STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 17, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 10-T-0350 – Application of DMP New York, Inc. and Laser Northeast Gathering Company, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII to Construct a 16 Inch Natural Gas Gathering Pipeline to the Existing Millennium Pipeline in the Town of Windsor, Broome County Approximately 51,857 feet of Steel Coated Pipeline and a Gas Compressor Station.

ORDER GRANTING CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

(Issued and Effective February 22, 2011)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission grants a Certificate of Environmental Compatibility and Public Need (Certificate) to DMP New York, Inc. (DMP) and Laser Northeast Gathering Company, LLC (Laser) (collectively, Applicants), to construct and operate a natural gas gathering pipeline and gas compressor station in the Town of Windsor, Broome County. The grant of the Certificate is subject to extensive conditions to ensure public health and safety, and to minimize impacts to the environment.

The review of the facilities in this order will be divided into two parts. The first part will address the alignment and installation of the Applicants' proposed pipeline.

The second part will address the compressor facilities. Appendix A provides a detailed description of the facility.

BACKGROUND

On July 20, 2010, DMP and Laser submitted an application pursuant to §121-a(3) of the Public Service Law (PSL) to construct approximately 51,857 feet of 16-inch diameter, coated steel natural gas transmission pipeline and a gas compressor station in the Town of Windsor, Broome County. The proposed pipeline would be used to transport natural gas from nine existing natural gas wells operated by Alta Resources LLC (Alta) in Susquehanna County, Pennsylvania, and nine additional wells yet to be drilled by Alta in the same area, to the 30-inch gas pipeline owned by Millennium Pipeline Company, LLC in New York State. The Applicants expect that any other wells in the immediate area not yet drilled in Pennsylvania will be attached along the entire length of the pipeline, and stated that wells could be attached along the pipeline in New York State should regulatory procedures allow for drilling of Marcellus Shale wells in New York. The Applicants submitted a supplement to the application on September 30, 2010. The application was determined to comply with the PSL and implementing regulations as of that date.

In addition to written comments, phone calls and concerns conveyed to the Commission Secretary and Department of Public Service (DPS) Staff (Staff), public statement hearings were held pursuant to PSL §121-a(7).[1] The public statement hearings were held before Administrative Law Judge Howard A.

[1] Case 10-T-0350, DMP New York, Inc. and Laser Northeast Gathering Company, LLC, Order Requiring Hearing (issued August 19, 2010).

Jack during the afternoon and evening of Wednesday, October 20, 2010, at different venues in the Town of Windsor. Thirteen members of the public spoke at the afternoon hearing and eight members of the public spoke at the evening hearing. The comments are addressed below in the body of this order.

SECTION I – PIPELINE FACILITIES

Facility Description

The proposed gathering pipeline would traverse from gas wells in Pennsylvania to the existing Millennium Pipeline (Millennium) in New York State. The New York portion of the proposed pipeline commences at the Pennsylvania state line and its alignment is generally in a north-south direction located on new pipeline right-of-way. The area is rural and crosses gently rolling hills, along with a few occasional steeper hills, and side slopes. It crosses a variety of land uses including active agricultural fields and pastures, woodlands and brushlands, wetlands, road right-of-ways and streams. The Applicants state that the proposed 16-inch diameter pipeline will cross four underground telephone cables and indicated that those cables are owned by Verizon.

The pipeline will be buried to a minimum depth of 36-inches, unless solid rock is encountered in the pipeline trench. If solid rock is encountered, Applicants will meet the depth conditions set forth in 16 NYCRR Part 255.327(a). The pipeline will be buried to a depth of 48 inches in active agricultural fields and at a minimum depth of 60 inches under all streams, intermittent streams, intermittent drains, diversion ditches, ponds and floodplains.

Basis of Need

The proposed gathering pipeline is needed to transport natural gas from certain Marcellus shale formation gas wells in

Pennsylvania, nine recently drilled Alta gas wells[2] and nine proposed Alta gas wells[3], to Applicants' proposed Dunbar Compressor Station Facility located in the Town of Windsor, and connect to the existing Millennium Pipeline in New York State. Millennium[4] helps supply local distribution companies (LDCs) and their customers in both the New York Southern Tier and New York City gas markets. There are no existing pipelines in the immediate area that can transport such gas.

In addition to those previously identified wells that the pipeline will serve, Applicants note that it may also be used to transport gas from wells to be drilled in the vicinity by another producer, Carrizo (Marcellus) LLC. Furthermore, it notes that future gas wells in New York located in Broome County could potentially be connected to the proposed pipeline

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[2] The following recently drilled Alta gas wells as described in Exhibit "D" and by Company officials that will be connected to the pipeline are: Carrar #1H (API 37-115-20174-00), Fondi Inc #1 (API 37-115-20191-00), Five E's LFP #1H (API 37-115-20193-00), Holbrook #1 (API 37-115-20099-00), Ivey #1H (API 37-115-20175-00), Knosky #1H (API 37-115-20206-00), Markovitch #1H (API 37-115-20211-00), Powers #1H (API 37-115-20169-00), and Webster #1 (API 37-115-20062-00).

[3] The following Alta wells that are presently being drilled and are not yet completed and will be connected to the proposed pipeline as described in Exhibit "D" and Company officials are: Blye #1H (API 37-115-20231-00), Carty #1H (API 37-115-20205-00),Fondi Inc #1 (API 37-115—20191-00), Holbrook #2H (API 37-115-20379-00), Hollenbeck #1H (API 37-115-20365-00), Micks #1 (API 37-115-20214-00), Turner #1 (API 37-115-20143-00), Turner #1H (API 37-115-20188-00), and Webster #2H (API-37-115-20254-00).

[4] Millennium, an interstate gas pipeline, is regulated by the Federal Energy Regulatory Commission (FERC). The FERC has determined that the proposed DMP/Laser facilities are exempt from its jurisdiction as a gathering line. See "Order Determining Jurisdictional Status of Facilities," issued March 5, 2010 in Docket No. CP10-35-000.

depending on the regulatory outcome regarding issues surrounding horizontal directional drilling and hydro-fracturing procedures relating to Marcellus shale gas wells in New York.

Environmental Resources

The proposed pipeline will traverse a mixture of land uses, predominantly woodlands (32,857 feet), pasture (6,992 feet), active agricultural fields (5,810 feet), brushlands (3,013 feet), wetlands (772 feet) and public road right-of-ways (662 feet). The proposed pipeline will cross two perennial streams (Trowbridge Creek and Occunam Creek), eight intermittent streams, 30 intermittent drains, 15 diversion ditches, and one pond.

By field observations and review of the aerial project maps, Staff has determined that the nearest residence to the pipeline is approximately 93 feet away; four other residences range from 100 to 200 feet away, and 12 other residences range from approximately 200 to 600 feet from the proposed pipeline route. Applicants have succeeded in locating the pipeline route to distance the proposed pipeline and compressor station from residences.

The Applicants state that they have generally acquired a maximum right-of-way width of 60 feet unless otherwise noted on the project map, 20 feet of which will be temporary and 40 feet of which will be permanent. They indicate that the proposed pipeline right-of-way will be cleared to a width of 60 feet unless otherwise indicated on the project drawings. Additional clearing may be needed in areas of cross-slope, streams and roads and are reflected on the project drawings.

All wetlands and bored streams will have a minimum of 75 feet of undisturbed buffer zones. In the buffer zones and wetlands, a “line of sight” clearing will be completed directly over the pipeline after installation is complete to facilitate

line patrols and inspections required under 16 NYCRR Part 255 and to facilitate repairs that may be required in the future. The Applicants explain that this “line of sight“ clearing will be accomplished by utilizing hand-clearing techniques (removing timber and brush to ground level) exercising care not to disturb the soil surface in delineated wetlands.

The Applicants explain that the proposed pipeline facilities will be installed over private property for which they have secured easements. The majority of the existing landowner agreements were provided with the application and the Applicants report that any outstanding land use agreements with property owners will be provided to Staff prior to the commencement of pipeline.

Efforts will be made by the Applicants to minimize clearing in forested areas. The general character of the project area is abandoned farmland with a mixture of overgrown fields, young forested areas, and some active agricultural land. Minor alignment adjustments were made to the proposed route that resulted in a net savings of approximately 2,780 feet of forested land that will not be disturbed. Overall impact to woodlands is approximately 32,857 feet, or approximately 63 percent of the pipeline route. The Applicants will attempt to keep right-of-way disturbance to a minimum; while the 60 foot clearing of the right-of-way will produce 45.3 acres of initial disturbance, the right-of-way will be maintained at a width of 40 feet allowing the additional 20 feet of temporary right-of-way for construction to re-vegetate naturally. The total amount of permanent disturbance of forested land will be 30.2 acres. In some locations, additional work areas will be required. Those approximate locations have been identified on maps included with the application. Applicants will also minimize impacts to wooded areas by utilizing directional drilling

procedures to cross wetlands and streams that will reduce clearing of some wooded areas.

The Applicants will leave all firewood and timber neatly stacked, in tree length, along the edge of the right-of-way for landowners, if their landowner agreements permit them to do so. Brush will be chipped and stacked along the edge or buried within the right-of-way. Chips may also be stored off the right-of-way if the Applicants have permission from landowners to do so. No logs, brush, chips or stumps will be stored in any wetlands or floodplains.

Access to the proposed pipeline will be along existing access roads, existing landowner access roads, existing public roads, and private property that Applicants have been granted access to by landowners. Applicants explain that the roads will be crossed using a horizontal directional drill (HDD), conventional bore, or an open cut method and as required by permit specifications. Applicants indicate their preferred road crossing method will be boring under the public roads to minimize traffic disruption during pipeline construction. The Applicants have also committed to adhering to the standards relating to transportation and utility crossings in the DPS Revised Interim Environmental Management and Construction Standards and Practices (EM&CS&P) document, which became effective February 28, 2006, and was subsequently adopted.[5]

Applicants indicate that pursuant to review of the U.S. Fish & Wildlife Service's National Wetlands Inventory, the

[5] Case 06-T-1383, Fortuna Energy Inc., and Case 70100 Environmental Management and Construction Standards and Practices, Order Granting Certificate of Environmental Compatibility and Public Need and Improving Environmental Management and Construction Standards and Practices (issued December 7, 2006).

New York State Freshwater Wetlands Maps, preliminary screening with the New York State Department of Environmental Conservation (DEC), several field reviews, and a review by the Applicants' wetland consultant, that the project will cross 13 wetlands as are shown on the project maps. Applicants indicate that impacts to wetlands will be minimized or avoided by minimizing clearing and directionally drilling underneath all wetland areas, using biodegradable drilling fluids. The Applicants state that after consultation with the United States Army Corps of Engineers (ACOE) in Buffalo, New York, the ACOE determined that its jurisdiction is not triggered in this instance. However, Applicants indicated that, if necessary, they will use wetland construction and restoration techniques in these areas as outlined in the EM&CS&P and will comply with the terms and conditions of the ACOE Nationwide 12 Permit. Applicants have committed to delineating wetland boundaries under the guidance and direction of a qualified wetland specialist prior to the start of construction, for wetlands and wet areas that the project will cross or be in close proximity to.

Applicants noted that they are not aware of the existence of vulnerable ecosystem features or resources including wells, springs, unique old growth forest, active sugar bushes or productive timber stands and habitats of rare, threatened and endangered species within or near the proposed pipeline corridors. No trees from the State Registry of Big Trees were identified along the proposed route.

DMP and Laser included a letter, identified as Exhibit "J" in their application, dated March 5, 2010, from the New York State Department of Environmental Conservation's (DEC) Division of Fish, Wildlife and Marine Resources. The letter reflects that DEC has no record of known occurrences of rare or state-listed animals or plants, significant natural communities, or

other significant habitats on or in the immediate vicinity of the proposed project site and had no concerns about any potential impacts from this project.

The Applicants indicate that some vulnerable ecosystem resources are present, including highly erodible soils, wetlands, floodplains, and streams. Applicants indicate that they met with the Broome County Planning Department and that the proposed pipeline will travel through one flood plain located on either side of the Trowbridge Creek crossing. The Applicants confirm that they will take extra precautions in this area and will directionally bore Trowbridge Creek and the majority of the floodplain. The approximate location of the entrance and exit points for the directional drill will be 400 feet to the south and 300 feet to the north of the creek for an approximate 700 foot drill span. Applicants have noted that they have acquired additional work space on the south side of the creek to provide additional work room for the directional bore. There will be some minor clearing disturbances on the south side of the creek caused by the clearing and grading of the two areas of extra work space required for the drill set up points. These areas will be re-graded and restored post-construction; there will be no impacts within the 100-year floodplain or to the immediate creek banks as a result of pipeline construction. Applicants indicate that they will follow construction and restoration techniques outlined in the EM&CS&P, the Storm Water Pollution Prevention Plan, and any Certificate conditions concerning vulnerable ecosystem resources present on the project.

The Applicants indicate that areas of agricultural land uses will be crossed by the proposed project. They state that they contacted the Broome County Planning Department with regard to the agricultural districts within the project area, and report that this proposed pipeline will not cross any Broome

County Agricultural Districts. Staff consulted the Broome County Planning Department to confirm this finding. The County indicated that the pipeline crosses Broome County Agricultural District #4. The proposed pipeline crosses active agricultural fields in this district, including the following parcels: Osterhout (Parcel #164.04-1-9.1), Farr (Parcel #180.02-1-9.1), Root (Parcel #180.02-1-10.2) and Nash (Parcel #212.04-1-25). The Applicants have committed to implementing measures described in the DPS's EM&CS&P document and the New York State Department of Agriculture and Markets' Standards to mitigate pipeline construction activities in the active agricultural fields.

Applicants state that no existing or officially approved planned residential, commercial, industrial, institutional or recreational land uses will be crossed by the proposed pipeline. They indicate that no designated visual resources, including scenic areas, roads, vistas, and overlooks, parks or recreational areas will be affected by this project. Staff conducted its own review of known visually-sensitive resources in the project area and although the removal of trees on forested slopes to clear the right-of-way will add an unnatural linear element to the landscape in several locations, no historic areas, parklands, hiking trails, designated scenic highways or similar sensitive visual receptors will be adversely affected by the change. Staff notes, however, that the proposed right-of-way crosses New York State Route 17 (now designated as Interstate Route 86), a controlled access highway that is well-traveled. At this crossing, the pipeline will traverse moderate to steep terrain in forested areas on the south side of the highway that may afford viewing opportunities by motorists traveling along this highway.

The Applicants report that no cultural resources or archeologically sensitive areas were identified for this

project. Applicants received a letter of "No Impact" dated April 27, 2010, from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) that was included as Exhibit "K" of their Application. The letter explains that OPRHP reviewed information submitted for this project in accordance with Section 14.09 of the New York Parks, Recreation and Historic Preservation Law, and that based upon its review, it is its opinion that the project will have "No Impact" upon cultural resources on, or eligible for, inclusion in the State and National Register of Historic Places.

Environmental Management and Construction

In accordance with PSL §121-a(1), the Applicants have certified that, in constructing fuel gas transmission lines less than ten miles long, they will follow the standards and practices set forth in the DPS EM&CS&P document. The Applicants have identified general and site-specific construction and environmental management measures and techniques, described in Exhibit "E" of their application, to be employed in connection with this project.[6] The measures and techniques contained in this document, when properly applied, will help ensure that environmental impacts are minimized during construction, operation and maintenance of the facility.

