

151 FERC ¶ 61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Enable Gas Transmission, LLC

Docket No. CP14-503-000

ORDER DENYING PROTEST AND AUTHORIZING CONSTRUCTION

(Issued April 16, 2015)

1. On June 20, 2014, Enable Gas Transmission, LLC (EGT) filed a prior notice request, pursuant to section 7 of the Natural Gas Act (NGA)¹ and section 157.205 of the Commission's Part 157 blanket certificate regulations,² to construct and operate a pipeline lateral in Grady and McClain Counties, Oklahoma (Bradley Pipeline Lateral).

2. On August 13, 2014, Susie Purcell, Gilbert Purcell, Jr., Susan Purcell Perine, and June Miller (collectively, Landowners) filed a protest to EGT's request. The Landowners' protest was not withdrawn during the reconciliation period provided for in the Commission's regulations.³ Accordingly, the Commission will review EGT's filing as a case-specific certificate application under section 7 of the NGA.⁴ For the reasons discussed herein, the Commission will deny the Landowners' protest, and authorize EGT to construct and operate the proposed Bradley Pipeline Lateral under its Part 157 blanket certificate.

¹ 15 U.S.C. § 717 (2012).

² 18 C.F.R. § 157.205 (2014).

³ 18 C.F.R. § 157.205(g) (2014).

⁴ 18 C.F.R. § 157.205(f) (2014).

I. Background and Proposal

3. EGT is a natural gas company within the meaning of section 2(6) of the NGA⁵ and is subject to the Commission's regulatory jurisdiction. EGT provides interstate transportation services in the states of Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas.

4. The proposed Bradley Pipeline Lateral would be an approximately 16.2-mile-long, 24-inch-diameter pipeline in Grady and McClain Counties, Oklahoma, extending from EGT's existing Line AD-East to the Bradley Processing Plant (Bradley Plant) currently being constructed to process natural gas produced in the South Central Oklahoma Oil Province. EGT estimates that the cost of the Bradley Lateral Project will be approximately \$30,413,475.

II. Public Notice, Intervention, and Protest

5. The Commission's notice of EGT's prior notice application was issued on June 30, 2014, and published in the *Federal Register* on July 9, 2014,⁶ in accordance with section 157.205(d) of the Commission's regulations.⁷ Trans Louisiana Gas Pipeline, Atmos Energy, Laclede Gas, and the Missouri Public Service Commission filed timely unopposed motions to intervene.⁸

6. Pursuant to section 157.205(h) of our regulations, authorization to construct and operate qualifying facilities under the blanket certificate regulations' prior notice provisions is automatic so long as no protests to the activity are filed by the 60-day deadline.⁹ If a timely filed protest is not withdrawn within the 30-day reconciliation

⁵ 15 U.S.C. § 717a(6) (2012).

⁶ 79 Fed. Reg. 38,882 (2014).

⁷ 18 C.F.R. § 157.205(d) (2014).

⁸ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. *See* 18 C.F.R. § 385.214 (2014).

⁹ 18 C.F.R. § 157.205(h) (2014).

period following the 60-day notice period, the prior notice request proceeds as an application under section 7(c) of the NGA for case-specific authorization.¹⁰

7. On August 13, 2014, the Landowners filed a timely protest with the Commission, objecting to the proposal's route across their 270-acre property located between mileposts 5.1 and 5.9 in McClain County, Oklahoma (Nichols Farm Property). On August 29, 2014, EGT filed a motion for leave to answer and answer to the Landowners' protest.

8. On September 18, 2014, Susie Purcell, one of the protesting Landowners, filed an untimely motion to intervene and information to supplement the Landowners' protest. On October 29, 2014, Gilbert Purcell, Jr. and Susan Purcell Perine, also included among the protesting Landowners, filed an untimely motion to intervene and an additional supplement to the Landowners' protest. On September 26 and November 10, 2014, EGT filed answers to the Landowners' September 18 and October 29 filings, disputing their allegations and opposing their intervention.

