COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

MOBIL PIPE LINE COMPANY Petition for Determination of Jurisdiction	)	EFSB 07-5

FINAL DECISION

Robert J. Shea, Presiding Officer
Stephen H. August, Presiding Officer

January 25, 2008

On the Decision:
William S. Febiger
Mary Menino

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Petitioner

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The Energy Facilities Siting Board hereby concludes that it has jurisdiction to exercise its eminent domain powers for the 120 foot pipeline segment owned by the petitioner, Mobil Pipe Line Company, and located underneath land in Oxford, Massachusetts, said land being owned by Providence and Worcester Railroad Company.

I. INTRODUCTION

A. Scope

Mobil Pipe Line Company ("Mobil" or "Company") is seeking a determination whether the Energy Facilities Siting Board ("Siting Board") has jurisdiction over approximately 120 feet of pipeline ("Pipeline") that is located underneath railroad tracks owned by Providence and Worcester Railroad Company ("P&W") in the Town of Oxford, Massachusetts (Exh. MPL-2, at 1-3). From May 1, 1977, until April 30, 2007, Mobil leased an easement from P&W that allowed it to operate the Pipeline on P&W's land in Oxford (the "P&W Property") (id.). The predecessors in interest to Mobil and P&W had entered into various agreements allowing the operation of the Pipeline on the P&W Property beginning in approximately 1931 (id.).

B. Eminent Domain Petition

On April 27, 2007, prior to filing its petition for determination of jurisdiction, Mobil filed a petition with the Siting Board, pursuant to Massachusetts G.L. c. 164, § 69S, seeking the acquisition by eminent domain of a permanent easement for operation of the Pipeline on the P&W Property ("Eminent Domain Petition" or "Petition for Eminent Domain") (Exh. MPL-1, at 1-3). According to the Company, the easement in question, if obtained, would allow the Pipeline to remain in place: Mobil would be able to use the easement even after the lease expired (id.). The Eminent Domain Petition was docketed as case number EFSB 07-3 (id.).

On May 1, 2007, the day the easement expired, Mobil commenced an action in Worcester Superior Court seeking injunctive relief. The Superior Court held that the lease of the easement had terminated (Exh. MPL-2, exh. A). Furthermore, the Court stated that P&W "views the plaintiff [Mobil] as a trespasser with no right to hold over, and has made demand

upon it to cap the pipeline and terminate its continued use of the defendant's land" (id.). Consequently, Mobil sought an injunction from the Superior Court in order to continue "the status quo pending action on" the Eminent Domain Petition by the Siting Board (id.).

The Worcester Superior Court granted Mobil's request for a preliminary injunction enjoining P&W from taking any action to interfere with the operation of the pipeline, including commencing any proceeding to evict Mobil pending the conclusion of the Eminent Domain Petition proceedings before the Siting Board (id.). The injunction also required that Mobil file with the Siting Board either a petition for determination of jurisdiction, pursuant to 980 CMR 2.08, or a petition for an advisory opinion (id.). The court stated that either of these petitions must request a response from the Siting Board regarding the applicability of M.G.L. c. 164, § 69S, to the situation presented (id.).

On May 30, 2007, P&W filed a Petition to Intervene in the Eminent Domain Proceeding, which was allowed.

C. Petition for Determination of Jurisdiction

Mobil properly filed a Petition for Determination of Jurisdiction with the Siting Board on July 10, 2007. This petition sought a ruling as to whether the Board had jurisdiction to hear and decide the Petition for Eminent Domain (Exh. MPL-2). The Siting Board docketed this case as EFSB 07-5. Pursuant to 980 CMR 2.08, the Siting Board is authorized to issue a decision regarding its jurisdiction over matters presented to it. In accordance with the direction of the Presiding Officer, the Company provided notice of hearing and adjudication of the Petition for Determination of Jurisdiction proceeding.[1]

II. SUMMARY OF THE POSITIONS OF THE PARTIES

A. Mobil Position Re Siting Board Jurisdiction

1. Board Has Broad Statutory Authority

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[1] This decision addresses the determination of jurisdiction only, and does not take any action on Mobil's petition for eminent domain.

Mobil asserts that the Siting Board has a broad statutory obligation pursuant to G.L. c. 164, § 69H "to provide a reliable energy supply for Massachusetts with minimum impact on the environment at the lowest possible cost" (Mobil Supplemental Memorandum at 3). Mobil further asserts that under 980 CMR 2.02(1) the Siting Board has been given broad regulatory powers "for implementing the energy policies contained in its enabling legislation in order to provide a reliable energy supply for Massachusetts with a minimum impact on the environment at the lowest possible cost" (id.).

