

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 26, 2010

COMMISSIONER PRESENT:

Garry A. Brown, Chairman

Case 10-T-0019 - Joint Petition of Fortuna Energy Inc. and Corning Natural Gas Corporation for Approval of the Transfer of a Certificate of Environmental Compatibility and Public Need of an Existing Gas Pipeline Consisting of Approximately 24,920 Feet of Six-Inch Coated Steel Pipeline and an Amendment of the Certificate to Authorize Construction of a Gas Compressor Station and Approximately 500 Feet of Six-Inch (Discharge Pipeline) and 400 Feet of Ten-Inch (Suction Pipeline), Located in the Town of Caton, Steuben County.

ORDER APPROVING TRANSFER AND AMENDMENT OF CERTIFICATE

(Issued and Effective July 26, 2010)

INTRODUCTION

By joint petition filed January 14, 2010,¹ Talisman Energy, USA (TE) (f/k/a Fortuna Energy, Inc.) and Corning Natural Gas Corporation (CNG) (collectively, Petitioners) seek approval to transfer, from the former to the latter, the certificate of environmental compatibility and public need (Certificate) granted in Case 07-T-0818,² pursuant to §121(2) of

¹ The petition was supplemented on March 16 and 17, April 19, 28, 29 and 30, May 24, and June 3, 15 and 28, 2010.

² Case 07-T-0818 - Fortuna Energy, Inc-Fuel Gas Transmission Line, Order Granting Certificate of Environmental Compatibility and Public Need (issued August 9, 2007). The Commission authorized the construction and operation of 24,920 feet of six-inch coated steel gas pipeline located in the Towns of Caton and Lindley, Steuben County.

the Public Service Law (PSL). The Petitioners also seek approval of the amendment of the Certificate, pursuant to PSL §121(3) to authorize CNG to install the Maxwell Compressor Station (consisting of five gas compressor units) and approximately 500 feet of six-inch discharge pipeline and 400 feet of ten-inch suction pipeline, in the Town of Caton, Steuben County.

All relevant parties to the original certification proceeding have been notified of the proposed transfer and amendment. Several parties, as well as members of the public, have provided comments.

THE TRANSFER PETITION

Petitioners state that TE is a wholly-owned subsidiary of Talisman Energy of Canada and that CNG is an investor owned utility involved in the transmission of natural gas in New York State. CNG was incorporated and registered to conduct business in the State of New York.³ Petitioners also provide an affidavit of Michael I. German, CNG's president, by which CNG agrees to comply with the terms of the Certificate sought to be transferred. Mr. German also describes CNG's qualifications and experience in the construction, operation and maintenance of natural gas pipelines and related facilities. Petitioners explain that, because TE is limiting its natural gas activities to those set forth in PSL §66-g(3) (essentially to the production, sale and transportation of indigenous natural gas),

³ A certified copy of the Restated Certificate of Incorporation of Corning Natural Gas Corporation, approved by the Public Service Commission in Case 07-G-0787, filed with the New York Department of State on September 26, 2007, and subsequently corrected by a Certificate of Correction filed with the New York Department of State on April 24, 2008, is on file with the Public Service Commission in Case 08-G-0483.

the Commission's jurisdiction, pursuant to PSL §70, to approve the transfer of the transmission line constructed and operated as authorized by the Certificate does not adhere to TE.

THE AMENDMENT PETITION

Facility Need

According to Petitioners, under current conditions CNG is constrained from accepting all of the locally produced natural gas its system could use or transport cost-effectively because it is physically unable to deal with excess quantities when demand on the distribution system is low. The proposed compressor station, however, would ameliorate that constraint because it would permit the pipeline and other interconnected pipelines on CNG's system to operate at higher pressures, thereby permitting the transportation of greater quantities of natural gas through the system and into the interstate transportation system via the interconnection with Dominion Transmission Inc (DTI) at the Ryers Creek Road Metering Site. CNG would thus be free to accept additional quantities of local gas production,⁴ knowing that, when its own system demand falls, it would be able to "off-load" any excess quantities to the interstate system. Facilitating this capability greatly benefits all of CNG's customer classes by providing them with access to additional lower cost locally produced gas supplies and by providing additional revenue from the transportation of excess quantities to the interstate system. Additionally, such support enhances the marketability of local gas production by providing a higher-pressure path into the interstate system.

⁴ Subsequent to construction of the compressor station, it is anticipated that natural gas from Pennsylvania, as well as from New York, will be transported over these facilities.

Facility Description

The Maximum Allowable Operating Pressure (MAOP) of the line authorized in Case 07-T-0818 is 1440 pounds per square inch gauge (PSIG). Petitioners plan to construct a compressor station comprised of five compressor units that would be designed to operate at a MAOP of 1440 PSIG. The proposed six-inch discharge pipeline described below would also be designed to operate at a MAOP of 1,440 PSIG, while the proposed ten-inch suction line (described below) would be designed to operate at a MAOP of 400 PSIG. Petitioners state that installation of the compressor units and associated pipelines is planned to begin upon receipt of the amended Certificate; the in-service date would most likely occur in the fall of 2010.

