

July 6, 2015

VIA HAND DELIVERY

Attorney Melanie Bachman
Acting Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: Algonquin Gas Transmission, LLC – Atlantic Bridge Project

Dear Attorney Bachman:

As has been recognized by the Connecticut Siting Council, FERC has exclusive jurisdiction over interstate natural gas pipelines. Accordingly, enclosed please find the original and fifteen (15) copies of Algonquin's Petition for a Declaratory Ruling of no jurisdiction over the Atlantic Bridge Project facilities. In addition, I enclose a check in the amount of \$625.00 payable to the Treasurer, State of Connecticut, representing the filing fee.

Despite the absence of the Council's jurisdiction, Algonquin intends to keep the Council apprised of its federal and state filings for the proposed work in Connecticut. Algonquin encourages the Council to intervene at FERC and to provide any comments it deems appropriate concerning the Atlantic Bridge Project. Algonquin will certainly participate in a presentation to the Council or provide additional information should the Council wish to receive such information for the purpose of formulating its comments to FERC.

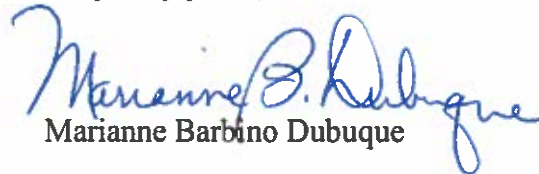
Please note that Algonquin has conducted outreach to federal, state and local governmental officials, including the chief elected officials of the municipalities affected by the Atlantic Bridge Project. A list of the Connecticut contacts is attached to this letter as Attachment A. Furthermore, Algonquin has held five (5) open houses in Connecticut. A list of the open houses is attached as Attachment B. Affected landowners were notified of the open houses and will receive notice of the FERC process.

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Please call me if you have any questions.

Very truly yours,


Marianne Barbino Dubuque

MBD/mkw

Enclosures

cc: Thomas L. Stanton, Jr., Esq.



