

D.T.E. 01-48-A

Supplemental Petition of Maritimes & Northeast Pipeline, L.L.C., for approval by the Department of Telecommunications and Energy to grant it the authority to enter upon land owned by various persons, entities, or corporations in the Towns of Boxford, North Andover, and Middleton in Essex County, Massachusetts, for the purpose of making a survey preliminary to an 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.

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APPEARANCE: James T. Finnigan, Esq.  
Rich May, A Professional Corporation  
176 Federal Street  
Boston, Massachusetts 02110-2223  
FOR Maritimes & Northeast Pipeline, L.L.C.  
Petitioner

## I. INTRODUCTION

On May 11, 2001, Maritimes & Northeast Pipeline, L.L.C. (“Petitioner” or “Maritimes”) filed a petition with the Department of Telecommunications and Energy (“Department”) seeking authority under G.L. c. 164, §§ 72A and 75D to enter upon land in the Towns of Boxford, North Andover, Middleton, and Danvers, and the Cities of Haverhill and Peabody for the purpose of making a survey of a proposed natural gas pipeline route preliminary to: (1) an application to the Federal Energy Regulatory Commission (“FERC”) (FERC Docket No. CP01-04-000) 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.

On July 27, 2001, the Department issued an Order granting the May 11, 2001 petition with conditions. Maritimes & Northeast Pipeline L.L.C., D.T.E. 01-48 (July 27, 2001) (“July 2001 Order”). The July 2001 Order directed that the docket shall remain open for a reasonable time to allow the petitioner to supplement its petition, should it need to do so in order to seek approval to survey lands of other property owners along the primary route. Id. at 9.

On September 6, 2001, the Petitioner filed a Supplemental Petition for Survey Permission (“Supplemental Petition”). The Supplemental Petition seeks permission to survey additional properties in the Towns of Boxford, North Andover, and Middleton. Specifically, Petitioner seeks permission to survey additional properties in order to investigate additional deviations from the primary route and certain alternative access roads for construction purposes (Supplemental Petition at 2; Gessner Supplemental Affidavit at 3). Further, Petitioner seeks permission to survey property owned by John Parent and Cynthia Parent, located in North Andover, who revoked oral survey permission to survey

given earlier; property owned by James Hartigan, who was incorrectly listed in the initial Petition; and property held by Henry and Ruth Nason who, as the Trustees of Stone House Farm Realty Trust, gave oral permission to survey but have not as yet given written permission (Supplemental Petition at 2). Finally, Petitioner has identified owners of a parcel of land on Hovey's Pond Road in Boxford, from whom survey permission has not been given (id.; Gessner Supplemental Affidavit at 2-3).

## II. BACKGROUND

Petitioner filed an application with FERC to obtain a Certificate for authority to construct and operate approximately 25 miles of high pressure natural gas pipeline and other appurtenant facilities in Massachusetts ("Maritimes Phase III Project") (Petition at 2; Hester Affidavit at 2). The Maritimes Phase III Project, as currently proposed, would run from a point in Methuen, through Haverhill, Boxford, North Andover, Middleton, North Reading, Peabody, Danvers, to a point in Salem (Petition at 2; Gessner Affidavit at 1).<sup>1</sup> Petitioner states that the Maritimes Phase III Project would provide transportation services to various markets in Massachusetts and other northeastern states beginning in 2002-2003, and argues that the project would provide purchasers in those markets with more choices as well as provide these markets with cost-effective, efficient, and secure alternatives for meeting current and future energy requirements (Petition at 3). On April 13, 2001, FERC issued its Preliminary Determinations on Non-Environmental Issues in Maritimes & Northeast Pipeline, L.L.C., Docket No. CP01-4-000, and Algonquin Gas Transmission Company, Docket No. CP01-5-000, 95 FERC ¶

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<sup>1</sup> The Maritimes Phase III Project will interconnect with Algonquin Gas Transmission Company's proposed Hubline Project in Salem. Maritimes & Northeast Pipeline, L.L.C., D.T.E. 00-34, at 1 (2000).

61,077 (2001), Preliminary Determinations, Slip Op., p. 24 (Petition at 3; see Hester Affidavit at 3).