The Applicants indicated they would begin construction of this pipeline shortly after a Certificate of Environmental Compatibility and Public Need (Certificate) is granted.

Gas Safety Review

The proposed pipeline's maximum allowable operating pressure is 1,440 pounds per square inch gauge (psig). Higher

[6] Applicants believe that blasting is not needed on this pipeline project but, if it is required, Applicants have agreed to adopt the blasting requirements from the DPS EM&CS&P document.

pressures for gathering lines operating in excess of 300 psig require additional measures to ensure safe operation. Accordingly, this pipeline will be required to be designed, constructed, tested, operated, and maintained in accordance with the provisions of 16 NYCRR Part 255 applicable to steel transmission lines. In addition, all downstream piping connected to this pipeline shall also be considered transmission piping and be subject to requirements found in 16 NYCRR Part 255 for the operation and maintenance, operator qualifications, integrity management, and emergency plans for transmission pipelines. The pipeline will be owned and operated by Laser.

Due to the high operating pressure and location of this pipeline, Applicants will be required to become a member of Dig Safely New York, the one-call notification system in the area where the line is located. Laser states that it is a member of Dig Safely New York and will comply with the requirements (for operators and excavators) contained in 16 NYCRR Part 753 (Code Rule 53) regarding the protection of underground facilities.

Class designations are established by measuring population density near the pipeline route. Applicants indicate that for this proposed route, there are two class designations present, Class 1 (10 or less occupied buildings per mile) and Class 2 (more than 10, but fewer than 46 occupied buildings per mile).[7] The application states that Applicants will endeavor to nondestructively test 100 percent of all the welds for the pipeline.

[7] Per 16 NYCRR §255.5, Class 1 pipeline designations require that 10% of all pipe welds be x-rayed and Class 2 designations require 15% of such welds to be x-rayed.

The facility will be hydrostatically tested as required by 16 NYCRR Part 255 to ensure the integrity of the pipeline. The design of the facility conforms to the requirements in Part 255, and, thus, will minimize the hazard to persons or property along the area traversed by the pipeline.

SECTION II - COMPRESSOR STATION FACILITIES

Facility Description

The Applicants are proposing to install four new compression units that will be used to maximize the ultimate recovery of natural gas from the formation reservoirs in Pennsylvania as well as to optimize and centralize the gas gathering system. These compressor units will be connected to Applicants' proposed metering station, and then to the Millennium Pipeline. Applicants have indicated that they may need to install additional compressor units on site at a later date.

The proposed compressors will be located approximately 1,475 feet east of Dunbar Road and 1,790 feet south of Patterson Road in the Town of Windsor. The Applicants will install 200 feet of 16-inch pipeline as a suction line between the proposed compressor suction header and the compressors, and 860 feet of 16-inch discharge pipeline from the proposed compressor header to the proposed coalescing filters, dehydrators and metering station, located within the proposed compressor station site. The proposed 16-inch pipeline will continue in a northerly direction and will connect to the existing above-ground tap on the existing 30-inch Millennium gas pipeline. The proposed compressor facilities will receive gas at 350 psig and compress it to the pressure required to make deliveries to Millennium.

Three of the compressors are model Caterpillar 3606 engines with Aerial JGD/4 gas compressors, each capable of

developing 1,775 horsepower. Each of these compressors will be mounted on an "I" beam skid that is 14 feet wide and 38 feet long. The other compressor is a model Caterpillar 3616 engine with an Ariel JGZ-4 gas compressor that is capable of developing 4,735 horsepower. It will be mounted on an "I" beam skid that is 15 feet wide and 50 feet long.

The four compressor units will be housed in a building 235 feet long, 70 feet wide and 25 feet tall. The noise abatement for the compressors shall include cooling fans with the slowest tip speeds available, critical grade exhaust silencers,[8] and a noise abatement building. The building will be constructed of heavy gauge steel siding, using sound dampening walls and roof materials, with all openings sealed or attenuated to reduce sound. The electrical and operations building for the compression facilities will be 10 feet long, 10 feet wide, and 8 feet tall. The shop/storage building will be 25 feet long, 20 feet wide, and 15 feet tall. Applicants indicate that the external walls and roof for the compressor station building and the two smaller buildings will be coated with a silicon polyester paint in a surry beige color.

The proposed compressor station will be located in a 350 feet by 400 feet area (3.2 acres), located in the approximate center of a 40 acre parcel owned by Laser. The compressor station building will be set back from the property lines at least 450 feet in all directions. The building will be 25 feet tall and the top of the compressor exhaust muffler will be 34 feet tall. There will be a small metering station in the

[8] Applicants have indicated for the three smaller gas compressors (Caterpillar 3606) they will use a Maximum QAC6-67-18 Hospital Plus Silencer (one for each unit) and a Maximum MCCOS-1200 Hospital Plus Silencer for the larger gas compressor (Caterpillar 3616).

northwest corner of the compressor station site. The closest residence to the proposed compressor station is approximately 1,100 feet away.

Laser has acquired a 12-acre parcel contiguous to the north side of the compressor station site that fronts Patterson Road. Permanent vehicle access to the compressor station site will be through this parcel; this is also where the connection to the Millennium Pipeline will be made. A permanent gravel road will be constructed commencing at Patterson Road and continuing south, with a total length of approximately 1,950 feet and width of 20 feet. This gravel access road will be used to transport the compressor units to the building site. In addition, the Applicants have acquired a temporary easement on an existing gravel road, which goes into the compressor station site, to the west of Dunbar Road. They indicate that they may use this existing gravel road to begin construction of the compressor station site.

Environmental Management and Construction

Tree clearing and grading will be needed to construct compressor station facilities. The compressor station site is bordered by mature trees (50-60 feet tall) to the south and east. To the north, the site is bordered by mature trees (40-50 feet tall) and abandoned fields; west of the site are abandoned fields and mature trees (50-60 feet tall). The Applicants have proposed to leave a permanent vegetative buffer zone 200 feet wide around the outside boundaries of the 40-acre parcel (see Exhibit “C”). A preliminary screening planting plan (see Drawings C-110 & C-120) was submitted by the Applicants; the planting plan describes that conifer trees with low hanging foliage will be planted on a ten foot earthen berm with a four foot flattened area at the top of the berm extending approximately 380 feet in length on the west side of the

compressor building; after construction of the compressor station, Applicants will conduct a visual assessment to determine if any additional screen plantings or adjustments are necessary.

Applicants have provided a detailed drainage design plan for the compressor station site.[9] Drainage provisions include grading, ditching, water bars, diversion berms, culverts, rock rip-rap and use of drainage tiles. A portion of the water draining from the compressor station site will be used for habitat formation by creating a small pond and enhancing some wetland areas on the Applicants' property. Drainage water may include rain water as well as drainage from hill side seeps or springs from the graded hillside immediately east of the compressor station.

Applicants included an analysis of potential noise impacts in Exhibit "C-5". The report describes the area surrounding the proposed compressor station as generally a quiet area that would be controlled by normal environmental sounds (i.e., birds, insects, wind noise, distant traffic during a southerly wind etc.). The report noted that sound measurements were taken at four residential locations in close proximity to the compressor station site. The locations, described as noise sensitive areas (NSA) #1-4 are located as follows: NSA #1 is approximately 1,100 feet west of the compressor site, NSA #2 is approximately 1,900 feet north of the compressor site, NSA #3 is approximately 1,800 feet east of the compressor site and, finally, NSA #4 is approximately 2,000 feet south of the

[9] See Drawing Numbers C-1, C-3, C-3a, C-110, C-120, C-130, C-200, C-210 & C-220.

compressor building. Daytime ambient sound measurements[10] at the noise sensitive areas registered at 47.7 at NSA #1, 36.5 at NSA #2, 41.9 at NSA #3, and 42 at NSA #4.

The Applicants' sound consultant performed sound modeling and used predicted sound data from the compressor station equipment. Two cases were analyzed: Case #1 models the use of the four proposed compressors described above; Case #2 involves the four compressors and an additional two compressors. The report states that predicted estimated sound levels calculated in Case #1, without including ambient levels, at NSA #1-4 would range from 29.6 acoustic decibels (dBA) to 35.5 dBA. Case #2, with six compressor units, estimates that sound levels at NSA #1-4 without calculating ambient levels, would result in noise levels ranging from 31.5 dBA and 37.4 dBA. The analysis concluded that the estimated sound level contribution from the compressor station will be less than 40 dBA at any residence within the four identified NSA described above for Case #1 and Case #2.

Proposed sound mitigation includes the use of Maxim Hospital Plus Silencers to silence the exhaust of the proposed compressors, which will be oriented, along with the cooling fans, towards the east. The Applicants indicate that an earthen berm, approximately ten feet high, will be constructed around the western and southern perimeters and through the center of the 3.2 acre compressor station to deflect any remaining station noise upward. Trees (conifers with low hanging foliage) and other landscaping will line the perimeter berm to aid in noise reduction and limit the line of sight from neighboring vantage

[10] Nighttime ambient noise levels were not evaluated in the study; daytime levels were stated to be representative of nighttime levels.

points. The trees will be planted at the base and on top of the berm after the completion of the construction of the building and setting of the major equipment; visual inspection post-installation will be conducted to determine the location and number of trees to be planted.

The noise study provided by the Applicants was developed based upon the results of a March 26, 2010 ambient sound survey and noise impact analysis associated with the proposed compressor station for this project. The study was conducted prior to the effective date of the Town of Windsor Noise Control Code, and did not incorporate all of the measurement standards described in the Code. The Noise Control Code, which will be discussed in further detail below, sets standards for measuring ambient noise levels that are used to calculate the maximum permitted noise levels. The Code establishes that unless ambient noise levels are measured by the described standard, pursuant to Section 68-8, the ambient noise levels are assumed to be 35 dBA. Maximum noise permitted during daytime hours is the ambient level plus five dBA or here, 40 dBA, and maximum noise permitted during nighttime hours is the ambient level plus three dBA, or 38 dBA.

By letters dated November 9, 2010 and January 10, 2011, a landowner whose property abuts the compressor site property submitted comments highlighting concerns with noise levels at the compressor station and urging that the Applicants be required to comply with the Noise Control Code. The comments included noise readings at locations on the landowner's property completed by the Code Enforcement Officer of the Town of Windsor and an evaluation of the Applicants' report conducted by Environmental and Safety Associates on behalf of the landowner. The critique of the Applicants' report notes the absence of nighttime ambient noise readings, non-compliance with the Town

of Windsor Noise Control Code, and concerns with the locations selected to measure ambient noise readings. The landowner requested that the Applicants conduct noise sampling that meets standards of the industry and complies with the program policy memorandum for accessing and mitigating noise impacts as promulgated by the New York State Department of Environmental Conservation and, that such reports be provided to the Commission as a condition of any Certificate granted.

The Applicants submitted letters dated December 8, 2010 and January 7, 2011, responsive to the landowner's report. The Applicants described that their study was conducted prior to the Town's adoption of the Noise Control Code, that nighttime sampling of ambient levels was not conducted due to weather conditions that may have distorted sampling results, and that Applicants intend to conduct sampling of ambient noise levels, both pre- and post-operation to demonstrate compliance with the Noise Control Code. Applicants also submitted a table estimating sound level contributions from the compressor stations under the two cases described above, with four and six compressor stations operational, respectively. The estimates do not include interaction with ambient levels, but estimates the sound levels at four noise sensitive areas, north, south, east and west locations at the fence line of the compressor site under the two cases. Estimates calculated for Case #1 describe a range of 38.8 dBA to 42.0 dBA at the fence line, and Case #2, a range of 41.0 to 44.0 dBA at the fence line. The Applicants note that the estimates provided do not take into account recently added attenuation mechanisms from the berm and trees to the south and west side, the natural 50 foot wall, created by cutting into the hill, on the south and east side, nor the attenuation from other design changes such as moving the engine air-intake into the building.

The Applicants state that based on their analysis of the noise produced by this compressor facility, the compressors should comply with the 40 dBA daytime noise limit and 38 dBA nighttime noise limit at the edge of the compressor site property line, so long as the facility is constructed to the standards recommended by the Applicants' noise consultant. Applicants state that if the noise from the compressor units exceeds initial predictions, the final building design or building may be altered to further mitigate noise levels by following recommendations from their acoustical consultant. Compliance with the noise limit will be demonstrated to Staff after the compressor units are installed and the building is constructed.

Gas Safety Review

As described above, Applicants will comply with the requirements for the protection of underground facilities found in 16 NYCRR Part 753. According to the Applicants, system maps will be updated to include the compressor station and associated piping and will be furnished to Dig Safely New York so that they are included in the one-call notification system.

The access road to the gas compressor station shall be constructed and maintained to allow for easy access for any needed fire-fighting equipment and personnel. There must be enough open space around the main compressor building to allow uninhibited movement of fire-fighting equipment.

PROPERTY RIGHTS

The Applicants have already negotiated agreements for right-of-way access across private property crossed by the facility. Applicants submitted a letter dated February 7, 2011, indicating that all remaining property rights to build and operate the proposed pipeline have been acquired. Applicants committed to providing copies of the remaining easements or

other documents evidencing the right to access the properties prior to construction.

The route of the proposed facility requires crossing town, county and state roads. The Applicants have obtained a road use agreement from the Town of Windsor (executed on October 21, 2010) to access and/or cross Dunbar Road, Patterson Road, Dodd Road, Thompson Road, Fox Farm Road, Place Road, Abbey Road, Rockwell Road, Rockwell Road Extension, Laga Road, Dickinson Road, Hoadley Hill Road, County Road 32, Anne Road, Bush Hill Road, Williams Road, Sugarbush Road, Bell Road, Blatchley Road, Bennet Road, John White Road, Phillips Road, Honey Hollow Road, Farr Road and Bush Road.[11] Applicants must obtain consent from Broome County to cross County Road 32 (Trim Street) and Fox Farm Road.[12] The consent of the New York State Department of Transportation is needed for the crossing of the east and west bound lanes of New York State Route 17.

LOCAL LAWS

The Applicants indicated that they contacted all municipal, county, and state entities which would have jurisdiction over any portion of the project, would it not be pursued under Article VII, and there are no applicable local laws which the Applicants identified as unreasonably restrictive. The Applicants stated that Broome County does not

[11] Case 10-G-0462, DMP New York, Inc. and Laser Northeast Gathering Company, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued February 22, 2011).

[12] The application indicates that both of these roads are under the jurisdiction of the Town of Windsor, but in further discussions with the Applicants, they indicated to Staff that both Trim Street and Fox Farm Road are under the jurisdiction of Broome County.

have any applicable laws or regulations pertaining to pipeline construction, and they provided an internet link to the Town Code of Windsor and identified the laws they believe pertain to the construction of this pipeline.