CNG's proposed ten-inch suction pipeline would commence at the east end of the compressor units and travel north for 32 feet, then turn northeast for 548 feet and cross under a CNG eight-inch pipeline (TL-6) and connect to the existing CNG ten-inch steel gas pipeline (TL-7). CNG's proposed six-inch discharge pipeline would also commence at the east end of the compressor units and travel east for 20 feet, then turn southeast for 70 feet and then south for 290 feet and connect to the existing six-inch steel gas pipeline being transferred from TE to CNG.

The proposed compressor units and the majority of the associated piping would be installed within a proposed fenced enclosure located approximately 1,000 feet southwest of the intersection of Thurber Road and County Route 120 (Lindley-Caton Road) in the Town of Caton. The compressor station would be comprised of five Ariel Single Stage JGT-4 compressors, each one with a 1,380 horsepower Caterpillar 3512-ULB natural gas engine, two Air X Changer 144EH-110-22, Moore CL-10k fans with HDVT blades, and a Maxin model M51-12- SIEO Silencer (Hospital Grade Muffler). CNG proposes the construction of approximately 1,000

feet of gravel access road to the south of Lindley - Caton Road (County Road 120) that will provide access to the proposed Maxwell Compressor Site. The proposed compressors would be located in the approximate center of a graded level area on the site.

The five compression units would be transported to the site on the proposed gravel access road. The surface that the compressor station would be placed on would be a gravel underlay with a concrete pad above to ensure stability and levelness of the weather-tight and sound-attenuating building (measuring approximately 168 feet long, 60 feet wide and 26 feet high) housing the new compressor units. The building is proposed to be red with white trim and to include cupolas as requested by the Town of Caton Planning Board. This would assist the building to blend in with the existing rural character of the area. The building would be located in a gently rolling 34 acre open field and the compressor station site would occupy approximately two acres of this parcel.

Petitioners indicate that the compressor station site is being purchased from the owner of the closest residence. CNG has agreed that, before the start of construction of the compressor station, it will provide documentation to the Commission Secretary and Department of Public Service (DPS) Staff that it owns or has the rights to build on the 34-acre parcel.

Associated Facilities

CNG is currently working on upgrading its existing ten-inch gas pipeline (TL-7) to which the proposed suction line would connect; it is currently x-raying pipeline welds and repairing them as necessary. CNG explains that it has hydrostatically tested the segment of pipeline TL-7 immediately upstream of the proposed Maxwell Compressor Station (from the

Cram Farm Regulator Station to the proposed compressor station site) to allow a MAOP of 286 PSIG. Moreover, says CNG, measures are being taken to test the portion of TL-4 west from the Root Well pipeline (TL-13) interconnect to the Cram Farm Station as required to support operation at a MAOP of 400 PSIG.

In addition, CNG has requested an upgrade in the MAOP from below 125 PSIG to 400 PSIG of TL-13, which is used to transport natural gas from Pennsylvania into New York.⁵ Because this upgrade is being requested within three years of the construction of the pipeline, 16 NYCRR §255.552(b) requires CNG to explain the basis of the need for the upgrade, discuss how the increase in operating pressure will serve the public interest, convenience and necessity and provide assurance that no undue hazard will result from operation of the line at the higher pressure requested. In complying with such requirements, CNG explains that, when it constructed the Root Well pipeline, it was contractually obligated to transport 20,000 MCF per day, but that, after the line had been in operation for several months, TE requested an increase in this capability to 70,000 MCF per day, a request that could not have been anticipated at the time of construction. According to CNG, the pressure upgrade will facilitate its transportation of local gas production to its customers, as well as to DTI. Furthermore, CNG describes how the work necessary to accomplish this upgrade will be performed, maintains that it will comply with the pertinent provisions of 16 NYCRR Part 255 to ensure the safety of the system and the public, and states that no undue hazard will result from operation of the line at the higher pressure.

⁵ Testing of both TL-4 and TL-13 is expected to be undertaken in early August 2010 to coincide with temporary closure of the upstream TE facilities for maintenance.

Environmental Review

Compressor Station Site

According to Petitioners, the open land where the compressor station is proposed to be located has not been used for agricultural production for at least the past eight years. The proposed compressor building would be bounded by Lindley-Caton Road 617 feet to the north; a small wooded parcel (with tree heights of 50 to 60 feet tall) and a sparsely vegetated hedgerow 513 feet to the east; a low small wet open area 200 feet to the south; and Harris Road 422 feet to the west. CNG indicates that no clearing would be required at the compressor station site, other than mowing; however, extensive additional grading would be required for the installation of the compressors and compressor building.

