

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

_____))
In the Matter of the Petition of))
The Berkshire Gas Company for Approval))
To Construct a Liquefied Natural Gas) EFSB 99-2A
Storage and Vaporization Facility in))
Whately, Massachusetts))
_____))

_____))
The Petition of The Berkshire Gas Company))
for an Exemption from the Zoning Bylaws))
of The Town of Whately in Connection) D.T.E. 99-17A
with the Construction and Operation of a))
Liquefied Natural Gas Storage and))
Vaporization Facility))
_____))

FINAL DECISION ON COMPLIANCE AND
ON MOTION FOR PROTECTIVE TREATMENT

M. Kathryn Sedor
Presiding Officer
October 10, 2003

On the Decision:
Christopher Bourne

APPEARANCES:

James M. Avery, Esq.
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, Massachusetts 02111
FOR: Berkshire Gas Company
Petitioner

Patricia Crowe, Esq.
KeySpan Energy Delivery New England
52 Second Avenue, 4th Floor
Waltham, Massachusetts 02451
FOR: Colonial Gas Company
Intervenor

J. Raymond Miyares, Esq.
Pickett, Miyares & Harrington, LLP
124 Watertown Street
Watertown, Massachusetts 02472
FOR: Town of Deerfield and Deerfield Planning Board
Intervenor

Joel B. Bard, Esq.
Edward M. Reilly, Esq.
Kopelman and Paige, P.C.
50 South Street
The Berkshire Common
Pittsfield, Massachusetts 01201
FOR: Town of Whately
Intervenor

Robert A. Nailling, Esq.
Distrigas of Massachusetts, LLC
One Liberty Square, 10th Floor
Boston, Massachusetts 02109
FOR: Cabot LNG Corporation
Interested Person

Theodore F. Cycz
40 Old State Road
South Deerfield, Massachusetts 01373
Interested Person

The Energy Facilities Siting Board hereby APPROVES, with conditions, the plan prepared by The Berkshire Gas Company for remote operation of its liquified natural gas storage and vaporization facility in Whately, Massachusetts. The Siting Board also GRANTS the Company's motion for protective treatment with respect to the remote operation plan.

I INTRODUCTION

On September 13, 1999, the Energy Facilities Siting Board ("Siting Board") issued a Final Decision in the above-referenced proceeding ("underlying proceeding"), approving the petition of The Berkshire Gas Company ("Berkshire" or "Company") to construct a new liquified natural gas ("LNG") storage and vaporization facility ("facility") in the Town of Whately, Massachusetts. Berkshire Gas Company, 9 DOMSB 1 (1999) ("Berkshire Gas Decision" or "Decision").¹

In the underlying proceeding, Berkshire indicated its intent to operate the LNG facility manually for one to two years, and then to operate it remotely from the Company's Dispatch Center in Pittsfield, Massachusetts (Berkshire Gas Decision at 78; Exh. BG-C-1, at 2). However, the Berkshire Gas Decision did not authorize the Company to operate the LNG facility remotely. Rather, in a Condition to the Decision, the Siting Board required Berkshire to submit a remote operation plan ("plan") for review and approval by the Siting Board and the Department of Telecommunications and Energy's Pipeline Safety and Engineering Division ("Pipeline Safety Division") before commencing remote operations. Berkshire Gas Decision at 94-95, Condition 4 ("Condition 4").

The LNG facility has been constructed, and has been operating manually for over three years (Exh. BG-C-1, at 2). On March 4, 2003, in accordance with Condition 4 of the Berkshire Gas Decision, the Company filed a remote operation plan for review by the Siting Board and the Pipeline Safety Division. The Company also has filed a motion seeking confidential treatment for the plan ("Motion").

¹ The Siting Board also granted Berkshire's petition to the Department of Telecommunications and Energy for certain exemptions from the Town of Whately Zoning Bylaw. That petition was docketed as D.T.E. 99-17, and was consolidated for hearing with the Company's Siting Board petition, docketed as EFSB 99-2.

