

**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 new )  
natural gas transmission pipeline in Chittenden )  
and Addison Counties, approximately 5 miles of )  
new distribution mainline in Addison County, )  
together with three new gate stations in )  
Williston, New Haven, and Middlebury, )  
Vermont )

Docket No. 7970

**PROPOSED FINDINGS AND MEMORANDUM OF LAW**

**NOW COMES** the Town of Monkton, by and through its attorneys, Diamond & Robinson, P.C., of Montpelier, Vermont, and hereby submits the following Proposed Findings and Memorandum of Law:

**I. Introduction.**

The Town of Monkton (“Monkton” or the “Town”) is requesting that in the event a Certificate of Public Good (“CPG”) is issued pursuant to 30 V.S.A. § 248 in this docket, it be conditioned upon the terms of the Memorandum of Understanding reached with Vermont Gas Systems, Inc. (“VGS”). Monkton Exh. SP-2. The inclusion of the terms and conditions of the MOU are necessary for a finding that the Project meets the public good pursuant to 30 V.S.A. § 248. Such conditions are necessary to insure that (1)

the project does not unduly interfere with the orderly development of community by taking into account the recommendations of the municipality; (2) insure an economic benefit to the State and its residents; and (3) does not have an undue adverse impact upon aesthetics, municipal resources, public health and safety.

## **II. Proposed Findings and Discussion.**

1. Monkton is a rural municipality located in Addison County, Vermont, with a population of approximately 1,800 residents. Vermont Gas Systems, Inc. (“VGS”) has proposed to construct approximately 43 miles of a high pressure natural gas transmission pipeline through Chittenden and Addison Counties (the “Project”). The Project includes VGS’ construction and operation of approximately 7.47 miles of a natural gas transmission pipeline running in a north-south direction through the Town of Monkton. Pilcher pf. at p. 3.

2. Monkton has a number of concerns regarding the proposed transmission pipeline by VGS. These concerns include, but are not limited to, the environment, safety, and the economic impacts of the natural gas transmission pipeline. The proposed natural gas transmission pipeline will cross public lands. It will run through private property and come within close proximity to the residences of Monkton’s citizens. The Project will impact agricultural lands, wetlands, and other ecologically sensitive areas within the Town of Monkton. The construction of a high pressure natural gas transmission pipeline through the Town of Monkton has the potential to impact the safety of its residents, the

water quality of the wells that provide potable water to the Town's citizens, and the use and value of the property within the Town of Monkton. Pilcher pf. at 3.

3. One major goal for the community is achieving 300' setbacks from residential homes and wells to the location of the transmission pipeline. This goal reflects the legitimate preferences of its citizenry to have such a setback in order to minimize any construction, environmental, operational, and safety impacts from the Project. Pilcher pf. at 3; Pilcher Cross at p. 14, 21. The impact radius, or the area subject to catastrophic harm to both property and person, caused by a catastrophic breach of the transmission pipeline as designed by VGS is approximately 320 feet. Howe Cross at p. 279; Monkton Exh. SP-3, Mark J. Stephens, A Model Sizing High Consequence Areas Associated With Natural Gas Pipelines. The 300' setbacks accounts for this contingency.

4. To address these concerns, the Town of Monkton entered into a Memorandum of Understanding ("MOU") with VGS. Pilcher pf. at 4. The MOU contains agreements in the following areas:

- a. Siting and route of the natural gas transmission line;
- b. Construction of the distribution network.
- c. Capacity and methods of construction.
- d. Environmental protection; and
- e. Easements and other miscellaneous items.

Monkton Ex. SP-2.

5. The Town of Monkton requests any CPG issued in this docket be conditioned upon VGS' compliance with the terms and conditions set forth in the MOU. Pilcher pf. at 5.

6. The Town of Monkton requests any CPG issued in this docket be also conditioned upon VGS' compliance with the recommendations of the Addison County Local Emergency Planning Committee. Bouton pf. at p. 8-9.