Substantive requirements or prohibitions of local laws are applicable under PSL §126(1)(f) relative to a transmission facility unless the Commission finds the local laws to be unreasonably restrictive and refuses to apply them under the statute.[13] Where local laws and regulations have both substantive and procedural requirements, the procedural requirements are inapplicable under PSL §130, but substantive requirements or prohibitions remain in force unless found to be unreasonably restrictive under PSL §126(1)(f).[14] The Commission has previously noted that applicants have the burden of identifying applicable local laws with substantive requirements and justifying any need for waivers of any such requirements they consider unreasonably restrictive, or that would prohibit construction of the facility.[15]

Several Town of Windsor local laws are applicable to this project including Chapter 51 Flood Damage Prevention, Chapter 53 New York State (NYS) Uniform Fire Prevention and Building Codes, Chapter 68 Noise Control, and Chapter 93 Zoning. As noted above, while the Applicants need not comply with the procedural requirements of these local laws, or make application to the local government for site plan approval and/or special

[13] Cases 92-T-0114 and 92-T-0252, Niagara Mohawk Power Corporation – Independence Station-Related Facilities, Certificate of Environmental Compatibility and Public Need, 33 NYPSC 885 (issued August 20, 1993).

[14] Id.

[15] Id.

use permits, the criteria that the town would apply in such cases must here be evaluated by the Commission.

Chapter 51: Flood Damage Prevention

Chapter 51 of the Town Code and Article XII of the Chapter 93 Zoning Ordinance address flood zones. Both sections of the local law are intended to minimize the potential loss of life and property, both public and private, due to flood conditions within the Town of Windsor.

Section 51-10 of the Code states in part that "no structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations." Pursuant to Section 51-13, the Code requires that a development permit be obtained before the start of construction or any other development within the area of special flood hazard. Section 51-14 outlines the responsibilities of the local administrator and describes the standard of review of issuing a development permit. This section provides that if the proposed development adversely affects the area of special flood, meaning physical damage is done to adjacent properties, then flood damage mitigation measures shall be made a condition of the permit. If there is no adverse affect on the adjacent properties, then the permit shall be granted. The administrator must also review development permits for compliance with the provisions of Section 51-15(E) relating to encroachments. This section states that where base flood elevation data is available and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.

The Applicants' proposed pipeline crosses one designated 100-year flood zone where it crosses Trowbridge Creek. As noted, while Applicants need not comply with the procedural requirements of these local laws, or make application to the local government for a development permit, the criteria that the town would apply in such case must be evaluated by the Commission. In this instance, a permit would be issued if (1) installation of the pipeline produced no physical damage to adjacent properties, and (2) that, in combination with all other existing and anticipated development, the pipeline would not increase the water surface elevation of the base flood.[16] If there are adverse effects on adjacent property, flood damage mitigation would be a condition of the permit. The Applicants have indicated that Trowbridge Creek will be directionally drilled with the entrance and exit points for the directional drill approximately 400 feet to the south and 300 feet to the north of the creek and will be buried at a minimum depth of 60 inches below the floodplain. The pipeline itself is anticipated to have no impact on the water surface elevation of the base flood as it will be buried below Trowbridge Creek. Physical damage at the point of entrance and exit would include clearing, grading, and excavation at the bore site location and clearing and grading of additional work room. The right-of-way on the south side of Trowbridge Creek is scheduled for topsoil stripping to the south of the entrance/exit points to salvage topsoil for restoration and limited trenching will be utilized at entrance and exit points to weld the pipe directionally drilled to the main pipeline. These impacts are classified as temporary in nature and will not increase the water surface

[16] The flood having a one-percent chance of being equal or exceeded in any given year.

elevation of the base flood. Mitigation of these impacts include backfilling the excavated trench post-installation and grading and seeding (both temporary and permanent). The stockpiled topsoil, to the south of the creek, will be spread, seeded and mulched as appropriate for the weather conditions. As physical damage to adjacent properties are temporary in nature and the pipeline and drilling procedures will not increase the water surface elevation of the base flood; installation of the pipeline in this location meets the substantive standard.

Chapter 53: NYS Uniform Fire Prevention and Building Codes

Chapter 53 of the Town of Windsor Code provides for the administration and enforcement of the NYS Uniform Fire Prevention and Building Code. Section 53-4(A) of the Code requires that unless a specific exemption is available, a Building Permit is required for any work which must conform to the Uniform Code and/or Energy Code. Construction of buildings or structures would require such a permit. As described in Section 53-4(F), a permit would be issued if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. A building, as defined in Chapter 51 of the Town of Windsor Code, is defined as a structure having a roof supported by columns or walls.

Again, as noted above, while Applicants need not comply with the procedural requirements of these local laws, or make application to the local government for site plan review or building permit, the criteria that the town would apply in such case must be evaluated. Chapter 53 of the Town of Windsor Code describes local administration and enforcement of the NYS

Uniform Fire Prevention and Building Code[17] and describes the standard of review to issue such a permit as finding conformity with that Code. As described earlier, Applicants intend to construct three buildings, a building to house the compressor units, an electric and operations building, and a shop/storage building. These three structures are buildings as defined by Chapter 93-4 of the Town of Windsor Code. Applicants indicate that they would keep the Town Zoning Enforcement Official fully apprised of the progress of construction and will provide the Town with appropriate "as built" drawings.

Discussion

Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of such Codes. Pursuant to such rules and regulations, the Department of Public Service is not an agency with the requisite training or qualifications to determine whether the compressor station buildings, as proposed, are in conformance with applicable provisions of the State Building Codes. Therefore, Applicants shall be required to obtain review and approval of the compressor station buildings, and inspection of the construction work, by the Town of Windsor or another public entity recognized by the Department of State as having the requisite training or qualifications. This condition is reasonable to ensure the safety of the facility both during and after construction.

[17] The NYS Uniform Fire Prevention and Building Code includes the "Building Code of New York State", the "Fire Code and Property Maintenance Code of New York State", the "Residential Code of New York State", the "Plumbing Code, Mechanical Code and Fuel Gas Code of New York State", and the "Energy Conservation Construction Code of New York State."

Chapter 68 Noise Control

Chapter 68 of the Town of Windsor Code, adopted by the Windsor Town Board on June 2, 2010 and effective July 12, 2010, establishes noise control standards to protect public health, welfare, safety, peace and tranquility of the residents of the Town of Windsor by regulating noise levels. Section 68-7 prohibits unreasonable noise upon property within the geographical boundaries of the Town of Windsor; Section 68-8 describes the maximum permissible continuous sound level. Unreasonable noise is determined by reviewing the noise against the maximum permissible level. As stated, noise shall be measured as follows:

A. The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute;
B. The slow meter response of the sound level meter shall be used in order to best determine that the average amplitude has not exceeded the limiting noise level;
C. Measurement of noise levels shall be made at or beyond the property line of the property on which such noise is generated or perceived, as appropriate, and shall be taken at least four feet from ground level;
D. Compliance with the noise limits shall be maintained at all elevations at the boundary of the property;
E. Daytime hours shall be between 7:00 a.m. and 10:00 p.m. Nighttime hours shall be between 10:00 p.m. and 7:00 a.m.
F. The maximum permitted noise or sound levels on property, within the geographic boundaries of the Town of Windsor are:

   During daytime hours: ambient noise levels plus five (5) dBA.

> During nighttime hours: ambient noise levels plus three (3) dBA.
>
> Additionally, until demonstrated by the applicant or by the Town, ambient noise or sound levels within the Town of Windsor shall be assumed to be 35 dBA.
>
> However, in no event shall the allowed noise or sound levels on the property exceed 55 dBA, unless as allowed via a Special Permit.
>
> Moreover, noise levels shall be measured as described in this section.

The Code outlines exceptions to the noise restrictions, none of which would be applicable to the Applicants' proposed project, discusses enforcement and administration, and describes the process for application for temporary or special permits.

Applicants have stated that they will comply with the substantive local law and that the "Compressor Noise Study," dated June 2, 2010, indicates compliance with the noise ordinance. As previously described, the noise study was developed based upon the results of a March 26, 2010 ambient sound survey and noise impact analysis associated with the proposed compressor station for this project. The study, conducted prior to the effective date of the Town of Windsor Noise Control Code, did not incorporate all of the measurement standards described in the Code. Until Applicants demonstrate ambient noise levels measured using those standards, pursuant to Section 68-8, the ambient noise levels are assumed to be 35 dBA; maximum permitted noise therefore is 40 dBA during daytime hours and is 38 dBA during nighttime hours on the Applicants' property.

As described above, Applicants have indicated that the estimated sound levels produced by their study yielded results ranging between 38.8 dBA to 42.0 dBA at the edge of the

compressor site property in Case #1 where the four compressors proposed were analyzed, and ranged between 41.0 dBA to 44.0 dBA at the edge of the compressor site property in Case #2 where a total of six compressor units were used to estimate expected sound levels. The Applicants note that the estimates provided do not take into account recently added attenuation mechanisms and assert that the estimated sound level contribution from the compressor station at the fence line will translate into a slightly greater noise increase above ambient levels.

Applicants indicate that noise levels will comply with the 40 dBA maximum permitted noise level during daytime hours and the 38 dBA maximum permitted noise level during nighttime hours on the Applicants' property once mitigation measures have been implemented. Sound levels will be evaluated pre- and post-operations to determine compliance with the Town of Windsor Noise Control Code. If the post-operations noise study does not show compliance with the Noise Control Code, Applicants will be required to install additional measures to attenuate the noise.

Chapter 93 Zoning

The Town of Windsor Zoning Code establishes the different districts zoned within the Town boundaries and describes accepted uses in those zones. Section 93-5 states that no building or land shall be occupied unless it is in conformity with the regulations described for the district in which it is located. Section 93-6 establishes five zoning districts within the Town of Windsor: a Residential District, an Agriculture District, a Commercial District, an Industrial District, and a Flood Hazard District. The proposed pipeline traverses four of the districts: Agriculture, Flood Hazard, Commercial and Residential. The proposed compressor station, as reflected on the Town Zoning map submitted by Applicants on January 11, 2011, is located within the Agriculture District.

The Residential, Agriculture and Commercial districts permit electrical distribution substations and other public utility structures as permitted principal uses. Gas pipelines are public utility structures. Residential and Agriculture districts have no other applicable regulations to be evaluated for gas pipelines.

The pipeline traverses a Flood Hazard District where the pipeline crosses Trowbridge Creek. As described briefly above, with regards to the Flood Damage Prevention Chapter of the Code, the Town's intent by establishing the Flood District is to minimize potential loss of life and property during periods of flooding by regulating the alteration and/or development of those areas within the Flood Hazard District. Section 93-51 specifically notes the intent of this section is to "control floodplain uses such as clean fill (including rubble), storage of materials, structures and any other works which acting alone or in combination with other existing or future uses will cause damaging flood heights and velocities by obstructing flows and reducing floodwater storage;" to protect human life and health; to minimize public and private property damages; and minimize surface and groundwater pollution which may affect human, animal or plant life. Section 93-52 describes permitted uses in the Flood Hazard District. Utilities are not identified as permitted uses. As described in Section 93-53, any uses outside of those identified in 93-52, are permitted only after issuance of a special use permit by the Zoning Board of Appeals. Staff has reviewed the criteria of review outlined by the Town of Windsor and notes that the pipeline will be constructed underground and will not impact water levels or velocities, obstruct flows or reduce floodwater storage and is not among the types of uses in the Flood Hazard district that

the statute is intended to prohibit. No further review under this section is required.

The pipeline also traverses the Commercial District in the area around Fox Farm Road. Among the permitted uses described in Section 93-22 are electrical distribution substations and other public utility structures. As noted above, pipelines are public utility structures. Pursuant to Section 93-21, site plan review is required on all commercial developments. As described in Section 93-21.2, the Code Enforcement Officer would review the Commercial Site Plan to determine, among other factors, whether the application meets all zoning regulations and whether the property involved in the application is in a Flood Zone. The pipeline, which includes no buildings in this district, is a permitted use in this district and there are no other restrictions applicable to the pipeline.

The Compressor Station is located in an Agriculture District where utility uses, as described above, are permissible. This district requires that no principal building be erected on a lot of an area less than 14,000 square feet and having a width of less than 90 feet pursuant to Section 93-19. Section 93-20 describes the yards and other open spaces that shall be provided and maintained. It describes that the front yard shall be maintained at 35 feet, side yard at ten feet, with two side yards required, and a rear yard of 30 feet. It provides that accessory buildings are not permitted in front of principal buildings or closer than three feet to any property line and that farm buildings and structures that are incidental to farm residences shall be required to maintain a setback from the right-of-way of county, state and town roads of 15 feet. As discussed above and shown on Exhibit ”C” of the application, the Compressor Station is on a 40-acre parcel located on Dunbar Road in Windsor. The Compressor Station will be set back at least

450 feet on all sides from the property line. It complies with the lot area, width, and yard requirements as described in Sections 93-19 and 93-20 of the Town of Windsor Zoning Code.

PUBLIC COMMENTS

1. Department of Environmental Conservation

By letters dated November 12, December 6 and December 13, 2010, the New York State Department of Environmental Conservation (DEC) offered comments concerning this proposed project. DEC provided comments relative to Applicants' Stormwater Pollution Prevention Plan for coverage under the State Pollution Discharge Elimination System (SPDES) general permit. DEC notes that the Applicants' proposal does not meet the minimum requirements of the SPDES General Permit for Stormwater Discharges from construction activity and identified an extensive list of concerns. Concerns outlined appropriate fill for sediment control socks, seeding and mulch requirements, protocol for slash disposal, procedures for open cut crossings, reporting of inadvertent release of drilling fluids, inspection report retention, site inspection protocol and reporting, erosion and sediment control training for contractors, specifications for stone used to stabilize road entrances, stabilization of stockpiles, and water bar spacing protocol. DEC stated that Applicants must submit to the DEC's Bureau of Water Permits a Notice of Intent to obtain coverage under the SPDES Stormwater General Permit.

The November 12, 2010, comments also included preliminary comments on the EM&CS&P including a suggestion that the document be revised to include only drop inlet protection practices that appear in DEC's NYS Standards and Specifications for Erosion and Sediment Control ("Blue Book"), that it be revised to include (T) and (TS) stream classification designations for trout habitat and spawning, that the document

be revised to include updates to DEC office addresses, that the document be revised to include a requirement that inadvertent releases of drilling fluid be reported to the DEC, and that diversion ditch spacing requirements be updated to comply with DEC's Blue Book standards.

DEC notes that Applicants will be using horizontal drilling technology to bore under stream and wetlands and should not clear in the vicinity of the streams except to clear a "line of sight" over the pipeline; DEC requests that clearing be limited to a width of 15 feet. DEC officials report that precautions must be taken to avoid impacts to water quality in accordance with Environmental Conservation Law Article 15-0501. DEC explains that of particular concern is minimizing the potential for "frac out"[18] of the boring slurry into a protected stream. DEC requests that Applicants use a biodegradable drilling solution rather than a clay-based bentonite and that boring pits be located as far from the top of the stream banks or wetland edges as possible. DEC also confirms that during its field review with DPS and Applicants, the entry and exit holes were requested to be relocated an additional 100 feet, plus or minus, to a more upland area at the Trowbridge Creek Crossing, and to increase the pipeline depth under the stream. DEC explains that this practice would help minimize potential pipe exposure over time as stream banks and stream beds erode due to natural stream channel migration process. DEC notes that where Applicants have identified that blasting may be needed, one such area is within a few feet of an intermittent stream; DEC

[18] The term "frac out" refers to the upward migration and surfacing of the drilling mud during a directional drill resulting from a point of weakness in an underground formation.

requests that blasting activities only occur when streams are dry.

