

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2012-02

**Re: Motion of Granite State Gas Transmission Company for Declaratory Ruling on the
Little Bay Bridge Crossing Replacement Project**

July 5, 2012

ORDER GRANTING MOTION FOR DECLARATORY RULING

Background

On April 3, 2012, Granite State Gas Transmission Company (Granite State) filed a motion entitled “Motion for Declaratory Ruling on Little Bay Bridge Crossing Replacement Project” (Motion). Granite State is a New Hampshire corporation with a principal place of business in Portsmouth. Amongst other assets, Granite State owns and operates an interstate bidirectional high pressure natural gas pipeline that transports natural gas between Haverhill, Massachusetts and Portland, Maine. The pipeline is 87 miles in length. The pipeline includes a “tie-in” between Newington, New Hampshire and Dover, New Hampshire. The tie-in consists of buried pipeline on either side of Little Bay with approximately 1,500 ft. of above-ground, 10-inch pipeline affixed to and suspended below the Little Bay Bridge (US Route 16/Spaulding Turnpike).

The New Hampshire Department of Transportation (NHDOT) has undertaken a project to rehabilitate and reconfigure the Spaulding Turnpike in the area of the Little Bay Bridge. As part of the project, the existing Little Bay Bridge will be rehabilitated and widened to accommodate four lanes traveling in a northerly direction. A new bridge is being constructed immediately adjacent to the existing bridge and will accommodate four lanes of travel in a southerly direction. Once completed, the new bridge will sit between the existing Little Bay Bridge and the existing General Sullivan Bridge. In addition, the NHDOT project includes rehabilitation of the General Sullivan Bridge. The General Sullivan Bridge is a steel truss bridge reserved for pedestrian and recreational use and located a short distance to the west of the existing Little Bay Bridge. As part of the NHDOT project, the steel girders and stringers that currently support the pipeline and suspend it under the existing bridge will be removed and eliminated from the bridge design. NHDOT has notified Granite State that the pipeline must be re-located from the existing Little Bay Bridge. Suspension of the pipeline under the new bridge was considered but would present future accessibility difficulties for maintenance. Replacement of the pipe onto the General Sullivan Bridge required multiple relocations because of pending immediate rehabilitation of the General Sullivan Bridge once the Little Bay Bridge was completed. After review of the alternatives, Granite State, with the assistance and support of NHDOT, determined that the most feasible alternative is to relocate the pipeline under Little Bay through the use of horizontal directional drilling.

Granite State plans to replace the existing pipeline with approximately 2,500 linear feet of 10-inch API 5L Grade B X 52 pipe that will be installed in bedrock, through the use of horizontal directional drilling techniques, approximately 30 feet beneath the bed of Little Bay. Some additional length of pipeline will be necessary to accommodate the depth of Little Bay and the areas where the new portion of pipeline will tie in to the existing pipeline. The new pipe will be located east of the existing Little Bay Bridge. It will run parallel to Little Bay Bridge and is proposed to enter and exit the Little Bay/Piscataqua River on state owned property administered by NHDOT. The Dover tie-in will occur within an area known as Hilton Park. The Newington tie-in will occur in the area of Shattuck Way where the new pipeline will then be directed westerly and under the Spaulding Turnpike to a tie-in to the existing pipeline west of the Spaulding Turnpike. A traditional “jack and bore” drilling technique will be employed to install the pipeline under the turnpike and in the vicinity of the tie-ins to the existing pipe.

Required Easements and Permits

The State of New Hampshire owns the land beneath the tidal waters of the State subject to the public trust. See, R.S.A. 1:14. Granite State will require an easement from the state in order to undertake the horizontal directional drilling and for the permanent installation of the new section of pipe within the bedrock beneath Little Bay. Pursuant to R.S.A. 4:40, such an easement must be approved by the Governor and Executive Council. The easement process also includes review and approval by the Long Range Capital Planning and Utilization Committee after consultation with the Council on Resources and Development and review by the Rivers Management Advisory Committee. To date, the Council on Resources and Development has approved the project and the Rivers Management Advisory Committee has categorically excluded the project from review due to its *de minimis* effect on the Piscataqua River and Little Bay. Review by the Long Range Capital Planning and Utilization Committee and the Governor and Executive Council are pending.

