

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 7970

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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 :
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BRIEF OF THE VERMONT AGENCY OF TRANSPORTATION

In accordance with the Board's April 12, 2013 Order with respect to the Motions to Intervene filed in this matter, the Vermont Agency of Transportation (VTrans) is filing its post-hearing brief in this matter. This brief is based primarily on the Pre-Filed Testimony of VTrans' Chief of Utilities and Permits, Craig Keller, whose testimony was unopposed by Petitioner, VGS, and introduced into evidence on September 20, 2013.

In its application for a certificate of public good, Vermont Gas Systems (VGS) has proposed locating the northern segment of its proposed mainline from Colchester to Williston, near Interstate I-89, within the right-of-way of Interstate 289/VT 289 and the unconstructed segments of the CIRC (Circ ROW). This

segment of the Project corridor is approximately 11.5 miles from the point of interconnection in Colchester, and extends through portions of the Towns of Colchester, Essex and Williston, to a point east of Interstate 89 in Williston near the intersection of Interstate 89 and U.S. Route 2. Near the intersections of I-89 and Route 2 in Williston, the Mainline will leave the CIRC and generally run parallel to Vermont Electric Power Company, Inc. ("VELCO")'s electric transmission line corridor that extends between Williston and Middlebury, Vermont.

In Vermont, as in most jurisdictions, the Legislature has authorized regulated utilities to use existing highway rights-of-way, subject to control by highway authorities—VTrans in the case of state highways and the selectboards in the case of town highways. VTrans carefully scrutinizes permit applications from utilities to ensure that the proposed facilities are located so that their installation and maintenance will not impair the highway or adversely affect highway or traffic safety.

VTrans expects permit applicants to avoid conflicts with other utility facilities already located in the highway right-of-way and to avoid impacts to environmental and historic resources. Part of the *quid pro quo* for use of existing highway rights-of-way is that utilities, at their own expense, must bear the expense of relocating or adjusting their facilities to accommodate future highway reconstruction. Therefore, VTrans looks to see if proposed utility facilities are

located as to minimize the risk of conflict with future build-out of the highway facility.

Because Vermont has used federal-aid highway funds to build or improve its highways, VTrans also must comply with the Federal-aid Highway Act, Title 23, United States Code, and the regulations of the Federal Highway Administration (FHWA). In particular, 23 C.F.R. Part 645 (Utilities), Subpart B (Accommodation of Utilities) requires each state transportation department to have an FHWA-approved utility accommodation plan (UAP). As a federal agency, FHWA is subject to the National Environmental Policy Act (NEPA). Under the FHWA regulations governing FHWA compliance with NEPA, FHWA approval of utility installations along or across a federal-aid transportation facility ordinarily requires a categorical exclusion (CE), which is the basic level of documentation required in the NEPA process. See 23 C.F.R. § 771.7(c)(2).

Special considerations apply to the Petitioner's proposed use of the Circ ROW because the VT 289 corridor is a limited-access facility. As originally proposed in the 1980s, VT 289 would have extended through the towns of Williston, Essex, and Colchester. Starting from Interstate 89 (I-89) in Williston, between Exits 11 (Richmond) and 12 (Williston), VT 289 would have passed easterly and northerly of the Village of Essex Junction, crossing I-89 in Colchester between Exits 16 (Winooski/Colchester) and 17 (Chimney Corners/Milton), then continuing westerly

through Colchester to the Heineberg Bridge, the Vermont Route 127 (VT 127) bridge over the Winooski River between Burlington and Colchester.

In the 1990s, VTrans purchased or condemned much of the proposed VT 289 corridor—wide enough for an eventual four-lane build-out—from Interstate to Interstate. VTrans subsequently constructed a two-lane, interim build-out of a segment of VT 289 in the Town of Essex from Vermont Route 117 (VT 117) to Vermont Route 2A (VT 2A). Although there has been no construction along the remainder of the VT 289 corridor between I-89 in Williston and VT 117, as well as between VT 2A in Essex and I-89 in Colchester, these as-yet unused segments of the VT 289 corridor were laid out as part of the limited-access facility and retain their legal character as a limited-access facility.

Moreover, from a stewardship perspective, the entire VT 289 corridor represent a significant investment of federal and state highway funds. From the utility accommodation standpoint, limited-access facilities differ because they are designed primarily as arterial roads for high-speed traffic. There is no access to adjacent property, some degree of separation of opposing traffic flow, use of grade-separated interchanges, prohibition of some modes of transport such as bicycles or horses and very few or no intersecting cross streets. Because of high-speed, high-volume traffic, as well as the roadway design and operational features of limited-access facilities, temporary traffic control in and around work sites within limited-

access facilities typically is much more complicated than for work sites within ordinary (*i.e.*, not limited-access) highways.

Under Vermont law, limited-access facilities, in addition to highway laws of general applicability, are subject to the special requirements of 19 V.S.A. Chapter 17 (Limited Access Facilities), 23 V.S.A. § 1004 (Interstate highway rules), and the State Traffic Committee's *Regulations Governing Use of State Highways with Limited Access Facilities*. Historically, VTTrans did not allow longitudinal (*i.e.*, parallel) utility installations within limited-access facilities, such as what the Petitioner now proposes for the VT 289 corridor. Several years ago, VTTrans, with the approval of the FHWA, modified this policy to allow longitudinal installation of fiber-optic lines within limited-access facilities, including the Interstates.

More recently, VTTrans, with the approval of the FHWA, further modified this policy to allow certain other longitudinal utility installations within limited-access facilities such as VT 289 that are not part of the Dwight D. Eisenhower System of Interstate and Defense Highways. In Sec. 17 of Act No. 12 of 2013 (eff. July 1, 2013), the General Assembly amended 19 V.S.A. § 26a (Determination of rent to be charged for leasing or licensing state-owned property under the Agency's jurisdiction) to authorize VTTrans to collect fair market value rent from utilities allowed to locate new lines within limited-access facilities. (This is similar to the model that VTTrans has long followed for utility use of State-owned railroad corridors.)

Petitioner filed its application for a 19 V.S.A. § 1111 permit on November 28, 2012. At this stage, Petitioner has presented us with a conceptual alignment, which is being reviewed by VTrans. In addition, VTrans is consulting with FHWA's Vermont Division here in Montpelier, which must approve Petitioner's proposed use of the VT 289 right-of-way, most likely by issuing a CE. Assuming that VTrans should see fit to grant Petitioner's permit application, VTrans will issue the Petitioner a Letter of Intent (LOI), confirming VTrans' intent to issue a Section 1111 permit, subject to both standard and project-specific conditions. However, VTrans will not issue Petitioner an actual Section 1111 permit until Petitioner has completed other environmental and regulatory reviews, so that VTrans can fine-tune the Section 1111 permit conditions to reflect any late modifications to Petitioner's proposed project. In addition, VTrans and VGS have yet to reach an agreement with respect to the amount of compensation VGS will be paying VTrans for locating its utilities in the Circ ROW.

CONCLUSION

VTrans does not object to the Project, however VTrans' position is conditional both on VGS' meeting whatever conditions may be imposed in any Section 1111 Permit and on its reaching an agreement with VGS with respect to the amount of compensation to be paid by VGS to VTrans for locating its facilities in the Circ facilities.

AGENCY OF TRANSPORTATION
STATE OF VERMONT
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