

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

KeySpan Energy Delivery New England
Investigation

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EFSB 02-3

DECISION CLOSING INVESTIGATION

Jolette A. Westbrook
Presiding Officer
October 10, 2003

On the Decision:
Amy Barad

I. INTRODUCTION

On January 8, 2003, the Massachusetts Energy Facilities Siting Board (“Siting Board”) opened an investigation regarding the circumstances under which Colonial Gas Company d/b/a/ KeySpan Energy Delivery New England (“KeySpan” or “Company”) replaced approximately 6000 feet of 8-inch diameter pipeline with 12-inch diameter pipeline between January and May 2000 (“pipeline project”).¹ KeySpan constructed the pipeline project without prior Siting Board approval. The Siting Board opened the investigation: (1) to examine the circumstances under which the approximately 6000 feet of pipeline were constructed; (2) to determine whether the approximately 6000 feet of pipeline were constructed in violation of G.L. c. 164, § 69J; (3) to determine whether KeySpan failed to seek other state permits for the upgrade project; (4) to assess whether any damage to the environment or harm to KeySpan’s customers occurred due to the Company’s failure to obtain Siting Board approval; and (5) to determine whether any redress is warranted. Action by Consent, KeySpan Energy Delivery New England, Order Opening Investigation, January 8, 2003, at 1-2. The Siting Board directed KeySpan to cooperate fully with this investigation and required KeySpan, inter alia, to provide all information requested by Siting Board staff and to present oral testimony, if requested to do so. Id. at 3. The Siting Board stated that at the conclusion of its investigation, it would take such further action as it deemed necessary. Id. During the course of the investigation, KeySpan provided written responses to questions posed by Siting Board staff and met with staff to provide further clarification regarding circumstances surrounding the construction of the pipeline project.²

II. INVESTIGATION

KeySpan stated that since 1956, the Company has operated and maintained a high-

¹ The investigation opened by the Siting Board was not adjudicatory in nature.

² KeySpan has provided the following information to the Siting Board: (1) a letter dated October 4, 2002 and attached map addressed to Selma Urman and signed by David S. Rosenzweig (“October Letter”); (2) responses to information requests designated as Exhs. INV-1 through INV-12; and (3) a letter dated February 14, 2003 addressed to Jolette Westbrook and signed by Richard A. Visconti (“February Letter”). In addition, on June 30, 2003, Siting Board staff met with KeySpan representatives to obtain further clarification regarding the pipeline project.

pressure natural gas pipeline on Cape Cod that runs from Bourne through North Falmouth (February Letter at 2). The Company stated that, in 2000, it replaced 6058 feet of 8-inch pipe with 12-inch pipe and that the Company constructed the project in order to maintain a minimum operating pressure of 86 psig at its Route 151 regulator station (Exh. INV- 1; February Letter at 2). The Company stated that, absent the pipeline project, the Route 151 regulator station in Falmouth would not have been able to provide an adequate supply of gas at peak periods during the winter of 2000-2001 (Exh. INV-4). The Company stated that by upgrading the existing pipeline, the Company has been able to ensure a minimum pressure of 89 psig at the Route 151 regulator station (February Letter at 2). The Company also stated that the upgraded 12-inch pipeline is along the same public roadway and military-base easement as the pre-existing 8-inch pipeline (*id.* at 2).

The upgraded pipeline travels through the Towns of Sandwich and Falmouth along Simpkins and Sandwich Roads (October Letter and map). The Company stated that: (1) there are no sensitive receptors along the route of the pipeline project; (2) at its closest point the route passes within about 300 feet of the nearest body of water; and (3) the nearest vernal pool is approximately 350 feet to the east of the route of the pipeline project (Exh. INV-8). In addition, the Company stated that approximately 300 feet of the pipeline project is "just within" an area mapped both for state protected and rare species and for estimated habitat for rare wetland species (*id.*). The Company also asserted that, although much of the upgrade was in areas mapped as "groundwater contamination plumes," the 4 to 5 foot deep trench that was used for the pipeline project did not raise issues since the groundwater contamination plumes are generally at depths of approximately 40 feet (*id.*). KeySpan stated that construction of the pipeline project began on January 31, 2000 and was completed on May 30, 2000 (Exh. INV-2). The total cost of construction, according to the Company, was \$181,217.25 (Exh. INV-3).

The Company stated that, prior to constructing the pipeline project, it received oral permission from both the Air Force National Guard³ and the Town of Falmouth (Exh. INV-5). The Company also stated that it notified the Department of Telecommunications and Energy's

³ Approximately 4800 feet of the pipeline project is located on or adjacent to the Massachusetts Military Reservation (Exh. INV-8, at 2).

