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October 21, 2014

Mrs. Susan M. Hudson, Clerk
Chittenden Bank Building
Vermont Public Service Board
112 State Street - Drawer 20
Montpelier, VT 05620-2701

Re: Docket No. 8328 – Response to Motions to Intervene

Dear Mrs. Hudson:

Enclosed for filing with the Public Service Board are an original and six copies of the *Response of the Vermont Department of Public Service to Motions to Intervene* in the above docket.

Sincerely,



Timothy M. Duggan
Special Counsel

Enclosure

cc: Service List



**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 8328

Investigation into alleged violation by Vermont Gas
Systems, Inc., of Public Service Board Rule 5.409

**RESPONSE OF
THE VERMONT DEPARTMENT OF PUBLIC SERVICE
TO MOTIONS TO INTERVENE**

The Vermont Department of Public Service (Department) hereby provides the following response to the Motions to Intervene filed by Conservation Law Foundation (CLF) and Ms. Louise Selina Peyser (Ms. Peyser) in the above-referenced proceeding. The Department makes this filing consistent with the schedule established by the Board on October 3, 2014, in its *Scheduling Order Re Intervention and Briefings on Scope of Proceeding*.

In the Department's view, neither CLF nor Ms. Peyser has demonstrated a substantial interest in the subject matter of this proceeding necessary to grant party status. There are also other proceedings that more squarely address their stated concerns, and which therefore serve as alternative means to protect their interests. Accordingly, neither CLF nor Ms. Peyser has shown that they meet the standard for intervention.

Standard

As the Board explained in its *Order Re: Motions to Intervene, et al.*, in Docket No. 8180, the standard for intervention in Board proceedings is as follows:

PSB Rule 2.209 governs intervention in proceedings before the Board. Rule 2.209(A) provides that upon timely application a person shall be entitled to intervene in a proceeding in three circumstances:

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or
- (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive

means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Board the power to grant intervenor status on a permissive basis, when an applicant “demonstrates a substantial interest which may be affected by the outcome of the proceeding.” In exercising the discretionary authority reserved in Rule 2.209, the Board considers three factors:

- (1) whether the applicant's interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the applicant's interest can be protected; and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

In this case, neither CLF nor Ms. Peyser claim a statutory right to intervene in the proceeding. Instead, both movants seek intervention under the “substantial interest” standard set forth in 2.209(A)(3) and 2.209(B). “In applying the substantial interest standard under PSB Rule 2.209(B), the Board will deny a motion to intervene where a movant has failed to demonstrate a ‘specific particularized interest’ that may be affected by the outcome of a proceeding. Simply raising generalized concerns is not sufficient to support intervention.” *Application of Seneca Mountain Wind, LLC, Order Re: Motion for Interlocutory Review*, Docket No. 7867, Order of 10/5/12 at 2 (citing *Joint Petition of Green Mountain Power Corporation, et al.*, Docket 7628, Order of 9/3/10 at 3-4). While this language pertains solely to the “substantial interest” standard under 2.209(B), the Department submits that the standard is no less stringent under the intervention of right provisions in 2.209(A)(3). With respect to landowner requests for intervention, the Board has denied intervention where the concerns asserted do not demonstrate a specific or substantial interest arising from the proceeding on the landowner’s property, and where the asserted interest is not distinct from the interests of the general public. *Petition of Vermont Gas Systems, Inc., Order Re: Motions to Intervene, et al.*, Docket No. 8180, Order of 4/1/14 at 8.

Discussion

Ms. Peyser

The specific interests asserted by Ms. Peyser in her Motion to Intervene appear to be based on the fact that she is a landowner along the Phase I pipeline route and generally go to the timing of the release of the updated cost information in that proceeding. Ms. Peyser, Motion to Intervene at 2-3. The Department understands the areas of concern to be generally related to possible route changes, how requirements in the Board's final order were influenced or affected by revised cost estimates, and Vermont Gas's overall right-of-way and land acquisition budget and how it relates to the payments to landowners along the Phase I route.

The Department understands and shares Ms. Peyser's concerns with respect to the timing of Vermont Gas's release of updated cost information, as compared to when Vermont Gas first knew that estimated cost projections had increased by more than 20 percent. However, Ms. Peyser's motion does not make the connection between this proceeding and any possible impact on her. At the prehearing conference, Chairman Volz explained the narrow subject matter at issue in the present case. See Tr. 9/17/14 at 4-5 (Chairman Volz) ("I just want to be really clear about what this case is about. It's a very narrow issue. It's not about the pipeline specifically. It's about whether Vermont Gas violated Rule 5.409 by not notifying us earlier about changes in their cost estimates.") Subsequently, in an order requesting that the parties consider schedules that would move the proceeding along swiftly, the Board later reiterated that "the subject matter of this investigation is limited." *Scheduling Order Re Intervention and Briefings on Scope of Proceeding*, Order of 10/3/14 at 2.

Notwithstanding the narrow and limited subject matter of the instant investigation—whether and when a violation of Rule 5.409 may have occurred and if so the appropriate penalty—the interests asserted by Ms. Peyser appear to go to route alterations, issues addressed in the final order in Docket No. 7970, and right-of-way negotiations. None of these issues fits within the narrow and limited area of investigation that that will take place in this docket. These matters have either been already addressed in the certificate of public good (CPG) final order

(including the recent investigation into whether that order should be reopened due to the revised cost estimates), in other proceedings, or in future proceedings related to condemnation.