Attachment A
Atlantic Bridge Public Officials List - CT

Name	Title	Company	Address	City, State, Zip Code
George Jepsen	Attorney General	State of Connecticut	55 Elm Street	Hamford, CT 06106
Katherine Massachusetts	Associate Attorney General	State of Connecticut	55 Elm Street	Hamford, CT 06106
Joseph Rubin	Associate Attorney General	State of Connecticut	55 Elm Street	Hamford, CT 06106
Matthew Levine	Assistant Attorney General	State of Connecticut	55 Elm Street	Hamford, CT 06106
Robert Srook	Assistant Attorney General	State of Connecticut	55 Elm Street	Hamford, CT 06106
Robert Clark	Special Counsel to the Attorney General	State of Connecticut	55 Elm Street	Hamford, CT 06106
Robert Klee	Commissioner	Connecticut DEEP	79 Elm Street	Hamford, CT 06106
Jessie Stratton	Policy Development Director to Commissioner Klee	Connecticut DEEP	79 Elm Street	Hamford, CT 06106
Michael Caron	Commissioner	CT Public Utilities Regulatory Authority	Ten Franklin Square	New Britain, CT 06051
Arthur House	Chairman	CT Public Utilities Regulatory Authority	Ten Franklin Square	New Britain, CT 06051
John Belkosi III	Vice Chairman	CT Public Utilities Regulatory Authority	Ten Franklin Square	New Britain, CT 06051
Erin Swanson Katz	Consumer Counsel	CT Office of the Consumer Counsel	10 Franklin Square	New Britain, CT 06051
Joseph Rosenthal	Principal Attorney	CT Office of the Consumer Counsel	10 Franklin Square	New Britain, CT 06051
Richard E. Sobhenski	Supervisor of Utility Financial Analysis	CT Office of the Consumer Counsel	10 Franklin Square	New Britain, CT 06051
Paul Mouras Jr.	Director, Government Relations	Office of Governor Dannel P. Malloy	300 Capitol Avenue, Room 416	Hamford, CT 06106
Liz Donohue	Policy Director	Office of Governor Dannel P. Malloy	300 Capitol Avenue, Room 416	Hamford, CT 06106
Kenny Curran	State Director	Office of U.S. Senator Chris Murphy	One Constitution Plaza, 7th Floor	Hamford, CT 06103
Dan Lynch	District Director	Office of Congressman John Larson	221 Main Street, Second Floor	Hamford, CT 06106
Alynd Grant	District Aide	Office of Congressman Joe Courtney	55 Main Street, Suite 250	Norwich, CT 06360
Samantha Pignon	District Aide	Office of Congressional Elizabeth Eszy	114 West Main Street	New Britain, CT 06051
Stephanie Podewell	Director of District Operations	Office of Congressman Elizabeth Eszy	114 West Main St., Suite 206	New Britain, CT 06051
Rich Kehoe	State Director	Office of U.S. Senator Richard Blumenthal	90 State House Square, 10th Floor	Hamford, CT 06103
Matthew LeBeau	Research Aide	Office of U.S. Senator Richard Blumenthal	90 State House Square, 10th Floor	Hamford, CT 06103
Senator Robert Duff	Senate Majority Leader	Legislative Office Building Room 3300	300 Capitol Avenue	Hamford, CT 06106
Representative Lonnis Reed	Chair, Energy & Technology Committee	Legislative Office Building Room 3900	300 Capitol Avenue	Hamford, CT 06106
Senator Paul Doyle	Chair, Energy & Technology Committee	Legislative Office Building Room 3900	300 Capitol Avenue	Hamford, CT 06106
Senator Tim Larson	Vice Chair, Energy & Technology Committee	Legislative Office Building Room 3300	300 Capitol Avenue	Hamford, CT 06106
Senator Paul Fomica	Ranking Member, Energy & Technology Committee	Legislative Office Building Room 3900	300 Capitol Avenue	Hamford, CT 06106
Representative Tim Ackerl	Ranking Member, Energy & Technology Committee	Legislative Office Building Room 3900	300 Capitol Avenue	Hamford, CT 06106
Dave Skulber	Policy Aide, Senate Democrats	Legislative Office Building Room 4000	300 Capitol Avenue	Hamford, CT 06106
Jesse Hubbard	Policy Aide, House Democratic Caucus	Legislative Office Building Room 3400	300 Capitol Avenue	Hamford, CT 06106
Jason Stark	Policy Advisor, Senate Republican Caucus	Legislative Office Building Room 3400	300 Capitol Avenue	Hamford, CT 06106
Chris Zwegman	Policy Aide, Senate Republican Caucus	Legislative Office Building Room 3400	300 Capitol Avenue	Hamford, CT 06106
Ryan Wolfe	House Republican Caucus	Legislative Office Building Room 4200	300 Capitol Avenue	Hamford, CT 06106
William H. Rose IV	First Selectman	Town of Chaplin	495 Phoenixville Road	Chapin, CT 06235
John A. Smith	Selectman	Town of Chaplin	495 Phoenixville Road	Chapin, CT 06235
Irene J. Schein	Selectman	Town of Chaplin	495 Phoenixville Road	Chapin, CT 06235
Deb Hitchey	Mayor, City of Norwich	Norwich City Hall	100 Broadway, Rm. 330	Norwich, CT 06360
John Bida	Acting City Manager, City of Norwich	Norwich City Hall	100 Broadway, Rm. 219	Norwich, CT 06360
John F. Bada, P.E.	General Manager	Norwich Public Utilities	173 N. Main Street	Norwich, CT 06360
Mark D. Bourghon	Mayor	City of Danbury	155 Deer Hill Avenue	Danbury, CT 06810
F. and Khouri	City Engineer	City of Danbury	155 Deer Hill Avenue	Danbury, CT 06810
David Day	Public Utilities Superintendent	City of Danbury	Meridown Road	Danbury, CT 06810
Timothy Nelan	PU Foreman of Maintenance, Transmission & Distribution	City of Danbury	Meridown Road	Danbury, CT 06810
George R. Temple	First Selectman	Town of Oxford	Town Hall, 486 Oxford Road	Oxford, CT 06478

Andrew McGeever	Economic Development Director	Town of Oxford	Town Hall, 496 Oxford Road	Oxford, CT 06478
Michael Melachuk	State Senator	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Dan Carter	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
David Arconti	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Jamies Gaylor	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Robert Godfrey	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Richard Smith	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Douglas Dubitsky	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Catherine Osten	State Senator	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Erinnett Riley	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Kevin Ryan	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Antonio Guerrero	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
Robert Kane	State Senator	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105
David Lathia	State Representative	Legislative Office Building	300 Capitol Avenue	Hartford, CT 06105

