

A-2010-2200201

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February 22, 2012

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**PA PUBLIC UTILITY COMMISSION
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Rosemary Chiavetta
Pennsylvania Public Utility Commission
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Dear Secretary Chiavetta:

Enclosed please find for filing an original and 3 copies of the reply brief of James E. Rosenberg in the case Docket A-2010-2200201, application of Peregrine Keystone Gas Pipeline, LLC for approval on a non-exclusive basis to begin to offer, render, furnish, or supply natural gas gathering, compression, dehydration, and transportation or conveying service by pipeline to the public in all municipalities located in Greene and Fayette Counties and in East Bethlehem Township in Washington County, Pennsylvania. Enclosed please also find an original and 3 copies of certificate of service for this brief. I hereby certify that I have served via E-mail and US Mail a true and correct copy of my reply brief in this case upon the following individuals:

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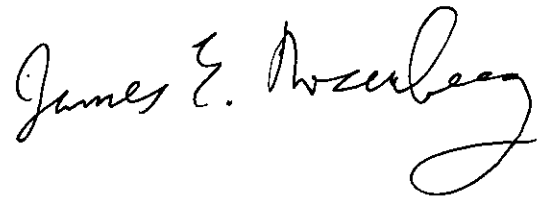
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Sincerely,



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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Before the Public Utility Commission
The Honorable Susan D. Colwell Presiding
Docket A-2010-2200201

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Application of Peregrine Keystone Gas Pipeline, LLC for a Certificate of Public
Convenience

James E. Rosenberg Reply Brief

I. Replies to Peregrine's Main Brief

Before enumerating specific points, I should say that I have in effect "replied in advance" in my Main Brief to much of the material in Peregrine's Main Brief; any omission here of a point covered in my Main Brief should not be construed as a retreat from that point in my Main Brief.

1. Peregrine's Statement of the Case (p. 2) omits the protest of Evelyn Hovanec.

Admittedly this is a minor point, but is symbolic of the lack of care Peregrine takes with the Public Interest that they fail to take notice of a protestant who is a party to this case.

2. Peregrine's assertion that its facilities will be designed to accommodate as many unaffiliated customers as possible does not agree with its published map.

Peregrine asserts: "Peregrine's facilities will be designed and constructed to provide service to as many customers as possible" (Peregrine Main Brief p. 19). This assertion is included as a Proposed Finding of Fact: "8. Peregrine's facilities will be designed and constructed to provide service to as many customers as possible and will increase the size and capabilities of its facilities to meet increased customer demand for service as more wells are developed in the service area. (PKGP Stmt. No. 1 at p. 7: 11-21)." (Peregrine Main Brief, p. 48). Peregrine's published map giving the only announced facilities which Peregrine intends to construct in the service territory in fact shows the exact opposite. The facilities Peregrine intends to construct are in fact several isolated pipeline segments (denoted as "systems" on Peregrine's map) all but one of which connect to the Dominion transmission line. This "design" provides no backbone provided by Peregrine, but instead uses the Dominion transmission line as its backbone. Peregrine has applied for a CPC covering the entirety of Greene County and the entirety of Fayette County as well as one township in Washington County. Will Peregrine's

“design” for the whole of two counties continue to use transmission lines for its backbone? Is this in fact an efficient design “to provide service to as many customers as possible”? More to the point: What documentation has Peregrine provided to the PUC by which they might *evaluate* the assertion that Peregrine’s facilities will be designed to connect to as many non-affiliated customers as possible? Peregrine’s published map shows that its announced project is actually designed to connect its own affiliate, Arrington Oil and Gas Operating, LLC (Arrington). As noted in my Main Brief (Point 1B, p. 1) because Arrington has the same ownership as Peregrine, Arrington may be considered Peregrine itself. If there are features of the “design” of Peregrine’s announced project that make it conducive to being connected to as many unaffiliated customers as possible, they have not been elucidated in this case.

3. Peregrine’s assertion that so-called “commitments” made in testimony can substitute for conditions on its requested CPC lacks credibility.

Peregrine insists (Peregrine Main Brief V p. 23) that “Conditions to a Peregrine certificate are unnecessary in light of its testimony commitments.” What exactly does the word ‘commitment’ mean here? Let’s consider a specific example: compressor station noise mitigation to a standard of 5 db above ambient at 100 feet. As I already noted on this point in my Main Brief (Point 20, p. 14) Peregrine’s testimony on this point was hardly worded as a firm commitment and was full of conditional language (Evidentiary Hearings. P. 398 lines 5-13, P 398 line 23 - P. 399 line 6): “that’s our target and we expect to meet that” “However, we don’t think it’s prudent or reasonable to blindly apply that rule ...” “It’s hard for me to anticipate every situation” “I think the answer to the question is yes” — the citizens of the service territory who are subject to eminent domain are expected to swallow such waffling as “a commitment”? Really? If Peregrine is not willing to accept its own “company standard” as a condition on its CPC, it is impossible to escape the suspicion that in fact it does not want to be **bound** to adhere to that standard. To put it bluntly: such an assertion that a spoken promise does not need to be translated into the formal language of conditions on a CPC has the exact same moral force that a spoken promise by a negotiator does not need to be translated into the formal language of a lease or easement agreement or contract.