**A. Orderly Development of the Region, 30 V.S.A. § 248(b)(1).**

7. The Project will not unduly interfere with the development of the region provided that VGS abides by the conditions set forth in the MOU. The MOU insures due consideration of the recommendations from Monkton's selectboard. Pilcher pf. at 3.

Specifically, but without limitation to the entirety of the MOU, the following conditions should be adopted to insure the orderly development of the region:

a. The transmission pipeline should be sited within the Town of Monkton as described in Section IIA, consistent with VGS' February 28, 2013, filing. Monkton Ex. SP-2, at p. 2. Such location will facilitate the Town's reasonable goal and desire to maximizing the locations where the pipeline is setback 300' from existing residential homes and wells. Monkton Ex. SP-2 at p. 2; Pilcher Cross at p. 17-19, 21, 29.

b. VGS shall develop a distribution network within the Town of Monkton's Village and Pond districts for the delivery of natural gas to Monkton's residences, businesses, municipal buildings, and school as described in Section III of the MOU. Monkton Ex. SP-2 at p. 2-3.

- c. VGS shall limit and condition construction and blasting as set forth in MOU Sections IV F, G, and H. Monkton Ex. SP 2 at p. 5-7.
  - d. VGS shall acquire such municipal permits as needed prior to construction as set forth in MOU Sections IV I and J. Monkton Ex. SP 2 at p. 7.
  - e. VGS shall restore lands disturbed from the construction of the Project, including agricultural lands, as set forth in MOU Sections IV E and IV K. Monkton Ex. SP 2 at p. 4, 7.
  - f. VGS shall provide monies to the Town of Monkton to pay for oversight services to insure that construction by VGS within the Town of Monkton comports with conditions set forth in the CPG. Monkton Ex. SP-2 at p. 7.
  - g. VGS shall remediate, indemnify, and hold harmless property owners for any physical damage to property caused by its construction and/or blasting involved in the Project. Without limitation, VGS shall indemnify and hold harmless any landowner whose well that falls within 300' of the transmission pipeline that is damaged or otherwise adversely impacted by the construction or operation of the Project. Monkton Ex. SP-2, Sections V B and IV G(6) at p. 7, 8.
  - h. VGS shall provide training for the Town's volunteer fire department and pay for the Monkton Central School's membership in the School Pipeline Safety Partnership for a period of three years. Monkton Ex. SP-2, Sections VI B and VI D.
  - i. VGS shall negotiate in good faith with the Town's residents with respect to the acquisition of easements. VGS agrees to commence takings litigation and use of eminent domain only as a last resort. Monkton Ex. SP-2, Section VI E.
8. Nathan Palmer ("Palmer") objects to the location of the Project as agreed upon in the Monkton MOU because it will directly pass through and encumber his residential property and farm. In particular, it will fall within 300' of his residential home. Mr. Palmer seeks to relocate the transmission pipeline into the VELCO right of way near Rotax road. Such relocation is inconsistent with the orderly development of the region

when taking into consideration the Town's recommendations and is further supported by findings 8a-8d below:

a. The MOU's siting of the transmission pipeline within the Town of Monkton reflects the legitimate expression of the Town's stated goal to maximize setbacks at least 300' from residences and wells. *Supra.*, at finding 7a above.

b. Unfortunately, it is not possible to achieve a 300' setback for all property owners. Pilcher cross at p. 21. If the Project is relocated from the Palmer property back into the VELCO right of way, four additional property owners will be involuntarily impacted by having the transmission pipeline fall within 300' of their residences and/or wells. Heinz Cross (9/20/13) at p. 31-41; VGS Exh. EMS-Supp.-1. The location of the Project as described in the Monkton MOU maximizes the 300' setback goal.

c. The four property owners who would be impacted by a reroute have not had an opportunity to participate in these proceedings because they reasonably believed that the pipeline route would not be located upon their properties. Pilcher Cross at p. 34. Nothing in the VELCO easements that currently encumber these homeowner's properties put them on notice that a natural gas transmission pipeline would encumber their property. Heinz Cross (9/20/13) at p. 28-29.

