

# STATE OF NEW HAMPSHIRE

## SITE EVALUATION COMMITTEE

### SEC DOCKET NO. 2001-01

#### Re: Sprague Energy Corporation Application for Exemption - Sprague Pipeline

**Application of Sprague Energy Corporation (Sprague) for an exemption from the requirements of RSA 162-H pertaining to the proposed siting, construction, installation and operation of a six inch inside-diameter fuel transfer pipeline to supply low sulfur diesel fuel, as a back up source of fuel, to the 525 megawatt Newington Power Facility being constructed by Newington Energy, L.L.C. in Newington, County of Rockingham, New Hampshire.**

**The Application seeks exemption from the certification process set forth at RSA 162-H. Copies of the complete Application may be viewed at the Offices of the Department of Environmental Services, 6 Hazen Drive, Concord, New Hampshire or at the Town Offices in Newington, New Hampshire.**

### DECISION AND ORDER

#### I. Introduction

On March 16, 2001, Sprague Energy Corp. (Sprague or Applicant,) filed a document entitled "Application for Exemption - Sprague Pipeline" (Application). In its Application, Sprague seeks an exemption from the certificate requirements of Chapter 162-H of the Revised Statutes of New Hampshire (RSA 162-H). Sprague, in its Application, proposes to construct, operate and maintain a 6 inch inside diameter fuel transfer pipeline to supply low sulfur diesel fuel as a backup source of fuel to the 525 megawatt gas fired electric generating facility being constructed by Newington Energy, L.L.C., (NEL) in Newington, New Hampshire.

The Sprague pipeline is proposed to be built from 2 existing, permitted, aboveground storage tanks (AST) located on Sprague's property. The proposed pipeline will then traverse aboveground on the Sprague property for approximately 1,120 feet and underground for approximately 700 feet to River Road. The pipeline will then run underground parallel to River Road and along the northeast side of the proposed Industrial Corridor Road (ICR)<sup>1</sup> for approximately 4,600 feet until it diverges and terminates at the Newington energy facility AST. The total length of the proposed oil pipeline is 6,420 feet. *See*, Application, p. 3; *see also*,

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<sup>1</sup>The ICR is a public road which the Town has proposed to build to service the NEL facility and other residents within the industrial zone of this portion of Newington, N.H. *See*, Application, Attachment B (Route Alignment Sheets.)

Application, Attachments B (Route Alignment Sheets) and D (Abutters Information and Tax Maps.)

The Sprague pipeline is proposed to be constructed in a 10-foot easement located along the ICR permanent right of way which is 60 feet wide. The purpose of this location is to minimize and consolidate the number of right-of-ways in the affected area. Land within the prospective right-of-way is owned by Sprague, Public Service Company of New Hampshire (PSNH) and NEL. Application, p. 3; Transcript, p.10.

The proposed facility is an energy facility within the meaning of RSA 162-H:2, VII and as such, requires a certificate of site and facility or an exemption from certification pursuant to RSA 162-H:4, IV. In its Application, Sprague seeks an exemption.

## **II. Requirements for Exemption Pursuant to RSA 162-H:4, IV**

RSA 162-H:4, IV, grants the Site Evaluation Committee discretion to exempt an application from the statutory site evaluation process if it determines that other existing statutes provide adequate protection of the objectives set forth in RSA 162-H:1. The discretion of the Committee is statutorily circumscribed by 4 requirements:

- (a) existing state statutes, state agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1;
- (b) a review of the application reveals that consideration of the application by only selected agencies represented on the Committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;
- (c) response to the application from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and,
- (d) all environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.

RSA 162-H:4, IV. The Committee must find that an application satisfies each of the statutory requirements before it may exercise its discretion to grant an exemption from the statutory site evaluation process of RSA 162-H. *See*, RSA 162-H:6. An exempted application remains subject to the permitting, licensing and review authority of all federal, state and local government agencies.

### **III. Sprague's Request for an Exemption**

In its Application, Sprague sets forth at least 5 reasons for exemption of the proposed oil pipeline. Sprague's reasons address each of the criteria required for an exemption under RSA 162-H:4, IV. Sprague asserts the following reasons:

1. Sprague asserts that the purpose of RSA 162-H:1 is to avoid "undue delay" in the construction of necessary energy facilities. Sprague notes that full SEC review pursuant to RSA 162-H:6 requires a nine month process. Sprague also asserts that it will have to comply with the very same statutes and regulations whether it is subject to the full permitting process or its request for an exemption is granted. Sprague believes that it can complete the individual federal, state and local agency permitting requirements in less time than would be required under the 9 month SEC process. Sprague asserts that the granting of an exemption will avoid undue delay in the construction of the pipeline. Application, p. 8.

