



DONALD J. PFUNDSTEIN
President & Managing
Director

214 N. Main Street
P.O. Box 1415
Concord, NH 03301

Ph: (603) 545-3600
Ph: (800) 528-1181
Fax: (603) 228-6204
pfundstein@gcglaw.com

December 11, 2008

HAND DELIVERED

Thomas S. Burack, Chairman
New Hampshire Site Evaluation Committee
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

**Re: Docket No. SEC 2008-02 - Application of Tennessee Gas Pipeline Company
For a Certificate of Site and Facility Concord Lateral Expansion Project**

Dear Chairman Burack:

We enclose for filing Tennessee Gas Pipeline Company's Post-Hearing Memorandum. Although certificated by FERC to build the compressor station within the federal sound levels, as a result of the work done in this proceeding, the Company proposes to build the compressor station with significant noise mitigation measures so that the end result will be much better for the surrounding community and its residents. We are hopeful that the Committee will see this commitment as a good result in this case and not impose a noise condition different than the federal level.

Respectfully yours,


Donald J. Pfundstein

DJP/skr

Enclosure

cc: Service List

THE STATE OF NEW HAMPSHIRE
ENERGY FACILITY SITING EVALUATION COMMITTEE

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)
In Re: Application of Tennessee)
Gas Pipeline Company For a)
Certificate of Site and Facility -) Docket No. SEC 2008-02
Concord Lateral Expansion Project)
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Tennessee Gas Pipeline Company's Post-Hearing Memorandum

Introduction

To meet growing natural gas demand in New Hampshire, Energy North Natural Gas, Inc., d/b/a/ KeySpan Energy Delivery New England ("Energy North"), a New Hampshire corporation and Tennessee Gas Pipeline Company ("Tennessee") have entered into an agreement that will allow Tennessee to provide incremental capacity to the region. The agreement was approved by the New Hampshire Public Utilities Commission in Docket DG 07-101 by Order No. 24,825 dated February 29, 2008. To provide this capacity to Energy North, Tennessee plans to construct and operate a new 6,130 horsepower compressor station on its Line 200 system, the Concord Lateral system in Pelham, New Hampshire, that will allow Tennessee to provide an incremental 30,000 Dth/day of capacity to Energy North. Tennessee will also upgrade its existing Laconia Meter Station in Concord, New Hampshire, with piping modifications to accommodate the additional capacity (collectively "the Project"). The anticipated in-service date is November 1, 2009.

On January 30, 2008, Tennessee filed an application with the Federal Energy Regulatory Commission ("FERC") pursuant to Section 7(c) of the Natural Gas Act, 15 USC §717f(c) for a

certificate of public convenience and necessity to construct and operate the Project. FERC issued the requested certificate authorization by order dated August 28, 2008 (the “Order”). Without waiving any rights under federal law, Tennessee also filed an Application for a Certificate of Site and Facility on April 22, 2008.

Tennessee’s Commitment

Although certificated by FERC to build the Project in accordance with the federal sound level of 55 A-weighted decibels (“dB(A)”), Tennessee has committed to design and construct the compressor station “in substantial conformity with those parameters contained in Section 4, ‘Station Sound Level Treatment Summary’ in the ... Report of HFP Acoustical Consultants, Inc., dated November 6, 2008.” See Tennessee’s Exhibit H. Tennessee’s commitment is specifically described in “TGP’s Proposed Sound Condition.” See Tennessee’s Exhibit J. Section 4 of the November 6, 2008, HFP Report (Tennessee’s Exhibit H) outlines in detail the components of the high performance acoustical compressor station Tennessee has agreed to construct. The high performance acoustical compressor building as described in Section 4 has predicted sound level contributions at the nearest sound sensitive areas ranging from 46 to 48 dB(A) Ldn or substantially less than the 55 dB(A) Ldn limit of the FERC regulation.

Argument

Public Counsel's Proposed Sound Limit Condition Is Preempted By Comprehensive

Federal Regulation

The Natural Gas Act (“NGA”) has long been recognized as a “comprehensive scheme of federal regulation of all wholesales of natural gas in interstate commerce.” Schneidewind v. ANR Pipeline Co., 485 U.S. 293, 300-301 (1988); see also Islander East Pipeline Co. LLC v. Conn. Dep’t of Env’tl Prot., 467 F.3d 295, 305 (2d Cir. 2006) (“Congress wholly preempted and completely federalized the area of natural gas regulation by enacting the NGA.”). For this reason, the NGA is held to preempt state and local regulation.

