

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 13, 2011

IN RE:

**APPLICATION OF RENEWCO-MEADOW BRANCH,
LLC FOR A SPECIAL PERMIT TO INSTALL GLASS
REINFORCED EXPOXY (GRE) THERMOSET PIPE**

**DOCKET NO.
10-00195**

ORDER APPROVING REQUEST FOR WAIVER

This matter came before Director Eddie Roberson, Director Kenneth C. Hill and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, during a Special Authority Conference held on December 20, 2010, to consider the Application filed on October 6, 2010 by Renewco-Meadow Branch, LLC (the "Applicant" or "RMB") requesting that the TRA grant a waiver from 49 C.F.R. Parts 192.53(c), 192.121 and 192.123, and 192.619(a) to allow for installation and operation of glass reinforced epoxy ("GRE") thermoset pipe in its high pressure natural gas pipeline application. A public hearing was held before the panel on December 13, 2010. During the Hearing, the panel requested and afterward obtained additional information related to RMB's request. Thereafter, the panel deliberated the merits of the Application on December 20, 2010.

BACKGROUND

RMB is a wholly-owned subsidiary of AGL Resources, Inc. ("AGL") and was formed to develop, finance, build and operate plants to convert landfill methane gas ("LFG") to high-BTU renewable gas.¹ On September 3, 2010, RMB filed an application for a Certificate of Public Convenience and Necessity ("CCN") in TRA Docket No. 10-00179 to construct and operate a

¹ RMB is a joint venture formed by AGL Renewables, LLC, a wholly-owned subsidiary of AGL, and Keystone Renewable Energy, LLC.

9.5 mile pipeline for the purpose of transporting renewable LFG within McMinn County, Tennessee. On October 25, 2010, the Authority held a public hearing on RMB's CCN Application and, based on the record, determined that the construction and operation of the proposed LFG pipeline would inure to the benefit of the present and future public convenience. On December 15, 2010, the TRA entered an Order reflecting its grant of a CCN to RMB.²

In its Application filed in this docket on October 6, 2010, RMB seeks a waiver from the requirements of 49 C.F.R. Parts 192.53(c), 192.121, 192.123, and 192.619(a) to allow for the installation and operation of GRE thermoset (Fiberspar) pipe to transport natural processed methane gas³ within McMinn County from its Processing Plant at the Meadow Branch Landfill northwest of the City of Athens to an interconnect station on Spectra Energy's East Tennessee Natural Gas transmission line south of the City. RMB intends to install the GRE Fiberspar pipeline along Tennessee Department of Transportation, County and City of Athens rights-of-way and private easements.

The authority of the TRA, as that of its predecessor agency the Tennessee Public Service Commission, to adopt and enforce federal gas pipeline safety standards is derived from Tenn. Code Ann. § 65-28-104, *et seq.* Under the provisions of applicable law, including 49 U.S.C. § 60118, the TRA may waive compliance with any part of an applicable standard, such as those in 49 C.F.R. Parts 192.53(c), 192.121, 192.123, and 192.619(a), provided the terms of the waiver are consistent with pipeline safety.

The record in this proceeding includes the Pre-Filed Testimony of RMB witness Allen Spivey filed on October 14, 2010 and RMB's responses to TRA Staff Data Requests. The panel

² See *In re: Petition of Renewco-Meadow Branch, LLC for a CCN to Construct and Operate a Renewable Landfill Methane Gas Pipeline in McMinn County, Tennessee*, Docket No. 10-00179, *Order Granting Certificate of Public Convenience and Necessity* (December 15, 2010).

³ RMB will gather landfill gas from wells located throughout the Meadow Branch Landfill, process the gas to remove impurities, and compress the gas on the landfill site and send it through the GRE pipeline.

heard supplemental oral testimony proffered by Allen Spivey during the public hearing on December 13, 2010 and subsequently on December 20, 2010. The panel also heard oral testimony during the hearing from Christopher Makselon, a mechanical engineer who provides engineering support for the manufacture, design and new product development for Fiberspar LinePipe, LLC. The record also contains various exhibits and the comments filed on December 16, 2010 by the Applicant with respect to certain conditions imposed on the use of GRE thermoset pipe in the Anchor Point, Alaska project. Larry Borum, Chief of the TRA's Gas Pipeline Safety Division, filed affidavits on December 3 and 17, 2010, in which he recommended approval of the waiver request provided certain conditions are in place and are met by the Applicant.