Mobil asserts that its Providence to Springfield pipeline delivers approximately 13,000 barrels per day (546,000 gallons per day at 42 gallons per barrel) of gasoline to the Springfield terminus (Mobil Reply Brief of August 15, 2007 [Mobil Reply Brief] at 3). According to Mobil, if P&W terminates Mobil's easement across P&W's land in Oxford, Mobil's pipeline will be shut down. Mobil asserts that a shutdown of the pipeline will also cause the Springfield terminal (the only terminal in Massachusetts west of Boston) to shut down (Mobil Pipe Line Memorandum in Support of Mobil Pipe Line's Petition for Determination of Board Jurisdiction at 4). Consequently, Mobil argues that gasoline supplies for the customers served through the Springfield terminal would need to be trucked into the area from New Haven or Rocky Hill in Connecticut, East Providence, RI or Boston (id. at 3-4). Mobil asserts that, assuming the additional trucking capacity were available, the need to truck in gasoline would increase truck traffic, diesel fuel consumption, and air pollution. In addition, Mobil alleges that the delivered cost of gasoline in the area served by the Springfield terminal would rise at the wholesale and retail level (Mobil Reply Brief at 3-4). Mobil asserts that the Siting Board has a statutory obligation to avoid the economic and environmental consequences associated with a closure of the Providence to Springfield pipeline (id.).

2. Statutory Background

In making its case that G.L. c. 164, § 69S confers upon the Siting Board the jurisdiction to grant Mobil's petition for eminent domain, Mobil relies upon the wording of two Massachusetts statutes which are excerpted in relevant part herewith.

G.L. c. 164, § 69S provides:

> Any company may petition the board for the right to exercise the power of eminent domain with respect to oil pipelines specified and contained in the proposed notice of intention in accordance with section sixty-nine I if such company is unable to reach agreement with the owners of land for acquisition of any necessary estate or interest in land. . .This section shall apply only to oil pipelines which are facilities as defined in section sixty-nine G**.**

G.L. c. 164, § 69G defines an "Oil Facility" as:

> any new unit, including associated buildings and structures, designed for, or capable of, the refining, (and) storage of more than five hundred thousand barrels or transshipment of oil or refined oil products and any new pipeline for the transportation of oil or refined oil products which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity.

a. Mobil's Interpretation of the Definition of "Facilities" in G.L. c. 164, § 69G

1. Mobil Interprets the "Except" Clause To Bring Existing Pipelines Within the Board's Jurisdiction.

Mobil asserts that the correct interpretation of the definition of "oil facility" in § 69G is the key to its contention that M.G. L. c. 164, § 69S provides the Siting Board with jurisdiction over this matter (Tr. at 5). Mobil argues that the language of the statute used to define an "oil facility" is ambiguous and the phrase beginning with "except" is enigmatic (Tr. at 9). Mobil concedes that its pipeline, which was put into service in 1931, is not new (id. at 6-7). However, Mobil asserts that the definition of an oil facility in G.L. c. 164, § 69G includes an exclusionary clause, "except restructuring, rebuilding or relaying of existing pipelines," which should be construed to mean that when a pipeline is being restructured or relaid or rebuilt, the pipeline need not be new to fall within the definition of an oil facility (id. at 7). Mobil asserts that in the definition of an oil facility "new pipelines are included, and, therefore, the subtext being that existing pipelines are excluded, except . . . this limited class of existing pipelines" (id. at 8).

Mobil states that, even though "there is no immediate necessity to reconstruct this 120-foot portion. . . . it could very well be reconstructed" if that action were required in order to "come within the literal language of the statute" (id. at 11-12).

