a diet and reducing a patient's calorie intake to prevent major health problems, it is not helpful to then have the doctor fill the patient's pantry with potato chips. Simply hoping the patient does not eat the chips staring him in the face is an unrealistic way for the patient to lose weight.

Likewise, since Vermont law sets aggressive goals to reduce fossil fuel use and combat climate change, 10 V.S.A. § 578, it cannot be consistent with these goals to blindly expand pipelines that deliver these fuels to the doorstep of Vermonters and beyond. These are pipes that will be in place for the next 50 to 100 years. In that timeframe every credible climate scientist and all the credible evidence presented in this case acknowledges that Vermont needs to move away from fossil fuels, including gas.

Apart from the climate scientists, the young people who will bear the brunt of climate change are saying the same thing. It was telling that so many younger people spoke out at the public hearing on the proposed project. Many spoke forcefully and eloquently and expressed grave concerns about the gas coming from sources that use fracking and about the climate change disasters that await the future they will inherit if the Board approves the project and fails to help move away from fossil fuels now.

Instead of honestly addressing the greenhouse gas impacts, the proponents of the proposed project are ignoring future generations and the project's long term impacts.

Instead of proposing a project that actually meets Vermont's climate change diet needs, VGS and PSD are recommending the Board do the equivalent of filling Vermont's energy pantry with

potato chips — chips that Vermonters will stare at every day and try not to eat in order to stay on our diet.

VGS and PSD are hoping Vermonters will only eat the chips as a small snack, and use them as a transition to a better diet. But neither proposes any actual limits on the use of the gas or sizing the project to meet Vermont's very limited future fossil fuel needs. Both VGS and PSD ask the Board to ignore the use of the full pipeline capacity in determining the greenhouse gas emission impacts. (PSD Brief at 7, 9).

Both VGS and PSD recognize that the proposed project provides for significant excess capacity. (PSD Brief at 7, 9). Neither provides any analysis of how the excess will be used. Neither recommends any conditions to address the use of the excess capacity to ensure it achieves either the desired or anticipated results. Instead, they simply acknowledge the excess capacity and like the patient with the pantry full of potato chips, they simply hope the chips will not be eaten in place of healthier snacks, like fruits and vegetables.

The Board cannot rely on the hopes of either the PSD or VGS. Absent specific measures in place, as part of this project, to reduce fossil fuel use – including gas – over the life of the project, there is insufficient evidence for the Board to determine the project will reduce greenhouse gas emissions.

Both Dr. Stanton and Dr. Erickson explained how continued reliance on natural gas in the long term is not compatible with meeting Vermont's energy or climate change goals. Their testimony that the proposed project “locks in” long term reliance on fossil fuels is sound in the face of the VGS and PSD's failure to propose any limits on the use of gas going forward or any reasonable analysis of how gas will be used during the long-term life of the project. The PSD claim that Vermonters can transition away from gas if “gas becomes too expensive,” is pure

speculation and conjecture. (PSD Brief at 16). Since the PSD has failed to present evidence supporting this claim, the Board cannot accept it. In contrast, like those who commented at the public hearings, Dr. Stanton and Dr. Erickson thoughtfully explained why the Board must reject the move from oil to gas as being insufficient to meet the demands of climate change.

Mr. Wolfe, the only witness with experience developing renewable energy projects explained how it is not reasonable to assume all gas will replace oil — especially if we consider a longer-term horizon. Dr. Stanton explained how the pipeline will carry enough gas to support a new gas-fired electric facility – in addition to meeting demands for heating, thus increasing Vermont’s dependence on fossil fuels.

Simply hoping for a better future is not enough. These hopes are not evidence the Board can rely on in determining the environmental impacts of a proposed project. The Board must base its decision not on hopes, but on actual action that will achieve reduced greenhouse gas emissions. VGS and PSD have not proposed actions that would address the longer-term impacts of this project and ensure that Vermont is no longer relying on gas 50 to 100 years from now.