9. Our rules do not permit answers to protests.¹¹ However, because EGT's aforementioned answers provide information that has assisted the Commission in its decision-making process, we will, for good cause, waive the regulatory proscription against answers in this case and allow EGT's responses.¹² We will, however, deny EGT's request that we deny the Landowners' late motions for intervention. As discussed above, the Landowners' protest was timely filed and has resulted in EGT's prior notice filing under the blanket certificate regulations being converted to a proceeding for case-specific certificate authorization. In the interests of giving full consideration to the issues raised during proceedings for case-specific certificate authorization for pipeline projects, the Commission has a liberal intervention policy prior to the time an order on the merits has been issued.¹³ Further, granting the Landowners' untimely motions to intervene will not cause undue delay or disruption or unfairly prejudice any parties to the proceeding.

¹⁰ *Id.* Because notice was issued on June 30, 2014, the 60-day notice period ended on August 29, 2014, and the subsequent 30-day reconciliation period pursuant to section 157.205(g) ended on September 29, 2014.

¹¹ *See* 18 C.F.R. § 385.213(a)(2) (2014).

¹² 18 C.F.R. § 385.101(e) (2014).

¹³ *See, e.g., Tennessee Gas Pipeline Company, L.L.C.*, 142 FERC ¶ 61,025, at P 15 (2013).

Thus, we will exercise our discretion under section 385.214(d) of the regulations to grant the Landowners' late-filed motions to intervene.¹⁴

III. Discussion

A. Protesters' Non-Environmental Issues

10. As a holder of a blanket construction certificate, EGT is authorized to undertake various routine activities, subject only to certain reporting, notice, and protest requirements. The blanket certificate procedures are intended to increase flexibility and reduce regulatory and administrative burdens. It is expected that activities to construct facilities that are eligible for purposes of the blanket certificate regulations and can satisfy those regulations' environmental requirements and cost limits will have minimal impact, such that the close scrutiny involved in considering applications for case-specific certificate authorization is not necessary to ensure compatibility with the public convenience and necessity. The prior notice procedures apply to activities that are not minor enough to qualify for automatic authorization under the Commission's blanket certificate regulations, but that are still expected to have relatively minimal impact on the environment, ratepayers, and pipeline operations.¹⁵

11. Because interested parties might have valid concerns about individual activities eligible to proceed under the prior notice procedures, the regulations provide an opportunity for protest and a more thorough review and potential adjudication of the issues raised in any protest.¹⁶ The prior notice procedures include a 30-day reconciliation period to allow an opportunity for a blanket certificate holder and protester to reach a mutually agreeable resolution of the protester's concerns. If the protest is withdrawn before the end of the reconciliation period, the pipeline company may proceed under its blanket certificate authority. Here, the Landowners' protest has not been withdrawn. Thus, EGT's prior notice request will be treated as an application for case-specific certificate authorization under section 7 of the NGA.¹⁷

¹⁴ 18 C.F.R. § 385.214(d) (2014).

¹⁵ See *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 Fed. Reg. 24,254 (June 4, 1982), FERC Stats. & Regs. ¶ 30,368 (1982); 18 C.F.R. § 157.205(f) (2014).

¹⁶ *Transcontinental Gas Pipe Line Corporation*, 98 FERC ¶ 61,094, at 61,288 (2002).

¹⁷ 18 C.F.R. § 157.205(f) (2014).

12. Emphasizing that section 157.206(a)(2) of the regulations states that a Part 157 blanket construction certificate is not transferable and that the Part 157 blanket construction certificate referenced in EGT's prior notice filing was issued to Arkansas Louisiana Gas Company, not EGT, the Landowners assert that EGT has no authority to make use of the Commission's prior notice procedures or to undertake construction activities under the blanket certificate. While the Landowners are correct that EGT's Part 157 blanket construction certificate was issued to Arkansas Louisiana Gas Company in 1982,¹⁸ several name changes and a change in corporate structure to limited liability corporation status have resulted in the Part 157 blanket construction certificate presently being held in the name "Enable Gas Transmission, LLC."¹⁹ The Part 157 blanket construction certificate was not improperly transferred to EGT as alleged by the Landowners.

