

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 17-3550-INV

Investigation pursuant to 30 V.S.A. §§ 30 and 209 regarding the alleged failure of Vermont Gas Systems, Inc. to comply with the certificate of public good in Docket 7970 by burying the pipeline at less than required depth in New Haven, Vermont	
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Case No. 18-0395-PET

Notice of Probable Violations of Vermont Gas Systems, Inc. for certain aspects of the construction of the Addison natural gas pipeline	
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THE VERMONT DEPARTMENT OF PUBLIC SERVICE’S RESPONSE TO VERMONT GAS SYSTEMS, INC.’S COMPLIANCE FILING REGARDING PROPOSED AMENDMENTS TO THE CERTIFICATE OF PUBLIC GOOD

On April 6, 2023, the Vermont Public Utility Commission (the “Commission”) issued a Final Order in the above-captioned matters finding that Vermont Gas Systems, Inc. (“VGS”) committed six separate violations of the 2013 Final Order and Certificate of Public Good (“CPG”) issued in Docket 7970 by failing to seek and receive Commission approval of changes to the construction of the Addison Natural Gas Pipeline (the “Project”).¹ The Commission concluded that five of the six violations were unapproved, substantial changes to the Project in violation of Commission Rule 5.408.² The Final Order directed VGS to submit specific, proposed conditions

¹ The Final Order found VGS violated the 2013 Final Order and CPG by: (i) burying the pipeline using the “sink-in-the-swamp” burial method, a method not previously approved by the Commission, (ii) failing to achieve the required four-foot depth-of-cover standard at 18 locations in the Clay Plains Swamp, (iii) failing to conform to its own specifications regarding pipeline burial on the trench bottom and installation of trench breakers, (iv) failing to comply with the compaction requirements for the pipeline in its construction specifications, (v) failing to ensure staffing for the Project included a Vermont-licensed professional engineer to serve as the responsible charge engineer for the Project, and (vi) failing to bury the pipeline seven feet below non-jurisdictional streams. Final Order at 2-3 (April 6, 2023).

² *Id.* at 3.

as a compliance filing that address each of the five substantial changes identified and account for remedial actions recommended by the witnesses within this investigation.³

On April 27, 2023, VGS submitted its compliance filing detailing several proposed CPG conditions intended to address the five substantial changes identified in the Final Order. The compliance filing specifically incorporates recommended and proposed conditions primarily from three sources of evidence within this investigation: (i) the Final Report from the Independent Investigation of the VGS ANGP authored by William R. Byrd (the “Byrd Report”), (ii) the Stipulated Remedial Action Compliance Plan filed in Case No. 18-0395-PET, and (iii) Transco LLC/Vermont Electric Power Company, Inc. (“VELCO”). Additionally, VGS’s compliance filing provides a narrative detailing why each proposed CPG condition will prevent future occurrences of undue impacts on applicable Section 248 criteria. The Vermont Department of Public Service (the “Department”) reviews each of the proposed CPG amendments in turn below.

CPG Amendment #1: Trenching Techniques in the Clay Plains Swamp – the Department supports the CPG condition as proposed by VGS. As concluded in the Byrd Report and found in the Final Order, the “sink-in-the-swamp” burial method used for the construction of the ANGP within the Clay Plains Swamp did not present an undue, adverse impact to the relevant Section 248 criteria.⁴ The proposed CPG condition appropriately authorizes the as-constructed use of the “sink-in-the-swamp” burial method consistent with the record evidence in this investigation.

CPG Amendment #2: Depth of Cover in the Clay Plains Swamp – the Department supports the CPG conditions as proposed by VGS. The conditions appropriately incorporate the recommendations made in the Byrd Report and by VELCO regarding the necessary remedial

³ *Id.* at 22.