Division of Pipeline Safety and Engineering prior to construction of the pipeline project and again in March 2000 (id.). KeySpan also represented that letters were sent to residences and businesses along the route before any construction was undertaken (Exhs. INV-7; INV-10).

KeySpan stated that even though the pipeline project was over a mile in length, the Company did not seek Siting Board approval prior to construction because it believed that the project fell under the exclusions outlined in the Siting Board's regulations at 980 CMR 7.07(8)(c) and (d) (February Letter at 1-2). Specifically, KeySpan asserted that 980 CMR 7.07(8)(c) excludes from Siting Board review the "upgrading of an existing pipeline, which has been in existence for at least 24 months and which is capable of operating at pressures in excess of 100 psig", and 980 CMR 7.07(8)(d) excludes "construction of a pipeline which at least for the first two years of service will be used at a pressure of less than 100 psi gauge or which involves the rebuilding, relaying, minor relocation or restructuring of all or part of an existing line which traverses essentially the same route" (id.). KeySpan stated that the pipeline project was exempt from review pursuant to 980 CMR 7.07(8)(c), in that the construction was considered to be an upgrade to a system that had been in existence well over 24 months and was already functioning at a normal operating pressure in excess of 100 psig (id.). Further, the Company argued that the pipeline project was exempt from review pursuant to 980 CMR 7.07(8)(d), because the upgrade occurred along an existing pipeline route (id.). KeySpan also stated that the pipeline project was not intended to increase capacity (id. at 2).

III. ANALYSIS

Pursuant to G.L. c. 164, § 69J, construction of a facility at a site shall not occur unless a petition for approval of construction of that facility has been approved by the Siting Board. For purposes of this investigation, the relevant definition of facility is "a new pipeline for the transmission of gas having a normal operating pressure in excess of 100 pounds per square inch gauge which is greater than one mile in length except restructuring, rebuilding, or relaying of existing transmission lines of the same capacity." G.L. c. 164, § 69G. The statute does not provide a definition for "new pipeline", "restructuring", "rebuilding", "relaying" or "capacity". Further, there does not appear to be a single industry-wide definition for such terms. Therefore, for additional guidance, the Siting Board turns to its regulations.

The Siting Board's current regulations do not directly address the jurisdictional issues described above. However, 980 CMR 7.07, which governs the filing of supply plans by gas companies, enumerates certain activities that are deemed not to constitute the construction of facilities. Specifically, 980 CMR 7.07(8)(c) excludes "the upgrading of an existing pipeline, which has been in existence for at least 24 months and which is capable of operating at a pressure in excess of 100 psi gauge" and 980 CMR 7.07(8)(d) excludes "construction of a pipeline which for at least the first two years of service will be used at a pressure of less than 100 psi gauge or which involves the rebuilding, relaying, minor relocation, or restructuring of all or part of an existing line which traverses essentially the same route...."

Historically, Massachusetts gas companies and the Siting Board have relied on 980 CMR 7.07(8) to determine whether or not it is necessary to file a petition to construct natural gas facilities. Here, KeySpan has argued that the pipeline project is exempt under both 7.07(8)(c) and (d). KeySpan has presented information demonstrating that the pipeline project replaced, along the same route, certain portions of a pipeline that had been operating for over 45 years and that said pipeline had been operating at 200 psi gauge for well over two years. Therefore, we determine that it was reasonable for Colonial Gas Company, now owned by KeySpan, to rely on 980 CMR 7.07(8)(c) to construct the pipeline project without obtaining prior Siting Board approval.⁴ Consequently, the Siting Board determines that Colonial Gas Company was not required to obtain Siting Board approval before constructing the pipeline project.

Having made this determination, we also note that the Siting Board is in the process of promulgating new regulations that directly address the siting of natural gas pipelines. Promulgation of Rules Governing Siting of Natural Gas Pipelines, Final Order Opening Rulemaking, 13 DOMSB 296 (2002) ("Rulemaking"). In this Rulemaking, the Siting Board will assess and clarify the limits of its jurisdiction over natural gas pipelines.

⁴ Because of this determination, the Siting Board does not examine whether the pipeline project would have been excluded from the definition of construction of a facility under 980 CMR 7.07(8)(d).

IV. DECISION

The Siting Board has determined, above, that it was reasonable for Colonial Gas Company, now owned by KeySpan, to rely on 980 CMR 7.07(8)(c) to construct the pipeline project without prior Siting Board approval. Accordingly, the Siting Board hereby closes its investigation of Colonial Gas Company's 6058 feet pipeline project constructed in the Towns of Sandwich and Falmouth along Simpkins and Sandwich Roads between January and May 2000.

Jolette A. Westbrook
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 Sydnay (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.