



Statement from Commissioner Russell McMurry on Palmetto Pipe Line LLC Application for Certificate of Public Convenience and Necessity

5/18/15

On February 13, 2015, the Georgia DOT received an application from Palmetto Products Pipe Line LLC (Palmetto) requesting a Certificate of Public Convenience and Necessity for a proposed petroleum pipeline that is expected to run from the Augusta, Georgia-South Carolina border to the Brunswick, Georgia-Florida border. The pipeline project would involve the following counties in Georgia: approximately 2 miles in Richmond; 25 miles in Burke; 34 miles in Screven; 39 miles in Effingham; 12 miles in Chatham; 7 miles in Bryan; 18 miles in Liberty; 2 miles in Long; 17 miles in McIntosh; 24 miles in Glynn; 18 miles in Camden; and 12 miles in Charlton.

O.C.G.A. 22-3-83 dictates that “Before exercising the right of eminent domain as authorized in this article, a pipeline company shall first obtain from the commissioner of transportation or the commissioner's designee a certificate of public convenience and necessity that such action by the pipeline company is authorized.”

After careful consideration of information in the application submitted by Kinder Morgan on behalf of Palmetto; numerous public comments submitted at seven (7) public meetings held by Palmetto; two (2) public hearings hosted by the Georgia DOT; and approximately 3000 public comments submitted online and by mail to myself and the Utilities staff, the Department has determined that it will not issue a Certificate of Public Convenience and Necessity. The basis for the decision is outlined in our correspondence to Palmetto Products Pipe Line LLC.



May 18, 2015

Via Email and Regular Mail
jchally@kslaw.com

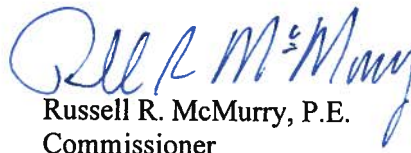
Mr. Jonathan R. Chally
Attorney at Law
King & Spalding
1180 Peachtree Street, NE
Atlanta, GA 30309-3521

RE: Final Decision Regarding Palmetto Products Pipe Line LLC's Application for Certificate of Public Convenience and Necessity

Dear Mr. Chally:

Please find enclosed my final decision regarding Palmetto Products Pipe Line LLC's Application for a Certificate of Public Convenience and Necessity. We have worked diligently to timely review the information submitted by your firm on behalf of your clients as well as the substantial information from the public, and I appreciate your professional interactions with my staff and the public during this process.

Sincerely,


Russell R. McMurry, P.E.
Commissioner

In RE: Palmetto Products Pipe Line LLC's Application for a Certificate of Public Convenience and Necessity

Background

On February 13, 2015, Palmetto Products Pipe Line LLC ("Palmetto") filed an application for a Certificate of Public Convenience and Necessity, pursuant to O.C.G.A. § 22-3-80, *et seq.* The notice of the application was first advertised and published in several official county news publications on February 18, 2015, and in the *Atlanta Journal Constitution* on February 19, 2015. The required publication of the notice of the application was completed on February 25, 2015. Six public information meetings were held, and two official public hearings were held regarding Palmetto's application. The first public hearing took place on April 21, 2015, in Richmond Hill, Georgia, and the second hearing took place on May 7, 2015, in Waynesboro, Georgia.

The Department has received a considerable amount of information regarding this application. Among the information submitted for consideration is: (1) Palmetto's submissions through its representative and on its own behalf, including its initial application and supplemental information; (2) comments provided during the public information meetings and public hearings, which were transcribed by a court reporter; and (3) approximately 3,000 comments received through regular mail and e-mail. I have also considered publicly available information published by the U.S. Energy Information Administration ("EIA"), fuel consumption projection information utilized by the Office of Planning and Budget for budgeting purposes, which is provided by the State Economist and the Georgia Department of Revenue ("GDOR"), Federal Highway Administration ("FHWA") data on past fuel consumption in Georgia and other readily available information.

As Commissioner and the decision maker in this process, I am fully aware of the impact that my decision will have on affected corporations and individuals. I have given a great deal of thought and consideration to the information that has been provided to the Department in this process, as well as to the level of authority given to me by the governing statute in making this decision. Finally, I have given significant consideration to the voluminous information submitted by Palmetto, and by interested individuals and groups.

