

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF :
NEW JERSEY NATURAL GAS COMPANY :
FOR A DETERMINATION CONCERNING THE :
CONCERNING THE SOUTHERN RELIEABILITY : BPU Docket No. GO15040403
LINK PURSUANT TO N.J.S.A. 40:55D-19 :
AND N.J.S.A. 48:9-25.4 :

TOWNSHIP OF NORTH HANOVER'S POST-HEARING BRIEF

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PRELIMINARY STATEMENT

The Township of North Hanover located is primarily a farming community located in the northeast part of Burlington County. However, it is home to two significant New Jersey cultural and historical destinations, the Brigadier General William C. Doyle Memorial Cemetery, New Jersey's first state operated veterans' cemetery and the "Arneytown Historic District," a small hamlet comprised of three buildings dating back to the 1700's.

Significantly, the Southern Reliability Link (hereinafter "SRL") Project being proposed by New Jersey Natural Gas (hereinafter "NJNG") before the Board of Public Utilities would follow a route that would pierce the very heart of these irreplaceable treasures. Based upon the proceedings conducted before the Board, it is also abundantly clear the NJNG paid little, if any, mind to these significant aspects of North Hanover Township. Moreover, the testimony of the officials from NJNG further confirmed that the NJNG either chose to ignore or were ignorant of the physical characteristics of its preferred SRL route, that includes trees in Arneytown that have stood for over 100 year old trees and a "Little Quaker" cemetery in Upper Freehold Township.

N.J.S.A. 40:55D-19 mandates that the Board find that "the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public." In that regard, and as the Board is keenly aware, the MLUL proceeding recently concluded before the Board, permits it to consider additional factors with regard to the necessity of the SRL Project. Specifically, in determining whether the proposed utility project is "reasonably necessary for the service, convenience or welfare of the public," relevant case law directs the Board to consider:

1. The benefits to the whole public served by the utility and not the limited group that benefit from the local zoning ordinances;

2. The locations must be found to be “reasonably necessary” and so the Board must consider the community zoning plan, the physical characteristics of the site, and the surrounding neighborhoods; and

3. Alternative sites and their comparative advantages and disadvantages, including cost, must be considered.

In determining whether to grant approval of New Jersey Natural Gas’s petition, the Board is also required to weigh the aforementioned factors based upon the facts and evidenced produced during the course of the adjudicatory process afforded to the parties.

Based upon the facts and evidence presented, when considering and balancing the relevant factors stated above, and specifically as it relates to North Hanover Township, it is abundantly clear that New Jersey Natural Gas has failed to meet its burden of demonstrating that the SRL Project is “reasonably necessary” and therefore this Board must deny the application.

LEGAL ARGUMENT

N.J.S.A. 40:55D–19 authorizes the Board of Public Utilities to exempt a public utility’s development that spans multiple municipalities, from local zoning ordinances and regulations if the Board deems the development “reasonably necessary for the service, convenience or welfare of the public.” While this statute was first enacted in 1975 and subsequently amended in 1999, it has its roots in the New Jersey’s original Zoning Enabling Act that was codified until 1975 at *N.J.S.A.* 40:55–50. The prior version of the statute provided that local zoning ordinances or regulations would not apply to a public utility’s building or structures if the Board decided, upon the utility’s petition, “that the present or proposed situation of the building or structure in question [was] reasonably necessary for the service, convenience or welfare of the public.”

In *In re Pub. Serv. Elec. & Gas Co.*, 35 N.J. 358, 376-77 (1961), the New Jersey Supreme Court, in construing the application of *N.J.S.A. 40:55-50* (and necessarily its successor, *N.J.S.A. 40:55D-19*), the Court provided criteria that the Board must be consider in divining what is “reasonably necessary for the service, convenience or welfare of the public”:

1. The statutory phrase, “for the service, convenience and welfare of the public” refers to the whole “public” served by the utility and not the limited local group benefited by the zoning ordinance.
2. The utility must show that the proposed use is reasonably, not absolutely or indispensably, necessary for public service, convenience and welfare at some location.
3. It is the “situation,” i.e., the particular site or location which must be found “reasonably necessary,” so the Board must consider the community zone plan and zoning ordinance, as well as the physical characteristics of the plot involved and the surrounding neighborhood, and the effect of the proposed use thereon.
4. Alternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must be considered in determining such reasonable necessity.
5. The Board’s obligation is to weigh all interests and factors in the light of the entire factual picture and adjudicate the existence or non-existence of reasonable necessity therefrom. If the balance is equal, the utility is entitled to the preference, because the legislative intent is clear that the broad public interest to be served is greater than local considerations.