Preemption doctrine derives from the Supremacy Clause of the Constitution, which provides that federal laws take precedence over state and local laws on the same subject. See U.S. Const., art. VI. 1. 2. Preemption can generally occur in any one of three well established ways: where Congress has expressly preempted state and local law; where Congress has legislated so comprehensively that federal law occupies an entire field of regulation and leaves no room for state or local law; or where federal law conflicts with state or local law. See Schneidewind, 485 U.S. at 299-300. Federal law need not be statutory to preempt state law. Regulations promulgated by an agency pursuant to its delegated authority may preempt similar state regulations. See National Gas Supply Corp v. Public Serv. Comm’n of the State of New York, 894 F.2d 571, 576 (3d Cir. 1990).

There is undeniably a strong federal interest in establishing a uniform system of regulation of the construction of interstate natural gas facilities to implement a national policy of ensuring an adequate supply of natural gas. “[B]ecause the federal regulatory scheme comprehensively regulates the location, construction and modification of natural gas facilities, there is no room for local zoning or building code regulations on the same subjects. In short, Congress clearly has manifested its intent to occupy the field and has preempted local zoning ordinances and building codes to the extent that they purport to regulate matters addressed by federal law.” Algonquin LNG v. Ramzi J. Loqa, 79 F. Supp. 2d 49, 52 (D.RI 2000).

Public Counsel’s proposed sound condition is preempted by federal law because it purports to establish a maximum limit for sound attributable to a compressor station, which is already expressly addressed under federal law by the Department of Energy, under authority of the FERC, which regulates sound from compressor stations under Part 380 – Regulations Implementing the National Environmental Policy Act (18 CFR § 380.1 (2008)). This regulation sets a limit for sound generated by a new or modified compressor station to a day-night average level (“Ldn”) of 55 dB(A) at any pre-existing noise sensitive area. Id. Public Counsel’s proposed condition would lower that limit to 50 dB(A) Ldn (the “Proposed Condition”).

Preemption does not prohibit all state and local regulation of the construction of interstate natural gas facilities. However, permissible state or local regulation is limited to areas not already exhaustively addressed by federal law. See, e.g., Kern River Gas Transmission Co. v. Clark County, Nevada, 757 F. Supp. 1110, 1115 (D. Nev. 1990); Algonquin LNG, 79 F. Supp. 2d 49 at 53. Regulation in areas that are addressed comprehensively under federal law, such as safety-specific conditions, cannot be applied by state and local governments in a cumulative fashion. See, e.g., Kern River Gas Transmission Co., 757 F. Supp. 1110 at 1115. Therefore,

imposition of the Proposed Condition would be preempted as an impermissible cumulative application of a regulation of an issue already exhaustively addressed by federal law.

Moreover, the 50 dB(A) Ldn threshold under the Proposed Condition directly conflicts with FERC's 55 dB(A) Ldn requirement. Where a conflict arises "between the requirements of a state or local agency and [FERC's] certificate conditions, the principles of preemption will apply and the federal authorization will preempt the state or local requirements." Islander East Pipeline Co. L.L.C. v. Richard Blumenthal, 478 F. Supp. 2d 289, 293 (D. Conn. 2007).

Subjecting the Project to the Proposed Condition would conflict with FERC's Order and would be tantamount to conferring power to modify the Order, which would conflict with FERC's authority and is prohibited by the doctrine of preemption.

By issuing the Order, FERC has determined that construction and operation of the Project meets all of the requirements under federal law, including those relating to sound levels. The comprehensive nature of FERC's regulations is consistent with the broad purpose of the NGA. Texas Midstream Gas Services, LLC v. City of Grand Prairie, 2008 U.S. Dist. LEXIS 95991 (N.D. Tex Nov. 25, 2008). FERC's regulations directly address the sound effects of interstate gas facilities and applicants must "identify the effects of the project on the existing air quality and sound environment." Id. (quoting 18 CFR §380.12(j)(11)). Where federal law is comprehensive in scope, thereby evidencing Congressional intent to occupy the entire field of regulation, as under the NGA, there is no room for overlap with state regulations. Id. at pp. 23-28,

The Order is final and unappealable. FERC is best-suited to exercise discretion in balancing the national interest in reliable natural gas delivery with the public interest in safety. It did so by mandating, at Appendix A, Condition 13, that Tennessee make all reasonable efforts

(i.e., install the sound mitigation devices Tennessee previously committed to) to ensure the sound levels comply with federal regulations.