In support of its inclusive interpretation of the definition of "oil facility," Mobil points to two regulations: 980 CMR 7.07(8), which governs the construction of natural gas facilities; and 980 CMR 7.04(9), governing the construction of electric facilities (id. at 16-28). Mobil notes that both natural gas facilities and electric facilities are "Facilities" as defined in section 69G, while the pipeline in question is an "Oil facility" as defined in that same section. Consequently, Mobil's argument is one asserted by the interpretation of an analogous, but not identical, definition (id. at 27). Mobil notes that both regulations cited exclude certain construction activities on existing equipment, transmission lines, substation facilities and similar property from the jurisdiction that the Board would otherwise have over the construction of natural gas and electric facilities (id. at 28). Mobil argues that by including references to construction activities on existing oil and gas facilities, the regulations imply that "facilities" may include existing facilities (id.). In support of the relevance of the two regulations governing oil and gas facilities with this argument, Mobil notes that the definitions in section 69G of a pipeline that constitutes a "facility" [i.e., a gas pipeline] and a pipeline that constitutes an "oil facility" use many of the same words (id. at 27).

Mobil states the same argument in another way, by asserting that if "new," as used throughout in G.L. 164, § 69G, meant only "new," with no exceptions, the Siting Board would not have felt compelled to articulate certain exclusions relating to existing property in its own regulations governing new gas and electric facilities (id. at 19-23).

In addition, Mobil notes also that the definition of "oil facility" in G.L. 164, § 69G specifically references "existing pipelines of the same capacity" (Tr. at 13-14). Mobil asserts that by limiting the "except" phrase to existing pipelines of the same capacity the "statute is evidencing a concern [that] the pipeline to be rebuilt, relaid or restructured be a substantial pipeline, one of the same capacity that would bring it within the statute in the first place" (id., language in brackets supplied). Mobil further asserts that if the "except" phrase were not interpreted to be one which extended the definition of "new" to include rebuilt, restructured or relaid pipelines, it would imply the Siting Board would have no jurisdiction over the rebuilding of substantial lengths of pipelines, such as the entire 65-mile length of the subject Mobil pipeline in Massachusetts (id. at 14-15).

2. Segment Length Not a Disqualifier

Mobil asserts that, consistent with the overall purpose of the "except" clause Mobil advanced in 1. above, a segment of a pipeline which is being rebuilt, restructured or relaid need not be greater than one mile in length to constitute an oil facility (Mobil Supplemental Memorandum at 7). Consequently, Mobil argues, the Siting Board has jurisdiction over the entire 65-mile portion of the pipeline in Massachusetts, as well as any segment of said pipeline located within Massachusetts (id. at 7-8).

In support of its argument, Mobil cites to 980 CMR 8.03, which addresses the circumstances under which a Notice of Intention to Construct an Oil Facility must be issued pursuant to G.L. c. 164, § 69J. This regulation requires detailed information with respect to proposed pipelines and any segment of such a pipeline to be located in Massachusetts. 980 CMR 8.03(2)(e) reads in part as follows:

> For a proposed pipeline for the transportation of oil or refined oil products which is greater than one mile in length, the petitioner shall provide, for any segment of such pipeline to be located in Massachusetts . . .

Mobil notes, however, that the citation above from 980 CMR 8.03(2)(e) does not explicitly require that a pipeline segment be greater than one mile in length in order to be subject to the Siting Board's regulation (Mobil Supplemental Brief at 7-8). Consequently, Mobil argues, the regulation supports its assertion that pipeline segments of less than one mile fall within the Siting Board's jurisdiction, as long as the entire length of the pipeline is longer than one mile (id.).

b. No Requirement to File Notice of Intention

Mobil asserts that it is exempt from any requirement to file a Notice of Intention pursuant to G.L. c. 164, § 69S by the Acts of 1975, chapter 617, § 15, which states: "the provisions of sections sixty-nine I and sixty-nine J of chapter 164, of the General Laws shall not apply to facilities under construction prior to May 1, 1976" (Mobil Supplemental Brief at 8). Mobil also argues that: "in light of the fact that Mobil Pipe Line is not, in fact, building a "new pipeline" such a proposed notice is not required" (id.).

Not withstanding its interpretation that there is no statutory requirement to file or to have filed a Notice of Intention, Mobil states that it is willing to file a Notice of Intention if the Siting Board so requires (id.).

B. Providence and Worcester Railroad

1. Siting Board Statutory Authority

P&W asserts that the Siting Board's jurisdiction is limited to pipelines that are: 1) new, 2) greater than one mile in length, and 3) as to which the owner has filed a Notice of Intention (P& W Brief of August 8, 2007 at 9-10). P&W argues that because the portion of the pipeline in question is not new, is less than one mile in length, and no notice of intention has been filed, the Siting Board has no jurisdiction in this case (id. at 9-15).

P&W further asserts that the authority to grant eminent domain is an extraordinary power, and as such, requires strict interpretation of the statutes which authorize its use (id. at 6-7).

