The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U.11-26 January 6, 2012

Petition of Tennessee Gas Pipeline Company pursuant to G.L. c. 40A, § 3 for exemption from the Zoning Bylaw of Southwick.

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I. INTRODUCTION

A. Description of Proposed Project

On March 9, 2011, the Petitioner, Tennessee Gas Pipeline Company ("Tennessee" or "Company") filed a petition with the Department of Public Utilities ("Department") pursuant to G.L. c. 40A, § 3 seeking both individual and comprehensive exemptions from the Zoning Bylaw of the Town of Southwick. The matter was docketed as D.P.U. 11-26.

The proposed Northampton Expansion Project ("Project") consists of a new 2,000 horsepower compressor station in Southwick, Massachusetts along Tennessee's existing Northampton Lateral Line ("Northampton Lateral") (Exh. TGP-3, at 1). The site is 5.32 acres, of which approximately 3.3 acres will be used for the facilities. The site is located approximately 200 feet east of Tennessee's existing Northampton Lateral pipeline facilities and right-of-way ("ROW") (Exh. DPU-EN-1, at 8-1). The electric compressor unit will be housed in an approximately 20-foot by 30-foot by 16-foot tall building (id.; Exh. TGP-3, Exh. D (supp.) at 1).[1] In order to connect the compressor unit to the Northampton Lateral, Tennessee will install 155 feet of pipeline on the compressor station site and 225 feet of pipeline within a 60-foot wide ROW, which will require a new easement (Exhs. DPU-EN-1, at 8-1; TGP-3, Exh. D (supp.) at 21). A six-pole overhead electric line will be constructed to connect the Project to the local distribution system. There will be a new on-site private paved driveway located off of Feeding Hills Road (Exh. TGP-3, at 2).

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[1] Associated appurtenant facilities include a control building, gas cooler unit, vent silencer, and fan. Ancillary equipment includes a gas-fired emergency generator, boiler and heater (Exh. DPU-EN-1, at 8-1).

B. Procedural History

On April 27, 2011, the Department conducted a site visit and public hearing in the Town of Southwick. The Department conducted an evidentiary hearing at its offices in Boston on July 26, 2011. The Company sponsored the following witnesses in the proceeding: L. Trae Miller III, Manager, El Paso Corporation; and Harold W. McCracken, Principal Environmental Representative, El Paso Corporation. There was no intervention. The evidentiary record consists of the Company's petition, prefiled testimony, responses to the Department's information requests, record requests, testimony, the FERC Environmental Report and the FERC Certificate.

II. REQUEST FOR INDIVIDUAL ZONING EXEMPTIONS PURSUANT TO G.L. c. 40A, § 3

A. Standard of Review

G.L. c. 40A, § 3 provides, in relevant part, that:

> Land or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the [Department] shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public ….

Thus, a petitioner seeking exemption from a local zoning by-law under G.L. c. 40A, § 3 must meet three criteria. First, the petitioner must qualify as a public service corporation. Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667 (1975) ("Save the Bay"). Second, the petitioner must demonstrate that its present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. Massachusetts Electric Company, D.T.E. 01-77, at 4 (2002); Tennessee Gas Pipeline

Company, D.T.E. 01-57, at 3-4 (2002) ("Tennessee Gas Pipeline Company (2002)"). Finally, the petitioner must establish that it requires exemption from the zoning ordinance or by-law. Boston Gas Company, D.T.E. 00-24, at 3 (2001).

1. Public Service Corporation

In determining whether a petitioner qualifies as a "public service corporation" ("PSC") for the purposes of G.L. c. 40A, § 3, the Massachusetts Supreme Judicial Court has stated:

> among the pertinent considerations are whether the corporation is organized pursuant to an appropriate franchise from the State to provide for a necessity or convenience to the general public which could not be furnished through the ordinary channels of private business; whether the corporation is subject to the requisite degree of governmental control and regulation; and the nature of the public benefit to be derived from the service provided. Save the Bay at 680. See also D.T.E. 00-24, at 3-4; Berkshire Power Development, Inc., D.P.U. 96-104, at 26-36 (1997).

The Department interprets this list not as a test, but rather as guidance to ensure that the intent of G.L. c. 40A, § 3 will be realized, i.e., that a present or proposed use of land or structure that is determined by the Department to be "reasonably necessary for the convenience or welfare of the public" not be foreclosed due to local opposition. See D.P.U. 96-104, at 30; Save the Bay at 685-686; Town of Truro v. Department of Public Utilities, 365 Mass. 407, at 410 (1974). The Department has interpreted the "pertinent considerations" as a "flexible set of criteria which allow the Department to respond to changes in the environment in which the industries it regulates operate and still provide for the public welfare." D.P.U. 96-104, at 30; see also Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U./D.T.E. 95-59-B/95-80/95-112/96-113, at 6 (1998). The Department has determined that it is not necessary for a petitioner to demonstrate the existence of "an appropriate franchise" in order to establish PSC status. D.P.U. 96-104, at 31.

2. Public Convenience and Welfare

In determining whether the present or proposed use is reasonably necessary for the public convenience or welfare, the Department must balance the interests of the general public against the local interest. Save the Bay, 366 Mass. at 680; Town of Truro, 365 Mass. at 410. Specifically, the Department is empowered and required to undertake "a broad and balanced consideration of all aspects of the general public interest and welfare and not merely [make an] examination of the local and individual interests which might be affected." New York Central Railroad v. Department of Public Utilities, 347 Mass. 586, 592 (1964). When reviewing a petition for a zoning exemption under G.L. c. 40A, § 3, the Department is empowered and required to consider the public effects of the requested exemption in the State as a whole and upon the territory served by the applicant. Save the Bay, 366 Mass. at 685; New York Central Railroad, 347 Mass. at 592.

With respect to the particular site chosen by a petitioner, G.L. c. 40A, § 3 does not require the petitioner to demonstrate that its primary site is the best possible alternative, nor does the statute require the Department to consider and reject every possible alternative site presented. Rather, the availability of alternative sites, the efforts necessary to secure them, and the relative advantages and disadvantages of those sites are matters of fact bearing solely upon the main issue of whether the primary site is reasonably necessary for the convenience or welfare of the public. Martarano v. Department of Public Utilities, 401 Mass. 257, 265 (1987); New York Central Railroad, 347 Mass. at 591.

Therefore, when making a determination as to whether a petitioner's present or proposed use is reasonably necessary for the public convenience or welfare, the Department

examines: (1) the present or proposed use and any alternatives or alternative sites identified; (2) the need for, or public benefits of, the present or proposed use; and (3) the environmental impacts or any other impacts of the present or proposed use. The Department then balances the interests of the general public against the local interest, and determines whether the present or proposed use of the land or structures is reasonably necessary for the convenience or welfare of the public. D.T.E. 00-24, at 2-6; D.T.E. 01-77, at 5-6; D.T.E. 01-57, at 5-6; Tennessee Gas Company, D.T.E. 98-33, at 4-5 (1998).

