

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Application of Bluestone Gas Corporation of New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for the Construction and Operation of a 20" Natural Gas Gathering System and Dehydration and Compression Facilities, in the Town of Sanford, Broome County, and Request for Approval of Environmental Management and Construction Standards and Practices

Case 11-T-0401

Petition of Bluestone Gas Corporation of New York, Inc. for an Order Granting Certificate of Public Convenience and Necessity

Case 12-G-0214

**BLUESTONE GAS CORPORATION OF NEW YORK, INC.'S
REPLY
STATEMENT IN SUPPORT OF THE JOINT PROPOSAL**

Dated: August 31, 2012

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PRELIMINARY STATEMENT

Bluestone Gas Corporation of New York, Inc. (“Bluestone”) hereby submits this Reply to the Statement in Support of the Joint Proposal, filed August 9, 2012 in these proceedings. This Reply Statement responds to the Statement in Opposition filed on behalf of Ms. Elisabetta Iaboni on August 23, 2012 in these proceedings. As described further below, the arguments raised by Ms. Iaboni’s Statement in Opposition have either been fully addressed by the documents already in the record in these proceedings, or provide no basis for the New York State Public Service Commission (“Commission”) to modify or reject the comprehensive Joint Proposal that has been signed by most of the parties to these proceedings.¹ Indeed, Ms. Iaboni is the only Party to these proceedings that has made a filing opposing the Joint Proposal. Therefore, for the reasons set forth herein and in Bluestone’s Statement in Support of the Joint Proposal filed on August 24, 2012, the Commission should adopt the Joint Proposal in its entirety and issue Bluestone the necessary Certificates in order to construct and operate the Bluestone Gathering System (“BGS”).²

¹ The Joint Proposal was signed by Bluestone, Department of Public Service (“DPS”) Staff, the New York State Department of Environmental Conservation (“DEC”), the New York State Department of Agriculture and Markets (“Ag & Mkts”) and the Delaware Highlands Conservancy, Inc. (collectively, the “Signatory Parties”). Bluestone, DPS Staff, NYS DEC and Ag & Mkts filed Statements in Support of the Joint Proposal. DMP New York, Inc./Laser Northeast Gathering Company, L.L.C. also a party in this case, did not sign the Joint Proposal but did not file a statement. Ms. Iaboni was the only Party that filed a Statement in Opposition.

² Specifically, Bluestone is requesting a Certificate of Environmental Compatibility and Public Need (“CECPN”) pursuant to Public Service Law (“PSL”) Article VII and a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to PSL § 68. The BGS is an approximately 9.2 mile natural gas gathering line and metering station located entirely in the Town of Sanford, Broome County, New York.

ARGUMENT

POINT I

BLUESTONE IS AN EXPERIENCED AND FINANCIALLY VIABLE DEVELOPER AND OPERATOR OF ENERGY PROJECTS

In her Statement in Opposition, Ms. Iaboni argues that Bluestone has not provided “satisfactory assurance that it has the financial capabilities to construct, own, and operate this pipeline.” (Iaboni Statement in Opposition at 3). Ms. Iaboni fails to recognize that an applicant under Article VII is not required to provide this information, nor is such information required for the Commission to make the findings required by Section 126 of the PSL. However, while this is not a relevant consideration in determining whether to grant a CECN under Article VII, it is a relevant consideration in determining whether to grant a CPCN under § 68 of the PSL. In that context, contrary to Ms. Iaboni’s claim, Bluestone has provided repeated assurances that it has the financial capability to construct, own and operate the BGS.

Under PSL § 68 an applicant for a CPCN must demonstrate that it is an experienced and financially viable developer and operator of energy projects.³ As explained several times by multiple parties throughout these proceedings, Bluestone is financing the BGS internally through its parent company, DTE Pipeline Company, which is a wholly-owned

³ See, e.g., Case 10-G-0462, *DMP New York, Inc. and Laser Northeast Gathering Company, LLC – Petition for Order Granting a Certificate of Public Convenience and Necessity and Establishing a Lightened Regulatory Regime, Order Granting Certificate Of Public Convenience And Necessity And Providing For Lightened Rate Making Regulation* (February 22, 2011) at 5-7.

subsidiary of DTE Energy Company (“DTE Energy”). In its Statement in Support DPS Staff correctly notes that:

