COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Petition of Boston Gas Company d/b/a National Grid for Jurisdictional Determination Pursuant to 980 C.M.R. § 2.09	)	EFSB 14-1

FINAL DECISION

James A. Buckley
Presiding Officer
August 14, 2014

On the Decision:

Margaret Howard

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Pursuant to 980 C.M.R. §2.09, the Energy Facilities Siting Board ("Siting Board" or "Board") determines that it does not have jurisdiction to approve or deny the construction of liquefaction equipment at Commercial Point, Dorchester, Massachusetts by the Petitioner Boston Gas Company d/b/a National Grid ("Boston Gas" or "Company").

I. INTRODUCTION

A. Petition for Jurisdictional Determination

On February 21, 2014, Boston Gas filed a petition pursuant to 980 C.M.R § 2.09 ("Petition") seeking a determination as to whether the Company's proposed installation of new liquefaction equipment[1] ("Project") at its Commercial Point Liquefied Natural Gas ("LNG") facility ("Commercial Point") at 220-238 Victory Road in Dorchester is subject to Siting Board jurisdiction and would therefore require Board approval. Boston Gas asserts that the liquefaction equipment would not constitute a "facility" under the definition of that term in G.L. c. 164, § 69G, and, therefore, would not be subject to Siting Board approval under G.L. c. 164, § 69J.

If the Board were to determine that the proposed liquefaction equipment constitutes a facility under Section 69G, then, alternatively, the Company asks that the Siting Board waive its jurisdiction pursuant to the waiver provision in 980 C.M.R. § 1.02(1). The Company's rationale for a waiver is that the new liquefaction equipment would replace existing equipment and the increase in liquefaction capacity does not significantly exceed the thresholds that allow for the exclusion of certain replacement construction activities from the long-range supply plans of gas companies under 980 C.M.R. § 7.07.[2] Boston Gas Memorandum of Law in Support of Petition at 14 ("Boston Gas Memo").[3]

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1 Liquefaction equipment takes natural gas in a gaseous state and liquefies the gas into liquefied natural gas. Liquefaction requires chilling the gas to about -260 degrees Fahrenheit.

2 When the Energy Facilities Siting Council was replaced by the Siting Board and the Board was placed administratively within the Department of Public Utilities ("Department"), the responsibility for reviewing long-range supply plans transferred to and remains with the Department. G.L. c. 164, § 69I (originally enacted by St. 1992, c. 141, §§ 12-14, 55). The provisions of the Siting Council's regulation 980 C.M.R. § 7.00 establishing the required contents of the long-range plans to be filed by gas companies have not been adopted or otherwise followed by the Department.

3 Boston Gas filed the Boston Gas Memo with its Petition on February 21, 2014.

B. Procedural History

The Presiding Officer directed the Company to publish a Notice of Petition for Determination of Board Jurisdiction ("Notice") in the Boston Globe, and to send the Notice by electronic mail to all gas companies in Massachusetts, the Attorney General, various officials of the City of Boston, and the Department's generic service list for the gas industry, which includes, among others, representatives of environmental organizations. The Notice invited interested parties to submit comments on the Company's Petition; no comments were received. The Siting Board issued one set of information requests to the Company and received responses on April 17, 2014.

II. BACKGROUND

A. Existing Commercial Point Facility

Commercial Point was built in the 1960s and early 1970s as a peak-shaving LNG facility with approximately 5.5 million standard cubic feet per day ("mmscfd") of natural gas liquefaction capability, two LNG storage tanks (one 331,000 barrel ("bbl") storage tank and one 290,000 bbl storage tank), and 240 mmscfd of LNG vaporization capacity (Boston Gas Memo at 2). The initial elements constructed at Commercial Point, including the original liquefaction equipment and the 290,000 bbl tank, were placed in operation in 1969. Additional elements of Commercial Point, including the 331,000 bbl tank, were placed in service in 1971 (id.).

The 290,000 bbl LNG storage tank was dismantled in 1992; the 331,000 bbl tank remains in service (id.). The remaining LNG tank holds approximately a five-day supply at Commercial Point's full vaporization rate of 240 mmscfd (Exh. EFSB-1). The existing liquefaction system has not been used since 2002, is partially disassembled, and is no longer serviceable (Boston Gas Memo at 2). Currently, LNG is trucked in to refill the storage tank prior to the winter heating season and the LNG is vaporized for sendout to the Company's low-pressure distribution system (id.).