3. Exemption Required

In determining whether exemption from a particular provision of a zoning by-law is "required" for purposes of G.L. c. 40A, § 3, the Department makes a determination whether the exemption is necessary to allow construction or operation of the petitioner's Project. See D.T.E. 01-77, at 4-5; D.T.E. 01-57, at 5; Western Massachusetts Electric Company, D.P.U./D.T.E. 99-35, at 4, 6-8 (1999); Tennessee Gas Company, D.P.U. 92-261, at 20-21 (1993). It is a petitioner's burden to identify the individual zoning provisions applicable to the Project and then to establish on the record that exemption from each of those provisions is required:

> The Company is both in a better position to identify its needs, and has the responsibility to fully plead its own case . . . The Department fully expects that, henceforth, all public service corporations seeking exemptions under c. 40A, § 3 will identify fully and in a timely manner all exemptions that are necessary for the corporation to proceed with its proposed activities, so that the Department is provided ample opportunity to investigate the need for the required exemptions.

New York Cellular Geographic Service Area, Inc., D.P.U. 94-44, at 18 (1995).

B. Public Service Corporation Status

Tennessee is a natural gas pipeline company as defined by G.L. c. 164, § 74B, and, as such, is a public service corporation (Exh.TGP-3, at 1). Tennessee Gas Pipeline Company (2002), at 7. Accordingly, Tennessee is eligible to petition the Department for exemptions from local zoning ordinances under G.L. c. 40A, § 3.

C. Public Convenience and Welfare

1. Need for or Public Benefit of Use

a. The Company's Position

The Company states that the purpose of the Project is to provide additional capacity for the transportation of natural gas to two customers, Berkshire Gas Company ("Berkshire") and Bay State Gas Company ("Bay State"), in response to increasing demands for natural gas in the northeast (Exhs. TGP-3, at 3; TGP-3, Exh. A, at 20).[2] The new compression facility will enable the Company to provide 6,100 Dekatherms ("dth") per day of incremental long-term firm transportation capacity to Bay State and 4,300 dth per day to Berkshire (Exh. TGP-3, Exh. A, at 2, 4).[3]

Tennessee has signed binding Precedent Agreements with Bay State and Berkshire[4] together for 100 percent of the capacity from the Project (Exh. TGP-3, Exh. A at 4). Both

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[2] Bay State and Berkshire are the only companies that submitted qualified bids for the capacity for Tennessee's non-binding Open Season.

[3] Of the total 10,400 dth per day of new firm transportation, 8,305 dth is incremental and 2,095 dth is turn back capacity reserved for the Project (Exh. TGP-3, Exh. A at 4).

[4] Tennessee also entered into an Interim Agreement with Berkshire to provide interim gas transportation service to Berkshire if the capacity under the Precedent Agreement is not available by November 1, 2012. The maximum term of the Interim Agreement is five months (see D.P.U. 10-60 at 2).

agreements were signed in spring 2010 with a primary term of 20 years (id.). The language of the Precedent Agreements states: "Service there under shall commence on the later of November 1, 2012, or the date on which Transporter is able to render service to Shipper under the Project (the "Commencement Date"),[5] for a primary term ending twenty years from the Commencement Date… " (RR-DPU-2, at 3; Exh. DPU-N-1).[6]

The estimated in-service date is November 1, 2012 (Tr. at 7). The Company anticipates beginning major construction in April 2012, which would be completed in five to six months (Exhs. TGP-3, Exh. A at 7; DPU-G-1; Tr. at 6, 7).

On August 24, 2011, FERC issued an Order granting a Certificate of Public Convenience and Necessity for the proposed Project subject to certain conditions (Exh. DPU-2). Specifically, FERC found that Tennessee has designed the Project to provide service to the Shippers without degrading the service to its existing customers, none of which have objected to the proposal, and the capacity that the Project will create is fully subscribed by its Shippers and will provide increased service to Bay State and Berkshire (id.). Finally, FERC concluded that "Tennessee's proposal is required by the public convenience and necessity" (id., at 4).

b. Analysis and Findings

The Company has signed agreements with two Massachusetts natural gas suppliers for firm transportation service on or after November 1, 2012. Construction of the proposed compressor station is necessary for Tennessee to provide the service detailed in the two Precedent Agreements with Bay State and Berkshire. The Project is proposed to meet

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5 The Transporter is Tennessee and the Shipper is either Berkshire or Bay State.

6 As indicated by the contract language, failure to meet the planned date of November 1, 2012 is not a breach of contract (Tr. at 10).

customer demand for Bay State and Berkshire gas supplies for their Massachusetts consumers. In addition, FERC has issued a certificate of public convenience and necessity for the Project.

Accordingly, the Department finds that there is a need for, and public benefits that would result from, the construction and operation of the Project.

2. Alternatives Explored

The Company looked at three categories of alternatives: energy alternatives, system alternatives and site alternatives.[7]

For energy alternatives, Tennessee reviewed wind, solar, geothermal power, coal, oil, nuclear, electric generation, fuel cells, and LNG (Exh. TGP-3, Exh. C at 10-2 to 10-3). The Company concluded that wind, nuclear, and LNG would not be able to meet the need in the immediate time frame and that solar, geothermal and fuel cells are currently more costly in comparison to gas and are not being developed sufficiently to be available in the near future (id.). While oil and coal are viable energy sources, they have no advantage over natural gas, and pose increased environmental impacts (id.).

The Company reviewed two viable system alternatives to transport the equivalent amount of incremental natural gas volumes: pipeline looping and pipeline looping with compression (Exh. TGP-3, Exh. C at 10-4). Tennessee determined that pipeline looping would involve either 6.4 miles or 8.7 miles of new 12-inch pipeline (id. at 10-5). The Company determined that the Project would involve less land disturbance and impact fewer landowners than both system alternatives (id. at 10-6). In addition, the Company noted that

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[7] Tennessee also looked at the No-Action Alternative, which it found was not feasible; and conservation, which alone could not meet the need (Exh. TGP-3, Exh. C at 10-2).

the selection of a compressor station to meet the contracted volumes was the choice of both Bay State and Berkshire (Exh. DPU-N-2).

