

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case 11-T-0401 - Application of Bluestone Gas Corporation of New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for the Construction and Operation of a 20” Natural Gas Gathering System and Dehydration and Compression Facilities, in the Town of Sanford, Broome County, and Request for Approval of Environmental Management and Construction Standards and Practices.) **CASE 11-T-0401**
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Case 12-G-0214 - Petition of Bluestone Gas Corporation of New York, Inc. for an Order Granting Certificate of Public Convenience and Necessity.) **CASE 12-G-0214**
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**THE DELAWARE RIVERKEEPER NETWORK’S STATEMENT IN OPPOSITION OF
THE JOINT PROPOSAL**

Dated: 8/30/12

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PRELIMINARY STATEMENT

The Delaware Riverkeeper Network (“DRN”) hereby submits its opposition to the Joint Proposal. DRN is a non-profit organization established in 1988 to protect and restore the Delaware River, its associated watershed, tributaries, and habitats. This area includes 13,539 square miles, draining parts of New Jersey, New York, Pennsylvania and Delaware, and it is within this region in Broome County New York that a portion of the Bluestone Gathering System Project’s (“Project”) construction activity will take place.

The Upper Delaware River is a federally designated “Scenic and Recreational River” administered by the National Park Service. The National Wild and Scenic Rivers System also includes parts of the Lower Delaware and the Delaware Water Gap. The Basin and River are home to a number of federal and state listed endangered or threatened species including the dwarf wedgemussel, Indiana bat, bog turtle, shortnose sturgeon, loggerhead and Kemm’s ridley sea turtles, and Northeastern bulrush. Over 200 species of migratory birds have been identified within the drainage area of the Upper Delaware River within the Basin, including the largest wintering population of bald eagles within the Northeastern United States. Migratory birds breed in or migrate through the high quality riparian corridors of the Basin. The Delaware River and Delaware Bay are also home to dozens of species of commercially and recreationally important fish and shellfish species.

In its efforts to protect and restore the watershed, DRN organizes and implements stream-bank restorations, a volunteer monitoring program, educational programs, environmental advocacy initiatives, recreational activities, and environmental law enforcement efforts throughout the entire Delaware River Basin. DRN is a membership organization headquartered in Bristol, Pennsylvania, with more than 10,000 members with

interests in the health and welfare of the Delaware River and its watershed. DRN is uniquely qualified to comment on and provide relevant information concerning associated impacts to human health and the environment as a result of this Project. DRN brings this action on its own behalf and on behalf of its members, board, and staff.

On July 27, 2011, Bluestone provided an application to the Secretary to the New York State Public Service Commission ("Commission") seeking a Certificate of Environmental Compatibility and Public Need ("Certificate"), pursuant to Article VII of the Public Service Law ("PSL"), authorizing construction, operation and maintenance of the proposed Bluestone Gathering System ("BGS" or the "Project") in the Town of Sanford, Broome County, New York. The BGS is a natural gas system that will aggregate and dehydrate natural gas production from wells in Susquehanna County, Pennsylvania for delivery into interstate pipelines. The BGS also will have the capability to aggregate natural gas production from wells in Broome County, New York for delivery into interstate pipelines. According to the documents on record BGS will provide an outlet for the production of natural gas from a minimum of 30,000 acres being developed by affiliates of Southwestern Energy ("SWN") in Susquehanna County, Pennsylvania as well as any additional acreage along the route in Pennsylvania and in New York located within a 5 to 10 mile proximity of BGS. According to the documents on record BGS will be capable of delivering natural gas from these wells to two interstate pipelines; the Millennium Pipeline which will be interconnected to the BGS in New York and the Tennessee Gas Pipeline which will be interconnected to the BGS in Pennsylvania. Though compression will not be required initially at the Sanford Station, Bluestone anticipates that, in the future, it may need compression to meet the needs of growth in regional production.

If the Commission adopts the Joint Proposal in its entirety, the appended Certificate Conditions will govern the construction and operation of the BGS. DRN has a number of

significant concerns regarding this particular Project and urge the Commission to reject the Joint Proposal.

ARGUMENT

1) A Ruling On This Proposal Is Premature And Improper Because Bluestone Has Not Filed For A Formal Application For Non-Jurisdiction With FERC.

Bluestone has failed to file for a formal petition requesting an official determination from the Federal Energy Regulatory Commission (“FERC”) exempting the Project from FERC jurisdiction. Instead, Bluestone *itself* determined it was not subject to FERC authority after informal discussions with FERC staff.¹

The Commission has developed specific and searching criteria to determine which facilities are non-jurisdictional gathering facilities. *See Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). To determine a facility’s function, the Commission relies on the modified “primary function test,” which includes consideration of physical and geographical factors including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point in the field; (3) the facilities’ geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of the pipelines. *See, e.g., Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000).