- a. **New Jersey Natural Gas failed to consider the physical characteristics of the proposed route for the SRL Project and its impact on the surrounding neighborhoods.**

At the evidentiary hearing held before Commissioner Solomon on December 7, 2015, the Prepared Direct Testimony of Mayor James Durr was admitted into the record (12/7/15 Tr. at 106:19-15). Additionally, Mayor Durr testified at the hearing to supplement his prepared Direct Testimony. (12/7/15 Tr. 107:1 to 125:17.)

Mayor Durr testified regarding his knowledge of North Hanover Township's significant historical hamlet of "Arneytown." Arneytown is located along Provinceline Road in the northeastern portion of North Hanover Township. (12/7/15 Tr. 109:9-14). Arneytown was initially constructed in the 18th Century and comprised of 18 homes and now only 3 remain, the Arneytown Tavern, Myrtlebank and the Thomas Woodward house. (12/7/15 Tr. 109:15-16; (¶ 14-15, Prepared Testimony of James Durr.) According to NJNG's Amended Petition, the proposed route for the SRL Project will pass directly through and around Arneytown (*See*, ¶ 14, Amended Petition, Ex. P-2; 12/7/15 Tr. 109:20-24.) In fact, the Arneytown Tavern, which dates back to 1731 (¶ 14, Prepared Testimony of James Durr) is located only 18 feet from the edge of the CR 664. (12/7/15 Tr. 110:8-19.)

Mayor Durr further elaborated on the historical significance of remaining structures in Arneytown, including the fact that "Myrtlebank" home built by John Emley and owned by a member of Congress in the early 1700s; the Arneytown Tavern was originally built and owned by the grandson of the Governor of West Jersey; both Myrtlebank and the Arneytown Tavern included in the original Historic American Buildings (HABS) survey commissioned by President Franklin Roosevelt in 1935 and 1936. Mayor Durr also relayed the fact that the Arneytown Tavern and Myrtlebank are not only historically significant, but structurally fragile. The building foundations are comprised of sandstone, with brick paint exteriors, clapboards on the exterior and brick interior walls. (*Id.* at 113:8-25). Consequently, road construction related to the installation of the proposed pipeline could have a significantly detrimental impact on historical structures that are simply irreplaceable.

Moreover, these historical structures are also adorned with American sycamore trees that have been standing for almost 200 years, presently are in good condition and that could live upwards of 350 years. (Id. at 114:13-25).

The testimony of the three witnesses presented by New Jersey Natural Gas at the evidentiary hearing confirmed that there was little, if any, consideration given to Arneytown and what impact that the SRL Project would have upon it.

For example, Barry A. Baker from AECOM, the consultant retained by NJNG to “assist in the evaluation and development of alternate routes for the Project.” (Prepared Direct Testimony: 3:1-4.) According to Mr. Baker’s written testimony, this includes “site assessment, and expert judgment into the decision making process. (Id. at 5-6). Furthermore, he stated that the “overall objective of the study was to select a Project route that would best minimize impacts to the local communities and the natural environment while still being practicable to construct by NJNG.” (Id. 7-10). However, when questioned about whether he had any knowledge any studies addressing the impact of escaped methane gas on existing vegetation, he said he had no such knowledge. (12/7/15 Tr. 86:1-5.) Furthermore, when asked what recourse a property owner would have for replacement of trees that were 200 hundred years or older, Craig Lynch indicated that the property owner “could submit a claim” to NJNG under its damage claim procedure. (Id. at 86:17-24).

Similarly, when questioned on cross-examination whether NJNG considers root growth of trees located along roadways where they intended to install a pipeline, John B. Wycoff, Director of Engineering for NJNG stated “To some degree.” (Id. at 94:6-8.) When further questioned regarding the impact of the installation of a pipeline on trees abutting the roadway,

Mr. Wycoff admitted that he had no experience dealing with trees as old as those located in Arneytown. (Id. at 95:2-11.)