Attachment B

OPEN HOUSE MEETINGS – Atlantic Bridge	<u>Approximate Number of Landowners Invited</u>
DANBURY, CONNECTICUT <i>March 2, 2015</i> 5:30 PM - 7:30 PM Crowne Plaza 18 Old Ridgebury Road Danbury, CT 06810	373
NORWICH, CONNECTICUT <i>March 4, 2015</i> 5:30 PM – 7:30 PM Norwich Holiday Inn 10 Laura Blvd Norwich, CT 06360	124
SOUTHBURY, CONNECTICUT <i>March 5, 2015</i> 5:30 PM - 7:30 PM (for the Oxford Compressor Station) Crowne Plaza 1284 Strongtown Road Middlebury, CT 06762	91
GLASTONBURY, CONNECTICUT <i>March 9, 2015</i> 5:30 PM - 7:30 PM Glastonbury Riverfront Community Center, Community Room B 300 Welles Street Glastonbury, CT 06033	168
CHAPLIN, CONNECTICUT <i>March 10, 2015</i> 5:30 PM - 7:30 PM Chaplin Senior Center 132 Chaplin Street Chaplin, CT 06235	49

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

ALGONQUIN GAS TRANSMISSION, LLC : PETITION NO. _____
PETITION FOR A DECLARATORY RULING :
REGARDING THE JURISDICTION OF THE :
CONNECTICUT SITING COUNCIL OVER THE :
CONSTRUCTION OF PIPELINE FACILITIES :
IN DANBURY, CONNECTICUT, COMPRESSOR :
STATION MODIFICATIONS IN OXFORD AND :
CHAPLIN, CONNECTICUT, MODIFICATIONS :
TO AN EXISTING METERING STATION IN :
THE CITY OF DANBURY, AND :
CONSTRUCTION OF A NEW METERING :
STATION IN THE CITY OF NORWICH : JULY 6, 2015

**PETITION FOR A DECLARATORY RULING
OF ALGONQUIN GAS TRANSMISSION, LLC**

I. INTRODUCTION

Pursuant to Conn. Gen. Stat. §§ 4-176(a) and 16-50k(d) and Conn. Agencies Regs. § 16-50j-38 *et seq.*, Algonquin Gas Transmission, LLC (“Algonquin”) hereby petitions the Connecticut Siting Council (the “Council”) for a declaratory ruling that it does not have jurisdiction over the installation or replacement of pipelines in the City of Danbury, Connecticut, compressor station modifications in Oxford and Chaplin, Connecticut, modifications to an existing metering station in the City of Danbury, and construction of a new metering station in the City of Norwich, which will replace an existing metering station in Norwich, all as part of the Atlantic Bridge Project (“Atlantic Bridge” or the “Project”). As demonstrated below, under the Natural Gas Act (“NGA”), 15 U.S.C. § 717 *et seq.*; and the Natural Gas Pipeline Safety Act, 49 U.S.C. §1671 *et seq.*, the Federal Energy Regulatory Commission (“FERC” or “Commission”) has “exclusive jurisdiction” over the Project, except with respect to the safety of the Project

facilities, which is within the exclusive jurisdiction of the Federal Department of Transportation. Therefore, under Conn. Gen. Stat. § 16-50k(d), the Council has no jurisdiction over the Project.¹

Notwithstanding this exclusive federal jurisdiction, subsequent to the Council's action on this petition for a declaratory ruling, Algonquin proposes to file with the Council detailed information regarding the Project to provide the Council with the opportunity to provide recommendations to FERC and Algonquin regarding siting, environmental mitigation measures, and construction procedures.

II. BACKGROUND

Algonquin is engaged in the business of transporting natural gas in interstate commerce under certificates of public convenience and necessity ("CPCNs") issued by FERC pursuant to Section 7 of the NGA, 15 U.S.C. § 717f. Algonquin maintains and operates interstate natural gas pipelines throughout the Mid-Atlantic and Southern New England regions.