In assessing the suitability of the compressor station site, CNG explains, it conducted on-site inspections and examined relevant documents and that: (1) there are no existing and officially approved planned residential, commercial, industrial, institutional, recreational or agricultural land use that will be affected by this project; (2) there are no highly erodible soils, wetlands, floodplains, streams, springs, wells, unique old-growth forests, active sugar bushes productive timber stands, trees listed in the Registry of Big Trees, or habitats of rare, threatened or endangered species on the project site; (3) there are no officially designated visual resources, including scenic areas, roads, vistas and overlooks affected by the project; and (4) there are no known archeological or historic sites in the project area.

Noise Survey

Petitioners report that the nearest noise-sensitive receptor (NSR1), is a private residence located approximately 833 feet southwest of the proposed compressor building; the

second closest residence (NSR2) is located approximately 868 feet northwest of the compressor building; the third closest residence (NSR3) is approximately 928 feet north of the compressor building; the fourth closest residence (NSR4) is approximately 977 feet south of the compressor building; and the fifth closest residence (NSR5) is approximately 1,105 feet northeast of the compressor building. CNG reports that the ten proposed cooling fans (along with the associated hospital grade mufflers) would be oriented in a northerly direction where a portion of the sound would be muted because of the earthen berm that is proposed to be located on the north side of the compressor station.

CNG's acoustical consultant indicates that this site is located between 800 and 1,100 feet from noise sensitive receptors to the north, south, and northeast and the aerial photograph shows a significant amount of open space. Also, the project site map depicts the topography of the proposed site and CNG's consultant affirms that the site is somewhat sheltered from prevailing winds because of the topography.

The acoustical consultant projects that, using a standard sound transmission loss building with a 24 gauge metal shell, all noise levels at the NSR's would be at or below the 40dB(A) level that the Commission has specified in previous cases. CNG has agreed to take additional sound measurements with the compressor units running and to alter the design to further mitigate the noise level (based on its consultant's recommendations), if noise from the compressor unit exceeds initial predictions. CNG officials indicate that noise compliance can be demonstrated to DPS Staff by February 28, 2011.

Environmental Management and Construction

In accordance with PSL §121-a(1), CNG has certified that, in constructing fuel gas transmission lines less than ten

miles long, it will follow the standards and practices set forth in the DPS's Revised Interim Environmental Management and Construction Standards and Practices (EM&CS&P), effective February 28, 2006, and subsequently adopted.⁶ CNG explains that it would operate and maintain the proposed compressor station and associated pipelines in accordance with general and site-specific measures and techniques to be employed in connection with this project.

In the application, Petitioners state that the lead inspector for construction and restoration would be a CNG employee, Harry German. Mr. German will be responsible for compliance with all environmental requirements.

Gas Safety Review

Petitioners indicate that no underground facilities would be encountered as a result of the proposed compressor installation, other than at the connection points for the suction and discharge pipelines and at the point where the proposed ten-inch gas suction pipeline crosses under the existing CNG eight-inch steel pipeline (TL-6). CNG reports that it is a member of Dig Safely New York (the one-call notification system in upstate New York) and will comply with the requirements for the protection of underground facilities found in 16 NYCRR Part 753. According to CNG, if the Certificate amendment is approved, system maps will be updated to include the compressor station and associated piping and will be

⁶ 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).

furnished to Dig Safely New York for inclusion in the one-call notification system.

Under the terms of the negotiated agreement between TE and CNG filed in this proceeding, TE would operate and maintain the compressor station on behalf of CNG for a period of six months.⁷ After that period, CNG would contract with a third party (possibly TE) or operate and maintain the facility with its own staff. Should CNG decide to operate the station with its own personnel, it would contract with a qualified and experienced third party (subject to DPS approval) for compressor station procedures. Over the six-month period that TE has agreed to operate the compressor station, CNG would develop a DPS-approved operator qualification (OQ) program (consistent with its existing OQ program) and in compliance with 16 NYCRR 255.604(a)(1)-(7). The OQ program would then be administered through an approved independent organization, such as the Northeast Gas Association. According to CNG, it plans to train and qualify two employees to operate and perform routine maintenance on the compressor station.⁸ Otherwise, the maintenance function would be outsourced to a qualified company.

Local Laws

Petitioners indicate that they are aware of no Town of Caton ordinances that, if reasonably applied to the proposed compressor station, would interfere with its construction or operation. Petitioners report that the Town has no noise ordinances in place. In the absence of a local noise ordinance,

⁷ TE currently operates four compressor stations in New York and two in Pennsylvania. All TE operators are qualified through the Northeast Gas Association.

⁸ The abnormal conditions that would be included in the operation/maintenance of the station are unintentional release of gas and plant emergency shutdowns.

CNG proposes to meet the 40 dB(A) level specified by the Commission in previous Certificates.