THE APPLICATION AND TESTIMONY OF RMB WITNESSES

In support of its Application that RMB be allowed to install and operate GRE thermoset pipe, RMB submitted the Pre-filed Testimony of Allen Spivey, Director of the Office of Corporate Engineering at AGL. In his Pre-Filed Testimony, Mr. Spivey stated that based on the findings in RMB's feasibility study, GRE in general, and Fiberspar more specifically, is a viable alternative to steel pipe in this and certain other high pressure gas applications.⁴ Mr. Spivey testified that as a part of its feasibility study, AGL conducted: a product data review that included information regarding historical uses and testing of the pipe; a plant inspection to learn about the manufacturing process; and a peer review soliciting feedback regarding the feasibility of Fiberspar use. AGL also solicited input from an approved pipeline contractor who walked the preferred route and noted advantages in the use of Fiberspar.⁵

Mr. Spivey stated the first commercial installation for a major operator consisted of over 40,000 ft. of 2-½ inch nominal thermoset pipe, tying in over 250 wells. This installation, located

⁴ Pre-filed Direct Testimony of Allen Spivey, p. 5 (October 14, 2010).

⁵ *Id.* at 3-4.

in New York, has maintained trouble-free operation for more than 5 years, operating at pressures of 2,200 psig.⁶ AGL's feasibility study included discussions with personnel of the pipeline company that had installed GRE Fiberspar concerning that company's experience in the installation, operation and testing of the pipe to determine pipe strength over time.⁷

Based on AGL's investigation, Mr. Spivey testified that Fiberspar is technically fit-for-purpose and offers several benefits over conventional steel pipe in this application. According to Mr. Spivey, those benefits include: reduced need for corrosion control; reduced risk of weak or leak points due to fewer joints because of the spooled lengths of Fiberspar of over 4,500 feet for 4-½ diameter pipe; a smaller construction footprint for Fiberspar when compared with construction involved with a steel pipeline; and faster construction that improves safety, reduces costs and limits labor expenses.⁸ Mr. Spivey stated that if approved, the Applicant would be installing approximately nine miles of 4-½ inch Fiberspar pipe for this application. According to Mr. Spivey, RMB has elected to use a pipe with a 1,500 pound rating for a 700 pound operating pressure.

At the December 13, 2010 public hearing, Mr. Makselon testified regarding previous applications of Fiberspar pipe, the pipe composition and quality, and the results of tests conducted at certain intervals of operation. In Mr. Makselon's opinion, Fiberspar pipe is appropriate for the proposed pipeline project.

DECEMBER 13 AND 20, 2010 HEARINGS

Public notice of the December 13, 2010 Hearing in this matter was issued by the Authority on December 3, 2010. On December 13, 2010, Charles B. Welch, Jr. filed an Affidavit reflecting that notice of the hearing was published in the Daily Post Athenian on

⁶ *Id.* at 13.

⁷ *Id.* at 4.

⁸ *Id.* at 5-6.

December 8, 2010. No person sought intervention prior to or during the Hearing. The Application, Pre-filed Testimony, Exhibits, Data Requests and Responses, Proof of Publication and Affidavit were entered into the record without objection. RMB was represented by Charles B. Welch, Jr., Esq. During the Hearing, Mr. Spivey and Mr. Makselon were subject to examination by the panel and were questioned about conditions imposed on the use of Fiberspar pipe as set forth in a special permit recently issued by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (“PHMSA”) to Anchor Point Energy, LLC. As a part of the record in this case, the panel directed RMB to file a copy of PHMSA’s special permit and to provide comments as to whether the same conditions imposed in that permit should be imposed on the installation of Fiberspar pipe in this proceeding.

On December 16, 2010, RMB filed *Comments of Renewco-Meadow Branch, LLC Regarding Appropriate Conditions for Special Permit* (“Comments”). In its *Comments*, RMB pointed out the conditions imposed by PHMSA in Docket Number PHMSA-2010-0063 to Anchor Point Energy, LLC and provided statements as to the relevance and applicability of PHMSA’s conditions to RMB’s pipeline project. RMB submitted its *Comments* through its counsel as RMB’s position with respect to each condition in PHMSA’s special permit.