In addition to the physical and geographical factors, the Commission also considers the purpose, location, and operation of the facilities; the general business activities of the owner of the facility; and whether the jurisdictional determination is consistent with the NGA. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations. *See, e.g., NorAm Gas Transmission Co.*, 75 FERC ¶

¹ *Additional Information In Response To August 10, 2011 Deficiency Letter From Department Of Public Service Staff* (“Bluestone concluded that the proposed Bluestone Gathering System fits the jurisdictional requirements of a gathering system and is not subject to FERC jurisdiction.”)

61,127, at 61,429 (1996). The Commission weighs any and all other relevant facts and circumstances of a particular case, including the non-physical criteria. *See ANR Pipeline Co.*, 76 FERC ¶ 61,153 (1996).

In Bluestone's letter titled, *Additional Information In Response To August 10, 2011 Deficiency Letter From Department Of Public Service Staff*, Bluestone directly admits that a similar pipeline gathering system² needed to file for a declaratory order requesting exemption. Bluestone makes the specious argument that because the two projects are "analog," and the other project was found to be non-jurisdictional, Bluestone therefore does not need to file such a request with FERC.

However, when the jurisdictional requirement test is applied to the BGS, a number of these factors weigh heavily for a finding of jurisdiction. For example, typical "gathering systems" operate at Maximum Allowable Pressures of roughly 350 pounds per square inch, the BGS system will have the capacity to operate at over 1400 pounds per square inch. In addition, the design of this system will allow for the potential pass through of natural gas from the Tennessee Line to the Millenium Line, thus making the BGS a functional equivalent of a transmission line. This fact is further reinforced by the fact that the pipeline will have a much higher capacity than will be used when initially put into service, a capacity that will only increase when/if additional compressor stations are added to the system. Furthermore, just the simple fact that the BGS interconnects two major gas pipeline systems at either end of the line, indicate that this system is not your typical open ended "gathering" system.

As detailed above, a jurisdiction decision is a multifaceted and complex balancing test, and is a matter for FERC to determine – not the project sponsor. As such, Bluestone must

² On December 23, 2009, Laser Marcellus Gathering Company, LLC (Laser Marcellus) filed a petition for a declaratory order requesting that the Commission determine that pipeline facilities it intends to construct from Pennsylvania into New York (Marcellus Facilities) will perform a gathering function exempt from the Commission's jurisdiction. 130 FERC ¶ 61,162, Docket No. CP10-35-000.

submit a request for declaratory order requesting an exemption to FERC before this Commission rules on the Joint Proposal. A finding that FERC does in fact have jurisdiction would materially change the procedure and substance of the review and permitting processes, and therefore it would be premature for the Commission to rule on the Joint Proposal before a clear jurisdictional decision has been made by FERC.

2) The Project's Planned Waterbody Crossings Construction Activity Are Improper and Unnecessarily Harmful To The Environment.

The rapid development of natural gas supporting infrastructure – in particular pipeline delivery systems – have a significant negative impact on the Delaware River Basin and surrounding communities. All such construction activity results in negative impacts to the surrounding environment. As indicated in Bluestone's *Stream and Wetlands Crossings Methods* submission before the Commission, Bluestone plans on crossing no less than 22 waterbodies in New York.³ The Joint Proposal should not be approved until a condition is included in the proposal that expressly states that under no circumstances will the "Wet Cut" water body crossing method be used. This method is the cheapest and fastest way to cross a water body, but it is also – by far – the most environmentally damaging.

There are two broad categories of construction methods for gathering pipelines that cross water-bodies. These two methods are known as "dry" ditch crossing and "wet" ditch crossing (also known as "open cut") construction.⁴ "Dry" ditch crossings encompass three primary techniques: dam and pump, flume, and horizontal direct drilling. A "wet" ditch crossing encompasses any dredging construction activity that takes place while the water body continues to flow. Each technique is associated with a particular set of environmental harms.

³ Appendix C, Attachment 4, Streams and Wetlands Crossing Methods.

⁴ Nels Johnson, et al., *Natural Gas Pipelines*, THE NATURE CONSERVANCY, 3 (December 2011).