Additional testimony presented by Mayor Durr confirmed the location of the “Little Quaker” cemetery located along the proposed route for the SRL Project, that being Provinceline Road in Upper Freehold Township. (12/7/15 Tr. 118:15-25; 119:1-25). Mayor Durr indicated that while there were some grave markers of “early families” that lived in Arneytown, there were also many unmarked graves. (Id. at 119:2-7). Mayor Durr also indicated that he had evidence that suggested that at least one person, John Bacon, would have been buried under the road. (Id. at 119:8-15.) It is also significant to note the NJNG’s original petition and initial preferred route did not include Provinceline Road. (Id. at 89:25-90:1-8).

Mayor Durr further provided testimony regarding Brigadier General William C. Doyle Memorial Cemetery, New Jersey’s first state operated veterans cemetery that and is bordered by Chesterfield-Arneytown Road (CR 664) and Province Line Road, which is part of NJNG’s preferred route for SRL pipeline. (¶ 7-9, Prepared Testimony of James Durr.) As Mayor Durr’s testimony indicates, the cemetery is designed to accommodate 154,000 veterans and their family members. Consequently, there are burials each day, which could be upwards of 15 per day and 75 per week. (Id.) Notwithstanding, NJNG never had any discussions with the State of New Jersey Department of Military Affairs prior to filing with either the original petition or amended petition. (12/7/15 Tr. 87:17-19). In fact the only time that they even considered contacting the Department of Military Affairs was one week before the hearing. This is simply emblematic of NJNG’s indifference to the physical characteristics of its proposed and preferred route and the impact that it will have on the “neighborhood” directly adjacent to its pipeline.

In determining whether to grant approval of New Jersey Natural Gas's petition, the Board is also required to weigh the aforementioned factors set forth in *In re Pub. Serv. Elec. & Gas Co.*, supra. Given the significant negative impact that SRL project will have on North Hanover, in conjunction with Chesterfield Township and other objection parties, it cannot be said that NJNG's preferred routes is "reasonably necessary" and therefore, NJNG's petition must be denied.

b. In the alternative, NJNG should be made to further consider the alternative route that includes the JCP & L Right of Way

Given the significance of this project and the universal opposition by the communities and residents in Burlington County to NJNG's preferred route for the SRL Project, NJNG should be made to further consider an alternative route that includes the JCP & L Right of Way. In his Rebuttal Testimony, Mr. Baker advances that an alternative route utilizing the JCP & L Right of Way cannot be built because it will pass through preserved farmland, claiming that only farming activities can occur on those lands and that building a pipeline across those lands is "prohibited" by law. (Prepared Rebuttal Testimony of Barry A. Baker, 5:1-13). However, during the evidentiary hearing, Mr. Baker admitted that this rebuttal testimony was based on information that was provided by NJNG's legal counsel and that he had no recollection of ever seeing anything in writing in this regard. (12/7/15 Tr. 72:7-25; 73:1-7.) In fact, North Hanover Township was never provided with any written confirmation of this fact from the SADC or any other party, including NJNG.

Furthermore, the source of NJNG's gas for the SRL Project is a proposed compressor station to be built by Transcontinental Pipe Line Co., otherwise known as "Transco". (NJNG Amended Petition, ¶14). Therefore, its gas supply and the genesis for the entire project are from a supplier subject to the Federal Energy Regulatory Commission ("FERC") regulations. Given


the significant interconnect between Transco and NJNG for this project, due consideration must be given to the fact that Transco's gas supply and compressor station and necessarily the entire SRL Project as presently proposed can only become a reality if FERC approves Transco's pending application for compressor station. It appears that the record is void of any determination of what impact that these facts may have regarding crossing preserved farmland and therefore making the JCP &L ROW route a viable alternative. Therefore, North Hanover further urges the Board to deny the designation and approval of NJNG preferred route.

CONCLUSION

For the foregoing reasons, the Township of North Hanover respectfully requests that the Board of Public Utilities deny the petition of New Jersey Natural Gas because it has failed to carry its burden of demonstrating that the SRL Project is "reasonably necessary for the service, convenience or welfare of the public."

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By:



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