

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

SEC Docket No. 00-01

**Application of Tennessee Gas Pipeline
Londonderry 20" Replacement Project**

Application of Tennessee Gas Pipeline Co. (Tennessee) for a Certificate of Site and Facility to construct install and operate 19.3 miles, of 20 inch replacement pipe commencing in Dracut, Massachusetts and terminating in Londonderry, New Hampshire; and to construct, install and operate delivery point facilities, including a meter station, to allow Tennessee to provide firm gas transportation service of up to 130,000 dekatherms per day of natural gas to a new industrial end-use customer, AES Londonderry, LLC (AES)

The pipeline will extend from a proposed interconnection with the existing pipeline facilities of the Tennessee Gas Company in Dracut, Massachusetts, continuing parallel and adjacent to the existing 12 inch Concord lateral and terminating in Londonderry, New Hampshire. The Towns traversed include Pelham, Windham and Londonderry.

ORDER ON MOTIONS FOR REHEARING

On December 29, 2000, the Site Evaluation Committee (SEC or Committee) issued a Decision and Order in the above entitled matter granting a Certificate of Site and Facility, to Tennessee Gas Pipeline Company (Tennessee) for the siting, and construction of a twenty inch replacement pipeline commencing in Dracut, Massachusetts and terminating in Londonderry, New Hampshire. The Certificate was granted subject to a number of conditions.

On January 17, 2001, Tennessee filed a Motion for Reconsideration and Clarification of the Certificate. On January 25, 2001, an intervenor, the Town of Londonderry and the Londonderry School District (TOL/LSD) filed a Motion for Rehearing. On January 25, 2001, an intervenor, the Londonderry Neighborhood Coalition (LNC) also filed a Motion for Rehearing that simply adopted and incorporated the Motion for Rehearing filed by TOL/LSD.

On January 26, 2001 the Committee issued an Order requiring objections to the motions filed by the various parties to be filed by February 8, 2001. On February 21, 2001, the Committee held a public meeting for the review and consideration of the motions and objections. At the Public meeting the Committee voted to deny the motions filed by the Intervenors and to grant, in part, and deny, in part, the motion filed by Tennessee. This Order sets forth, in writing, the reasons for the Committee's actions.

I. TENNESSEE’S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE CERTIFICATE.

Tennessee’s Motion for Reconsideration and Clarification of the Certificate is, in fact, a request for the Committee to grant rehearing pursuant to RSA 541: 3. The Committee may grant a rehearing if “in its opinion good reason is stated in the motion.” RSA 541:3. In its motion, Tennessee primarily complains about various conditions imposed upon the certificate by the Decision and Order. Tennessee claims that the Committee should grant rehearing and eliminate a condition that Tennessee apply a one inch concrete coating in the areas within three hundred feet of the Londonderry and Pelham school property lines and Muldoon Park (Extended Class Three Locations.) Tennessee also seeks elimination of a condition which requires the appointment of an Ombudsman who would act as a neutral facilitator between members of the public and Tennessee in the event that there are disputes or inquiries regarding the project. Tennessee also seeks rehearing regarding certain environmental conditions, conditions relating to the cost of a safety inspector and inspection costs and conditions requiring Tennessee to ensure the integrity of an existing 12-inch pipeline adjacent to the proposed twenty inch line. Tennessee also seeks rehearing concerning the condition that requires internal inspection or “pigging” of the proposed replacement pipeline.

With the exception of several minor issues regarding certain environmental conditions, Tennessee has not raised any new claims or presented any new evidence which amount to good reason to permit rehearing. In this Order, the Committee will specifically address two claims made by Tennessee and amend certain environmental conditions.