2. In its Application and presentation before the Committee, Sprague asserted that the construction of the ICR and the proposed Sprague pipeline are integrally related. Application, p.8. Sprague recognizes that RSA 162-H, in the absence of an exemption, preempts municipal regulation of the project. Sprague asserts that municipal jurisdiction, reasonably exercised, over the project is, under these circumstances, appropriate. In addition to municipal regulation, Sprague asserts that other existing statutes and state agency rules provide adequate protection of the objectives of RSA 162-H:1. *Id.*

3. Sprague asserts that the requirements for exemption set forth at RSA 162-H:4, IV (b) are achieved because regulation of the pipeline is essentially required by only two agencies, the Department of Environmental Services (DES) and the Public Utilities Commission (PUC). Sprague asserts that regulation by those state agencies will meet the objectives of RSA 162-H:1 and, therefore, it is unnecessary to submit the proposal to the complete site evaluation process as contemplated by RSA 162-H:6. Application, p. 8.

4. Sprague asserts that the proposed project has been met with uniformly favorable public response and, therefore, the response from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of participating federal, state and local agencies. Application, p. 9.

5. Last, Sprague asserts that all of the environmental impacts and effects of the project are adequately regulated by federal, state and local statutes, rules and ordinances. In its Application, Sprague references, without limitation, the following statutes and regulations which will govern the proposed project: the Hazardous Liquid Pipeline Safety Act of 1979; RSA 482-A; the Endangered Species Act, 16 U.S.C. §1531, et seq.; §404; and the Wetlands, Waste Management and AST Regulations of the Department of Environmental Services. Application, p. 5-7. The Sprague Application asserts that the construction of the pipeline will eliminate the need for approximately 100 fuel truck deliveries per day from the existing Sprague terminal to the NEL facility when the facility is using backup fuel. Sprague asserts that construction of the proposed pipeline will reduce the exposure of the environment to the risk of oil spills at each

spigot where oil delivery trucks would pick up and deliver oil. Sprague asserts that the proposed pipeline would include a state of the art leak protection system. Application, p. 2.

#### **IV. Consideration of Statutory Criteria for Exemption Pursuant to RSA 162-H:4, IV**

After a comprehensive review of Sprague's Application, its presentation before the Committee, and the response of the public to the request for an exemption, the Committee voted to grant the request for exemption and to exercise its discretion to exempt the Sprague Application from the statutory site evaluation process. The exemption was conditioned upon Sprague entering into an agreement with the PUC and the Town of Newington which ensures that the PUC will have authority to ensure that the construction and operation of the pipeline conforms to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 60101, *et. seq.*). Transcript, p. 50 and 61-65. In coming to this decision, the Committee has considered the documents which have been filed by Sprague, the representations and commitments made by Sprague at the public hearing, and each of the statutory requirements for exemption which are discussed below.

##### **1. Existing state statutes, state agency rules and municipal ordinances provide adequate protection of the objectives of RSA 162-H:1.**

The objectives of RSA 162-H:1 include maintaining a balance between the environment and the possible need for new energy facilities; and, avoiding undue delay in the construction of needed energy facilities; and, treating the construction and operation of energy facilities as a significant aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion.

In this case, Sprague will be subject to a number of federal and state statutes and administrative regulations. DES will administer state environmental laws and regulations pertaining to wetlands, waste management, and above ground storage facilities. Sprague has already submitted the appropriate applications and obtained AST and wetlands approval for the project. Transcript, p. 11 and p. 30. The PUC will regulate the design, construction, operation and safety aspects of the proposed pipeline in accordance with the federal Hazardous Liquid Pipeline Safety Act and an agreement to be executed by Sprague, the PUC and the Town of Newington. Additionally, this project will be subject to the zoning, planning, building and other ordinances and regulations of the Town of Newington. RSA 676: 15 and 17 provide the Town with the ability to obtain injunctive relief and to impose monetary penalties in the event of a violation of local regulations. A large portion of the project will be constructed along the proposed ICR and the Applicant will have to satisfy any additional conditions imposed by the Town of Newington governing the use of the right of way along the ICR.

A review of Sprague's application indicates that there does not appear to be any adverse effect upon protected plant or animal species, historic sites, or fish and wildlife management. Nonetheless, the Applicant has represented to the Committee that it will continue to consult with the various federal, state and local agencies responsible for the protection of such resources.

The Committee finds that existing federal, state and local statutes, regulations and ordinances will provide adequate protection of the objectives of RSA 162-H:1. The largest impacts stemming from this project appear to be within the authority of the Department of Environmental Services and the Public Utilities Commission through the application of the Hazardous Liquid Pipeline Safety Act. The laws administered by these agencies adequately protect the environment and the health, safety and welfare of the citizens of the State of New Hampshire.

