

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2014-01**

**Re: Motion of Granite State Gas Transmission Company for Declaratory Ruling on the  
Squamscott Replacement Project**

**August 20, 2014**

**ORDER GRANTING MOTION FOR DECLARATORY RULING**

**Background**

On February 4, 2014, Granite State Gas Transmission Company (Granite State) filed a Motion for Declaratory Ruling on the Squamscott Replacement Project (Motion). Granite State is a New Hampshire corporation with a principal place of business in Portsmouth. Amongst its other assets, Granite State owns and operates an interstate bidirectional 86 mile long high pressure (rated at 492 pounds per square inch gauge Maximum Allowable Operating Pressure (psig MAOP)) natural gas transmission pipeline that transports natural gas between Haverhill, Massachusetts and Portland, Maine. Granite State constructed the initial 15.6 mile section of 6-inch diameter pipeline between Essex Station in Haverhill, Massachusetts and Newfields Road in Exeter, New Hampshire in 1955. The pipeline from Newfields Road in Exeter, New Hampshire was extended to Pease Air Force Base in Newington, New Hampshire with 8-inch diameter pipe in 1956. Granite State upgraded some of its original facilities with 10-inch diameter pipe in 1968.

The portion of the line relevant to our deliberations in this docket, however, was not upgraded and consists of the original 8-inch pipe that had previously served as an oil pipeline. In this section the coating of the pipeline deteriorated and has become disbonded from the pipe, making it difficult to maintain effective cathodic protection. Granite State plans to replace a 0.9 mile section of 8-inch diameter disbonded pipe located between Newfields Road in Exeter, New

Hampshire and Route 101 in Stratham, New Hampshire thereby allowing for continuous internal pipeline inspection for 24 miles of 10-inch pipeline.

Granite State also plans to realign a portion of the replacement pipeline by co-locating it with the existing, Maritimes & Northeast Pipeline and Portland Natural Gas Transmission System 30-inch pipeline through easements and co-location agreements. Granite State plans to relocate the pipeline so that, instead of intersecting at the Town of Exeter Waste Water Treatment Plant (WWTP), it will go around the WWTP. Finally, Granite State plans to adjust the existing pipeline crossing of the Squamscott River by way of horizontal directional drilling under the riverbed to parallel the existing Maritimes & Northeast Pipeline, LLC and Portland Natural Gas Transmission System pipeline in order to minimize environmental impacts on the river, river banks and shore land areas. The present pipeline rests on the bottom of the river. After conducting all necessary procedures for proper preservation of the existing pipe, the Applicant intends to secure and abandon the replaced section of the pipeline.

Granite State requests that the Committee issue a declaratory ruling pursuant to New Hampshire Code of Administrative Rules, Site 203.01 and RSA 541-A: 1, V, finding that the construction and operation of the proposed replacement pipeline does not constitute a sizable change or addition to an existing energy facility and, therefore, does not require a certificate of site and facility under RSA 162-H: 5, II. In the alternative, Granite State requests the Committee to treat the Motion as a request for exemption under RSA 162-H:4, IV and grant such exemption.

### **Procedural History**

The Motion was filed on February 4, 2014. On April 14, 2014, Assistant Attorney General Mary E. Maloney was appointed to serve as Counsel for the Public in this docket. On April 15, 2014, 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 12, 2014. 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 26, 2014, 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 and the Portsmouth Herald on May 5, 2014. No parties sought intervention. No public comment was received.

A hearing was held at the public meeting of the Committee on June 12, 2014. The Committee heard testimony from Granite State and statements from Counsel for the Public. In addition, the Committee asked Granite State numerous questions and received clarifying answers.

### **Position of the Parties**

In the Motion for Declaratory Ruling filed with the Committee on February 4, 2014, Granite State asserted that 0.9 mile section of 1956 pipe in and adjacent to the Squamscott River should be replaced in order to maintain compliance with pipeline safety obligations and in order to allow for continuous internal pipeline inspection of 24 miles of 10-inch pipeline using state-of-the-art technology. See Motion for Declaratory Ruling at 3. Granite State further asserted that the upgrade to 10-inch diameter pipeline was not intended to increase transmission capacity and any such increase would be incidental. Id. In addition, according to Granite State, the pipeline should be realigned to avoid potential interference with the Town of Exeter's plans to expand the Waste Water Treatment Plant and to avoid significant environmental impacts to the lagoon berms. Id. at 4. Ultimately, Granite State submitted that it had determined, in consultation with

the Town of Exeter, that realignment to co-locate with the existing 30-inch pipeline rather than just replacing the disbonded pipeline would avoid wetlands and other impacts in the vicinity of the lagoons, avoid interfering with Waste Water Treatment Plant expansion, and minimize constraints on future development by the affected landowners. Id. at 5-6.

