

April 26, 2004

D.T.E. 04-26

Petition of Mill River Pipeline, L.L.C., pursuant to M.G.L. c. 164, §§ 72A, 75D and 75H, for approval by the Department of Telecommunications and Energy to enter upon various properties in the City of Fall River and the Town of Somerset, Massachusetts, to survey gas pipeline routes preliminary to eminent domain proceedings.

APPEARANCE: James T. Finnigan, Esq.
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176 Federal Street
Boston, Massachusetts 02110-2223
FOR: Mill River Pipeline, L.L.C.
Petitioner

I. INTRODUCTION

On February 24, 2004, Mill River Pipeline, L.L.C. (“Petitioner” or “Mill River”) filed a petition with the Department of Telecommunications and Energy (“Department”) seeking authority under G.L. c. 164, §§ 72A, 75D and 75H to enter upon land in the City of Fall River and the Town of Somerset, Massachusetts for the purpose of making a survey of two proposed natural gas pipeline routes preliminary to: (1) an application to the Federal Energy Regulatory Commission (“FERC”) to obtain a Certificate of Public Convenience and Necessity (“Certificate”) with respect to the two proposed pipelines, and (2) eminent domain proceedings.¹

Petitioner filed an application with FERC in Docket No. CP04-41-000, on December 19, 2003, pursuant to § 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c), for a Certificate authorizing Mill River to construct, install, operate and maintain two interstate 24-inch diameter high pressure natural gas pipelines and other appurtenant facilities in Massachusetts to be used to transport natural gas in interstate commerce (Petition at 1-2). One pipeline, known as the Western Lateral, would be approximately 2.54 miles in length and would extend from the proposed Weaver’s Cove Energy, LLC (“Weaver’s Cove”)² liquefied natural gas (“LNG”) terminal (“LNG Terminal”) in Fall River to a connection point with a natural gas pipeline

¹ In issuing this Order, the Department relies on the Petition and supporting affidavits, information responses, and comments received from interested persons.

² Weaver’s Cove filed an application with FERC on December 19, 2003, Docket No. CP04-36-000, for a certificate authorizing the construction and operation of the LNG Terminal at a site along the Taunton River at the north end of Fall River (Petition at 2). This proceeding, D.T.E. 04-26, does not involve any review of the LNG facility.

owned and operated by Algonquin Gas Transmission Company (“Algonquin”) in Swansea, Massachusetts (id. at 2). The second pipeline, known as the Northern Lateral, would be approximately 3.62 miles in length and would extend from the proposed Weaver’s Cove LNG Terminal in Fall River to a proposed interconnection facility in Freetown, Massachusetts (id.).

Petitioner states that Mill River’s pipelines would benefit the public by enabling natural gas from the Weaver’s Cove LNG Terminal to be transported throughout New England through Algonquin’s pipeline system (id. at 4). Petitioner represents that the increased supply of gas would provide individuals and companies with a cost-effective, efficient and secure alternative for meeting their current and future energy requirements (id.). Petitioner proposes to commence service in November 2007, a date which is consistent with the proposed in-service date for the Weaver’s Cove LNG Terminal (id. at 3). Mill River anticipates that construction of the two pipelines will take approximately six months (id.). In order for FERC to prepare an Environmental Impact Statement and assess Mill River’s application for the Certificate and for Mill River to apply for state and local permits, Petitioner states that it must enter onto all properties that would be traversed by the Western Lateral and the Northern Lateral in order to perform civil surveys, and if necessary also perform environmental, and archeological surveys (id. at 4; IR-4). The information gathered during these surveys will be submitted to FERC and any appropriate state and local agencies (id.).

Petitioner states that it would need to perform a civil survey on each parcel of land it surveys (IR-2). The civil survey, according to the Petitioner, would involve placing wooden stakes along a portion of each property to delineate the area to be surveyed (Petition at 6). Mill River states that this activity should take no longer than two days for each property

surveyed, weather permitting (id.).

Mill River states that an environmental survey will be performed only if there are vegetative and geological indicators of wetlands on the property (IR-2). If such indicia are present, the Petitioner states that it would stake the boundaries with small colored flags and that wetlands experts may need to use a hand auger to take soil test samples (Petition at 6). Mill River states that its representatives also would look for evidence of endangered species if a suspected habitat is within the staked area (Petition at 5-6). Mill River estimates that the environmental survey activity should take no longer than three days for each property surveyed, weather permitting (id. at 7).