With regard to the possibility of locating the proposed compressor station on industrially zoned land, the Company explained that there were no industrially zoned sites available that met its engineering design criteria (Exh. DPU-N-4; Tr. at 13). The engineering and design criteria included pipeline hydraulic design, facility and workspace requirements, site elevation, road access, availability of 3-phase power, and length of connecting pipe between the Project and the existing pipeline (Exh. TGP-3, Exh. C at 10-8). It is advantageous to locate the compressor station in close proximity to the existing Northampton Lateral, as the closer the pipeline is to the compressor, the less horsepower is required (Tr. at 13). Further, none of the industrial sites were of a sufficient size for the Project (Exh. DPU-N-4). The Company studied three alternative sites, all of which were also zoned residential (Exh. TGP-3, Exh. C at 10-11). The preferred site was the only site among the alternatives that did not require subdivision. Further, the preferred site is available for purchase, contains no rare species, does not have direct wetland impacts, and provides the requisite volumes of gas (id.).

a. Analysis and Findings

The record shows that Tennessee analyzed in a systematic manner various alternatives to constructing the compressor station. First, the Company looked at other alternatives to the use of natural gas, and determined that natural gas was readily available, cost effective, and had minimal environmental impacts (Exh. TGP-3, Exh. C at 10-2 to 10-3). Then, the Company identified three methods for ensuring that the gas supplies could be transported to

both Bay State and Berkshire. Tennessee determined that the Project had fewer environmental impacts than either pipeline looping or pipeline looping with compression. Finally, Tennessee identified four sites in Southwick and applied engineering and environmental criteria to determine which site would be most advantageous (Exh. TGP-3, Exh. C at 10-8). All of the sites are zoned residential due to the necessity of locating near the existing Northampton Lateral; however the preferred site has the fewest wetland impacts, the ability to provide the necessary volume of gas, and is available for purchase.

Accordingly, the Department finds that Tennessee's decision to pursue the Project, rather than the alternatives, was reasonable.

3. Impacts of the Proposed Use

a. Land Use and Wetland Resources

The site includes the permanent alteration of 1.57 acres of prime farmland and farmland of statewide importance (Exh. TGP-3, Exh. E at 3).[8] Tennessee consulted with the Town of Southwick and the Massachusetts Department of Agricultural Resources ("MDAR") on appropriate mitigation for the loss of agricultural land (id.). MDAR has accepted the Company's proposal for a financial contribution to the Town to be used for the purchase of Agricultural Restrictions in Southwick (id.).

According to the Company, the Project will not directly impact wetlands, water sources, or their 100-foot buffer zones (Exh. DPU-TGP-3, at 4). A portion of the proposed

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[8] Prime farmland is defined by the United States Department of Agriculture to be land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops and is available for these uses (Exh. TGP-3, Exh. D at 6). In some areas, land that does not meet the criteria for prime or unique farmland is considered to be farmland of statewide importance (id. at 7).

facilities will be located in the 200-foot Riverfront Area of an unnamed stream and alter 7,500 square feet of this area (id.). The Company stated that it will fully comply with the standards for the Riverfront Area under the Massachusetts Wetlands Protection Act (id.). The Southwick Conservation Commission issued an Order of Conditions for the Project in April 2011 (Exh. DPU-Z-11).

Tennessee received a letter from the U.S. Fish and Wildlife Service indicating that there are no federal or state-listed threatened or endangered species or critical habitat on or in the immediate vicinity of the Project (Exh. DPU-1, at 9).

b. Visual

The building enclosing the compressor is designed to look like a red wooden barn in order to blend into the surrounding community, which improves on the standard design typically used by Tennessee (Exhs. DPU-EN-19; DPU-EN-4).

The Company presented visual simulations of the proposed facility from four viewpoints (Exh. DPU-EN-4). Due to the existing wooded buffer area between the surrounding residences and the proposed facility, there are minimal visual impacts associated with the compressor station (Exh. DPU-EN-4). The clearing associated with the permanent and temporary Northampton Lateral easement will not affect the visual buffer of the proposed facility (Exh. DPU-EN-18; Tr. at 43).

The station will have automated lights on poles and additional lights on the buildings for safety and security (Exh. DPU-EN-1 at 8-8). Given the residential location of this facility, the Company will not illuminate the facility on a regular basis, but instead will turn lights on and off as required (Tr. 49). The Company indicated that the lights on the buildings will be either

recessed or activated manually, and that no station lighting is expected to affect nearby residences (id.). Further, no hazardous sky-related glare will be permitted (Exh. DPU-Z-7).

c. Odor and Air Impacts

The Company stated that there will be no emission of odorous gases under normal operating conditions (Exh. DPU-Z-7). The Company stated that the planned or unplanned venting of natural gas could result in a perceptible odor (id.; Exh. DPU-EN-9. The facility is constructed to run continually and planned releases will occur when the facility has been off-line for two to three days (Tr. at 19, 20). However, under a planned release the Company estimates that the odor would be perceptible between 50 to 100 feet from the facility and should not be objectionable as the nearest residence is approximately 450 feet away (Exh. EN-3, at 6; Tr. at 19, 63).

Based on past experience, Tennessee estimates that this compressor station would have 20 planned releases each year (RR-DPU-2). The Company indicated that the unplanned release of gas is very infrequent, as that type of release is activated in the prevention of an emergency situation (Tr. at 21).[9] The Company estimated methane emissions would be 1.2 tons per year ("tpy") (23.4 tpy CO_2 equivalent) based on the 20 planned releases (RR-DPU-8). There will be no air emissions from the electric compressor unit (Exh. DPU-EN-21). The back-up generator will be powered by natural gas instead of oil, which minimizes potential greenhouse gas ("GHG") emissions (id.). Tennessee stated that it has a comprehensive system integrity program consisting of leak detection to minimize leaks of natural gas (id.). Further,

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[9] The Tennessee witness testified that in his 14 years experience, he has seen two unplanned releases (Tr. at 25).

the Company explained that since its system operates at high pressure, pressure changes from leaks are detected quickly, which limits undetected leaks and the resulting GHG emissions (id.).

The Company reported in its FERC Environmental Report (Appendix G, Air Quality Calculations) that for non-road construction equipment engines operating 30 days or more, 13 different types of equipment will be used (Exh. DPU-EN-23, at 5). Tennessee estimated that the total CO_2 equivalent emissions from diesel operated construction equipment would be 343 tpy (Exh. DPU-EN-2 at 9-10). Tennessee asserted that due to the relatively small size and short duration of the Project (six months), the calculated emissions will be low and the Company is not planning to use additional mitigation (Exh. DPU-EN-23, at 5). However, the Company noted that it will encourage the use of ultra-low sulfur diesel and limits on idling times (id.).

d. Noise and Vibration Impacts

The Company performed a Baseline Sound Survey and Noise Impact Assessment which included five residential receptors (noise sensitive areas or NSAs) and three property line locations (Exh. EN-3, at 6, 7, 15).[10] The closest residential receptor is NSA 1 at Hillcrest Road, located 450 feet northwest of the compressor station (id. at 6). The modeled noise increase from the new compressor station at NSA 1, the closest residence (i.e., at the residence itself as opposed to the residence property line), is predicted to be 3.3 dBA (id. at 9). The

[10] The lowest ambient measurement for NSA 1 is 40 dBA (Exh. DPU-EN-3, at 7). While measured ambient L_{90} are usually lower at night, in this case the daytime measurements were lower due to nighttime insect noises. Therefore, daytime L_{90} were used as the baseline in this analysis (id.).