The Project is designed to provide increased natural gas supplies and enhanced system reliability to Algonquin's natural gas customers, as well as customers of Algonquin's affiliated pipeline, Maritimes & Northeast Pipeline Company, L.L.C. ("Maritimes"). As part of Atlantic Bridge, Algonquin plans to install new pipelines or to replace existing pipelines and to construct modifications to existing compressor and meter stations in New York, Connecticut and Massachusetts. In Connecticut, Algonquin intends to replace pipelines in Danbury, Connecticut. Algonquin also intends to install a new compressor at its existing compressor stations in Oxford and Chaplin and replace two (2) compressors at Chaplin, as well as perform related

¹ Under Conn. Gen. Stat. § 16-50k(d), the Public Utility Environmental Standards Act ("PUESA"), chapter 277a of the Connecticut General Statutes "shall not apply to any matter over which any agency, department or instrumentality of the federal government has exclusive jurisdiction, or has jurisdiction concurrent with that of the state and has exercised such jurisdiction, to the exclusion of regulation of such matter by the state."

modifications at its existing metering station in Danbury and construct a new metering station in Norwich, to replace an existing metering station in Norwich.

By letter order dated February 20, 2015, Algonquin and Maritimes were granted approval by FERC to utilize FERC's Pre-Filing Review Process for the Atlantic Bridge Project with facilities proposed in New York, Connecticut, and Massachusetts. The Project was assigned FERC Docket No. PF15-12-000.

III. PRIOR COUNCIL DETERMINATIONS

Significantly, the Council has repeatedly acknowledged that FERC has exclusive jurisdiction over facilities used for the transportation of natural gas in interstate commerce and that its own role is wholly advisory.

For example, in its *Decision and Order* on the Iroquois Brookfield Compressor Station and Brookfield Additions, the Council wrote that:

The Connecticut Siting Council (Council) does not have jurisdiction to rule whether or not there is a need for the proposed projects (Petitions 540 & 555). The projects are under the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC). The FERC encourages the applicants to cooperate with agencies, such as the Council, regarding the siting of pipeline facilities, environmental mitigation, and construction procedures. The FERC alone will decide whether there is a need for the proposed projects, and whether this project or another one can best provide that service.

Petition Nos. 540 and 555, *Decision and Order* (Sept. 25, 2002). Similarly, as then-Chairman Gelston stated in his opening remarks during those proceedings:

The Siting Council does not have jurisdiction to rule whether or not there is a need for this project. The project is in the exclusive jurisdiction of the Federal Energy Regulatory Commission, known as FERC. FERC encourages the applicants to cooperate with agencies, such as the Council, regarding the siting of pipeline facilities, environmental mitigation, and construction procedures. FERC alone will decide whether there is a need for the proposed compressor station and whether this project or another one can best provide that service. FERC has not asked for us to review these issues.

Also, the Council is not the decision-making authority in matters involving safety of gas pipelines. Matters involving pipeline safety issues are under the jurisdiction of the United States Department of Transportation Office of Pipeline Safety. Therefore, the comments that will be most helpful to us in doing the work that the FERC has left us to do would concern the likely environmental effects of the proposed facilities and how they might be mitigated.

Docket Nos. 540 and 555, Hearing Transcript, at 5 (Sept. 4, 2002).

Likewise, as the Council found in Docket No. 221:

The Federal Energy Regulatory Commission (FERC) has exclusive jurisdiction for the siting of interstate natural gas transmission facilities including the route selected, the determination of public need, and the mitigation of environmental impacts. The United States Department of Transportation (U.S. DOT) has exclusive jurisdiction over the regulation of the safety of interstate natural gas transmission facilities including the safety aspects of their design, construction, and maintenance. The FERC has encouraged applicants before it to cooperate with agencies, such as the Council, with regard to the siting of pipeline facilities, environmental mitigation measures, and construction procedures.

Docket No. 221, *Findings of Fact*, at ¶ 2 (Aug. 1, 2002). See also Docket No. 221, Letter from Pamela B. Katz, P.E., to Anthony M. Fitzgerald (May 29, 2003).²

More recently, on October 31, 2013, in Petition No. 1072, the Council granted a similar Petition for a Declaratory Ruling for the Algonquin Incremental Market Project, known as the AIM Project.

As demonstrated below, the Council's recognition of FERC's exclusive jurisdiction over interstate natural gas facilities, and the Council's lack of jurisdiction over such facilities, is wholly consistent with federal court and FERC precedent.