B. The Project

Boston Gas proposes to replace the existing inoperable liquefaction equipment at Commercial Point with new liquefaction equipment having a capacity of approximately 20

mmscfd (id.). At that rate of liquefaction, it would take approximately 57 days to fill the Commercial Point tank (Exh. EFSB-1). The Company intends to use the proposed liquefaction equipment to supply all the LNG required for vaporization and sendout from Commercial Point.[4] With the liquefaction capability provided by the Project, the Company also plans to supply by tanker truck shipments from Commercial Point a portion of the LNG required by its other Massachusetts LNG storage facilities (Exh. EFSB-10).

The new liquefaction equipment would use nitrogen-cycle cooling technology and electric motor drives for the refrigeration compressors (Boston Gas Memo at 2-3). The liquefaction equipment would include a new feed gas pretreatment system in the location now occupied by the original liquefaction system equipment (id. at 2).[5] The Project would also include:

- Construction of a new compressor building on the east side of the existing LNG storage tank to house the new liquefaction units and refrigeration compressors (Boston Gas Memo at 3);
- Installation of a new pretreatment heater on the far west side of Commercial Point, close to where the existing decommissioned pretreatment heater is located (id.);
- Construction of a new switchyard for the new electrical service (id.). The anticipated electric load of the proposed liquefaction equipment at peak capacity is approximately 15 megawatts ("MW") (Exh. EFSB-6);
- Realignment of the access driveway to the trucking station, to provide a turn-around area for trucks for a drive-through loading operation (Boston Gas Memo at 3); and
- Installation of new liquid nitrogen storage and vaporization to provide makeup supply for the new refrigeration system (id.).

The Project would be constructed within the existing Commercial Point footprint (id.). Figure 1 (attached) shows a preliminary site plan and layout of the entire Commercial Point facility, including the proposed location of the Project components.

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4 While the Company anticipates no future deliveries of LNG by tanker truck to Commercial Point after installation of the new liquefaction equipment, it did not indicate that the existing facilities at Commercial Point used to receive such shipments would be retired or dismantled (Exh. EFSB-10).

5 The pretreatment system removes water, carbon dioxide, and sulfur compounds from pipeline gas; these compounds would freeze at low temperatures and interfere with the liquefaction process (Exh. EFSB-4).

The Company stated that the construction and operation of the liquefaction equipment would be subject to regulation under the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (49 C.F.R. § 193 - Liquefied Natural Gas Facilities: Federal Safety Standards); the Department's 220 C.M.R. § 112.00: Design, Operation, Maintenance and Safety of Liquefied Natural Gas Plants and Facilities; and the National Fire Protection Association's 59A Utility Liquid Propane and Gas Plant Code (Exh. EFSB-13). Regulatory authorities, such as the Department, would use these codes to inspect for compliance during construction of the Project and the ongoing operation of the entire Commercial Point facility (id.).

The Company stated that is does not expect that the Project would have significant visual impacts because the landscaping at Commercial Point would remain the same and because the existing LNG storage tank, which is the dominant visual feature on the site, would not be altered (Exh. EFSB-18). The Company does not expect that the Project would result in any increase of noise at abutting property lines or in neighboring residential areas and it intends to meet the requirement in earlier Department orders granting zoning exemptions (Boston Gas Company, D.P.U. 15513 (1967) and Boston Gas Company, D.P.U. 16457 (1970)) that noise levels at the property line not exceed ambient sound levels (Exh. EFSB-17). The Company stated that it would perform a noise study to establish the noise level at the existing facilities, including the background noise, and model the expected noise of the new facilities. The Company would verify these projections through additional noise analysis conducted during plant commissioning (Exh. EFSB-17).

Based on preliminary Project designs, the Company anticipates the need for a number of environmental and other permits and approvals. In addition to local permits and zoning approval, the Project would require: (1) the filing of a Notice of Intent under the U.S. National Pollutant Discharge Elimination System General Permit for Stormwater Discharge from Construction Activities; (2) Minor Project Modification approval under Chapter 91, the Massachusetts Public Waterfront Act; (3) Non-Major Comprehensive Plan Approval under the Massachusetts Clean Air Act; and (4) an Order of Conditions from the Boston Conservation Commission under the Massachusetts Wetlands Protection Act (Exh. EFSB-7). The Company noted that the City of Boston would not officially determine the required local permits until a

building permit application is submitted to the ISD, which the Company anticipated would occur in fall of 2014 (Exh. EFSB-5).[6]