CNG officials indicate that they are currently working with the Town of Caton to obtain a building permit for the structure(s) that will house the compressor equipment. According to CNG, it will submit a copy of the building permit to the Commission Secretary and DPS Staff prior to construction.

COMMENTS

Party Comments

By letter dated January 26, 2010, the New York State Department of Environmental Conservation (DEC), Region 8 Office states that the air contaminant emissions to be vented from the compressor station must meet permitting requirements of the NYS Air Pollution Control regulations. DEC explains that it has been contacted by a consultant on CNG's behalf and that it expects to issue a Minor Air Facility Registration.

DEC states that the project would not affect any NYS protected streams (with a stream classification of C(t) or above) or NYS Freshwater Wetlands or their regulated adjacent areas. According to DEC officials, CNG will need to obtain a General Permit for Stormwater Discharges from Construction Activities (GP 0-10-001), if this project will result in disturbance of one acre or more of soil. To obtain coverage under this permit, all conditions of the permit must be met, including the preparation and implementation of an appropriate Stormwater Pollution Prevention Plan (SWPPP) and the filing of a Notice of Intention (NOI) with DEC.

DEC states that, based on information from the NYS Archeological Site Map, the project is located within an archeologically sensitive area. DEC explains that it has reviewed the available information in the New York Heritage Program database on known occurrences of rare or state listed

animals and plants or significant natural communities and other significant habitat and that no occurrences were found.

By e-mail dated January 15, 2010, officials from the NYS Department of Agriculture and Markets (Ag & Mkts) state their understanding that, due to the location of the existing pipelines, CNG has to site the proposed compressor station in the approximate middle of an agricultural field. Ag & Mkts provided no comments, other than requesting that CNG be required to minimize the footprint of disturbance in the agricultural field to the fullest extent practicable.

The Town of Caton has filed several comments with the Commission dated April 30; and June 1, 11, and 22, 2010. At the outset, the Town requested clarification as to the effect of PSL §130 on local procedural and permitting requirements. The Town Board and Planning Board requested that they receive copies of the detailed plans for review and the opportunity by notice in the local newspaper(s) for the public to comment to DPS and Petitioners before DPS makes a final decision. The Town also submitted questions from Steve and Lynn Leonard, members of the public; these questions will be summarized in the next section. Substantively, the Town expressed concern regarding neighborhood integrity and noise mitigation; the Town also expressed a preference for an alternative compressor station site.

Neighborhood Integrity

The Town submitted an engineering review of the application. Based on the engineering review, the Town questions the adequacy of the site plan for the compressor station. Among other things, the Town's consultant commented that the entrance point of the access road to the compressor station site should be moved further to the west on Lindley-Caton Road, away from an active residence. The Town opines, moreover, that information concerning environmental impacts during construction should be

provided. The information should relate to the hours of construction, actions to screen unsightly construction material, and the like.

Noise Mitigation

The Town claims that, given the rural character and low ambient noise level, the 40 dB(A) limit at existing residences proposed by CNG is too high. The Town suggests that this limit be applied at a distance of 80-100 feet from the building. According to the Town, CNG orally agreed to meet a lower limit. The Town's concern is that an oral acknowledgement does not provide sufficient protection of the Town's interests, particularly in the absence of plans detailing how the Town would be protected.

In these comments, the Town of Caton engineer indicates that, in previous town meetings, the applicant has guaranteed a maximum noise level of 40dB at the property boundary, but has not presented any data on how that limit would be achieved. The Town engineer further requests that, after construction is completed and once operation begins, the noise level should be measured by an independent source and reported to DPS.

Alternative Site

Most importantly, the Town contends that an alternative compressor station site, located about 0.6 miles northwest of the proposed site, is a better location for the compressor station. The Town board also recommends that DPS Staff take an opportunity to review the proposed alternate compressor site before any decision is made. The Town contends that it has conveyed to CNG its concerns regarding the siting of the compressor station on a knoll consisting primarily of lawns and grass pastures between the houses since a January 2010 town

meeting. According to the Town, due to the difficult nature of sound mitigation in the rural environment, it is proposing the alternative site because such site has fewer inherent hurdles to neighborhood integrity.

Public Comments

Public Comments were received from five residents of the Town of Caton. Robert Lord opines that the compressor station project should be reviewed pursuant to the Town's land use permitting requirements. He contends that the proposed station location is in an open field near the top of a hill with no large tree cover to help mitigate sound or conceal the station. Mr. Lord argues that the ambient sound level is 28dB(A) and that the Commission's requirement that noise level be no higher than 40dB(A) at the nearest residence is not reasonable. Mr. Lord further asserts that there are possible alternative sites which have not fully been explored by CNG. Finally, Mr. Lord requests that adequate notice and time for comments be given and that a Commissioner conduct a site visit and public hearing.