2. Mobil's Pipeline fails to Meet Prerequisites for an "Oil Facility"

P&W asserts that G.L. c. 164, § 69S, the statute conferring eminent domain authority on the Siting Board with respect to oil facilities, requires that oil pipelines comport with the definition of "facilities" articulated in G.L. c. 164, § 69G (id. at 5). In P&W's view, the definition of an "oil facility" states unequivocally that the pipeline must be new (id. at 9). In contrast, Mobil's pipeline has been operating in the P&W right-of-way for about 76 years (id. at 9). P&W asserts that the clause in the definition of "oil facility" excepting restructured, rebuilt or relaid pipelines refers to pipelines which are specifically excluded from the reach of the eminent domain powers granted to the Siting Board regarding oil facilities in G.L. c. 164, § 69S (id. at 16). P&W claims its interpretation of "oil facility" gives "plain and ordinary meaning to all the words in the statute," and that to construe the phrase "except restructuring, rebuilding, or relaying of existing pipelines" to expand the definition of "new" is a "tortured interpretation" which "renders the word 'new' meaningless" (id. at 16-18).

P&W further states that "while a restructured, rebuilt or relaid portion of an existing pipeline may be 'new' in the literal sense, the Legislature did not intend such repairs or replacements to be jurisdictional to the Siting Board under Section 69J" (id. at 16-17).

Furthermore, P & W, referencing analogous wording in 980 CMR 7.04(9) and 980 CMR 7.07(8) pertaining to electric and gas facilities, asserts that the Siting Board has never before "construed repairs, relays or replacements of existing oil facilities (or similar electric and gas facilities) to be subject to its comprehensive review under Section 69J (id. at 17, footnote 10).

P&W asserts that the segment of the Mobil pipeline is not of sufficient length to be included in the definition of an "oil facility" (id. at 9). Furthermore, P&W notes that Mobil has not filed a Notice of Intention, and this failure is fatal to its position (id. at 9-15). P&W contends that the Notice of Intention requirement is not a mere formality. Rather, it indicates that the oil facility in question is one which is jurisdictional to the Siting Board and potentially eligible to petition for eminent domain pursuant to G.L. c. 164, § 69S (id. at 11). P&W asserts that jurisdictional facilities are subject to Siting Board review; they may be approved only after the Board makes specific statutorily-required findings (id.).

3. Eminent Domain is an Extraordinary Power

P&W argues that the taking of private property is "a serious matter and that the right of eminent domain is a power of the government to be used sparingly and only for public purposes" (P&W Brief at 6). P&W further asserts that as a consequence of the gravity of the authority to invoke eminent domain, there is a requirement for strict adherence to the statutes governing its use (id.).

III. ANALYSIS AND FINDINGS

We are not persuaded by Mobil's novel argument that the "except" clause in G.L. c. 164, § 69G should be interpreted to mean that restructuring, rebuilding or relaying of existing pipelines are new jurisdictional pipelines. The Siting Board's cases and regulations indicate that the opposite is true, namely that such restructuring, rebuilding or relaying are not jurisdictional. See KeySpan Energy Delivery New England Investigation, EFSB 02-3 (2003) (upgrading of an existing natural gas pipeline does not constitute the construction of a jurisdictional facility); 980 CMR 7.07(8)(c) and 7.07(8)(d). See also 980 CMR 7.04(9)(b) (excludes from Siting Board jurisdiction reconductoring or rebuilding of an existing electric transmission line at the same voltage). As discussed below, we are also not persuaded by P&W's argument that the plain language of the

statute is sufficient to answer the question before us in this case. Our analysis leads us to a different result.

In analyzing this dispute, the Siting Board looks to two relevant statutory provisions: (1) General Laws c. 164, § 69G, which defines an oil facility; and (2) G. L. c. 164, § 69S, which sets forth when the Siting Board may authorize a taking by eminent domain. General Laws c. 164, § 69G, defines an oil facility, in relevant part, as follows:

> any new pipeline for the transportation of oil or refined oil products which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity . . .

General Laws, c. 164, § 69S provides, in relevant part:

> Any company may petition the [Siting] [B]oard for the right to exercise the power of eminent domain with respect to oil pipelines . . .
> . . .
> This section shall apply only to oil pipelines which are facilities as defined in section sixty-nine G.