In the dam and pump technique, the stream is dammed and water is transferred across the construction site by means of a temporary hose or pipe and pump. This construction isolates and diverts the stream around the pipeline crossing. Problems associated with this technique include: sediment release during dam construction and removal as water washes over the construction area; slow construction/installation time compared to other construction methods; extended period of in-stream activity and prolonged sediment release; fish salvage may be required from dewatered reach; and, a short-term barrier to fish movement is created.⁵

In the flume technique, the stream is dammed and a culvert is installed. The flume pipe is then installed after blasting (if necessary), but before any trenching. Sand bags and plastic sheeting diversion structures or an equivalent setup are often used to divert stream flow through the flume pipe. In addition to the problems posed by the dam and pump method, problems associated with flume pipeline construction include: the flumes becoming short-term barriers to fish passage if the water velocity in the flume pipe is too high or if the flume pipe is perched above the streambed; and the inducement of stream velocities that may create downstream scour.⁶

Horizontal directional drilling is a technique that is similar to the drilling of a horizontal hydraulic fracturing well. A pilot hole is first drilled down to a sufficient depth and then deviated underneath the stream parallel to the ground. The wellbore is then enlarged to a diameter larger than the diameter of pipe to be installed. A prefabricated pipe segment is pulled into the hole, using the same drill rig that bored the initial and enlarged holes. Although directional boring installations do not generate major sediment discharges the potential for environmental damage

⁵ James Norman, et al., *Utility Stream Crossing Policy*, ETOWAH AQUATIC HABITAT CONSERVATION PLAN, July 13, 2008, 12.

⁶ *Id.* at 13.

due to unexpected releases of drilling mud and borehole cave-ins still exists.⁷ For instance, if fractures in the drilling substrate are encountered, there is the potential for pressurized drilling fluids to leak out of the bore hole and potentially reach the streambed.⁸ When intersected by the pilot hole, aquifers may be large-volume sources of groundwater under pressure, and such, fluid management problems and cross-contamination of aquifers may be a concern.⁹ In addition, Horizontal Directional Drilling also requires large areas to be cleared for mud pits, pipe assembly areas, and staging areas and therefore has a significant footprint. In July and August 2011 three separate blowouts or spills caused by Laser Pipeline Co. muddied a high value stream in Susquehanna County in a creek crossing where horizontal direct drilling was utilized.¹⁰

Wet ditch crossing construction – the method of crossing seemingly proposed by Bluestone – is primarily accomplished through in-stream dredging. While this method is cheaper, quicker, and thus more common, it is also associated with *more significant environmental problems than any of the dry ditch techniques*. The process for wet ditch crossings involves laying pipe across a stream by digging a ditch from one side of the stream to the other. In some cases, a temporary bridge is installed so the backhoe can dig a trench across the streambed.¹¹ This construction occurs as the stream is flowing, there is no redirecting or damming of water. For a more thorough description of the different pipeline construction techniques, please see

⁷ Canadian Association of Petroleum Producers, Canadian Energy Pipeline Association, and Canadian Gas Association, *Pipeline Associated Water Crossings*, 1-4 (2005).

⁸ *Id.*

⁹ Canadian Association of Petroleum Producers, Canadian Energy Pipeline Association, and Canadian Gas Association, *Planning Horizontal Directional Drilling for Pipeline Construction*, 6-3 (2004).

¹⁰ Available at, <http://thetimes-tribune.com/news/third-spill-at-pipeline-site-sullies-susquehanna-county-creek-1.1186532#axzz1iLFWwIBC>.

¹¹ Norman, *supra* note 5, at 8.

“Overview of the Design, Construction, and Operation of Interstate Liquid Petroleum Pipelines,”
by T.C. Harris and R.L. Kopla.¹²

A brief survey of published environmental studies suggests that four primary water quality impacts result from pipeline construction activities regardless of which method is used, these impacts include: erosion and sedimentation, loss of riparian vegetation, forest and habitat fragmentation, and cumulative environmental impacts.

Studies documenting the effects of stream crossing construction on aquatic ecosystems identify sediment as the primary stressor for construction on river and stream ecosystems.¹³ During construction of the pipeline stream crossings discrete peaks of high suspended sediment concentration occur during activities such as blasting, trench excavation, and backfilling.¹⁴ The excavation of streambeds can generate persistent plumes of sediment concentration and turbidity.¹⁵ This sedimentation has serious consequences for the benthic invertebrates and fish species whose vitality is crucial for healthy aquatic ecosystems. There have been documented reductions in benthic invertebrate densities, changes to the structure of aquatic communities, changes in fish foraging behavior, reductions in the availability of food, and increases in fish egg mortality rates.¹⁶ In addition to the stream crossing construction activity itself, the associated new road construction increases the risk of erosion and sedimentation.¹⁷ Heavy rains during two tropical storms in August and September 2011 caused extensive failures to erosion and sediment

¹² T.C. Pharris, R.L. Kopla, *Overview of the Design, Construction, and Operation of Interstate Liquid Petroleum Pipelines*, Argonne National Laboratory (2007).

