

D.P.U. 07-62

Petition of Algonquin Gas Transmission for approval by the Department of Public Utilities to grant it the authority to enter upon land owned by various persons, entities, or corporations in the Towns of Braintree, Canton, Franklin, Holbrook, Millis, Norfolk, Randolph, Sharon, Stoughton, Walpole and Weymouth, for the purpose of making a survey preliminary to application to the Federal Energy Regulatory Commission for the construction of a natural gas pipeline and appurtenant facilities, pursuant to M. G.L. c. 164, §§ 72A and 75D.

APPEARANCE:

James T. Finnigan, Esq.
Rich May, PC
176 Federal Street
Boston, Massachusetts 02110
FOR: Algonquin Gas Transmission, LLC
Petitioner

I. INTRODUCTION

On July 13, 2007, Algonquin Gas Transmission Company (“Petitioner” or “Algonquin”) filed a petition with the Department of Public Utilities (“Department”) seeking authority under G.L. c. 164, §§ 72A and 75D to enter upon land in the Towns of Braintree, Canton, Franklin, Holbrook, Millis, Norfolk, Randolph, Sharon, Stoughton, Walpole and Weymouth for purpose of making a survey of a proposed natural gas pipeline route. Algonquin is conducting its survey in conjunction with the pre-filing process at the Federal Energy Regulatory Commission (“FERC”) that begins an early environmental review of a gas pipeline project and is preliminary to: (1) an application to FERC to obtain a Certificate of Public Convenience and Necessity (“Certificate”) with respect to the proposed pipeline (pursuant to 15 U.S.C., § 717f(c)); and (2) eminent domain proceedings (Petition at 3, citing National Environmental Policy Act, 42 U.S.C. §§ 4321-4335). Algonquin stated that it would submit its pre-filing materials to FERC in August, 2007, and anticipates filing its application for a Certificate in February of 2008 (id. at 3).

The Petitioner is proposing to expand its interstate pipeline network in New Jersey, New York, Connecticut, Rhode Island and Massachusetts known as the East to West Expansion Project (“East to West Project” or “Project”). In Massachusetts, the Petitioner would remove or replace its existing 24-inch diameter pipeline with a 36-inch diameter pipeline along the existing right of way from Bellingham to Canton (Petition at 1-2). Algonquin also would install new 36-inch diameter pipeline along a route from Canton to Weymouth (id. at 2). The Company stated that the Project is designed to address the need for additional capacity for the region’s existing pipelines, and would provide an expansion of natural gas supplies for Massachusetts businesses and residences (id.).

As part of the pre-filing process, the Petitioner must enter all properties that would be traversed by the Project in order to conduct civil, environmental, and archaeological surveys (Petition at 5). The Company indicated that it may be necessary during the survey work to cut or trim tree branches or small brush, not to exceed a two-inch diameter (id. at 6-7). Algonquin

stated that it will confine its survey work to approximately 200 feet from the centerline of the existing or proposed pipeline (id. at 6). The Company stated that although the proposed pipeline would be installed within an existing or new 50-foot wide right-of-way, Algonquin's study corridor is wider in order to allow surveying of adjacent areas (id. at 6 and Att. G).

Algonquin stated that 33 landowners along the proposed route have granted permission for the Company to survey their property (id. at 4). However, Algonquin indicated as of the time of the filing that 71 landowners did not grant the Company permission to survey (id. at 4, Exhibit G). On July 20, the Company submitted the affidavit of William D. Simmons, Right-of-Way Supervisor for Algonquin, stating that an additional three landowners have given permission for the Company to survey their property (Affidavit of William D. Simmons at 1 (July 20, 2007)). On August 14, 2007, the Company submitted a revised second affidavit of William D. Simmons stating that since July 20, 2007, an additional five landowners have given the Company permission to survey their property (Revised Second Affidavit of William D. Simmons at 1 (August 14, 2007)).