In the context of this case, the Siting Board understands the ordinary meaning of the word "new" to indicate that which is in addition to what already exists. The Concise Oxford Dictionary, Oxford University Press (1990). However, this does not resolve the controversy before us because the words of a statute will not be read literally if to do so would be inconsistent with legislative intent.[2] Cummings v. Secretary of Executive Office of Environmental Affairs, 402 Mass. 611, at 622 (1988), citing Oxford v. Oxford Water Co., 391 Mass. 581, 592, 463 N.E.2d 330 (1984). Attorney General v. School Comm. Of Essex, 387 Mass. 326, 336; 439 N.E.2d 770 (1982). Lexington v. Bedford, 378 Mass. 562, 393 N.E. 2d 321 (1979). Holbrook v. Holbrook, 18 Mass. (1 Pick.) 248 (1823). Where the Legislature enacts a comprehensive scheme of legislation, such as the establishment of the Energy Facilities Siting Board and its attendant powers, "there are likely to be

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[2] If we were to interpret the language of these statutes absolutely literally, then Mobil Oil could cause the situation to fall within an interpretation of § 69G by simply building a new pipeline laid across a different route. Needless to say, this would be a time-consuming and expensive proposition. Such an interpretation, therefore, would engender an absurd result, and one contrary to the intent of the Legislature in enacting the relevant statutory scheme.

casual overstatements and understatements, half-answers, and gaps in the statutory provisions. . . ." Memorial Drive Tenants Corp. v. Fire Chief of Cambridge, 424 Mass. 661, at 663 (1997).

> As practice develops and the difficulties are revealed, the courts are called on to interweave the statute with decisions answering the difficulties and composing, as far as feasible and reasonable, an harmonious structure faithful to the basic designs and purposes of the Legislature.

Id., citing Cummings v. Secretary of Envtl. Affairs, 402 Mass. 611, 628-629 n. 12, 524 N.E.2d 836 (1988), quoting Mailhot v. Travelers Ins. Co., 375 Mass. 342, 345, 377 N.E.2d 681 (1978) (7-2 decision).

In the first instance it is the agency itself, here the Energy Facilities Siting Board, that must fulfill the responsibility of interpreting the statutes applicable to the agency. City Council of Agawam v. Energy Facilities Siting Board, 437 Mass. 821, at 828 (2002) (Supreme Judicial Court gives Siting Board broad discretion to interpret statutes that it is responsible for enforcing, lending "substantial deference" to such interpretations); AT&T v. Automatic Sprinkler Appeals Board, 52 Mass.App.Ct. 11, at 15 (2001) (Although the duty of statutory interpretation is for the courts, where the agency's statutory interpretation is reasonable, the court should not supplant that interpretation with its own judgment); Greater Media v. Department of Public Utilities, 415 Mass. 409, at 414 (1993) (ordinary precepts of statutory construction instruct us to accord deference to an administrative interpretation of a statute).

This case presents the paradigm of a situation in which the Siting Board is called on "to interweave the statute with a decision answering the difficulty and composing an harmonious structure faithful to the basic designs and purposes of the Legislature." Memorial Drive Tenants Corp. v. Fire Chief of Cambridge, 424 Mass. 661, at 663 (1997). The issue is whether the Legislature did not intend to give the Siting Board the authority to grant eminent domain for existing oil pipeline facilities (and thus intentionally referred to new facilities only) or whether the Legislature simply failed to consider this issue but, to effectuate the legislation's purpose, the Legislature plainly would have provided the Siting Board the power of eminent domain concerning existing oil facilities. See Company-IHOP Restaurant v. Town of Saugus, 1997 WL 339117, at *2 (Mass. Super.).

"The intention of the general court in enacting any statute must be ascertained, not alone

from the literal meaning of its words, but from a view of the whole system of which it is but a part, and in the light of the common law and previous statutes." Pereira v. New England LNG Company, 364 Mass. 109, at 115 (1973) ("Pereira"), citing Armburg v. Boston & Maine R.R., 276 Mass. 418, 426, 177 N.E. 665, 670, Boston v. Quincy Mkt. Cold Storage & Warehouse Co., 312 Mass. 638, 644 N.E. 2d 959. Accordingly, we consider the several statutes and available legislative reports, not in isolation but in relation to each other and to other statutes, referring to their origins, their historic development, and their present language. Pereira at 115.