Company asserted that the Project will be in compliance with the Massachusetts Department of Environmental Protection ("MDEP") Noise Pollution Policy at the nearest residences (Exh. DPU-EN-3, at 2).[11]

The modeled noise increase at the northern portion of the facility's property line is 11.3 dBA and 11.7 dBA at the facility's east and west property lines (Exh. EN-3, at 9). The property line of NSA 1 is located 33.4 feet from the northern portion property line of the Tennessee property and would measure an 11.2 dBA modeled increase (Exh. DPU-EN-11; RR-DPU-3(supp.)). The NSA 1 property is a large parcel, with a significant wooded area of between 300 and 350 feet from the residence to its property boundary line closest to the compressor station (RR-DPU-4; Exh. DPU-G-1). The land adjacent to the northern portion property line and the central property line is wooded, and while zoned residential, the Company asserted that it is very unlikely that there will be new residential development there because each surrounding lot has a residential structure and the land is essentially fully developed (Exh. DPU-EN-3, at 10).

The noise analysis shows that the noise levels at the five NSAs will remain in compliance with FERC limits of 55 dBA L_{dn} based on the proposed noise mitigation (Exh. DPU-EN-2). The proposed noise mitigation consists of acoustical design of the

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[11] The MDEP Noise Pollution Policy limits increases in sound levels to a maximum of 10 dBA above the ambient level (L_{90}) at the nearest inhabited building and the project property line (Exh. DPU-EN-3, at 4). While MDEP's Noise Pollution Policy does not apply to the permitting of this facility (no pre-construction approval by MDEP under its air pollution regulations is required), the Policy is instructive in reviewing the facility's operational noise levels. The MDEP Noise Pollution Policy limits do not apply to construction (see Boston Edison Company, 1 DOMSB at 114).

compressor building walls, roof, and doors, duct silencers in the building ventilation system, and ISO Type C acoustical lagging (Exh. DPU-EN-3, at 11, 12; RR-DPU-6; Tr. at 36-37).

Tennessee provided an estimate of additional noise mitigation by modeling the installation of an on-line silencer to the suction and discharge piping of the compressor station (RR-DPU-6). The results showed a 1.5 dBA decrease at the north property line, a 0.3 dBA decrease at the central property line, and a 0.3 dBA decrease at the nearest residence (id.). Although the Company did not calculate the cost based on a design estimate, it opined that the cost could be several hundred thousand dollars (id.).

For a planned release of natural gas, all the gas is passed through a silencer (Tr. at 23). Since an unplanned release is considered an emergency, the gas is evacuated as quickly as possible, and therefore does not pass through a silencer (id.). Therefore, unlike a planned release that is quieter and can be scheduled during the daytime, the potential unplanned venting of natural gas could result in a loud or distinctive noise that could occur at any hour (Exh. DPU-Z-7; Tr. 51). The Company stated that this would be an emergency event and is predicted to be highly unlikely (Tr. 21, 25).

Town regulations concerning noise are found in the Southwick Zoning Bylaw, under the Environmental Performance Standards, Chapter 185-36(A)(9) (Exh. DPU-Z-8). Specifically, the standard states "[n]oise and vibration shall not be allowed which causes a disturbance to residents or occupants of adjacent properties. No exceptionally loud or distinctive noise shall be allowed between the hours of 10:00 p.m. and 7:00 a.m." (Exh. TGP-3, at Exh. G at 185:77).

In addition, the FERC Environmental Assessment recommended that Tennessee measure actual operational levels to ensure that the levels do not exceed those analyzed and reported in the Environmental Assessment (Exh. DPU-1, at 16). The FERC Certificate therefore ordered the following condition:

> Tennessee shall make all reasonable efforts to ensure that its predicted noise levels from Compressor Station 260A are not exceeded at nearby NSAs and file noise surveys showing this with the Secretary no later than 60 days after placing Compressor Station 260A in service. However, if the noise attributable to the operation of Compressor Station 260A at full load exceeds an Ldn of 55 dBA at any nearby NSAs, Tennessee shall file a report on what changes are needed and shall install additional noise controls to meet the level within 1 year of the in-service date. Tennessee shall confirm compliance with the requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls (Exh. DPU-2, at 16-17).

With regard to construction noise, the Company indicated that only standard construction equipment will be used in the construction of the Project (Exh. DPU-EN-2, at 14). Based on an analysis of crane, backhoe and welding machine operating simultaneously, the Company estimated that the sound level at the nearest NSA during daytime construction would be 59 dBA (id.). The Company proposed hours of construction would be Monday through Saturday, from 7:00 a.m. to 7:00 p.m. (id.; Exh. DPU-EN-17).

With regard to vibration, Tennessee asserted that the type of compressor it is using, an electric motor driven centrifugal package, does not typically cause vibration (Exh. DPU-EN-7). The Company noted that it does not have a record of receiving any vibration complaints from the use of this type of compressor package in other locations (id.). The FERC Environmental Assessment reads:

> Although it is uncommon for compressor stations to cause vibrations at NSAs, Tennessee has not performed a baseline vibration assessment; therefore to ensure that the construction of the compressor station does not result in any increase in perceptible vibration at resident's homes it was recommended that

> Tennessee file a vibration survey with the FERC Secretary (Exh. DPU-1, at 16).

The FERC Certificate therefore ordered the following condition:

> Tennessee shall file a report with the Secretary in the event that it receives any complaints concerning vibration at any NSA near Compressor Station 260A. The report shall identify how Tennessee proposes to resolve the complaint, including plans for installation of additional vibration control mitigation measures. If any mitigation control measures are implemented, Tennessee shall confirm compliance with this requirement by filing a second vibration survey with the Secretary no later than 60 days after it installs the additional vibration controls (Exh. DPU-2, at 17).

The Company explained that if it receives complaints about vibration and the ensuing vibration survey determines that mitigation is required, mitigation could include installation of straightening vanes, piping modifications, or relocation of pipe supports (Exh. DPU-EN-8; Tr. at 17). Such mitigation would be within the existing Project footprint (Tr. at 16, 17).

e. Miscellaneous

The Company anticipates that as many as 50 construction workers may be on site during Project construction (Exh. DPU-EN-22). There will be no on-street parking; the final parking, traffic and support site plan will not be prepared until the contractor is selected (id.). However, the Company anticipates being able to accommodate all of the workers and storage on-site (Tr. at 45).

f. Analysis and Findings

The Project will not directly impact wetlands, will comply with the Massachusetts Wetlands Act Riverfront Area standards, and has received an Order of Conditions from the Town of Southwick. In accordance with the MDAR, the Company will provide mitigation for the use of farmland. There are no federal or state endangered species in the Project area.

Given the design of the compressor station and the existing wooded buffer, as well as the control of nighttime lighting, the visual impacts of the Project would be minimal (Exhs. DPU-EN-4; DPU-EN-19; Tr. at 49).