² "[T]he Council sought to make clear its understanding that approval authority for such interstate natural gas transmission projects exists at the federal level, specifically with the FERC, and that the role of the Council is to aid in the approval and siting process by providing meaningful input and recommendations on behalf of the citizens of Connecticut." Docket No. 221, Letter from Pamela B. Katz, P.E., to Anthony M. Fitzgerald (May 29, 2003). See also Docket No. 221, *Opinion*, at 1 (Aug. 1, 2002) ("Although the FERC has exclusive jurisdiction for the siting of interstate natural gas transmission facilities including the route selected, the determination of public need, and the mitigation of environmental impacts, the FERC has encouraged applicants before it to cooperate with agencies, such as the Council, with regard to the siting of pipeline facilities, environmental mitigation measures, and construction procedures."); Docket No. 221, Memorandum from S. Derek Phelps to Council Members (Jan. 31, 2002) (discussing FERC's exclusive jurisdiction over the Islander East Pipeline).

IV. COMMUNICATIONS

Communications regarding this Petition should be directed to the following:

Thomas L. Stanton, Jr.
Associate General Counsel
Spectra Energy Corp
Waltham Woods Corporate Center
890 Winter Street, Suite 300
Waltham, MA 02451
(617) 560-1378
Fax: (617) 560-1587
E-mail: TLStanton@spectraenergy.com

Marianne Barbino Dubuque
Carmody Torrance Sandak & Hennessey LLP
50 Leavenworth Street
P.O. Box 1110
Waterbury, CT 06721-1110
(203) 578-4218
Fax: (203) 575-2600
E-mail: mdubuque@carmodylaw.com

V. DISCUSSION

A. A COMPREHENSIVE FEDERAL REGULATORY SCHEME PREEMPTS ANY STATE REGULATION OF INTERSTATE NATURAL GAS TRANSPORTATION FACILITIES

1. The NGA

Section 1(b) of the NGA, 15 U.S.C. § 717(b), grants FERC jurisdiction over: (1) the “transportation of natural gas in interstate commerce,” (2) the “sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use,” and (3) “natural-gas companies engaged in such transportation or sale.” A “natural-gas company” is a “person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.” 15 U.S.C. § 717a(6).

Section 7 of the NGA provides that a natural-gas company must obtain a CPCN from FERC before it constructs, extends, acquires or operates any facility for the transportation or sale of natural gas in interstate commerce.

No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of facilities therefor ... unless there is in force with respect to such natural-gas company a

certificate of public convenience and necessity issued by the Commission authorizing such acts or operations

15 U.S.C. § 717f(c)(1)(A). FERC will only issue such a CPCN where it finds that:

the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

15 U.S.C. § 717f(e). Acting under the NGA, FERC has promulgated detailed regulations setting forth application requirements for such CPCNs. *See* 18 C.F.R. Parts 157 and 380.

The Supremacy Clause of the U.S. Constitution provides that “the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

U.S. Const. art. VI, cl. 2. Under the Supremacy Clause, federal law preempts state law where:

(i) Congress expressly intended to preempt state law; (ii) there is an actual conflict between federal and state law; (iii) compliance with both federal and state law is impossible; (iv) there is an implicit federal barrier to state regulation; (v) *Congress has “occupied the field” of the regulation*, leaving no room for a state to supplement the federal law; or (vi) the state statute forms an obstacle to the realization of Congressional objectives.

National Fuel Gas Supply Corp. v. Public Service Comm’n of N.Y., 894 F.2d 571, 575 (2nd Cir. 1990) (internal citations omitted) (emphasis added), *cert. denied*, 497 U.S. 1004 (1990) (“*National Fuel*”). *See also Northern Natural Gas Co. v. Iowa Utilities Board*, 377 F.3d 817, 820-24 (8th Cir. 2004) (“*Northern Natural Gas*”) (discussing *National Fuel* and the NGA’s complete occupation of the field of regulation).

Since the NGA’s passage in 1938, the U.S. Supreme Court has repeatedly held that the NGA preempts state regulation over the interstate transportation and sale of natural gas. *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 314 U.S. 498, 506-08 (1942); *Federal*

Power Comm'n v. Panhandle Eastern Pipeline Co., 337 U.S. 498, 503 (1949); *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 89-91 (1963). “[It] is now well settled: Congress *occupied the field* of matters relating to wholesale sales and transportation of natural gas in interstate commerce.” *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 305 (1988) (emphasis added) (“*Schneidewind*”). Thus, “[t]he NGA confers upon FERC *exclusive jurisdiction* over the transportation and sale of natural gas in interstate commerce for resale.” *Id.* at 300-01 (emphasis added). Regulations promulgated by FERC pursuant to its delegated authority under the NGA also preempt state law. *National Fuel*, 894 F.2d at 576.

