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February 15, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Tennessee Gas Pipeline Company's Essex-Middlesex Project
PROJECT MUNICIPALITIES : Saugus, Lynnfield, Wakefield
PROJECT WATERSHEDS : Saugus River Watershed
EOEA NUMBER : 13798
PROJECT PROPONENT : Tennessee Gas Pipeline Company
DATE NOTICED IN MONITOR : January 9, 2007

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (Draft EIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

Project Overview

According to the Final Environmental Impact Report (FEIR), the project involves construction of 7.84 miles of new 24-inch diameter pipeline, which will parallel and pass within the existing New England Power Company electric transmission right-of-way in Saugus, Wakefield, and Lynnfield. The right-of-way (ROW) traverses Priority Habitat and Estimated Habitat, Reedy Meadow, and a small temporary workspace is required in the Golden Hills ACEC in Saugus. Two permanent facilities also are proposed: a new pig receiver at the northern terminus in Lynnfield and a tie-in assembly with the DOMAC Line in Saugus will replace the existing pig receiver at the southern end. The pipeline will alter 45 wetland areas including 1,119,247 square feet of bordering vegetated wetlands, 829 square feet of isolated land subject to flooding, 392,090 square feet of riverfront, 107,327 square feet of bordering land subject to flooding, 10,132 square feet of land under water, and 3,479 linear feet of inland bank.

State Permits and Jurisdiction

The project will require a 401 Water Quality Certificate and a Wetlands Permit under the Limited Project provisions from the Department of Environmental Protection (DEP); a Conservation and Management Permit from the Natural Heritage & Endangered Species Program (NHESP) of the Division of Fisheries & Wildlife; an 8(m) Permit from the Massachusetts Water Resources Authority (MWRA); an Orders of Conditions from the communities along the pipeline routes (and hence Superseding Order(s) from DEP if any local Orders were appealed); and Construction Permits from the Massachusetts Highway Department (MHD). The project will undergo review by the Massachusetts Energy Facilities Siting Board (EFSB). The project will also require the preparation of an Environmental Assessment (EA) pursuant to the requirements of the National Environmental Policy Act (NEPA) and review by the Federal Energy Regulatory Commission (FERC). MEPA jurisdiction extends to the broad subject matter of the state permits that the proponents are seeking. The project meets or exceeds mandatory EIR thresholds related to land alteration, wetlands alteration, and energy infrastructure. The project also meets review threshold related to rare species and Areas of Critical Environmental Concern (ACEC) resources.

MEPA Review Process and Approval Standards

Under Section 11.08(2) of the MEPA Regulations, during the course of an EIR review, I may review any relevant information from any source to determine whether the EIR is adequate. To that end, I have considered both the EIR itself, as well as comment letters received, additional information from consultation meetings between state and federal agency staff, and correspondence from the project proponent.

MEPA review is an informal process, which does not itself result in any formal adjudicative decision approving or disapproving a project. Section 11.08(8) of the MEPA Regulations requires me to find a FEIR adequate even if certain aspects of the project or issues require additional analysis of technical issues, so long as I find that the aspects and issues have been clearly described and their nature and general elements analyzed in the EIR or during MEPA review, that the aspects and issues can be fully analyzed prior to any Agency issuing its Section 61 Findings, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency taking Agency Action on the Project. As described in more detail in this Certificate, after examining the record before me, I find that there is enough information on project alternatives, environmental impacts, and mitigation to meet this standard.

Prior to project commencement, each state permitting agency must prepare and adopt Section 61 Findings pursuant to MEPA, which will detail each agency's enforceable commitments to actions that will avoid, minimize, or mitigate the project's environmental impacts. The project will also require several state permits as described above. The proponent can resolve any remaining issues with the permitting agencies during permitting. Several comment letters have outlined areas where additional technical analysis may be required. I have highlighted some of the major concerns below. I ask that the state permitting agencies and the proponent consider carefully the comments received on the FEIR when finalizing the details of state permit conditions and the proponent's mitigation commitments.

General

I find that the FEIR adequately addresses the issues remaining from the Certificate on the Draft EIR and provides adequate information to understand project impacts and provides state agencies with information necessary to make their required Section 61 Findings. The proponent has met its obligations under MEPA to avoid or minimize impacts wherever possible, and to develop mitigation commensurate with impacts in those areas where impacts are unavoidable. The MEPA review of the project is concluded.

Review of the FEIR:

The FEIR has adequately responded to the Draft EIR certificate. However, the proponent should continue to work with local, state and federal agencies to provide Draft Section 61 Findings.