In Section II, below, the Siting Board addresses whether the Company's remote operation plan satisfies Condition 4 of the Berkshire Gas Decision. In Section III, below, the Siting Board addresses the Company's motion for confidential treatment of the plan.

II. REMOTE OPERATION PLAN

A. Condition 4

Condition 4 of the Berkshire Gas Decision provides that, prior to commencement of remote operation, Berkshire

“shall file with the Siting Board for review and approval in consultation with the Department's Pipeline Engineering and Safety Division a Remote Operation Plan. The Remote Operation Plan shall include, at a minimum, the following: (1) a comprehensive set of proposed standard operating procedures (“SOP's”) for remote operation of the facility; (2) a proposed SOP for use by dispatchers at the Company's Pittsfield facility in determining the circumstances in which additional personnel are needed to operate the facility remotely; (3) a summary of changes to the facility's emergency response system as a result of remote operation, including a summary of all changes requested by the Whately or Deerfield Fire Departments and the Company's response to such requests; (4) a proposal to install on the facility site a CCTV system suitable for operational, emergency and security uses; a detailed plan for protection of the facility with a remotely operated firefighting system. The plan should identify which area(s) of the facility could be protected with remotely operated firefighting equipment, and the type of equipment that would be best suited to that area. The plan should be developed with the assistance of a qualified fire protection engineer familiar with LNG facilities; and
(5) a plan regarding use of the facility's existing alarm system under remote operation. The plan should include the results of a false alarm study performed during the first year(s) of local operation of the facility. The plan should indicate which detectors were most likely to give false alarms; how the Company proposes to minimize false alarms; and to what extent components of the remotely operated firefighting system could be connected to the alarm system.”

Berkshire Gas Decision at 94.

B. The Company's Proposed Remote Operation Plan

1. Comprehensive Standard Operating Procedures

As noted above, Condition 4(1) of the Berkshire Gas Decision requires Berkshire to include in its remote operation plan “a comprehensive set of proposed standard operating procedures” for remote operation of the Whately facility.

The standard operating procedures for the LNG facility are set out in Section 3.0 of the Company’s plan. This section contains detailed procedures to be followed by Company personnel when starting, operating, and closing down the facility. In some cases, the specified procedures apply to both local and remote operation. Where differences exist between local and remote operation, Section 3.0 sets forth the applicable procedures for each. Operating procedures of general applicability include: procedures for inspection and preparation of the facility for operation; the unloading of LNG transport tankers; and LNG tank pressure control (Exh. BG-C-2, at 3.1- 3.5). In contrast, the procedures which govern the send-out of vaporized LNG depend on whether the facility is under local or remote operation (*id.* at 3.6, 3.7). Pursuant to the remote operation plan, an updated copy of the operating procedures must be maintained at all times in the facility control room, at the Company’s offices in Greenfield and Pittsfield, and at the Company’s Pittsfield Dispatch Center (*id.* at 3.0). Berkshire intends to install an electronic logbook for facility record keeping, and has stated that it will not operate the facility remotely until the installation has been completed (Exh. EFSB-C1-4).

The Siting Board, in consultation with the Pipeline Safety Division, has reviewed the Company’s remote operation plan, particularly Section 3.0 of the plan, which sets forth the standard operating procedures for the Whately LNG facility. The Siting Board concludes that the plan satisfies the requirement of Condition 4(1) that a comprehensive set of operating procedures be developed for operation of the facility. In reaching this conclusion, we note that detailed operating procedures have been developed for the various phases of plant operation, including start-up, vaporization, and shut-down. The Siting Board also notes that the remote operation procedures have been incorporated into the facility’s general operating procedures, rather than set apart in a separate operational plan. The Siting Board views this integration as beneficial, because many of the general operating procedures also apply to remote operations, and because it provides Company personnel with a more comprehensive guide to plant operation than would a plan focused on remote operations only. Finally, we also note

that updated copies of the remote operation plan will be available at all of the Company's facilities and offices, which we view as another component in the development of a comprehensive set of operating procedures. Accordingly, the Siting Board finds that the Company's standard operating procedures, as set forth in Section 3.0 of the remote operation plan, is a comprehensive set of operating procedures for the Whately LNG facility under remote operation and, as such, satisfies Condition 4(1) of the Berkshire Gas Decision.