In contrast, CLF’s efficiency proposal would begin to fund the retirement of the project so that Vermont has a reasonable expectation of meeting its climate goals and not simply hoping it does. CLF’s efficiency proposal would recapture a significant portion of the expected financial savings from the proposed project and put that money towards statewide energy efficiency. CLF’s efficiency proposal would be money in the bank to reduce global warming pollution, instead of pipes in the ground to increase emissions. CLF’s efficiency proposal would effect a reasonable transition and that would serve not only this generation, but future generations as well.

As proposed, the Addison Natural Gas Project will significantly increase greenhouse gas emissions over the life of the project. Neither VGS nor PSD presented credible evidence that emissions would be reduced and failed to recommend conditions that would ensure emission reductions over the life of the project. The proposed project fails to promote the general good of the state and fails to meet the 30 V.S.A. § 248(b)(5) criteria requiring that the project not have an undue adverse effect on air purity and natural resources.

III. Comprehensive Energy Plan

The Board should reject both the VGS and PSD claims that undetermined, unquantified, and speculative future investments in energy efficiency, bio-methane and natural gas expansion meet the requirements of Vermont's Comprehensive Energy Plan. (PSD Brief at 27-31; VGS Brief at 38-39, 83-84).

Both VGS and PSD rely on an undetermined and unquantified expansion of energy efficiency to support meeting the CEP goals. Unlike CLF, neither recommends any condition as part of this proceeding that would put in place any actual efficiency improvements. Their claims are pure speculation and cannot be relied on by the Board in this proceeding. They suggest efficiency investments will increase. They provide no measure for how much efficiency resources will be acquired, instead leaving this to a future proceeding. They do not even propose a floor for the level of efficiency investment increase that would be sufficient.

Both VGS and PSD recommendations regarding bio-methane have similar shortcomings. Both advance some unknown, unquantified and un-analyzed future amount of bio-methane that somehow helps bolster the proposed project's compliance with the CEP. (PSD Brief at 30; VGS Brief at 39). Neither provided any evidence regarding the amount of bio-methane

that could reasonably be expected to be available. Without some grounding in how viable any future bio-methane projects are – both in terms of the available resource or the financial viability of the projects, the recommendations of VGS and PSD are purely speculative and amount to no more than hopes and “feel good” possibilities not grounded in any reality or any evidence in the record.

The PSD’s analysis regarding the use of natural gas and the CEP are similarly not supported by the evidence in the record or grounded in any quantification that can be relied on. The PSD relies on language in the CEP encouraging a general expansion and upgrade of natural gas to support its claims that this project, without any conditions to address use of excess capacity, is supported by the CEP. As noted by the PSD, the CEP “recognizes the advantages and disadvantages of natural gas.” (PSD Brief at 28). The CEP does not support a blanket expansion of natural gas, and it recognizes that it must be partnered with increased efficiency and renewables to achieve the 90% renewable target by 2050. VGS and PSD conflate the CEP’s recognition that some expanded gas use will be helpful, with support for a major, multi-year gas expansion without any conditions to limit its use or tie it to measurable increases in efficiency or renewables. The CEP’s language that actions regarding future energy supplies must be “deliberate and measured” is ignored by the PSD. (PSD Brief at 29; CEP at vol.1, p.3). VGS and the PSD have failed to provide any “deliberate” or “measured” proposal for increased gas use. They failed entirely to provide recommendations for how to ensure gas use will help meet the CEP’s broader goals and have failed to provide any conditions or analysis about the magnitude of future energy uses. The PSD’s entire evaluation is based on a huge assumption that total energy consumption remains constant. (PSD Brief at 29). No evidence supports this assumption.

The Board cannot rely on speculative future actions. Vermont established aggressive goals in its Comprehensive Energy Plan that call for meeting 90% of Vermont's energy needs with renewable sources by 2050. VGS made no showing in this proceeding how this aggressive goal can be met while significantly expanding gas infrastructure as proposed by this project.

