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WATERSHED PROPERTY REVIEW BOARD

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WATERSHED PROPERTY REVIEW BOARD)
REQUEST BY SUEZ WATER NEW JERSEY,) ORDER GRANTING
ON BEHALF OF TRANSCONTINENTAL) EXEMPTION
GAS PIPE LINE COMPANY, LLC FOR APPROVAL)
RIVERVALE SOUTH TO MARKET PROJECT)

(SERVICE LIST ATTACHED)

BY THE WATERSHED PROPERTY REVIEW BOARD¹:

SUEZ Water New Jersey Inc. ("SWNJ"), a public utility regulated by the New Jersey Board of Public Utilities, on behalf of Transcontinental Gas Pipe Line Company, LLC ("Transco"), has filed an application with the Watershed Property Review Board ("Board") for an exemption to the Watershed Protection and Moratorium Act, P.L. 1988, c. 163, as amended by P.L. 1990, c.19 ("Act"). Specifically, SWNJ seeks an exemption to enter into a License Agreement ("License Agreement") with Transco. The requested exemption would allow for temporary workspace rights on properties owned by SWNJ in the Borough of Emerson, the Borough of Oradell and the Township of River Vale, Bergen County in connection with Transco's Rivervale South to Market Project ("Project"). This Order adopts Board Staff's recommendation to grant the requested exemption in accordance with the conditions outlined below.

Background/Procedural History

On June 22, 2018, SWNJ filed an application with the Board seeking an exemption from the Act. Specifically, SWNJ sought an exemption to grant Transco a temporary License Agreement on portions of the following properties ("Properties") to support the construction of the Project:

¹ Department of Community Affairs Chief Regulatory Officer Donald Palombi took no part in the consideration of this decision.

Borough of Emerson, Bergen County – Block 1201, Lot 2 and Block 1301, Lot 3.01

Borough of Oradell, Bergen County – Block 1105, Lot 1.02

Township of River Vale, Bergen County – Block 202, Lots 2 and 8

The Oradell Reservoir and the Lake Tappan are water supply sources for the residents of Bergen County. All the Properties included in the Project are owned by SWNJ and are being held for the purpose of protecting a surface water supply source. Therefore, the Properties fall under the Board's jurisdiction and are subject to the Act. The proposed License Agreement was discussed at the October 27, 2017 quarterly meeting, at which time Board Staff determined that the License Agreement would require an exemption from the Act.

In addition, a Settlement Agreement ("Agreement") was signed between the Board, Hackensack Riverkeeper, Bergen Save the Watershed Action Network ("Bergen SWAN") and SWNJ on March 26, 2009 and adopted by Board Order on the same date. Included in the Settlement Agreement is a Conservation Easement between SWNJ (as "Grantor") and the State of New Jersey, Department of Environmental Protection ("DEP") (as "Grantee"). Under the Settlement Agreement, as mitigation for identified violations of the Act, SWNJ granted a conservation easement to the DEP on approximately 3,095 acres of its lands and provided \$1 million to the Garden State Green Acres Preservation Fund to be utilized for the purchase of additional open space protective of the watershed in Bergen County, New Jersey. The Properties are subject to the Conservation Easement.

Proposal

The Project involves the improvement and expansion of Transco's existing interstate natural gas pipeline, which is the primary route for gas transmission into the New Jersey and New York metropolitan area. Transco's existing 24" diameter North New Jersey Extension ("NNJE") pipeline was constructed in 1956 and generally runs within a varying width permanent easement between the Township of River Vale and the Borough of Paramus in Bergen County. Portions of the existing NNJE pipeline cross watershed lands that are held by SWNJ, under pre-existing easements. Board Staff reviewed the October 31, 1955 Easement agreement between SWNJ and Transco outlining Transco's current rights.

Transco is seeking to enter into a License Agreement with SWNJ for the temporary use of five SWNJ-owned Properties to perform upgrades to its Emerson Metering and Regulating ("M&R") Station, Orange and Rockland M&R Station and the removal and replacement of the J199 Valve from the Borough of Oradell to the Emerson M&R Station. In each of these areas, the existing NNJE pipeline is surrounded on all sides by SWNJ property.