¹³ Scott Read, *Effects of Sediment Released During Open-cut Pipeline Water Crossings*, *Canadian Water Resources Journal*, 1999, 24: (3) 235-251.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Norman, *supra* note 5, at 9-10.

¹⁷ *En Banc* Hearing of the Pennsylvania Public Utility Commission on Jurisdictional Issues Related to Marcellus Shale Gas Development, Docket No. I-2010-2163461.

controls on pipelines under construction in north central Pennsylvania resulting in sedimentation plumes in nearby waterbodies.¹⁸

Pipeline construction also will result in the loss of riparian vegetation.¹⁹ For each of the pipeline construction techniques there is a resulting loss of foliage associated with clearing the stream banks. This reduction in foliage increases stream temperature and reduces its suitability for incubation, rearing, foraging and escape habitat.²⁰ The loss of vegetation also makes the stream more susceptible to erosion events, as the natural streambank stabilization provided by the roots has been removed.

Deposited sediment from construction activities can fill in the interstitial spaces of the streambed, changing its porosity and composition, and thereby increasing embeddedness and reducing riffle area and quality.²¹ Furthermore, deposited sediment has the potential to fill in pool areas and reduce stream depth downstream of the construction area, further impacting stream habitats.²²

Forest fragmentation is also a serious and inevitable consequence of increased pipeline construction activity. While the right of way for a pipeline construction zone ranges from 25-200 feet, on average, the right of way extends about 100 feet.²³ The Nature Conservancy has determined that “[t]he expanding pipeline network could eliminate habitat conditions needed by “interior” forest species on between 360,000 and 900,000 acres as new forest edges are created by pipeline right-of-ways.” In addition, the right of way will need to be maintained and kept clear throughout the lifetime of the pipeline, which can be up to 80 years. The clearing of forest

¹⁸ Craig R. McCoy and Joseph Tanfani, *Similar Pipes, Different Rules*, PHILADELPHIA INQUIRER, available at, http://articles.philly.com/2011-12-12/news/30507185_1_hazardous-materials-safety-administration-pipeline-safety-rules.

pipelines.

¹⁹ Norman, *supra* note 5, at 8.

²⁰ CAPP (2005), *supra* note 7, at 1-4.

²¹ Read, *supra* note 13, at 235-251.

²² Norman, *supra* note 5, at 9-10.

²³ Johnson, et al. *supra* note 4, at 6.

for pipelines can result in the introduction of invasive species (such as Japanese knotweed and hay scented fern), native wildlife species decline, and the creation of microclimates that degrade forest health through sunscald and wind-throw. Habitat fragmentation also deprives interior forest species of the shade, humidity, and tree canopy protection that well developed deep forest environments provide.²⁴

The cumulative impact of multiple construction sites for water crossings on a stream or river has the potential significantly degrade the quality and flow rate of the water body. The capacity of a water system to recover from a multitude of impacts may be exceeded with the detrimental effects of crossing construction becoming permanent.²⁵ Recurrent stresses on fish, such as those originating from elevated suspended sediment concentrations, will have negative effects on fish health, survival and reproduction.²⁶

For a more expansive overview of potential cumulative environmental impacts please see, *Utility Stream Crossing Policy*, by James Norman, et al.²⁷

The Joint Proposal fails to adequately consider the aforementioned impacts, and as such, should be rejected by the Commission. Lastly, it should be noted that in the construction of a much larger pipeline, that involved over 100 stream crossings, Tennessee Gas and Pipeline proposed only to use “Dry Ditch” or Horizontal Direct Drilling construction methods for all of its water crossings. The Commission should require Bluestone to provide binding assurances, through a condition on the proposal, that only dry cut methods will be used and that under no circumstances will wet cut methods be authorized.

3) The Delaware River Basin Commission Has Authority To Regulate Pipelines And Must Be Consulted Before The Proposal Is Ruled Upon.

²⁴ Johnson, et al. *supra* note 4, at 7.

²⁵ CAPP (2005), *supra* note 7, at 1-4.

²⁶ *Id.*

²⁷ Norman, *supra* note 5, at 11-13.

As detailed above, linear pipeline construction activities involve significant impacts to both land and water. Pursuant to Section 2.3.5.A.12 of the Rules of Practice and Procedure (“RPP”) for the Delaware River Basin Commission (“DRBC”), the DRBC requires project proponents to submit projects for review for all projects that involve a “involve significant disturbance of ground cover affecting water resources.” Bluestone’s project undeniably meets this standard, as a significant portion of the pipeline lies within the jurisdiction of the DRBC. . As such, Bluestone must consult with, and gain approval of, the DRBC regarding construction of this pipeline. To the extent that Bluestone has not made such a consultation, and received such approval, any ruling on the Joint Proposal by the Commission is premature and inappropriate.

