

BEFORE THE  
COASTAL ZONE INDUSTRIAL CONTROL BOARD  
OF THE STATE OF DELAWARE

In the Appeal of the  
Delaware Audubon Society from the  
Delmarva Power & Light Company  
Claymont-Wilmington Natural Gas  
Transmission Pipeline Status Decision

Appeal No. 217SD

A hearing was held before the Coastal Zone Industrial Control Board ("the Board") on May 11, 1988 in the appeal of the Delaware Audubon Society ("Audubon") from a decision of the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") that Delmarva Power & Light Company's ("DP&L") proposal to install and utilize a buried natural gas pipeline in the Coastal Zone is not regulated by the Delaware Coastal Zone Act ("CZA"), 7 Del. C. ch. 70. Present were Harry M. Fisher, Esquire, Acting Chairman; John Allen; Eugene Bookhammer; Jan Robinson; John Super; and Robert Tunnell, Esquire, Members of the Board. Deputy Attorney General Regina M. Mullen acted as legal counsel to the Board.

Jacob Kreshtool, Esquire represented Audubon. Grace W. Pierce, Audubon's Conservation Director, also was present. Ms. Pierce and Representative David Ennis testified on Audubon's behalf.

Deputy Attorney General Kevin Maloney represented DNREC.

Dale G. Stoodley, Esquire and Peter F. Clark, Esquire represented DP&L. Howard Cosgrove, Executive Vice President, and Frank J. Perry, Vice President of the Gas Division, appeared and testified for DP&L. Willard Manuel of Ford, Bacon & Davis, Inc., and Thomas Campbell of Biota Research and Consulting, Inc. testified on behalf of DP&L.

Pursuant to notice and to its practice, the Board also received statements of position from George Sonnichson representing the Fox Point Association and Ted Wilson.

At the conclusion of the Hearing the Board announced its decision to affirm the Secretary's decision. This is the Board's written opinion on that decision.

#### SUMMARY OF THE EVIDENCE

Grace Pierce testified that she is the Conservation Director of the Delaware Audubon Society. Ms. Pierce said that the purpose clause of the CZA was a sufficient basis to prohibit the pipeline as a bulk product transfer facility. She said that she believed the legislative history of the CZA showed that it was intended to cover both on and off shore bulk product transfer facilities. She read from a 1982 interview in the Audubon publication Law and Nature with former Governor Russell W. Peterson, the proponent of the Act, to demonstrate that was the Governor's understanding as well.

Ms. Pierce also referred to a letter dated April 3, 1974, from former Deputy Attorney General Lester J. Taufen

which advised the former administrator of the coastal zone program that, because certain pipelines proposed to be placed in the coastal zone were an integral part of a power generating facility located outside the coastal zone, the whole project could be evaluated to consider whether it fell within the prohibited uses.

While she expressed a concern over the pipeline's safety, Ms. Pierce admitted that she had no personal knowledge about pipeline safety problems.

Representative Ennis outlined the history of the Fox Point Park, a New Castle County park, which is the prime recreation area for residents of the Edgemoor through Claymont areas. He said that it would be difficult for the community to support anything which would hinder potential recreational development in the park. However, he noted that the civic association had not yet taken an official position on the pipeline.

Howard Cosgrove testified for DP&L. He described the load growth that DP&L had experienced in recent years with an emphasis on the acceleration of that growth over projections beginning in 1987. He discussed the Company's strategy for addressing the need for electrical power production. One of the central features of the plan is the installation of two combustion turbine generators.

Mr. Cosgrove said that the turbine can burn either oil or natural gas. DP&L expects to be able to run one of the

turbines without the additional supply of natural gas which would be transmitted through the pipeline. Mr. Cosgrove admitted that if the pipeline were not approved, the Company would have to reevaluate whether to install the turbine.

Frank J. Perry also testified for DP&L. He said that DP&L had identified internally at least as early as 1984-1985, that it needed to construct an additional pipeline. He said there were two reasons for this forecast: first, that DP&L desired increased reliability in comparison with its existing pipeline, and second, that it wanted to increase the gas available for the existing No. 5 generator. Economic conditions delayed the project. With the advent of the turbine project, the pipeline project was moved forward. Mr. Perry also testified that DP&L had the capacity to run one of the proposed new turbines from its existing supply of oil and natural gas supply. Both turbines can be operated with the existing oil supply.

Willard R. Manuel, an engineering consultant to DP&L, testified on its behalf. He said the pipeline has been designed to meet or exceed the controlling federal Department of Transportation standards for pipelines. The installation of the pipeline will be typical. After the restoration and revegetation of the area, the surface will resemble a neighboring Texaco pipeline.

Mr. Manuel noted that there was relatively few safety problems with escaping natural gas. However, DP&L has developed a series of safety protections for the

pipeline which include early detection monitors and automatic shut-off valves. Emergency response teams also would be assigned responsibility.

Thomas Campbell, DP&L's environmental consultant, testified briefly that no negative environmental impact was expected from the construction or operation of the pipeline.

#### FINDINGS OF FACT

The pipeline installation and operation will serve two purposes: the increased reliability over the existing pipeline and increased supply. The additional gas to be supplied through the pipeline will serve the existing No. 5 turbine as well as two proposed turbines which are the subject of a permit presently under appeal. While the pipeline project is related to servicing the proposed new turbines, DP&L will be able to supply one of those turbines from existing gas capacity. Both can be operated from existing oil capacity.

No environmental damage is anticipated from the pipeline.

No evidence of safety problems with the pipeline installation or operation was presented. DP&L has an emergency response plan and automatic safety devices in the event of a leak.

Fox Point Park is subject to some diminution of use because of the location of part of the pipeline through it. However, the County Government, as the owner of the Park, has control over the location of the pipeline.

### CONCLUSIONS OF LAW

The pipeline is not by itself a prohibited use under the Act. It is neither a "heavy industry" nor a "bulk product transfer facility." It does not occupy more than 20 acres of land, nor does it have smokestacks, tanks, chemical processing equipment, or waste-treatment lagoons, for example. Nor is it a port or dock facility for the transfer of bulk quantities of gas from an onshore facility to a vessel, vice versa, nor between vessels in a port.

The pipeline, while plainly an aid to the proposed turbine project, is not so inextricably connected with the latter project to subject it to the Act's permitting requirements. The turbines are subject to the permitting process, and the permit decision on them is the subject of a separate appeal brought on his own behalf by Audubon's counsel in this proceeding.

There has been no evidence presented that the pipeline will cause adverse environmental impacts.

Accordingly, Mr. Tunnell moved, seconded by Mr. Allen, that the Board affirm the Secretary's decision. All members of the Panel voted to affirm except Mr. Super.

Mr. Super would reverse the Secretary's decision. He believes that the pipeline is inextricably linked to the construction and operation of the of the turbines, a project for which a Coastal Zone Act permit is required. For that reason, he believes the pipeline is subject to the Act's

permitting requirements. Furthermore, he believes that the CZA was intended to preserve recreational values. He believes that the evidence demonstrates that recreational values and uses at Fox Point Park will be impacted negatively by the installation and required maintenance of the pipeline. Given the limited parkland available in New Castle County generally and in the Fox Point area particularly, he believes that the purposes of the CZA would be defeated if the Secretary's decision stands.

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Harry M. Fisher

15/  
John Allen

15/  
Eugene Bookhammer

15/  
Jan Robinson

15/  
John Super

15/  
Robert Tunnell

Date: July 21, 1988