13. We also find no merit to the Landowners' contention that EGT's proposed pipeline lateral is outside the intended scope of the blanket certificate construction program because it will be 16.2 miles long or because the purpose of the pipeline is to receive gas from a processing plant being constructed by an affiliate of EGT. As discussed above, a pipeline company may only rely on its Part 157 blanket construction certificate to construct "eligible" facilities, as defined in section 157.202(b)(2)(i) of the regulations, or certain other facilities that qualify under other sections of the blanket certificate regulations. Further, even if planned facilities are eligible facilities or other qualifying facilities for purposes of the blanket certificate regulations, a pipeline company still may only rely on its Part 157 blanket certificate to construct the facilities if it can satisfy all of the blanket certificate regulations' environmental conditions and stay within those regulations' cost limits.²⁰ The 16.2-mile length of the proposed Bradley

¹⁸ *Arkansas Louisiana Gas Company*, 20 FERC ¶ 62,408 (1982), *amended*, 22 FERC ¶ 61,148 (1983) (issuing Part 157 blanket certificate in Docket No. CP82-384-000).

¹⁹ On June 28, 1985, Arkansas Louisiana Gas Company filed a notice in Docket No. G-110 of a corporate name change to Arkla Energy Resources Company. As documented by the certification by the Secretary of the State of Delaware included as Exhibit D to EGT's September 26, 2014 answer, the corporate name was changed to NorAm Gas Transmission Company in 1994; to Reliant Energy Gas Transmission Company in 1999; to Centerpoint Energy Transmission Company in 2002; to Centerpoint Energy Transmission, LLC, in 2010 when the company converted to limited liability corporation status; and most recently to Enable Gas Transmission, LLC in 2013.

²⁰ As the Commission stated in Order No. 234, which implemented the blanket construction certificate program in 1982, the per-project cost limitations serve to ensure

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Pipeline Lateral does not disqualify it as an eligible facility under the blanket certificate regulations so long as EGT can satisfy all of the applicable environmental conditions and the construction costs will not exceed the current cost ceiling for activities subject to the prior notice provisions.²¹ Nor does the fact that the purpose of the proposed lateral is to receive gas processed at a plant being constructed by an affiliate operate as an impediment.²²

B. Protesters' Environmental Issues

14. As discussed above, the blanket certificate regulations require pipeline companies to give prior notice of some types of blanket certificate projects in all instances,²³ and require prior notice of other types of blanket certificate projects in the event that the project exceeds section 157.208's automatic authorization cost limits.²⁴ The blanket certificate regulations require prior notice in these instances in recognition that such projects may raise issues of concern for a pipeline company's existing shippers regarding possible effects on their services or may present valid environmental concerns to individual landowners, or others, notwithstanding that the pipeline companies will be

that "a proposed activity is sufficiently routine and will have sufficiently small impact on ratepayers, so that it should be approved under the streamlined procedures of the blanket certificate regulations." *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234 FERC Stats. & Regs. ¶ 30,368, at 30,206 (1982).

²¹ See, e.g., *Texas Eastern Transmission Corporation*, 90 FERC ¶ 61,278 (2000) (denying protest to prior notice filing under the Part 157 blanket certificate regulations and authorizing the pipeline company to construct a 14.03-mile-long pipeline lateral under its blanket certificate).

²² See, e.g., *Colorado Interstate Gas Company*, 70 FERC ¶ 61,229 (1995) (denying protest to prior notice filing under the Part 157 blanket certificate regulations and authorizing Colorado Interstate Gas Company to construct a pipeline to transport gas from a processing plant being constructed by Colorado Interstate Gas Company's affiliate).

²³ For example, all blanket certificate projects under section 157.210 to construct mainline facilities are subject to the prior notice requirement, regardless of the project's projected cost. 18 C.F.R. § 157.210 (2014).