DEC's December 6, 2010, letter provided extensive comments suggesting wording changes to the DPS EM&CS&P document. DEC requests that a Certificate, if granted, either include the updates and changes identified, or that the 2006 EM&CS&P document be supplemented with a site specific EM&CP incorporating DEC's comments. DEC supplied a chart describing the relevant EM&CS&P section, exemplary language it proposes would supplement the EM&CS&P language, and the reason the supplementary language is needed. DEC also stated that it recognizes that not all of the provisions described in its supplementary language may be relevant to this case. The identified sections of the EM&CS&P and supplementary language related to erosion and sediment control, crossing of waterbodies, horizontal drilling procedures, clean-up and restoration procedures, invasive species control and inspection and monitoring.

DEC noted, among other requests, that the Certificate should reference the DEC Stormwater General Permit obligations for construction that are more specific than the requirements of the EM&CS&P, that straw is preferred to hay for erosion control devices, that temporary culverts be installed based upon recommended culvert installation procedures, that Applicants avoid clearing, that vegetated buffer areas be shown along streams, that a frac out contingency plan be more detailed, that seed mixes should contain native grass and wildflower mixes, that measures be taken to avoid the spread of invasive species, and that inspection and monitoring be synchronized with SPDES requirements. In addition, DEC indicates that Applicants are working with DEC to obtain coverage under the DEC SPDES General Permit for Stormwater Discharges from Construction Activities,

since this project will result in more than one acre of ground disturbance.

DEC also states that the air contaminant emissions to be vented from the compressor station must meet permitting requirements of the NYS Air Pollution Control regulations and said that it is presently working on the preparation of a draft permit. DEC officials indicate that Applicants should obtain the necessary air pollution control approvals prior to construction of the compressor station.

By letter dated December 13, 2010, DEC indicates that the pipeline facilities, as proposed, will not cross any DEC regulated wetland or associated 100-foot adjacent areas. DEC notes that the alignment sheets indicate that Applicants are proposing to bore under several federally-regulated wetlands, which will minimize or avoid impacts altogether. In addition, DEC reports that this project would potentially impact several NYS Class C Streams. DEC officials indicated to DPS Staff that this project will not cross any NYS protected streams (classifications Class C(T) or higher). DEC has provided a list of the Class C Streams on the project which are Trowbridge Creek (station 429+00), one unnamed tributary of Trowbridge Creek (station 402+87), Occanum Creek (station 48+25), and two unnamed tributaries of Occanum Creek (station 123+31 and 47+85). It notes that utilizing a horizontal directional drill (HDD) is the preferable method to cross the streams mentioned above.

2. Department of Agriculture & Markets

By letter dated October 22, 2010, the New York State Department of Agriculture and Markets (Ag&Mkts) provided comments on the proposed pipeline. Ag&Mkts noted it reviewed the proposed route in the field and that the proposed pipeline route will cross several agricultural parcels. It recommends that Applicants hire an Environmental Inspector with

agricultural experience to oversee construction and restoration in active agricultural areas.

Ag&Mkts describes that natural stratification of soil horizons and natural soil drainage patterns may be altered by construction occurring on lands within or adjoined to agricultural areas. When such drainage problems occur, Applicants must rectify the effects with measures such as subsurface intercept drain lines. Ag&Mkts requests that the selection of the type of intercept drain lines to be installed to prevent surface seeps and the seasonally prolonged saturation of the backfilled trench zone and adjacent areas be performed by a qualified Agricultural Specialist. Drawings of such drain locations should be provided by Applicants during monitoring and follow-up remediation. Ag&Mkts states that all drain lines should be installed according to the Natural Resource Conservation Service standards and specifications for subsurface drains and should include the use of Schedule 40 or better outlet pipe and corrugated polyethylene drain that meet or exceed the American Association of State Highway and Transportation Officials (AASHTO) M252 standards.

Ag&Mkts notes that the Applicants indicated an anticipated start of construction to be either late fall or early winter. As a result, final restoration of the right-of-way was not expected to be completed until the spring of 2011 when soil conditions have dried sufficiently as determined by the Environmental Inspector in consultation with Ag&Mkts and DPS Field Staff. Until such time, Ag&Mkts recommends all disturbed agricultural areas should be temporarily stabilized according to measures included in the Ag&Mkts' *Seeding, Fertilizing and Lime Recommendations for Gas Pipeline Rights–of-Way Restoration in Farmland.*

Ag&Mkts noted that the agricultural protection measures the Applicants committed to following that are included in the document *Pipeline Right-of-Way Construction Projects; Agricultural Mitigation Through the Stages of Project Planning, Construction/Restoration and Follow-Up Monitoring (Rev 11-97)* should be applied to the following property parcels:

- June D. Puskar and Chester H. Davis (parcel 164.0-1-3-cropland) with approximate stations 30+84 to 38+93. This includes the proposed off right-of-way access road beginning at approximate station 32+67 to the east of the proposed pipeline right-of-way. The area used for this access should be matted or the topsoil be stripped prior to use.
- Raymond L. Ousterhout (parcel 164.04-1-9.1-cropland) with approximate station 113+27 to 121+50.
- David W. Farr (parcel 180.02-1-9.1-cropland/pasture) with approximate stations of 125+19 to 126+77 and 127+33 to 134+13.
- John and Monika Root (parcel 180.02-1-9.1-cropland) with approximate stations 151+13 to 163+65.
- Mary Beth and Marcella Donlick (parcel 181.01-1-1-pasture) with approximate stations 164+58 to 166+15.
- Nancy A. Nash (parcel 212.04-1-25-cropland/pasture) with approximate stations 387+77 to 402+37.

Ag&Mkts observed that a portion of the June D. Puskar and Chester H. Davis parcel between approximate stations 52+93 to 57+94 is unimproved pasture and, as a result, it is not necessary to follow all of the agricultural protection measures. Ag&Mkts recommends that full width topsoil stripping be required in this area to increase the chances of successful re-vegetation after restoration.

Ag&Mkts suggests that Applicants work with farm operators during the planning phases of construction to develop a plan to delay the pasturing of the right-of-way following construction until pasture areas are adequately re-vegetated. Ag&Mkts contends that Applicants should be responsible for maintaining the temporary fencing, in pasture designated parcels

listed above, on and along the right-of-way until the Environmental Inspector determines that the vegetation on the right-of-way is established and able to accommodate grazing and that at such time, Applicants should be responsible for removal of the temporary fencing.

3. Public Statement Hearings

As noted above, public statement hearings were held on October 20, 2010 before Administrative Law Judge Howard A. Jack in the Town of Windsor. Prior to establishing a date for the hearing, approximately 25 individuals submitted comments requesting that public statement hearings be held. A total of thirteen members of the public spoke at the afternoon hearing and eight members of the public spoke at the evening hearing. Comments were made both in support and in opposition to the proposed pipeline, or to certain aspects of the project. Comments were delivered by an array of speakers including local residents, the Town of Windsor Supervisor, representatives of the Windsor Landowners Pipeline Coalition, Laborers' Local 785, Windsor Pipeline Steering Committee, EARTHWORKS Oil and Gas Accountability Project, a local branch of the International Brotherhood of Electrical Workers, Windsor/Colesville Gas Coalition, and Earthjustice.

Individuals showing support for the proposed pipeline noted that Applicants have been cooperative with the Town of Windsor and that the positive experience of working with Applicants will be a good model for future development. Some speakers recognized that Applicants tried to accommodate landowner concerns including the location of the pipeline and compressor station, mitigation of noise and pollution, and price paid for easements. Speakers stated that Applicants have indicated that work will be completed by a New York-based contractor and note support for companies that employ union

workers and commit to putting local communities to work while helping to build infrastructure. It was noted that employment of local workers will benefit local communities and help maintain health insurance coverage and retirement programs for those individuals. One individual noted that while use of eminent domain to secure land would be problematic, that in this instance, that issue is moot since he believed that all landowners in New York had agreed to easements allowing for installation of the pipeline on their properties. One speaker recommended that the proposed pipeline project should be perceived as one traversing private properties, not a natural gas drilling project.

A comparison was made between this proposed pipeline and the Tennessee Gas and Millennium pipelines. The Tennessee Gas Pipeline in Pennsylvania was described as being operational for 50 years with no major problems, that the pipeline has had minimum visual impact, has been successful, and that many wells connect to the pipeline. It was suggested that the proposed pipeline, with more advanced technology available, should be even more of a success. The Millennium Pipeline was described as a positive experience for the local community as it brought jobs and prosperity to the local economy. The speaker suggested that excellent planning had occurred with regards to the proposed project and that the pipeline should be installed.

Some comments indicated support for recovery of gas from the Marcellus shale formation and described that extraction of such gas should begin to produce energy sources domestically and avoid dependency on foreign energy, and to avoid impacts of any potential future energy shortages that may occur due to trade barriers or increasing energy consumption by foreign nations. Natural gas was identified as clean burning and preferable to other energy sources and, with the development of

other sources of energy and conservation, would help to limit global warming. It was stated that natural gas can be used to meet increasing customer demand with proper oversight, and that development of gas resources may aid depressed upstate economies while creating an infrastructure for bringing gas to market. One individual noted that the proposed pipeline is necessary to develop Marcellus shale gas and other gas formations in the area.

While several speakers identified forest fragmentation as a concern, one individual noted that while growing up in Windsor, the area was primarily farmland with little forest; it was stated that 100 years ago, land use was split approximately 50/50 between farm and forest lands. It was reported that approximately 72 percent of land use is now forestland while farmland comprises approximately 12 percent of land use. Given the changing land use, this individual reports that fragmentation of forests should not be perceived as an issue.

Comments in opposition to the proposed pipeline focused on eminent domain, environmental concerns, threshold of review applied to the application, limited need of the pipeline and appropriateness of reviewing pipeline siting applications prior to a determination of treatment of drilling practices for Marcellus shale wells in New York State. Speakers noted that eminent domain should only be exercised if a project is in the public good; one speaker indicated that while the project might be beneficial to landowners and the gas industry, it does not serve the interests of the general public. One person suggested that Laser be classified as a pipeline corporation rather than a gas corporation.

Environmental concerns include: forest fragmentation, protection of wetlands and streams, potential for earthquakes, potential human and animal illness, and noise and pollution

associated with the compressor station. It was suggested that evidence be provided that forest fragmentation is being minimized as well as impacts on the ecosystem; where impacts cannot be avoided, it was suggested that mitigation, such as planting of trees to replace removed trees, should be adopted. One speaker questioned the proposed route that traverses forest, wetlands and streams and suggested the route was selected with the goal of creating a route that spans less than ten miles. A concern was raised as to landowner liability where water contamination originated on the property. A concern was also raised regarding maintenance of the pipeline if no gas flows through it.

A concern with noise created by the proposed compressor station was noted by several speakers. One individual noted that 80 residences are on the perimeter of Dunbar, Patterson and Thompson Roads that form a triangle around the compressor site. Sound levels should be checked once the pipeline is operational to ensure appropriate levels.

Several speakers discussed the negative impacts of drilling in Pennsylvania generally, and Dimock, Pennsylvania specifically, and noted concerns with water quality and contamination of farmland. One speaker noted that approval of the proposed pipeline would ensure that northern Susquehanna County in Pennsylvania and eastern Broome County would become an industrial wasteland.

Several speakers noted that the project would not be in the public interest and that the Applicants failed to establish need for the proposed pipeline. Statements asserted that the pipeline would transport raw resources through New York to world markets and would fail to provide products or services to New York. It was asserted that no gas transported through the pipeline would reach end users in New York State through

distribution and that low market prices reflect that there is a "glut" of product in the market. Speakers also noted that the pipeline could connect in Pennsylvania either with the Stagecoach Pipeline or Tennessee Transmission Line and that connection in New York was unnecessary and Applicants had not articulated a need rationale. It was stated that environmental impacts in New York will not be compensated by any service in New York.

Many of the speakers opposed to the proposed pipeline project stated that the pipeline is just under ten miles in length and that, as a result, the Applicants avoid a more stringent threshold of review under Article VII of the Public Service Law. Speakers noted that gas pipelines extending a length of ten miles or longer would be subject to a more thorough environmental review and that the Commission would be required to make a finding that "the facility represents the minimum adverse environmental impact…."[19] Speakers noted that with the addition of lateral pipelines from additional connecting wells, the pipeline length would exceed ten miles and therefore the additional review is appropriate.

Several speakers also questioned the prudence of reviewing pipeline siting applications where pipelines would serve Marcellus shale gas wells. Speakers noted that without knowing the full scope of the project, with wells potentially being drilled in New York State, members of the public are not fully informed to make comments regarding the project. Several speakers also noted that the DEC has not completed its review process of hydraulic fracturing methods and therefore it is unknown whether Marcellus shale drilling will be permitted in New York. It was suggested that permitting pipeline

[19] PSL §126(1)(c).

applications relating to Marcellus shale gas wells prior to a determination of whether wells will be permitted is essentially putting the cart before the horse. Speakers suggested a cumulative impact study of shale gas pipelines should be undertaken. One speaker noted that wells will follow existing conduits for delivery, which means that if allowed in New York State, many Marcellus shale wells could be drilled around the pipeline and additional pipeline and compressor stations could be constructed. It was urged that the Commission perform a complete study of the cumulative impacts on wildlife, watershed protection, forest fragmentation and carbon emissions. It was stated that the impact of pipelines and compressor stations are not being evaluated by the DEC since pipeline and compressor station siting are not under its jurisdiction.

Finally, one speaker noted that resources and equipment should be made available to first responders in the event of an emergency. It was stated that there are few fire companies in the area and that they have low budgets. Further, the Applicants should provide the first responders with infrastructure, buildings, equipment and training as well as resources.

4. Written Comments from the Public

Approximately 300 written comments were received from the public regarding the proposed pipeline. Appendix B lists the names of individuals that supplied comments for the Commission's consideration.[20] Some individuals supplied multiple comments on the proposed project.

[20] Comments continue to be received; however, by virtue of the need to proceed with the evaluation of this application, recently submitted comments may not be reflected herein.

Comments received included some 210 form letters showing support for the pipeline and development of natural gas in New York State and infrastructure to support its development. Several other letters in support of the project were received and cited economic benefits to the local community and a good working relationship with the Applicants. The Millennium Pipeline Company, LLC, owner of the pipeline Applicants propose to connect to, submitted comments in support of the pipeline. It describes that the Millennium Pipeline has Firm Transportation capacity between Corning, New York and Ramapo, New York and that over 80 percent of that Firm Transportation is held by local distribution companies. Millennium notes it has a limited amount of local production tied to its system and that most of the Firm Transportation is used to transport natural gas that must first be transported through other pipelines. It notes that the construction of the project would result in more competitively priced and reliable gas supplies for New York utility customers because the addition of local production will diversify the portfolio of local distribution companies that serve end-use natural gas customers.

Approximately 45 of the comments received related to the length of the pipeline and the threshold of review that would be conducted. These comments described that as the pipeline length would extend less than ten miles, the Commission would not be required to make as rigorous a finding relating to environmental impacts and urged that the Applicants be asked to prove that the pipeline, when lateral piping is added, will not exceed ten miles, or alternatively, that the Commission review the application under the higher review threshold that would be required for a pipeline extending ten miles or more.