FERC reserved its final decision on issues pending the preparation of an Environmental Impact Statement in accordance with 18 C.F.R., §§ 380.1-380.15 (Petition at 4). The Environmental Impact Statement will include consideration of “possible alternatives to . . . portions of the projec[t]” (id.). In order to complete its analysis of the primary route and alternative routes required by FERC as well as other state and federal environmental permit applications, the Petitioner must physically enter property along the primary route, alternative routes, and access roads in order to perform civil, environmental, and archeological surveys, and directional drill geotechnical testing, where applicable (id.; see Gessner Affidavit at 2-3; Hester Affidavit at 3-4).

General Laws c. 164, §§ 72A and 75D authorize the Department to grant a Petitioner authority to enter private lands for the purpose of making a survey preliminary to eminent domain proceedings.<sup>2</sup> The Department may grant such permission without notice and hearing. Carlisle v. Department of Public Utilities, 353 Mass. 722 (1968). In acting on this Supplemental 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 (Supplemental Petition at Exhibit A). This notice provided that property owners could submit comments on the Supplemental Petition to the Department by October 12, 2001 (id.). On September 24, 2001, the Petitioner mailed notice to the landowners referenced in its Supplemental Petition (Certification of Publication and Notice).

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<sup>2</sup> Petitioner is a natural gas pipeline company to which the statutes apply. See Maritimes & Northeast Pipeline, L.L.C., D.T.E. 00-34, at 2 (2000); G.L. c. 164, §§ 75B, 75H.

### III. COMMENTS

The Department received comments from Joseph Patterson on October 4, 2001 (“Patterson Letter”); Harold and Brenda B. Brown on October 4, 2001 (“Brown Letter”); and Phyllis Rines on October 10, 2001 (“Rines Letter”). These comments, for the most part, focus on issues relating to the Maritimes Phase III Project, although Mr. and Mrs. Brown question the need for additional surveying on their property.

Mr. Patterson requested Maritimes be denied surveying authority until Maritimes has condemned his property through proper eminent domain proceedings (Patterson Letter). Mr. Patterson reserves the ability to use his property for Title 5 compliance and asserts that his property serves as a watershed runoff for a dozen surrounding properties (id.).

Harold and Brenda B. Brown requested that, until FERC acts on the Petitioner’s request for permission to construct the pipeline, no permission for surveying should be granted (Brown Letter).<sup>3</sup> The Browns expressed health and safety concerns regarding the proposed project and requested that the Supplemental Petition be denied until the proposed project is reevaluated in light of health, welfare, safety, and security concerns (id.). In addition, the Browns believe that the construction of the proposed pipeline along the proposed route would be detrimental to their health and welfare and would destroy their property (id.).

Phyllis Rines stated the Petitioner has previously surveyed her property without her permission

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<sup>3</sup> The Browns stated they also oppose this Supplemental Petition for the reasons stated in an attached letter submitted in response to the environmental impact study of FERC (Brown Letter). No additional documents were appended to the Brown Letter.

(Rines Letter at 1). Ms. Rines also expressed concerns about the proposed route for the pipeline and argued that her property would be devalued if the pipeline were built (id. at 2-3). Finally, Ms. Rines anticipates damage to her trees which screen existing power lines as well as landscapes, wetlands, and waterways (id. at 3). Ms. Rhines also attached a newspaper article from the Village Reporter and a memorandum from the North Andover Pipeline Coalition and requested the Department deny the Petitioner a certificate of public convenience and necessity<sup>4</sup> (id.).

On October 19, 2001, the Petitioner submitted a response to the comments concerning its Supplemental Petition for Survey Permission (“Response”). On October 24, 2001, Petitioner submitted a Supplemental Response (“Supplemental Response”).

Petitioner asserted that many of Mr. Patterson’s comments are not germane to the Supplemental Petition to Survey and would be better addressed in the state and federal permitting processes for the proposed pipeline (Response at 1). Similarly, the Petitioner stated that the comments filed by Mr. and Mrs. Brown raise concerns and issues that will be addressed in the state and federal permitting processes, and asserted that the Browns had not raised any concerns relevant to Supplemental Petition (id. at 2).

Petitioner initially asserted that most of Ms. Rines’ concerns would be addressed in state and federal permitting processes and were not relevant to this Supplemental Petition for survey authorization (id. at 2). However, in its Supplemental Response, Petitioner corrected and supplemented its

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<sup>4</sup> The Department notes that such a Certificate is issued by FERC. See 15 U.S.C., § 717f(c).