With regard to noise, the potential Project noise impacts consist of construction and operational noise. The Company has estimated that construction noise at the nearest residence due to daytime construction will be 59 dBA. The Project is located in a rural area, and the nearest residential locations are between 450 to 610 feet from facility construction. The construction will be approximately five to six months starting in the spring 2012, and work hours are proposed to be Monday to Saturday from 7:00 a.m. to 7:00 p.m. Although the measured construction noise levels at the nearest residences are not projected to be excessive, it would be reasonable to avoid the encroachment into the evening hours, and to start construction later on Saturday morning (Exh. DPU-EN-2, at 14). Therefore, to help mitigate noise impacts from construction, absent unusual circumstances, Tennessee shall (1) conduct no work on Sundays and holidays, (2) limit construction activities to the hours of 7:00 a.m. to 5:30 p.m. on Monday through Friday, and (3) limit construction activities to the hours of 8:00 a.m. to 5:30 p.m. on Saturday.

With regard to operational noise, the noise increase at the nearest residence is projected to be 3.3 dBA, which is a minimal baseline increase and well within increases accepted by the Department (as well as the Energy Facilities Siting Board) in past cases. The increases at the facility property lines are in the 11 dBA range, exceeding MDEP's Noise Pollution Policy limit of 10 dBA over ambient background at a source's property line. However, the areas adjacent to the facility's property lines do not seem to be likely candidates for residential development

(Exhs. DPU-G-1; DPU-EN-3, at 10; RR-DPU-4).[12] As discussed in Section II.D.5 below, the Project would be subject to the Town of Southwick noise bylaw and the Company will be submitting a survey of operational noise to FERC. Nonetheless, as noted above, the facility is located in a residential area and its noise levels will be above 10 dBA at the property line of the nearest residence (NSA-1) as well as above 10 dBA at the facility property lines in multiple directions. While the project's FERC Certificate contains a noise condition, that condition does not address the level of incremental noise impacts above the baseline. Therefore, to ensure that noise associated with the operation of the compressor station does not create a disturbance, the Department directs Tennessee to make all reasonable efforts to ensure that its predicted noise levels from Compressor Station 260A are not exceeded at nearby NSAs, and file noise surveys showing that there is no exceedance with the Department no later than 60 days after placing Compressor Station 260A in service. If the survey demonstrates that noise attributable to the operation of Compressor Station 260A at full load exceeds an increase of 3.3 dBA at NSA 1, Tennessee shall include in its 60-day filing a report on what changes are needed to achieve compliance. Tennessee shall install additional noise controls to be at or below the 3.3 dBA increase at NSA-1 within one year of the in-service date. Tennessee shall confirm compliance with the requirement by filing a second noise survey with the Department no later than 60 days after it installs the additional noise controls.

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[12] MDEP's Noise Pollution Policy Interpretation, provides that "Noise levels that exceed the criteria at the source's property line by themselves do not necessarily result in a violation or a condition of air pollution under MassDEP regulations.... A new noise source that would be located in an area that is not likely to be developed for residential use in the future.... may not be required to mitigate its noise impact on those areas, even if projected to cause noise levels at the facility's property line to exceed ambient background by more than 10 dB(A)."

In addition, although vibration impacts are unlikely due to the type of equipment being installed, the Company is required to submit a vibration survey to FERC if it receives complaints and to install appropriate mitigation. In the event the Company submits a vibration survey to FERC, the Department directs the Company to provide a copy of the survey to the Department.

In addition, in order to ensure that that information about construction and operation of the Project is disseminated to the community, the Department directs the Company, in consultation with the Town of Southwick, to develop a community outreach plan for Project construction and operation. This outreach plan should, at a minimum, lay out procedures for providing prior notification to affected residents of: (a) the scheduled start, duration, and hours of construction; (b) any construction the Company intends to conduct that must take place outside of the hours detailed above due to unusual circumstances; (c) any operation the Company intends to conduct that could result in unexpected community impacts due to unusual circumstances; and (d) complaint and response procedures including contact information.

With regard to mitigation of air impacts during construction, Tennessee has indicated its support for using ultra-low diesel in its off-road equipment and limiting idling times (Exh. DPU-EN-23, at 5). In two recent Siting Board cases, the Board imposed conditions requiring the applicant to retrofit certain diesel powered construction equipment. Western Massachusetts Electric Company/GSRP, EFSB 08-2/D.P.U. 08-105/106, at 80, 145 (September 28, 2010) ("GSRP"); New England Power Company/Worcester, EFSB 09-

1/D.P.U. 09-52/53, at 41-43, 85 (March 14, 2011) ("Worcester").[13] In two recent Department cases, the applicants committed to retrofit their equipment consistent with Siting Board precedent. See New England Power Company Millbury, D.P.U. 09-136/137, at 26-27 (October 13, 2011); New England Power Company Mansfield, D.P.U. 10-77, at 37. Therefore, to mitigate the project's construction-related air emissions and consistent with our practice of requiring applicants to reduce emissions from diesel-powered off-road construction vehicles, the Department directs Tennessee to comply with the following condition:

> All diesel-powered non-road construction equipment with engine horsepower ratings of 50 and above to be used for 30 or more days over the course of Project construction must have USEPA-verified (or equivalent) emission control devices, such as oxidation catalysts or other comparable technologies (to the extent that they are commercially available) installed on the exhaust system side of the diesel combustion engine. Prior to the commencement of construction, the Company shall submit to the Department certification of compliance with this condition and a list of retrofitted equipment, including type of equipment, make/model, model year, engine horsepower, and the type of emission control technology installed.

Further, the Department directs Tennessee to use ultra-low diesel in all of its off-road construction equipment.

Finally, since the estimates of methane emissions from venting, as well as the potential for odor and noise is based on an estimate of 20 planned releases per year, the Department

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[13] Diesel engines produce significant amounts of particulate matter ("PM"), which are small solid and liquid particles, composed primarily of carbon which can be easily inhaled and which pose a significant health risk to humans. Massachusetts Department of Environmental Protection ("MDEP") indicates that reducing PM pollution from all sources, including construction equipment, is important for the health of workers and communities. MDEP has established a Massachusetts Diesel Retrofit Program ("MDRP"). The program involves using contract specifications to require contractors working on state-funded projects to install retrofit pollution controls on their construction equipment engines to reduce PM, volatile organic compounds ("VOCs"), and carbon monoxide ("CO"). See New England Power Company Mansfield, D.P.U. 10-77, at 36.

directs Tennessee to submit documentation to the Department one year after the project's in-service date on the actual number of releases that took place in the first year of project operation and the methane emissions resulting therefrom.

Thus, the Department concludes that with compliance with (1) applicable federal, State and local regulations; and (2) the directives herein, the Project would include feasible measures to avoid or minimize environmental impacts.

4. Conclusion on Public Convenience and Welfare

Based on the foregoing analysis of: (1) need for or public benefit of use; (2) alternatives explored; and (3) impacts of the proposed use, the Department finds that the benefits of the Project exceed adverse local impacts and, thus, that the proposed use is reasonably necessary for the public convenience or welfare.