Many of the comments, approximately 30, discussed forest fragmentation that would be caused by the proposed

pipeline routing. Comments noted that by cutting through the forest area, habitats would be fragmented to the detriment of the environment. Many of these comments, approximately 20, opined that the route selected, and the associated environmental impacts, are unnecessary and that other potential routes could avoid forest fragmentation and other environmental impacts. It was suggested that Applicants selected the proposed route with the intention of circumventing a higher threshold of review required of pipelines extending ten miles or longer. There was an additional critique that the pipeline route does not follow property boundaries. Several other comments suggested that the pipeline route should instead follow road or public right-of-ways to avoid environmental impacts.

Approximately 25 individuals submitted comments relating to gas safety and the location of Class 1 sites. The comments outlined that Class 1 areas are not subject to federal safety regulations or federal inspection requirements and note that this may result in potential safety consequences to individuals living near the proposed pipeline route. Other comments related to pipeline safety included how large the gas system would be and what contracts Laser has in place for transporting gas, the characterizations of gas gathering lines as opposed to transmission lines, that gas should be odorized, that continual infra-red monitoring of the compressor station and pipeline be conducted to check for methane leaks, and that an emergency plan for the pipeline be posted on the internet.

Approximately ten comments were received related to eminent domain. Comments noted that eminent domain should not be permitted to be utilized by the Applicants and described that use of property to construct a pipeline would not generally be for the public good and thus should be disallowed.

Many comments related to hydraulic fracturing practices in New York State and the review currently being undertaken by the DEC. Approximately 20 comments related to the fact that drilling for Marcellus shale is not yet permitted in New York and suggest that the Commission wait to consider Certificates of Environmental Compatibility and Public Need to construct pipelines until a determination has been made as to whether drilling for Marcellus shale gas will be permitted in New York. Several people noted general opposition to natural gas drilling. Others described that if drilling for Marcellus gas were permitted in New York, the presence of a pipeline would make their area more likely to be developed for gas drilling. Many of these comments included an urging that a comprehensive cumulative impact review be conducted of both the impacts of pipeline construction and installation and impacts of drilling gas wells. Approximately six comments stated that the DEC should have siting jurisdiction over pipeline projects rather than the Public Service Commission. Several other individuals suggested that the Commission not make a determination on proposed pipeline applications until the U.S. Environmental Protection Agency makes a determination as to the impacts of extracting gas from deep shale wells.

Many concerns raised in the comments are related to environmental impacts. Comments noted that the pipeline route will cross forest, wetlands, streams, and agricultural areas. Some of the comments urged protection of those resources, suggested that alternate routes be explored, and/or that mitigation of those resources should be explored by the Commission. It was noted that New Yorkers should not have to absorb environmental impacts where the pipeline is meant to serve only gas wells in Pennsylvania. One individual suggested an endangered species review be conducted.

Concerns were raised with the proposed compressor station and its potential impacts on noise levels, emissions, and water resources. It was stated that more than 80 families live in proximity to the proposed compressor site and that safety and noise impacts are prominent concerns. Several individuals urged that noise sampling be required as a condition of any Certificate granted to ensure compliance with the Town of Windsor Noise Code. It was suggested that a noise management plan be developed and incorporated into any Certificate that described an action plan to handle noise complaints. Several comments noted that the Applicants' sound consultant recommended a 20-foot acoustical barrier and that the Applicants proposed a ten foot berm instead; they suggested the stricter mitigation method be utilized. It was also suggested that any Certificate granted be conditioned on the requirement that testing of water supply sources shall include testing for substances that are known within the industry to be found in water discharged in the operation of natural gas drilling and that such reports be filed with the Commission.

Other comments suggested that the project provided little justification for its need in New York, that the pipeline route is too close to their property line, that hydraulic fracturing processes could cause earthquakes, property values may be negatively impacted by the proximity to the pipeline route, that the pipeline be buried at an appropriate depth under public roadways, that construction would be beneficial to the economy, that the pipeline might open the door for hydraulic fracturing techniques for drilling wells in the area, and that the Federal Energy Regulatory Commission should regulate this pipeline. Other concerns discussed disposal of waste fluids from pipeline cleaning, the potential for illness and contaminated water that may result from the compressor station,

potential health effects of the compressor station on humans and animals, that the project may be more beneficial to Pennsylvania than New York and that the pipeline route should be routed to connect with the Tennessee pipeline in Pennsylvania to maintain future development opportunities in New York, that better communication should occur between New York agencies, that easements should be filed with the Commission to assure compliance with their terms, and that environmental impacts of gas exploration and extraction should be evaluated prior to granting approval of pipeline projects.

In addition to the comments received, a petition bearing approximately 1,800 names was submitted with comments. The petition's stated goal is to stop gas drilling in Afton, Coventry, and Bainbridge, New York. These communities are located to the north and northeast of the proposed pipeline. The petition cites health and environmental concerns related to drilling and supports fighting gas drilling in the county, state and nation.

DISCUSSION

Other state agencies and members of the public actively participated in this proceeding and provided us with many comments for review. We will first discuss the agency comments and then discuss comments received from the public.

Agency Comments

DEC provided significant input regarding Applicants' Stormwater Pollution Protection Plan and their plan to comply with DEC's General Permit for Stormwater Discharge. DEC contacted Staff and advised that Applicants' Stormwater Pollution Prevention Plan was accepted by DEC for this project with the revisions they supplied to DEC on November 30 and December 7, 2010. DEC has imposed standards sufficient to

satisfy the State Pollution Discharge Elimination System permit for protection of erosion and sediment control; the Applicants are bound to the terms of that permit and the associated Stormwater Pollution Protection Plan for this project. Applicants must provide Staff and the Secretary with a copy of their Notice of Intent to DEC concerning the SPDES permit and a copy of the SWPPP prior to construction.

DEC has also requested that "line of sight" clearing over the pipeline be limited to a width of 15 feet in the vicinity of streams. We shall not limit clearing in those areas to the 15 feet that DEC requests, but shall instruct Applicants to limit clearing to the maximum extent practical. Clear and immediate access to the pipeline is necessary in the context of an emergency situation; 15 feet of clearing in all of these areas may not be sufficient to ensure proper access. Applicants shall not exceed a width of 40 feet of clearing in these areas and shall limit clearing to the maximum extent practicable while considering necessary access in an emergency situation.

DEC further requests that Applicants utilize a biodegradable drilling solution rather than a clay-based bentonite solution, that boring pits be located as far from the top of stream banks or wetland edges as possible, that blasting activities only be conducted when streams are dry, and that horizontal directional drilling be utilized at Class C stream crossings. DEC also noted that the compressor station must meet permitting requirements of the NYS Air Pollution Control regulations. We will adopt these as conditions of the Certificate to ensure that environmental impacts are appropriately mitigated. The Applicants shall submit copies of all necessary air pollution control approvals prior to the commencement of construction.

By letters dated November 12 and December 6, 2010, DEC has proffered updates and suggested extensive language changes to the DPS EM&CS&P document. It attached a supplement to the comments with suggested language and asked that the terms be incorporated into the Certificate or that a site-specific EM&CP be developed that incorporates DEC's comments; it also recognized that some of the suggested language was inapplicable to this project. We will not by this order make changes to the previously-approved EM&CS&P document, but will consider the suggested language changes DEC provided for application to this project. While some of the updates and suggested changes may be beneficial to the EM&CS&P document, we will consider changes to the EM&CS&P document at a later date. We suggest the EM&CS&P document be reviewed and the proposed language be examined collaboratively by members of DPS and DEC Staff to discuss what changes are appropriate. We will consider changes to the EM&CS&P document upon recommendation of Staff; again, we encourage DEC to work with Staff to review the EM&CS&P document. DEC suggested language relative to four areas of the EM&CS&P and two sections that do not relate to a specific section of the EM&CS&P document. We will discuss each section in turn for application to this project.

DEC identified the Erosion and Sedimentation Control section of the EM&CS&P document and suggested that language be replaced by language it outlined and identified as "Section 1, Erosion and Sediment Control." DEC suggested that the language proposed be adopted citing that the Stormwater General Permit contains more specific requirements than the EM&CS&P, that the language presented would require use of straw instead of hay for erosion control, and would address temporary culverts. As described above, Applicants have committed to complying with the permit granted to them by DEC. Applicants are also required to

comply with the DEC permit, therefore it is unnecessary to adopt the additional proposed language at this time; Applicants are instructed to use straw bales for erosion control devices. The language supplied by DEC does not describe the temporary culvert calculations it prefers be used in this instance, but rather cites to the DEC's "Standards and Specifications for Erosion and Sediment Control" document. The DPS EM&CS&P document describes that culverts will be sized by calculating flows from the contributing watershed; the calculation described in the DPS document adequately addresses recent flooding events and the Applicants shall continue to calculate temporary culvert size utilizing the standard described in the DPS EM&CS&P document.

DEC identifies Section Five of the EM&CS&P document relating to vegetation clearing in upland areas and suggests it be replaced with a section it supplied titled, "Section 2, Clearing and Slash Disposal Activities." It states that the suggested language should be adopted to conform to Environmental Conservation Law (ECL) Articles 15 and 24 by updating the objectives to specifically state the goal of avoidance of clearing. ECL Articles 15 and 24 relate to water resources and freshwater wetlands. The language provided by the DEC describes extensive clearing and slash disposal procedures in the context of both gas and electric transmission right-of-ways. The stated intention of DEC in proposing the new language was to include the objective of avoidance of clearing. In this instance we will not adopt the proposed language of the DEC. The Applicants have been instructed to limit clearing to the maximum extent practicable and where streams and wetlands are present, the Applicants have committed to install the pipeline using directional drilling procedures.

DEC identified Section 5.7 of the DPS EM&CS&P relating to vegetation buffer areas and Section 10 relating to waterbody

crossings and suggests it be replaced with a section it supplied entitled, “Section 3, Stream and Wetland Protection Procedures.” DEC states that the Applicants have not shown vegetated buffer areas along streams pursuant to the DPS EM&CS&P documents and requests they be submitted to the Commission and DEC. Staff has advised that until the engineering drawing is prepared showing the directional bore, the exact locations of the vegetative stream buffers are not known. We will require the Applicants to provide the engineering drawings showing the bore locations and vegetative stream buffer zones on either side of the streams that are proposed to be directionally bored prior to commencement of clearing operations in these locations. DEC also suggests that the objectives of the two identified EM&CS&P sections update their objectives to clarify that waterbody crossings should first be avoided and where avoidance is not practicable, impacts should be minimized. At this time, it is not necessary to make any alteration to the objectives listed in the EM&CS&P document to describe a preferred avoidance of waterbodies for application to this project. As the DEC noted in its comments, Applicants have avoided waterbody crossings through the use of horizontal directional drilling. DEC also requests that its comments on turbidity and flow included in its supplement be applied to work activities impacting streams and waterbodies. Three subsections of the supplemental language pertain immediately to turbidity and flow: Section 3.2.1(c), (d), and (g). The first subsection states that “during periods of work activity, flow immediately downstream of the worksite will equal flow immediately upstream of the worksite.” The second subsection states, “there will be no increase in turbidity downstream of the construction activity that will cause a substantial visible contrast to natural conditions.” The final subsection states that, “for all crossings, the pre-

disturbance flow regime will be maintained." While we will not adopt the entirety of Section 3 for application to this project, these three subsections are reasonable conditions to apply to work activities that impact streams and waterbodies in order to meet water quality standards and shall be applied to this project.

DEC identified Section 10.2.1 of the DPS EM&CS&P document that relates to categories and classifications of waterbody crossings and suggests it be replaced by its supplementary language described as "Section 4, Horizontal Drilling Procedures." DEC explains that the new section should be adopted to specify use of biodegradable materials rather than bentonite for horizontal directional drilling provisions, and notes that the contingency plan for frac outs should be much more detailed describing what equipment will be used, who will be notified, and whether clean up equipment and materials will be readily available near site. Section 4 is comprised of three subsections. Subsection (a) states that all protected streams and State-regulated wetlands should be directionally bored; no State-protected streams are present however, Applicants propose to directionally bore all stream crossings and no State-regulated wetlands are present along the proposed pipeline route. Subsection (b) describes use of biodegradable materials for horizontal directional drilling. As previously described, the Applicants are directed to use biodegradable materials for horizontal directional drilling. Subsection (c) of this section relates to stream and wetland crossing conditions and describes distancing of exit and entry points from stream banks, sediment stabilization measures prior to boring activities, limitations on downstream turbidity, management of water accumulation in an isolated work area, and that equipment and provisions of a frac-out contingency plan be readily accessible. The conditions

described are reasonable to protect water resources and shall be adopted herein. Applicants are instructed to submit a contingency plan prior to construction that details what procedures will be followed in the case of a horizontal directional drill fail, procedures for mitigating frac outs, a description of what equipment will be used, who will be notified, and a description of where clean up equipment and materials will be located during drilling.

DEC identified Section 10.6.4 of the DPS EM&CS&P document relating to clean-up and restoration and suggests it be replaced by its "Section 5, Clean-up and Restoration Procedures." It describes the reason for the supplement, that seed mixes should contain native grass and wildflower mixes. While we will not adopt all of DEC's suggested language, we instruct the Applicants to use native upland and native wetland vegetation for both temporary stabilization and permanent restoration of the right-of-way.

DEC identified two new sections it believes should be adopted for this project. The two sections are identified as "Section 7, Invasive Species Control" and "Section 9, Inspection and Monitoring." Section 7 describes identification, measures and controls to prevent the transport of invasive plant species, disposal of organic materials, control of invasive insects, and a list of invasive plant species. Section 9 describes qualifications and responsibilities of an environmental monitor. The Applicants, by letter dated December 8, 2010, have agreed to the conditions described in DEC's December 6, 2010 letter that includes these two sections. We will adopt these conditions for application to this project only.

The suggested conditions proposed by Ag&Mkts are necessary and reasonable to ensure the protection of agricultural land uses. Ag&Mkts suggested measures, including

Applicants' retention of an Environmental Inspector with agricultural experience, the installation of appropriate subsurface intercept drain lines using Natural Resource Conservation Service standards and specification including the use of Schedule 40 or better outline pipe and corrugated polyethylene drain meeting AASHTO M252 standards, submission of drawings detailing locations of intercept drain lines installed, application of agricultural protection measures for enumerated agricultural properties, an outline of the active agricultural parcels where agricultural protection measures are required and the temporary stabilization of these areas, full width topsoil stripping in unimproved pastures, and the delay of final restoration in the active agricultural parcels until the spring or summer of 2011 when soil conditions are dry. Ag&Mkts suggested that Applicants work with the farm operator to adequately re-vegetate pasture areas after construction and that they should be responsible for maintaining temporary fencing in pasture designated parcels until vegetation on the right-of-way can accommodate grazing where upon, they should remove the fence. These suggestions are reasonable to protect agricultural resources and this certificate is conditioned with these terms. Staff reports that it has discussed the 70-foot right-of-way in active agricultural fields with Ag&Mkts' officials and they note that as long as topsoil and subsoil stays separated during pipeline construction, a 70-foot right-of-way is acceptable. Applicants shall take precautions to ensure that topsoil and subsoil are separated during construction and we adopt conditions in the certificate to protect the soil integrity.

