



**S. Mark Sciarrotta, Assistant General Counsel**  
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October 25, 2013

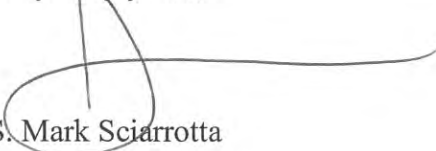
Mrs. Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street  
Montpelier, VT 05620-2701

Re: *PSB Docket No. 7970: Petition of Vermont Gas Systems, Inc.,*

Dear Mrs. Hudson,

Enclosed for filing please find the original and eight copies of the Reply Brief of the Vermont Electric Power Company, Inc. in the above referenced matter.

Very truly yours,



S. Mark Sciarrotta

Enclosures

Cc: Service List



STATE OF VERMONT  
PUBLIC SERVICE BOARD

Petition of Vermont Gas Systems, Inc., requesting 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 ) Docket No. 7970  
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 )

**REPLY BRIEF OF THE VERMONT ELECTRIC POWER COMPANY, INC.**

**I. The Board should not reopen the record.**

For at least three reasons, the Board should reject the Department of Public Service (the “Department”)’s suggestion to reopen the evidentiary record to explore intra-VELCO corridor siting alternatives.<sup>1</sup> First, the Department concedes that the route proposed by Vermont Gas Systems (“VGS”) in its February 2013 filing (the “February 2013 filing”) “is not inconsistent with the orderly development of the region” under 30 V.S.A. § 248(b)(1).<sup>2</sup> The Department does not contend that the February 2013 filing route fails to meet any of the §248 criteria.

Second, while VELCO is sensitive to the good intentions of the Department in its brief, as a procedural matter the Board should not exercise its discretion to reopen a record absent the submission of affidavits showing that new material evidence has come to light following the close of evidence and that a different outcome would result. With respect to Vermont Public Service Board proceedings, the Vermont Supreme Court treats

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<sup>1</sup> Department Brief, pp.5.

<sup>2</sup> Id. pp. 4.

a request to reopen an evidentiary record as a motion for a partial new trial pursuant to Rule 59(a).<sup>3</sup> Rule 59(a) motions are “routinely decided on affidavits so that the court can determine whether new evidence is available that might lead to a different outcome on the issue involved”.<sup>4</sup> Here, there are no affidavits and no showing that that new evidence would lead to an outcome different than the February 2013 pipeline route.

Third, in addition to other criteria, the Board should analyze the pipeline alignment under 30 V.S.A. § 248(b)(3) to ensure that it does not adversely affect *electric* system stability and reliability. While other parties have limited this criteria’s analysis to natural gas system stability and reliability issues, the Board should also consider electric transmission system stability and reliability concerns under this criterion, since doing so is consistent with the intent of the statute and the Board’s jurisdiction, generally. The February 2013 gas pipeline alignment satisfies this criterion with respect to electric system issues by avoiding the VELCO ROW in the Rotax Road area. On the other hand, there has been no showing that §248(b)(3) can be satisfied with respect to the electric transmission system if the pipeline were to be placed in the VELCO right of way (“VELCO ROW”). Indeed, the only testimony on this issue shows that putting the

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<sup>3</sup> *In re Petition of Twenty-Four Vermont Utilities*, 159 Vt. 339, 356-57 (1992). VELCO recognizes that, in matters concerning the public good, the *Board* may solicit additional evidence during the hearings in order to see to the full development of those public good issues, such as the adequacy of and safety of community electric power supplies. *See, e.g., VELCO v. Bandel*, 135 Vt. 141, 151 (1977). Here, however the evidentiary record is already closed and, moreover, the additional evidence is not needed because the February 2013 route satisfies the relevant §248 criteria. The evidence sought seems to be aimed at resolving individual landowner concerns, not public good issues.