It is noted that my review of this matter is focused on whether the pipeline would be a public convenience and necessity and that O.C.G.A. Sec. § 22-3-83 does not empower me to consider the environmental effects of the project, or to review whether pre-existing easements and rights of way should be utilized, or to consider any other factor not listed in the statute. While the statute does not specifically define the term "public convenience and necessity," other Georgia code sections do provide some guidance. Specifically, in a similar subject matter, O.C.G.A. § 46-4-25 provides guidance to the Public Service Commission when determining whether to issue a Certificate of Public Convenience and Necessity for natural gas pipelines. Therefore, when determining whether to grant Palmetto's request for a Certificate of Public Convenience and Necessity, I have tried to determine the overall intent of O.C.G.A. § 22-3-80, *et seq.*, and I have

used O.C.G.A. § 46-4-25 as a general reference related to the phrase “public convenience and necessity” in making my determination.

Decision

Based on all of the information that has been considered, and for the following reasons, I find that there is substantial evidence showing that the pipeline would not constitute a public convenience and necessity. Accordingly, Palmetto’s application for a Certificate of Public Convenience and Necessity is denied.

Discussion

One of Palmetto’s primary arguments in support of the proposed pipeline is that it will meet the future demand for petroleum in the region in both the near-term and long-term. Considering long-term demand and addressing an increase in demand is relevant to my decision. For example, looking at O.C.G.A. § 46-4-25 as guidance, three of the factors to consider with regard to the public convenience and necessity for a natural gas pipeline involve the potential demand and need for the pipeline. Those are: “(1) Whether existing gas pipelines or distribution systems are adequate to meet the reasonable public needs; (2) The volume of demand for such gas, and whether such demand and that reasonably to be anticipated in the future can support already existing gas pipeline and distribution systems, if any, and also the pipeline or distribution system proposed by the applicant; [and] (4) The adequacy of the supply of gas to serve the public [.]”

In support of its forecast for growth in the consumption of fuel, Palmetto relies on data from “*The Motor Use Fuel Tax in Georgia: Collection Efficiency, Trends, and Projects*,” by the University of Georgia’s Carl Vinson Institute of Government (“CVIOG”), December 2010. Citing this document, Palmetto ties increased fuel consumption to projected increases in population and suggests that, in 2020, motor fuel consumption will have increased by 15.4% over the 2011 level of consumption. Palmetto states that motor fuel consumption is expected to increase faster than the state’s population, even when factoring in increases in fuel efficiencies in newer model cars and trucks¹. However, this information is contradicted by several sources including the forecast by the U.S. Energy Information Administration (“EIA”), which states: “Consumption of petroleum products across all sectors in 2040 is unchanged from 2013 levels, as motor gasoline consumption in the transportation sector declines as a result of a 70% increase in the average efficiency of on-road light-duty vehicles ... which more than offsets projected growth in vehicle miles traveled (VMT).”²

Georgia has experienced increased population growth but less fuel consumption over the last few years. In the past 10 years the highest fuel consumption in Georgia occurred in 2006 when it was at 6.5 million gallons per year as noted in the FHWA MF-33 Tables and GDOR data. An analysis of that data indicates the 2016 projection for fuel consumption is approximately 8% lower than the 2006 high, and the 2020 fuel consumption forecast is approximately 9% lower than 2006. Thus, the evidence reflects an overall downward trend in fuel consumption and the

¹ See Palmetto’s May 6, 2015, Second Supplement to Its Application, at Tab E, Section 1.

² U.S. EIA’s *Annual Energy Outlook 2015 with projections to 2040*, page 15.

idea that the pipeline is needed to address current and future increased demands is simply not supported.

In addition to there being little evidence of increasing demand, there also is no evidence that the pipeline would serve to reduce the price of fuel in the region. In fact, Palmetto notes in its May 6, 2015 Second Supplement to Its Application that the pipeline will have no influence over prices. Tab E, Section 4 of that document is entitled, "Palmetto is Needed to Reduce Fuel Transportation Costs to Consumers," yet later it states, in Section 5, "Note: Palmetto will not own the product transported in the pipeline and will not set the price of gasoline at the pump, and therefore has no ability to raise or lower fuel prices."³ Further, representatives from Palmetto explained at the public information meetings and public hearings that their company would have no control over the ultimate price consumers would pay at the pump for gasoline.⁴ Thus, one cannot assume that the mere presence of the pipeline will affect prices in the region.