In a letter dated February 14, 2007 the proponent has committed to work proactively with both DEP and DCR to ensure that the final project design fully complies with applicable local, state, and federal regulatory requirements, including giving appropriate consideration to potential route alignment modifications. In addition, the Federal Energy Regulatory Commission (FERC) requires that any alignment modifications of the current certificated route be justified to its standards and include landowner consents. I advise the proponent to work closely with DEP's North East Regional Office, Department of Conservation and Recreation (DCR), the Natural Heritage and Endangered Species Program (NHESP) and other interested state and local agencies on alignment route modifications.

DEP has stated that a variance is not required pursuant to the 401 Water Quality Certification regulations for the discharge of dredged or fill material to Outstanding Resource Waters (ORW's) because it is allowed under the criteria pursuant to 314 CMR 9.06 (3)(f). However, I advise the proponent that they must comply with requirements for additional alternatives analyses and other requirements of 314 CMR 9.06, including 1:1 restoration or replication. The proponent must demonstrate that all reasonable alternatives have been exhausted to avoid impacts to ORW's (e.g. vernal pools). DEP has suggested, and I concur, that alternatives to be evaluated during permitting should include use of a span or other bridging technique, the realignment of the Right-of-Way in the immediate vicinity of the vernal pools, and the reduction of temporary impacts. Such alternatives are considered feasible unless the alternative is shown to be not practicable, would have greater adverse impact on the aquatic ecosystem, or would result in other significant adverse environmental consequences. The proponent should consult and work closely with DEP's staff.

NHESP has stated in their comment letter that based on a review of the survey results and habitat assessments provided by the applicant, the project, as currently proposed, will result in a "take" of the Four-toed Salamander, the Blue-spotted Salamander, the King Rail, and the American Bittern. The proponent has recently submitted a Draft Conservation & Management Permit application which is currently under review by NHESP. In order for a project to be considered for a Conservation and Management Permit, the project proponents must (1) avoid and minimize

impacts to state-listed species to the greatest extent practical, (2) demonstrate that an insignificant portion of the local population will be impacted or that no viable alternative exists, and (3) develop and implement a conservation plan that provides a long-term net benefit to the conservation of the local population of the impacted species. In addition, I advise the proponent that pursuant to 314 CMR 9.06(2) and 310 CMR 10.59, no project may be permitted which will have any short or long term adverse effect on specified habitat sites of rare vertebrate or invertebrate species. Therefore, the proponent should work very closely with NHESP.

Summary of Final EIR Mitigation:

The FEIR included a separate chapter on mitigation measures and a table summarizing mitigation measures that the proponent has committed to implementing.

Article 97 Land Disposition

- The proponent is working closely with all entities from whom Article 97 Land Disposition is required to avoid and minimize temporary alterations to the greatest extent possible.
- The proponent is also working with municipalities to ensure conveyance of Article 97 easement rights in accordance with procedural requirements in EOEAs' Article 97 Land Disposition Policy.
- The proponent will ensure no net loss of Article 97 lands in accordance with requirements of EOEAs' Article 97 Land Disposition Policy.

Wetlands

- The proponent will clearly mark, with signs and/or highly visible flagging, wetland boundaries and buffers zones prior to ground disturbing activities so all construction personnel know where protected resources are located. Maintain signs or flagging until construction-related ground disturbing activities are complete.
- Following installation of the pipeline, the proponent will restore wetlands to their original configurations and contours.
- Inspect the ROW periodically during and after construction, and repairing any erosion control or restoration features as needed in a timely manner until permanent revegetation is successful.

To ensure successful restoration of wetland areas, the proponent will monitor wetland revegetation annually until wetland revegetation is successful.

Rare Species

- The proponent will continue consultations with the Natural Heritage and Endangered Species Program (NHESP) to identify impact avoidance, minimization, and mitigation measures for state-listed species. Tennessee will implement mitigation, based on their recommendations, to ensure no adverse affects on protected species or their habitats. Mitigation measures being discussed include construction timing restrictions, pre-construction surveys to document presence or absence of protected species, additional avoidance and minimization, and compensation for temporary alteration of protected habitats.

- Following construction, the proponent will restore disturbed portions of protected habitats (e.g., significant habitats, wetlands, and vernal pools) as well as upland areas, to pre-construction condition, and portions of these areas will be protected from future development through purchase and maintenance of 30-foot-wide permanent right-of-way easements.
- The proponent will train all contractor personnel prior to allowing them onto the construction ROW, in the identification of protected species and protocols to be followed if they are found on the ROW. In most cases, construction personnel will be instructed to stop work, or ensure avoidance, and contact trained environmental professionals immediately.