2. SOP for Additional Personnel

Condition 4(2) requires Berkshire to include in its remote operation plan "a proposed SOP for use by dispatchers at the Company's Pittsfield dispatch center in determining the circumstances in which additional personnel are needed to operate the facility remotely." Berkshire Gas Decision at 94-95.

In its plan, the Company states that two dispatchers must be present in the Pittsfield Dispatch Center during normal working hours (Exh. BG-C-2, at 3.7.1). The plan further provides that, if the LNG facility is to be operated remotely before or after normal working hours, and only one dispatcher or authorized operator is present in the Dispatch Center, "additional qualified personnel shall be called in" (id.).

The Siting Board, in consultation with the Pipeline Safety Division, has reviewed the Company's remote operation plan. The Siting Board finds that the Company's standard operating procedure for determining when additional personnel are required for remote operation of the LNG facility satisfies Condition 4(2) of the Berkshire Gas Decision.

3. Summary of Changes to Emergency Response System

Condition 4(3) of the Decision requires Berkshire to include in its remote operation plan "a summary of changes to the facility's emergency response system as a result of remote operation, including a summary of all changes requested by the Whately or Deerfield Fire Departments and the Company's response to such requests."

Berkshire stated that the Company has made several changes to the LNG facility's emergency response system to allow for remote operation (Exh. BG-C-1, at 4). Berkshire stated that several of the changes resulted from conversations between the Company and local fire officials, including the practice of making initial telephone contact in an emergency with the regional 911 dispatch center in Shelburne Falls, Massachusetts, rather than with local emergency officials (id.; Exhs. BG-C-2, at 5.12; BG-C-3, att.).

The Siting Board, in consultation with the Pipeline Safety Division, has reviewed the Company's remote operation plan. The Siting Board finds that the Company's remote operation plan provides a summary of changes to the facility's emergency response system as a result of remote operation and, consequently, satisfies Condition 4(3) of the Berkshire Gas Decision.

4. Proposals for CCTV System and Remote Firefighting
a. Proposal for a CCTV System

Condition 4(4) of the Berkshire Gas Decision requires Berkshire to include in its remote operation plan "a proposal to install on the facility site a CCTV system suitable for operational, emergency and security uses."

The remote operation plan states that a CCTV system has been installed on the facility site, and that this system may be operated both manually from the facility's control room in Whately, and remotely from the Pittsfield Dispatch Center (Exh. BG-C-2, at 7.1). The plan states that a CCTV system with three video cameras has been installed, and that each camera is capable of providing a 360-degree view of the facility (id.). The Company has stated that it intends to upgrade the CCTV system before beginning remote operations, to add remote pan, tilt, and zoom functions that can be operated remotely from the Dispatch Center (id.; Exh. EFSB-C1-1). The Company stated its video monitoring strategy is consistent with the recommendations of its fire safety consultant, FIREPRO, Inc. ("FIREPRO") (Exh. BG-C-1, at 5).²

² See "Fire Safety Analysis Report," prepared by FIREPRO Inc. for Northstar Industries, dated March 19, 2002, and incorporated as Section 2.0 to the Company's remote operation plan

The Siting Board, in consultation with the Pipeline Safety Division, has reviewed the Company's remote operation plan, in particular those sections of the plan and supporting documentation pertaining to the installation of the CCTV system at the Whately facility. Based on our review, the Siting Board finds that the Company has satisfied the requirements of Condition 4(4) of the Berkshire Gas Decision.

b. Proposal for Remote Firefighting

Condition 4(4) also requires Berkshire to include in its remote operation plan a detailed plan for protection of the facility with a remotely operated firefighting system. The plan should identify which area(s) of the facility could be protected with remotely operated firefighting equipment, and the type of equipment that would be best suited to that area. The plan should be developed with the assistance of a qualified fire protection engineer familiar with LNG facilities.