Chapter 78 of the Resolves of 1971 provided for an investigation and study by a special commission relative to the regulation of the location and operation of electric utility generation and transmission facilities. Chapter 78 of the Resolves of 1971 mandated the Massachusetts Electric Power Plant Siting Commission (the "Committee") to consider "the feasibility of a comprehensive state regulatory jurisdiction over the siting of electric generating plants and routing of major transmission facilities." Third Report of the Massachusetts Electric Power Plant Siting Commission, at 7 (March 30, 1973), House Report 6190. The Committee's two-year study resulted in Chapter 1232 of the Acts of 1973 – the Enabling Act creating the now Energy Facilities Siting Board. Over the period between 1971 and 1978 the Legislature engaged in a comprehensive review of the siting process for energy facilities in the Commonwealth.

Chapter 110 of the Resolves of 1973 broadened the scope of the Committee's study to encompass the total energy picture in Massachusetts to ensure that the Commonwealth has a sufficient supply of energy for the future while the land, air, and water resources are preserved and protected. Fourth Report of the Massachusetts Electric Power Plant Siting Commission, at 10 (June 13, 1974), House Report 6297 (the "Fourth Report"). The Committee found that gas facilities should also be brought under the scope of the Enabling Act. The Fourth Report offered amendments to the Enabling Act to bring the siting of natural gas facilities under the jurisdiction of the now Energy Facilities Siting Board. Favorable action by the General Court resulted in Chapter 852 of the Acts of 1974. As a result, the Energy Facilities Siting Board held jurisdiction over both electric and gas facilities.

Next, the scope of Chapter 110 of the Resolves of 1973 led the Committee to turn its attention in 1974 to a consideration of the siting of oil facilities within the Commonwealth. Fifth Report of the Massachusetts Electric Power Plant Siting Commission, at 8 (January 6, 1975), House

Report 5349 (the "Fifth Report"). Chapter 617 of the Acts of 1975 brought the siting of oil facilities under the jurisdiction of the Energy Facilities Siting Board. As a result, the Energy Facilities Siting Board held jurisdiction over electric, gas and oil facilities.

> Chapter 110 of the Resolves of 1973 broadened the scope of the Massachusetts Siting Commission to encompass the total energy picture in Massachusetts in regards to ensuring that the Commonwealth has a sufficient supply of energy for the future while its land, air, and water resources are preserved and protected. This mandate led the Special Commission to turn its attention in 1974 to a consideration of the siting of oil facilities within the Commonwealth. Our seven-month study resulted in Chapter 617 of the Acts of 1975. Patterned after Chapter 1232 of the Acts of 1973 and Chapter 852 of the Acts of 1974, Chapter 617 was intended to grant the Commonwealth an input into the siting of oil facilities within her boundaries.

Sixth Interim Report of the Special Commission Relative to the Regulation of the Location and Operation of Electric Utility Generation and Transmission Facilities and Other Related Matters, at 11 (January 8, 1976), House Report 4374 (the "Sixth Report"). Finally, the Committee proposed a series of additional amendments to Chapter 617, which stemmed from several meetings and discussions which the Siting Council had held with the Massachusetts Petroleum Council and counsel representing the major oil companies. Sixth Report at 11.

The proposed Siting Council amendments which followed recommended the following changes, in relevant part:

> To give oil pipelines, but not other types of oil facilities, the benefits of zoning override and eminent domain. An oil company would petition the Energy Facilities Siting [Board] for the rights to exercise the power of eminent domain.
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> * * *
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> [T]he [Special] Commission concurred in the need for the power of eminent domain with respect to oil pipelines because it felt that since a pipeline could go through thirty or forty communities, it would be difficult to imagine that the communities would have appropriately zoned areas contiguous to each other.

Sixth Report at 11-12. The Siting Board concurred in the need for the power of eminent domain for oil pipelines (id. at 12). Subsequently, Chapter 468 of the Acts 1976 empowered the Siting Board with the jurisdiction to exercise eminent domain for oil pipelines.

As evidenced by this extensive, well documented, and deliberate legislative history and associated legislative effort, we find that the General Court enacted a comprehensive scheme of legislation concerning the siting of energy facilities and the security of the state's energy requirements into the future. In the context of this comprehensive scheme of legislation, an analysis of the statute convinces us that the owner of existing oil pipelines, as well as the owners of new oil pipelines, are entitled to petition for the right to exercise the power of eminent domain pursuant to G.L. c. 164, § 69S.