²⁴ 18 C.F.R. § 157.208 (2014).

able to satisfy all of the blanket certificate regulations' standard conditions.²⁵ Further, section 380.5(b)(2) of the regulations requires Commission staff to prepare an environmental assessment (EA) for projects under the prior notice provisions to construct eligible facilities regardless of whether a protest is filed.²⁶ Preparation of the EA ensures that a pipeline company has, in fact, satisfied all of section 157.206(b)'s standard environmental conditions and also confirms that the standard conditions are adequate to reduce the potential for adverse environmental impact to acceptable levels.²⁷ In protested prior notice proceedings, such as this one, the Commission's EA also addresses any specific environmental concerns or issues raised by the protesters in order to assess whether additional environmental conditions are needed.²⁸

²⁵ *Transcontinental Gas Pipe Line Corporation*, 98 FERC at 61,288.

²⁶ 18 C.F.R. § 380.5(b)(2) (2014). EGT filed its prior notice request under section 157.208(b) of the blanket certificate regulations, which authorizes a Part 157 blanket certificate holder "to make miscellaneous rearrangements of any facility, or acquire, construct, replace, or operate any eligible facility" that exceeds the automatic cost limit (\$11.4 million for 2015) but is less than the prior notice cost limit (\$32.4 million for 2015). *See* 18 C.F.R. § 157.208(b) (2014). The proposed Bradley Pipeline Lateral is an "eligible facility" as defined in section 157.202(b)(2). *See* 18 C.F.R. § 157.202(b)(2) (2014).

²⁷ Section 157.205(e) states "any person *or the Commission's staff* may file a protest prior to the deadline" 18 C.F.R. § 157.205(e) (2014) (emphasis added). *See, e.g., Williams Natural Gas Company*, 66 FERC ¶ 62,114, at 64,302 (1994) (prior notice filing converted to application for case-specific certificate authority as the result of protest filed by Commission staff, because the applicant had not obtained necessary clearance from the U.S. Fish and Wildlife Service, one of the prerequisites under section 157.206(d) for the project go forward under applicant's Part 157 blanket certificate).

²⁸ *Compare Equitrans, L.P.*, 147 FERC ¶ 61,032, at P 21 (2014), *and CenterPoint Energy Gas Transmission Company*, 121 FERC ¶ 61,180, at P 18 (2007) (authorizing pipeline companies to proceed under their Part 157 blanket certificates with the construction of compression facilities proposed in prior notice filings after addressing protesters' arguments and finding the blanket certificate regulations' standard noise abatement requirements adequate to ensure that the protesters would not be significantly affected by noise from operation of the new compressor station), *with Carolina Gas Transmission Corporation*, 150 FERC ¶ 61,111, at P 21 and n.23 (2015) (issuing case-specific certificate to authorize construction of compression facilities proposed under blanket certificate regulations' prior notice procedures because the Commission found

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15. The EA prepared by Commission staff for EGT's prior notice proposal addresses water resources, geology, soils, vegetation and wildlife, land use, cultural resources, air quality and noise, and reliability and safety. The EA also addresses the environmental concerns raised by the Landowners' protest, as discussed below. However, the EA does not identify a need for any specific environmental conditions in addition to the standard environmental conditions in section 157.206(b) to address the concerns raised by the Landowners or to ensure that EGT's project will not significantly affect the quality of the human environment.²⁹ The EA was placed into the public record on February 25, 2015.

16. The Landowners assert that the Nichols Farm Property is protected Native American tribal land, and they assert that EGT's pipeline construction project over the property will result in adverse impacts on rare species, including two lizard species (horned toads and mountain boomers), mature Hackberry trees, and natural spring water used to feed cattle and other wildlife.

17. Commission staff consulted with the U. S. Department of Interior's Bureau of Indian Affairs (BIA) to ascertain whether any special protections, including Native American tribal land protections, apply to the Nichols Farm Property. Based on that consultation, staff determined that the Nichols Farm Property would have no special protective status unless the property had been allotted to an allottee having 50 percent or more Indian Blood.³⁰ As explained in the EA, the Nichols Farm Property was originally given as an allotment from the Chickasaw Nation to Jewel Eugenia Nichols, from whom the current landowners are descended.³¹ However, the EA also explains that on December 10, 2014, EGT filed comments that included as Exhibit A an email from the BIA concerning the Nichols Farm Property. The email from BIA states that its records confirm that Jewel Eugenia Nichols was enrolled as 1/16 blood Chickasaw and, consequently, the Nichols Farm Property is not subject to any special protection as Native American tribal land.³²

additional environmental noise abatement conditions were appropriate to address protesters' concerns).