As noted above, the Company contends that based on its anticipated natural gas supply plan the Project would eliminate the use of LNG delivery trucks to fill the Commercial Point tank (Exh. EFSB-10). Based on the average number of deliveries to Commercial Point over the last ten years, approximately 851 LNG truck deliveries per year would be avoided (Exh. EFSB-10). However, overall truck traffic at Commercial Point would increase because the Company intends to ship approximately 1,080 truckloads of LNG per year from Commercial Point to the Company's other Massachusetts LNG storage facilities instead of sourcing that LNG from Distrigas of Massachusetts or other suppliers (Exh. EFSB-10).[7]

C. Need for the Project

According to Boston Gas, LNG is essential to the reliability of its delivery system during the winter heating season (Boston Gas Memo at 4). Recently, while LNG has been the source for only about six percent of the Company's total winter season supply, it has provided approximately 42 percent of the Company's supply on peak days (id.). LNG peaking capacity has been part of the least-cost mix for meeting peak demand on the Company's system (id.). LNG also provides system reliability benefits at other times of the year by being available in case of a supply disruption, such as a pipeline or compressor station failure (id.).

For more than 30 years the Company's LNG supply has been sourced primarily from the Distrigas import terminal in Everett (Boston Gas Memo at 4). Boston Gas asserts that by installing the new liquefaction equipment the Company would be able to reduce or even

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6 The Company has held several meetings with representatives from the City of Boston, including a February 13, 2014 meeting with staff from the Inspectional Services Department ("ISD") and an April 7, 2014 meeting with staff from the Boston Redevelopment Authority ("BRA") (Exh. EFSB-5). ISD staff expressed a preference for local permitting of the Project, and the Company stated its intention to obtain any necessary zoning relief from the City of Boston. If zoning relief were unavailable or denied by the City of Boston, the Company would seek a zoning exemption from the Department (Exhs. EFSB-5; EFSB-8).

7 The Company's estimated annual average LNG traffic to and from National Grid's facilities after the Project is completed is based on the ten-year average demand at the Company's Massachusetts LNG facilities (Exh. EFSB-10).

eliminate: (1) the reliability concern relating to having one predominant source of LNG supply (i.e., Distrigas); (2) the reliability concern relating to the imported sources of Distrigas's LNG; and (3) exposure of the Company and its customers to globally priced (and recently more expensive) LNG supplies (id.).

Boston Gas identified a winter 2015/2016 construction start date as the earliest practicable date that would allow for engineering, designing, and permitting the Project. A winter 2015/2016 construction start date would enable an in-service date of September 2017. The September 2017 in-service date would allow the Company to liquefy natural gas during the spring and summer of 2018 to serve its customers in the winter of 2018/2019 (Boston Gas Memo at 4).

III. JURISDICTIONAL DETERMINATION

A. Position of Boston Gas

As an initial matter, citing both St. 1973, c. 1232, § 7 and St. 1975, c. 617, § 15, Boston Gas contends that, because the existing facility was constructed prior to the enactment of the Siting Board statute, the existing facility is not subject to the jurisdiction of the Board (Boston Gas Memo at 5-6). Consequently, the Company reasons, for the Siting Board to have jurisdiction over the Project, the Project itself must be a "facility" as defined in Section 69G (id. at 6). The Company asserts that the pertinent provision within the statutory definition of "facility" is stated in the fifth clause: "(5) a unit, including associated buildings and structures, designed for or capable of the manufacture or storage of gas…."

Boston Gas claims that, "[a]s a matter of science and common meaning, natural gas liquefaction does not 'manufacture' or 'store' gas" (Boston Gas Memo at 7). According to the Company, the manufacture of gas involves combining coal or other forms of hydrocarbons with water and heat to make gas where it did not exist (id. at 7-8). In contrast, liquefaction merely changes the physical state of natural gas, from gas to liquid (id. at 7). Furthermore, the Company states that the liquefaction equipment does not store the LNG. Rather, the liquefied natural gas must be transported to the LNG storage tank when the liquefaction process is complete (id. at 8).

Boston Gas adds that the Board's enabling statute recognizes that some types of gas are manufactured while others are not (id.). The Company notes that the word "gas" is defined to include four types of gas: natural gas, propane air, synthetic natural gas ("SNG"), and liquefied

natural gas, and then each of those four types of gas is defined (id., citing G.L. c. 164, § 69G). Boston Gas contends that SNG is a type of Section 69G-defined gas that is manufactured because it "is defined as 'a type of gas which is *made* by a facility which produces a gaseous fuel from the *manufacture*, conversion or reforming of liquid or solid hydrocarbons' G.L. c.164, §69G" (Boston Gas Memo at 9) (emphasis added).[8] Boston Gas asserts that the General Court used the words "made" and "manufacture" precisely to define SNG, but did not use those words to define LNG.[9] Boston Gas concludes that the language of Section 69G demonstrates a clear legislative intent that LNG not be regarded as a manufactured gas (id. at 10).