DTE Energy is a publicly traded company listed on the New York Stock Exchange with \$8.5 billion in equity market capitalization (as of June 30, 2011), \$26 billion in assets (as of year-end 2011); in 2011 it had \$8.9 billion in revenues and \$711 million in net income. DTE Pipeline Company’s assets include a 26.25 percent in the Millennium Pipeline, located primarily in New York and a 40 percent interest in the Vector Pipeline that runs between Chicago, Illinois and Ontario, Canada. DTE Energy, through its subsidiaries, also is an experienced developer, builder, owner and operator of natural gas gathering systems having developed built and operated over 840 miles of gathering pipeline providing over 500 MMDth/day (peak) of throughput. (DPS Statement in Support at 12).

The Joint Proposal further demonstrates that Bluestone’s management team is comprised primarily of individuals that have successfully developed other, similar DTE Energy projects (Joint Proposal at 43). In addition, the record in this proceeding demonstrates that Bluestone has entered into a binding, long-term agreement with Southwestern Energy Services (“SES”), an affiliate of Southwestern Energy, to provide gathering and dehydration services for SES’s production currently under development in Susquehanna County, Pennsylvania. SES has committed to Bluestone a minimum of 875 Bcf from approximately 30,000 acres in Susquehanna County, and several wells that will ultimately deliver natural gas to the BGS have already been successfully drilled. (Joint Proposal at 9-10). The financial strength and development experience of DTE Energy, coupled with the contractual commitments from SES, more than demonstrate that Bluestone is an experienced and financially viable developer and operator of energy projects.

Moreover, the Road Use and Crossing Agreement between Bluestone and the Town of Sanford, which is the subject of the Petition filed under § 68 of the PSL in Case 12-G-

0224, requires Bluestone to obtain and deliver to the Town a bond in the amount of \$1,000,000 before starting construction under any town road.⁴ The bond ensures that any damage to town roads will be repaired.

Further, if Bluestone and Ms. Iaboni cannot achieve a negotiated agreement for the property rights needed by Bluestone, and Bluestone is required to proceed under the Eminent Domain Procedure Law (“EDPL”), Ms. Iaboni’s concern about Bluestone’s financial capability is sufficiently addressed by the requirements under EDPL § 402(B)(3)(f). Ms. Iaboni’s Statement in Opposition correctly notes that, if Bluestone is required to obtain any property interests pursuant to the EDPL, Bluestone must include, “in its petition for acquisition, notice that it shall deposit a bond or undertaking with the clerk of the court prior to vesting of title to the real property...in an amount to be fixed by the court....” (EDPL § 402(B)(3)(f)). Thus, Ms. Iaboni’s concern regarding Bluestone’s financial capabilities have been or will be fully addressed by the information in the record and the specific bonding requirements referred to above.

POINT II

BLUESTONE WILL COMPLY WITH ALL RELEVANT PROVISIONS OF THE EDPL

Ms. Iaboni next asserts that the Joint Proposal incorrectly states the requirements of the EDPL and that the Commission should require Bluestone to comply with the EDPL. (Iaboni Statement in Opposition at 4). The assertion that the Joint Proposal incorrectly states the requirements of the EDPL is simply wrong. Moreover, the Joint Proposal explicitly requires Bluestone to comply with the EDPL should condemnation become necessary.

⁴ Case 12-G-0214 – Petition of Bluestone Gas Corporation of New York, Inc. for an Order Granting Certificate of Public Convenience and Necessity and Establishing a Lightened Regulatory Regime, Petition (filed May 10, 2012) at Exh. B, pp. 5-6.

Appendix C of the Joint Proposal includes proposed Certificate Conditions that, if adopted by the Commission, will govern the construction and operation of the BGS. Paragraph 1(q) of Appendix C discusses Bluestone's obligation to file, at least five days prior to commencement of construction, all landowner easement agreements or other documents evidencing the right to access such property. Recognizing that the use of eminent domain may be necessary, paragraph 1(q) further provides that "[f]or property that will be acquired pursuant to the Eminent Domain Procedure Law, Bluestone shall file with the Secretary proof that it has filed a Notice of Pendency and a Petition pursuant to New York Eminent Domain Procedure Law § 402 at least 5 days before the commencement of construction." In addition, paragraph 116 of the Joint Proposal states: "Bluestone agrees that it is prohibited by law from commencing construction of the BGS on any parcel of property if it has not obtained the necessary property rights for such parcel of property."