FEDERAL AND STATE REQUIREMENTS FOR CONSIDERING WAIVER

Tenn. Code Ann. § 65-28-106 (2004) extends jurisdiction and power to the TRA to implement and enforce certain federal safety standards set forth in Title 49 of the United States Code. Tenn. Code Ann. § 65-28-106(a) specifically provides:

- (a) The authority has the right, power and authority to provide and make certifications, reports and information to the secretary of the United States department of transportation; to enter into agreements with the secretary to carry out the purposes of §§65-28-104 - 65-28-111; to enforce safety standards in the state of Tennessee including enforcement of federal safety standards as permitted in the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101 et seq.; and to exercise regulatory jurisdiction over the safety of

pipeline systems and transportation of gas in accordance with permission granted by the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101 et seq.

Tenn. Code Ann. § 65-28-105 mandates compliance by natural gas pipeline systems in the state with safety standards as follows:

All pipeline systems used in this state shall be constructed, operated and maintained in such a manner as to at all times be in compliance with the defined minimum safety standards and amendments thereto, as well as such additions and amendments as may be ordered by the authority from time to time.

The federal regulations for which RMB seeks a waiver provide specific criteria for the design and usage of plastic pipe pursuant to 49 C.F.R. § 192. Section 192.53 states general requirements applicable to materials for pipe and components. Section 192.121 establishes design parameters for determining the pressure requirements for plastic pipe. Section 192.123 sets forth limitations in the usage of plastic pipe based on operating temperatures and design pressure. Section 192.619 prohibits the operation of a segment of steel or plastic pipe at a pressure exceeding the maximum allowable operating pressure as determined by certain formulas in that subsection of the Code of Federal Regulation (C.F.R.).

In considering a request for waiver of the requirements in 49 C.F.R. 192.53(c), 192.121, 192.123 and 192.619(a), the Authority must comply with certain requirements as set forth in 49 U.S.C. § 60118. The pertinent sub-sections (c) and (d) are quoted below:

Sec. 60118. Compliance and Waivers⁹

(c) Waivers by Secretary.

On application of a person owning or operating a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate, if the waiver is not inconsistent with pipeline safety. The Secretary shall state the reasons for granting a waiver under this subsection. The Secretary may act on a waiver only after notice and an opportunity for a hearing.

⁹ 49 U.S.C. Chapter 601 Safety 01/06/03, Sec.60118 Compliance and Waivers.

(d) Waivers by State Authorities.

If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

Subsections (c) and (d) of 49 U.S.C. § 60118 have been interpreted through PHMSA's Guidelines for States Participating in the Pipeline Safety Program. This publication by PHMSA provides specific criteria for state agencies to follow in considering a waiver of federal regulations involving intrastate pipelines. PHMSA's criteria are found in Chapter 3 as follows:

3.2.1 Intrastate Pipelines

Upon application by an operator, a State agency may consider a waiver of pipeline safety requirements subject to PHMSA concurrence. A waiver may be granted when it is not practical for an operator to comply with a regulation of general applicability. The State agency is encouraged to consult with PHMSA on the appropriateness of granting a waiver before formal action is taken.

A State agency must notify PHMSA in writing by registered or certified mail of each waiver granted by the state. The written notice and hearing requirements may be omitted if the State agency finds that notice is impracticable, unnecessary, or not in the public interest. A notice may be published by any method authorized by State law.

If a State agency finds that a waiver request is consistent with pipeline safety and is justified, it may issue written approval under such terms and conditions as are appropriate. Written approval should include a statement of reasons for granting the waiver.

If a State agency finds that a waiver request is not consistent with pipeline safety or is not otherwise justified, it must issue written denial of the request. Written denial should include a statement of reasons.

A State agency must notify PHMSA in writing by registered or certified mail of each waiver granted by the State. Each notice must provide the following information:

1. The name, address, and telephone number of the applicant
2. The safety regulation involved
3. A description of the pipeline facilities involved
4. The justification for approving the waiver, including the reasons why the regulations are not appropriate and why the waiver is consistent with pipeline safety
5. A copy of the State agency's order or letter to the applicant

PHMSA will acknowledge receipt of each notice and consider each in the order it was received. PHMSA may provide further opportunity for public comment.