Mill River states that archeological surveys would be conducted only on parcels of land where there is “sufficient evidence” that archeological resources would be uncovered (IR-2).³ The Petitioner states that if such an area is found two to three people would return to perform a limited excavation in a square pit that would be approximately two feet wide and three feet deep (Petition at 7). According to the Petitioner, the walkover to determine if there are indicators of archeological resource should take no longer than one day and that any excavation should take no longer than four days, weather permitting (id.; Bowdoin Affidavit at 6-7). Petitioner states that any area that is excavated for the purpose of conducting the archeological survey would be restored by Mill River to a condition reasonably consistent with its condition prior to excavation (Petition at 7).

Mill River states that all survey activity would be conducted in a study corridor that

³ Based on the Company’s current information, it appears that only two parcels along the proposed Western lateral would require an archeological survey (IR-2).

would extend approximately 125 feet from either side of the centerline of the proposed pipeline (id. at 6).⁴ Mill River also states that during the survey work, no trees or timber would be cut down or moved from any property though it may be necessary to cut or trim tree branches or small brush in order to obtain a line-of-sight (id. at 7).

General Laws c. 164, §§ 72A, 75D and 75H authorize the Department to grant a petitioner authority to enter private lands for the purpose of making a survey preliminary to eminent domain proceedings. The Department may grant such permission under § 75D without notice and hearing. Carlisle v. Department of Public Utilities, 353 Mass. 722, 724 (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 March 19, 2004. On March 3, 2004, the Petitioner mailed notice to the landowners referenced in its Petition (Certification of Compliance with Order of Notice at 1).

The Department received comments from four individuals. On March 5, 2004, the Department received a letter from State Representative David Sullivan (“Representative Sullivan Letter”). On March 5, 2004, the Department received a letter from Freda Winkelstein (“Winkelstein Letter”). On March 16, 2004, a letter was received from Robert Payer, a property owner along the proposed route (“Payer Letter”). On March 19, 2004, a

⁴ Mill River states that it expects to install the proposed pipeline in a 50-foot right of way but that the study corridor is larger to allow for surveying in adjacent areas in the event the pipeline route has to be modified (Petition at 6).

letter was received from Edward M. Lambert, Jr., Mayor of the City of Fall River (“Mayor Lambert Letter”).

The comments focus on issues relating primarily to Mill River itself rather than the survey process. Representative Sullivan urges the Department to deny Mill River the requested access to residents’ private land for several reasons (“Representative Sullivan Letter”). First, Representative Sullivan states that the survey process is very intrusive to residents, in large part because the project has not yet been approved and is still in its infancy stages at both the federal and state levels (id.). Second, Representative Sullivan objects to the survey process because a large number of people, including public officials, environmental groups and citizens from Fall River and the surrounding communities, are opposed to the project and are working to stop the project from going forward (id.).

Ms. Winkelstein queries whether the pipeline in Somerset would make the delivery of gas more available and less expensive (Winkelstein Letter). Mr. Payer expresses concern about the pipelines destroying the value of his property and objects to the tone of a survey access letter sent to him by the Company, which he characterizes as “presumptuous and threatening” (Payer Letter). Mr. Payer states that he intends to protect the value of his property by “putting up a fight” (id.).

Fall River Mayor Lambert states that he is opposed to the granting of a right of entry for the purpose of surveying land prior to the Company initiating eminent domain proceedings (“Mayor Lambert Letter”). He also states that he is opposed to the project because he believes there are more appropriate locations for the facility (id.). Mayor Lambert states that he considers property surveys of a particular route to be premature until alternative locations of

the facility and the associated pipelines have been studied (id.). Further, Mayor Lambert states that he assumes that property owners would be compensated for any damages to their property and indemnified for claims resulting from any injury to those performing the survey work (id.).

On April 6, 2004, the Petitioner submitted a response to the comments concerning the petition (“Response”). The Response notes that only one letter is from a landowner; two are from public officials opposed to Mill River’s proposed project; and one from someone whose land will not be affected but is interested only in the effect of the project on the supply and price of natural gas (Response at 1). As to Mr. Payer’s letter, the Petitioner indicates that Mr. Payer’s concerns are not pertinent to Mill River’s survey petition, but rather object to the tone of Mill River’s recent letter to the property owner (Response at 1).

