

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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In the Matter of a Commission Investigation
Regarding the Appropriate Regulatory
Response to Propane-Storage Projects

ISSUE DATE: June 19, 2014

DOCKET NO. E,G-999/CI-14-423

ORDER ESTABLISHING
VARIANCE PROCEDURES

PROCEDURAL HISTORY

On May 21, 2014, the Minnesota Department of Commerce (the Department) filed a letter stating that propane-storage facilities were being proposed to address an anticipated propane shortage during the upcoming harvest and heating seasons. To help ensure that these projects could be constructed expeditiously, the Department recommended that the Commission temporarily vary Minnesota Rules chapter 7853 to exempt the proposed facilities from the certificate-of-need requirement.

On May 28, 2014, the Commission issued a notice soliciting comments on the Department's request.

Between June 2 and 10, 2014, the following industry stakeholders filed comments supporting the Department's request:

- PirkI Gas,
- CHS Inc., an agricultural cooperative,
- the Minnesota Propane Association,
- the Minnesota Corn Growers Association,
- Cooperative Network,
- LPG & NH₃ Supply, Inc.,
- Rahn's Oil & Propane, and
- Jay Johnston & Associates, Inc.

On June 12, 2014, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Background

A. Factual Background

Propane is a fuel commonly used in rural areas with limited access to natural gas. In Minnesota, the major applications of propane are drying crops after harvest to prevent them from spoiling and heating residences and businesses during the winter.

During the winter of 2013–2014, the upper Midwest experienced persistent extremely cold temperatures. In addition, the Cochin Pipeline, which transported propane from Canada to the United States, shut down for several weeks in November and December. These factors, combined with a late-maturing corn harvest, severely strained propane supplies, leading to long wait times, driving up prices, and requiring the fuel to be imported by truck from neighboring states.

In response, Governor Dayton issued a series of executive orders declaring an emergency and exempting motor carriers and drivers providing direct assistance in emergency-relief efforts from regulations limiting hours of service.¹ The Governor ultimately extended the exemption through March 2014.

Additionally, on January 27, 2014, Governor Dayton issued an executive order declaring a peacetime emergency under Minnesota Statutes section 12.31.² The Governor found that the limited availability of propane was making it unaffordable for many Minnesotans; that an increasing number of households, farms, and businesses were at risk of running out of heating fuel, posing an immediate threat to human life and public welfare; and that local government resources were inadequate to handle the emergency. The Governor ordered the Department of Public Safety to activate its emergency operations plan and called upon the Minnesota National Guard to assist.

In May 2014, the Cochin Pipeline's flow was permanently reversed to carry diluent from U.S. shale-oil fields to oil-sands processors in Canada. Historically, the Cochin had supplied nearly 40% of the propane used in Minnesota.

At least two Minnesota propane suppliers are planning propane-storage projects to address a potential shortage in the upcoming harvest and heating seasons.³

B. Regulatory Background

While propane utilities are not rate-regulated like natural-gas utilities, the construction of large propane-storage facilities is governed by the Commission's certificate-of-need rules. Obtaining a certificate of need is a multi-step process that can take up to a year.

¹ Minn. Exec. Order Nos. 13-11 (Oct. 23, 2013), 13-12 (Nov. 6, 2013), 13-14 (Dec. 9, 2014), and 14-04 (Feb. 6, 2014).

² Minn. Exec. Order No. 14-02.

³ Pirkel Gas stated that it is planning a 180,000-gallon expansion of an existing facility in Owatonna. CHS, Inc. stated that it is planning a 1,000,000-gallon expansion of its rail-supplied facility in Glenwood, among other unspecified projects.