⁴ *Id.* at 17, Suppl. Findings 1-2.

measures to ensure proper notice and inspection at the site of the decreased burial depth within the Clay Plains Swamp.⁵ Additionally, the CPG condition grants Commission approval for installation of the ANGP as constructed with less than four feet of cover, consistent with the Commission's findings that the pipeline meets the loading standard required under the June 2013 VELCO-VGS MOU and will not result in undue, adverse impacts to any of the relevant Section 248 criteria.⁶

CPG Amendment #3: Trench Bottom & Trench Breakers – the Department supports the CPG conditions as proposed by VGS, with modification. The proposed conditions adopt, in whole, the stipulated conditions proposed in the Stipulated Remedial Action Compliance Plan filed in Case No. 18-0395-PET between the Department and VGS. While the Byrd Report suggests that the proposed five-year in-line-inspection interval is overly conservative, VGS has agreed and committed to the shortened inspection interval as proposed. Additionally, the Byrd Report recommends that an over-the-line (“OTL”) survey every 3.5 years should replace the stipulated remedial action requirement that VGS conduct a close-interval survey and direct current voltage gradient or alternating current voltage gradient coating survey to determine the effectiveness of the cathodic protection.⁷ However, VGS has stated its commitment to conducting both remedial measures.⁸ As such, the OTL surveys recommended in the Byrd Report should be incorporated as a relevant condition within an amended CPG.

⁵ Proposal for Decision at 28, Suppl. Finding 6 (Oct. 3, 2022) (*citing* Prefiled Direct Testimony of Brian Connaughton at 6; *See* Byrd Report at 73, Recommendation 3; *See also* Byrd Report, Attachment #56, VELCO Letter of 4-25-2017 Re Clay Plains Swamp at 2.

⁶ Final Order at 18, Suppl. Findings 3-5.

⁷ Byrd Report at 73-4, Recommendation 2.

⁸ VGS Compliance Filing at 12.

CPG Amendment #4: Compaction – the Department supports the CPG conditions as proposed by VGS. As found in the Final Order, provided that VGS commences appropriate remedial measures recommended in the Byrd Report and conducts an ongoing review of the identified fifteen road crossing locations, VGS’s failure to comply with the compaction requirements in its construction of the ANGP will not have an adverse impact on public safety in the future.⁹ The proposed CPG conditions appropriately incorporate the recommendations contained in the Byrd Report.

CPG Amendment #5: Design & Engineering – the Department supports the CPG conditions as proposed by VGS. The Final Order found that provided VGS ensures that any future pipeline work or related construction projects are overseen by a Vermont-licensed engineer, VGS’s failure to maintain a responsible charge engineer during construction of the ANGP will not have any future undue, adverse impacts on public health and safety.¹⁰ The ANGP’s plans for construction were found to be prepared under the supervision of a Vermont-licensed engineer and the Byrd Report found no deficiency or risk in the engineering or design of the ANGP. The proposed CPG condition appropriately authorizes the ANGP as-constructed, provided that VGS continues to ensure continued oversight of any related pipeline construction by a Vermont-licensed engineer.

Finally, VGS has committed to the additional remedial measures outlined in the Byrd Report. While VGS does not present these remedial measures as proposed CPG conditions, the Department recommends that they be incorporated as conditions of an amended CPG either by reference or wholly incorporated as individual conditions. Several of the recommendations do not

⁹ Final Order at 19, Findings 9-10.

¹⁰ *Id.*, Finding 13.

directly relate to the Final Order’s precise findings on the six violations, however the Byrd Report specifically identifies these remedial measures as “provid[ing] additional assurance of safety in the future.”¹¹ The Final Order directs VGS to “include specific proposed conditions that address each of the five violations identified in [the Final Order] *and account for the remedial actions recommended by expert witnesses in this proceeding.*”¹² Given VGS has committed to performing or has already completed the additional remedial measures and they relate to additional assurances of public and pipeline safety as identified within the Byrd Report, any amended CPG should incorporate these measures as further conditions.¹³

Based on the foregoing, the Department recommends that the Commission adopt the proposed conditions in an amended CPG with modification to incorporate the additional remedial measures contained in the Byrd Report.

DATED at Montpelier, Vermont this 24th day of May 2023.

Respectfully Submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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¹¹ Byrd Report at 73.

¹² Final Order at 22.

¹³ The Byrd Report recommendations not specifically incorporated in VGS’s proposed CPG conditions include recommendations 1, 2, 4, 5, and 7. Byrd Report at 73-4.