Public Comments

We appreciate the public's active participation in this case. The public statement hearings and the voluminous written comments we received gave us the opportunity to better

understand the communities' concerns. Furthermore, active participation by members of the public results in a more robust process. Concerns raised by the public generally related to the applicable threshold of review, interaction with the DEC and well drilling in New York State, environmental concerns from both pipeline and compressor station installation and operation, need for the facility, gas safety concerns, and potential use of eminent domain for properties along the proposed right-of-way route. We will discuss each of these topics in turn.

Comments were received relating to the threshold of review applicable to this project. As many people noted, the proposed pipeline length is just under ten miles. Many individuals suggested that the route may have been selected with the intention of keeping the length of the pipeline under ten miles, others noted that Applicants intend to connect other wells to the pipeline in New York State and that, with the lateral lines connecting to it, the pipeline will exceed ten miles in length. Others suggested a different route may impact fewer environmental resources such as forested areas, wetlands and streams. Many individuals requested that a higher threshold of environmental review be applied to the project.

The Public Service Law (PSL) describes three separate thresholds of review for gas transmission pipeline applications within Article VII. Each review threshold, determined by length and diameter of the pipeline, requires different application materials, varying timing to conduct the review, and requires different findings to be made before we may grant a Certificate of Environmental Compatibility and Public Need. Pipelines extending less than ten miles in length are reviewed pursuant to PSL §121-a. Applicants proposing pipelines spanning over five miles but under ten, such as this proposal, are required to provide the information listed in PSL §121-a(3) and our

regulations; both the timing for review and the required findings are described in PSL §121-a(7). By contrast, applicants proposing pipelines with lengths of ten miles or more are required to provide the information listed in PSL §122 and our regulations, and we are required to make the findings specified in PSL §126(1). As some individuals noted, PSL §121-a(7), among other findings, requires us to determine "the nature of the probable environmental impact" of the proposed pipeline. PSL §126(1) requires us not only to determine the probable environmental impact of a facility, but also to find that "the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations including but not limited to, the effect on agricultural lands, wetland, parklands and river corridors traversed." In order for us to make the finding that the facility represents minimum adverse environmental impact, applicants are required to consider alternate route locations in their applications. Pipeline applications with a length less than ten miles are not required to contain alternative route locations.

The pipeline application we received describes a pipeline that extends 9.82 miles in length. Staff reviewed the pipeline application and determined that the length, including the pipeline on the compressor station site, was accurately described.[21] As such, we are required by the PSL to review the application by the standards set out for us by the Legislature in PSL §121-a. While we understand that there is a concern about the selection of the pipeline route and the potential for future pipes to be interconnected with this pipeline, we must

[21] 16 NYCRR 85-1.4 describes how pipeline length is calculated.

evaluate the proposal before us. Our regulations require applicants to include every line currently planned for an applicant's proposed system;[22] the proposed pipeline is the only currently planned pipeline by Applicants in New York. Should Applicants desire to connect laterals to their proposed pipeline in the future, we will review those proposals and evaluate them if they fall within our jurisdiction.

PSL §121-a(7) requires us to make only the findings listed in this section and does not allow us to elect to apply a different standard of review to an application meeting the threshold criteria. We can, however, request additional information to evaluate applications because we must find that such pipelines will serve the public interest, convenience and necessity in order to grant Certificates of Environmental Compatibility and Public Need. In this instance, our Staff reviewed the application materials and the proposed project route in the field, and has carefully assessed environmental impacts that are quantified in this order. Based on the record before us, we have determined that, with the imposition of appropriate requirements and safeguards, as described herein, the proposed pipeline is in the public interest. No additional review is required in this instance.

Concerns were raised with regards to the interaction between our review of pipeline applications and the permitting of well drilling in New York State, for which DEC has regulatory jurisdiction. Comments questioned the prudence of reviewing pipeline applications before a determination by the DEC regarding deep shale drilling in New York, stated that approval of pipelines would ensure future development of wells in surrounding areas if deep shale drilling were approved by DEC,

[22] Id.

noted that cumulative review of environmental impacts of pipeline construction and operation and drilling and extraction of gas from wells has not been conducted, and suggested DEC should have jurisdiction over siting gas transmission lines.

The Legislature, through Article VII of the PSL, has given us jurisdiction over siting major transmission facilities in New York State. DEC has been given jurisdiction over the permitting of wells in New York by virtue of Article 23 of the Environmental Conservation Law. We do not have jurisdiction over the future development of gas wells in New York State. As members of the public have described, hydro-fracing, a practice used for some gas well drilling operations, is being carefully examined by the DEC. While there is currently a moratorium on use of hydro-fracing in New York State for drilling horizontal wells, no such moratorium exists for the review of pipeline siting applications. In this instance, no wells are associated with the pipeline in New York State. We have carefully analyzed the application before us and have specified appropriate requirements and safeguards, and we believe that the project, as proposed, presents the least impacts to both the environment and to residents living in the area around the proposed pipeline. We believe that the system currently in place under Article VII allows for active participation, not only from other state agencies, but also local municipalities and members of the public. In this instance, we received significant feedback from other agencies that we considered herein. We appreciate the public coming forward and presenting their concerns regarding this project, and we are adopting measures to assure that construction, operation and maintenance of the pipeline facility meet both our regulations and goals of minimizing impacts and protecting the environment while developing energy resources within New York State.

Environmental concerns were raised with regard to the pipeline and compressor station. Environmental concerns relating to the pipeline route include forest fragmentation, protection of wetlands and streams, potential for earthquakes, and potential human and animal illness. Environmental concerns relating to the compressor station include visual, air, water, and noise pollution.

Staff has carefully quantified and analyzed the likely impacts to the environment that construction of the pipeline and compressor station will produce. The proposed route will require removal of trees from the right-of-way and work areas. Applicants have attempted to minimize the impacts of clearing by allowing re-vegetation to occur along portions of the right-of-way and by utilizing directional boring procedures for installation of the pipeline in certain locations to avoid vegetation clearing. In addition, Staff advises that the Applicants have agreed to reduce the clearing width for pipeline construction and maintenance, to the maximum extent possible, between stations 138+15 and 149+69 (approximately 1,100 feet) to minimize any visual contrast that the cleared right-of-way may create with the forested slopes in the area south of Route 17. We will require that the Applicants to file a tree clearing, protection, safety access, and vegetation maintenance plan, for Staff review, indicating appropriate measures for selective tree clearing and tree protection during construction and maintenance of the right-of-way to minimize potential views of the project from Route 17 by reducing clearing to the maximum extent possible. Although construction in this section of the right-of-way may be more laborious and require additional time and care, we believe that all these measures, taken together, are appropriate to mitigate the adverse affects of tree removal. No construction shall commence in this area until the Director of

the Office of Energy Efficiency and the Environment, after consultation with the Safety Section of the Office of Electric, Gas and Water, has approved the plan as being in conformance with this Certificate. In this area, the clearing of trees for the construction period shall be designed to create and maintain a continuous cleared corridor with a maximum width of 30 feet at ground level with the crown of trees located outside of the 30 foot corridor being allowed to remain and overhang the cleared area so long as the branches are high enough that they do not interfere with ground-level construction equipment; in the limited circumstance that additional clearing is needed at the edge of the right-of-way to ensure worker and work-site safety or to avoid damage to specimen trees for screening purposes, clearing an additional five or ten feet will be permissible. The cleared corridor shall be located within the 60 foot right-of-way in a manner that provides necessary access while avoiding tree clearing to the maximum extent possible. After the completion of construction, the cleared corridor shall be maintained at a maximum width of 15 feet at ground level with the crowns of the trees located outside the 15 foot corridor being allowed to remain and overhang the maintained cleared area so long as the branches are high enough that they do not interfere with ground level maintenance equipment. The plan shall include a requirement for a post-construction assessment to determine if plantings are warranted to minimize views from Route 17 prior to natural re-vegetation occurring. The Applicants shall file plan and profile drawings indicating the construction width in this area and a survey of all specimen trees within the boundaries of the construction right-of-way that could be retained to help soften the visual contrast of the right-of-way from Route 17. The scale of the plan and profile drawings shall be large enough for the size and location of

individual trees to be clearly distinguished.[23] Trees to be protected will be indicated on the plan and profile drawings, marked in the field, and reviewed by Staff. The plan shall also include a tree protection plan that will indicate construction practices that will be used to prevent clearing beyond the intended areas and to avoid damaging trees that will be maintained. The plan shall also include details for safety access and marking of the right-of-way in this area and other measures necessary to ensure that the normal safety inspections and other safety, operation and maintenance activities for the pipeline and right-of-way are conducted. The plan shall also include details for right-of-way vegetation maintenance for this area that is consistent with the construction modifications we are imposing.

The comments also showed concern for protecting water and wetland resources. Applicants have proposed crossing streams and wetlands using horizontal directional drilling procedures to mitigate impacts to these resources. The DEC has provided recommendations for protective measures to be implemented during the construction phase to adequately maintain water resources. As discussed above, we are adopting those recommended measures to ensure that impacts to streams and other water resources are minimized, and have included ordering clauses to implement them. Applicants shall retain an environmental monitor with authority to stop work that is inappropriate for resource protection. The monitor shall be on-site during all phases of construction to ensure compliance with the terms and conditions of this Certificate. Additionally, DPS Environmental Field Staff will regularly be present at the construction site to ensure that the terms of the Certificate

[23] Preferably at a scale of at least 20 feet to the inch.

are complied with. We do not believe any undue gas safety hazard exists, given that there is no history of gas safety incidents caused by seismic activity in New York, even though there are over 1,000 miles of gas transmission piping in the state. An additional concern was raised regarding what would happen to pipelines once gas no longer flowed through them. Decommissioning, or the removal of a facility, is not standard practice for gas pipelines. Decommissioning pipelines in place is beneficial in that no additional environmental damages are undertaken for removal.

Applicants have proposed a planting plan to mitigate noise and visual impacts relating to the compressor station site. They have proposed use of a neutral color for the compressor station buildings to blend in with the natural environment. These measures are appropriate measures to mitigate the change to the physical environment at the compressor station site. Post-construction, Applicants will review the site with DPS Environmental Staff and will determine whether further plantings are necessary at the site. As described earlier, Applicants are required to obtain a permit from the DEC relating to air quality. We will require Applicants to provide a copy of the approved air permit prior to construction.

A concern was raised regarding water quality at the compressor station site. All wastewater shall be handled, stored, tested, transported and disposed in accordance with all applicable State and local laws and regulations. We will require Applicants to provide written procedures which shall include, but not be limited to, the collecting, storing, testing for contaminants and corrosivity, and proper disposal of any excess water obtained from the operation of the pipeline and gas compressor units. In addition, the Applicants shall keep a copy

of the water test reports on file for inspection by DPS Staff on a regular basis. These procedures shall be provided to the Commission Secretary five days prior to the operation of the compressor units.

Noise pollution was also cited as a concern for this project. We will require Applicants to conduct a sound analysis utilizing the standards described in the Town of Windsor Code prior to construction and again upon the commencement of operations. In addition to the requirement of compliance with the Town of Windsor noise ordinance, Applicants must ensure that noise not exceed 40 dBA, under no wind conditions, at any existing residences; the sound analysis shall measure sound levels at the closest existing residences upon the commencement of operations to show compliance with this requirement. We will require Applicants to report on the results of the analysis, and propose a mitigation plan for our approval should actual measured levels exceed the levels described herein.

Comments also requested a noise management plan be developed. Applicants have provided contact information in Exhibit “C-6” of their application materials to register noise complaints. We will require Applicants to maintain a log of complaints received that includes name and contact information of the caller, date, time and a summary of the complaint. All complaints unresolved within 30 days shall be reported to the Secretary and include a copy of the complaint. Applicants described the potential for additional compressor units to be installed at the compressor station site. Applicants are required to seek an amendment of this Certificate prior to installation of additional compressor units at this site.

Comments questioned the need for this facility asserting that the pipeline would not result in benefits for end users in New York State and pointed to other interstate

pipelines in Pennsylvania that Applicant could have connected to. We have reviewed the application and have determined that the pipeline is in the public interest of New York State. Transporting gas from Pennsylvania to the Millennium Pipeline would benefit the customers of certain New York State gas local distribution companies and gas marketers by offering access to Pennsylvania (and possibly future New York State) shale gas supplies. Purchasing such gas close to the market area, as compared to current procurement from the United States Gulf Coast and western Canada gas supply regions, offers a multitude of customer benefits. Such benefits would include reliability of supply, diversity of supply, lower commodity and upstream pipeline costs, and reduced cost volatility. In addition to those benefits to New York, installation of the pipeline produces local benefits to the landowners that Applicants have negotiated easements with and the Town of Windsor through tax revenues levied on the pipeline.

Gas safety concerns were described in the comments. Such comments included a concern about federal safety regulation and federal inspection requirements, resources and equipment availability to first responders in an emergency situation, a request that an emergency plan be posted to the internet, a request that the gas be odorized, that infra-red monitoring be used for the compressor station and pipeline to check for methane leaks, and a concern about a potential increase of seismic activity.

We have carefully reviewed Applicants' proposed project and the gas safety analysis and conclude that undue hazards to persons or property along the pipeline area are not present. Regardless of federal oversight of this pipeline, the pipeline will be designed, constructed, operated and maintained as a transmission line, although it is technically a gas

gathering line. Pipeline safety regulations applicable to transmission lines in New York State, as applied here, are much more stringent than those for gathering lines. For purposes of inspection and auditing activities, this facility and its associated facilities will be treated as a transmission line. As a transmission line, the gas in the pipeline is required to be odorized; the compressor station and associated buildings are required to be designed to conform with strict safety standards contained in 16 NYCRR Part 255 that include, among other provisions, that the buildings have a fixed gas detection and alarm system. This pipeline will be included in the DPS Staff regular inspection schedule that requires regular auditing of all operation and maintenance. Based on class location, this pipeline will operate with a maximum allowable operating pressure that has an approximate factor of safety of 1.4 built into all pipeline construction.

Our gas safety regulations describe requirements of gas pipeline operators to develop written procedures to minimize any hazard resulting from a gas pipeline emergency.[24] The regulations describe the information to be detailed in the procedures that include the availability of personnel, equipment, tools and materials needed in the case of an emergency. It also requires training of operating personnel and for operators to establish and maintain liaison with appropriate fire, police, and other public officials. These gas safety regulations also include provisions for a customer education and information program.[25] While there is no requirement that pipeline operators post such procedures on the internet, there

[24] 16 NYCRR 255.615

[25] 16 NYCRR 255.616

is a requirement for operators to develop and implement a written continuing public education program. One of the requirements of the regulation is for operators to educate the public on possible hazards associated with unintended releases from a gas pipeline facility, steps that should be taken for public safety in the event of a gas pipeline release, and procedures for reporting such an event. Applicants may consider posting their public education program on a publically accessible website upon its development.