<sup>4</sup> *Id.* at 357.

pipeline in the VELCO ROW in the Rotax Road area raises a host of potential electric transmission system reliability and stability problems.<sup>5</sup>

**II. The Board should resolve individual landowner concerns in a different proceeding.**

Respectfully, the concerns raised by the Palmers with respect to VGS' proposal to site the pipeline on their property are "irrelevant" to the Board's decision in this proceeding. The Vermont Supreme Court could not have been clearer on this point.

This Court considers it settled law that proceedings under 30 V.S.A. § 248 relate only to the issue of public good, not the interests of private landowners who are or may be involved. As we have stated as a matter of statutory interpretation, "(t)he necessity of taking an individual's property or an interest therein is not at issue in a proceeding under 30 V.S.A. § 248. The sole issue is the determination of whether or not under the criteria set forth in the statute the proposal for which a certificate is sought advances the public interest." [citing *Auclair v. Vermont Electric Power Co.*, 133 Vt. 22, 28, 329 A.2d 641, 645 (1974)]. Individual property rights not being at issue, they are not a basis for any special recognition of the property owners, nor do they support any special consideration for their protection in these proceedings. In short, they are irrelevant and cannot be the basis for inadequate notice based on those special concerns. Such individual rights have their recognition in [condemnation] proceedings under 30 V.S.A. s 110 et seq., [].<sup>6</sup>

The Palmers have not raised issues other than individual property interests; those interests cannot be resolved in this proceeding as a matter of law.

Moreover, even if the Board were to re-open the proceeding to explore routes different than the February 2013 filing, this would likely result in trading one set of landowner issues for another while, again, potentially adversely affecting electric system stability and reliability. Therefore, even if the Board had the discretion to consider

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<sup>5</sup> Tr. 9/20/2013 pp. 59-64 6880 (Dunn).

<sup>6</sup> *Bandel*, 135 Vt. at 145.

individual landowner issues in this proceeding, there are strong reasons to avoid taking on landowner and other issues attendant to siting the pipeline in the VELCO corridor.

Finally, to the extent that the Palmers' brief implies that the absence of an immediate-term electric transmission project to develop the rest of the VELCO ROW is reason enough to consider siting the pipeline in the VELCO ROW,<sup>7</sup> the Board should reject that suggestion. Mr. Dunn provided ample testimony demonstrating that, particularly in today's dynamic grid environment, this ROW is a significant resource for electric transmission projects going forward, particularly renewable energy-driven projects, as states to the south of Vermont attempt to meet demanding renewable portfolio standards.<sup>8</sup> This testimony and the real-time nature of VELCO's desire to protect the ROW for electric transmission development are underscored by post-hearing developments including indications that Hydro-Québec is in the "early stages of exploring an additional expansion into [this region] with a ~425 MW expansion of its Highgate line into VT"<sup>9</sup> and a September 27<sup>th</sup> request to interconnect 1000 MW of power from a 735kV substation in Canada to the VELCO electric transmission system.<sup>10</sup>

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<sup>7</sup> Palmer Brief pp. 5-6.

<sup>8</sup> Tr. 9/20/2013 pp. 59-60, 83-84(Dunn).

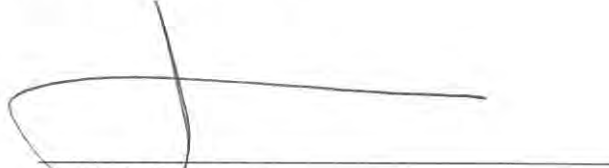
<sup>9</sup> UBS Investment Research, Northeast Utilities, 9/27/2013 (attached).

<sup>10</sup> [http://www.iso-ne.com/genrtion\\_resrcs/nwgen\\_inter/status/](http://www.iso-ne.com/genrtion_resrcs/nwgen_inter/status/) (last visited 10.24.13) (ISO New England Study Request Database – Public)

**CONCLUSION**

The Board should approve the Project as set forth in VGS' February 2013 filing,  
with whatever mitigation measures the Board deems reasonable.

Dated: October 25, 2013  
Rutland, Vermont

A handwritten signature in black ink, appearing to read 'S. Mark Sciarrotta', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke.

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