

STATE OF VERMONT  
PUBLIC SERVICE BOARD

VERMONT PUBLIC  
SERVICE BOARD

2016 MAR 31 PM 3 31

Amended Petition of Vermont Gas Systems, )  
Inc. for authority to condemn easement rights )  
in property interests of **Claire R. Broughton,** )  
**Individually and as Trustee of the Claire R.** ) Docket No. 8641  
**Broughton Revocable Trust u/t/a dated** )  
**April 6, 2012, et al.,** National Bank of )  
Middlebury, Green Mountain Power )  
Corporation, and Waitsfield-Fayston )  
Telephone Co., Inc., d/b/a Waitsfield and )  
Champlain Valley Telecom at 553 Pond Road )  
in **Monkton,** Vermont, for the purpose of )  
constructing and operating the pipeline )  
authorized in Docket 7970 )

Petition of Vermont Gas Systems, Inc. for )  
authority to condemn easement rights in )  
property interests of **Terence D. Cuneo and** )  
**Kari A. Cuneo,** and New England Federal ) Docket No. 8642  
Credit Union, at 360 Chaloux Lane, **Williston,** )  
Vermont, for the purpose of constructing the )  
pipeline authorized in Docket 7970 )

Petition of Vermont Gas Systems, Inc. for )  
authority to condemn easement rights in )  
property interests of the **Town of Hinesburg** )  
and Green Mountain Power Corporation, ) Docket No. 8643  
relative to property located in **Hinesburg,** )  
Vermont in order to construct and operate )  
Phase 1 of the Addison Rutland Natural Gas )  
Project )

Amended Petition of Vermont Gas Systems, )  
Inc. for authority to condemn easement rights )  
in property interests of **Louise Selina Peyser,** )  
JPMorgan Chase Bank, N.A., and Green ) Docket No. 8645  
Mountain Power Corporation at 57 Cedar )  
Lane, **Monkton,** Vermont, for the purpose of )  
constructing and operating the pipeline )  
authorized in Docket 7970 )

VGS RESPONSE TO PROCEDURAL ORDER: CONDUCT OF HEARINGS

On March 17, 2016, the Board requested that the parties in the above-referenced dockets respond to a concern regarding the conduct of hearings related to eminent domain petitions for the Vermont Gas Systems, Inc. (“VGS” or “Vermont Gas”) pipeline project approved in Docket 7970. Specifically, the Board asked for recommendations as to “what steps, if any, the Board should consider taking to ensure that future hearings in these dockets can be conducted in an orderly fashion and to ensure the safety of all participants and anyone else in attendance.” The Board encouraged the parties to consider options for maintaining full public access in the hearing room, to prohibiting general public access to the hearing room during the course of official State business in these proceedings.<sup>1</sup>

At the time of this submission, VGS has secured the rights to all but four parcels required for completion of the pipeline approved in Docket 7970. Members of the public have had and should continue to have appropriate opportunities to witness the proceedings. However, this must be done lawfully, without disrupting state business. Given the urgency of responsibly managing these dockets to allow for construction access this summer with sufficient time to ensure placement of the pipeline into operation for the 2016 heating season, Vermont Gas urges the Board to consider the recommendations listed below.

Vermont Gas frames its recommendations with several legal considerations in mind, recognizing the importance of preserving the rule of law at public hearings while balancing transparency and the public’s right to access as appropriate. First, proceedings under 30 V.S.A. §110 *et seq.* are contested cases as that term is used in the Vermont Administrative Procedures Act (“APA”).<sup>2</sup> Consequently (and contrary to assertions of several individuals at the disrupted prehearing conferences) eminent domain proceedings are not subject to the requirements of the Vermont Open Meeting Law.<sup>3</sup> Second, it is a criminal offense for anyone to engage in

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<sup>1</sup> While counsel for the landowners in Docket 8641 and 8642 makes the repeated point that there have not been any incidents of violence to date, VGS interprets the Board’s concern in the Procedural Order to avoid a situation where such incidents could conceivably take place, and to ensure that the safety of all participants – parties and non-parties– is maintained.

<sup>2</sup> See 3 V.S.A. §801(b)(2) (“...a proceeding ... in which legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.”); accord 30 V.S.A. §111(a) (requiring board to hold a hearing based on the petition, and directing the department to present positions at the hearing).