Currently, the majority of the petroleum available in the region is transported by truck from Macon and North Augusta, S.C. There is no apparent lack of competition in either market. It is generally known that both markets are served by multiple petroleum suppliers and Savannah has two competing ocean terminal petroleum suppliers in the area. There is no reason to believe nor is there any evidence that the presence of the pipeline in the market alone will affect prices in the region.

It is noted that the United States Federal Energy Regulatory Commission ("FERC") granted Palmetto's Petition for Declaratory Order on May 1, 2015. It is also noted by Palmetto that 90% of the volume of the proposed pipeline would be dedicated to committed shippers and 10% to uncommitted shippers. However, Palmetto has not provided the number of committed shippers who make up the 90%. Without any information on the number of committed shippers, it is impossible to determine whether these committed shippers will provide any additional competition to the region, which might, in turn, affect prices. One assumption is that with only one or two committed large petroleum suppliers taking up the full 90% of capacity, competition could actually decrease in the area. Since the proposed volume of fuel that will flow through the pipeline will be as much as 167,000 barrels per day⁵, and since Palmetto estimates that 50-60% of that volume will flow to consumers in Georgia⁶, and since that volume is far greater than the current fuel consumption in the area (only 50,000 bpd)⁷, one could assume that the fuel brought through the pipeline would be of sufficient quantity to replace the current existing fuel supply

³ This disclaimer is repeated in Palmetto's May 6, 2015, Second Supplement to Its Application, at Tab I, page 2, statement E.

⁴ By way of example, at the public meeting in Brunswick, a representative stated: "[O]ur role in this is the transportation piece. We don't market or sell the gas. We just transport it." (March 12, 2015, Transcript page 21, line 25.) Further, at the public meeting in Rincon, a representative stated: "[N]o, we can't guarantee that prices will go down.... Our piece of this is the transport piece. We don't sell it. We don't drill it. We don't own it. We transport it. So whether the prices are very high or very low doesn't affect the transportation charge. We hope the prices are low. We strongly encourage the price to be low. We don't control that." (March 31, 2015, Transcript page 45, line 22.)

⁵ See Palmetto's May 6, 2015, Second Supplement to Its Application, at Tab D.

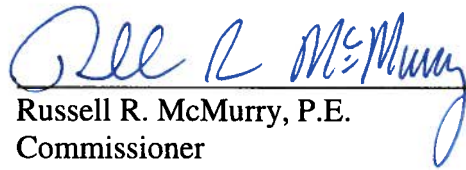
⁶ *Id.*, at Tab C, statement (2); and at Tab E, statement 6.

⁷ *Id.*, at Tab E, Section 1. "The 23 East and Coastal Georgia counties used ... 50,000 barrels per day (bpd), not counting the large quantities of motor fuels used at Fort Gordon, Fort Stewart, Hunter Army Air Base, and for off-road purposes."

transported by trucks and through the ocean terminals. In that case, those one or two committed shippers could essentially control the supply to the entire area. Conversely, if the 90% committed volume suppliers represent several distinct companies, each with a relatively small portion of the capacity, then that may provide for additional pricing competition. Whether that competition would be equivalent to or greater than the competition that already exists with trucking and ocean terminal transportation is unknown. Therefore, because there are significant unknown facts regarding the potential effect on pricing in the region, I cannot reasonably conclude that the project will provide any benefit to the region in terms of fuel prices.

In coming to my decision to deny the application for a Certificate of Public Convenience and Necessity, I understand that I am not making any determinations as to the importance of the project to Palmetto. I also recognize that, despite the public objections of many who are opposed to the project, there are also a number of individuals who are very much in support of the project.

Georgia law requires me to determine whether the public convenience and necessity of the project is such that the pipeline company should be permitted to use the powers of condemnation to obtain the permanent and temporary easements necessary to accomplish the construction of the pipeline. In this instance, my conclusion is that there is substantial evidence that the construction of the proposed pipeline will not constitute a public convenience and necessity. Accordingly, Palmetto's application is denied.



Russell R. McMurry, P.E.
Commissioner
Georgia Department of Transportation

Date: 5/18/2015