d. Mr. Palmer's concerns about the continued use of his land and impacts caused by water migration and soil disturbance will be mitigated by having VGS perform horizontal direct drilling along the most western border between his property and the federal conservation easement. See VGS Surr. Exh. EMS-Supp.-1. The use of horizontal direct drilling will move the location of the transmission pipeline to

approximately 160' from Mr. Palmer's residence. Simollardes Cross (9/16/13) at p. 94. Such horizontal direct drilling will mitigate the concerns about water migration caused by the project on Mr. Palmer's farmland. Heindel Cross at p. 32. It will also mitigate concerns about soil disturbance that could otherwise impact his farming operations. Darby Cross at p. 158.

**Discussion.**

The issuance of a CPG requires a finding that the Project will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal legislative bodies. 30 V.S.A. § 248(b)(1). Conditioning VGS' CPG upon compliance with the conditions set forth in the MOU is needed to find that the Project will not unduly interfere with the orderly development of the region. The MOU's provisions contain essential terms on subjects ranging from siting, construction, and the development of a gas distribution system that are essential to insure that the Project does not unduly interfere with development in Monkton.

In particular, the municipality, through its Town Meeting and the Selectboard, has voiced the strong desire for 300' setbacks from residential homes and wells. This is needed to minimize any adverse construction, environmental, operational, and safety impacts from the Project. The Town recognizes that the proposed site for the transmission pipeline does not perfectly achieve this goal. There may be several properties where the 300' setback cannot be achieved. While not perfect, the alternatives at this time do not present better options.

The Town recognizes that one of these imperfections is the placement of the transmission pipeline within the Palmer's property. The 300' setback on the Palmer's property cannot be achieved with the current routing. To minimize the potential adverse impact upon the Palmer property, Monkton requests that the Board further condition the CPG upon VGS' use of horizontal direct drilling along the western border of the Palmer property. This should greatly assist in mitigating the impacts of soil disturbance and water migration.

The Town is concerned that a change in the routing from the Palmer property into the VELCO right of way will impact four other property owners with residences and wells that fall within 300' of a re-route, and they have not participated in this proceeding. Should the current route proposed by VGS not be adopted, Monkton requests that newly impacted landowners be granted the opportunity to be heard prior before any final decision is reached. Certainly, Monkton would have no objection to an alternative route near Rotax road if impacted landowners voluntary consent to the change.

**B. Economic Benefit, 30 V.S.A. § 248(b)(4).**

9. The MOU provides for the development of a distribution network and service. The distribution network will be constructed within the Town's Village and Pond districts as depicted in MOU Attachment A. Monkton Exh. SP-2. This will provide the delivery of natural gas to some of Monkton's residences, businesses, municipal buildings, and



school. VGS will utilize best efforts to complete construction of the distribution system within two years from the construction of the Project. *Id.*, at Section III B; Pilcher Cross at 22-23.

10. VGS shall also pay property taxes for its facilities utilizing the methodologies promulgated by the Vermont Department of Taxes. Monkton Exh. SP-2 at section IIIC.

11. The CPG shall be conditioned upon the development of the distribution network set forth in the MOU and the payment of property taxes described in the MOU to provide an economic benefit to the State and its residents.

### **Discussion**

30 V.S.A. § 248(b)(4) requires a finding that the Project result in an economic benefit to the State and its residents. In the event a CPG is issued by the Board for the Project, it should be conditioned upon the adoption of the MOU's provisions requiring the development of a distribution system in Monkton. Such a finding and conclusion is required to insure that Monkton is not merely burdened with the development of the transmission pipeline, but also benefits economically from hosting the Project.