The State of New Hampshire also owns the real estate in Hilton Park on the Dover side of Little Bay and the real estate near Shattuck Way on the Newington side where the new section of pipeline will connect to the existing pipe. Both pieces of land are administered for the State by NHDOT. NHDOT and Granite State are in the process of negotiating a use and occupancy agreement for these parcels.

The project will not require any approvals from city or municipal land use boards. However, it will require a minimum impact wetlands permit from the Department of Environmental Services (DES) because the project will occur in a previously disturbed tidal buffer zone. The conservation commissions in Dover and Newington have already approved and signed off on the wetlands permit application that Granite State will be submitting to DES. In addition, the project will require a license to cross state waters from the Public Utilities Commission (PUC). Granite State has filed a petition for such a license with the PUC and that matter is pending. In addition, Granite State has received correspondence from the New Hampshire Fish and Game Department (NHFG) specifying that the project will not interfere with NHFG’s proposed construction of a new boat ramp in Hilton Park and that NHFG has no objection to the temporary closure of the existing boat ramp in Hilton Park for construction purposes during the winter months. As construction proceeds, Granite State will provide public notice of closure through the NHFG web site.

The United States Federal Energy Regulatory Commission (FERC) has issued a "blanket certificate" of public convenience and necessity, under which Granite State is authorized by operation of law to conduct certain routine activities like this pipeline re-alignment. *See*, 21 FERC P 62238, 1982 WL 39567 (F.E.R.C.) (Docket No, CP82-515-000, November 16, 1982); 18 C.F.R. § 157.208 (2012). The FERC certificate requires Granite State to adhere to certain conditions that include report filings and compliance with all applicable laws, such as environmental, fisheries and historic resources laws. *See*, 18 C.F.R. § 157.206 (b) (2012). In compliance with the blanket certificate, Granite State has submitted the project for review by the New Hampshire Division of Historical Resources which has commented on the project and issued a determination that the project has no potential to cause effects on historic resources.

Granite State has also received FERC approval of certain mechanisms for review of project costs and rate adjustments. *See*, 136 FERC 61,153 (Docket No. RP10-896-002, August 31, 2011).

The project will also require review by the United States Army Corps of Engineers under its Programmatic General Permit for the state. State water quality certification and compliance with Coastal Zone Management/federal consistency review, Section 106 Historic Preservation, Endangered Species Act, fisheries/wildlife impacts and other criteria referenced in the Programmatic General Permit would also occur through the Corps review process or in conjunction with the state minimum impact wetlands permit discussed above.

Granite State has confirmed that the United States Coast Guard does not require any permitting for the proposed project. Granite State will provide the Coast Guard with thirty days' notice prior to the commencement of construction and/or drilling.

Granite State has identified one potential environmental impact of horizontal directional drilling. Occasionally, during the drilling process, "frac-out" will occur. "Frac-out" is a condition that occurs when the clay slurry used to lubricate the drilling process seeps out of fissures in the ground and rises to the surface. Granite State reports that the potential for frac-out in this project is very low because of the depth at which the directional drilling will occur within the bedrock below Little Bay and because of the swift moving waters of the Piscataqua River and Little Bay. Nonetheless, Granite State intends to exercise established Best Management Practices that include procedures for monitoring the pressure of the slurry and mitigation of any potential frac-out through the use of reverse drill procedures.

While Granite State has reserved the right to claim that federal law, in particular FERC jurisdiction, pre-empts the applicability of state and local laws and regulation, it nevertheless agrees that it will comply with state and local laws and regulations and does not take the position that they will oppose any further federal, state or local permitting.

Procedural History

The Motion was filed on April 3, 2012. On April 27, 2012, the Chairman issued an Order and Notice of Public Hearing and Meeting. The Order and Notice described the proposed project and the nature of the Motion and scheduled a public meeting and hearing before the Committee for June 1, 2012. The notice indicated that the Committee may consider and deliberate on the relief requested in the motion at the hearing. The Order and Notice also set a deadline for the filing of motions to intervene for May 23, 2012, and notified the public that written comment would be accepted during the pendency of the proceeding. The Order and Notice was published on the Committee's website. It was also published in the Union Leader, the Portsmouth Herald and Fosters Daily Democrat on May 8, 2012. No parties sought intervention. No public comment was received.