In a status report filed with the Committee on May 12, 2014, Granite State further advised the Committee that it has reached tentative agreement with the Towns of Exeter and Stratham, the owners of the Maritime & Northeast/Portland Natural Gas Transmission pipeline and a private property owner in Stratham with regard to the proposed relocation of the pipeline. See Status Report, ¶1. Granite State also reported the following: (i) the New Hampshire Natural Heritage Bureau determined that there were no expected impacts to the exemplary subtidal system; (ii) Granite State met with the representatives of the Department of Environmental Services, Wetlands, Alteration of Terrain and Dam Bureaus and determined that necessary permit applications would be filed at the appropriate time in the construction planning process; (iii) it was confirmed that no additional state permitting would be required with regard to wastewater and coastal zone management. Id. ¶¶4, 5.

The project requires an easement in order to cross lands owned by the State. The procedure to obtain such easements is set out in RSA 4:40. Granite State asserts that it is complying with the statutory process and that the Rivers Management Advisory Committee has already provided a record of approval to the Council on Resources and Development (CORD) and CORD has voted to recommend approval of the proposed state easement to the Long Range Capital Planning and Utilization Committee (LRCPUC). Id. ¶¶7, 8; Ex. 6, 7. Finally, the Committee was advised that Granite State was preparing to file with the Public Utilities

Commission a petition for a license to allow for the Squamscott River crossing by way of horizontal directional drilling. Id. ¶9.

At the time of the hearing, Granite State reaffirmed that the 8-inch pipeline should be replaced with the 10-inch pipeline to resolve problems with cathodic protection, to allow internal inspection by “pigging<sup>1</sup>,” and to allow the Town of Exeter to plan for expansion of the Waste Water Treatment Plant. See Tr. at 17, 18, 22-24. As to the relocation of the pipeline, Granite State asserted that paralleling the existing M&N pipeline within the same disturbed pipeline corridor was a good solution from an engineering perspective. See Tr. at 18, 19, 26. Granite State further confirmed that the Project falls within a “blanket certificate” issued by the United States Federal Energy Regulatory Commission (FERC). See Tr. at 19. The estimated cost of the Project is \$1.5 million and it is considered a “minor rearrangement” under FERC rules. See Tr. at 19. The Project will have only temporary environmental impacts during the construction period. See Tr. at 19, 26. Granite State confirmed that a Wetlands Permit Application has been filed with DES and that an Alteration of Terrain Permit Application was soon to be filed. See Tr. at 19. Granite State further confirmed that it had reached a tentative agreement with the landlord to change the existing easement through the middle of the privately owned parcel of property and relocate the easement up to the northern edge of the property. See Tr. at 21.

At the hearing Granite State emphasized that it was seeking to replace a .8 mile section of the pipeline with a .9 mile section of pipeline. See Tr. at 22. The resulting increase by .1 mile will result in an increase in length equal to less than 1% of the length of the entire pipeline. The increase in length is less than 3% as compared to the length of the pipeline within the State of

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<sup>1</sup> “Pigging” is an inspection process whereby an electronic device is launched into the pipeline and driven by product flow collects and transmits information regarding the condition of the pipe. The process is referred to as “pigging” because the electronic device often makes a sound resembling the squealing of a pig as it flows through the pipeline.

New Hampshire. See Tr. at 23-24. Granite State, once again, reiterated that the replacement of the pipeline will not increase the capacity of the entire line. See Tr. at 25. As to the Squamscott River crossing by way of horizontal directional drilling, Granite State advised the Committee that it has already filed a Petition for Water Crossing with the Public Utilities Commission. See Tr. at 29. According to Granite State, as of the date of the hearing, no serious concerns have been raised by governmental agencies or members of the public. See Tr. at 30.

Counsel for the Public did not take a position as to whether or not the Project is “sizable.” See Tr. at 34. Counsel for the Public did acknowledge, however, that she was not apprised of any fact that would cause her to urge the Committee to determine that the Project is a sizable change and did not hear any concerns from any member of the public. See Tr. at 35. Ultimately, Counsel for the Public neither objected to nor supported Granite State’s request for declaratory ruling. See Tr. at 35.

