

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Applications for Permits and Variances
from State-wide Gas Well Spacing Requirements
Pursuant to Environmental Conservation Law
§ 23-0503(8) and Parts 552 and 553 of Title 6
of the Official Compilation of Codes, Rules
and Regulations of the State of New York,

- by -

LE ROY CENTRAL SCHOOL DISTRICT,

Applicant.

DEC Project No. DMN 08-MV-01

SUMMARY HEARING REPORT AND ORDER OF DISPOSITION

April 29, 2008

SUMMARY HEARING REPORT AND ORDER OF DISPOSITION

Appearances:

-- Brian Foeller, Business Administrator, for applicant Le Roy Central School District

-- Alison H. Crocker, Deputy Commissioner and General Counsel (Jennifer Hairie of counsel), for staff of the Department of Environmental Conservation

Proceedings:

In February 1980, applicant Le Roy Central School District began development of its property located in the Town of Le Roy, Genesee County. At the present time, applicant has successfully drilled four natural gas wells (see Matter of Le Roy Central School District, Order of the Commissioner, April 17, 1991).

On December 3, 2007, applicant filed applications for permits to drill and variances from the natural gas well spacing provisions of section 553.1 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") for the drilling of the Fee No. 5 and Fee No. 6 wells. The proposed wells are to be located less than 660 feet from boundary lines of the property, and less than 1,320 feet from producing wells in the same pool. Applicant proposes to drill both wells to a total depth of 1,450 feet, targeting the Medina natural gas formation. If successful, applicant would use the natural gas for its exclusive use on the property.

In support of its variance application, applicant provided a geologic report dated July 30, 2007, which notes that the Federal Energy Regulatory Commission has designated the Medina formation in Genesee County as a "tight sand" formation.

Staff of the Department of Environmental Conservation ("Department") reviewed the application and prepared a draft order finding that (1) applicant will use all natural gas produced from the proposed wells for its exclusive use, (2) no other entity will develop the natural gas resource proposed to be developed by applicant within twelve months of the close of the hearing, (3) applicant's project will prevent waste and provide for greater ultimate recovery of natural gas, and (4) the rights of all persons including landowners and the general public will be fully protected. Pursuant to ECL 23-0503(8), Department staff

referred the matter to the Department's Office of Hearings and Mediation Services ("OHMS") for hearings under 6 NYCRR part 624 ("Part 624"). Chief Administrative Law Judge ("ALJ") James T. McClymonds was assigned as presiding ALJ.

A combined notice of application and public hearing was issued March 7, 2008 to all parties deemed to have an interest in the applications. The notice was also published in the Department's electronic Environmental Notice Bulletin and in the Batavia Daily News on March 12, 2008.

With respect to compliance with the State Environmental Quality Review Act ("SEQRA") (ECL article 8), the notice stated that Department staff published a Final Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program in July 1992. On September 1, 1992, Department staff issued a SEQRA (ECL article 8) findings statement concluding that the conduct of compulsory integration hearings pursuant to ECL article 23 would have no significant impact on the environment. Department staff, on behalf of the Department as lead agency, determined that these proceedings are being carried out in conformance with the conditions and thresholds established for compulsory integration hearings in the GEIS and the findings statement. Accordingly, no further action is required under SEQRA (see 6 NYCRR 617.10[d][1]).

The notice indicated that a legislative hearing, issues conference and adjudicatory hearing were scheduled to begin on April 23, 2008 in the Memorial Auditorium, Le Roy Central School, Le Roy, New York. The notice also established a deadline of April 16, 2008 for the filing of petitions for party status and written comments. The notice further provided that if no petitions for party status were received by 4:00 P.M. on April 16, 2008, the public hearing would be cancelled pursuant to ECL 23-0503(8), the variances would be granted, and the Department would continue processing the drilling permit applications for the wells.

No petitions for party status or written comments were filed by close of business on April 16, 2008. Accordingly, on April 18, 2008, the hearing was cancelled. Although anyone appearing at the hearing location on April 23 would be given an additional week to file written comments, no one appeared on April 23, and no written comments have been received at OHMS.

Discussion:

ECL 23-0503(8) provides that the Department, without

considering correlative rights, may grant a permit to a public entity such as applicant for the purposes of natural gas development if the Department determines, after notice and hearing, that the natural gas resource would not be developed by any other entity within twelve months of the close of the hearing record. Section 23-0503(8) further provides that in the event the Department does not receive timely notices of appearance prior to the scheduled date of hearing, it may dispense with such hearing.

In this case, no timely petitions for party status or any written objections to the applications were filed with the Department prior to the scheduled date of the hearing. Accordingly, pursuant to ECL 23-0503(8), the hearing was cancelled. There being no timely petitions for party status, and no dispute between applicant and the Department concerning the draft order granting the variances sought, no adjudicable issues requiring hearing are presented (see 6 NYCRR 624.4[c][5]).

Order of Disposition:

The hearing record is closed and the matter is remanded to Department staff to continue processing the applications to issue the requested variances and permits.

_____/s/_____
James T. McClymonds
Chief Administrative Law Judge

Dated: April 29, 2008
Albany, New York

TO: Cindy Neth
Superintendent of Schools
Le Roy Central School District
2-6 Trigon Park
Le Roy, New York 14482

Brian Foeller
Business Administrator
Le Roy Central School District
2-6 Trigon Park
Le Roy, New York 14482

Jennifer Hairie, Esq.
Associate Attorney
New York State Department of Environmental Conservation
Office of the General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1500