Finally, eminent domain was raised as a concern by several individuals noting that Applicants should not be permitted to utilize eminent domain power and that the construction of the pipeline would not generally be for the public good, and therefore should be disallowed. We do not grant eminent domain power. DMP is organized as a pipeline corporation as defined by Article 7 of the New York Transportation Corporations Law (TCL). The TCL provides that a pipeline corporation has the power to acquire real estate for its corporate purposes and the right-of-way through any property in the manner prescribed by the Eminent Domain Procedure Law. By granting a Certificate of Environmental Compatibility and Public Need, the Commission's decision acts as a finding of need and leaves only a rate of compensation to be decided pursuant to the Eminent Domain Procedure Law. In this instance, Applicants have indicated that they have acquired all required property rights in New York State for the construction of the pipeline; Applicants will not be seeking any eminent domain rights for those parcels. We will require the Applicants to provide us with copies of all easements or other forms of consent showing authorization to access and construct the pipeline on the indicated properties in New York prior to construction.

WATER QUALITY CERTIFICATION

Applicants requested that the Commission issue a water quality certification, pursuant to §401 of the Federal Clean Water Act (CWA), for activities associated with construction of their proposed pipeline. The CWA requires a federal permit to discharge dredged or fill material into "navigable waters" (33 U.S.C. §§ 1311(a) and 1342(a)) and requires an applicant for a federal permit to provide a certification from the State that the discharge will comply with State water quality standards. CWA §410 defines "navigable waters" as waters of the United States, including the territorial seas (33 U.S.C. §1362(7)). The Army Corps of Engineers, which issues the permits, defines these waters to include tributaries (33 CFR §328.3(a)(5)) and other types of water sources.[26] The Applicants will apply for any federal permits that are required.

Discussion

Conditions are imposed to assure that the Applicant complies with applicable State water quality standards. Given the ministerial nature of decisions to grant water quality certifications and the normal 60-day period for granting the certifications established in federal rules (33 C.F.R. §325.2(b)(1)(ii)), we delegated responsibility for granting water quality certifications in connection with Article VII Certificates to the Director of the Office of Energy Efficiency and the Environment. As requested, the Director will issue a

[26] The classification of certain waters, including tributaries, is undergoing reexamination. The U.S. Supreme Court raised questions regarding the meaning of navigable waters in the CWA and the definition used by the Army Corps of Engineers and remanded the case to the lower court for further proceedings (Rapanos v. United States, 547 U.S. 715, 126 S. Ct. 2208 (2006)). Depending on the outcome of the case, the Army Corps of Engineers may revise its definition of waters that require discharge permits under the CWA.

water quality certification after the Certificate has been granted.

Applicants propose to use a directional drill method for all of the crossings of the NYS Class C streams identified above and the majority of floodplains and federal wetlands. All other intermittent streams and drainages are intended to be crossed using an open cut, dry stream crossing method, utilizing the "dam and pump around" method, but the Applicants are not precluded from making an HDD or conventional bore crossing. Ten days before pipeline construction commences across any stream or drain, we will require a meeting to be held among Staff, the Applicants, and the pipeline contractor to determine the most appropriate crossing methods and techniques to be applied, as well as restoration methods to be used in connection with the water courses.

CONCLUSION

In accordance with PSL §121-a(7) the Commission finds and determines that (a) the facility is needed; (b) the nature of the probable environmental impacts, as discussed above, are largely temporary in nature due to construction and will be mitigated by the requirements of the Applicants' adopted EM&CS&P; (c) the location of the pipeline will not pose an undue hazard to persons or property along the area traversed by the pipeline; (d) the location of the facility as proposed, conforms to applicable state and local laws and regulations as discussed above; and (e) the facility will serve the public interest, convenience and necessity, as discussed above.

The Commission orders:

1. DMP New York, Inc. (DMP) and Laser Northeast Gathering Company, LLC (Laser)(together, Applicants) are granted a Certificate of Environmental Compatibility and Public Need,

pursuant to Public Service Law §121-a(7), to construct the fuel gas transmission line as described in their application and in this order, subject to the following conditions:

(a) Applicants shall apply the measures and techniques for environmental management and construction of this project indicated in its application and reflected herein; in addition the Applicants shall follow construction and restoration techniques outlined in the EM&CS&P, the Storm water pollution Prevention plan and any Certificate conditions concerning vulnerable ecosystem resources present on the project and/or referred to in this certificate;

(b) Applicants shall report to Department of Public Service (DPS) Staff (Staff) any proposed changes to the approved project, including proposed changes to the approved measures and techniques to be applied to the environmental management and construction of this project; Staff shall refer to the Director of the Office of Energy Efficiency and the Environment (OEEE), for approval, those proposed changes that will not cause substantial change in environmental impact or a change in the location of any portion of the certified site or right-of-way of the project and shall refer all other proposed changes to the Commission; Applicants shall not execute any proposed change until it receives written notification from the Director of OEEE or the Commission;

(c) the certified work is subject to inspection by authorized representatives of the Department of Public Service;

(d) Applicants shall notify the Secretary of the proposed commencement date at least 15 days prior to the start of construction;

(e) Applicants shall designate a full-time monitor with stop-work authority over all aspects of this project; the supervisor shall be on site during all phases of construction and restoration; the full-time supervisor and the environmental and construction monitors shall be equipped with sufficient documentation, transportation, and communication equipment to monitor effectively contractor compliance with the provisions of this Order, applicable sections of the Public Service Law and the EM&CS&P;

(f) Applicants shall hire a full time agricultural specialist to monitor construction and restoration of this pipeline project in active agricultural fields;

(g) Applicants shall provide construction contractors with complete copies of the Certificate, the Environmental Management and Construction Standards and Practices (EM&CS&P), updated construction drawings and any site-specific plans; Applicants shall notify all construction contractors that the Commission may seek to recover penalties for violations of the Certificate, not only from Applicants, but also from their construction contractors, and that construction contractors may also be liable for

other fines, penalties and environmental damage caused;

(h) at least 15 days prior to the commencement of construction, the name and qualifications of the environmental monitor shall be submitted to Staff;

(i) at least ten days prior to the start of construction Applicants shall hold a pre-construction meeting. An agenda, location, and attendee list shall be agreed upon between Staff and Applicants. Applicants shall supply draft minutes from this meeting to all attendees; the attendees may offer corrections or comments and Applicants shall issue the finalized meeting minutes to all attendees; if, for any reason, the pipeline contractor cannot finish the construction of this project and a new pipeline contractor is needed, then another pre-construction meeting with the same format as outlined above in this Ordering Clause shall be held;

(j) at least ten days prior to construction in active agricultural fields, representatives from the Department of Agriculture and Markets (Ag&Mkts), Staff, Applicants, and Applicants' contractor shall conduct a field review of the project to discuss compliance with the recommendations of Ag&Mkts described above regarding construction, restoration and mitigation to be used in active agricultural fields; agricultural mitigation, restoration and clean-up may include, but shall not be limited to the following: full-width

topsoil stripping, removal of rock four inches or larger, importing of topsoil, surface or subsurface shattering, deep tillage, repair of broken tile or tiling systems, and installation of new intercept tiles;

(k) if blasting is necessary, at least ten days before any blasting operations begin on this project, a meeting shall be held with Staff from the Offices of Energy Efficiency and the Environment and Electric, Gas and Water, Safety Section, Applicants, and Applicants' contractor to discuss the blasting procedures to be used, along with other pertinent information; if any blasting is necessary in the immediate vicinity or in stream channels the blasting shall be performed when the stream channels are dry;

(l) at least ten days prior to pipeline installation across any stream or drain on this project, Applicants shall meet with DPS Field Staff and Applicants' contractor to determine the type of crossing method, erosion control measures and materials used to install the stream crossing; field meeting notes shall be taken by Applicants of the issues discussed at this meeting and a copy of these notes shall be distributed to the attendees;

(m) at least ten days prior to the commencement of construction, the Applicants shall provide the Secretary with notice that they have obtained all the appropriate permits in New York and Pennsylvania as well as any required federal permits; Applicants shall provide contact

information of regulatory agencies in Pennsylvania;

(n) at least five days prior to the commencement of construction, Applicants shall provide the Secretary with any outstanding landowner easement agreements or other documents evidencing the right to access the properties;

(o) prior to the commencement of construction, Applicants shall provide the Secretary with a copy of their Stormwater Discharge Notice of Intention filed with the New York State Department of Environmental Conservation Bureau of Water Permits as well as a copy of the Stormwater Pollution Prevention Plan (SWPPP);

(p) prior to the commencement of construction, Applicants shall obtain some form of consent from the NYS Department of Transportation for crossing the east and west-bound lanes of New York State Route 17 and the County of Broome for the crossings of County Route 32 and Fox Farm Road and supply a copy of these consents to the Secretary;

(q) prior to the commencement of construction, Applicants shall provide notice to the Secretary that each necessary local, state, and federal permit required in connection with this project has been obtained and shall provide a copy of each permit and a copy of all other plans and documents discussed in the body of this order;

(r) prior to the commencement of construction, the Applicants shall provide the Secretary with documentation that they have obtained the

appropriate air quality permitting from the New York State Department of Environmental Conservation;

(s) Applicants shall consult with each local department or agency having jurisdiction over public roads that will be crossed or paralleled by the pipeline or used for direct access to the right-of-way; at least 15 days before Applicants begins construction within the right-of-way limits of such roads or takes direct access from them, they shall notify each such department or agency of the approximate date work will begin, the crossing locations and/or uses, depth of facility crossings, details and specifications for repaving (if any), and related considerations;

(t) Applicants shall comply with the terms and conditions of the Army Corp of Engineers Nationwide 12 Permit;

(u) prior to the commencement of construction, Applicants shall supply a copy of their Winter Stabilization Plan to the Secretary;

(v) at least ten days prior to the commencement of clearing operations, Applicants shall provide to the Secretary engineering drawings showing the bore locations and the vegetative stream buffer zones on either side of the streams proposed to be directionally bored or drilled;

(w) at least ten days prior to the commencement of construction, Applicants shall contact the U.S. Department of the Interior's Fish and Wildlife Service to obtain information concerning

federally listed or proposed endangered or threatened species along the pipeline route, provide the information obtained to the Secretary to the Commission, and propose a mitigation plan for Commission approval prior to the commencement of construction if any such species are present in the vicinity of the pipeline;

(x) at least ten days prior to the commencement of construction, the Applicants shall provide the Secretary with a “Frac Out Contingency Plan” that includes, but is not limited to, what procedures will be followed in the case of a frac out, procedures for mitigating frac outs, a description of what equipment will be used, who will be notified, and a description of where clean up equipment and materials will be located during drilling;

(y) prior to the commencement of construction, Applicants shall make available to Staff a copy of construction standards that conform with 16 NYCRR Part 255.303; these standards shall encompass all phases of construction, including, but not limited to: welding procedure qualifications, welder qualifications, and non-destructive testing procedures;

(z) prior to the commencement of construction, Applicants shall submit to the Secretary an acoustical study performed in accordance with the guidelines provided in the Town of Windsor Code to establish the ambient noise level at the edge of their property;

(a1) prior to the commencement of construction, should circumstances warrant, Applicants may seek to change the pipe diameters below 16-inches by following the change process as outlined in Ordering Clause 1(b) above;

(b1) if single-layer FBE pipe is unavailable, Applicants may use coated steel pipe that meets or exceed the coating requirements specified in 16 NYCRR §255.461; in addition, Applicants shall amend Appendix 7-D reflecting the coating change and shall send it to DPS Gas Safety Section Staff in both Albany and Syracuse;

(c1) if natural stratification of soil horizons or natural soil drainage patterns are altered by construction occurring on lands within or adjoined to agricultural areas, Applicants shall rectify the effects with measures such as subsurface intercept drain lines; selection of the type of intercept drain lines to be installed to prevent surface seeps and the seasonally prolonged saturation of the backfilled trench zone and adjacent areas must be performed by a qualified Agricultural Specialist. All drain lines shall be installed according to the Natural Resource Conservation Service standards and specifications for subsurface drains and shall include the use of Schedule 40 or better outlet pipe and corrugated polyethylene drain that meet or exceed the American Association of State Highway and Transportation Officials M252 standards. Drawings of such drain locations

shall be provided to DPS and Ag&Mkts Field Staff during monitoring and follow-up remediation;

(d1) the Applicants will follow the Departments of Agriculture and Markets' (Ag&Mkts) agricultural protection measures included in the document *Pipeline Right-of-Way Construction Projects; Agricultural Mitigation Through the Stages of Project Planning, Construction/Restoration and Follow-Up Monitoring (Rev 11-97)as well as the EM&CS&Ps and these* measures shall be required for the following parcels: June D. Puskar and Chester H. Davis (parcel 164.0-1-3-cropland) with approximate stations 30+84 to 38+93. This includes the proposed off ROW access road beginning at approximate station 32+67 to the east of the proposed pipeline ROW. The area used for this access should be matted or the topsoil be stripped prior to use; Raymond L. Ousterhout (parcel 164.04-1-9.1-cropland) with approximate station 113+27 to 121+50; David W. Farr (parcel 180.02-1-9.1-cropland/pasture) with approximate stations of 125+19 to 126+77 and 127+33 to 134+13; John and Monika Root (parcel 180.02-1-9.1-cropland) with approximate stations 151+13 to 163+65; and, Mary Beth and Marcella Donlick (parcel 181.01-1-1-pasture) with approximate stations 164+58 to 166+15. Nancy A. Nash (parcel 212.04-1-25-cropland/pasture) with approximate stations 387+77 to 402+37;

(e1) construction on the June D. Puskar and Chester H. Davis parcels between approximate stations 52+93

to 57+94 shall utilize full-width topsoil stripping;

(f1) the Applicants shall temporarily stabilize all disturbed agricultural areas according to measures included in the Ag&Mkts' *Seeding, Fertilizing and Lime Recommendations for Gas Pipeline Rights-of-Way Restoration in Farmland;*

(g1) all construction and restoration in active agricultural fields shall be done when soil moisture conditions are suitable for construction equipment, as determined by DPS Field Staff in consultation with the Staff of Ag&Mkts and Applicants; where wet soil conditions are present, decompaction of the subsoil shall be required using a deep ripper or heavy duty chisel plow and shall be completed when soil conditions have dried sufficiently as determined by the agricultural specialist, in consultation with Ag&Mkts and DPS Field Staff;

(h1) Applicants shall work with farm operators during the planning phases of construction to develop a plan to delay the pasturing of the right-of-way following construction until pasture areas are adequately re-vegetated; Applicants shall be responsible for maintaining the temporary fencing in pasture designated parcels on, and along the right-of-way, until the Agricultural Specialist determines that the vegetation on the right-of-way is established and able to accommodate grazing; at such time, Applicants shall remove the temporary fencing;

(i1) Applicants shall use straw bales to construct erosion control devices on the project;

(j1) Applicants shall use native upland and native wetland vegetation for both temporary stabilization and permanent restoration of the right-of-way;

(k1) stream and wetland crossings shall be subject to the following: exit and entry points shall be distanced from the stream bank so as to minimize disturbance, to the extent practicable; prior to boring, all sediment stabilization measures shall be in place to prevent unnecessary erosion and associated turbidity and sedimentation; no increase in downstream turbidity or sedimentation is permitted; any water accumulated in the isolated work area shall be managed in a manner that prevents a visible contrast in the stream below the work area; prior to boring, all sediment stabilization measures shall be in place to prevent unnecessary erosion and associated turbidity and sedimentation; equipment and provisions of the Frac-Out Contingency Plan shall be readily accessible, for locations where streams are crossed using horizontal directional drilling technology;

(l1) during periods of work activity, flow immediately downstream of the worksite shall equal flow immediately upstream of the worksite;