1. Certificate-of-Need Requirement

Minnesota Statutes section 216B.243 provides that “[n]o large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need.”⁴ Section 216B.2421 lists several types of large energy facilities, including “any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural gas or synthetic gas.”⁵

These statutes do not define the term “synthetic gas.” However, the Commission has defined “synthetic gas” to include propane. Minnesota Rules part 7853.0010 states,

“Synthetic gas” means flammable gas created from gaseous liquid, or solid hydrocarbons, or other organic or inorganic matter. Synthetic gas shall include ethane, propane, butane, or their mixtures, whether extracted from gas streams lifted from oil and gas wells or produced at refineries or fuel conversion plants. It shall also include hydrogen or methane produced at conversion plants.⁶

Thus, the Commission’s rules require that the developer of a propane-storage project with a capacity of more than 100,000 gallons apply for and receive a certificate of need before constructing the facility.

2. Certificate-of-Need Application Procedures

Once an certificate-of-need application has been filed, the Commission solicits public comments,⁷ determines whether the application is complete, and, upon finding it complete, determines whether to use contested-case proceedings to develop the record. An administrative law judge (ALJ) holds a public hearing on the application,⁸ and, in a contested case, holds evidentiary hearings and recommends a decision in accordance with contested-case rules.⁹

The Commission may grant a certificate of need if it finds that a project is needed in light of potential alternatives and other relevant factors.¹⁰ The entire process, from application submission to final decision, can take up to a year.¹¹

⁴ Minn. Stat. § 216B.243, subd. 2.

⁵ Minn. Stat. § 216B.2421, subd. 2(6).

⁶ Minn. R. 7853.0010, subp. 23.

⁷ Minn. R. 7829.2500, subp. 4.

⁸ Minn. R. 7853.0200, subp. 5.

⁹ See Minn. R. 1400.5010–.8400 (contested-case rules)

¹⁰ See Minn. R. 7853.0130 (listing criteria for granting certificate of need).

¹¹ See Minn. Stat. 216B.243, subd. 5 (requiring that the Commission approve or deny a certificate of need within 12 months of application submission).

II. Comments

A. The Department

The Department stated that it is reasonable to conclude that increased propane storage is needed, given the propane availability crisis that occurred during the past heating season, even before the loss of the Cochin Pipeline's supply. The Department believes that additional propane-storage capacity could increase propane supplies and help to prevent or mitigate another potential crisis.

However, the Department is concerned that the 12-month timeframe required to obtain a certificate of need for a large propane-storage facility could prevent additional capacity from being in place in time to avert another propane-supply crisis. The Department therefore recommended that the Commission temporarily vary its rules by striking the word "propane" from the definition of synthetic gas in Minn. R. 7853.0010, subp. 23.

B. Industry Stakeholders

The commenting stakeholders supported the Department's request to vary the definition of synthetic gas in part 7853.0010. They stated that following the certificate-of-need process would prevent propane-storage projects from being constructed in time to meet the demands of the approaching harvest and heating seasons.

A number of commenters argued that the definition of "synthetic gas" in the Commission's rules is not consistent with industry usage or practice. According to these commenters, propane and synthetic gas have different chemical compositions, are manufactured through different processes, and are distributed in different forms. Whereas propane is produced in natural-gas processing and crude-oil refining, synthetic gas is commonly produced by gasifying carbonaceous materials, such as biomass, plastics, coal, or municipal waste.

CHS suggested a modification to the Department's proposed variance. CHS stated that consumer-grade propane (known as HD-5) may contain small amounts of other fuels besides propane. For clarity, CHS recommended that the variance expressly state that consumer-grade propane is excluded from the definition of synthetic gas:

"Synthetic gas" means flammable gas created from gaseous liquid, or solid hydrocarbons, or other organic or inorganic matter. Synthetic gas shall include ethane, ~~propane~~, butane, or their mixtures, whether extracted from gas streams lifted from oil and gas wells or produced at refineries or fuel conversion plants, but shall not include consumer grade propane (i.e., HD-5), including any mixture of propane, ethane, butane or methane sold as consumer grade propane. It shall also include hydrogen or methane produced at conversion plants.