A. Concrete Coating. The Committee is requiring that Tennessee install a one-inch concrete coating in the areas referred to as the Extended Class III Locations. These are the locations that fall within three hundred feet of the property lines of the schools located in Pelham and Londonderry and the area known as Muldoon Park. In designing this condition the Committee took into account the unique circumstances presented by the location of this proposed pipeline. As noted throughout the record, the proposed pipeline runs in close proximity to five schools in the Town of Londonderry and at least one school in the Town of Pelham. The record reflects that one of the five schools in Londonderry simultaneously serves approximately 1,500 children during the typical school day. Transcript, Day 3, p. 357. The Committee considered alternative routes for the proposed pipeline but the alternatives were not conducive to the needs of the environment or the orderly development of the region. *See*, Decision and Order, p. 13 - 14. During the course of the proceedings, Tennessee provided much evidence that third party damage is the primary cause of pipeline failure. Transcript, Day 1, p. 156; Day 2, p. 83, 235. In order to provide additional protection from third party construction in roadways and railroad beds Tennessee will be applying a one-inch concrete coating around the pipeline. Transcript, Day 1, p. 162; Day 2, p. 176; Exhibit A62. The Committee finds that a similar protection against third party damage is just as necessary and important in the areas of the schools and Muldoon Park where there can be large numbers of people and schoolchildren gathered at various times. Tennessee argues that there should not be as much construction in the Extended Class III Locations because they are controlled by the individual landowners. However, there is no evidence that there will be no future construction in the areas of the schools. In fact, a new

kindergarten building is under construction in proximity to the pipeline. Transcript, Day 1, p. 133-134. At least one of Tennessee's witnesses testified that there have been occasions where there has been activity in the area of the existing pipeline and Tennessee was not contacted. Transcript, Day 2, p. 237. The record reflects that there is no master plan for the use of the balance of the school district property in the Town of Londonderry and there can be no guarantee that further school construction will not occur in proximity to the pipeline right of way. Exhibit A-90. In considering the effect of this project on the public health and safety the Committee finds that the installation of concrete coating in the Extended Class III Locations is necessary to add an additional and appropriate measure of protection from the possibility of third party damage to the pipeline.

B. Community Ombudsman. In the Decision and Order the Committee requires that the parties consult with each other and select a Community Ombudsman (CO). The purpose of the CO is to facilitate communication between members of the community and Tennessee about the project. Nothing in the condition limits or expands any right, title, claim or other interest that any party might have under applicable law. The sole purpose of the CO is to facilitate communication. The Committee issued this condition because the record does reflect problems in communication between members of the community and Tennessee. Decision and Order, p. 16, 67-68.

The Committee specifically heard testimony from individuals who have reported difficulty in communications with Tennessee. The record reflects a concern by members of the community that the notices regarding proceedings before the Federal Energy Regulatory Commission (FERC) were published in newspapers that are not generally read by the Londonderry community. Transcript, Day 3, p. 290, 296 -298. Similarly, the Committee heard testimony complaining that Tennessee published notice of the public informational hearings in the legal notice section of newspapers that are not read by the general public. Transcript, Day 3, p. 375. Although Tennessee was not legally required to publish the notices in any other fashion, this complaint from members of the community demonstrates a mistrust that can affect future communications. The Committee also heard complaints from citizens that many in the Town of Londonderry had "no idea of what was going on" with regard to the plans for the pipeline. Transcript, Day 3, p. 352-353. Additionally, the record reflects that, in at least one instance, Tennessee has provided materials to the public that were ambiguous with regard to the intention of Tennessee to internally inspect the proposed pipeline. Transcript, Day 2, p. 188 - 192. Tennessee delivered a pamphlet to the public that advised that it "performs periodic inspections and testing on the interior of the pipeline to verify system integrity." Exhibit 45. However, the testimony during the adversarial proceedings indicated that Tennessee might not perform such testing for a period as long as twenty years. Transcript, Day 2, p. 189. The Committee finds that a CO is necessary to facilitate communication and assist in the orderly development of the region.

C. Environmental Conditions. Tennessee has requested reconsideration of the terms of several environmental conditions. The reconsideration sought does not require any substantial change to the conditions nor does Tennessee's proposal decrease the environmental protection afforded by the conditions. Although the Committee feels that Tennessee's concerns could have been addressed within the framework of the original environmental conditions, we will,

nonetheless, grant minor changes to those conditions as set forth on Attachment A to this Order. The amendments simply provide more detail and flexibility to the environmental requirements.