D. Exemptions Required

1. Introduction

Tennessee is seeking individual exemptions and a comprehensive exemption from the Southwick Zoning Bylaw (Exh. TGP-3, at 7). In support of this request, the Company asserts that it must proceed with its Project given Tennessee's need to meet contractual obligations by November 1, 2012 (id.). According to the Company, such exemptions would avoid adverse interpretations, delays, and/or multiple appeals which would not serve the public interest and which could be time-consuming, fragmented and costly (id.).

2. Individual Exemptions

The Company seeks the following individual exemptions from the operation of the Southwick Zoning Bylaw:

Table 1: Southwick Zoning Ordinance Provisions Requiring an Exemption

Zoning Provision	Chapter
Use	Chapter 185-12
Wellhead Protection	Chapter 185-22
Signs	Chapter 185-29
Site Plan Approval	Chapter 185-10
Site Plan Review	Chapter 185-37
Parking and Loading	Chapter 185-30
Environmental Performance Standards	Chapter 185-36
Storm Water Management	Chapter 185-36.1
Flood Hazard and Wetlands	Chapter 185-20
Earth Excavation	Chapter 185-33

3. The Company's Position – Southwick Zoning Bylaws

In addition to the general positions set forth above, the table below summarizes the Company's position with respect to the requested individual exemptions from the Southwick Zoning Bylaw:

Table 4: The Company's Position – Southwick Zoning Bylaw

Individual Zoning Exemption	Available Relief from Town	Why Project Cannot Comply: Company's Position
Use Chapter 185-12	Unclear if Southwick Zoning Board of Appeals can grant use variances (Exh. TGP-3 at ¶ 20; see Chapter 185-41 of Southwick Zoning Bylaw).	Public utility uses are not permitted in the Residence Zone R-40 zoning (Exh. TGP-3, at ¶20).
Wellhead Protection District Chapter 185-22	Unclear if Southwick Zoning Board of Appeals can grant use variances (Exh. TGP-3 at ¶ 20; see Chapter 185-41 of Southwick Zoning Bylaw).	There is uncertainty whether the Project would be a permitted use, prohibited use, or use permitted by a special permit (Exh. TGP-3, at ¶ 21). However, given that prohibited uses are commercial and industrial, it is likely to be prohibited. Prohibited uses require a variance.
Parking and Loading Chapter 185-30	May have authority to grant variance or special permit (Exh. TGP-3, at ¶ 24)	Uncertain whether, and if so how, parking requirements would be applied to the Project (Exh. TGP-3, at ¶ 24).
Signs Chapter 185-29	May have authority to grant variance or special permit (Exh. TGP-3, at ¶ 22)	Tennessee needs to provide signage due to public safety requirements in a residential area. This type of sign is prohibited in a residential area (Exh. TGP-3, at ¶ 22)
Environmental Performance Standards[14] Chapter 185-36	Applicable to any use permitted by right or by special permit (Exh. TGP-3, at ¶ 25)	Tennessee states that these standards are general, vague, subject to discretionary interpretations, apply to uses permitted by right or special permit, and contain uncertain procedural requirements (Exh. DPU-Z-7).

[14] The Environmental Performance Standards consist of regulations of: emissions, flammable liquids or explosive materials, discharges, odors, glare, radioactivity, electrical disturbance, and noise and vibration (Exh. TGP-3, Exh. F at 185:77). Tennessee states that it will attempt to comply with a "reasonable interpretation" of these standards to the extent feasible during construction and under normal operation (Exh. DPU-Z-7).

Individual Zoning Exemption Requested	Available Relief from Town	Why Project Cannot Comply: Company's Position
Storm Water Management Chapter 185-36.1	Special Permit	Tennessee states that the special permit process is subject to appeals and judicial review, which can be costly and result in delays. Tennessee states that it will comply with all storm water requirements consistent with the Wetlands Protection Act (Exh. TGP-3, at ¶ 26). Further it has received an Order of Conditions from the Southwick Conservation Commission (Exh. DPU-Z-12).
Earth Excavation Chapter 185-33	In meetings with Planning Board, Board stated this Chapter is not applicable to Project.	Tennessee does not believe this Chapter applies to the Project; however the Company has not received this interpretation in writing from Town. Absent a binding interpretation, Tennessee maintains it is at a legal risk that the enforcement of this provision could result in legal uncertainty, potential adverse interpretations, delay, burden and undue expense (Exh. DPU-Z-5).
Flood Hazard and Wetlands Chapter 185-20	In meetings with Planning Board, Board stated this Chapter is not applicable to Project.	Tennessee does not believe this Chapter applies to the Project; however the Company has not received this interpretation in writing from Town. Absent a binding interpretation, Tennessee contends it is at a legal risk that the enforcement of this provision could result in legal uncertainty, potential adverse interpretations, delay, burden and undue expense (Exh. DPU-Z-5).
Site Plan Approval/and Site Plan Review Chapters 185-10 and 185-37[15]	In meetings with Planning Board, Board stated this Chapter is not applicable to Project.	Tennessee also does not believe this Chapter applies to the Project; however the Company has not received this interpretation in writing from Town. Absent a binding interpretation, Tennessee suggests it is at a legal risk that the enforcement of this provision could result in legal uncertainty, potential adverse interpretations, delay, burden and undue expense (Exh. DPU-Z-5).

[15] Tennessee notes that it intends to file a site plan with Southwick, but it seeks an exemption from the approval process which requires a special permit (Tr. at 65-66).

4. Consultation with the Municipality

a. Introduction

Tennessee states that since the summer of 2010, it has engaged in extensive outreach to Southwick town officials (Exh. TGP-3, at 5). In particular, on November 22, 2010, the Company met with the Southwick Town Planner, the Southwick Department of Public Works Director, and the Southwick Conservation Commission Coordinator to review the Project and discuss local permitting requirements (id.). Tennessee went before the Southwick Planning Board on December 7, 2010, January 4, 2011, and January 18, 2011, to discuss local zoning and permitting requirements (id.). The Town of Southwick did not seek to intervene in this proceeding and has made no formal objection to the Company's petition.

b. Analysis

The Department continues to favor the resolution of local issues on a local level whenever possible to reduce concern regarding any intrusion on home rule. The Department believes that the most effective approach for doing so is for applicants to consult with local officials regarding their projects before seeking zoning exemptions pursuant to G.L. c. 40A, § 3. See New England Power Company Milbury, D.P.U. 09-136/09-137, at 36, fn. 15 (2011) ("Milbury"); Worcester at 76-77 (2011).

In this case, the Company had significant contact and consultation with the relevant Southwick authorities regarding the Company's Project. The Town of Southwick has neither intervened nor submitted public written or oral comments objecting to the Company's Petition. Accordingly, we find that: (1) the Company made a good faith effort to consult with the local zoning authority concerning the Project before seeking zoning exemptions from the

Department; and (2) the Company's communication with the Town of Southwick before filing zoning exemption petitions with the Department is consistent with the spirit and intent of Russell Biomass LLC/Western Massachusetts Electric Company, EFSB 07-4/D.P.U. 07-35/07-36, at 60-65 (2009). Moreover, because the Southwick Zoning Bylaw does not expressly permit the Zoning Board of Appeals to grant a variance for use, to construct its project as proposed in a residential zone, Tennessee would require an exemption from the Department. See G.L. c. 40A, § 10 ("except where local . . .by-laws shall expressly permit variances for use, no variance may authorize a use . . . not otherwise permitted in the district").