<sup>3</sup> See 1 V.S.A. §312(e) (“Nothing in this section or in section 313 of [the Open Meetings Law] shall be construed as extending to the Judicial Branch of the Government of Vermont or of any part of the same *or to the Public Service Board*; nor shall it extend to the deliberations of any public body in connection with *a quasi-judicial proceeding ...*”)(emphasis added) and §310(5)(A) (defining quasi-judicial proceeding to include contested cases under the APA).

disorderly conduct. 13 V.S.A. §1026. The law is violated when an individual intentionally causes (or creates a risk of) public inconvenience or annoyance by:

- (1) engag[ing] in ... threatening behavior;
- (2) mak[ing] unreasonable noise;
- (3) in a public place, us[ing] abusive or obscene language;
- (4) without lawful authority, disturb[ing] any lawful assembly or meeting of persons; or
- (5) obstruct[ing] vehicular or pedestrian traffic.

*Id.* Vermont Gas is not opining on whether or not violations of this statute occurred at three prehearing conferences,<sup>4</sup> or at the site visit for Docket 8645 where road access to the subject property was intentionally blocked by members of the public. Rather, we are simply providing the legal framework for consideration. Third, while recognizing that the Public Service Board hearing room is a “state facility” and thus may be used by any person for a public purpose during regular business hours, that access “may be subject to reasonable limitations on the time, place and manner of use.”<sup>5</sup> Even so, “any conduct [in a State Facility] resulting in a breach of the peace or disturbance, as defined by the conduct prohibited by the provisions of 13 V.S.A. Chapter 19, or which impedes or disrupts the orderly conduct of State Business is prohibited.”<sup>6</sup>

With these underlying principles in mind, Vermont Gas provides the following suggestions for the Board to consider to ensure that the proceedings can move forward efficiently:

1. Use of Telephonic Conferences Other Than For Technical Hearings. For those hearings that may arise concerning discovery, scheduling, evidentiary matters and the like prior to the technical hearings, the Board should consider telephonic conferences in lieu of having the parties travel to Montpelier. This will reduce costs for all involved while avoiding risks of disruption. Where feasible, the hearing notice posted on the Board’s

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<sup>4</sup> That said, during pre-hearing conferences in Docket 8645, 8642, and 8641, singing by observers of the proceedings made it very difficult for the parties to efficiently conduct the important business of setting schedules. *See* Docket 8645, Hrg. Tr. at Docket 8641, Hrg. Tr. at Docket 8642, Hrg. Tr. at 5.

<sup>5</sup> *See* Vermont Agency of Administration, Department of Buildings and General Services, State Facilities Rule 3, (available at [http://bgs.vermont.gov/facilities\\_rules](http://bgs.vermont.gov/facilities_rules) (last visited March 29, 2016)) (hereinafter “State Facilities Rule”).

<sup>6</sup> *See* State Facilities Rule 7.

calendar would ideally include a dial-in number for anyone to call in to hear the discussion.

2. Issue Public Notice Regarding Disorderly Conduct Prior To The Technical Hearing. On its public notice page, the Board can issue a notice of technical hearing that informs the public of its right to attend while making clear that disorderly conduct aimed at disrupting the proceedings will not be tolerated (and describing standards of acceptable / unacceptable behavior in the hearing room).<sup>7</sup>
3. Hold the Technical Hearings In An Alternate Venue. In conjunction with recommendation 2, convene the hearing in a venue with additional room for observers and simultaneously address the concerns expressed to the Board by law enforcement officials as set forth in the Order.
4. Allow Public Access In The Hearing Room While Conducting The Technical Hearings In A Closed Section Of The Building. State Facilities Rule 3 provides that “Certain areas of State Facilities may be exclusively reserved for the purpose of State Business by the Commissioner or designee.” Using this rule, it may be possible to conduct the technical hearings in one part of the building (*e.g.*, the GIGA Room), while allowing members of the public to congregate in the hearing room and witness the proceeding via closed-circuit TV or other electronic media. This would avoid disruption of State Business, while providing a means for the public to witness the hearing. And it provides a practical balance between transparency and allowing state business to proceed, but without the Board having to exercise its equitable powers to control the proceedings (*e.g.*, restraining orders under 30 V.S.A. §10(e)).

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<sup>7</sup> By contrast to the other prehearing conferences, the prehearing conference for Docket 8645 on February 2, 2016 featured several members of the public who attended with signs expressing their viewpoints. These attendees did not disrupt the proceeding, but effectively communicated their positions to the Hearing Officer.

DATED at Burlington, Vermont this 31<sup>st</sup> day of March, 2016.

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