D. Remaining Claims. The remaining claims raised in Tennessee's motion have been thoroughly litigated, reviewed and considered during the statutory proceedings before the Committee. Tennessee offers no new evidence or reason requiring rehearing on these issues. The record of the proceedings fully supports the findings of the Committee and the imposition of the conditions to the Certificate.

Tennessee's Motion for Reconsideration and Clarification of the Certificate is **GRANTED, IN PART, AND DENIED, IN PART.**

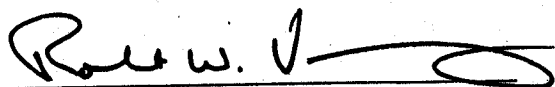
II. INTERVENORS' MOTION FOR REHEARING

The Intervenor, in their Motion for Rehearing present a "laundry list" of perceived errors on the part of the Committee in granting a Certificate of Site and Facility. The motion asserts that 1) the location of the pipeline in the vicinity of the school district property is unreasonable; 2) the Committee failed to adequately consider the concerns of the Intervenor; 3) Tennessee should be made subject to local site plan and building permit review; 4) the granting of a certificate subject to certain conditions would adversely affect the public health and safety; 5) construction should have been limited during school sessions; 6) the Committee erred in making certain factual findings. Attached to the Intervenor's Motion is a "Commentary" from TOL/LSD's engineering consultant.

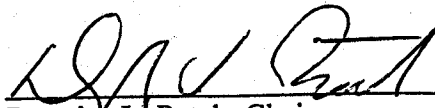
Each issue raised by the Intervenor and by the engineering consultant for TOL/LSD was thoroughly litigated, reviewed and considered during the course of the statutory proceedings before the Committee. The Intervenor have not presented any new evidence or any new reasons that require a rehearing. The record of the proceedings fully support the findings of the Committee granting the Certificate of Site and Facility subject to the conditions set forth in the Decision and Order.

The Motion for Rehearing filed by TOL/LSD is **DENIED.**
The Motion for Rehearing filed by LNC is **DENIED.**

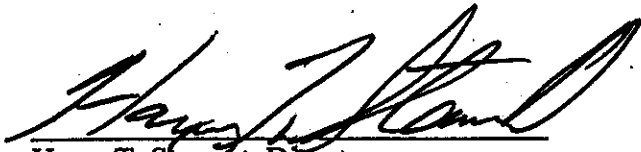
By Order of the Site Evaluation Committee this 23rd day of February, 2001.



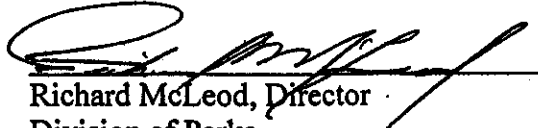
Robert W. Varney, Chairman
Commissioner, Department of
Environmental Services



Douglas L. Patch, Chairman
Public Utilities Commission



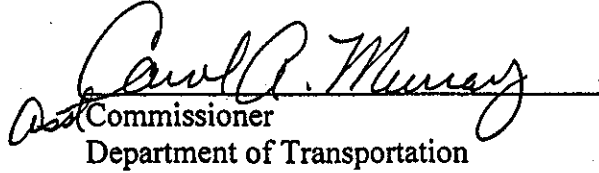
Harry T. Stewart, Director
Water Division
Department of Environmental Services



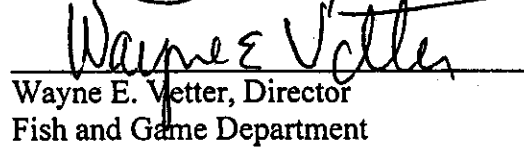
Richard McLeod, Director
Division of Parks
Department of Resources & Economic
Development



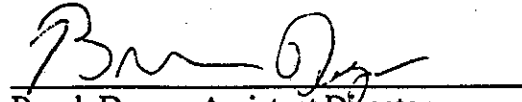
Jeffrey H. Taylor, Director
Office of State Planning