Chelsea Robertson asks that a copy of a memo dated March 25, 2010, and provided in the Town's filing of April 30, that Stephen and Lynn Leonard sent to the Town of Caton be included in the record of this proceeding. Mr. and Mrs. Leonard's home is 2,000 feet away from the proposed compressor station. Their concerns, expressed as a series of questions, fall into the following categories: physical location, compression requirements, regulatory requirements, resultant noise & vibrations, odors, safety, the environment, equipment design, construction costs, maintenance, and local property values. The Leonard's memo asks the Town to explain the review process in granting CNG the appropriate rights. Mr. and Mrs. Leonard also assert the availability of an alternative site in a

wooded area. Mr. and Mrs. Leonard believe that the alternative location would mitigate the visual and auditory impacts of the compressor station.

Kathryn C. Mack, a resident of the Town of Caton, wrote in support of the Project. She notes that the Town has not sufficiently considered issues associated with its proposed alternative site, such as the environmental and monetary cost that would be incurred by clearing a path in the woods for the Project. Additionally, she believes that CNG has made adequate concessions to accommodate the Town to maintain neighborhood integrity and mitigate the noise produced by the compressors.

RESPONSES

Petitioners responded to the Town of Caton's comments, contending that locating the Compressor Station at the alternative site would result in greater environmental disturbance, significant delay and higher costs in the range of 1.3 million dollars, without any discernible benefits. Furthermore, Petitioners assert that they have re-designed the appearance of the compressor building at the request of the Town in order to help fit the character of the surrounding area and proposed to move the compressor building on the proposed site to further accommodate the Town. In addition, claim Petitioners, they submitted a planting plan for the compressor station to lessen visual impacts even more.

DISCUSSION

PSL §121(2) authorizes us to approve the transfer of a Certificate if the transferee agrees to comply with its terms, limitations and conditions. CNG has agreed, in an affidavit of its president, to comply with the terms, limitations and conditions contained in the Certificate granted in Case 07-T-0818 upon closure of the transaction with TE. In view of the

affidavit and given that CNG has the experience and qualifications requisite for operating natural gas pipelines; we will grant the requested transfer.

PSL §121(3) authorizes us to amend a Certificate. The petition, comments and responses have focused almost exclusively on whether we should amend the Certificate as requested.

Regarding procedural matters, PSL 130 supplants state and local procedural permitting requirements, such as site plan approvals, in connection with major utility transmission facilities as defined in PSL Article VII; however, a Certificate holder may seek to obtain local permits as a matter of discretion. The most comprehensive discussion as to the applicability of state and local laws in such circumstances was provided by the Commission seventeen years ago.⁹ Therefore, we will discuss site plan and other issues herein. As to conformity with the State Building Codes,¹⁰ 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 structure(s) that will house the compressor equipment is/are in conformance with applicable provisions of the State Building Codes. Therefore, CNG shall be required to

⁹ Cases 92-T-0114 and 92-T-0252, Niagara Mohawk Power Corporation, Opinion No. 93-17, 33 NYPS 885 (issued August 20, 1993).

¹⁰ The New York State 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".

obtain a review and approval of the plans, and inspection of the construction work, by a public entity recognized by the Department of State as having the requisite training or qualifications. That function could be carried out by either the building officials of the Town, the County, or any State agency designated a "construction-permitting" agency as described above. This condition is reasonable to ensure the safety of the facility both during and after construction.

Turning to substantive matters, CNG is incorrect that there are no highly erodible soils on the project site. Nevertheless, soil erosion due to the present and proposed topography of the site and the amount of exposed soil during the construction of the project will be minimized by the standards and practices outlined in the EM&CS&P that CNG has agreed to follow, and by conforming to the sediment and erosion control devices shown on the project site plan.

Regarding historic and archaeological resources, a copy of a letter of "No Impact" from the Office of Parks, Recreation and Historic Preservation (OPRHP) must be supplied to DPS Staff and the Secretary prior to pipeline construction. If any archaeological resources are uncovered during construction, we will require CNG to stop work and contact OPRHP and DPS Staff.

The measures and techniques contained in the EM&CS&P that CNG has agreed to employ, when properly applied, will help ensure that environmental impacts are minimized during construction, operation and maintenance of the facility (pipelines & gas compressors). Also, in minimizing disruption and environmental impacts associated with construction, CNG must use its best efforts to coordinate pipeline construction with other known construction activities in the immediate vicinity of the project. We will require CNG to hire a full time qualified field environmental inspector(s), who will report to the job

supervisor(s), during the construction and restoration of the project and who will have "stop work authority."

We will require all pipelines located downstream of the compressors to be operated and maintained according to the provisions of 16 NYCRR Part 255 for steel transmission lines; pressure downstream of the compressor site may not exceed 1440 PSIG. The proposed access road from Lindley-Caton Road to the gas compressor station must be maintained to allow for easy access for any needed firefighting equipment and personnel. There must be enough open space around the new compressor building to allow uninhibited movement of firefighting equipment and personnel.