5. Analysis and Findings

The Company has identified the above-described provisions of the Southwick Zoning Bylaw from which it seeks exemption to minimize delay in the construction and ultimate operation of the Project. We note that use variances are not expressly allowed under the Southwick Zoning Bylaw (Exh. TGP-3, Exh. F at 185:82). Thus, Tennessee requires an exemption from the residential use provision of the Zoning Bylaw to construct the project as proposed.

With regard to provisions relating to locating in a wellhead protection district, if the proposed use is prohibited in that district, Tennessee requires an exemption from Section 185-22 (use provision) to construct the project as proposed. See G.L. c. 40A, §10. For parking and loading and signs, there is uncertainty whether a variance or special permit must be issued (id. at ¶ 22). If a variance is required, the Department concurs with the Company that

obtaining a variance can cause undue delays and subject the Project to a difficult legal standard to meet and uphold in court.

With regard to the provisions relating to earth removal, locating in a floodplain zone, and site plan review, the Company believes that these provisions do not apply to the Project. However, the Planning Board has not provided written confirmation of this determination (Exh. DPU-Z-5). Further, with regard to storm water management, a special permit must be issued (Exh. TGP-3, at ¶ 26). The Department acknowledges that while these provisions do not on their face prevent the development of the Project, there is some likelihood that these provisions, if interpreted to be applicable, could result in one or more of the following: an adverse outcome, a burdensome requirement, or an unnecessary delay as part of zoning review.

The Department finds that the substantive sections of the Southwick Zoning Bylaw included in Table 1 would or could affect the Company's ability to implement the Project as proposed. However, as noted above, the Environmental Performance Standards of the Southwick Zoning Bylaw Chapter 185-36 regulate not only the nature and characteristics of the facility to be constructed, but also the on-going operation of the proposed facility. The Town's ability to regulate noise is confined to the Environmental Performance Standards (Exhs. TGP-3, at ¶ 25; DPU-Z-8).

As discussed in Section II.C.3.d. above, while the Project has modeled minimal noise increase at the nearest residence, the facility property line increases are significantly higher. Further, planned gas releases should be confined to the hours stated in the Environmental Performance Standards. Were the Department to grant an exemption from this Chapter, the

Town of Southwick could not exercise local zoning control over the on-going operation of the proposed facility with respect to environmental considerations covered by the Environmental Performance Standards. See New England Power Company Amesbury, D.P.U. 09-27/09-28 at 52-53 (2010) ("Amesbury"); Western Massachusetts Electric Company/Agawam-West Springfield, D.P.U. 09-24/09-25, at 36-37 (2010) ("Agawam-West Springfield"); Braintree Electric Light Department, 16 DOMSB at 186-187 (101-102) (2008). Tennessee has testified that it can meet the Environmental Performance Standards under normal operation of the Project (Exh. DPU-Z-7; Tr. 56-58). Although the Department grants the requests for zoning exemptions to facilitate construction and avoid unnecessary delay or adverse zoning outcomes the Department believes that once such facilities are operational they should comply with local environmental performance requirements.

Accordingly, the Department finds that with the exception of Environmental Performance Standards, Chapter 185-36, Tennessee has demonstrated that the requested zoning exemptions listed in Table 1 are required pursuant to G.L. c. 40A, § 3.

6. Conclusion on Request for Individual Zoning Exemptions

As described above, the Department finds that: (1) Tennessee is a public service corporation; (2) the proposed use is reasonably necessary for the public convenience or welfare; and (3) the specifically named zoning exemptions, with the exception of Environmental Performance Standards, Chapter 185-36, as identified by Tennessee, are required for purposes of G.L. c. 40A, § 3. Accordingly, we grant the Company's request for the individual zoning exemptions listed above in Table 1, with the exception of Environmental Performance Standards, Chapter 185-36.

III. REQUEST FOR A COMPREHENSIVE EXEMPTION

A. Standard of Review

The Department has granted requests for a comprehensive zoning exemption on a case-by-case basis. NSTAR Electric Company, D.P.U. 07-60/07-61, at 50-51 (2008), citing Princeton Municipal Light Department, D.T.E./D.P.U. 06-11, at 37 (2007) ("Princeton"); NSTAR Electric Company, D.T.E./D.P.U. 07-9/07-10, at 37 (2007). The Department will not consider the number of exemptions required as a sole basis for granting a comprehensive exemption. Princeton at 37 (2007). Rather, the Department will consider a request for comprehensive zoning relief only when issuance of a comprehensive exemption would avoid substantial public harm. Id.; see also NSTAR Electric Company, D.P.U. 07-60/07-61, at 51-52 (2008).

B. The Company's Position

In addition to the individual exemptions listed above, the Company requests a comprehensive zoning exemption from the Southwick Zoning Bylaw (Exh. TGP-3, at 8). Tennessee asserts that granting a comprehensive exemption is appropriate because the Project is necessary to address market demand and service requirements of Bay State and Berkshire. According to the Company, the Project should therefore be constructed quickly and without interruption, and absent a comprehensive zoning exemption, the Project could be delayed for numerous reasons including adverse, inconsistent interpretation of the Bylaw and/or multiple appeals (id.; Tr. at 74-75).

C. Analysis and Findings

Here, the record shows that the Project will provide additional gas supplies to Bay State and Berkshire. Construction of the proposed facilities will enable Tennessee to meet its

obligations to provide additional transportation capacity to Massachusetts suppliers. As noted above, the Project is reasonably necessary for the convenience or welfare of the public, and accordingly, the Department has granted individual zoning exemptions (see Section II.C.1, above).

The granting of a comprehensive exemption falls under a stricter standard of review than the granting of individual exemptions. It is not enough to be reasonably necessary for the convenience or welfare of the public; the granting of a comprehensive exemption must also "avoid substantial public harm."(see Princeton at 37). The granting of a comprehensive exemption is not a given, it is based on the specifics of each case. As compared to the granting of individual zoning exemptions, which are tailored to meet the construction and operational requirements of a particular project, the granting of a comprehensive exemption serves to nullify a municipality's zoning code in its entirety, including zoning provisions that may be adopted at some point in the future, with respect to the project under review. Thus, compared to the granting of individual zoning exemptions, which entail specific demonstrations that an exemption is required, a comprehensive zoning exemption constitutes a broader incursion upon municipal home rule authority. In the absence of a showing that substantial public harm may be avoided by granting a comprehensive exemption, the granting of such extraordinary relief is not justified. NSTAR Waltham, D.P.U. 08-1, at 36-37; Massachusetts Electric Company, D.T.E. 04-81, at 24; Tennessee Gas Pipeline Company, D.T.E. 01-57, at 11.