In order to promote the general good of the state, a new energy project should move Vermont closer to meeting the goals set forth in the Comprehensive Energy Plan. The proposed project moves Vermont in a direction away from the CEP goals and fails to promote the general good of the state. In contrast to VGS and PSD's analysis, CLF provided concrete recommendations for conditions that would enable a gas project to reduce emissions and meet the CEP goals.

IV. Least Cost Analysis

The Board should reject the PSD's unfounded statutory revision of the least cost standard set forth in section 248(a)(2). (PSD Brief at 7-11). Without any legal authority, the PSB recommends the Board ignore the plain language of the controlling statute requiring a demonstration the project "is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measure and energy efficiency and load management measures." 30 V.S.A. § 248(b)(2). Neither VGS nor PSD has demonstrated that the proposed project is needed to meet current or expected demand that could not otherwise be met with efficiency. Instead, PSD recommends the Board create a different standard for an expansion project. (PSD Brief at 7). This distinction does not exist in statute. The PSD's reliance on the

Georgia Mountain decision is misplaced. *Petition of Georgia Mountain*, Docket 7508, Order of 6/11/10. Unlike the proposed gas project, which expands fossil fuels, the Georgia Mountain project contributes to the region's need for renewable power. *Id.* at 21. There is no similar least cost benefit for the current project. The need for the project compared to efficiency and conservation and renewable alternatives has not been demonstrated. (CLF Brief at 12-13). The Board cannot ignore the clear statutory requirements as recommended by the PSD. *Department of Taxes v. Murphy*, 2004 VT 20, ¶ 6 (courts bound to follow plain language of statute). Absent an evaluation that the proposed project is needed to serve present and future demand that cannot otherwise be met in a manner that comports with least cost principles, the Board cannot award a CPG for the project.

V. Need for all Permits Prior to Construction

CLF supports the Agency of Natural (ANR) recommendation that if a CPG is awarded, it should include a condition that "Petitioner shall obtain all necessary state and federal permits before commencement of construction or ground clearing" (ANR Brief at 38).

As noted by ANR, a number of natural resource permits have been applied for but not obtained. (ANR Brief at 38). Additionally, as noted by VTRANS, the state and federal permits and approvals, including the regulatory review required by the National Environmental Policy Act (NEPA) and a state access permit have not been obtained. (VTRANS brief at 6).

The Board should not allow any construction to commence until all permits have been received. This is a major project, needed permits may be denied or new conditions may arise with permits that have not yet been obtained. The Board's approval should not pre-judge the

other needed approvals and should preclude any construction until all permits are in place. This case is unlike other cases where construction was allowed to commence before all permits were in place. In *Energy Conservation Council of Pennsylvania v. Pub. Util. Comm'n*, 25 A.3d 440, 452 (Pa. Commw. Ct. 2011) the Public Utilities Commission approved construction prior to obtaining all permits because a separate specific need required line replacement. In *In re Lowell Mountain*, Docket 7628, Order of 5/31/11 at 158-166 the Board required approval of specific plans prior to construction, and recognized the need to begin and complete construction within a specific timeframe to qualify for specific tax credits. In this case, so such extenuating circumstances exist that would either require or justify construction prior to obtaining all outstanding permits.

VI. Conclusion

For the foregoing reasons the Board should reject VGS and PSB recommendations to award a Certificate of Public Good for the proposed Addison Natural Gas Project. The specific requirements set forth in 30 V.S.A. § 248 have not been satisfied. Absent specific conditions that measurably and specifically reduce greenhouse gas emissions and ensure compliance with least cost planning and the Comprehensive Energy Plan, the Board should not approve the proposed project.

In the alternative, a Certificate of Public Good should be conditioned on VGS providing funding for significant additional thermal efficiency efforts as outlined in CLF's Brief to mitigate the greenhouse gas emission impacts of the proposed project.

Dated at Montpelier, Vermont, this ____ day of October, 2013.

CONSERVATION LAW FOUNDATION

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