- 2. A review of the application reveals that consideration of the application by only selected state agencies represented on the Committee is required and the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H.**

As indicated in the foregoing section, DES and the PUC, through the application of the Hazardous Liquid Pipeline Safety Act, are the state agencies that would administer the majority of the laws and regulations pertaining to the project contained within the Application. The proposed Sprague pipeline will be constructed in an area that is already industrially zoned and industrially developed. *See*, Application, Attachments B and D. Although there will be some wetlands and forest impact, such impacts can be monitored and regulated through DES. Indeed, Sprague has already obtained AST and wetland approvals from DES. The New Hampshire Department of Environmental Services and the Public Utilities Commission are the state agencies which appear to have the greatest regulatory interest and can adequately regulate the project in such a fashion as to protect the objectives of RSA 162-H:1. It is not necessary to employ the complete procedural apparatus of RSA 162-H in order to protect the statute's objectives.

- 3. Response to the application from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies.**

The Committee held a public hearing in Newington on May 15, 2001. No members of the public appeared to oppose Sprague's Application. The Town of Newington Planning Board was represented at the hearing by its acting chairperson, Dennis Hebert. Mr. Hebert indicated that the Planning Board supported the application and presented a letter to that effect to the Committee. That letter indicated that the Planning Board held its own public hearing on the Sprague proposal at which there was favorable input prior to the Planning Board's unanimous vote to approve the Sprague pipeline. Through its Planning Board, the Town of Newington indicates that it believes that the Sprague pipeline represents an environmentally safe and efficient means of transferring fuel oil to the Newington power facility.

The Committee has received no written opposition to the application from any member of the public and no one has sought intervenor status in this docket.

On this record, the Committee finds that the response to the application from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies.

**4. All environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.**

A review of the Application indicates that the environmental effects of this project appear to reside within the jurisdiction of the DES. In fact, the Applicant already received the necessary approvals from the DES, Waste Management Division, Oil Remediation and Compliance Bureau for the proposed pipeline. Transcript, p. 11. Likewise, the Applicant's wetlands, dredge and fill permit application has been approved. Transcript, p. 30. The project, as proposed, disturbs approximately fifty thousand square feet of terrain. Therefore, a site specific alteration of terrain approval is not separately necessary. Application, p. 6; Transcript, p. 27.

In addition, the Applicant has filed with the Committee correspondence from the Department of Resources and Economic Development, Division of Forests and Lands, the United States Department of the Interior, Fish and Wildlife Service, and the State of New Hampshire Fish and Game Department. These agencies have indicated that there are no known occurrences of rare species or natural communities in the area of the ICR, which constitutes the majority of the proposed pipeline. Sprague has also filed a Phase IA cultural resource survey for the proposed ICR prepared by TRC Environmental Corporation. The Phase IA survey recommends monitoring by a qualified archaeologist. The Applicant has represented to the Committee that in the event that endangered species or communities, or sensitive cultural resources are discovered, they will be reported to the appropriate agencies.

Under these circumstances, the Committee finds that the environmental impacts of the proposed pipeline can be adequately regulated by the aforementioned state agencies without the need for a complete site evaluation proceeding before the Committee.

**V. Conclusion**

After considering the Application, the evidence presented at the public hearing and the representations and commitments made by the Applicant, the Committee finds that the Applicant has satisfied the statutory criteria for exemption set forth at RSA 162-H:4, IV. Therefore, the Committee will exercise its discretion and grant the Applicant an exemption from the statutory process of RSA 162-H for the project contained in its Application that has been accepted and docketed as No. 2001-01. However, this grant of an exemption is specifically conditioned upon the execution of a binding agreement between the Applicant, the PUC and the Town of Newington that confirms the authority of the PUC to monitor and inspect the siting, construction and operation of the proposed pipeline to ensure conformance to the Hazardous Liquid Pipeline Safety Act of 1979 and any administrative regulations which have been promulgated under the auspices of the Act. Nothing in the agreement shall be interpreted or construed to undermine or limit, in any way, the authority of the PUC, the State of New Hampshire, or any other person or entity to pursue an applicable private right of action against Sprague in the event that the Act or applicable regulations are violated.

## **ORDER**

WHEREAS, Sprague Energy Corp. has filed an Application for exemption from the requirements of RSA 162-H pertaining to the proposed siting, construction, installation and operation of a 6 inch inside-diameter fuel transfer pipeline to supply low sulfur diesel fuel, as a backup source of fuel, to the 525 megawatt Newington power facility being constructed by Newington Energy, L.L.C. in Newington, County of Rockingham and State of New Hampshire; and,

WHEREAS, the Site Evaluation Committee has determined that the Application contains sufficient information to carry out the purposes of RSA 162-H; and,

WHEREAS, the Site Evaluation Committee finds that existing state statutes, state agency rules and municipal ordinances provide adequate protection of the objectives of RSA 162-H:1; and,

WHEREAS, the Committee finds that consideration of the Application by only selected agencies represented on the SEC is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H; and,

WHEREAS, a public informational hearing held on May 15, 2001, revealed that the public supports the Application and the public response to the Application indicated that the objectives of RSA 162-H:1, can be met by those state agencies without exercising the provisions of RSA 162-H; and,

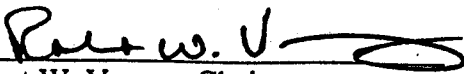
WHEREAS, all environmental impacts or effects of the proposed pipeline are adequately regulated by federal, state or local statutes, rules or ordinances.