Citing three regulatory provisions, 980 C.M.R. §§ 7.07(2)(c)(1), 7.07(7)(c)(1) and 10.01(2)(b), Boston Gas acknowledges that some Siting Board regulations could be construed to suggest that liquefaction does involve manufacturing gas under Section 69G (Boston Gas Memo at 10). However, Boston Gas asserts that these regulations relate to filing requirements for long-term gas supply plans and are not intended to define a "facility" for jurisdictional purposes (id. at 11). Given its view that the statutory definition of "manufactured gas" is not ambiguous and does not include LNG or natural gas liquefaction as "manufacturing," the Company asserts that, even if the Siting Board intended its regulations to classify liquefaction as manufacturing gas, the regulation would be beyond the Board's statutory authority and, therefore, invalid (id. at 12).

B. Statutory Interpretation Standard of Review

Interpretation of a statute necessarily begins with the statutory text itself, because "[e]lementary rules of statutory construction require that each statute be interpreted as enacted." Commonwealth v. Gore, 366 Mass. 351, 354 (1974). In interpreting a statute, the Massachusetts Supreme Judicial Court ("SJC") attempts "to give effect and purpose to all of [the] words" in the statute and, therefore, no one statutory provision is read in isolation from the remaining provisions. Providence and Worcester R.R. Co. v. Energy Facilities Siting Board,

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8 Boston Gas indicates that propane air, as a gas that is "*produced*," would also be considered a manufactured gas within Section 69G (Boston Gas Memo at 9). However, propane air is not relevant to the issues presented in this proceeding.

9 Section 69G defines LNG as "a natural gas that has been changed into a liquid by cooling the temperature at atmospheric pressure to approximately -260°F."

453 Mass. 135, 142 (2009). If the statutory language is plain, then the words receive their "usual and natural meaning." Commonwealth v. Gore, 366 Mass. at 354. However, the Court "may look to outside sources to determine the meaning of the statute whose language is unclear." Commonwealth v. Lightfoot, 391 Mass. 718, 720 (1984). Except when the language is clear and unambiguous, the SJC gives "substantial deference" to the Siting Board to interpret the statute the Board must implement and enforce. See City Council of Agawam v. Energy Facilities Siting Board, 437 Mass. 821, 828 (2002).

C. Analysis and Findings

1. Project as Stand-Alone Facility

The entire Commercial Point complex is an existing "facility" within the meaning of G.L. c. 164, § 69G because the LNG storage tank capacity at the site is considerably greater than the storage capacity threshold of 25,000 gallons above which the Siting Board's regulations deem a gas storage unit (including multiple tanks and associated buildings and structures) to be a "facility." 980 C.M.R. § 1.01(4). However, as the Company noted, Commercial Point was constructed prior to the establishment of the Siting Board (and its predecessor, the Siting Council).[10] Therefore, the current facility is "grandfathered" and requires no approvals of the Siting Board, absent proposed changes of a magnitude and nature that would trigger jurisdiction under the Board's statutes and regulations.[11]

The record is clear that the Project would have absolutely no effect on the existing grandfathered storage capacity of Commercial Point and therefore would not trigger Siting Board jurisdiction with regard to storage of gas. The sole remaining jurisdictional question is whether the Project's liquefaction function constitutes "the manufacture of gas" and, if so, whether the

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10 As noted above, Boston Gas sought and received zoning exemptions from the Department for construction of Commercial Point. Prior to submission of this Petition, Boston Gas had not petitioned the Siting Board for any construction-related approvals pertaining to Commercial Point.

11 See e.g. Southern Energy Canal II, L.L.C., 12 DOMSB 155, 170-171 (2001) (Board found Section 69J jurisdiction when petitioner proposed to repower the "grandfathered" Canal Unit 2 and increase generating capacity by more than Siting Board's jurisdictional threshold of 100 MW).

extent of the intended change would require Siting Board approval. Thus, the Siting Board agrees with Boston Gas that the Project requires approval pursuant to § 69J only if the Project itself (rather than the grandfathered components of the facility) is regarded as a facility under Section 69G. Had Commercial Point originally been subject to and received Siting Board approval, additional jurisdictional scope could potentially arise from any project changes to the facility that altered in any substantive way either the assumptions or conclusions reached by the Board in approving the facility. However, jurisdiction on this basis is not applicable to Commercial Point as a grandfathered facility and, therefore, our analysis is limited solely to the Project itself and whether it constitutes the "manufacture of gas."