Turning to CNG's request to increase the MAOP of the Root Well pipeline in conjunction with the proposed installation of the Maxwell compressor station, 16 NYCRR §255.552(b) requires a hearing if the increase in pressure is proposed within three years of the initial operation of a pipeline which, at the higher pressure proposed, would be a major utility transmission facility under PSL Article VII, unless such hearing is waived. Given the demonstrated benefits associated with the requested increase in MAOP of the Root Well pipeline, which were not expected at the time it was constructed, and CNG's showing that no undue hazard will result from operating such line at the higher pressure, we will waive such hearing. We will, however, impose several conditions to ensure the safe operation of the Root Well pipeline, the pipelines associated with the compressor station and the compressor station itself.

CNG must obtain the necessary air pollution control approvals prior to construction of the compressor station. Moreover, before the start of construction, CNG must provide documentation to the Secretary that it has obtained the appropriate air quality permit from DEC. Before construction

begins, a copy of CNG's NOI to DEC and a copy of its SWPPP must be sent to the Secretary.

We take seriously the concerns of the Town and its residents regarding the proposed location, construction and operation of the compressor station. As recommended by the Town Engineer, we will require the entrance point of the access road into the Compressor site to be moved further to the west along Lindley-Caton Road to move away from an active residence. This change will relieve traffic congestion, which would otherwise be likely.

As for the Town's view that the siting of the compressor station on a grassy knoll would disturb neighborhood integrity, the same type of field habitat would be restored after construction of the compressor station, so the field and lawn character mentioned by the Town would be preserved. In addition, we note that CNG and TE are attempting to diversify the habitat in the vicinity of the proposed compressor station by performing some wetland creation in the meadow south of the station. Small wetlands located in meadows are prevalent in this area and such wetland creation would help maintain the neighborhood integrity. Compressor station installation on the alternative site would remove mature woods, which would disrupt neighborhood integrity to a greater extent than warranted.

Based on a DPS Staff site visit to review the alternative compressor site on June 17, 2010, during which Town officials and Ag & Mkts personnel were present, we believe that there would be too much environmental disturbance associated with the alternative site due to additional necessary pipeline construction and the tree clearing that would be needed at this location. Although the movement of the compressor station to the alternative site would get it away from some active residences, the alternative compressor site is near other active residences.

In considering the Town's concerns regarding visual impacts of the proposed compressor station, we conclude that the site plan drawings and CNG's commitment to construct a building with the character of a large barn offer sufficient mitigation of the visual impacts. On a visit to the project vicinity on July 15, 2010 DPS Staff noted that a barn-like structure with the approximate dimensions of the proposed compressor station building is located about 1.3 miles northwest of the proposed building (at the corner of Martin Hill Road and Richards Road) in an elevated open field with no appreciable screening. By contrast, as indicated above, CNG plans to move the compressor station from the knoll area on the parcel south and slightly west to take advantage of the natural contours of the parcel to help lessen the station's visual impacts. Additionally, Petitioners will use dirt berms and plantings to help mitigate visual impacts of the proposed compressor station. We consider their planting plan preliminary in nature; it can be revised through the use of the change process as outlined in ordering clause 4(b) below or through the Certificate amendment process, to meet changing field conditions.

While the Town does not have any formal sound ordinance, the Commission has previously adopted a standard of 40 dB(a) at any existing residence (under no-wind conditions) in rural and suburban areas.¹¹ CNG will be required to meet or exceed this noise standard and provide a final report to DPS Staff verifying that it has achieved the required sound levels. If for any reason the proposed project fails to meet any specifications in ordering clauses, moreover, we have sufficient authority to ensure compliance. The Town of Caton Engineer suggested a reading of 40dB at 80 to 100 feet away from the

¹¹ Case 70076, Columbia Gas Transmission Corporation, Order Adopting Recommended Decision (issued August 24, 1984).

compressor building; however, we believe that this is too restrictive and that adherence to the Commission's standard is protective of the environment. CNG has every incentive to attempt to achieve a noise level less than 40 dB(a) at any existing residence in order to avoid complaints from residents.

The public comments we received cover essentially the same concerns as those expressed by the Town. Therefore we need not further elaborate on those topics. Given the extensive comments filed in this case and the site visits of DPS Staff, an evidentiary hearing and a site visit by the Commission are not necessary.

CONCLUSION

Having carefully considered the petition, comments and responses filed in this case, we will approve the transfer to CNG of the Certificate granted in Case 07-T-0818 and grant the requested Certificate amendment, pursuant to PSL §121(2) and (3), respectively, subject to the terms and conditions set forth below.