If PHMSA does not object to the waiver, it will so notify the State agency. The waiver is effective upon approval by PHMSA or no action by PHMSA 60 days after the receipt of waiver from State agency. If, before a waiver is to become effective, PHMSA notifies the State agency that it objects to the waiver, the action granting the waiver will be stayed. PHMSA will then allow the State agency an opportunity to present its arguments with opportunity for a hearing. Thereafter, PHMSA will make the final determination whether the waiver may be granted and will notify the State agency of its decision.¹⁰

FINDINGS AND CONCLUSIONS

Based upon the evidentiary and administrative record as a whole, the panel made the following findings. The panel found that RMB met the criteria as set forth in 49 U.S.C. § 60118 to obtain a waiver of the requirements in 49 C.F.R. 192.53(c), 192.121, 192.123 and 192.619(a), and that RMB's request for a special permit with respect to 49 C.F.R. Sections 192.53(c), 192.121, 192.123, and 192.619(a) should be approved subject to compliance with specific conditions set forth as follows:

- (1) RMB will notify the TRA Gas Pipeline Safety Division ("GPSD") of a class location change that would result in the transmission line being subject to the requirements of § 192.625(b).
- (2) The use of Fiberspar will not be permitted in Class 3 or 4 locations.

¹⁰ Pipeline and Hazardous Materials Safety Administration, *Guidelines for States Participating in the Pipeline Safety Program*, Chapter 3, Revised December 2007.

- (3) Material used in the manufacture of the pipe installed within the special permit segment, during construction or in future repairs or replacement, shall not contain any regrind or rework material.
- (4) RMB shall perform external corrosion control monitoring on each buried metallic fitting in accordance with 49 C.F.R. § 192.465(a). Cathodic protection test stations will be provided at each metallic connector.
- (5) RMB shall submit construction specifications for the special permit segment to the GPSD prior to the start of construction operations.
- (6) RMB shall notify the GPSD prior to the start of construction operations of the date and location of pipeline installation.
- (7) RMB shall notify the GPSD if: any repairs or modifications to the Fiberspar pipe or fittings are required; or the special permit segment is at any time damaged or hit.
- (8) RMB shall schedule and perform three inspections conducted at five years, ten years, and twenty years following installation, which include non-destructive and destructive testing on the pipe material to determine that characteristics have not degraded outside the predicted parameters.
- (9) If the tests required by Condition No. 8 determine that the pipe material is no longer suited for service in this application, RMB will replace it with steel pipe or the project will be abandoned.
- (10) RMB will notify the GPSD of the results of the tests conducted as required by Condition No. 8.
- (11) RMB shall require personnel involved in the construction or repair of the pipe to be qualified in these tasks with necessary emphasis given to procedures unique to the GRE pipe material.
- (12) RMB shall make every effort to maintain the GRE pipe operating temperatures at or below 120 degrees Fahrenheit. In the event operating temperatures exceed 140 degrees Fahrenheit for any period of time, the pipeline will be shut down and notice of the event provided to the GPSD within 24 hours for a determination of appropriate requirements for continued service of the pipeline.
- (13) RMB shall stock tools, fittings and materials for operational maintenance and emergency repairs of the pipeline.
- (14) RMB shall install line-of-site pipeline markers in all areas except agricultural areas where line of site markers are not practical.
- (15) RMB shall file a copy of the Special Permit and any final Orders issued by PHMSA in this docket.

The panel further found that, with the above conditions in place, the special permit requested by RMB will not endanger the public's safety and does not conflict with fundamental standards for natural gas pipeline distribution systems. The panel found that the Authority and RMB have taken appropriate actions pursuant to § 60118 to provide notice and the opportunity for the public to be heard concerning RMB's request. Thereafter, based on these findings, the panel voted unanimously to approve RMB's Application for waiver contingent upon the requirements.

The approved waiver is subject to review by the U.S. Department of Transportation ("DOT") and will become effective upon the approval of the DOT, or if no action is taken by the DOT, sixty days after the receipt by the DOT of the Authority's Order in this docket.

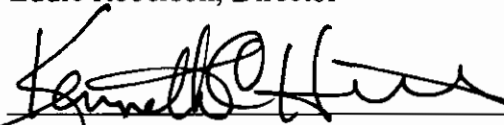
IT IS THEREFORE ORDERED THAT:

1. The Application by Renewco-Meadow Branch, LLC for waiver of 49 C.F.R. 192.53(c), 192.121, 192.123 and 192.619(a) is approved, subject to compliance by RMB of the requirements and conditions set forth herein.

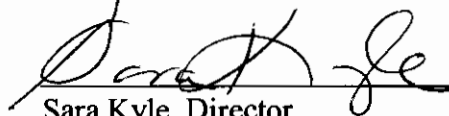
2. This Order will become effective upon the approval of the U.S. Department of Transportation, or if no action is taken by the U.S. Department of Transportation, sixty days after the receipt of this Order by the U.S. Department of Transportation.



Eddie Roberson, Director



Kenneth C. Hill, Director



Sara Kyle, Director