Numerous Department cases that have considered and granted comprehensive exemptions have involved reliability-based projects that were time-sensitive and involved several municipal ordinances. See Milbury at 49; Amesbury at 52; Agawam-West Springfield

at 36. While Tennessee has entered into binding agreements with both Bay State and Berkshire, and the date that Tennessee is projected to begin supplying capacity is November 1, 2012, there is no legal ramification if the Company misses the deadline (RR-DPU-2; Tr. at 10). Thus, the Project is not time sensitive. In addition, the Project is subject to a single municipality's zoning ordinance, which lessens the complexity in dealing with numerous zoning ordinances across different communities which may be in conflict. See GSRP, EFSB 08-2/D.P.U. 08-105/08-106 at 137. Therefore, the record does not support a finding that a comprehensive zoning exemption is needed to prevent delay in order to avoid "substantial" public harm. Accordingly, Tennessee's request for a comprehensive zoning exemption is denied.

IV. SECTION 61 FINDINGS

MEPA provides that "[a]ny determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact" ("Section 61 findings"). G.L. c. 30, § 61. Pursuant to 301 C.M.R. § 11.01(3), Section 61 findings are necessary when an EIR is submitted to the Secretary of Energy and Environmental Affairs, and should be based on such EIR. Where an EIR is not required, Section 61 findings are not necessary. 301 C.M.R. § 11.01(3). On January 21, 2011, the Secretary issued a Certificate, which determined that the Project does not require the preparation of an EIR (Exh. DPU-TGP-4). Accordingly, Section 61 findings are not necessary in this case.[16]

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[16] The Department notes the requirements set forth in G.L. c. 30A, § 61 effective November 5, 2008, regarding findings related to climate change impacts. Since Section 61 findings are not required in this case, the project is not subject to the Greenhouse

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is hereby

ORDERED : That the petition of Tennessee Gas Pipeline Company seeking the specific exemptions set forth in Table 1, with the exception of Environmental Performance Standards, Chapter 185-36, from the operation of the Town of Southwick Zoning Bylaw pursuant to G.L. c. 40A, § 3 is allowed; and it is

FURTHER ORDERED: That the petition of Tennessee seeking comprehensive exemptions from the operation of the Town of Southwick Zoning Bylaw is denied; and it is

FURTHER ORDERED: That to help mitigate air impacts from construction, all diesel-powered non-road construction equipment with engine horsepower ratings of 50 and above to be used for 30 or more days over the course of Project construction must have USEPA-verified (or equivalent) emission control devices, such as oxidation catalysts or other comparable technologies (to the extent that they are commercially available) installed on the exhaust system side of the diesel combustion engine. Prior to the commencement of construction, the Company shall submit to the Department certification of compliance with this condition and a list of retrofitted equipment, including type of equipment, make/model, model year, engine horsepower, and the type of emission control technology installed; and it is

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Gas Emissions Policy and Protocol (Exh. TGP-3, at Exh. E). The Department notes that this Project will have minimal greenhouse gas emissions, as the compressor unit is electric powered, and the back-up unit will use natural gas (Exh. DPU-EN-21). In addition, methane emissions from venting will be approximately one tpy. The Company also has a comprehensive gas leak detection system to minimize GHG emissions (id.). As such, the Project will have minimal direct emissions from a stationary source under normal operations and will have minimal indirect emissions from transportation sources limited to construction, occasional repair or maintenance activities. The Department addresses temporary emissions from off-road construction vehicles and a reporting requirement concerning venting in Section III.C.3, above.

FURTHER ORDERED: That to help mitigate air impacts from construction, all off-road construction equipment used during project construction shall use ultra-low diesel; and it is

FURTHER ORDERED: That to help mitigate noise impacts from construction, absent unusual circumstances, Tennessee shall (1) conduct no work on Sundays and holidays, (2) limit construction activities to the hours of 7:00 a.m. to 5:30 p.m. on Monday through Friday, and (3) limit construction activities to the hours of 8:00 a.m. to 5:30 p.m. on Saturday; and it is

FURTHER ORDERED: That to help mitigate noise impacts from operation Tennessee shall make all reasonable efforts to ensure that its predicted noise levels from Compressor Station 260A are not exceeded at nearby NSAs, and file noise surveys showing that there is no exceedance with the Department no later than 60 days after placing Compressor Station 260A in service. If the survey demonstrates that noise attributable to the operation of Compressor Station 260A at full load exceeds an increase of 3.3 dBA at NSA 1, Tennessee shall include in its 60-day filing a report on what changes are needed to achieve compliance. Tennessee shall install additional noise controls to be at or below the 3.3 dBA increase at NSA-1 within one year of the in-service date. Tennessee shall confirm compliance with the requirement by filing a second noise survey with the Department no later than 60 days after it installs the additional noise controls; and it is

FURTHER ORDERED: That to help mitigate impacts from construction and operation Tennessee shall, in consultation with the Town of Southwick, develop a community outreach plan for Project construction and operation. This outreach plan should, at a minimum, lay out procedures for providing prior notification to affected residents of: (a) the scheduled start,

duration, and hours of construction; (b) any construction the Company intends to conduct that must take place outside of the hours detailed above, due to unusual circumstances; (c) any operation the Company intends to conduct that could result in unexpected community impacts, due to unusual circumstances; and (d) complaint and response procedures including contact information; and it is

FURTHER ORDERED: That Tennessee submits documentation to the Department one year after the project's in-service date on the actual number of releases that took place in the first year of project operation and the methane emissions resulting therefrom; and it is

FURTHER ORDERED: That in the event that Tennessee submits a vibration survey to FERC, the Company provides a copy of the survey to the Department; and it is

FURTHER ORDERED: That Tennessee work cooperatively with municipal and state officials and affected property owners in Southwick to minimize any noise, visual, traffic, odor or other local impacts associated with the Project; and it is

FURTHER ORDERED: That Tennessee and its contractors and subcontractors shall comply with all applicable state and local regulations for which the Company has not received an exemption, including those pertaining to noise, emissions, blasting, herbicides, and hazardous materials; and it is

FURTHER ORDERED: That Tennessee and its successors in interest notify the Department of any significant changes in the planned timing, design, or environmental impacts of the Project so that the Department may decide whether to inquire further into a particular issue; and it

FURTHER ORDERED: That Tennessee shall obtain all other governmental approvals necessary for the Project; and it is

FURTHER ORDERED: That the Secretary of the Department shall transmit a certified copy of this Order to the Town of Southwick, and that Tennessee shall serve a copy of this Order on the Southwick Town Council, and the Southwick Zoning Board of Appeals within five business days of its issuance and shall certify to the Secretary of the Department within ten business days of its issuance that such service has been accomplished.

By Order of the Department:

Ann G. Berwick, Chair

Jolette A. Westbrook, Commissioner

David W. Cash, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.