2. The Natural Gas Pipeline Safety Act (“NGPSA”)

In 1968, Congress enacted the NGPSA, 49 U.S.C. § 60101 *et seq.* Section 2 of this act requires the Secretary of Transportation to adopt federal safety standards for pipeline facilities and the transportation of natural gas. Section 3(a) of the act explicitly prohibits state agencies from adopting or continuing in force, after federal safety standards become effective, “any such standards applicable to interstate transmission facilities.” *Id.*, § 49 U.S.C. § 60104(c). This prohibition has been uniformly recognized by the courts. *National Fuel*, 894 F.2d at 577; *ANR Pipeline Co. v. Iowa State Commerce Comm'n*, 828 F.2d 465 (8th Cir. 1987) (Congress intended to preclude states from regulating “in any manner whatsoever” the safety of interstate gas pipelines and therefore Iowa safety standards were preempted by Natural Gas Pipeline Safety Act); *Natural Gas Pipeline Co. v. Railroad Comm'n of Texas*, 679 F.2d 51 (5th Cir. 1982) (safety regulations promulgated pursuant to Natural Gas Pipeline Safety Act preempt state and local regulation of safety issues); *Northern Border Pipeline Co. v. Jackson County*, 513 F. Supp. 1261 (D. Minn. 1981) (zoning requirement regarding depth of burial of pipeline preempted by federal safety regulation); *United Gas Pipeline Co. v. Terrebone Parish Police Jury*, 319 F. Supp. 1138

(D. La. 1970), *aff'd*, 115 F.2d 301 (5th Cir. 1971) (“Congress by completely preempting this area of interstate pipeline safety has specifically prohibited the states from doing anything in this regard”).

Accordingly, this comprehensive federal regulatory scheme governs every aspect of the transportation and sale of natural gas in interstate commerce, preempting state regulation of such matters as the prices at which natural gas may be sold in interstate commerce, whether interstate natural gas pipelines may be constructed or modified, where such pipelines may be located, and the methods of construction and applicable safety standards for such pipelines.

3. Because PUESA would regulate the facilities of natural gas companies subject to exclusive federal jurisdiction, PUESA does not apply to the Project.

Absent Conn. Gen. Stat. § 16-50k(d), PUESA would on its face regulate the facilities of natural gas companies used in transportation of natural gas in interstate commerce. As a “fuel transmission facility” with a design capability of at least two hundred pounds per square inch gauge pressure, the Project is a “facility” under PUESA. Conn. Gen. Stat. § 16-50i(a)(2).

PUESA requires that any facility obtain a “certificate of environmental compatibility and public need” from the Council. Conn. Gen. Stat. § 16-50k(a). Under PUESA:

no person shall ... commence the preparation of the site for, or commence the construction or supplying of a facility, or commence any modification of a facility, that may, as determined by the [C]ouncil, have a substantial adverse environmental effect in the state without having first obtained a certificate of environmental compatibility and public need ... issued with respect to such facility or modification by the [C]ouncil....

Id.

However, PUESA by its own terms does not apply to Algonquin’s Project because Conn. Gen. Stat. § 16-50k(d) expressly states that “[t]his chapter [277a of the Connecticut General Statutes] shall not apply to any matter over which any agency, department or instrumentality of

the federal government has exclusive jurisdiction, or has jurisdiction concurrent with that of the state and has exercised such jurisdiction, to the exclusion of regulation of such matter by the state.”

In *National Fuel*, a case directly on point, the Second Circuit held that a New York statute analogous to PUESA, which required that an interstate pipeline apply for and obtain a “certificate of environmental compatibility and public need” from the New York State Public Service Commission (“PSC”), was preempted by the NGA because the NGA explicitly vests exclusive jurisdiction in FERC to regulate such facilities, 894 F.2d at 579, and because Congress had so occupied the field of regulation of such facilities by enactment of the NGA that there was no room for the states to regulate, *id.* at 577. Given FERC’s “exclusive authority over the ‘rates and facilities’ of interstate gas pipelines,” *id.* at 576 (emphasis in original), “[t]he matters sought to be regulated by the PSC were directly considered by the FERC . . . [and] such direct consideration is more than enough to preempt state regulation,” *id.* at 579. See Conn. Gen. Stat. § 16-50k(d).