Carol A. Murray, Commissioner
Department of Transportation



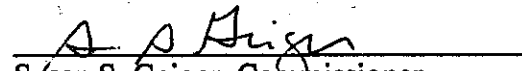
Wayne E. Vetter, Director
Fish and Game Department



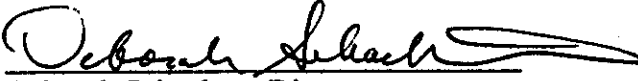
Brook Dupee, Assistant Director
Office of Community & Public Health
Department of Health & Human Services



Kenneth A. Colburn, Director
Air Resources Division
Department of Environmental Services



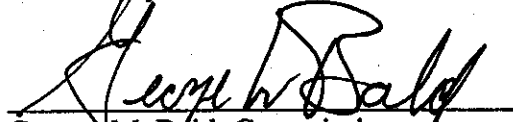
Susan S. Geiger, Commissioner
Public Utilities Commission



Deborah Schachter, Director
Governor's Office of Energy &
Community Services



Nancy Brockway, Commissioner
Public Utilities Commission



George M. Bald, Commissioner
Department of Resources & Economic
Development



Michael D. Cannata, Jr., Chief Engineer
Public Utilities Commission



Philip Bryce, Director
Division of Forests & Lands
Department of Resources & Economic
Development

ATTACHMENT TO ORDER ON MOTIONS FOR REHEARING

The New Hampshire Department of Environmental Services Conditions contained in Attachment B of the Committee's Decision dated December 28, 2000, are amended to read as follows:

DES Condition 11 - Topsoil:

Topsoil shall be stripped and stockpiled from over the trenchline in all areas where grading and/or ditching is required. In addition to the requirements for handling of topsoil in agricultural and wetland areas as specified in the ECP and elsewhere in these conditions, Tennessee and its contractors shall make every reasonable effort to handle all soils so as to minimize mixing of topsoil with underlying soils and to replace soils with the topsoil at or near the surface upon completion of final grading.

DES Condition 12 - Vegetative Buffer:

Tennessee shall develop and submit to DES, methods and procedures, in addition to those presented in the ECP, for discharging of "trench water" in a manner that will not result in violations of state surface water quality standards. Discharge from dewatering of work areas shall be to engineered features such as settling basins or filter bags which are located in upland areas with a minimum of 50 feet of undisturbed vegetated buffer to wetlands and surface waters. Where upland and undisturbed vegetative buffers are limited, the DES EI shall have discretion regarding the placement of dewatering structures and the methodology of dewatering.

DES Condition 17 - Geotextile Diapers and Flume Crossings:

Timber mat bridges over perennial or intermittent streams shall have a geotextile diaper and be constructed over a flume (culvert), except as approved in writing by the DES EI based on site-specific characteristics of the waterbody.

DES Condition 20 - In-stream Drilling and Blasting:

In-stream drilling and blasting shall be conducted in the dry except in the case of a DES-authorized wet crossing, in which case Tennessee shall submit a site-specific plan to DES for approval of wet drilling and blasting that will meet the turbidity standard. The DES EI shall be notified at least one (1) hour prior to the initiation of in-stream blasting.

DES Condition 58(e) -- Section 401 Water Quality Certification:

Tennessee shall monitor for turbidity in the field at each surface water crossed at the following locations: (1) at a point just upstream of all construction activity in order to establish a natural turbidity background level, and (2) at the locations specified in any applicable mixing zone. Monitoring shall occur at the times specified under subsection (c) or as approved under subsection (d), unless these times and locations for turbidity sampling are modified in writing by the DES EI in the field based on field conditions at the time of the crossing. Turbidity sampling

results shall be provided to DES as part of the periodic reports required under DES Condition 9. The DES EI shall immediately be notified of any results that are inconsistent with the requirements of this condition, or any applicable mixing zone.

All of the conditions to the Certificate which are not amended herein shall remain in full force and effect.

Appeals Process

Any person or party aggrieved by this decision or order may appeal this decision or order to the New Hampshire Supreme Court by complying with the provisions of RSA 541:1

541:3 Motion for Rehearing. - Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

541:4 Specifications. - Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.

541:6 Appeal. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.