2. Statutory Text

The Board agrees with the Company that the pertinent statutory provision is the fifth clause in the definition of "facility" in Section 69G. Accordingly, the Project as a stand-alone facility would be jurisdictional only if liquefaction involves the manufacture of gas, because the Project would not be used to store liquefied gas. The common, everyday meaning of "manufacture" is "something made from raw materials by hand or by machinery." (The Merriam-Webster dictionary website, first definition, http://www.merriam-webster.com/dictionary/manufacture, accessed on May 23, 2014). Changing natural gas (i.e., the "raw material") into liquid so that the liquid can later be converted back into the original raw material does not seem to be "manufacturing" as that term is typically used.

However, the Board must not only consider the dictionary definition of "manufacture." It must also consider the words and legislative intent of the entire statutory text. While the General Court did not define the terms "manufacture" or "manufactured gas" in Section 69G, it did define "gas" as "a term which shall include natural gas, propane air, synthetic natural gas and liquefied[12] natural gas." G.L. c. 164, § 69G.

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[12] In the definition of "gas," both the West Publishing Company's annotated version and the General Court's online version of the General Laws spell the term "*liquified* natural gas," while in the stand-alone definition of LNG, both spell the term "*liquefied* natural gas" (emphasis added). As reflected in the Acts of 1974, the General Court spelled both terms as "liquefied natural gas." St. 1974, c. 852, §2, adding the pertinent definitions to G.L. c.164, §69G.

"Natural Gas" is defined as "a type of gas which originates in the ground and is predominantly methane." G.L. c. 164, § 69G. The process of removing the natural gas from the ground for delivery via pipelines to consumers would not appear to be manufacturing as the natural gas was already "made" prior to its extraction from the ground. Thus, as defined and used within G.L. c.164, §69G, the term "natural gas" is clearly not manufactured gas.

The definition of "liquefied natural gas" is "a natural gas that has been changed into a liquid by cooling the temperature at atmospheric pressure to approximately -260ºF." G.L. c. 164, § 69G. The General Court uses the verb "changed" to describe how natural gas becomes LNG, and not "made," a word more often associated with manufacturing. While perhaps not free from all ambiguity, the verb choice at least supports a statutory interpretation that LNG should not be considered to be manufactured gas because the chemical composition of natural gas does not change when it is liquefied. In that sense, liquefaction is not the manufacture of gas because the Siting Board's statute defines the input to the process (natural gas) as a type of gas.

The definition of "synthetic natural gas" is also instructive in attempting to define manufactured gas: "a type of gas which is *made* by a facility which produces a gaseous fuel from the *manufacture*, conversion or reforming of liquid or solid hydrocarbons." G.L. c. 164, § 69G (emphasis added). Boston Gas correctly points out that SNG expressly is made and manufactured, while LNG is not defined using the words "made" or "manufacture." In addition, LNG is defined using the words "natural gas," whereas the SNG definition does not use the word "natural," only "gas." Because natural gas "originates in the ground," LNG is further separated from the concept of "manufacturing."

Still, liquefaction involves refrigeration of gas to an extremely cold -260ºF, at a utility scale that may be viewed as an industrial process with respect to the amount and type of equipment required. Furthermore, the process also involves removing various impurities from the natural gas before it can be liquefied. While the "plain" statutory words tend to indicate a legislative intent to exclude liquefaction as manufacturing, the words "manufacture" and "manufactured gas" are not defined in Section 69G. In the Board's view, the words are not precise enough to conclude that the statutory text is free from ambiguity in regards to whether liquefaction could be considered manufacturing for purposes of Section 69G. Consequently, the Board will examine sources outside the statute to assist in defining "manufacture."

3. Department Use of the Term "Manufactured Gas"

Since 1990, as part of setting rates for each gas distribution company in Massachusetts, the Department has included expenses associated with the cleanup of hazardous material located at sites once used to produce "manufactured gas." The Department's policy concerning these expenses was established when it approved a settlement at the conclusion of a generic investigation into the matter in 1990. Generic Investigation of the Facts Surrounding the Ratemaking Treatment of the Costs of Investigating and Remediating Hazardous Wastes Associated With the Manufacture of Gas During the Period 1822-1978, D.P.U. 89-161 (1990) ("Generic Investigation Order"). For purposes of the Generic Investigation Order, the Department defined "manufacturing gas process" as the "now-discontinued process" of manufacturing gas from coal and other feedstock. Id. at 1.