Response (Supplemental Response at 2).<sup>5</sup> Specifically, Petitioner explained that Mr. Rines gave Maritimes oral permission to survey on March 26, 2000, which oral permission was confirmed by receipt of a letter and Verbal Survey Permit from Petitioner dated April 14, 2000 (*id.* at 2). Petitioner asserted it left a voice message with the Rines' home on June 17, 2001, in compliance with its 48 hour advance notice policy, informing the Rines that their property was scheduled to be surveyed on June 19, 2001. Petitioner also provided copies of records which indicate survey crew were on the Rines' property on June 19 and 20, 2001 (*id.*). Petitioner asserted that on June 20, 2001, Mr. Rines phoned Maritimes and revoked his oral survey permission (*id.* at 2).

#### IV. ANALYSIS AND FINDINGS

Before the Department makes a determination on the Petitioner's Supplemental Petition filed under G.L. c. 164, §§ 72A and 75D, the Department considers the comments submitted by the affected landowners. The Department notes that Mr. and Mrs. Brown and Ms. Rines raised issues regarding the need for, alternatives to, or impacts of the Maritime Phase III Project that are not directly related to the Supplemental Petition. The Department's jurisdiction in this proceeding is limited to

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<sup>5</sup> In its Response, Petitioner acknowledged Maritimes' survey crews entered Ms. Rines' property to perform surveying work without her permission (Response at 3). Petitioner explained that in early 2000, Mr. Rines gave oral survey permission to Maritimes (*id.*). Because of a possible route change that would have avoided the Rines' property, Maritimes did not survey her property in 2000 (*id.*). Petitioner asserted that in May 2001, as a result of another potential change in the proposed route, Maritimes contacted Mr. Rines concerning survey permission, which Mr. Rines denied (*id.*). Petitioner acknowledged that during the week of July 23, 2001, Maritimes' crew surveyed a small area of the Rines property "on the mistaken belief" it had Mr. Rines' verbal permission to do so (*id.*). Petitioner further asserted that neither Mr. nor Mrs. Rines addressed the surveying crew and that no communication occurred with the North Andover Police regarding this surveying (*id.*).

rendering a decision on a petition to survey for the proposed route(s) contained in the Supplemental Petition. FERC possesses jurisdiction over the designation of primary and alternative pipeline routes.

Mr. Patterson raised issues regarding eminent domain. This 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 are related directly to the Supplemental Petition and finds that none of the commenters raised issues sufficient to deny the Supplemental Petition. The Department notes that surveying authority cannot, as suggested by the Browns, be denied until FERC has completed its review and acted upon Petitioner's application for a Certificate because FERC requires the information to be obtained from the proposed surveying in order to complete its environmental evaluation.

The Department finds that additional survey work is necessary to provide FERC with the information it needs to evaluate various routing alternatives for the Maritimes Phase III Project. Accordingly, the Department finds the Petitioner's Supplemental Petition to be appropriate as a necessary activity incident to the proposed Maritimes Phase III Project. The Petitioner is granted authority to enter those lands listed in Appendix A, subject to conditions enumerated in Section IV of this Order.

The Department's approval under G.L. c. 164, §§ 72A and 75D does not constitute a judgment regarding the Maritimes Phase III Project 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 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 Maritimes Phase III Project, as described in the Petitioner's Supplemental Petition and attachments, Maritimes & Northeast Pipeline, L.L.C., 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 Maritimes & Northeast 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 trees may be cut down and removed on affected properties, but only in areas where surveyors need 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) Maritimes & Northeast Pipeline, L.L.C. 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 (7) Maritimes & Northeast Pipeline, L.L.C. shall provide a copy of its Supplemental

Petition and plans to any of the landowners listed in Appendix A who requests a copy; and it is

FURTHER ORDERED: That the Department 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 this Order, Maritimes & Northeast Pipeline, L.L.C. shall serve a copy of this Order on the selectmen of the Towns of Boxford, North Andover, and Middleton, and place a copy of this Order in the libraries of those Towns for public inspection; and it is

FURTHER ORDERED: That this docket shall remain open for a reasonable period of time to allow Maritimes & Northeast 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 primary route or alternate routes.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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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).