²⁹ EA at 30.

³⁰ Staff memorandum documenting phone conference filed November 24, 2014, in Docket No. CP14-503-000.

³¹ EA at 18.

³² *Id.*

18. While the Landowners also emphasize that the Nichols Farm Property is listed in the Oklahoma Centennial Farm and Ranch Program by the Oklahoma Historical Society, that recognition does not convey any protection under state or federal law.³³ Further, EGT conducted a cultural resource survey of the entire project area, and the Oklahoma State Historic Preservation Office and the Oklahoma Archeological Survey have concurred that EGT's project will have no effect on any historic properties on the Nichols Farm Property or elsewhere in the project area.³⁴

19. The EA also addresses the Landowners' assertion that EGT's project would have adverse impacts on rare species of lizards and toads. As discussed in the EA, the U. S. Fish and Wildlife Service, Oklahoma Natural Heritage Inventory, and Oklahoma Department of Wildlife Conservation were consulted to determine whether any critical habitat for federally listed species or species candidates for federal listing may occur in the project area. Although two species of horned lizards and two species of horned toads are known to occur in the project area, they carry no legal protective status under state or federal law.³⁵ Further, the EA concludes that if lizards or toads migrate from the project area during construction, they could re-inhabit the project area once construction is complete and the right-of-way is restored. Although the EA concludes that rock piles could be constructed by EGT with landowner approval along the edge of the right-of-way with excess rock that may be collected from the trench to provide habitat beneficial for lizards and other small animals, the EA does not recommend any special conditions on project construction.³⁶

20. In response to the Landowners' concerns with respect to mature Hackberry trees on the Nichols Farm Property, EGT has agreed to meet with the owners of the Nichols Farm Property to assess the feasibility of minor shifts in the pipeline alignment and/or site-specific reductions in construction workspace that might preserve specimen trees while allowing for the safe operation of construction equipment. We agree with the EA's conclusion that this is a reasonable approach to balance property owners' concerns with

³³ *Id.*

³⁴ EA at 17.

³⁵ EA at 11.

³⁶ *Id.*

the construction requirements for the project and agree that impacts on the Nichols Farm Property will be minimized to the extent practicable.³⁷

21. With respect to the Landowners' concerns that EGT's project will have adverse impacts on naturally occurring springs on the Nichols Farm Property, the EA concludes that no significant impacts are likely to occur because the shallow excavations for pipeline construction would typically be much shallower than the underlying aquifers and would not interfere with groundwater flow paths. While there may be temporary depression of the local water table around the pipeline trench, the ground water level should recover rapidly once the trench is backfilled. The EA also analyzes the proposed crossing of two ephemeral tributaries to Colbert Creek located on the Nichols Farm Property, and concludes that adequate flow rates would be maintained during construction and impacts would be minimal. The streams to be open-cut on the project are relatively narrow with low stream gradients, thus minimizing the potential transportation of suspended sediments during construction at stream crossings. In addition, the two streams to be open-cut on the Nichols Farm Property are ephemeral in nature, which would further reduce transport of sediments when there is low flow. We agree with the conclusions in the EA and find that EGT's proposal would have minimal impacts on water resources, including those located on the Nichols Farm Property.³⁸

³⁷ We note that section 157.206(b)(1) of the blanket certificate regulations provides that when a pipeline company relies on its Part 157 blanket certificate to undertake construction that involves ground disturbance or operational air and noise emissions, the pipeline company shall adhere to the guidance set forth in section 380.15 of the regulations. Section 380.15(b) states that the desires of landowners should be taken into account in the planning, location, clearing, and maintenance of rights-of-way and the construction of facilities on their property. 18 C.F.R. § 380.15(b) (2014). Thus, this order does not need to impose a specific condition to ensure that EGT honors its commitment to make minor shifts in its pipeline route over the Nichols Farm Property to the extent feasible to preserve specimen trees while allowing for the safe operation of construction equipment.