III. Commission Action

The Commission finds that additional propane storage is needed in Minnesota and that urgent action is appropriate to address this need. As described in Governor Dayton's executive orders and elsewhere in the record, several factors contribute to the need for immediate action. These factors include, but are not limited to, seasonal spikes in propane demand, the potential for extreme cold

weather like that experienced in the winter of 2013–2014, and the repurposing of the Cochin Pipeline.

The Commission has considered several possibilities other than a variance for exempting large propane-storage projects from the certificate-of-need requirement, or for expediting their approval, including the following:

- Informal or expedited proceedings under Minn. R. 7829.1200;
- Expedited rulemaking under Minn. Stat. §§ 14.385–.389; and
- Rulemaking generally.

However, none of these options would allow propane distributors to have increased storage capacity available for distribution when it is needed. They are not expeditious enough to prevent a propane shortage in the near term.¹²

Under Minnesota Rules part 7829.3200, the Commission may vary any of its rules upon making the following findings:

1. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with any standards imposed by law.

The Commission finds that enforcing Minn. R. 7853.0010, subp. 23, would impose an excessive burden on propane dealers, by jeopardizing their ability to secure adequate supplies for the coming harvest and heating seasons, and on propane users, by jeopardizing their crop-drying operations and their ability to heat their homes, businesses, schools, and other facilities during the coming fall and winter.

The Commission further finds that granting a variance would not adversely affect the public interest but rather would serve the public interest by ensuring that adequate propane supplies will be available when needed in the short term. And, finally, the Commission finds that granting the variance would not conflict with standards imposed by law.

Many of the criteria set forth in statute and rule for evaluating a certificate of need specifically apply to transmission lines or generation facilities and are not applicable to propane storage. Other criteria are clearly met by the unusual circumstances resulting from the recent loss of the propane supply carried by the Cochin Pipeline.¹³

¹² The Commission will, however, direct its staff to evaluate whether rulemaking to modify Minn. R. 7853.0010, subp. 23 (or other related rules) is an appropriate long-term solution in light of the circumstances and record in this case. This will also allow closer examination of whether propane is a “synthetic gas.”

¹³ See Attachment A (Supplemental Staff Briefing Paper).

A key purpose of a certificate-of-need process is to assure that new capacity is actually needed so that large energy facilities are not overbuilt and their costs inappropriately passed on to customers. In light of the loss of the propane supplied by the Cochin Pipeline, a one-year variance will not result in construction of excessive capacity. Requiring storage developers to submit an application will give the Commission the information it needs to track new storage and to determine if variances should be extended beyond one year or a rule amendment is warranted.

For the foregoing reasons, the Commission concludes that a variance of Minn. R. 7853.0010, subp. 23, is justified and will authorize propane-storage developers to request a variance in the form proposed by the Department and with the modification suggested by CHS.¹⁴

The Commission will require each developer requesting a variance to file detailed information about its project and summarize how the project meets the requirements for a variance. The filing will include the following types of information, as fully set forth below in the ordering paragraphs:

- The developer's name and contact information;
- A description of the project, including the number and capacity of the storage tanks, their expected lives, the estimated cost, and the anticipated construction-start and in-service dates;
- The name and address of the engineer or firm that designed the project and contractor that will construct it;
- A list of other required local and state permits or approvals and proof of the developer's compliance with applicable policies, rules, and regulations; and
- A summary of how the project meets the variance requirements of Minn. R. 7829.3200.

These information requirements, many of which mirror what a developer must file when applying for a certificate of need,¹⁵ will improve the Commission's knowledge of the propane industry, keep the Commission informed of new propane facilities as they are built, and provide assurance that developers are complying with safety regulations.

In light of the need for swift approval of variances, the Commission will delegate authority to the Executive Secretary to review variance requests for completeness and compliance with this order and to certify that a variance has been approved.