Despite the existence of this extensive legislative history we find no recorded discussion to support the more rigid interpretation of § 69S that would grant eminent domain authority to the Siting Board limited to new pipelines only. See Town of Oxford v. Oxford Water Company, 391 Mass. 581, at 592 (1984), citing Attorney General v. School Comm. Of Essex, 387 Mass. 326, 336, 439 N.E.2d 770 (1982). (The words of a statute should not be read literally if to do so would be inconsistent with the legislative intent). To the contrary, we find that the legislative intent of the overall legislation described above, and specifically G.L. c. 164, § 69S, was to create a comprehensive scheme for the Siting Board to review and approve the siting of proposed energy facilities, and to grant eminent domain, where necessary, to facilitate the long-term energy security of the Commonwealth. Logically this scheme should include both existing and new oil pipelines.[3]

As discussed above, it is reasonable that in such a major legislative enterprise as the development of an entirely new Siting Board and the creation of its attendant statutory authority there may be some oversights or gaps in the resulting statutory provisions. However, it would be a

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[3] Given the legislation's comprehensive nature, we are convinced that the term "new pipelines" should also apply to those legal rights, usually an easement, necessary to allow the continued operation of existing pipelines. This is the situation in the present case. Mobil's easement in P&W's property has lapsed, although the pipeline remains intact. Consequently, while it is not necessary for Mobil to lay new pipeline, it is necessary for Mobil to acquire a new easement so that the existing pipeline may continue to operate. The Siting Board is not persuaded by P&W's argument that the Board has eminent domain authority for new pipelines but that it lacks such authority necessary to maintain the operation of existing pipelines. The Board's statutory purpose, to "provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost," should not be undermined by an unnecessarily narrow interpretation of the relevant statute.

disservice to that enterprise to interpret its provisions without reference to the overall intention of the legislative scheme.[4]

With regard to whether the 120 foot segment of pipeline at issue comes within the Siting Board's jurisdiction, we agree with Mobil that the Siting Board has jurisdiction under G.L. c. 164, § 69S, as circumstances may require, for the entire 65-mile portion of the pipeline in Massachusetts, or any segment of the pipeline located within Massachusetts. Segments of less than one mile fall within the Siting Board's jurisdiction as long as the entire length of the pipeline is longer than one mile. P&W's assertion that the 120 foot segment is not of sufficient length (i.e., over one mile) to be included in the definition of an oil facility is inconsistent with the broader statutory intent, as described above, to site and to facilitate the long-term energy security of the Commonwealth.

IV. DECISION

For the reasons set forth above, the Siting Board hereby concludes that it does have jurisdiction to exercise its eminent domain powers for the 120 foot pipeline segment owned by the petitioner, Mobil Pipe Line Company, and located underneath land in Oxford, Massachusetts, said land being owned by Providence and Worcester Railroad Company.

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[4] It may be that the General Court simply did not anticipate that an oil pipeline, such as the one at issue in this case, would require eminent domain authority after it has already been built. This assumption may have been reasonable at the time, but as this case now demonstrates, not entirely prescient.

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Stephen H. August	Robert J. Shea
Presiding Officer	Presiding Officer

Dated this 25th day of January 2008

APPROVED by the Energy Facilities Siting Board at its meeting of January 24, 2008, by the members and designees present and voting. **Voting for** approval of the Tentative Decision, **as amended**: Ann Berwick (Acting EFSB Chairman/Designee for Ian A. Bowles, Secretary, Executive Office of Energy & Environmental Affairs); Rob Sydney, Designee for Philip Giudice, Commissioner (Division of Energy Resources); Laurie Burt, Commissioner (Department of Environmental Protection); April Anderson Lamoureux, Designee for Daniel O'Connell, Secretary of the Executive Office of Housing & Economic Development; and Carolyn Dykema, Public Member. **Voting against** the approval of the Tentative Decision, **as amended**: Paul J. Hibbard, Commissioner DPU; Tim Woolf, Commissioner DPU; and Dan Kuhs, Public Member.

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Ann Berwick, Acting Chairman
Energy Facilities Siting Board

Dated this 28th day of January, 2008

Appeal as to matters of law from any final decision, order or ruling of the Siting Board may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Siting Board be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Siting Board within twenty days after the date of service of the decision, order or ruling of the Siting Board, or within such further time as the Siting Board may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the clerk of said court. (Massachusetts General Laws, Chapter 25, Sec. 5; Chapter 164, Sec. 69P).