Petitioner states that the comments from public officials are more appropriately addressed in the context of the proceedings at FERC (id. at 2). Petitioner states that survey permission is necessary for FERC to complete its analysis as to alternative routes and determine the need for and safety of the proposed LNG terminal and proposed routes of the pipelines (id.). In response to Mayor Lambert’s concerns about damages, Petitioner indicates that Mill River would compensate any landowner for property damages caused by Mill River or its agents (id. at 3). Concerning Ms. Winkelstein’s inquiry about the economic consequences of the completed pipeline, Mill River indicates that it believes the project will bring additional supplies of natural gas to the New England market area and to Fall River in particular and will result in improved gas deliveries and lower prices (id.).

II. ANALYSIS AND FINDINGS

As a preliminary matter, Mill River has not asserted that it is a natural gas company. However, G.L. c. 164, § 75H states, inter alia, that a corporation or other legal entity which intends to construct a natural gas pipeline within the Commonwealth and has filed for a Certificate is deemed to be a natural gas pipeline company for the purpose of having standing to “obtain all governmental consents with regard to the location, construction, completion and operation of said pipeline within the state.” Consequently, the Department may review Mill River’s petition seeking permission to survey.

Before the Department makes a determination on the Petitioner’s petition filed under G.L. c. 164, §§ 72A, 75D and 75H, the Department considers the comments submitted by the affected landowners and interested persons. The Department notes that in addition to siting issues most comments raise issues regarding the need for, alternatives to, or impacts of the project that are not directly related to the survey petition. The Department’s jurisdiction in this proceeding is limited to rendering a decision on Mill River’s request to survey the routes of the proposed pipelines described in the petition. FERC possesses jurisdiction over the designation of any primary and alternative pipeline routes. Further, ours is not an eminent domain proceeding. Therefore, comments addressing concerns associated with potential eminent domain proceedings are not within the statutory scope of this proceeding.

The Department has reviewed the comments that relate directly to the survey petition. We construe Mr. Payer’s comments as raising concerns about notification procedures. We find that these concerns can be adequately addressed by the conditions placed on the Petitioner in this Order and therefore are not sufficient reason to deny the petition. With respect to

Mayor Lambert's concerns we note that Petitioner is liable under G.L. c. 164, §§ 72A and 75D for any damage to the owners of all property surveyed caused by the surveying. With respect to Representative Sullivan's concerns, we note that FERC approval of a project is not a prerequisite to the Department granting survey permission.

The Department finds that survey work is necessary to provide the FERC with the information it needs to evaluate the routes for the two pipelines. Accordingly, the Department finds the proposed survey work to be appropriate as a necessary preliminary activity incident to the proposed pipelines. The Petitioner is granted authority to enter those lands listed in Appendix A, subject to the conditions enumerated in Section III of this Order.

The Department's approval under G.L. c. 164, §§ 72A, 75D and 75H, does not constitute a judgment regarding the two pipelines proposed by Mill River or the need for or location of any potential eminent domain takings. Considerations of and findings regarding the underlying project are reserved for the federal and state permitting processes and for any eminent domain proceeding which may be filed with the Department at some future date. Consistent with Carlisle, 353 Mass. at 724, the Department will keep this docket open for a reasonable period of time to allow the Petitioner to supplement its Petition, should the Petitioner identify additional land for which it is unable to obtain permission to enter upon and survey.

III. 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 pipelines, as described in the Petitioner's petition and attachments, Mill

River Pipeline, L.L.C., acting through its employees, agents, and representatives, is authorized to enter upon the lands of those persons listed in Appendix A attached hereto and made part hereof; and it is

FURTHER ORDERED: That Mill River Pipeline, L.L.C. comply with the following conditions: (1) no trees or timber shall be cut down or removed on the affected properties; (2) small brush or tree branches may be cut down and removed on affected properties, but only in areas where surveyors need to make a line of sight and to the extent needed to make a line of sight; (3) areas excavated for purposes of conducting archaeological surveys on the affected properties must be restored to a condition reasonably consistent with their condition before construction; (4) no blasting shall be conducted on any of the affected properties; (5) no man-made structures, including buildings, fences, and stone walls, shall be disturbed; (6) Mill River Pipeline, L.L.C. shall make a reasonable effort to arrange with each landowner a convenient date and time that their property will be surveyed so that the landowner may observe the surveying; and (7) Mill River Pipeline, L.L.C. shall provide a copy of its petition and plans to any of the landowners listed in Appendix A who request a copy; and it is