Finally, the purpose of this variance procedure is to respond to crisis conditions requiring the construction of propane-storage facilities under time frames inconsistent with full certificate-of-need procedures. Eligible facilities must therefore be constructed within a year of receipt of a variance, subject to time extensions to recognize extenuating circumstances.

¹⁴ This variance is not intended to apply to Minnesota Rules chapter 7851, which contains an identical definition of "synthetic gas" but governs applications submitted by utilities and pipeline companies.

¹⁵ See Minn. R. 7853.0230-.0330.

ORDER

1. The Commission hereby authorizes propane-storage developers to request a one-year variance of Minn. R. 7853.0010, subp. 23, as follows:

“Synthetic gas” means flammable gas created from gaseous liquid, or solid hydrocarbons, or other organic or inorganic matter. Synthetic gas shall include ethane, ~~propane~~, butane, or their mixtures, whether extracted from gas streams lifted from oil and gas wells or produced at refineries or fuel conversion plants, but shall not include consumer-grade propane (i.e., HD-5), including any mixture of propane, ethane, butane, or methane sold as consumer-grade propane. It shall also include hydrogen or methane produced at conversion plants.

2. A variance request shall include the following information:
 - a. the applicant’s complete name, address, telephone number, and standard industrial classification codes;
 - b. the complete name, title, address, and telephone number of the official or agent to be contacted concerning the filing;
 - c. a brief description of the proposed facility, its complete address (if known) or general location, its estimated cost, its planned in-service date, and its design capacity in gallons;
 - d. the signatures and titles of the applicant’s officers or executives authorized to sign the filing and the signature of the preparer of the application if prepared by an outside agent;
 - e. A list of other required local and state permits or approvals and documentation of the applicant’s compliance with, or its assurance that it will comply with, those relevant policies, rules, or regulations;
 - f. A description of the proposed facility, including
 - i. The number of tanks proposed;
 - ii. The capacity of each tank;
 - iii. The number of existing tanks and their capacity already onsite;
 - iv. The estimated cost of the facility;
 - v. The expected life of the tanks;
 - vi. The complete name and address of the engineer, if known, or firm that designed the proposed storage facility;

- vii. The complete name and address, if known, of the contractor or firm that would construct the storage facility;
 - viii. The expected construction start date; and
 - ix. The expected in-service date of the facility.
- g. A brief summary of how the project meets the requirements of Minn. R. 7829.3200:
- i. enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
 - ii. granting the variance would not adversely affect the public interest; and
 - iii. granting the variance would not conflict with standards imposed by law.
3. The Commission hereby delegates authority to the Executive Secretary to review variance requests for completeness and compliance with this order and to certify to the entity filing the request that it has been approved.
4. An entity that receives a variance under this process must construct the storage facility within one year of its receipt of the variance-approval notification from the Commission. The entity may petition the Commission for an extension of the time to construct.
5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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Staff Briefing Paper Supplemental Attachment A – Docket 14-423 Record in Relation to Certificate of Need Criteria

Staff has reviewed the certificate of need criteria in Minnesota Statute and Rule and the record to date. The statutory and rule related criteria the Commission is required to consider for propane storage facilities are reflected below followed by how the record reflects each criteria.

Most statutory criteria are reflected in Minn. Rule 7853, however, some are not and are included below.

Statutory Criteria: Minn. Stat. §216B.243	Summary of Criteria	Where Addressed in the Record	Statement of Reason
Minn. Stat. § 216B.243, subd. 3 (9)	(9) with respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric consumers in Minnesota;	N/A	Propane storage facilities are not transmission lines.
Minn. Stat. §§ 216B.243, subd. 3a and 216B.2422, subd. 4	Subd. 3a. Use of renewable resource. The commission may not issue a certificate of need under this section for a large energy facility that generates electric power by means of a nonrenewable energy source, or that transmits electric power generated by means of a nonrenewable energy source, unless the applicant for the certificate has demonstrated to the commission's satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source. ...	N/A	Propane storage facilities are not transmission lines or generation facilities. Propane dealers are not utilities.