Moreover, it bears noting that Ms. Peyser was not an intervenor in the Phase I proceeding. Rule 5.409 only provides that notice of revised cost estimates be given to parties to the proceeding and the Board. It does not require that notice of revised cost estimates be given to landowners along the route of the pipeline. Accordingly, Ms. Peyser had no expectation of being notified of the revised cost estimate and therefore cannot be viewed as having been harmed, or in any way impacted, by Vermont Gas's adherence (or lack thereof) to the reporting requirements set forth in Rule 5.409.

In this respect, it is instructive to consider a different penalty proceeding, recently concluded by the Board. In Docket No. 7628, the Board recently concluded an investigation into sound violations at Green Mountain Power Corporation's (GMP) Kingdom Community Wind Project. In that case, it was determined that GMP had violated noise standards contained in the CPG issued in that proceeding. Violations of noise standards contained in a CPG have the potential to directly impact landowners (i.e., noise from the facility has the potential to be heard at their properties) and those landowners are entitled to rely on and seek enforcement of those standards when they are not met. It is therefore clear that such landowners have substantial interests in the penalty proceeding given the impact on them as landowners.

Here, whether Vermont Gas violated Rule 5.409—a generic reporting requirement—carries no similar potential for a direct or substantial impact on any specific landowners, particularly landowners who for one reason or another have chosen not to participate in the underlying certificate proceeding. Accordingly, Ms. Peyser has not demonstrated any interest that could be affected by this proceeding, let alone a substantial interest or one that is distinguishable from the interests of the general public.

Furthermore, to the extent a specific interest can be discerned from Ms. Peyser's motion, other proceedings exist where the substance of the revised cost estimates will be addressed (the remand proceeding recently concluded in Docket No. 7970, and/or CLF Petition for Declaratory Judgment that an amended CPG is needed in Docket No. 8330) and where the valuation of any

easement or right-of-way on the Peyser property will be addressed. Accordingly, Ms. Peyser has not met the standards articulated by Board rule or precedent for intervention in this proceeding.

CLF

CLF describes itself as “a private, non-profit environmental membership organization dedicated to the protection and responsible use of New England’s natural resources, including resources affected by the generation, transmission, distribution and use of natural gas.” CLF, Motion to Intervene at 2. CLF states that its interests as a participant in Docket Nos. 7970 and 8180 will be affected by this proceeding as the determination in this proceeding may ultimately affect the evaluation of the Phase I and Phase II projects. CLF also asserts its members’ interests in promoting clean and cost-effective power supply, ensuring that investment in energy resources reduces pollution and greenhouse gas emissions, encouraging energy efficiency and conservation, and protecting Vermont’s natural environment and public investments. CLF further states that its Vermont members’ economic interests as ratepayers will also be affected by this proceeding, as the project’s costs may be recovered from ratepayers.

At base, CLF asserts two interests on behalf of its members—environmental and economic. While the environmental interests asserted appear to go to the core of CLF’s mission, as described in its motion, the economic interests asserted on behalf of Vermont member ratepayers do not. Nor does CLF differentiate the economic interests of its Vermont member ratepayers from the economic interests of ratepayers generally. Accordingly, CLF has not demonstrated that it has a substantial economic interest in this proceeding, and even if one could arguably be found, it is a ratepayer interest already represented by the Department’s general representation of ratepayers.

The environmental interests asserted by CLF—promoting clean energy and efficiency and protecting the environment—provide a sound basis for CLF’s intervention in the underlying CPG proceeding. However, they do not provide a basis for CLF to intervene in a case investigation Vermont Gas’s compliance with a generic cost estimate-reporting rule. Tellingly, CLF has not even attempted to draw the nexus between its environmental interests and the alleged reporting violation at issue here. To the extent the reporting rule at issue here pertained

to emissions or other impacts on the natural environment, CLF's interest would be on much firmer ground. In this case, while the substance of the cost estimate update may be of interest to CLF for the purpose of determining how those cost estimates impact the section 248 analysis, CLF has not shown how the narrow and limited issue of Vermont Gas's compliance with Rule 5.409 affects a substantial CLF interest.

CLF's best argument for intervention in this matter is that it is derivative of its intervention in Docket No. 7970, the case from which this investigation arises. However, the interest CLF asserts is that this proceeding "may ultimately affect the evaluation of the Phase 1 and Phase 2 projects." CLF, Motion to Intervene at 2. Such speculative and non-descript potential harms do not rise to the level of a "specific particularized interest" required to meet the substantial interest test. Moreover, even if such interests were viewed as "substantial," CLF is more than able to protect those interests in the CPG proceedings themselves (Docket Nos. 7970 and 8180). Therefore, CLF has a clear and direct alternative means by which to protect any of its interests. Accordingly, CLF does not meet the requirements for intervention set forth in Board rules.

Conclusion

Having reviewed the narrow and limited issues to be investigated in this proceeding against the Board's rules and recent precedent, the Department concludes that neither CLF nor Ms. Peyser have articulated a substantial interest in this proceeding sufficient to support a request for intervention.

Dated at Montpelier, Vermont this 21st day of October, 2014.

VERMONT PUBLIC SERVICE DEPARTMENT

By: 

Timothy M. Duggan
Special Counsel

cc: Docket No. 8328 Service List