The Company stated that the design of the LNG facility incorporates both active and passive fire protection systems (Exh. BG-C-2, at 6.9-6.10). Components of the facility's active fire suppression system include flame detectors, heat detectors, a smoke detector in the control room, manual pull stations and horn-strobes (id. at 2.0-3.0). The Company stated that the facility also is equipped with an Emergency Shutdown ("ESD") System, which is automatically activated by the fire alarm system and by high-level combustible gas signals (id.). The Company stated that remote operation of the facility was considered in the preliminary design phase for the facility and consequently "several passive [fire]-protection features are incorporated into the facility's design, including the design of the facility's control room, its vapor fence, and impoundment pits" (id. at 1-2).

Sections 6.17.2 and 6.18.2 of the Fire Safety Report specifically address the responsibilities of a facility operator in the event of a fire while the facility is under remote operation, stating that if a fire is discovered before the facility's fire alarm system activates, "it is the responsibility of the dispatcher or authorized operator to initiate ESD and/or Emergency Procedures" (id.). The Company intends to install a system by which fire alarms will be transmitted to a UL-listed central service provider, as

("Fire Safety Report").

backup to the transmission of alarms from the facility control room (Exh. EFSB-C1-2). The Company stated that this backup will ensure that a fire alarm is transmitted to the fire department if the Company experiences a loss in transmission signal (id.). The Company stated that it will not operate the facility remotely until installation of this backup transmission capability has been completed (id.).

With respect to the installation of remotely operated firefighting equipment, Berkshire stated that FIREPRO has determined that the “existing fire suppression equipment at the Facility [is] adequate for remote operations” and that “the best course of action in case of emergencies during remote operation [is] prompt and complete notification of fire department officials” (Exh. BG-C-1, at 5). Berkshire stated that it has implemented FIREPRO’s recommendations regarding specific equipment and communications measures for optimizing fire department notification, and has pursued training and coordination of fire department officials (id.). Based on FIREPRO’s study, the Company does not plan to install remotely operated firefighting equipment at the Whately facility (id.).

The Siting Board, in consultation with the Pipeline Safety Division, has reviewed the Company’s remote operation plan, including the Fire Safety Report prepared by FIREPRO, Inc. which is included in Section 2.0 of the plan. The Fire Safety Report specifically, and exclusively, addresses fire safety in connection with remote operation of the LNG facility. The Report is detailed, and contains four recommendations “designed to maximize public safety by reducing the probability of fire impacting the facility” (Exh. BG-C-2, at 2.0, p.10). These recommendations included: (1) updating of the Company’s emergency plans and coordination with local emergency agencies; (2) directing personnel to notify the local fire department in all cases, rather than determining first if the fire is “controllable;” (3) use of a UL-Listed Central Station to receive fire alarm signals from the facility; and (4) ensuring a means of direct communication between the Dispatch Center and the fire department. The Company has stated that it would implement each of these recommendations (Exh. EFSB-C1-3).

Because the Company, on the advice of its consultants, does not intend to develop a remote firefighting system for the Whately facility, literal compliance with the requirements of Condition 4(4) is not possible. The Siting Board notes that, of necessity, the Berkshire Gas Decision, including Condition 4(4), was issued well before the conduct and issuance by FIREPRO of its fire safety analysis and

recommendations for the Whately facility. Since issuance of the Decision, the Company has retained consultants with specific expertise in fire safety assessment, and these consultants have indicated that the addition of remote firefighting capabilities at the Whately facility is not warranted. There is nothing in the record of this proceeding, or the underlying proceeding, that leads us to question the technical decision by Berkshire and its consultants that the addition of remotely operated firefighting equipment to the Company's fire-protection strategy for the LNG facility is not necessary to protect public safety. For these reasons, the Siting Board waives the requirement in Condition 4(4) that Berkshire install remote firefighting capability for the Whately LNG facility.