A hearing was held at the public meeting of the Committee on June 1, 2012. The Committee heard testimony from Mr. Roger Barham, Lead Engineer for Granite State and from Lennart Suther, Utilities Engineer for the NHDOT. In addition, Granite State had additional witnesses sworn and available to answer questions raised by the Committee.

After hearing the testimony and arguments, the Committee voted unanimously that the proposed project was not a substantial addition or change to an existing energy facility and to grant the relief requested in Granite State's Motion.

Analysis

R.S.A. 162-H: 5 prohibits the construction of an energy facility unless the facility has received a certificate of site and facility from the Committee. Existing facilities and those that were constructed prior to the enactment of R.S.A. 162-H or its predecessor, R.S.A. 162-F, require the issuance of a certificate of site and facility for "sizeable changes or additions." *See*, R.S.A. 162-H: 5, I and II. The term "sizable change or addition" is not defined within the statute. Therefore, the Committee must ascribe the "plain and ordinary meaning" to the words used in the statute. The Committee may not consider what "the legislature might have said or add language that the legislature did not see fit to include." *Frost v. Comm'r., New Hampshire Banking Dept.*, 42 A.3d 738, 745; 2012 WL 1836349 (N.H., March 16, 2012). The Committee must also consider the context of the overall statutory scheme. *Id.* In this case, there is no doubt that the proposed re-alignment of the pipeline constitutes a change. The question becomes whether the proposed change in the pipeline is "sizable." The word "sizable" means "having considerable size." *See*, Webster's II New College Dictionary, Third Edition. "Considerable" means: "large in amount, extent or degree" or "worthy of consideration, important". *Id.* *See also, Order Denying Motion for Declaratory Ruling, p. 8, Re: Motion of Campaign for Ratepayers Rights, et. al., (August 10, 2009), NHSEC Docket No. 2009-01.* In applying the plain and ordinary meaning of the term sizable, the Committee finds that the proposed pipeline re-alignment is not sizable.

Whether a proposed addition or change to an energy facility is sizable is a determination that is fact-driven. Consideration may be given to the existing size of the energy facility and the size of the proposed change. Consideration may also be given to whether the proposed change will create a change in the capacity of the existing facility. Consideration may also be given to

whether the proposed change is merely a replacement of existing components of the facility as opposed to an expansion or increase in size of those components. Consideration may also be given to the disruption that an addition or change to a facility will cause in the existing environment. The vast difference in size, type and capacity of existing energy facilities must govern the nature of the consideration and the weight applied to various factors.

In this case, the Committee has determined that the proposed re-alignment of the existing pipeline is a relatively short component of the existing pipeline. The pipeline is approximately 87miles long. The segment of the pipeline affected by the project is approximately 1,500 feet long. It will be replaced by approximately 2,500 feet of new pipe in order to accommodate the depth of Little Bay. On a relative basis, this is a minor re-alignment of the pipeline. Although the magnitude of the change in relation to the existing facility will not always be determinate, in this case the impact on a very small segment of the pipeline is important.

The Committee has also determined that the proposed re-alignment will not increase the capacity of the pipeline. The change is undertaken for reasons that are beyond the control of Granite State and relate to the NHDOT bridge replacement project.

In actuality, the proposed re-alignment acts as a replacement of a segment of the existing pipeline. The replacement will not occur in the same place but will be re-routed to accommodate the legitimate safety, maintenance and security considerations expressed by both Granite State and NHDOT.

Additionally, the proposed re-alignment of the pipeline will not have a cumulative impact on the surrounding environment. The horizontal directional drilling technique will not have a major or unreasonable impact on the natural environment, the air or water quality, marine life or habitat or historical resources. Once completed, the re-alignment of the pipeline will be imperceptible to the general public utilizing the Little Bay Bridge and the Spaulding Turnpike. There may be some temporary impacts, including re-routing of some traffic during construction and the temporary closure of the boat ramp in Hilton Park. However, the temporary impacts are minor and outweighed by the public safety, security and maintenance benefits that will flow from the re-alignment. Any impacts that may occur are readily addressed by state and federal agencies, laws and regulations.