### **Status of 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 RSA 1:14. Consequently, Granite State is required to obtain an easement from the State in order to undertake the horizontal directional drilling beneath the Squamscott River. Pursuant to RSA 4:40, such an easement must be approved by the Governor and Executive Council. See RSA 4:40, I. The easement process also includes review and approval by the LRCPUC after consultation with the CORD and approval by the Governor & Executive Council. See *id.*<sup>2</sup> On January 21, 2014, Granite State filed a request for surplus lands review with the Governor’s Office of Energy and Planning and Council on Resources and Development

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<sup>2</sup> “[U]pon recommendation of the head of any state department having jurisdiction over the same, all requests for the disposal or leasing of state-owned properties shall be reviewed and approved by the long range capital planning and utilization committee, with advice from the council on resources and development, prior to submission to the governor and council for approval.” R.S.A. 4:40, I.

for the state easement necessary to allow the horizontal directional drilling under the Squamscott River. On April 8, 2014, the Rivers and Lakes Management Advisory Committee advised the CORD of its approval of the easement. On April 10, 2014, the easement was recommended for approval by the CORD. LRCPUUC approved the request on May 15, 2014. The Governor and Executive Council will be presented with a petition for final approval of the easement.

The Project requires a water crossing license from the New Hampshire Public Utilities Commission prior to commencement of the Project. Granite State advised the Committee that a licensing petition had already been filed with the Public Utilities Commission.

Granite State anticipates that the Project will trigger federal review under the National Pollutant Discharge Elimination System (NPDES) program due to the fact that the proposed area of disturbance will total approximately 1.4 acres. Granite State intends to prepare a storm water pollution prevention plan, submit the necessary notifications to EPA Region I for coverage under the NPDES construction general permitting relating to storm water discharge and implement best management practices for storm water management.

In addition, Granite State will have to obtain a Wetlands Permit and an Alteration of Terrain Permit from the New Hampshire Department of Environmental Services. Granite State has already initiated pre-application discussions with DES as it relates to the alteration of terrain permit and has submitted a wetlands permit application. At this point, Granite State confirmed that no additional state permitting would be required with regard to wastewater and coastal zone management.

On March 12, 2014, the New Hampshire Natural Heritage Bureau determined that there were no expected impacts to the exemplary subtidal system. Granite State has initiated

discussions with New Hampshire Department of Transportation in order to obtain all necessary construction and encroachment permits.

The Project will be subject to jurisdiction of 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 of the National Historic Preservation Act, Endangered Species Act, fisheries/wildlife impacts and other criteria referenced in the Programmatic General Permit would also occur through the Corps process or in conjunction with the state minimum impact wetlands permit.

It is noted that the 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 already submitted the project for review by the New Hampshire Division of Historical Resources.

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.



## Analysis

RSA 162-H: 5 prohibits the siting, construction or operation 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 RSA 162-H or its predecessor, RSA 162-F, require the issuance of a certificate of site and facility for “sizable changes or additions.” See RSA 162-H: 5, I and II. The Committee previously defined the word “sizable” as “having considerable size.” See Order Granting Motion for Declaratory Ruling, NHSEC Docket No. 2012-02, Re: Motion of Granite State Gas Transmission Company for Declaratory Ruling on the Little Bay Bridge Crossing Replacement Project, at 4 (July 5, 2012). “Considerable,” in turn, was defined as “large in amount, extent or degree” or “worthy of consideration, important.” Id.; see also Order Denying Motion for Declaratory Ruling, NHSEC Docket No. 2009-01, Re: Motion of Campaign for Ratepayers Rights, *et. al.*, for a Declaratory Ruling Regarding Modifications to Merrimack Station Electric Generating Facility, at 8 (August 10, 2009). Whether a proposed addition or change to an energy facility is sizable is a determination that is fact-driven. See Order Granting Motion for Declaratory Ruling, NHSEC Docket No. 2012-02, Re: Motion of Granite State Gas Transmission Company for Declaratory Ruling on the Little Bay Bridge Crossing Replacement Project, at 4 (July 5, 2012). In previous decisions, the Committee has considered the following factors in determining whether a change or addition to an existing facility is sizable: (i) the existing size of the energy facility and the size of the proposed change; (ii) whether the proposed change will require the acquisition of new land; (iii) whether the proposed change will create a change in the capacity of the existing facility; (iv) 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; and (v) whether the proposed