³⁸ The EA also considers the feasibility of rerouting the pipeline to avoid the Landowners' Nichols Farm Property. However, the EA concludes that rerouting around the property — the only property for which EGT has not already secured the necessary easement through negotiation — would require construction of a longer pipeline, impact other landowners that have not received notice, delay the pipeline project, and would likely have greater impact. EA at 30.

22. Finally, the Landowners asserted in their comments filed prior to issuance of the EA that the Commission must assess the environmental impacts that will result from the construction by EGT's affiliate, Enable Midstream, of the Bradley Plant which will process and deliver gas to EGT's proposed pipeline lateral.³⁹ In considering cumulative impacts attributable to EGT's proposed pipeline lateral project, the EA identifies the Bradley Plant as one of a number of projects that may have cumulative environmental impacts, including several other non-jurisdictional pipelines being constructed to receive gas processed at the Bradley Plant.⁴⁰ The most significant environmental permit required for the plant is the Air Quality Minor Source General Permit for Oil and Gas Facilities (GP-OGF) and is administered by the Oklahoma Department of Environmental Quality (ODEQ). The GP-OGF Authorization to Construct was issued on December 18, 2013 (Permit No. 2013-2217-NOI), and the plant is currently operating. A Notice of Modification to the permit was submitted to ODEQ on September 26, 2014, for the second phase of the plant, which is currently under construction. However, the EA did not identify any specific direct impacts that would result from construction and operation of the Bradley Plant, which will be located on a 40-acre site entirely on rangeland,⁴¹ sited to avoid impacts on wetland resources,⁴² and will not directly impact water resources or fisheries.⁴³ Best Management Practices would be used to minimize impacts on

³⁹ The Landowners mistakenly assert that Enable Midstream is constructing two processing plants from which EGT's proposed pipeline lateral will receive gas. Landowners' September 18, 2014 comments at 11. While Enable Midstream's original plans have been revised to construct additional facilities at the plant to increase its processing capacity, there will be only one processing plant. EA at 23.

⁴⁰ Other projects that the EA identifies as having the potential for cumulative impacts included 113 oil/gas well permits issued since 2010 by the Oklahoma Corporation Commission for wells in Grady, McClain, and Garvin Counties; an approximately 6.1-mile-long pipeline and an approximately 3.3-mile-long pipeline to transport gas from gathering areas to the new Bradley Processing Plant; and six other new pipelines varying in length between 0.9-miles-long and 20-miles-long to transport processed gas from the Bradley Plant to downstream transmission facilities. EA at 22-24, Table B.9-1.

⁴¹ EA at 26.

⁴² *Id.* at 25.

⁴³ *Id.* at 24.

waterbodies,⁴⁴ which includes the implementation of erosion control and restoration measures.⁴⁵ Also, a Spill Prevention, Control, and Countermeasure Plan would be implemented to contain spills during construction and operation of the Bradley Plant.⁴⁶ In any event, the EA finds that EGT's Bradley Pipeline Lateral Project would not significantly increase the cumulative impacts of other past, present, and future projects in the area.⁴⁷

IV. Conclusion

23. In view of the above considerations, we will deny the Landowners' protest, and authorize EGT, which has satisfied the blanket certificate regulations' conditions, to proceed with construction of the Bradley Pipeline Lateral under its Part 157 blanket certificate, consistent with the Commission's policy against granting redundant case-specific authority.⁴⁸

24. At a hearing held on April 16, 2015, the Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) EGT is authorized to construct and operate the facilities, as described herein and more fully described in EGT's prior notice request, pursuant to its Part 157 blanket certificate.

(B) The Landowners' protest is denied.

(C) Susie Purcell's September 18, 2014 motion to intervene is granted.

⁴⁴ *Id.* at 25.

⁴⁵ *Id.* at 24.

⁴⁶ *Id.* at 26.

⁴⁷ *Id.* at 29.

⁴⁸ See *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,138 (2014); *Kinder Morgan Gas Transmission, LLC*, 133 FERC ¶ 61,044 (2010).

(D) Gilbert Purcell, Jr.'s and Susan Purcell Perine's October 29, 2014 motion to intervene is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.