

D.T.E. 01-48

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, Middleton, and Danvers, and the Cities of Haverhill and Peabody 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.

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”) 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.

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, and Salem (*id.* at 2; Gessner Affidavit at 1).¹ Petitioner states the Maritimes Phase III Project would provide transportation service to various markets in Massachusetts and other northeastern markets 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

¹ A prior Order addressing a Petition for Survey Permission filed by Petitioner concerning this proposed pipeline reads the Maritimes Phase III Project will interconnect with Algonquin Gas Transmission Company’s proposed pipeline in Salem. Maritimes & Northeast Pipeline, L.L.C., D.T.E. 00-34, at 1 (2000).

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 Alongquin Gas Transmission Company, Docket No. CP01-5-000, 95 FERC ¶ 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 CFR, §§ 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 alternatives routes required by FERC as well as other state and federal environmental permit applications, the Petitioner must physically enter property along the primary route and alternative routes 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.² 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 (Petition at Revised Appendix A). This notice provided that property owners could submit comments on the

² 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).

petition to the Department by June 25, 2001 (id.). On June 11, 2001, the Petitioner mailed notice to the landowners referenced in its Petition (Second Certification of Compliance with Order of Notice at 1).

The Department received comments from Bridget Maye on June 25, 2001 (“Maye Letter”) and Mildred W. Clark and Richard Clark (“the Clarks”) on July 12, 2001 (“Clark Letter”). Both sets of comments focus on issues relating to the Maritimes Phase III Project itself, although Ms. Maye also raises concerns about the survey process.

The Clarks state that the proposed pipeline easement area, located along the southerly boundary of their property, is the only area suitable for subsurface septic disposal and ask the Department to require Maritimes & Northeast to consider relocating the easement so as to allow for subsurface septic disposal (Clark Letter). The Clarks further suggest the pipeline be located on adjacent currently unused property (id.).

Ms. Maye states her property is contiguous to a New England Power Company electric transmission line corridor and that she has planted pine trees and shrubs on her property in an effort to buffer her home from the power lines (Maye Letter at 1). Ms. Maye opposes survey work on her property because it would run through that buffer (id.). Specifically, Ms. Maye contends the 12-year-old pine trees are “still small enough that they might well be significantly damaged or even eliminated by the Maritimes survey crews” (id.). Ms. Maye also objects to the environmental and archaeological surveys because they are unnecessary (id.). Specifically, she argues the proposed location for the pipeline easement “overly burdens [her] property, and raises important issues of public safety and concludes there is no need for “invasive and expensive environmental and archeological survey in an

area that for other reasons is so clearly inappropriate for use as a pipeline right of way” (id. at 1, 4). In addition, Ms. Maye’s well is located within 100 feet of the transmission line (id. at 1).

Ms. Maye comments that she first learned that the proposed pipeline easement would run east of the transmission line; Ms. Maye’s property is to the west of the transmission line (id. at 1-2). Ms. Maye contends she did not receive notice of the proposed location of the easement across her property until she received a letter on or about February 13, 2001 (id. at 2). Ms. Maye indicates Petitioner sought permission to survey on March 29, 2001 and attached letters and information concerning the FERC approval process which Petitioner claimed it had originally sent to Ms. Maye in the Fall of 2000 (id.). Ms. Maye asserts she did not receive this information until March of 2001 and thus was unable to become involved in the FERC process (id.).

On July 18, 2001, the Petitioner submitted a response to the comments concerning its Petition For Survey Permission (“Response”). While noting that many of Ms. Maye’s comments are not germane to the Petition to Survey and would be better addressed in the state and federal permitting processes, Petitioner explained that the initial proposed route would not cross Ms. Maye’s property (Response at 2). However, in order to avoid a vernal pool, Petitioner has evaluated an alternative route that would cross Ms. Maye’s property, and informed her by letter dated February 13, 2001, that “a pipeline route across a portion of your property has been identified as a possible, alternative route to Maritimes’ preferred pipeline route currently under review by FERC” and requested permission to perform a survey on her property (id. at 2-3).³ Petitioner states that it will not cut any trees, small or

³ Petitioner states the letter further stated “If FERC certifies the alternative route being
(continued...)

otherwise, while surveying Ms. Maye's property, and indicated that, if excavation is necessary during the archeological survey, any pit excavated would be small and Petitioner would perform restoration (id. at 3). Finally, Petitioner states that it would be liable for any damages incurred during the course of survey activities (id.).

Petitioner objects to any consideration of the letter submitted by counsel on behalf of Mildred W. Clark and Richard Clark as untimely (id.). Notwithstanding the objection, Petitioner states that the Clarks' concerns are not germane to the Petition to Survey (id.).

II. ANALYSIS AND FINDINGS

Before the Department makes a determination on the Petitioner's petition filed under G.L. c. 164, §§ 72A and 75D, the Department considers the comments submitted by the affected landowners. The Department notes that both Ms. Maye and the Clarks raise issues regarding the need for, alternatives to, or impacts of the Maritimes Phase III Project that are not directly related to the survey petition. The Department's jurisdiction in this proceeding is limited to rendering a decision on a petition to survey for the proposed route(s) contained in the petition. FERC possesses jurisdiction over the designation of primary and alternative pipeline routes. Further, this is not an eminent domain proceeding. Therefore, comments addressing concerns associated with potential eminent domain proceeding are not within the statutory scope of this proceeding.

³ (...continued)
investigated by Maritimes, then the pipeline will not be installed on Ms. Maye's property, although the final delineation may result in a portion of Maritimes' easement being located on Ms. Maye's property" (Response at 3).

The Department has reviewed the comments that related directly to the survey petition and finds that although Ms. Maye's has raised specific concerns regarding the surveying of her property, these concerns can be adequately addressed by the conditions placed on Petitioners in this Order and therefore are not sufficient reason to deny the Petition. Ms. Maye's concern that surveying her property will result in the cutting or removal of trees and bushes is understandable, particularly as they provide a buffer between her house and a transmission right-of-way. However, Petitioner has stated it will not cut or remove any trees on Ms. Maye's property in performance of the survey work. Moreover, Petitioner is liable under G.L. c. 164, §§ 72A and 75D for any damage caused to Ms. Maye's property, and to the owners of all property surveyed, by the surveying.

The Department finds that additional survey work is necessary to provide the FERC with the information it needs to evaluate various routing alternatives for the Maritimes Phase III Project. Accordingly, the Department finds the Petitioner's petition to be appropriate as a necessary preliminary activity incident to the proposed Maritimes Phase III Project. 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 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 proceeding 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 should the Petitioner identify additional

land for which it is unable to obtain permission to 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 Maritimes Phase III Project, as described in the Petitioner's petition and attachments, Maritimes & Northeast Pipeline, L.L.C., acting through its employees, agents, and representatives, is authorized to enter upon the 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, and as consistent with (7) below; (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 that their property will be surveyed so that the landowner may observe the surveying; (7) Maritimes & Northeast Pipeline, L.L.C. shall not cut any trees, small or otherwise, during the performance of the surveys on Ms. Bridget

Maye's property; and (8) Maritimes & Northeast 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, 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, Middleton, and Danvers, and the Cities of Haverhill and Peabody, and place a copy of this Order in the libraries of those towns and cities 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.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr.,
Commissioner

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).