

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

In the Matter of the Petition of Mobil Pipe Line)
Company for Approval to Exercise) EFSB 07-3
The Power of Eminent Domain with)
Respect to an Oil Pipeline in the Town)
Of Oxford, Massachusetts)

Mobil Pipe Line Company)
Petition for Determination of Jurisdiction) EFSB 07-5
)

ORDER OF DISMISSAL
(UPON REMAND FROM THE SUPREME JUDICIAL COURT)

Robert J. Shea, Presiding Officer
May 26, 2009

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I. INTRODUCTION

From May 1, 1977, until April 30, 2007, the petitioner in these two proceedings, the Mobil Pipe Line Company (“Mobil” or the “Company”), leased an easement (“Easement”) from Providence and Worcester Railroad Company (“P&W”) (Exh. MPL-2,¹ Memorandum in Support of Mobil Pipe Line Company’s Petition for Determination of Jurisdiction, Tab A, Superior Court’s Findings and Order on Plaintiff’s Motion for Preliminary Injunction at 2). The Easement allowed Mobil to operate approximately 120 feet of pipeline (“Pipeline”) that had been laid underneath P&W railroad tracks. Said railroad tracks are located on land owned by P&W in the Town of Oxford, Massachusetts (“P&W Property”). The Pipeline was used to transport petroleum products from East Providence, Rhode Island, to Springfield, Massachusetts (*id.*).

On April 27, 2007, a few days before the Easement was to expire, Mobil filed a petition with the Energy Facilities Siting Board (“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”). The Eminent Domain Petition was docketed as case number EFSB 07-3 (Docket, EFSB 07-3). P&W was granted status as a party intervenor in this proceeding.

On May 1, 2007, the day the Easement expired, Mobil commenced an action against P&W Railroad in Worcester Superior Court seeking injunctive relief. The Superior Court held that the lease of the Easement had terminated (Exh. MPL-2, Superior Court’s Findings and Order on Plaintiff’s Motion for Preliminary Injunction, Tab A). Furthermore, the Superior 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

¹ The exhibits referred to are taken from the “Final Combined Exhibit List” issued in EFSB 07-3 (the “Eminent Domain Petition”) and EFSB 07-5 (the “Jurisdiction Petition”).

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 July 10, 2007, Mobil properly filed a Petition for Determination of Jurisdiction with the Siting Board (“Jurisdiction Petition”). This petition sought a ruling as to whether the Siting 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. Again, P&W was granted status as a party intervenor.

Mobil asserted that G.L. c. 164, § 69S, empowered the Siting Board to take land by eminent domain in order to preserve existing pipelines as well as in order to allow new pipelines to be laid (id.). P&W disagreed, asserting that G.L. c. 164, § 69S, empowered the Siting Board to take land by eminent domain for the construction of new pipelines only (id.). In its decision on the Jurisdiction Petition dated January 28, 2008, the Siting Board agreed with Mobil Pipe Line and held that it had jurisdiction to take an easement in land owned by P&W in order to allow Mobil’s existing pipeline to stay in place. P&W took an appeal from this decision to the Supreme Judicial Court.

On January 27, 2009, the Supreme Judicial Court issued an opinion in the case of Providence and Worcester Railroad Company v. Energy Facilities Siting Board, 453 Mass. 135 (2008). In that opinion, the Court reversed the Siting Board’s decision in the Jurisdiction Petition and remanded the case to the Siting Board for further proceedings consistent with the Court’s opinion. 453 Mass. at 146. The Supreme Judicial Court held that the Siting Board had no jurisdiction to take an easement from P&W by eminent domain because the statute limited the Siting Board’s eminent domain powers to new pipelines only. Id.

II. REQUEST FOR DISMISSAL

On April 7, 2009, Providence and Worcester Railroad Company (“P&W”), the intervenor in both of the above-captioned cases, moved to dismiss the petitions of Mobil Pipe Line Company in these two cases based upon the ruling of the Supreme Judicial Court in the appeal. On April 13, 2009, Mobil Pipe Line Company wrote to the Presiding Officer in these cases. In this letter, Mobil Pipe Line represented that it would not be filing an opposition to P&W’s motion to dismiss. The letter also recognized that the petition should be dismissed in light of the above-referenced Supreme Judicial Court decision.

THEREFORE, acting pursuant to 980 CMR 2.08 and 980 CMR 2.05, the Petition of Mobil Pipe Line Company for Approval to Exercise The Power of Eminent Domain with Respect to an Oil Pipeline in the Town of Oxford, Massachusetts (EFSB 07-3), and Mobil Pipe Line Company’s Petition for Determination of Jurisdiction (EFSB 07-5) are hereby DISMISSED.

Robert J. Shea
Presiding Officer

APPROVED by the Energy Facilities Siting Board at its meeting of May 21, 2009, by the members and designees present and voting. **Voting for** approval of the Order of Dismissal, as amended: Ann Berwick (Acting EFSB Chair/Designee for Ian A. Bowles, Secretary, EOEEA); Rob Sydney (Designee for Commissioner, DOER); Robert Mitchell (Designee for Secretary, EOHEd); Laurie Burt, Commissioner, DEP; Paul J. Hibbard, Commissioner DPU; Tim Woolf, Commissioner DPU; Penn Loh, Public Member.

Ann Berwick, Acting Chair
Energy Facilities Siting Board

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).