A second example: “Peregrine has agreed to provide a Landowner’s Bill of Rights to property owners along the route of its pipelines similar to that required by Texas which has been admitted into evidence as Peregrine Exhibit No. 3.” (Peregrine Main Brief p. 25.) Once again: this overstates the actual level of commitment contained in the testimony. I already addressed this issue in my Main Brief, Point 16 pp. 10-11. The actual quotation from testimony reads as follows: Evidentiary Hearings, P. 378 lines 3-7: “Q [Myself]. Is it your testimony that you would intend to produce such a document in your service territory in Pennsylvania? A [Mr.

Fuller]. **To the extent they're consistent with the Pennsylvania Code**, absolutely.” [Emphasis added.] As Peregrine’s witness knows full well, provision of a landowners bill of rights is required by state law in Texas. It is not required by law in Pennsylvania. In what sense is this “a commitment”? Peregrine Main Brief, p. 54: “Peregrine has agreed on page. 41 of its Main Brief to submit a Pennsylvania version of a Landowner’s Bill of Rights to all Pennsylvania landowners whose properties may be impacted by Peregrine’s proposed pipelines. Peregrine agrees to, work with the Commission Staff to develop a statement of rights which could be distributed to these property owners which would be based on the State of Texas Landowner’s Bill of Rights which has been submitted as a late filed exhibit and identified as Peregrine Exhibit No. 3.” And what is to be the role of the public in this process? What is the approval process for such a document? Does Peregrine commit to holding public input hearings on the wording of this document? Peregrine is proposing to have **private conversations** with the staff of the Public Utility Commission to create the wording of a document telling we the people what our rights are? And what if those conversations don’t happen? What is the mechanism of protest or appeal for this document? In what sense could it be called a “bill of rights” if it is drafted through private conversations between Peregrine and the PUC?

That so many questions arise from, and so much vague language is contained in Peregrine’s testimony makes perfectly plain that these are not “commitments” in any meaningful sense. Vague discussions in testimony are not a substitute for conditions on a CPC. That Peregrine would assert that such problematic language is a “commitment” casts serious doubt on Peregrine’s ability to act in the Public Interest.

4. Peregrine’s asserted demonstration of financial fitness is profoundly flawed, and only demonstrates fitness to construct service which is ineligible for a CPC because it is service only to itself.

Peregrine states (Main Brief, p. 21): “Peregrine has the financial resources to construct its facilities and **initiate service**. The tentative balance sheets attached to Peregrine’s direct testimony as Exhibit “B” demonstrate that Peregrine has the financial resources to construct its facilities and **begin operations** after the Commission issues a certificate of public convenience. (Exhibit “B” to PKGP Stmt. No. 1).” [Emphasis added.] This wording must be inspected very carefully. What exactly is the undertaking for which Peregrine has demonstrated financial fitness? Apparently this undertaking is simply construction of the announced set of disconnected pipeline segments shown on the map in Peregrine’s application. I.e. the only financial fitness which Peregrine has demonstrated is fitness to construct the gathering lines to bring to market gas from the Arrington wells. As I have covered in my Main Brief (Point 3, p. 3) 66 Pa.C.S. § 102 in the definition of public utility (2) explicitly states that an entity providing service only to itself does not qualify as a public utility. Because Arrington and Peregrine have the same ownership, the service detailed in the specific pipeline proposed in Peregrine’s

application — taken in isolation — is disqualified from being considered a public utility. Consequently, evidence of fitness to build that pipeline is not evidence of Peregrine’s fitness to receive a CPC. Instead:

Peregrine Main Brief, p. 9: “Peregrine intends to immediately hold itself out to unaffiliated producers and other customers to provide gas transport and compression and dehydration services to the extent of its system capacity. ***Peregrine will expand the capacity of its facilities in the future as necessary to provide service to these customers.***” [Emphasis added.] Without significant expansion of the services detailed on the map in Peregrine’s application, Peregrine’s service is ineligible for a CPC. Therefore: it is precisely this expansion for which Peregrine must demonstrate financial fitness. As I have already covered in my Main Brief, Point 12, pp. 8-9: By Peregrine’s own testimony, they have not done any financial planning for this expansion. Therefore: Peregrine has not met its burden of proof that it is financially fit to receive a CPC.

5. Peregrine has been consistently ambiguous about the extent to which it will expand its capacity to service new customers.