General Laws c. 164, §§ 72A and 75D authorize the Department to grant a petitioner, such as Algonquin, the authority to enter private lands for the purpose of making a survey preliminary to eminent domain proceedings.¹ The Department may grant such permission without notice and hearing. Carlisle v. Department of Public Utilities, 353 Mass. 722 (1968). In acting on this Petition, the Department exercised its discretion on the question of notice and hearing by ordering Petitioner to mail notice of this proceeding to all landowners upon whose land the Petitioner has petitioned for authority to enter. This notice provided that property owners could submit comments on the Petition to the Department by August 17, 2007. In July 2007, the Petitioner mailed notice to the landowners referenced in its Petition (August 15, 2007, Certification of Publication and Notice). The Department received comments from six of the

¹ Petitioner is a natural gas pipeline company to which the statutes apply. G.L. c. 164, §§ 75B, 75H.

affected property owners. The Company filed a response to the property owners' comments.

II. COMMENTS

The Department received six letters from the following landowners: John Morris and Sandra Morris, Edward and Noreen Finn, Peter and Denise Lochiatto, John and Debbie Munroe, Evelyn Taw Gee, all residents of Pine Street in Stoughton (collectively, the "Commenters"); and Mr. and Mrs. Robert Westhaver, residents of Ewing Drive in Stoughton.²

Mr. and Mrs. Morris state that there has been "considerable development" of energy facilities in the neighborhood, and in particular, note that the construction of an NSTAR substation has resulted in "considerable alteration to environmental resources and quality of life in the neighborhood" (Morris Comments at 1). They also are concerned about potential dangers of siting a new gas pipeline close to an existing substation (id. at 1). Mr. and Mrs. Morris ask that the Department deny the Company's petition to survey until other feasible alternatives have been investigated (id. at 2).

The Finn, Lochiatto, and Munroe comments include the same concerns found in the Morris Comments (Finn Comments at 1-2; Lochiatto Comments at 1-2; Munroe Comments at 1-2). In addition, these commenters state that the proposed pipeline will be "dangerously close" to an elementary school and will pass the New England Sinai Hospital and Rehabilitation Center (Finn Comments at 1; Lochiatto Comments at 1; Munroe Comments at 1).

Evelyn Taw Gee states that the Company should use existing pipeline rights-of-way to minimize environmental impact (Gee Comments). She maintains that she has proposed an alternative route using the existing rights-of-way, and that Algonquin has not provided any feedback on this proposal (id.).

III. COMPANY RESPONSE

_____ Algonquin asserts that the Commenters' concern with the route of the proposed pipeline

² The Company indicated that it no longer is seeking to survey Westhavers' property on Ewing Drive in Stoughton (Company Response at 1).

is premature, since the Company has yet to determine a primary route (Company Response at 3). The Company states that only after it has reviewed the information collected in the surveys will it propose a primary route to FERC (id.). According to the Company, FERC will then examine the proposed route and allow an opportunity to comment on the proposed route (id.). Algonquin states that the Commenters will be able to raise any routing concerns with FERC, which has jurisdiction to determine the final route (id.). Accordingly, Algonquin asserts that the Department need not address these concerns (id.).

IV. ANALYSIS AND FINDINGS

The Department's jurisdiction in this proceeding is limited to rendering a decision on the petition to survey the proposed route(s) as described in the Company's Petition. FERC possesses jurisdiction over the designation of primary and alternative pipeline routes. The Department finds that the routing, safety, and any other environmental concerns that the Commenters raise relative to the proposed pipeline are within FERC's jurisdiction, not the jurisdiction of the Department.

The Department finds that additional survey work is necessary to provide FERC with the information it needs to evaluate various routing alternatives for the East to West Project. Accordingly, the Department finds Algonquin's Petition to Survey to be appropriate as a necessary activity incident to the proposed East to West Project. The Petitioner is granted authority to enter those lands listed in Appendix A subject to this conditions in this Order.³

The Department's approval under G.L. c. 164, §§ 72A and 75D does not constitute a judgment regarding the East to West Project or the need for or location of any potential eminent domain takings. Considerations of and findings regarding the underlying project are reserved for

³ Algonquin was unable to identify the owners of the following properties: 278R N. Franklin Street Holbrook; Highland Terrace, Randolph; and Washington Street, Weymouth (Petition at Appendix G; Affidavit of William Simmons, July 20, 2007). Accordingly, the Department does not include these properties in Appendix A and does not grant the Company authority to survey these properties at this time.

the federal and other state permitting processes and for any eminent domain proceedings which may be filed with the Department at some future date. The Department will keep this docket open for a reasonable period of time to allow the Petitioner to supplement its petition further should the Petitioner identify additional land for which it is unable to obtain permission to survey.

V. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That for the purpose of making surveys and field studies in connection with the proposed East to West Expansion Project, as described in Algonquin Gas Transmission, LLC 's Petition and attachments, and in accordance with the Petitioner's own representations concerning the nature of and limitations on the activities necessarily appurtenant to such surveys and studies, Algonquin Gas Transmission LLC, acting through its employees, agents, and representatives, is authorized to enter upon lands of those persons listed in the attached Appendix A; and it is

FURTHER ORDERED: That Algonquin Gas Transmission, LLC shall comply with the following conditions: (1) no trees or timber shall be cut down or removed on the affected properties, except that small brush, limbs or trees, not to exceed a two inch diameter, may be cut down and removed from vegetated areas on affected properties in locations where surveyors need to make a line of sight; (2) areas excavated for purposes of conducting archaeological surveys on the affected properties must be restored to a condition reasonably consistent with their condition before excavation; (3) no blasting shall be conducted on any of the affected properties; (4) no man-made structures, including buildings, fences, and stone walls shall be disturbed; (5) Algonquin Gas Transmission, LLC shall make a reasonable effort to arrange with each landowner a convenient date and time when his/her property will be surveyed so that the landowner may observe the surveying; and (6) Algonquin Gas Transmission, LLC shall provide a copy of its Petition and plans to any of the landowners listed in Appendix A who requests a copy; and it is

FURTHER ORDERED: That the Algonquin Gas Transmission, LLC shall transmit a

copy of this Order, by certified mail, to the landowners listed in the attached Appendix A at least five days prior to any entry upon the affected properties; and it is

FURTHER ORDERED: That within three days of the date of issuance of this Order, Algonquin Gas Transmission, LLC shall serve a copy of this Order on the selectmen of the Towns of Braintree, Canton, Franklin, Holbrook, Millis, Norfolk, Randolph, Sharon, Stoughton, Walpole and Weymouth, and shall place a copy of this Order in the Public Library of the Towns of Braintree, Canton, Franklin, Holbrook, Millis, Norfolk, Randolph, Sharon, Stoughton, Walpole and Weymouth for public inspection; and it is

FURTHER ORDERED: That this docket shall remain open for a reasonable period of time to allow Algonquin Gas Transmission, LLC to supplement its petition should it determine the need to obtain Department approval to survey the lands of other property owners along the proposed routes.

By Order of the Department,

Paul J. Hibbard, Chairman

W. Robert Keating, Commissioner

Tim Woolf, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

APPENDIX A

Hung Yung and Yuen Foon Yee
20 Teaberry Lane
Braintree, MA

Braintree Real Estate Management Company LLC
Grove Street, Off Columbian Street
Braintree, MA

Rolling Frito-Lay Sales LP
c/o Frito Lay Inc.
100 Commerce Drive
Braintree, MA

Jay M. Lipis
Rebecca Road
Canton, MA

The Village at Shaw Farm Condominium Trust
2 Will Drive
Canton, MA

Mason Safiyya Haneef
19 Nasir Ahmad Road
Canton, MA

Masud Haneef
15 Nasir Ahmad Road
Canton, MA

Abid and Saliha Haneef
21 Nasir Ahmad Road
Canton, MA

Ahmadiyya Movement in Islam, Inc.
11 Nasir Ahmad Road
Canton, MA

Nicholas Tazi
42 Wardwell Road
Canton, MA

Ralph J. Perette
18 Plain Street
Franklin, MA

Jackson Hinten and/or His Heirs
300 Pine Street
Holbrook, MA

Robert and Yolanda Smith
28 Worchester Street
Holbrook, MA

Robert L. Stikeleather
330 N. Franklin Street
328 N. Franklin Street
Holbrook, MA