Paragraph 1(q) sets forth a condition that Bluestone must meet before commencing construction of the BGS on any property. This proposed condition does not, and is not intended to, provide Bluestone with the property rights required to commence construction on any individual parcel. Paragraph 116 of the Joint Proposal acknowledges that Bluestone must obtain the necessary property rights to commence construction on any individual parcel.

Thus, once Bluestone makes the showing required by paragraph 1(q) Bluestone would be authorized to commence construction only on those parcels to which Bluestone has obtained the appropriate property rights. Bluestone recognizes that it cannot commence construction on a parcel until Bluestone obtains property rights, and Bluestone recognizes that the Commission approvals sought in these proceedings will not provide Bluestone with any needed property rights.

Contrary to Ms. Iaboni's Statement in Opposition, the term "necessary property rights" is not vague and paragraph 116 clearly imposes an obligation on Bluestone to comply with all relevant EDPL provisions prior to commencing construction on a parcel if the use of eminent domain is required in order to secure the necessary property rights. For these reasons, Ms. Iaboni's concerns about compliance with the EDPL have been fully addressed by the Joint Proposal and the proposed Certificate Conditions.

POINT III

THE COMMISSION SHOULD REJECT MS. IABONI'S CONTENTION THAT BLUESTONE SHOULD RE-ROUTE THE BGS

In her Statement in Opposition, Ms. Iaboni claims that Bluestone does not need to route the BGS through her property or does not need her property to the extent claimed (Iaboni Statement in Opposition at 5). This argument should be rejected for a number of reasons. First and foremost, Ms. Iaboni provides no basis for this request other than simply stating that the BGS should be re-routed. That is not a sufficient basis for the Commission to change the route of a pipeline that the applicant, DPS, DEC and Ag & Mkts have determined to be an appropriate route.

Furthermore, there is no basis in Article VII for Ms. Iaboni's request to re-route the BGS off her property. Bluestone's original application requested a CECN pursuant to PSL § 121-a(3), which required Bluestone to submit an application containing: (1) the location of the site or the right-of-way; (2) a description of the facility to be built; (3) a statement explaining the need for the facility; (4) a description of the ecosystem, land use, visual and cultural resources which would be affected by the line; (5) an indication of the approved environmental

management and construction standards and practices that will be followed in an effort to minimize or avoid adverse environmental impacts to the maximum extent practicable; and (6) such other information as the Commission deems necessary.

Bluestone selected its proposed route in close consultation with DPS Staff. PSL § 121-a(3) expressly exempts applicants seeking to construct a natural gas transmission line less than 10 miles, such as Bluestone, from providing a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility. (*See* PSL § 121-a(3)(a)).

In making its determination on an application filed pursuant to PSL § 121-a(3), the Commission must make the following determinations under PSL § 126: (a) the basis of need for the BGS; (b) the nature of the probable environmental impact; (c) that the location of the BGS will not pose an undue hazard to persons or property along the area traversed by the line; (d) that the location of the BGS as proposed conforms to applicable state and local laws and regulations; and (e) that the BGS will serve the public interest, convenience, and necessity. (*See* PSL § 121-a(7)). In the Joint Proposal (and in the Statements in Support filed by DPS Staff, the DEC and Ag & Mkts) the Signatory Parties fully explained how the BGS as proposed satisfies all of the statutory findings that the Commission is required to make in order to grant Bluestone a CECPN and CPCN. The Commission should therefore reject Ms. Iaboni's request to alter the BGS's proposed route for this reason also.

If the Commission decides to consider Ms. Iaboni's request to re-route the BGS off her property even though she offered no basis for her request and even though Bluestone is not required to describe alternative locations nor explain the reasons why the primary proposed

location is best suited for the facility, the Commission nevertheless should reject this argument because the record shows that the proposed route is appropriate. As Ms. Iaboni notes, Bluestone modified the proposed route during this proceeding. Bluestone decided to change its originally-proposed route and utilize an additional 1,190 linear feet of Ms. Iaboni's property because, following close consultation with DPS Staff, Bluestone determined that her property is better suited to the construction and operation of the BGS than the originally-proposed location. As can be seen on page 11 of Exhibit F to Bluestone's Article VII Application, the original route traversed property that contained several buildings and structures in close proximity to each other, including one building that would have been only 39 feet from the proposed right-of-way. The current route completely avoids these structures. In addition, as further shown in Exhibit F, the current route avoids three invasive species areas that would have been traversed by the original route. Thus, for the reasons stated herein, Ms. Iaboni's request that the BGS be re-routed off of her property should be rejected.