In the Generic Investigation Order, the Department described the development of the manufactured gas industry and identified the processes and feedstock used in manufacturing the gas.[13] Id. at 10-17. The Department stated that natural gas pipelines "sounded the death knell" for the manufactured gas processes because natural gas was cheaper and had a higher British thermal unit ("Btu") content. Id. at 11. When the pipelines were extended into Massachusetts in the 1950s, gas companies converted from manufactured gas to natural gas as their base load source of supply. Id. at 11-12. The Department reported that gas companies stopped manufacturing gas in Massachusetts except for "some high Btu oil gas plants which were used for peak-shaving purposes into the 1960s and early 1970s."[14] Id. at 12.

Thus, the Generic Investigation Order uses the term "manufactured gas" to mean a gas that is made from and starts out as coal, oil or another substance that is originally a solid or liquid and not a gas. The Generic Investigation Order supports the premise that "natural" gas, whether liquefied or not, is intended to mean a type of gas different from "manufactured" gas.

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13 The Department also described the process residuals, like coal-tar wastes, that were disposed on-site and needed to be remediated. Generic Investigation Order, at 18-24.

14 The statutory language pertaining to manufacture of gas in Section 69G was enacted in 1974, when a few of these types of manufacturing gas plants were still in operation. St. 1974, c. 852, §§ 1, 2.

4. FERC and Department Accounting for Gas Companies

The Federal Energy Regulatory Commission's ("FERC") Uniform System of Accounts for Natural Gas Companies includes a subcategory within its Gas Production Plant accounts (Accounts 301 to 399) for "Manufactured Gas Production Plant." 18 C.F.R. § 201, Accounts 304-320. All of these accounts are for equipment that relates to producing gas from coal, oil, petroleum and other feedstock that fit the definition of "manufacturing gas process" used by the Department in the Generic Investigation Order. FERC includes an account for "liquefaction equipment," Account 363.1 (18 C.F.R. § 201). Account 363.1 is included in a different subcategory: Natural Gas Storage and Processing Plant, Other Storage Plant (Accounts 360-363.5). Thus, for FERC accounting purposes, liquefaction equipment is not used for the "manufacture" of gas.

The Department has adopted a similar regulation, "Uniform System of Accounts for Gas Companies," under 220 C.M.R. §50.00. Accounts 304 through 320 relate to "Manufactured Gas Production Plant" and Accounts 360 through 363 relate to "Gas Storage Plant." Liquefaction is discussed in a note that appears after Account 362, indicating the Department concurs with FERC that liquefaction equipment should be booked for accounting purposes as gas storage plant.[15]

Similar to the Generic Investigation Order, FERC and Department accounting regulations indicate a regulated gas industry use of the term "manufactured gas" to describe a gas that is made from coal, oil or another substance that is originally a solid or liquid and not a gas. Furthermore, the term is used to describe a type of gas that is different from "natural" gas. According to these regulatory sources, liquefaction does not involve manufacturing gas.

5. Board Regulations

The Siting Board regulations also should be examined to determine if they provide any guidance in defining "manufacture" under G.L. c. 164, § 69G.

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[15] The Company booked the existing liquefaction equipment at the Facility under Department accounts "316 – Other Reforming Equipment" and "320 – Other Equipment" (Exh. EFSB-19-revised). The Company did not offer an explanation for this discrepancy. The Company intends to book the liquefaction equipment installed as part of this Project under Department account "363 – Other Equipment" (id.).

First, Section 1.01(4) contains the definitions for the Siting Board's regulations, found at 980 C.M.R. The statutory and regulatory definitions of "facility" are identical except that the definition in 980 C.M.R. §1.01(4)(e) establishes the capacity threshold for gas manufacturing and storage facilities under the Board's jurisdiction.[16] Section 1.01(4) does not define the terms "manufacture," "manufactured gas," "liquefied natural gas" or "liquefaction."

However, two regulations use the words "liquefaction" or "liquefy": 980 C.M.R §§ 7.00 and 10.00. Section 7.00 was originally promulgated by the Siting Council. The regulation implements G.L. c. 164, § 69I, which imposes a requirement on gas companies to file a five-year forecast of gas demand and supply ("long-range plan") every two years for review and approval, which, as noted above, is now under the jurisdiction of the Department rather than the Siting Board. In pertinent part, the regulation establishes the procedure and requirements for the content of the long-range plans filed by gas companies.

Two provisions within Section 7.00 use the term "liquefaction." In listing the types of facilities that must be included in long-range plans, Section 7.07(2)(c)(1) requires a gas company to provide an inventory of existing facilities containing, among other items, "a general description of the type of facility (for example, for storage facilities: LNG storage, vapor storage; for manufacturing facilities: SNG plant, propane air facility, LNG vaporization facility, LNG liquefaction facility)[.]" Similarly, Section 7.07(7)(c)(1) makes the same categorization of storage and manufacturing facilities, with LNG liquefaction facilities falling within the manufacturing category, in describing the required listing of planned facilities.