Finally, we note that R.S.A. 162-H: 4, III-a permits the Committee to delegate to a state agency or official the authority to allow minor route re-alignments to certificated facilities. The existing facility was constructed before the existence of the siting statute and, therefore, does not operate under a certificate from the Committee. However, considering the overall statutory scheme, the re-alignment proposed is not a “sizable change or addition” and is of the nature that could be delegated to a specific state agency if the pipeline were a certificated energy facility.

Conclusion

For the reasons set forth above, the Committee finds that the Little Bay Bridge Crossing Replacement Project as proposed in the motion filed by Granite State does not include a sizable change or addition to an existing energy facility. Therefore, the Motion will be granted.

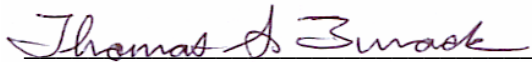
Order

It is hereby Ordered that the Motion for Declaratory Ruling on the Little Bay Bridge Crossing Replacement Project is GRANTED; and

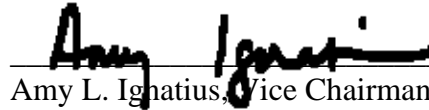
It is hereby Further Ordered that the Little Bay Bridge Crossing Replacement Project as proposed in the Motion does not constitute a sizable change or addition to an existing energy facility; and,

It is hereby Further Ordered that a certificate of site and facility is not required to undertake the project as proposed in the Motion.

By Order of the Site Evaluation Committee this 5th day of July, 2012.



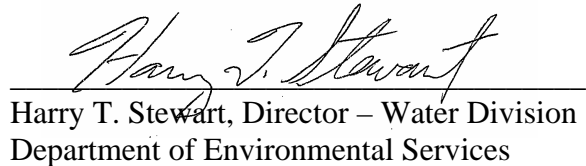
Thomas S. Burack, Chairman
NH Site Evaluation Committee



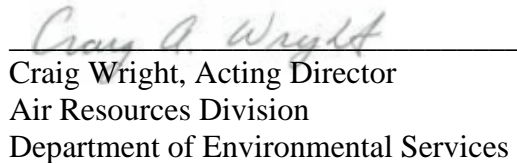
Amy L. Ignatius, Vice Chairman
NH Site Evaluation Committee



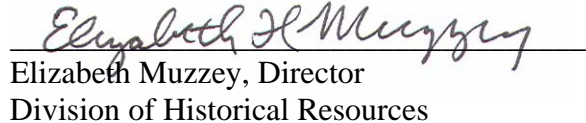
Michael Harrington, Commissioner
Public Utilities Commission



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



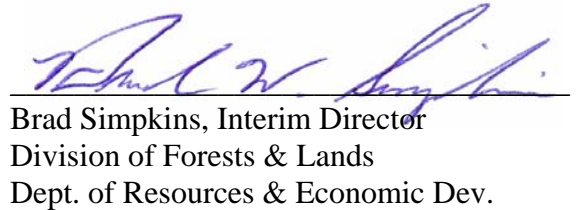
Craig Wright, Acting Director
Air Resources Division
Department of Environmental Services



Elizabeth Muzzey, Director
Division of Historical Resources



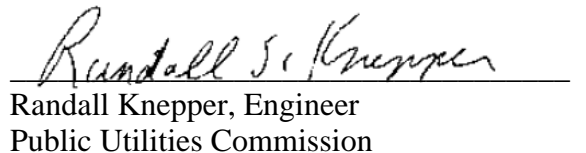
Glenn Normandeau, Director
NH Fish & Game Department



Brad Simpkins, Interim Director
Division of Forests & Lands
Dept. of Resources & Economic Dev.



Phil Bryce, Director
Division of Parks & Recreation
Dept. of Resources & Economic Dev.



Randall Knepper, Engineer
Public Utilities Commission