A comparison of the PUESA and the FERC regime under the NGA demonstrates that Congress has fully occupied the field that PUESA would regulate. As would Article VII of the New York Public Service Law, PUESA would regulate matters within FERC’s exclusive jurisdiction as they apply to Algonquin’s Project. Pursuant to the PUESA, the Council shall not grant a certificate of environmental compatibility and public need unless it finds and determines a “public need for the facility and the basis for the need.” Conn. Gen. Stat. § 16-50p(a)(3)(A).

Similarly, FERC will only issue a CPCN where it finds that:

the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the [FERC] thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to

the extent authorized by the certificate, *is or will be required by the present or future public convenience and necessity*; otherwise such application shall be denied....

15 U.S.C. § 717f(e) (emphasis added). It is for FERC, and FERC alone, to determine the public need for the Project. *National Fuel*, 894 F.2d at 577. *See also* Petition Nos. 540 and 555, *Decision and Order* (Sept. 25, 2002).

There is substantial additional overlap between the Connecticut and federal regulatory schemes. For example, PUESA requires a determination of the nature of the probable environmental impact on “the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife.” Conn. Gen. Stat. § 16-50p(a)(3)(B). Similarly, FERC requires the submittal of an environmental impact statement pursuant to the National Environmental Policy Act, 18 C.F.R. § 380.3(a)(2), and FERC must consider the environmental impacts of the construction, operation and maintenance of the proposed pipeline. 18 C.F.R. § 157.14(6-a). As would the Council under the PUESA, FERC considers and evaluates impacts on water use and quality, 18 C.F.R. § 380.12(d); fish, wildlife, and vegetation, 18 C.F.R. § 380.12(e); cultural resources, 18 C.F.R. § 380.12(f); socioeconomics, 18 C.F.R. § 380.12(g); soils and geology, 18 C.F.R. § 380.12(h) and (i); and land use, recreation, and aesthetics, 18 C.F.R. § 380.12(j).

As does the federal regulatory scheme, PUESA also requires that the Council determine that the location of the pipeline “will not pose an undue hazard to persons or property along the area traversed by the line.” Conn. Gen. Stat. § 16-50p(a)(3)(E). Pursuant to 18 C.F.R. § 157.14(a)(9)(vi), FERC considers such public safety concerns through its requirement that the facility comply with federal pipeline safety standards promulgated by the United States Department of Transportation under the NGPSA.

There are no material differences between the areas regulated by FERC and by PUESA, nor if there were would that leave any room for the Council to regulate. As *National Fuel* made clear, the NGA has so fully occupied the field that it precludes states from engaging in concurrent site-specific environmental review. 894 F.2d at 579. Moreover, even if a state law purported to authorize the exercise of some “residual” or “piecemeal” siting jurisdiction in an effort to regulate a particular area the state deemed unregulated by the federal government, such an attempt would fail. New York’s attempt to do so was held to be preempted by the Second Circuit, which stated that “[s]o-called piecemeal application of Article VII would thus allow the PSC to confront interstate transporters of gas with as much of the panoply of Article VII regulation as it chooses and to force them to litigate the preemption question issue by issue in state tribunals,” *id.* at 578, and that if such piecemeal jurisdiction were not preempted, “no state law, no matter how inconsistent with a federal law, would ever be facially preempted so long as it included a provision stating that the relevant state tribunals would abide by the Supremacy Clause, an obligation to which they are already bound.” *Id.* Thus, Connecticut may not pick and choose among PUESA’s various requirements and apply PUESA piecemeal to substantive areas the Council deems “unregulated” by the federal government. *Id.* at 577-78. Finally, neither the Council nor any other state agency may attempt to impose any safety regulation on interstate natural gas facilities, such as the proposed Atlantic Bridge facilities.

4. Notwithstanding federal preemption, FERC has implemented a policy which encourages applicants to cooperate with state and local agencies with regard to the siting of pipeline facilities.