The Proposed Condition Would Undermine Important Public Policy Considerations

Taking into consideration the national interest in ensuring gas transportation reliability balanced against the protection of the public safety, FERC has determined that the limit for sound generated by a new or modified compressor station should be an Ldn of 55 dB(A) at any pre-existing noise sensitive area. 18 CFR § 380.1 (2008). Deviation from a uniform federal standard of sound regulation could set a dangerous precedent for future projects here and in other states where Tennessee and other gas companies operate. Such a precedent could be used to gain leverage and seek to delay or prevent completion of future infrastructure projects. Public Counsel's assertion that the Proposed Condition is consistent with FERC's regulations because it will not unduly delay or prohibit the Project (Transcript, p. 40-41), is founded on an inappropriately narrow view of the doctrine of preemption.

Public Counsel suggests that simply because this Project is unlikely to exceed 50 dB(A) Ldn, there is sufficient justification to abandon the uniform federal standard of 55 dB(A) Ldn. Id. That argument ignores the inevitable legal challenges that would arise on this and future projects if a sub-55 dB(A) Ldn limit were to be imposed in this case. Imposition of the Proposed Condition could cause appellate proceedings to delay this Project. Transcript, p. 40. It would also likely contribute to unnecessary delay and possible cancellation of this or future projects that are critical to meet national and state energy needs. Projects in other locations may involve different types of equipment or closer residences that would make compliance with a sub-55 dB(A) limit impossible. Transcript, p. 31. Without a uniform system applying only the federal 55 dB(A) Ldn limit, the important national policy of ensuring safe and reliable delivery of

natural gas would be jeopardized. That is precisely why the doctrine of preemption of local and state regulation by the NGA has long been recognized. See, e.g., Algonquin LNG, 79 F. Supp. 2d 49 at 52; Islander East Pipeline Co., 478 F. Supp. 2d 289 at 294.

Imposition of the Proposed Condition would effectively penalize Tennessee for voluntarily implementing the most technologically advanced and effective sound reducing improvements. Doing so would create a disincentive for natural gas companies to voluntarily utilize such measures on future projects. That would obviously undermine a public policy that should favor and encourage the use of the best available technology on future projects.

The Distinction Between Ldn and Leq Standards Contravenes the Implied Purpose of the Proposed Condition

In quantifying and qualifying the sound impacts associated with the Project, it is critical to distinguish between A-weighted decibels measured in terms of the Day-Night Equivalent Sound Level (“Ldn”) and in terms of the Equivalent Sound Level (“Leq”). As explained by Mr. Jones’ testimony, the Ldn metric is a twenty-four hour logarithmic average in which 10 dB(A) are added to any sound measured between the hours of 10:00 P.M. and 7:00 A.M. See Transcript p. 47. The Leq metric is the logarithmic sound average for any designated period of time and has no nighttime adjustment. For a varying sound source, measured for twenty-four hours, the Ldn value will be approximately 6.4 dB(A) higher than the equivalent sound level measured in Leq. Id. Importantly, the FERC sound regulation of 55 dB(A) is based on the Ldn metric. Id. Therefore, given the steady-state nature of compressor station sound, it is reasonable to state that the FERC sound level regulation of 55 dB(A) Ldn is essentially equivalent to approximately 48.6 dB(A) Leq. Id.

Tennessee's sound control report predicts that overall sound levels due to the compressor station equipment will be in the 46 to 48 dB(A) Ldn range at the closest residences. See Tennessee's Exhibit H at S. 5.2; see also Transcript, p. 30. In response, Public Counsel advocates for the need for a limit of 50 dB(A) Ldn, as compared with the uniform FERC standard of 55 dB(A) Ldn, arguing that there is a material difference between 55 dB(A) and 50 dB(A).

Public Counsel's comments do not include the distinction among the sound measurement metrics. Tennessee's predicted sound levels in the 46 to 48 dB(A) Ldn range equate to roughly 40 to 42 dB(A) Leq. Public Counsel's Exhibit 18, which equates sound levels at different decibels with familiar human sound responses, is presumably measured based on the Leq metric. Tennessee's predicted levels of between 40 to 42 dB(A) Leq correlate with sound characterized by Exhibit 18 as falling midway in the range between "very quiet" to "quiet" and would be similar to "bird calls." Public Counsel argues in support of the Proposed Condition, that there is "an important qualitative difference" between 55 and 50 dB(A) Ldn (See Transcript p. 23) yet the sound from the Project is predicted to be in the 40-42 dB(A) Leq range, which roughly corresponds with the sound of "bird calls." See Public Counsel's Exhibit 18.