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[16] The Board's regulation that establishes minimum size thresholds provides that:

> Facility means any "facility" described in G.L. c. 164, § 69G including:
> …
> (e) a unit including multiple tanks and associated buildings and structures, designed for, or capable of, the manufacture or storage of gas, except:
> 1) a unit with a total gas storage capacity of less than 25,000 gallons and also with a manufacturing capability of less than 2,000 MMBtu per day;
> 2) a unit whose primary purpose is research, development, or demonstration of technology and whose sale of gas, if any, is incidental to that primary purpose; or
> 3) a landfill or sewage treatment plant.

980 C.M.R. § 1.01(4)(e).

When the Siting Council was replaced by the Siting Board and the Board was placed within the Department, the responsibility for reviewing long-range supply plans was transferred to the Department (St. 1992, c. 141, §§ 12-14, 55), and remains with the Department.[17] G.L. c. 164, § 69I. The provisions of the Siting Council's regulation establishing the required contents of the long-range plans to be filed by gas companies have not been adopted or otherwise followed by the Department. For example, in the most recent long-range plan filed with the Department by Boston Gas, its petition did not contain or categorize the information as referenced in Sections 7.07(2)(c)(1) and 7.07(7)(c)(1). Boston Gas Company, D.P.U. 13-01, Petition (February 21, 2013).[18]

In any event, the text in 980 C.M.R. § 7.00 that includes an "LNG liquefaction facility" as one of several "manufacturing facilities" pertains to filing requirements for long-range plans. In that context, it was important for the gas company to identify all of its existing and future sources of supply, so that the Siting Council could assess the adequacy of the supply plan. For that assessment, it is of doubtful significance whether any particular type of plant component and its related source of supply (e.g., liquefaction equipment) were included in the manufacturing category rather than the storage category. Accordingly, it seems unlikely that the Siting Council intended its long-range supply plan filing categorizations to have jurisdictional significance.

Furthermore, Section 10.00 of 980 C.M.R. imposes siting requirements on intrastate LNG storage facilities. Section 10.01(2)(b)(1) defines "LNG Processing Equipment" as including "the installed cost of equipment used to receive, liquefy, hold and regasify LNG for delivery into the operator's distribution system." The inclusion of the term "liquefy" in the definition of LNG Processing Equipment under the regulation for the siting of intrastate natural gas storage suggests that liquefaction equipment should be considered ancillary to the storage of LNG, instead of as equipment for the manufacture of LNG. In addition, the Siting Council used the

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17 Although the Chair of the Department may refer a long-range supply plan for review and approval to the Siting Board if the plan is submitted with a petition to construct a facility pursuant to Section 69J, jurisdiction over plan filing requirements rests with the Department and not the Siting Board. G.L. c.164, § 69I.

18 The Department approved Boston Gas's 2013 long-range plan on March 20, 2014 (Boston Gas Company, D.P.U. 13-01 (2014)).

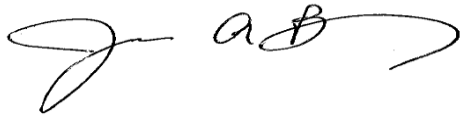
word "processing" to describe liquefaction equipment, rather than "manufacturing," the word used in the statutory definition of "facility" (G.L. c. 164, § 69G).

Thus, our review of outside sources, including Siting Board regulations, confirms our preliminary conclusion about the relevant statutory text: that liquefying natural gas is not "manufacturing" gas. Therefore, the Board finds liquefaction equipment, as presented in this Petition, is not a "facility" as that term is defined in G.L. c. 164, § 69G.

IV. DECISION

For the reasons set forth above, the Siting Board concludes that it does not have jurisdiction pursuant to G.L. c. 164, §69J to approve or deny the construction by Boston Gas of new liquefaction equipment at the existing Commercial Point storage facility.