It is ordered:

1. The transfer to Corning Natural Gas Corporation (the Company) of the Certificate of Environmental Compatibility and Public Need (Certificate) granted to the predecessor of Talisman Energy USA (TE) in Case 07-T-0818 is approved.

2. Within 30 days after the issuance of this Order, TE shall inform the Secretary to the Commission in writing of the date on which the certificate transfer was or will be completed.

3. At her sole discretion, the Secretary may extend the deadline specified in ordering clause 2 above.

4. The Company is granted an amendment to the Certificate to authorize it to install five gas compressors and

approximately 500 feet of six-inch (discharge line) and 400-feet of ten-inch (suction line) as described in its Petition filed January 14, 2010 and supplemented March 16 and 17, 2010; April 19, 28, 29, and 30, 2010; May 24, 2010; and June 3, 15 and 28, 2010 and in this Order, subject to the following conditions:

- (a) the Company shall apply the measures and techniques for environmental management and construction of this project indicated in its petition and reflected herein;
- (b) the Company shall report to Department of Public Service (DPS) Staff in the Office of Energy Efficiency and the Environment, 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; DPS 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 (ROW) of the project and shall refer all other proposed changes to the Commission; the Company shall not execute any proposed change until it receives oral or written notification from the Director of OEEE or the Commission;
- (c) the Company shall file as-built drawings with DPS Staff, should the pipeline deviate from the centerline of the proposed ROW; any change in the location of the proposed ROW shall be reported as set forth in the preceding condition;

- (d) the Company 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;
- (e) the Company shall designate a full-time job supervisor(s) with stop-work authority over all aspects of this project; the supervisor(s) shall be on site during all phases of construction, testing and restoration; the company shall also designate a full-time qualified environmental monitor(s) and/or inspector(s); the name and qualifications of such persons shall be submitted to DPS Staff at least two weeks before the start of construction; in addition, the environmental inspector(s) shall report to the job supervisor(s);
- (f) the Company shall notify all construction contractors that the Commission may seek to recover penalties for violations of the Certificate not only from the Companies but also from its construction contractors, and that construction contractors may also be liable for other fines, penalties and environmental damage;
- (g) In consultation with the Town of Caton Town Engineer, Town Highway Supervisor and DPS Staff, the Company shall move the entrance point of the access road approximately 200 feet to the west along Lindley-Caton Road;
- (h) the Company shall notify DPS Staff of the proposed commencement date at least ten days prior to the start of construction;

- (i) the Company shall exercise all necessary and reasonable precautions to minimize sedimentation and soil erosion in work areas; further the Company shall take prompt and effective action to control sedimentation and erosion, in the event it does occur; also, the project site plan, which shows the location and length of various erosion control devices, may be changed in consultation with DPS Staff to adapt to field conditions; in areas of the project subject to soil erosion, the Company shall install temporary erosion control devices as soon as practicable, but in no event later than the end of the work day;
- (j) the Company shall seed and mulch the project area no more than five days after final grading;
- (k) the certified work is subject to inspection by authorized representatives of DPS;
- (l) the maximum pressure of the six-inch discharge pipeline and compressor station components shall not exceed 1,440 pounds per square inch gauge (PSIG) and the maximum allowable operating pressure (MAOP) of the 10-inch suction pipeline shall not exceed 400 PSIG;
- (m) the Company shall design, operate and maintain the compressor station and associated discharge and suction pipelines in accordance with 16 NYCRR part 255 applicable to steel transmission lines and gas compressors;
- (n) the Company 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;

- (o) at least 30 days before construction commences, the Company shall submit an Appendix 7-D to DPS Safety Staff in Albany and Brett Mahan of DPS Field Safety Staff for the compression facilities; also, the Company shall notify Dig Safely New York of the addition of this pipeline to its system prior to the pipeline's in-service date;
- (p) at least five days before construction commences, the Company shall successfully complete pressure tests of pipelines 4, 7, and 13 that comply with 16 NYCRR Part 255 for increasing the MAOP of these pipelines;
- (q) the Company shall make available to DPS Safety Staff the mill certification corresponding to the steel pipeline being used;
- (r) the Company shall amend its Operation and Maintenance and Emergency Procedures, as required by 16 NYCRR §§ 255.603(b) and 255.615 to reflect the addition of the compressor station, transmission lines and all interconnected pipelines to its system and to address any or all compressor station and transmission line maintenance issues; the Company shall submit such procedures to DPS Safety Staff in Albany and Syracuse before the compressor station is operated; in addition, prior to the operation of the compressor station, the Company shall amend all procedures relating to Supervisory Control and Data Acquisition (SCADA) systems to include the operation of the compressor station