	<p>Subd. 4. Preference for renewable energy facility. The commission shall not approve a new or refurbished nonrenewable energy facility in an integrated resource plan or a certificate of need, pursuant to section <u>216B.243</u>, nor shall the commission allow rate recovery pursuant to section <u>216B.16</u> for such a nonrenewable energy facility, unless the utility has demonstrated that a renewable energy facility is not in the public interest. The public interest determination must include whether the resource plan helps the utility achieve the greenhouse gas reduction goals under section <u>216H.02</u>, the renewable energy standard under section <u>216B.1691</u>, or the solar energy standard under section <u>216B.1691</u>, subdivision 2f.</p>		
<p>Minn. Stat. § 216B.2426</p>	<p>OPPORTUNITIES FOR DISTRIBUTED GENERATION. The commission shall ensure that opportunities for the installation of distributed generation, as that term is defined in section <u>216B.169, subdivision 1</u>, paragraph (c), are considered in any proceeding under section <u>216B.2422, 216B.2425</u>, or <u>216B.243</u>.</p>	N/A	<p>Propane storage facilities are not generation facilities.</p>
<p>Minn. Stat. § 216B.1694, subd. 2 (a) (4)</p>	<p>Subd. 2. Regulatory incentives. (a) An innovative energy project: (4) shall, prior to the approval by the commission of any arrangement to build or expand a fossil-fuel-fired generation facility, or to enter into an agreement to purchase capacity or energy from such a facility</p>	N/A	<p>Propane storage facilities are not generation facilities.</p>

	for a term exceeding five years, be considered as a supply option for the generation facility, and the commission shall ensure such consideration and take any action with respect to such supply proposal that it deems to be in the best interest of ratepayers;		
Minn. Stat. §§ 216B.243, subd. 3 (10) and 216B.1691	(10) whether the applicant or applicants are in compliance with applicable provisions of sections <u>216B.1691</u> and <u>216B.2425, subdivision 7</u> , and have filed or will file by a date certain an application for certificate of need under this section or for certification as a priority electric transmission project under section <u>216B.2425</u> for any transmission facilities or upgrades identified under section <u>216B.2425, subdivision 7</u> ;	N/A	Propane distributors are not subject to REO.
Minn. Stat. § 216B.243 subd. 3 (12)	(12) if the applicant is proposing a nonrenewable generating plant, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk.	N/A	Propane storage facilities are not generation facilities.
Minn. Stat. §§ 216B.243, subd. 3 (10) and 216B.2425, subd. 7	(10) whether the applicant or applicants are in compliance with applicable provisions of sections <u>216B.1691</u> and <u>216B.2425, subdivision 7</u> , and have filed or will file by a date certain an application for certificate of need under this section or for certification as a priority electric transmission project under section <u>216B.2425</u> for any transmission facilities or upgrades identified under section <u>216B.2425, subdivision 7</u> ;	N/A	Propane distributors are not transmission owners.

	Subd. 7. Transmission needed to support renewable resources. (a) Each entity subject to this section shall determine necessary transmission upgrades to support development of renewable energy resources required to meet objectives under section <u>216B.1691</u> and shall include those upgrades in its report under subdivision 2.		
Minn. Stat. §§ 216B.243, subd. 3 and 216B.243, subd. 3 (8)	(8) any feasible combination of energy conservation improvements, required under section <u>216B.241</u> , that can (i) replace part or all of the energy to be provided by the proposed facility, and (ii) compete with it economically;	N/A	Propane storage facilities are not transmission lines or generation facilities. Propane dealers are not utilities. Propane dealers are not utilities, cooperative associations or municipalities.
Minn. Stat. § 216H.03	Greenhouse Gas Control Plan Statute	N/A	Propane storage is not a generation facility and propane is not a greenhouse gas ¹ . The storage of propane will not increase statewide greenhouse gas emissions.
Regulatory Criteria: Minn. Rules, Part 7853.0130	Summary of Criteria	Where Addressed in These Comments	Statement of Reason
Subpart A (1)	the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;	CHS Comments Pages 4-13 and Exhibit 1, Slide 4 and 5	Considering the significant size of the need for propane in the region due to drop in supply capacity (the reversal of the Cochin pipeline) and historic demand, the forecast of the need for increased propane storage is reasonable.
Subpart A (2)	the effects of the applicant's existing or expected conservation programs and state and	CHS Comments	Propane distributors are not subject to conservation program requirements nor