Land Alteration

- To minimize construction-related impacts to soils, the proponent will construct the project and restore disturbed areas in accordance with their Best Management Practices (BMPs) for pipeline construction contained in Appendix B.
- Soil erosion will be avoided and minimized to the greatest extent practicable through careful installation and maintenance of erosion and sedimentation controls (including temporary sediment barriers, temporary and permanent slope breakers, and trench breakers) before, during, and following construction until the ROW is successfully restored. Full-time Environmental Inspectors will be employed to ensure these erosion controls are properly installed and maintained during and after construction.
- Prior to the start of ground disturbing activities, all construction work limits will be clearly marked on site with stakes, highly visible flagging, and signs, to ensure no unnecessary alteration of soils.
- Following installation of the pipeline, the proponent will restore land contours to their pre-construction conditions to the greatest extent practicable, mulch and seed the ROW to stabilize soils after grading, and facilitate rapid revegetation.
- The proponent will maintain temporary sediment barriers across the entire construction ROW at the base of slopes greater than five percent where the base of the slope is less than 50 feet from a waterbody, wetland, or road crossing.
- Contamination of soils will be avoided and minimized by implementing Tennessee's Spill Prevention Control and Countermeasure Plan (SPCCP) contained in Appendix B. All construction personnel will be trained in the implementation of the SPCCP during mandatory environmental training prior to their entering the construction ROW.
- To preserve pre-construction soil profiles in wetlands, organic A horizons (top soils) will be segregated from B and C horizons (subsoils) while excavating the trench. Following installation of the pipe, subsoils will be placed in the trench first and rough graded. Then wetland topsoil will be replaced to maximize re-vegetation success.
- Stream flows will be maintained at all waterbody crossings (via flume or dam and pump) throughout construction.
- The proponent will prohibit parking of construction vehicles overnight and re-fueling of equipment within 100 feet of waterbodies.

Visual Resources

- The proponent has agreed to retain as many mature trees as possible between Whittier

Avenue in Saugus and the proposed construction right of way. Prior to tree clearing the Project Environmental Inspector will walk the tree line with the contractor and flag trees as "save trees".

- The proponent is also committed to working with each individual landowner from whom land rights are required to restore properties following construction in accordance with the needs and requests of the landowners. State and town owned lands will be restored in accordance with requests of responsible state and municipal officials.

Traffic

- To minimize temporary traffic impacts by timing road open cuts to avoid hours of peak use, keeping at least one lane of affected roadways open at all times by placing metal plates across the open trench as necessary and/or providing alternate access routes.
- To minimize fugitive dust in residential areas from construction activities by watering dry soils as needed throughout the period of active construction.
- To obtain all necessary permits for working within and adjacent to public and private roads and will apply required traffic mitigation recommendations resulting from these processes.

Archeological Resources

- To work closely with the Massachusetts Historical Commission (MHC) to ensure no unavoidable impacts to resources of historic or cultural significance.
- To following recommendations made by MHC to ensure compliance with Section 106 of the Historic Preservation Act and applicable Massachusetts regulations.
- To not proceed to construction without required authorizations from the MHC.

Section 61 Findings

I find the FEIR to be adequate, and am allowing the project to proceed to the state permitting agencies. The Final EIR contains adequate information on alternatives, impacts, and mitigation, and allows the state permitting agencies to understand the environmental consequences of their permit decisions. The proponent and state agencies should forward copies of the Section 61 Findings to the MEPA Office for completion of the file.

To keep all interested parties fully informed of permitting developments, the proponent should provide notification of local public meetings regarding the project to those parties who commented on the ENF, Draft EIR and Final EIR. I also request that the proponent send to the commenters notices of any relevant state permitting comment periods, meetings, or other opportunities for public input into the state permitting processes.

February 15, 2007

Date



Ian A. Bowles

Comments Received:

- 01/29/07 Massachusetts Historical Commission
- 02/01/07 Town of Wakefield, Board of Selectmen
- 02/05/07 Town of Lynnfield, Board of Selectment
- 02/05/07 Town of Saugus, Town Manager
- 02/08/07 Saugus River Watershed Council
- 02/08/07 Natural Heritage & Endangered Species Program (NHESP) of the Division of Fisheries & Wildlife
- 02/08/07 Department of Environmental Protection, NERO
- 02/08/07 Department of Conservation and Recreation
- 02/08/07 Massachusetts Division of Marine Fisheries
- 02/14/07 Response to Comments, Kathleen Miller, Northern Ecological Associates, Inc
- 02/14/07 2nd Response to Comments, Howdy McCracken, El Paso Corp.

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