5. Plan for Remote Operation of the Facility Alarm System

Condition 4(5) requires Berkshire to include in its remote operation plan

“a plan regarding the facility's existing alarm system under remote operation. The plan should include the results of a fire alarm study performed during the first year(s) of local operation of the facility. The plan should indicate which detectors were most likely to give false alarms; how the Company proposes to minimize false alarms; and to what extent components of the remotely operated firefighting system could be connected to the alarm system.”

Berkshire stated that it conducted two alarm studies at the Whately facility (Exh. EFSB-C2-2). The first study was conducted between July 6, 2002 and October 4, 2002, when the facility was not in operation (Exh. BG-C-1, att.). The second study was conducted between December 2002 and February 2003, while the facility was in operation (Exh. EFSB-C2-2). The Company stated that the alarm system installed at the Whately facility is a “substantial and sensitive” alarm system (Exh. BG-C-1, at 5) and that, based on the alarm studies, the “system is functioning as intended and the Company has not experienced any significant concerns with false alarms” (Exh. EFSB-C2-2).

The Siting Board and the Division of Pipeline Safety have compared the Company's remote operation plan with the requirements of Condition 4(5) of the Berkshire Gas Decision. The Siting Board notes that Berkshire has conducted two alarm studies at the Whately facility and, based on those studies, has concluded that the number of documented false alarms at the facility is insignificant. Having

completed alarm studies showing insignificant numbers of false alarms, the Company did not address potential methods for minimizing false alarms, as directed by Condition 4(5). As noted in Section II.B. 4.b, above, Berkshire, on the advice of its consultants, does not intend to install a remote firefighting system at the Whately facility. Consequently, the Company did not address the extent to which a remote firefighting system might be connected to the facility's alarm system, as required by Condition 4(5).

The Siting Board finds that Berkshire has satisfied the central requirement of Condition 4(5), which is to assess whether the alarm system in place at the Whately facility is producing false alarms in such numbers that modification of the alarm system may be in order. The record does not indicate such modification is warranted. Accordingly, we waive the requirement of Condition 4(5) requiring Berkshire to address methods for reducing false alarms. We likewise waive the Company's obligation to consider combining a remote firefighting system with the facility's alarm system, since we have waived Berkshire's obligation to install a remote firefighting system. Accordingly, the Siting Board finds that the Company has satisfied Condition 4(5) of the Decision.

C. Conclusions With Respect to the Remote Operation Plan

In Section II.A., above, the Siting Board found that Berkshire's remote operation plan had satisfied each of the five requirements of Condition 4 to the Berkshire Gas Decision. However, as also discussed in Section II. A, some of the steps needed to fully implement the plan have not yet been completed. The Siting Board concludes that the Company should be required to complete the items set forth in Condition A, below, before receiving authorization to operate the LNG facility remotely.

III. MOTION FOR PROTECTIVE TREATMENT

The protection of confidential information in a Siting Board proceeding is addressed in the Siting Board's regulations at 980 CMR § 4.00 et seq. The purpose of Section 4.00 is two-fold: to provide public access to Siting Board records, and "to provide protection for certain trade secrets, where such protection is both appropriate and provided for by law." 980 CMR § 4.01(1).