**C. Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment and Public Health and Safety, 30 V.S.A. § 248(b)(5).**

12. Specifically, but without limitation to the entirety of the MOU, the following conditions should be adopted to insure that the Project will not have an undue, adverse impact upon aesthetics, historic sites, air and water purity, the natural environment, public health and safety in the Town of Monkton:

a. Size and capacity shall be limited to no greater than a 12” diameter pipe at 1440 lbs of pressure. VGS agrees not to operate more than one pipe at a time over any particular easement with a total size and capacity limited to 12” and 1440 lbs of pressure. Monkton Exh. SP-2, at Section IVA.

b. VGS shall offer at no charge to such property owners with wells within 300’ of the transmission pipeline pre-construction water testing of well water through the Vermont Department of Health’s program for Testing Drinking Water from Private Water Supplies and testing to establish total coliform bacteria, inorganic chemicals, mineral content, gross alpha screen, radon, water yields, and verify pump access. Monkton Exh. SP-2, at Section IV C.

c. VGS shall limit the transmission pipeline’s use to gaseous materials only. Without limitation, the transportation of oil will not be permitted. Monkton Exh. SP-2, at Section IV D.

d. VGS shall abide by the terms and conditions concerning the use of agricultural lands set forth in Section IV E of the MOU. Monkton Exh. SP-2 at p. 4-5.

e. VGS shall limit the hours of construction and blasting as set forth in Section IV F of the MOU, unless further restricted by the PSB. Monkton Exh. SP-2, at p. 5-6.

f. VGS shall perform blasting in conformity with the provisions contained in Section IV G of the MOU. Monkton Exh. SP-2, at p. 5-7. Without limitation to those conditions in Section IV G, VGS shall perform the following:

i. VGS shall utilize seismic monitoring equipment during blasting at the closest structure to the blast epicenter regardless of distance (e.g., more than 600 feet).

ii) Water quality and flow testing of wells, and verification of pump access consistent with the requirements of section IV C of the MOU will be offered to all property owners within the Town within a 600 foot radius of the blasting at no charge to the property owners.

*Id.*, at p. 6.

g. VGS shall remediate, indemnify, and hold harmless property owners for any physical damage to property if and to the extent such damage is caused by construction and/or blasting for the Project and to the extent the property damage is not otherwise compensated with easements provided for the Project. Monkton Exh. SP-2, at Sections IV G(6) and V B.

h. VGS shall utilize lay down areas within the Town of Monkton shall occur as set forth in locations identified in Exhibit VGS Supp. JH-3 and JAN 2. Monkton Exh. SP-2, at Section IV H.

i. VGS shall obtain all necessary municipal permits prior to commencing construction. Monkton Exh. SP-2, at Section IV I and Section IV J.

j. VGS shall take those measures reasonably necessary to restore any lands disturbed by construction of the transmission pipeline to the original grade, landscaping and vegetation with similar species. Notwithstanding, VGS shall have the right to eliminate any trees within their right of way and honor the terms of any individually negotiated easements and access agreements. Monkton Exh. SP-2, at Section IV K.

k. Construction will be performed in conformity with VGS' EPSC and Spill Prevention Control and Countermeasures Plans approved by the Vermont Agency of Natural Resources. Monkton Exh. SP-2, at Section IV L.

l. VGS shall comply with all applicable Project permit conditions relating to the control of invasive species, protection of wetlands, water resources, wildlife habitat and natural communities. Monkton Exh. SP-2 at Section V A.

m. VGS shall refrain from using pesticides, herbicides or other chemicals on property to construct and maintain the pipeline ROW. Monkton Exh. SP-2 at Section V C.

13. Notwithstanding the MOU, Monkton agrees that construction and materials for the entire transmission pipeline shall occur in conformity with Class III standards pursuant to 49 C.F.R. part 192. Teixeria Cross at p. 96.

### CONCLUSION.

For the reasons set forth above, The Town of Monkton requests that the Board provide the following:

1. Condition the Project upon VGS' compliance with conditions set forth in the MOU.
2. Condition the Project upon VGS' performance of horizontal direct drilling upon the Palmer property.

Dated at Montpelier, Vermont this \_\_\_\_ day of October, 2012.

DIAMOND & ROBINSON, P.C.

By: \_\_\_\_\_

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