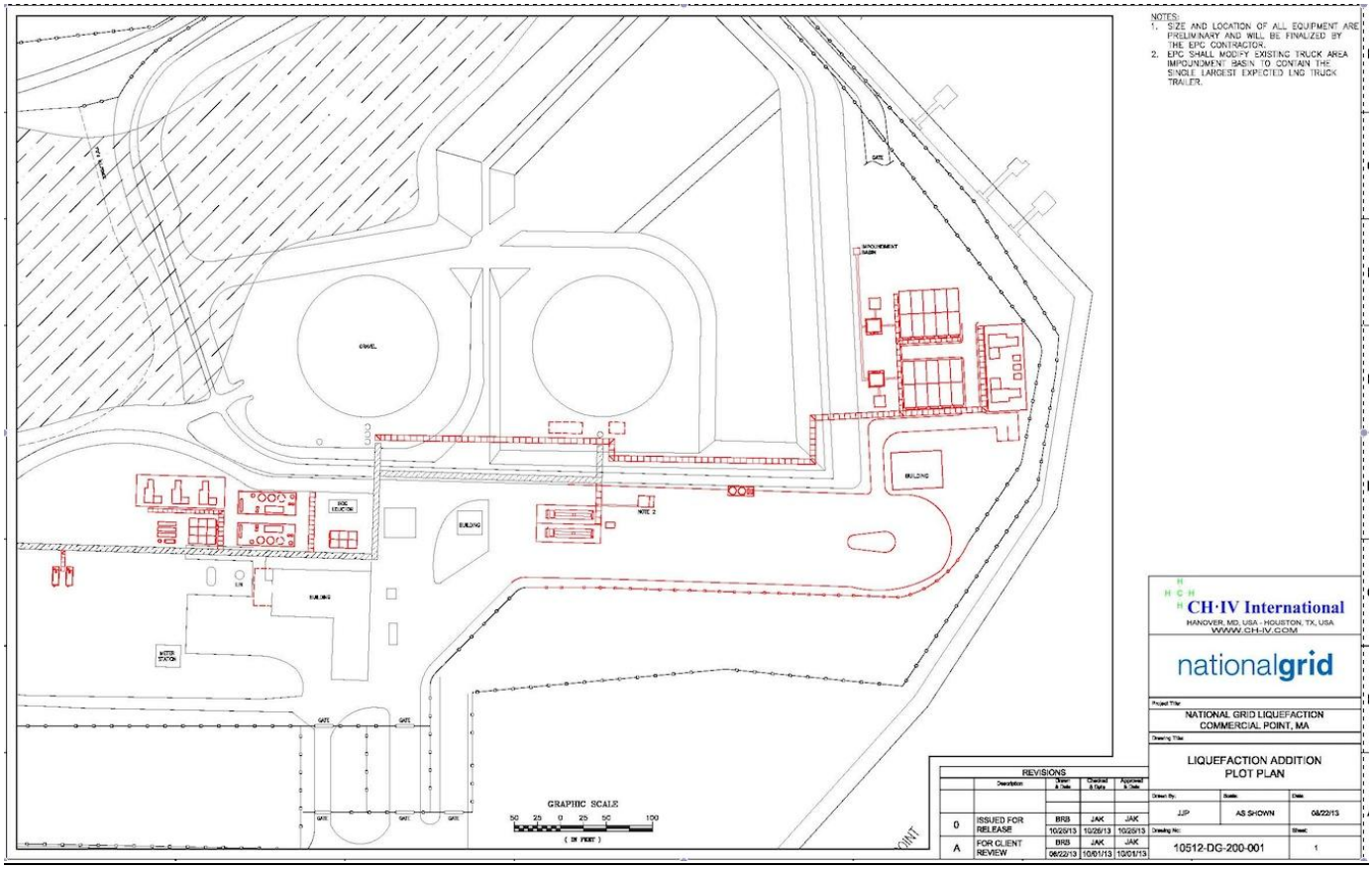
In making this decision, the Siting Board assumes that all material facts have been stated and that the facts as represented in the Petition, the Boston Gas Memo, and the responses to information requests are accurate. Should the material facts change or be inaccurate, this Jurisdictional Determination may no longer be valid.



James A. Buckley
Presiding Officer

Dated this August 14, 2014

Figure 1. Commercial Point Liquefaction Project Plot Plan



APPROVED by the Energy Facilities Siting Board at its meeting of August 14, 2014, by the members and designees present and voting. **Voting for** approval of the Tentative Decision (as amended): Mark Sylvia, Acting Chair, Designee of the Secretary of the Executive Office of Energy and Environmental Affairs, Meg Lusardi, Commissioner, Department of Energy Resources, Ann. G. Berwick, Chair, Department of Public Utilities, Jolette A. Westbrook, Commissioner, Department of Public Utilities, Kevin Galligan, Public Member, and Dan Kuhs, Public Member. **Voting against** approval of the Tentative Decision (as amended): Laurel MacKay, Designee for Commissioner, Department of Environmental Protection.

Mark Sylvia, Acting Chair
Energy Facilities Siting Board

Dated this August 14, 2014

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 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).