In 1997, FERC issued its order in *Maritimes & Northeast Pipeline, LLC*, 81 FERC ¶ 61,166 (1997) (“*Maritimes*”) specifying its current approach regarding state review of proposed interstate natural-gas pipelines. “[A]s a matter of policy ... the Commission has imposed upon

applicants a requirement that they cooperate with State and local authorities.” *Maritimes*, 81 FERC ¶ 61,166, at 61,730. Specifically, “the Commission has encouraged applicants to cooperate with state and local agencies with regard to the siting of pipeline facilities, environmental mitigation measures, and construction procedures.” *Id.* at 61,729. Such cooperation allows opportunities for state and local authorities to provide recommendations to an applicant and FERC regarding its proposed pipeline route and construction plan. *Id.* at 61,730.³ “The Commission, of course, can modify the applicant’s proposal and if, in doing so, a State or local agency recommendation is overruled or modified, the Commission’s requirement will prevail.” *Id.*

FERC’s policy of cooperation with state and local agencies is just that – a “policy” – and is a product of FERC’s broad discretion under the NGA. *See, e.g.*, 15 U.S.C. § 717f(e) (“The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.”). Nevertheless, “[t]hat [*Maritimes*] policy decision by the FERC . . . does not change the preemptive effect of the NGA as enacted by Congress.” *Northern Natural Gas*, 377 F.3d at 824. Thus, the well-established principles of federal preemption remain firmly in place. “[T]he NGA . . . vests sole authority to determine an interstate pipeline route in the Commission,” *Maritimes*, at 61,729, and “preempts State and local agencies from regulating the construction and operation of interstate pipeline facilities,” *id.* at 61,730. Consequently, “the Commission’s practice of encouraging cooperation between interstate pipelines and local authorities does not mean that those agencies may undermine through their regulatory

³ This consultation process is analogous to the municipal consultation process contained in Conn. Gen. Stat. § 16-50(c). Under 16-50(a), the Council has “exclusive jurisdiction” over “facilities” and “modifications of facilities.” However, under Conn. Gen. Stat. § 16-50(e), an applicant to the Council is still required to consult with a municipality, which “may conduct public hearings and meetings as it deems necessary for it to advise the applicant of its recommendation concerning the proposed facility.”

requirements, the force and effect of a certificate issued by the Commission.” *Id.* at 61,729; *Iroquois Gas Transmission System, L.P.*, 59 FERC ¶ 61,094, at 61,346-47 (1992).

Consistent with these principles, state and local agencies, through application of state or local laws, may not prohibit or unreasonably delay the construction or operation of facilities approved by FERC. *ANR Pipeline Co.*, 113 FERC ¶ 61,255 at P 31 (2005); *Tenn. Gas Pipeline Co.*, 113 FERC ¶ 61,335 at P 37 (2005). Where a state causes unreasonable delays in the issuance of an approval, an applicant may proceed without such approval. *Tenn. Gas Pipeline Co.*, 95 FERC ¶ 61,169, at 61,553 (2001). Finally, where FERC has issued certificate of public convenience and necessity, any state or local permits issued with respect to a facility must be consistent with the conditions of the FERC CPCN. *ANR Pipeline Co.*, 113 FERC ¶ 61,255 at P 31 (2005); *Tenn. Gas Pipeline Co.*, 113 FERC ¶ 61,335 at P 37 (2005).

The Council has consistently recognized the foregoing and FERC’s exclusive jurisdiction over interstate natural gas facilities. *See* Petitions Nos. 540 and 555, *Decision and Order* (Sept. 25, 2002); Docket Nos. 540 and 555, Hearing Transcript, at 5 (Sept. 4, 2002); Docket No. 221, *Findings of Fact*, at ¶ 2 (Aug. 1, 2002); Docket No. 221, *Opinion*, at 1 (Aug. 1, 2002); Docket No. 221, Letter from Pamela B. Katz, P.E., to Anthony M. Fitzgerald (May 29, 2003); Petition No. 757, *Ruling* (Feb. 22, 2006); Petition No. 1072, *Ruling* (Oct. 31, 2013).

VI. CONCLUSION

Based on the foregoing, and pursuant to Conn. Gen. Stat. §§ 4-176(a) and 16-50k(d) and Conn. Agencies Regs. § 16-50j-38, *et seq.*, Algonquin respectfully requests that the Council issue a declaratory ruling that it does not have jurisdiction over the Project.

Respectfully submitted,

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