The statement quoted above, “Peregrine will expand the capacity of its facilities in the future as necessary to provide service to these customers” seems perfectly clear, assertive, and unambiguous. Yet we consistently find in Peregrine’s litigation statements such as the following (Peregrine Main Brief, p. 52): “Peregrine will be providing service to any and all customers who request service ***to the extent Peregrine has available capacity to provide the service.***” [Emphasis added.] So which is it? Peregrine will provide service only to the extent it has capacity, or Peregrine will always expand capacity to service customers? Why at this late stage in the litigation do we still see the caveat “to the extent Peregrine has available capacity”? Why is this wording present? Consider the following scenario: (1) Peregrine is granted a CPC. (2) Peregrine builds the published pipeline segments to bring the Arrington (i.e. its own) gas to market. (3) Peregrine stops construction. (4) A new customer appears — let’s say in Eastern Fayette County, at maximum distance from any transmission line. This customer requests service. (5) Peregrine asserts that it doesn’t have capacity to serve this customer, and simply does nothing. What should happen in this scenario? Should Peregrine’s CPC be revoked? Should Peregrine be *ordered* by the PUC to provide service? What if Peregrine is unwilling or unable to fulfill this order? None of these questions should even arise. That Peregrine continues to apply this caveat “to the extent Peregrine has available capacity to provide the service” implies that Peregrine itself has doubts about its ability to expand its service as needed and wants “an out”.

As a landowner in the requested service territory who would be potentially subject to eminent domain, I would very much like an out also. Perhaps a fair exchange for giving Peregrine the out “to the extent Peregrine has

available capacity to provide the service” would be to give landowners a similar out that would grant Peregrine a CPC “to the extent landowners have the willingness to sign an agreement voluntarily”.

6. Peregrine confuses descriptions of how negative public interest might be mitigated with proposed conditions on a CPC.

It is my contention that the calculus of public interest for Peregrine’s application yields negative (my Main Brief Point 24, p. 16). To illustrate the dimensions of this public burden, I have described in my testimony various means by which negative public interest might be mitigated. To describe such a discussion as a formal proposal of conditions on a CPC is to misspeak: that was not my undertaking. The burden of proof is Peregrine’s to show that for their application, the calculus of public interest yields positive. Peregrine’s testimony is replete with examples of unwillingness to mitigate negative public interest to any greater degree than any other non-certificated midstream company. Consider the matter of compressor station air pollution. Peregrine considers that it has been responsive on this issue: “In response to Mr. Rosenberg’s comments on compressors, Mr. Fuller’s rebuttal testimony repeats the commitments Peregrine has made concerning compressors Peregrine has committed in its direct testimony that the compressors will be natural gas engine driven utilizing lean burn technology with catalytic convertors designed to achieve 1/2 grams of No_x per brake horsepower hour.” (Peregrine Main Brief, p. 38.) This so-called commitment (which conveniently fails to mention anything about mitigating pollution from dehydration equipment) is nothing more than an assertion that Peregrine intends to equip its compressor stations with *industry standard equipment* that is exactly comparable to the equipment used by midstream companies that are not operating under any CPC. Peregrine could undertake to mitigate negative public interest in the matter of compressor station air pollution to a greater extent than its non-certificated competitors. It chooses not to do so. Instead, Peregrine offers only that mitigation of negative public interest required by law and regulation of all midstream companies, and asks the public (the real public) to be content with this as a “commitment”. If Peregrine chooses to evade applicable forms of mitigation of negative public interest as being “too vague”, then the consequence is clear: by failing to mitigate negative public interest, Peregrine’s burden of proof on the positive side of public interest is only increased.

II. Reply to BIE’s Main Brief

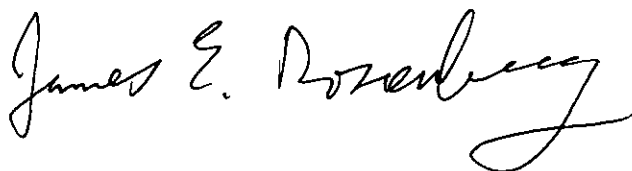
7. Willingness to “consider” waiving exemption from regulations is not any kind of “commitment” at all.

In its Main Brief, the Bureau of Investigation and Enforcement (BIE) notes: “Furthermore, Peregrine has stated its willingness to *consider* requests to waive the exemption of Class 1 pipelines from federal pipeline safety

regulations if they are asked to do so.” [Emphasis added.] As BIE should well know, a request to “consider” waiving exemption from regulation commits to nothing. It is simply a statement that Peregrine is willing to *think about* waiving the exemption but might very well do nothing at all about this issue. It is notable that Peregrine itself makes no mention of the Class 1 issue anywhere in its Main Brief. Not only does this indicate that Peregrine sees no need for a condition on its CPC regarding Class 1 areas, Peregrine has not included this issue in those items to which Peregrine claims to be committed by virtue of its testimony.

Accordingly, BIE is simply in error in thinking that the Class 1 issue is any different from the multitude of other issues on which Peregrine insists that it need not be bound by any stricter standard of mitigating negative public interest than those companies not given a CPC. Mention of the Class 1 issue in BIE’s brief gives a misleading impression of Peregrine’s willingness to mitigate negative public interest in areas of low population density.

Respectfully submitted,

A handwritten signature in cursive script that reads "James E. Rosenberg". The signature is written in black ink and is positioned to the left of the "RECEIVED" stamp.

James E. Rosenberg, appearing pro se.

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