FURTHER ORDERED: That the Department shall transmit a copy of this Order with Appendix A, 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 this Order, Mill River Pipeline, L.L.C. shall serve a copy of this Order on the Town Clerk of the Town of Somerset, and on the City Clerk for the City of Fall River, and place a copy of this Order in the libraries of the Town of Somerset and the City of Fall River for public inspection; and it is

FURTHER ORDERED: That this docket shall remain open for a reasonable period of time to allow Mill River Pipeline, L.L.C. 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,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre Manning, 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).

<u>LANDOWNER NAME</u>	<u>LOCATION OF PARCEL</u>	<u>MAP</u>	<u>LOT</u>	<u>MRP TRACT</u>	<u>COD E</u>	<u>MAILING ADDRESS</u>	<u>LOCAL STUD</u>
<u>FALL RIVER</u>							
N/F - Donald Hornby	3000 North Main Street	T-16	1	MRN-6	N	1897 Highland Avenue Fall River, MA 02720	DWG
N/F - Brian F. Harrington & Melissa M. Reis	3024 North Main Street	T-16	3	MRN-7	N	3025 North Main Street Fall River, MA 02720	DWG
N/F - Joyce M. Silvia	3080 North Main Street	T-16	8	MRN-15	N	3080 North Main Street Fall River, MA 02720	DWG
N/F - Kevin G. & Genevieve Souza	3100 North Main Street	T-16	24	MRN-16	N	3100 North Main Street Fall River, MA 02720	DWG
N/F - David C. Daniel	3226 North Main Street	T-16	16	MRN-24	N	3226 North Main Street Fall River, MA 02720	DWG
N/F - Vincent A. & Judith Codega	3248 North Main Street	T-16	17	MRN-26	N	3248 North Main Street Fall River, MA 02720	DWG
N/F - John Aguiar	3300 North Main Street	X-1	2	MRN-30	N	11 Weir Avenue Taunton, MA 02780	DWG
N/F - Robert J. & Marie V. Payer	3350 North Main Street	X-1	5	MRN-33	N	3350 North Main Street Fall River, MA 02720	DWG
N/F - Russell A. Noverca	3446 North Main Street	X-1	7	MRN-38	N	3446 North Main Street Fall River, MA 02720	DWG
N/F - Phyllis M. Canedy	59 Glendale Road	X-2	19	MRN-42	N	PO Box 589 Fall River, MA 02722	DWG
		X-2	18	MRN-43	N		DWG
N/F - Madison Finance Corp., c/o David M. Solomon	3820 North Main Street	X-3	10	MRN-54	N	10 Laurel Avenue Wellesley, MA 02481-7253	DWG

<u>LANDOWNER NAME</u>	<u>LOCATION OF PARCEL</u>	<u>MAP</u>	<u>LOT</u>	<u>MRP TRACT</u>	<u>COD E</u>	<u>MAILING ADDRESS</u>	<u>LOCA STUD</u>
N/F - Jeffrey & Pauline Dillon	3960 North Main Street	X-3	82	MRN-59	N	3960 North Main Street Fall River, MA 02720	DWG
N/F - GPT - RG Fall River LLC, c/o Grove Corporation	4594 North Main Street	X-4	16	MRN-71	N	2 North Riverside Plaza, Suite 400, Chicago IL 60606	DWG
		X-4	8	MRN-72	N		DWG
N/F - GPT - RG Fall River LLC, c/o Grove Corporation	4594 North Main Street	X-4	16	MRN-71	N	101 Federal Street Boston, MA 02110	DWG
		X-4	8	MRN-72	N		DWG
N/F - West Horizon Corporation	Off end of Horizon Way	X-8	12	MRN-76	N	222 Milliken Blvd Fall River, MA 02721	DWG
		X-4	20	MRN-77	N		DWG
		X-4	22	MRN-78	N		DWG
<u>SOMERSET</u>							
N/F - John & Mary Vasconcellos	143 Johnson Street	C-1	155	MR-10	W	143 Johnson Street Somerset, MA 02726	DWG
N/F - Ruth Mary Miller, MD	161 Johnson Street	C-1	149	MR-13	W	161 Johnson Street Somerset, MA 02726	DWG