

February 6, 2002

D.T.E. 01-48-B

Second 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 City of Haverhill, 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 and preliminary to eminent domain proceedings, pursuant to M. G.L. c. 164, §§ 72A and 75D.

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FOR Maritimes & Northeast Pipeline, L.L.C.  
Petitioner

## I. INTRODUCTION

On May 11, 2001, Maritimes & Northeast Pipeline, L.L.C. (“Petitioner”) filed a petition (“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 (August 1, 2001) (“August 2001 Order”). The August 2001 Order directed that the docket 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”) seeking permission to survey additional properties in the Towns of Boxford, North Andover, and Middleton (Supplemental Petition at 2; Gessner Supplemental Affidavit at 2-3). On November 9, 2001, the Department issued an Order granting the September 6, 2001 Supplemental Petition with conditions. Maritimes & Northeast Pipeline, L.L.C., D.T.E. 01-48-A (November 9, 2001) (“November 2001 Order”). The November 2001 Order directed that the docket 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 and alternate routes.

Id. at 9. On December 12, 2001, the Petitioner filed a Second Supplemental Petition for Survey Permission (“Second Supplemental Petition”).

## II. BACKGROUND

The 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, and Danvers, to a point in Salem (Petition at 2; Gessner Affidavit at 1).<sup>1</sup> The 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 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 ¶ 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

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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).

18 C.F.R., §§ 380.1-380.15 (Petition at 4).

The Second Supplemental Petition seeks permission to survey four properties owned by New England Power Company (“NEPCo”) in the City of Haverhill (Second Supplemental Petition at 2; Gessner Second Supplemental Affidavit at 2). The Petitioner initially proposed to install the pipeline on these parcels, but FERC requested that the Petitioner evaluate an alternative route on the opposite side of the Merrimack River; consequently, the Petitioner did not survey the NEPCo properties (Second Supplemental Petition at 3; Gessner Second Supplemental Affidavit at 2-3). FERC environmental staff subsequently recommended that the Petitioner install the pipeline along the original route, which crosses the NEPCo properties (Gessner Second Supplemental Affidavit at 3). The Petitioner stated that it now needs to survey the NEPCo properties; however, it has been unable to obtain NEPCo’s permission to do so (id.).

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 Second Supplemental Petition, the Department exercised its discretion on the question of notice and hearing by ordering the Petitioner to mail notice of this proceeding to the landowner upon whose land the Petitioner has petitioned for authority to enter (Second Supplemental Petition at Exhibit A; Order of Notice). This notice provided

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<sup>2</sup> The 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.

that property owners could submit comments on the Supplemental Petition to the Department by January 18, 2002 (id.). On December 21, 2001, the Petitioner mailed notice to NEPCo, the landowner of all four properties referenced in its Second Supplemental Petition (Certification of Publication and Notice).

### III. ANALYSIS AND FINDINGS

The Petitioner states that it needs to survey the NEPCo properties in response to FERC's recommendation that the pipeline be installed across the NEPCo properties rather than along an alternate route on the opposite side of the Merrimack River. NEPCo has neither challenged the Petitioner's need to survey nor raised specific issues with regard to how the survey should be conducted.

The Department finds that the additional survey work called for in the Petitioner's Second Supplemental Petition is appropriate as a necessary activity incident to the proposed Maritimes Phase III Project. The Petitioner is granted authority to enter those properties 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.

IV. 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 Second Supplemental Petition and attachments, Maritimes & Northeast Pipeline, L.L.C., acting through its employees, agents, and representatives, is authorized to enter upon the specified 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 Second Supplemental Petition and plans to any of the landowner listed in Appendix A, if requested, and it is

FURTHER ORDERED: That the Department shall transmit a copy of this Order, by certified mail, to the landowner 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 Mayor of the City of Haverhill and place a copy of this Order in the Haverhill Public Library 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).