Robert L. And Florence E. Stikeleather
326 N. Franklin Street
Hobrook, MA

Carl S. Olsson
Carl F. and Gerda O. Eckberg
Off N. Franklin Street
Holbrook, MA

Timothy Cleveland
32 Dean Street
Millis, MA

Linda M. Ranieri
11 Granite Drive
Millis, MA

Anthony E. Martucci
25 Cleveland Street
Norfolk, MA

Michael M. And Jennifer L. Cline
26 Fleetwood Drive
Norfolk, MA

Christopher W. & Kate E. Morog
125 Boardman Street
Norfolk, MA

Diplacido Dev. Corp. & SM Lorusso & Sons, Inc.
Diplacido Development Corp.
137 Rockwood Road
Off Holbrook Street
Medway Branch
Off Holbrook Street
Norfolk, MA

Homes Moderne Inc.
Tileston Road
Randolph, MA

Alfred Seeto (Duplex-Left)
57 Mark Terrace
Randolph, MA

Benson Chau
c/o Lin Chau
59 Mark Terrace
Randolph, MA

Raoul & Marie D. Desir (Duplex-Left)
199 South Street
Randolph, MA

Donald O. & Kantryn Clements
53 Mark Terrace
Randolph, MA

Harry F. Papp
Fitch Terrace
Randolph, MA

Elizabeth A. Miller
11 Virginia Circle
Randolph, MA

Timothy J. Mary J. Ahern
10 Highland Terrace
Randolph, MA

Abid & Salina Haneef
14 Nasir Ahmad Road
12 Nasir Ahmad Road
Sharon, MA

Greenbrook Condominium
c/o Board of Managers
Island Street
Stoughton, MA

Frank Shanton
Old Page Street
Stoughton, MA

Segal Associates of New Jersey LP
155 Maple Street
Stoughton, MA

133 Maple Street LLC
c/o International Metal Corp.
133 Maple Street
Stoughton, MA

Polo Realty Trust
Bruce S. & Fruman L. Baleder, Trustees
150 Old Page Street
Stoughton, MA

Michael F. Odenweller
Cheryl H. Hamilton
757 Pleasant Street
Stoughton, MA

John B. & Debbie J. Munroe
221 Pine Street
Stoughton, MA

Alberoncia Pereira Desouza
103 York Street
Stoughton, MA

George E. & Marcia Kostick
220 Ewing Drive
Stoughton, MA

Steven A. & Brenda M. Greenspoon
50 Darling Way
Stoughton, MA

Greg A. Russo
63 Brad Road
Stoughton, MA

Evelyn Taw Gee
203 Pine Street
Stoughton MA

Ewuniki D. Sanders
Averill Roberts
149 Pine Street
Stoughton, MA

John J. & Sandra Morris
233 Pine Street
Stoughton, MA

Dara L. Johnson
209 Pine Street
Stoughton, MA

Lisa A. Shaw
210 Ewing Drive
Stoughton, MA

Peter & Denise Lochiatto, Jr.
9 Pine Street
Stoughton, MA

Edward R. and Noreen Finn, Jr.
1 Pine Street
Stoughton, MA

Stoughton Redevelopment Authority
c/o T.W. Conroy 5, LLC
Page Street
Stoughton, MA

T.W. Conroy 3, LLC
c/o Terrence W. Conroy
Technology Center Drive
Stoughton, MA

Gershman Properties LLC (BJ's)
901 Technology Center Drive
Stoughton, MA

S.M. Lorusso & Sons, Inc.
South Street
15 Colony Drive
Walpole, MA

Bird & Son Inc.
c/o Ryan & Company
Norfolk Street
Walpole, MA

Jennifer Gorman & William Luciano
2 Taft Street
Walpole, MA

E.F.B. Realty Trust
c/o Eleanor Guisti, Trustee
Cleveland Street
Walpole, MA

Harry P. Blackwood Estate
c/o Mary Blackwood
Cleveland Street
Walpole, MA

Carl H. Gysell
1537 Main Street
Walpole, MA

Bruce & Barbara Bottomley
1543 Main Street
Walpole, MA

Abro Corporation
c/o Morton Rosenberg
Main Street
Weymouth MA

Realty Income Corporation
175 Main Street
Weymouth, MA

Daisy Mae Realty Trust
Paul C. Nourse, Trustee
Orcutt Street
Weymouth, MA