POINT IV

MS. IABONI'S PROPERTY VALUE CONCERNS HAVE BEEN OR WILL BE PROPERLY ADDRESSED ELSEWHERE

Ms. Iaboni's Statement in Opposition raises concerns about the BGS's potential impacts to mineral deposits, such as bluestone and/or shale gas, located on and under her property and the property of other property owners on or adjacent to the proposed right of way. (Iaboni Statement in Opposition at 5). This concern should not serve as a basis for rejecting or modifying the Joint Proposal because this concern involves property values, and such valuation

concerns are not properly before the Commission in an Article VII proceeding⁵ but, rather, are more properly addressed through negotiation with individual landowners or through the process set forth in the EDPL.

To the extent Bluestone already has agreements or commitments with other property owners, those property owners have already been or will be compensated for the potential disturbances to their property. Ms. Iaboni has no basis to question transactions negotiated by Bluestone at arm's length with other landowners nor has Ms. Iaboni provided any evidence that she or her attorneys are authorized to speak for or represent the interests of any other landowners.

Moreover, as noted in the Joint Proposal, the environmental impacts from the BGS will be minimal and are substantially limited to temporary, construction-related disturbance and inconvenience. (Joint Proposal at 11). Bluestone has also agreed to several construction-related measures and guidelines in an effort to minimize adverse impacts to all property owners on or adjacent to the proposed right of way including, among other things, the generic Environmental Management & Construction Standards & Practices approved by the Commission in Case 06-T-1383, a Blasting Plan, an Invasive Species Management Plan, and a Stormwater Pollution Prevention Plan as well as measures such as eliminating proposed temporary construction workspace in two separate areas along the proposed ROW resulting in the BGS avoiding unnecessary impacts to two water bodies, and specific construction techniques in four locations along the proposed right of way where steep slopes are present that will minimize the time that open trenches are present on steep slopes, thereby reducing the

⁵ The findings that the Commission must make in order to issue a CEPCN under PSL § 121-a(7) and PSL § 126 do not include the valuation issues raised by Ms. Iaboni.

amount of soil erosion that typically results from constructing on steep slopes. (Bluestone Statement in Support at 15.)

Further, Ms. Iaboni has not presented any evidence that the BGS will adversely impact any mineral deposits on her property. If Bluestone and Ms. Iaboni cannot reach a negotiated agreement regarding the value of her land, Bluestone will seek to acquire the necessary property rights pursuant to the EDPL, which provides Ms. Iaboni with ample opportunity to present expert evidence to a court on the value of the portion of her land that is needed for the BGS. (*See* EDPL Article 5).

Finally, Bluestone disagrees with Ms. Iaboni's contention that the BGS will negatively impact the value of gas or shale deposits, if any, on her property. As noted in Bluestone's Article VII Application, approximately 20,000 acres of land within five miles of the BGS have been leased by natural gas producers. (Article VII Application at § 2.1). If New York State permits hydraulic fracturing of wells, this entire 20,000 acre area can be served by the BGS. (*Id.*). The BGS will provide producers in New York State with infrastructure that has the ability to expand to meet their needs, thereby increasing the probability that producers will produce natural gas from nearby wells, in turn increasing the value of gas or shale deposits of property owners such as Ms. Iaboni that are located in close proximity to the BGS.

CONCLUSION

For all the reasons set forth herein and in the Statements in Support filed by Bluestone, DPS Staff, DEC and Ag & Mkts, the terms and conditions of the Joint Proposal are fair, reasonable, and consistent with the requirements of Article VII, PSL § 68 and the Commission's Settlement Guidelines. The record in these proceedings establishes that the Commission should issue a Certificate of Environmental Compatibility and Public Need and a Certificate of Public Convenience and Necessity. Bluestone therefore respectfully urges the Commission to adopt the Joint Proposal without modification and to issue the Article VII Certificate on or before September 13, 2012.

Dated: August 31, 2012
Albany, New York

Respectfully submitted,

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