addition or change to a facility will cause disruption in the existing environment. Id. at 4-5; See also Order Denying Motion for Declaratory Ruling, NHSEC Docket No. 2009-01, Re: Motion of Campaign for Ratepayers Rights, *et. al.*, for a Declaratory Ruling Regarding Modifications to Merrimack Station Electric Generating Facility, at 8 (August 10, 2009) (vacated on jurisdictional grounds in In re Campaign for Ratepayers' Rights, 162 N.H 245 (2011)). “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.” Id. at 5.

In this case, the Committee finds that the proposed replacement and re-alignment of the existing pipeline is a relatively short component of the existing pipeline. Specifically, the Committee notes that Granite State seeks to replace a .8 mile section of current line with a .9 section of proposed line resulting in .1 mile of new line required for realignment. The replacement will result in the replacement of less than 1% of the entire pipeline and less than 3% of the New Hampshire portion of the line. As to the diameter of the pipe, it is noted that it will be increased only by 2 inches to allow proper maintenance of the pipe. The Committee also finds that the replacement and realignment of the existing pipe will not change the capacity of the pipe, but simply will allow for the continuous equally pressured flow of the gas. The Committee notes that this Project is similar in size, scope and purpose to the project addressed by the Committee in NHSEC Docket No. 2012-02, Re: Motion of Granite State Gas Transmission Company for Declaratory Ruling on the Little Bay Bridge Crossing Replacement Project, in which matter the Committee found the proposed changes were not sizable. The changes proposed by the Motion in this docket are not sizable.

The record also demonstrates that Granite State has already obtained or is in the process of obtaining required permits and licenses for the construction of the Project in safe and regulated manner.

The Committee also finds that the replacement and relocation of the existing line will decrease the effect of the Project on the environment and that Granite State will ensure that the pipeline will be constructed and operated in a safe and prudent manner in compliance with all required certificates and permits. The Committee notes that the Project will have a temporary impact on the environment during the construction phase. The Committee is confident, however, that this impact will be mitigated by Granite State as required by the conditions of the state and federal permits and licenses required for the construction and operation of the Project.

After hearing the testimony and arguments, the Committee voted to grant Granite State's request for declaratory ruling. The Committee finds that the Project, as proposed, does not constitute a sizable change or addition to an existing energy facility and therefore does not require a certificate of site and facility under RSA 162-H: 5, II.

### **Conclusion**

For the reasons set forth above, the Committee finds that the Squamscott 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.

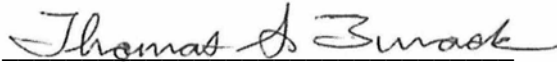
### **Order**

It is hereby Ordered that the Motion for Declaratory Ruling on the Squamscott Replacement Project is granted; and

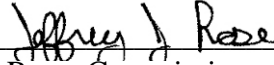
It is hereby Further Ordered that the Squamscott Replacement Project as proposed in the Motion does not constitute a sizable change or addition to an existing energy facility; and,

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 20<sup>th</sup> day of August, 2014.



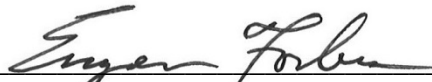
Thomas S. Burack, Chairman  
NH Site Evaluation Committee



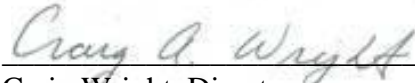
Jeffrey Rose, Commissioner  
Dept. of Resources & Economic Dev.



Martin Honigberg, Commissioner  
Public Utilities Commission



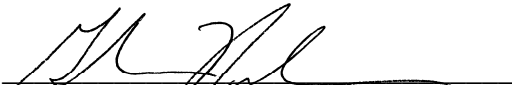
Eugene Forbes, Director – Water Division  
Department of Environmental Services



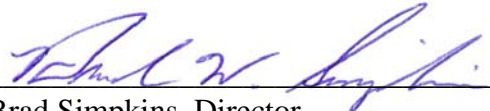
Craig Wright, Director  
Air Resources Division  
Department of Environmental Services



Elizabeth Muzzey, Director  
Division of Historical Resources



Glenn Normandeau, Director  
NH Fish & Game Department



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



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Joseph Vercellotti, Engineer  
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