Furthermore, this review process by the DRBC would be in *addition* to water withdrawal docket approval for the hydrostatic testing of pipeline integrity – which this project does not yet even have. In fact, on December 8, 2011 the DRBC unanimously voted to “postpone the Commission’s consideration of applications for water withdrawals within the State of New York to serve natural gas development activities, pending completion of New York’s environmental quality review process.” This ruling was the result of a letter sent by the New York State Department of Environmental Conservation on May 31, 2011, requesting that all water withdrawal applications within New York “that are associated with high volume hydraulic fracturing, be postponed until completion of the New York environmental impact process.”²⁸ This ruling of the DRBC directly relates to Bluestone’s water withdrawal request, which is now indefinitely postponed. It would be highly premature and inappropriate to approve the Joint Proposal for the construction of a pipeline before approval is provided to do the very testing that is required to demonstrate that the pipeline is indeed safe for operation. Such a backwards approach should not be permitted.

²⁸ Joseph Martens, *Request to Postpone XTO Energy, Inc. Water Withdrawal Docket and Similar Applications*, (May 31, 2010).

4) The Joint Proposal Must Not Be Approved Until New York State Has Made A Final Decision On Whether Or Not To Allow Drilling In New York State.

The Commission must consider the totality of all of the relevant factors in making its determination of environmental compatibility and public need. Under this Application, filed in accordance with PSL § 121-a(3) the Commission must make the determinations required by paragraphs (a), (b), (e), (f) and (g) of subdivision one of PSL §126.

Bluestone articulates that the half of the “need” for this project, as required by an Article VII application, is to a significant extent predicated on the assumption that drilling will occur in Broome County and that those well pads will be connected to the BGS. However, New York currently has in place an indefinite moratorium on high volume hydraulic fracturing within state boundaries. As such, the Commission cannot consider the “benefits” or “need” of the pipeline in New York based on increasing capacity and providing additional natural gas to Northeastern markets. It is improper for the Commission to take part in speculation as to whether New York will allow gas drilling when evaluating the public need for this project. Therefore, until the State of New York makes a final determination on whether or not to allow high volume hydraulic fracturing gas drilling in the state, a ruling on the Joint Proposal is premature and improper.

5) A Cumulative Environmental Impact Study Must Be Conducted That Accounts For Impacts From Pipeline Construction Activity As Well As Induced Development As A Result Of The Project.

Currently there is no local, state or Federal body that is looking at the cumulative impact of pipeline construction activity in the Marcellus Shale Region. To the extent that the Joint Proposal does not either require or include a Cumulative Environmental Impact study, it must be rejected. These pipeline projects do not occur in a vacuum. As one by one they steadily deplete the natural and scenic resources of the region, the combined impact becomes potentially devastating. The Joint Proposal makes it very clear that future upgrades, including future

compressor stations are likely, however analysis of what impact such foreseeable future development may have on the region is lacking in the Joint Proposal. Approval of the Project now will eliminate the opportunity for an accurate and timely cumulative impact analysis which considers all of the potential impacts, including future upgrades.

The size and scope of the construction activity and stream crossings associated with the BGS will have a deleterious effect on the water resources of the Delaware River Basin. There are significant concerns related to the cumulative impact that continuous water body crossing pipeline construction activity has on the health and vitality of the Delaware River Basin. In addition to the BGS, there have been at least two major pipelines constructed within the last year in this region (Tennessee Gas and Pipeline Company's 300 Line Project, and Columbia 1278k Replacement Project), and there are at least 3 others that are currently pending approval (Tennessee Gas and Pipeline Company's Northeast Upgrade Project, the Constitution Pipeline, Transco's Northeast Supply Link). These construction projects will facilitate the further development of new natural gas wells, access roads, gathering lines, compressor stations, and other supporting infrastructure, which will further degrade the local environment and which must be considered in conjunction with the BGS project as part of a cumulative impact study.

To further help identify environmental issues that must be evaluated pursuant to pipeline construction activity, DRN has attached both its scoping comments (Exhibit A) and the comments provided on the Environmental Assessment (Exhibit B) for Tennessee Gas and Pipeline's Northeast Upgrade Project that have been submitted before FERC.

CONCLUSION

DRN, hereby, requests that the Commission reject the Joint Proposal. Thank you for your attention regarding submission. Do not hesitate to contact us with any questions.

Dated: 8/30/2012

Respectfully submitted,

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