(m1) there shall be no increase in turbidity downstream of the construction activity that will cause a substantial visual contrast to natural conditions;

(n1) for all crossings, the pre-disturbance flow regime shall be maintained;

(o1) Section 7, “Invasive Species Control” and Section 9, “Inspection and Monitoring” as submitted in the Department of Environmental Conservation’s December 6, 2010 letter are applicable to this project;

(p1) Applicants shall only use biodegradable drilling fluid for all drilling procedures;

(q1) Applicants shall locate boring pits as far from the top of stream banks or wetland edges as possible;

(r1) if any additional stacking or extra work room areas are needed, Applicants must follow the change process as outlined in Ordering Clause 1(b) above and provide evidence of consent of the property owner to occupy that area;

(s1) Applicants shall maintain a minimum depth of ten feet of cover for Trowbridge and Occanum Creek;

(t1) Applicants shall confine clearing and subsequent mechanical treatment of vegetation to the minimum extent necessary for construction, operation and maintenance of the certified facility. During clearing operations, all brush and trees shall be felled into the right-of-way to minimize damage to trees and structures on adjacent land;

(u1) Applicants shall exercise all necessary and reasonable precautions to minimize sedimentation and soil erosion in work areas and on the right-of-way and shall take prompt and effective action to control sedimentation and erosion, in the event it does occur;

(v1) in areas of the right-of-way subject to soil erosion (including stream approaches), Applicants shall install temporary erosion control devices as soon as practicable, but in no event later than the end of the work day;

(w1) where final restoration of the right-of-way cannot be completed due to weather conditions, the right-of-way shall be temporarily stabilized according to the measures included in the Department of Agriculture and Markets' "Seeding, Fertilizing, and Line Recommendation for Gas Pipeline Right-of-Way Restoration in Farmland," the EM&CS&Ps, and the Winter Stabilization Plan until final restoration can be completed;

(x1) Applicants shall seed and mulch the right-of-way no more than five days after final grading;

(y1) the construction and operation plans shall be altered to require that the clearing of trees on the right-of-way between stations 138+15 and 149+69 designated on Sheet No. D09502004NY, Revision M, dated Thursday, September 9, 2010 at 12:44:03 PM (approximately 1,100 feet) be limited to the maximum extent possible during construction and operation. No construction shall commence in this area until the Director of the Office of Energy Efficiency and the Environment, after consultation with the Safety Section of the Office of Electric, Gas and Water, has approved a tree clearing, protection, safety access, and vegetation maintenance plan as being in conformance with the criteria set forth in the body of this Certificate;

(z1) the maximum pressure of the pipelines shall not exceed 1,440 pounds per square inch gauge; Applicants shall design, construct, test, operate and maintain the pipeline in accordance with the provisions of 16 NYCRR Part 255 applicable to steel transmission lines, in addition all downstream piping connected to this pipeline shall also be considered transmission piping and subject to requirements found in 16 NYCRR Part 255 for the operation and maintenance, operation qualifications, integrity management and emergency plans for transmission pipeline; Applicants shall be a member of the one-call notification system in the area where the line is located and comply with the requirements for excavators and operators for the protection of underground facilities set forth in 16 NYCRR Part 753 (Code Rule 53); at least 30 days before construction commences, Applicants shall submit an Appendix 7-D to DPS Gas Safety Section Staff in Albany and Syracuse; Applicants shall notify Dig Safely New York and update their system maps of the addition of this pipeline and the compressor station and associated piping to its system prior to the pipeline in-service date so that they are included in the one call notification system;

(a2) Applicants shall comply with the Integrity Management Requirements as found in 16 NYCRR Part 255;

(b2) prior to the pipeline and compressor station going on-line, Applicants shall submit and amend

their Operation and Maintenance and Emergency Procedures, as required by 16 NYCRR §§ 255.603(b) and 255.615, to reflect the addition of this pipeline, all interconnected pipelines and any or all compressor station operations and maintenance to its system, the procedures shall include site-specific start up and shut down procedures for each compressor (engine); in addition, Applicants shall amend and submit its program for operator qualification, as required by 16 NYCRR §255.604, to include covered tasks and qualifications of personnel related to operations and maintenance of these pipelines and all inter-connected pipelines to Staff from the Office of Electric, Gas, and Water, Safety Section for review sixty days prior to commencement of operations of the pipeline;

(c2) Applicants shall non-destructively test 100 percent of the welds for the pipeline facility;

(d2) at least five days prior to commencement of any welding activities, Applicants shall notify Gas Safety Section Staff of the date, time, and place of any welding procedure qualification or welder qualification tests to be conducted;

(e2) at least 10 days before hydrostatic testing commences Applicants shall provide to DEC and DPS Staff the information concerning the hydrostatic testing of the pipelines, also at least five business days prior to starting the pre-activation strength test, the operator shall notify the Director of the Office of Electric, Gas and Water. In order to maintain continuity

of service during emergencies, shorter notice is permissible;

(f2) at least seven days before hydrostatic testing commences, Applicants shall notify all residents residing within 1,500 feet of the pipeline centerline where hydrostatic testing equipment is located by letter explaining when testing will commence and what they might expect to hear, as well as a Company name and contact telephone number; a copy of the letter shall be provided to the Secretary;

(g2) Applicants shall make available to DPS Gas Safety Section Staff the mill certification corresponding to the steel pipeline being used;

(h2) the access road to the gas compressor station shall be constructed and maintained to allow for easy access for any needed fire-fighting equipment and personnel and there must be enough open space around the main compressor building to allow uninhibited movement of firefighting equipment;

(i2) Applicants shall contact DPS Field Staff after completing construction of the compressor station sites and a visual assessment shall be made to determine if the preliminary planting plan as depicted on the project site plans needs to be adjusted with respect to design, location and/or quantities and any proposed change will be processed in accordance with ordering clause 1(b) above;

(j2) Applicants are required to maintain a log of complaints received relating to noise at the

compressor station that includes name and contact information of the caller, date, time and a summary of the complaint. All complaints unresolved within 30 days shall be reported to the Secretary including a copy of the complaint;

(k2) Applicants are required to seek an amendment of this Certificate before additional or different compressor units are installed at this site;

(l2) all wastewater shall be handled, stored, tested, transported and disposed of in accordance with all applicable State and local laws and regulations; at least five days prior to the operation of the compressor units, Applicants shall provide the Secretary with written procedures which shall include, but are not limited to, the collecting, storing, testing for contaminants and corrosivity, and proper disposal of any excess water obtained from the operation of the pipeline and gas compressor units; Applicants shall keep a copy of the water test reports on file for inspection by DPS Staff;

(m2) prior to the commencement of construction of the compressor station and related buildings, Applicants shall first obtain review and written certification by the Town of Windsor or a public entity recognized by the Department of State as having the requisite training or qualifications that the construction plans for the compressor station are in compliance with the New York State Uniform Fire Prevention and Building Code;

(n2) within 10 days of receiving any written certification as described in “(m2)” above,

Applicants shall file a copy of such certification with the Secretary and shall serve a copy on the Director of the Office of Energy Efficiency and the Environment;

(o2) during construction of the compressor station and related buildings, Applicants shall obtain periodic inspections of the construction work by a public entity recognized by the Department of State as having the requisite training or qualifications to inspect such work for compliance with the New York State Uniform Fire Prevention and Building Code;

(p2) prior to the use or occupancy of the compressor station and related buildings, Applicants shall first obtain written certification by a public entity recognized by the Department of State as having the requisite training or qualifications that the construction was completed in compliance with the New York State Uniform Fire Prevention and Building Code;

(q2) within 10 days of receiving any written certification as described in "(p2)" above, Applicants shall file a copy of such certification with the Secretary and shall serve a copy on the Director of the Office of Energy Efficiency and the Environment;

(r2) Applicants shall seed and mulch the right-of-way no more than five days after final grading;

(s2) within 45 days of the commencement of operations of the compressor station, or such later date as may be specified by the Secretary, Applicants shall submit to the Secretary a report from an

independent acoustical consultant, in sufficient detail for DPS Staff to determine whether Applicants comply with the Town of Windsor Noise Control Code and a maximum noise limit of 40 dBA under no wind conditions at any existing residences; if the study does not show compliance with the Town of Windsor Noise Code and the terms of this order, Applicants shall have 45 days in which to bring sound levels into compliance;

(t2) Applicants shall file as-built drawings with Staff if the pipeline deviates from the centerline of the proposed right-of-way; any proposed change in the location of the proposed right-of-way shall be reported as set forth in Ordering Clause 1(b) above;

(u2) within ten days after the right-of-way is completely restored, Applicants shall so notify the Secretary in writing;

(v2) within ten days after the pipeline is in service, Applicants shall so notify the Secretary in writing;

(w2) within one year after the in-service date of the project, the pipeline right-of-way shall be fully restored;

(x2) Applicants shall promptly notify DPS Staff and the Secretary in writing should they decide not to complete construction of all or any portion of this project and they shall serve a copy of such notice upon all statutory parties; and,

(y2) if construction of the project hereby certified is not commenced within 12 months, this

Certificate may be vacated without further notice.

2. This proceeding is continued, but shall close ten days after the right-of-way has been completely restored, unless the Secretary of the Commission finds good cause to continue the proceeding further.

By the Commission

Jaclyn A. Brilling

Digitally Signed by Secretary
New York Public Service Commission

JACLYN A. BRILLING

Secretary

APPENDIX A

DETAILED DESCRIPTION OF TRANSMISSION FACILITY

Commencing at the New York State/Pennsylvania border the proposed 16–inch diameter pipeline will follow a northerly route 618 feet, then northeast 1,700 feet and cross one diversion ditch and then continue northeast 409 feet and will cross one intermittent drain, two diversion ditches, one wetland and one public road (Blatchley Road). At this point, the proposed pipeline will turn north 1,472 feet and will cross three intermittent drains and two wetlands, then turning northeast 1,944 feet and crossing one intermittent drain and one stream (Trowbridge Creek). The pipeline then turns north 558 feet, then turning northwest 517 feet, and proceeding north 969 feet. At this juncture, the proposed pipeline will travel northwest 1,085 feet and will cross one wetland and one intermittent stream, then turn northeast for a span of 1,431 feet and will cross one intermittent drain, one diversion ditch and one public road (Farr Road). The pipeline will travel east 1,551 feet and will cross two diversion ditches and one public road (Phillips Road), then turn northeast 756 feet and cross one intermittent drain, the pipeline will then move north 390 feet. At this point, the proposed pipeline will head north 1,321 feet and cross one intermittent drain, and then turn northwest 353 feet. At this juncture, the proposed pipeline will travel northeast 1,526 feet and cross one intermittent drain, it will move northwest 1,484 feet and cross one diversion ditch and one public road (John White Road), then turn north for 1,366 feet, and then northeast for 529 feet. The proposed pipeline will travel northwest 608 feet, turn north 918 feet and cross two intermittent streams. It will then proceed northeast 86 feet, then north 231 feet, cross one public road (Bell Road) and one diversion ditch, and then turn northwest for 80 feet. At this

point, the proposed pipeline will travel north 4,471 feet and cross three intermittent streams, turn north 1,245 feet and will cross two intermittent drains, one diversion ditch, one intermittent stream, one wetland, and one public road (Trim Street). At this juncture, the proposed pipeline will travel northwest 179 feet, then north 622 feet and cross two wetlands, one pond, and one intermittent drain. It will then turn north 942 feet, and turn northeast for 623 feet. The proposed pipeline will head northwest 658 feet and cross one intermittent drain, then turn north 2,215 feet and will cross one wetland, one diversion ditch, and one public road (Hoadley Hill Road), and then turn northeast for 740 feet. At this point, the proposed pipeline will turn north 1,375 feet and cross five intermittent drains, then turn northwest 406 feet and cross one intermittent drain and one wetland, then turn north 2,124 feet and cross two diversion ditches, one intermittent stream, and three public roads (Rockwell Road, Fox Farm Road, and State Route 17). It will turn west and proceed 705 feet and will cross one wetland. At this juncture, the proposed pipeline will travel north 1,077 feet and will cross one intermittent drain, then turn northwest 299 feet, and then northeast for a distance of 485 feet. The proposed pipeline will turn north 2,698 feet and cross five intermittent drains and two wetlands, then turn east for 1,503 feet and cross two wetlands, two intermittent drains, and one stream (Occunam Creek), and will then turn northeast for 134 feet. At this point, the proposed pipeline will turn northwest 1,275 feet and cross one wetland and two intermittent drains, then turn east for 125 feet and cross two diversion ditches and one public road (Dunbar Road), then turn northwest for 338 feet crossing one wetland, and then proceed northeast for 168 feet. At this juncture, the proposed pipeline will turn north 1,971 feet and cross one intermittent drain,

then turn northwest 502 feet and will enter the south side of Laser's Compressor Station site. The section of pipeline described above will traverse a distance of 48,594 feet.

Within the compressor station site, Applicants will install 1,500 feet of 16-inch diameter pipeline and 250 feet of 24-inch diameter pipeline for a total pipeline length of 1,750 feet. At this juncture, the proposed 16-inch pipeline will exit the northern side of the compressor station site and will travel north 30 feet, then turn northwest 179 feet, and then continue north 343 feet and will cross one diversion ditch. At this point, the proposed pipeline will turn northwest 550 feet and then north 411 feet and will connect to the Millennium 30-inch diameter gas pipeline. This section of pipeline discussed in this paragraph will traverse a distance of 1,513 feet.

The total length from the proposed pipeline sections is 51,857 feet (9.82 miles).

APPENDIX B

Allees, Edward

Allen, Jeffner
Binghamton University

Allen, Peter

Ambrose, Robert

Arnold, Brian

Avery, Karen

Bagatta, Joanna

Bailey, Walter

Bailey, Phyllis

Balantic, Phil & Deb

Barletta, David

Bellby, Mary Jane

Benkovitz, Tania

Berry, Ed

Besser, Roger

Birdsill, Ken

Black, Wilbur

Bloomer, Joe

Bohunicky, Mark

Bosetti, Michael
Cortland County

Bowman, Joe

Boys-Faust, Kristine

Brainard-Mount, Laurie

Braman, Gary

Brandow, Donald

Brandt, Ronald

Brandt, Ronald

Brink, Robert

Brisson, Paul

Brown, David

Brown, Daniel

Brown, Niles F.

Brundage, Dewitt

Burchesky, steve

Burgess, David

Butler, Trudy

Cannizzo, Anthony

Cargill, Jerrold

Carlson, Harry

Casey, John

Chubb, Bradley

Clapp, Elizabeth

Clark, Christopher

Colasanto, Arzu

Colasanto, Thomas

APPENDIX B

Comings, Bill

Comings, Jody

Conover, Brian

Cooper, Lorin

Corey, Joanne

Costa, Matt

Costigan, Amelia

Creech, John

Czerkies, Gary

DeNinis, Mike & Patty

Denton, Walter

Denu, Maureen

DeStefano, Linda A.

DiSanto, Charles

Dolak, George

Dorsey, Jeff

Dorsey, Susan

Dougherty, Mark

Dougherty, Thomas

Dowd, Gerard & Catherine

Dulkis, Barbara

Ellis, Ann

Farber, Joan C.

Farr, Rebecca

Feehan, Stephen P.

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