¹ <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=30d221a5b0d7b69e8ce2cea88f50f936&n=40y22.0.1.1.3.1&r=SUBPART&ty=HTML#40:22.0.1.1.3.1.10.11>

	federal conservation programs;	Pages 4-13, Section I, D, pages 8-11	would they typically have programs in place. It is unlikely due to the sudden and significant decrease in regional supply that the regional needs could be met through conservation programs.
Subpart A (3)	the effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;	CHS Comments Pages 4-13, Section I, D, pages 8-11	The need is driven by the interruption of supply infrastructure and not due to promotional practices by a distributor or the industry.
Subpart A (4)	the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and	CHS Comments Pages 4-13, Section I, D, pages 8-11	Due to the size of interruption in supply capacity and increased cost of infrastructure it is not possible to meet the short term future demand through facilities not requiring a certificate of need (increased smaller, on-site agricultural storage facilities).
Subpart A (5)	the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;	CHS Comments Section E. , pages 11-13, CHS EXHIBIT 1 Page 30	Propane storage will minimize use of long distance trucking, will allow for an efficient propane delivery sequence, will ensure harvested crops are salable, and ensure that Minnesota residents will have a heating resource.
Subpart B (1)	the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;	CHS Comments Pages 4-13, Section I,C, pages 6-9	In 2013, the Cochin Pipeline supplied 320 million gallons of propane to the Midwest region, a supply that is no longer available resource. Rail and trucking transport options are limited due to the rapid growth in demand to serve the Alberta oil sands industry
Subpart B (2)	the cost of the proposed facility and the cost of energy to be supplied by the proposed facility	CHS EXHIBIT 1,	Local propane storage is a cost effective when compared with other alternative ways

	compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;	Slides 6-38 and Section I, D, 3, pages 10-11	to meet peak demand (increased rail and truck deliveries). Further, propane users in Minnesota have limited ability to convert to alternative energy sources like natural gas infrastructure expansion to rural areas can be cost prohibitive.
Subpart B (3)	the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and	Section I, D, 3, pages 10-11 and CHS EXHIBIT 1	There are no other viable alternatives forms of energy for the agricultural and residential consumers in rural Minnesota in the short term to compare.
Subpart B (4)	the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;	CHS Comments Pages 4-13, and CHS EXHIBIT 1	There are no other viable alternatives forms of energy for the agricultural and residential consumers in rural Minnesota in the short term to compare. Propane storage in combination with other alternatives will provide increased reliability of propane supply.
Subpart C (1)	the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;	Section I, C and D, pages 4-11 and CHS Comments Pages 4-13	The proposed Project would help MN meet its propane demand due to the decreased supply.
Subpart C (2)	the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility;		Proposer to file documentation showing it has met the requirements of the MPCA.
Subpart C (3)	the effects of the proposed facility or a suitable modification of it, in inducing future development; and		Proposer to file documentation showing it has met the requirements of the MPCA.
Subpart C (4)	socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance		See items listed above. There are no other viable alternatives forms of energy for the agricultural and residential consumers in

	environmental quality; and		rural Minnesota in the short term to compare.
Subpart D	it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.		Proposer to file a list of other required local and state permits or approvals required and documentation of its compliance with or its assurance that it will comply with those relevant policies, rules, or regulations.