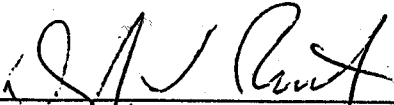
### **IT IS HEREBY:**

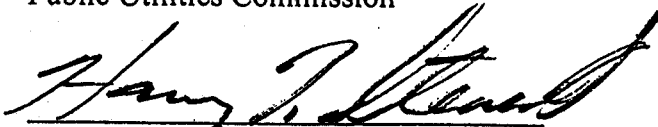
**ORDERED**, that Sprague Energy Corp.'s Application for Exemption is accepted as complete pursuant to RSA 162-H:6 and RSA 162-H: 7, and;

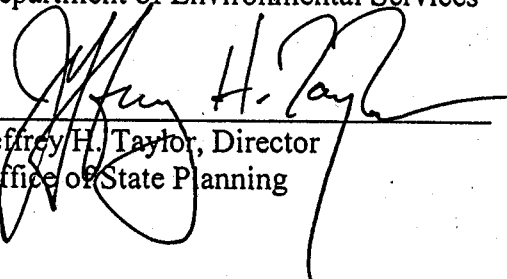
**FURTHER ORDERED**, that Sprague Energy Corp.'s Application for Exemption - Sprague Pipeline, Docket No. 2001-01, is GRANTED pursuant to RSA 162-H:4, IV, subject to the following condition: Sprague shall execute an agreement with the Public Utilities Commission and the Town of Newington confirming the authority of the PUC to monitor and inspect the siting, construction and operation of the proposed pipeline to ensure conformance with the Hazardous Liquid Pipeline Safety Act of 1979 and any administrative regulations which have been promulgated under the auspices of the Act.

So ordered this 29<sup>th</sup> day of June, 2001.

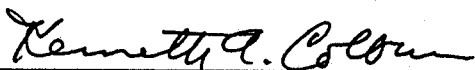
  
Robert W. Varney, Chairman  
Commissioner, Department of  
Environmental Services


  
Douglas L. Patch, Chairman  
Public Utilities Commission

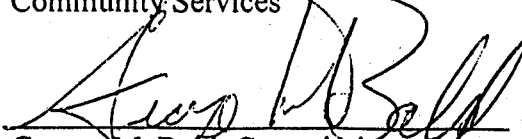
  
Harry T. Stewart, Director  
Water Division  
Department of Environmental Services


  
Jeffrey H. Taylor, Director  
Office of State Planning

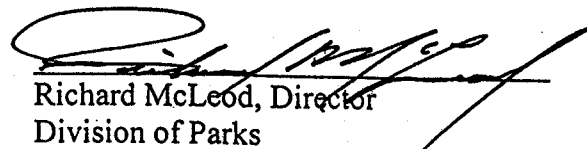
Wayne E. Vetter, Director  
Fish and Game Department

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

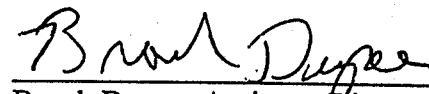
  
MaryAnn Manoogian, Director  
Governor's Office of Energy &  
Community Services

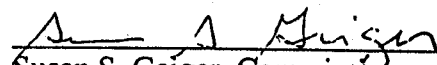
  
George M. Bald, Commissioner  
Department of Resources & Economic  
Development

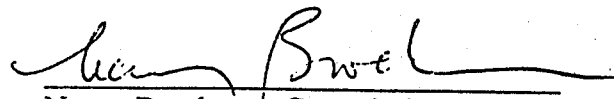
  
Philip Bryce, Director  
Division of Forests & Lands  
Department of Resources & Economic  
Development

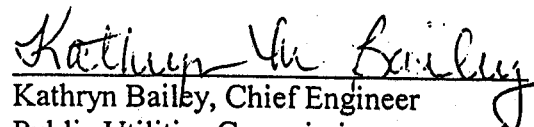
  
Richard McLeod, Director  
Division of Parks  
Department of Resources & Economic  
Development

Carol Murray, Commissioner  
Department of Transportation

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

  
Susan S. Geiger, Commissioner  
Public Utilities Commission

  
Nancy Brockway, Commissioner  
Public Utilities Commission

  
Kathryn M. Bailey, Chief Engineer  
Public Utilities Commission



## **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 following 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.