During the construction phase of the Project, Transco will establish some temporary workspace within its existing easements (for which it will not require any additional rights). However, Transco is seeking a total of 1.8 acres of temporary workspace outside its existing easements, for access and construction staging, as follows:

- Emerson M&R Station – This station is located on Transco-owned property surrounded by properties owned by SWNJ in the Borough of Emerson, Bergen County. This site is in the Hackensack River Watershed near the Oradell Reservoir. Transco seeks a total of 0.447 acre of temporary workspace to facilitate access to its property to perform station upgrades. While the majority of the impacts to this area

will be temporary, five trees will need to be removed to use this area as temporary workspace.

- Orange and Rockland M&R Station – This station is located within a permanent easement held by Transco in the Township of River Vale, Bergen County. This site is in the Hackensack River Watershed adjacent to the Lake Tappan Reservoir. Transco seeks 0.395 acre of temporary workspace to facilitate access to its easement area to perform station upgrades and hydrostatically test the NNJE pipeline. In order to hydrostatically pressure-test the NNJE pipeline, Transco proposes to draw water from the Lake Tappan Reservoir. Once testing is complete, the water will be treated and discharged into the municipal sewer system for the Borough of Paramus. While most of the impacts to this area will be temporary and will not result in any tree removal, there will be permanent disturbance to approximately 0.001 acre of freshwater wetlands on site. Transco received approval from the DEP's Division of Land Use Regulation ("DLUR") for this disturbance on January 25, 2018.
- J199 Valve Setting Removal – The J199 Valve Site is an above-ground easement on the Emerson Golf and Country Club property in the Borough of Oradell, Bergen County. This site is in the Hackensack River Watershed near the Oradell Reservoir. Transco seeks 0.958 acre of temporary workspace to access the J199 valve site through an existing golf course access drive. The J199 valve and valve settings on site will be removed, and the J199 valve will be relocated to Transco's property at the Emerson M&R Station.

Board Staff conducted site visits of the Properties on April 13, 2018. Maps of the proposed License Areas can be found in the License Agreement.

Transco proposes to restore the License Agreement to their pre-construction conditions once construction is completed. Permanent impacts to freshwater wetlands at the Orange and Rockland M&R Station will be mitigated through the DLUR approval, which requires the purchase of mitigation credits at a local freshwater wetlands mitigation bank. In order to mitigate for the removal of five trees at the Emerson M&R Station, in accordance with the License Agreement, 13 trees will be planted within the Conservation Easement area to enhance the watershed buffers around SWNJ's public water supply reservoirs. In addition, Transco will provide SWNJ a lump sum payment of \$20,000 for the estimated costs of watering and maintenance of these trees over a three-year period.

The DEP, as the holder of the Conservation Easement, reviewed the proposed License Agreement and determined it to be consistent with the Conservation Easement as long as the License areas are restored to their pre-construction condition upon completion of the Project. Should Transco be unable to restore the License areas to the condition required under the License Agreement, SWNJ and Transco must submit a restoration and mitigation plan for DEP approval. If the Project results in any permanent impact to the conservation values of the Properties, SWNJ will need to obtain approval from the DEP Commissioner for a release of the Conservation Easement in accordance with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1.

SWNJ and Transco have taken steps to involve the other parties to the Settlement Agreement during the review of this exemption request. The Project and License Agreement were discussed by the settlement parties at three quarterly meetings (October 27, 2017, April 13,

2018 and October 30, 2018) and during a conference call on August 16, 2018 (without Board Staff on the call).

Eastern Environmental Law Center

The Eastern Environmental Law Center ("EELC"), representing both Bergen SWAN and the Hackensack Riverkeeper, has submitted letters to Board Staff dated July 27, 2018 and October 4, 2018 expressing concerns about the Project. EELC states that the Project will result in unacceptable environmental impacts and will degrade water quality. EELC states that a comprehensive mitigation plan, fully mitigating all environmental and water quality impacts (including impacts to wetlands, steep slopes, species habitat, drinking water impacts and methane emissions) has not been submitted by Transco. EELC further states that the Board should take an expansive review of the Project on the public water supply and surrounding watershed property. Additionally, EELC was concerned that Transco had not received all appropriate DEP approvals and had not agreed to limit work based on timing restrictions relating to species habitats. EELC expressed concern about methane emissions from gas pipelines. EELC further argued that the Board should conduct an additional public process.