Also, Public Counsel's argument that 55 dB(A) Ldn is equivalent to the noise of conversation at five feet distance misses the mark. The FERC limit of 55 dB(A) Ldn, which is equivalent to 48.6 dB(A) Leq, is equated on Exhibit 18 to a "typical daytime suburban background." This characterization is very similar to the "quiet suburban neighborhood that they're used to" which Public Counsel has described as an acceptable target. See Transcript p. 23. Public Counsel's suggestion that the anticipated sound levels could pose health concerns to elderly neighbors who are more susceptible to noise (See, Transcript p. 20) is a stretch,

especially where the predicted sound levels measured in Leq which range from 40 to 42 dB(A) are consistent with current sounds in the area. See, Public Counsel's Exhibit 18.

This discussion should not be understood to undermine the legitimate need for uniform application of federal sound regulation standards and adherence to the doctrine of preemption in this instance. The sound discussion is included to demonstrate that, notwithstanding the federal preemption, Public Counsel's argument for a lower limit is unjustified in a situation where the predicted sound levels for the Project are in the "quiet" to "very quiet" range. See Public Counsel's Exhibit 18.

Also, the Order's requirement at Appendix A, Condition 13, that Tennessee shall make all reasonable efforts to ensure its predicted sound levels are not exceeded at the NSAs, was predicated on only a preliminary sound study wherein sound levels were estimated to be 54.7 dB(A) Ldn. See Transcript, p. 39. The subsequent sound reports that were prepared after the issuance of the FERC Order incorporated sound mitigation technologies and revised the initial predicted sound levels substantially downwards to the range of 46 to 48 dB(A) Ldn. Therefore, in pointing to Condition 13 of the Order in support of the argument that a sub-55 decibel Ldn limit is not necessarily inconsistent with FERC's Order (See Transcript p. 38), Public Counsel might note that the Order actually addressed a report predicting 54.7 dB(A) Ldn. The statement in the Order is a reflection of the information that was before FERC, which predicted a significantly higher sound level than what subsequent studies concluded should be anticipated.

Conclusion

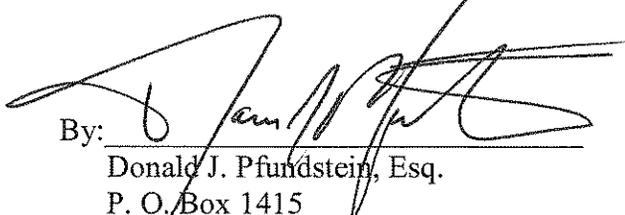
Tennessee is proactively seeking to be a good neighbor by voluntarily building a facility that should be "very quiet" to "quiet" when measured against Public Counsel's Exhibit 18. Imposing a 50 dB(A) Ldn level is unlikely to change what is constructed and, therefore, will not

affect the resulting sound output. Furthermore, imposing the limit would place an undue and unworkable burden on Tennessee relative to its business in New Hampshire and other states. Such imposition is also contrary to the established law regarding federal preemption. Tennessee respectfully requests that the Committee accept Tennessee's proposed noise condition, Exhibit J, and reject Public Counsel's Proposed Condition.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY
By Its Counsel
GALLAGHER, CALLAHAN & GARTRELL, PC

Dated: 12/11/08

By: 
Donald J. Pfundstein, Esq.
P. O. Box 1415
Concord, New Hampshire 03301
(603) 545-3600

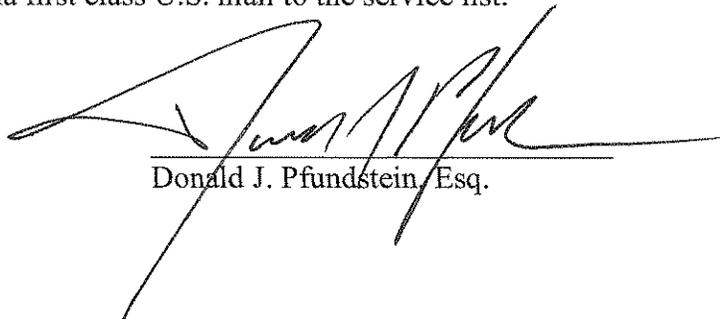
Dated: 12/11/08

By: Erik R Newman by: DJP
Erik R. Newman, Esq.
P. O. Box 1415
Concord, New Hampshire 03301
(603) 545-3638

CERTIFICATE OF SERVICE

I hereby certify that a copy of Tennessee Gas Pipeline Company's Post-Hearing Memorandum was mailed on this date via first class U.S. mail to the service list.

Dated: 12/11/08


Donald J. Pfundstein, Esq.