In its Motion, Berkshire asserts that protected or confidential treatment of the Company's remote operation plan "is appropriate given the greater need for security in the natural gas industry" (Motion at 3). Berkshire asserts that Massachusetts law specifically recognizes the merit of protecting materials such as the remote operation plan from public disclosure, citing G.L. c. 4, § 7(26)(n), which contains the following exemption from the definition of "public records":

"(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which ... is likely to jeopardize public safety."³

Citing this exemption, and the events of September 11, 2001, Berkshire asserts that it would be "highly inappropriate" for the remote operation plan to be made publicly available, given that the plan relates directly to the safety and security of the LNG facility (Motion at 4). Berkshire further asserts that because the LNG facility is necessary to protect the public health and safety of Berkshire's customers during peak demand, added security measures such as confidential treatment for the remote operation plan are necessary and appropriate to protect public health and safety (Motion at 4-5). Berkshire notes that the Company has reviewed the remote operation plan with local public safety officials, and has incorporated the suggestions of these officials into the plan (*id.*). Accordingly, Berkshire states, the requested protective treatment would not adversely affect public safety.

Based on our review of the Company's remote operation plan, we find that the plan as a whole consists of information relating to security measures, emergency response measures, and other information related to the security or safety of both persons and buildings within the meaning of G.L. c. 4, § 7(26)(n). We further find that, with the exception of local public safety officials, any interest that would be served by public disclosure of this information would be outweighed by the possibility that such disclosure could jeopardize public security or safety.

³ G.L. c. 4, § 7 was amended in 2002 to add the exemption to the definition of "public records" contained in subsection (n). St. 2002, c. 313, § 1, effective September 5, 2002.

Based on the representations by the Company in its Motion, we conclude that the information contained in Berkshire's remote operation plan is proprietary information that should be accorded confidential treatment pursuant to G.L. c. 4, § 7(26)(n) and 980 CMR § 4.01. Accordingly, Berkshire's Motion for Protective Treatment is granted.

IV. DECISION

A. Remote Operation Plan

The Siting Board hereby APPROVES the remote operation plan of The Berkshire Gas Company, subject to compliance with Condition A, below.

1. Condition A

Berkshire shall complete the following prior to commencing remote operation of the Whately facility:

1. Installation and successful testing of the remote pan, tilt, zoom capability of the CCTV cameras from the Company's Pittsfield Dispatch Center;
2. Installation and successful testing of a backup system for fire alarm signal transmission to the fire department;
3. Connection to a UL-listed central station for alarms; and
4. Installation and successful testing of the electronic logbook for the Whately facility and the Pittsfield Dispatch Center.

Berkshire shall notify the Siting Board and the Pipeline Safety Division when the items listed in Condition A (1) through (4) have been completed. Upon receipt and review of the notifications, the Siting Board will issue written confirmation of the Company's authorization to operate the Whately facility remotely.

B. Motion for Protective Treatment

The Siting Board grants the Motion by the Berkshire Gas Company for protective treatment of

the Company's remote operation plan, as identified in this proceeding. To help ensure confidentiality of the plan, the Siting Board and the Pipeline Safety Division will return all unredacted copies of this document to the Company. Neither the Siting Board nor the Pipeline Safety Division has a compelling need to retain the remote operation plan, particularly in light of the Company's representations that it has reviewed the remote operations plan with local public safety officials, and that the Company remains willing to provide copies of the remote operation plan "to appropriate parties upon the execution of a non-disclosure agreement" (Motion at 5). The Siting Board concludes that the interests of public safety and security, on which our decision to grant the motion for protective treatment is based, are best served in this instance by granting the motion for protective treatment and also by minimizing to the extent feasible the number of copies of the remote operation plan that are publicly available.

M. Kathryn Sedor
Presiding Officer

Dated this 10th day of October, 2003

APPROVED by the Energy Facilities Siting Board at its meeting of October 9, 2003, by the members and designees present and voting: Paul G. Afonso (Chairman, DTE/EFSB); W. Robert Keating (Commissioner, DTE); Deirdre K. Manning (Commissioner, DTE); Robert Sydney (for David L. O'Connor, Commissioner, Division of Energy Resources); and Stephen R. Pritchard (for Ellen Roy Herzfelder, Secretary of Environmental Affairs).

Paul G. Afonso
Chairman, DTE/EFSB

Dated this 9th day of October, 2003.

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).