Transco

On August 14, 2018, August 21, 2018 and October 10, 2018, Transco filed responsive correspondence. Transco states that the Project will not have significant and long-lasting environmental impacts as determined in the Environmental Assessment completed for the Project, which includes Transco's mitigation plan for impacts to the Properties. Transco indicated that they received all of the necessary DLUR and Bergen County Soil Conservation District approvals for the Project and believes the mitigation plan satisfies the requirements of the Act. Transco indicated that it had reduced the number of trees to be removed by avoiding forested wetland areas and using existing cleared areas when available. Transco further committed to comply with any timing restrictions regarding species habitat.

Transco indicated that it would treat any purchased water used in its hydrostatic test before discharging the water into the municipal sewer system in the Borough of Paramus. Transco further asserted that the application before the Board was for a License Agreement that provides temporary workspace on SWNJ's property for construction not for operation of its facilities (for which it already holds an existing easement), and therefore methane emissions are irrelevant to the exemption request. SWNJ and Transco agreed to restore all temporary impacts immediately after construction in addition to the purchase of freshwater wetlands and riparian vegetation mitigation credits at a local mitigation bank. Finally, Transco reiterated its position about temporary impacts on the Properties and indicated that a public hearing on the exemption request was not required.

By letter dated November 6, 2018, SWNJ notified Board Staff that it required Transco to provide 48 hours prior notice to the undertaking of any activity subject to the License Agreement and any raw water purchased from SWNJ for the hydrostatic testing will not be returned in the reservoir system and will be treated prior to discharge into the local sewer/sanitary system.

Discussion

The Act prohibits any "municipality, municipal utility authority, or public utility" from conveying "any land utilized for the purpose of the protection of a public water supply." Section 1 of P.L. 1988, c. 163. In other words, the Act places a moratorium on all conveyances of watershed property. The Act permits the Board to grant an exemption from the moratorium under three circumstances. Section 2(a) of P.L. 1988, c. 163. The Board may permit the conveyance of watershed property if it finds: "(1) that there is a compelling public need for the conveyance of the property, (2) the denial of the exemption would result in extraordinary hardship, or (3) the sale or development of the watershed property is otherwise consistent with the purposes of this act" (which are generally to protect water quality and encourage open space preservation). Any person applying for an exemption must submit to the Board appropriate documentation addressing any impact on buffer areas and proposals for mitigation.

SWNJ is seeking an exemption to enter into the License Agreement with Transco for temporary workspace. It bases its application on Transco's assertions that there is a compelling public need for the Project and that denial would result in extraordinary hardship. On the issue of public need, Transco states that the Project will result in increased capacity and system reliability to meet the increased demand demonstrated by the long-term (15-year) binding subscriptions to the Project capacity by Direct Energy Business Marketing, LLC and UGI Energy Services. These two shippers serve commercial, residential, institutional and industrial end users.

After the filing of this exemption request, on August 10, 2018, the Federal Energy Regulatory Commission ("FERC") granted a Certificate of Public Convenience and Necessity to the Project pursuant to section 7(c) of the Natural Gas Act. The Certificate authorized Transco to construct and operate the Project and was premised on FERC's finding that the Project will meet a public need.

Transco also asserts that the denial of the exemption request would cause a significant hardship to the Project and its operations. The License areas provide the necessary workspace outside of the limits of Transco's existing easements for the storage of equipment, material and personnel movement, safety and parking during construction of the Project. Alternatives were extensively evaluated during the planning and design phase of the Project, as outlined in the Environmental Assessment report, and were found to have more environmental impacts project-wide.

Conclusion

Based on the foregoing discussion, the Board **HEREBY FINDS** that the denial of the License Agreement between SWNJ and Transco would present a significant hardship. Additional temporary workspace is needed to construct the Project along stretches of the existing NNJE pipeline that traverse SWNJ land. Therefore, in order to exercise its rights under its easements, Transco could not use alternate space at a different location as temporary work space. As such, it has no choice but to use the land encumbered under the Act and the Conservation Easement as temporary workspace. These findings are based on the specific facts presented by this application, including that impacts to the Properties are temporary in nature and restoration and mitigation measures will be employed post-construction. Additionally, conditions will be imposed to restrict the impact to the temporary workspace and to ensure that SWNJ and Transco will comply with commitments made through its application. The Order is conditioned on the following:

1. SWNJ shall require Transco to provide SWNJ and Board Staff with notice prior to any construction activity on the Properties.
2. SWNJ shall ensure that all water from the hydrostatic testing is treated by Transco or its contractor prior to release and that no water is released directly into Lake Tappan, the Oradell Reservoir or onto the Properties.
3. SWNJ shall require Transco to take all reasonable steps, including use of appropriate barriers, to assure that there is no runoff from the Project into any public water supply source or onto the Properties. Transco shall be required to immediately notify SWNJ and address any indication of run-off or discharge.
4. SWNJ shall monitor and shall require Transco to monitor water quality of the Oradell and Lake Tappan Reservoirs during construction of the Project and remedy any negative impacts found to be caused by the Project. Such monitoring shall be in the immediate vicinity of the temporary work space as well as in the overall water body. Any indication of impacts to water quality shall be immediately addressed.
5. All temporary impacts to the License Areas and/or the Properties must be restored to pre-construction conditions immediately after construction.
6. Transco must comply with all timing restrictions required by the DEP and U.S. Fish and Wildlife Service and their commitments contained in correspondence with Board Staff dated August 14, 2018 and October 10, 2018.
7. SWNJ and Transco must comply with all federal, state and local regulations and permit conditions including but not limited to the DEP, DLUR Flood Hazard Area Control Act and Freshwater Wetlands Protection Act Permit No. 0200-17-0005.1 FWW 170001 and FHA 170001, the Bergen County Soil Conservation District approval, the conditions of the License Agreement and the mitigation described in the Environmental Assessment, dated June 2018 and prepared by Paulus, Sokolowski & Sartor, LLC.
8. SWNJ and Transco must comply with the DEP, Division of Water Quality, New Jersey Pollutant Discharge Elimination System permit issued for the Project and must notify the Borough of Paramus prior to any discharge into the municipal sewer system as a result of hydrostatic testing of the NNJE pipeline.
9. The License Agreement does not relieve SWNJ of any obligations regarding the Conservation Easement.

After consideration of the entire application, including the permits and Environmental Assessment report, the Board **HEREBY GRANTS** an exemption under the Act from the moratorium on the License Agreement for the purposes of this application. As stated above, the Board **FINDS** that the denial of the exemption would result in extraordinary hardship for this Project.

The application, permits and License Agreement contained in the documents submitted by SWNJ, included the Environmental Assessment report are significant and the Board **RELIES** upon the conditions and protections contained therein in considering this application. The Board **HEREBY FINDS** that these protections, plus additional conditions of this Order provide

sufficient mitigation of any potential water quality impacts. Therefore, the Board **HEREBY ORDERS** that the conditions agreed to and incorporated in the License Agreement document shall become part of this Order, along with the various protections included in the permits and Environmental Assessment report submitted to the Board. The Board **HEREBY ORDERS** that any material change to the License Agreement be subject to further review by the Board.

The Board **FURTHER ORDERS** that SWNJ work in good faith with Transco to determine the most beneficial on-going maintenance plan for the temporary License Agreement and to limit the impact upon the water supply. The Board **FURTHER ORDERS** that SWNJ shall have the opportunity to have its representative present to observe and object to any actions taken by Transco on SWNJ's property.

Therefore, the Board **HEREBY ORDERS** that the application for an exemption, pursuant to Section 2(a) of P.L. 1988, c. 163, as amended, shall be and hereby is **APPROVED** subject to the conditions recited above.

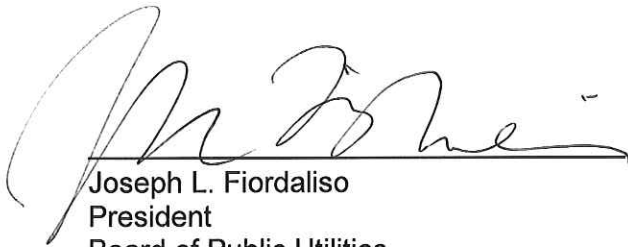
This Order addresses consideration of an exemption from the Act and does not relieve SWNJ or Transco of any other obligations that may be required pursuant to any statute or regulation.

This Order confirms the vote on this matter taken at the duly noticed open public meeting of the Watershed Property Review Board on November 30, 2018.


DATED: 11/30/18

WATERSHED PROPERTY REVIEW BOARD

BY:



Joseph L. Fiordaliso
President
Board of Public Utilities



Ray Bukowski, Assistant Commissioner
As designee of
Catherine R. McCabe
Commissioner
Department of Environmental Protection
Pursuant to delegation order dated
August 23, 2018