- (including all alarm points and detailed actions required to be taken at each alarm point);
- (s) the Company shall amend its program for operator qualification, as required by 16 NYCRR §255.604, to include covered tasks and qualifications of personnel related to operation and maintenance of the compressor station, transmission pipeline and all inter-connected pipelines;
 - (t) At all times qualified personnel shall be employed for all operation and maintenance activities related to the compressor station and transmission lines; before Company personnel may perform such operation and maintenance functions, the Company shall submit an operator qualification program, training program, and operations and maintenance procedures that address all requirements for compressor stations and transmission lines for acceptance by Safety Staff;
 - (u) the Company shall comply with the Integrity Management Requirements as found in 16 NYCRR Part 255 and ensure, before the compressor station commences operation, that the Integrity Management Plan includes all facilities subject to the integrity management rule in 16 NYCRR Part 255;
 - (v) if the dual layer FBE pipe proposed to be used becomes unavailable, the Company may use coated steel pipe that meets or exceeds the coating requirements specified in 16 NYCRR §255.461; in addition, the Company shall amend Appendix 7-D to reflect the coating change and shall send it to DPS Safety Staff;

- (w) before construction begins, the Company shall submit to the Secretary a copy of the Department of Environmental Conservation (DEC) minor air facilities registration and the Notice of Intent for the State Pollutant Discharge Elimination System permit; in addition, the Company shall provide a copy of any other permits obtained in conjunction with this project to the Secretary;
- (x) before construction commences at the compressor station site, the Company shall construct the permanent gravel access road from Lindley-Caton Road into the compressor Site;
- (y) prior to the commencement of construction of the compressor station, the Company shall provide documentation to the Secretary that it owns or has the rights to build on the 34-acre parcel as described in this order and that it has obtained review and written certification by a public entity recognized by the Department of State as having the requisite training or qualifications that the construction plans for the structure(s) that will house the compressor equipment are in compliance with the New York State Uniform Fire Prevention and Building Code; and prior to the occupancy or use of the compressor station, the Company shall provide documentation to the Secretary that during construction it obtained periodic inspections of the construction work by a public entity recognized by the Department of State as having the requisite training or qualifications and that the construction was completed in compliance with the New York State Uniform Fire Prevention and Building Code as

certified by a public entity recognized by the Department of State as having the requisite training or qualifications;

- (z) before construction commences, the Company shall supply a copy of its Winter Stabilization Plan to the Secretary;
- (aa) the Company shall submit a report to DPS staff, at least five days before construction commences, giving a general description of the sequence of events for the construction of compression facilities, as well as any measures that will be used to mitigate sound (if needed) during the construction of these facilities;
- (bb) at least ten days before hydrostatic testing commences, the Company shall provide to DEC and DPS Staff information describing the hydrostatic testing of the pipelines;
- (cc) the Company shall limit the noise produced to 40 dB(a) or below at any existing residence under no-wind conditions; the compressor shall not be operated, except for testing during daylight hours, until DPS Staff is notified that the compressor will be in compliance with the noise limit specified in this Order;
- (dd) the Company shall incorporate, by February 28, 2011 (or such later date as may be specified by the Secretary) noise-reduction measures to achieve compliance with the level specified in the immediately preceding condition. Within 45 days of completion of construction of the facilities at the compressor station site (or such later date as may be specified by the Secretary because of weather or other ambient

conditions that could affect acoustical testing), the Company shall submit to DPS Staff a report from an independent acoustical consultant, in sufficient detail for DPS Staff to determine whether compliance with the identified noise limit has been achieved;

(ee) the Company shall contact DPS Field Staff after completing construction of the compressor station site and a visual assessment will 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;

(ff) at least ten days prior to the start of construction, the Company shall hold a pre-construction meeting. An agenda, location and attendee list shall be agreed upon between DPS Field Staff and the Company. The Company shall supply draft minutes from this meeting to all attendees; the attendees may offer corrections or comments and the Company 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;

(gg) the Company 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 ROW; at least 15 days before the Company begins

construction within the ROW limits of such roads or takes direct access from them, it shall notify each such department or agency of the approximate date work will begin, the crossing locations or uses, depth of facility crossings, details and specifications for repaving (if any), and related considerations;

- (hh) within one year after the in-service date of the project, the pipeline ROW and compressor station site shall be completely restored;
- (ii) within ten days after the compressor station site and pipeline ROW are completely restored, the Company shall so notify the Secretary and DPS Staff in writing; also, within ten days after the compressor facilities are in service, the Company shall so notify the Secretary and DPS Staff in writing;
- (jj) the Company shall promptly notify the Secretary and DPS Staff in writing should it decide not to complete construction of all or any portion of this project; it shall serve a copy of such notice upon all parties; and
- (kk) if construction of the project hereby certified is not commenced within eight months, the amendment of this Certificate may be vacated without further notice.

5. This proceeding is continued, but shall close ten days after the ROW and the compressor station site have been completely restored, unless the Secretary to the Commission finds good cause to continue the proceeding further.

(SIGNED)

COMMISSIONER