



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-
1000

Fax: (617) 626-
1181

<http://www.mass.gov/envir>

April 18, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : Fitchburg Expansion Project
PROJECT MUNICIPALITY : Lunenburg
PROJECT WATERSHED : Nashua River
EOEA NUMBER : 14202
PROJECT PROPONENT : Tennessee Gas Pipeline Company, LLC
DATE NOTICED IN MONITOR : March 12, 2008

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and propose to grant a waiver from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Expanded Environmental Notification Form (EENF), the proposed project has been designed to provide new natural gas transportation service to the Devens Regional Economic Zone and consists of the replacement construction of approximately 5.6 miles of 6 inch diameter natural gas pipeline with new 12 inch diameter natural gas pipeline from Lancaster Avenue in Lunenburg extending in a northwesterly direction to the existing KeySpan Energy Station located off Pleasant Street in Lunenburg. Nearly all of the proposed pipeline replacement project will be located within an existing 30-foot wide gas and electric transmission and distribution easement corridor that traverses across 16 residential properties, 1.47 miles of active agricultural croplands, and approximately 250 linear feet (lf) of road crossings involving 10 municipal roadways.

The proponent has identified up to 50 feet of temporary workspace, adjacent to the utility easement corridor, for construction staging activities. The project also includes the construction of a new 2,220 square feet (sf) permanent inspection facility ('pig launcher') to be located off Millwood Street in Framingham, and a new 2,200 sf pig receiver facility to be located within the existing KeySpan meter station on Pleasant Street in Lunenburg. Upon completion of the pipeline construction, the land area will be restored to previous conditions.

The project requires the preparation of a mandatory EIR pursuant to Sections 11.03(1)(a)(1) and 11.03(3)(a)(1)(a) of the MEPA regulations because it involves the direct alteration of 50 or more acres of land (approximately 55.19 acres) and the alteration of one or more acres of Bordering Vegetated Wetlands (BVW) (approximately 6.8 acres – temporary disturbance, 2.4 acres permanent disturbance).

The project will require review and comment on a Federal Energy Regulatory Commission (FERC)-regulated project from the Energy Facilities Siting Board (EFSB). It may need to obtain a Water Quality Certificate from the Department of Environmental Protection (MassDEP). The project may also require Construction Access Permits from the Massachusetts Highway Department (MassHighway). The project may require Orders of Conditions (some as "limited" projects) from the Lunenburg Conservation Commission (and in the event of an appeal, a Superseding Order from MassDEP). The project received a permit for a Reconnaissance Survey from the Massachusetts Historical Commission (MHC) State Archaeologist in July 2007. The project will require a Certificate of Public Convenience and Necessity from the FERC. The project may also require a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit, a Spill Prevention, Control and Countermeasures Plan, and a Determination of General Conformity/Applicability from the US Environmental Protection Agency (EPA). The proponent may need to obtain a Section 404 Permit from the U.S. Army Corps of Engineers.

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required state permits with the potential to cause damage to the environment. In this case, MEPA jurisdiction extends to energy, wetlands, stormwater, waterways, construction issues, historical and archaeological resources, and land alteration issues.

Summary of Proposed Mitigation Measures

The following mitigation is proposed at the site:

1. The proponent is undertaking the project to provide new natural gas transportation service to the Devens Regional Economic Zone;

2. Nearly all of the proposed pipeline replacement project will be located within an existing 30-foot wide gas and electric transmission and distribution easement corridor that traverses across 16 residential properties, 1.47 miles of active agricultural croplands, and approximately 250 linear feet (lf) of road crossings involving 10 municipal roadways;
3. The project will involve approximately 16 stream crossings and will result in temporary and permanent impacts to approximately 6.8 acres and 2.4 acres of bordering vegetated wetland (BVW) resource areas, respectively. The project will also impact approximately 485 linear feet (lf) of Bank, and 465 sf of Riverfront Area;
4. The proponent has proposed a construction management plan (CMP) that describes project activities and their schedule and sequencing, site access and truck routing, road closures, and best management practices (BMPs) that will be used to avoid and minimize adverse environmental impacts; and,
5. The proponent has proposed the use of specialized construction techniques and erosion control procedures to avoid and minimize project construction impacts. Specifically, the proponent has committed to use timber mats, erosion control, and either a dam-and-pump or flume construction process to minimize impacts to wetland resource areas at stream crossings;
6. The proponent has committed to a time-of-year (TOY) restriction for in-stream crossing work to occur between June 1 and November 30 to protect cold water and warm water fisheries;
7. The proponent has also committed to employ an on-site environmental inspector to ensure compliance with the proponent's proposed *Upland Erosion Control, Revegetation, and Maintenance Plan*, and construction best management practices associated with the proponent's proposed wetland and waterbody construction and mitigation procedures;
8. The proponent has proposed to re-grade and re-seed all disturbed upland and wetland resource areas; and,
9. The project will not result in adverse impacts to archaeological and architectural resources;

Waiver Request

On March 12, 2008, the proponent requested a waiver from the requirement for the preparation of an EIR. An Expanded ENF was submitted in conjunction with this request that identifies the environmental impacts of the project and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts. The waiver request was discussed at the consultation/scoping session, which was held on March 28, 2008.

Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and,
- (b) not serve to avoid or minimize Damage to the Environment.

Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) the project is likely to cause no Damage to the Environment; and,
- (b) ample and unconstrained infrastructure facilities and services exist to support the project, when subject matter jurisdiction is broad in scope, or those aspects of the project within subject matter jurisdiction, when jurisdiction is limited to the subject matter of state agency permits.

Findings

Based upon the information submitted by the proponent and after consultation with the state permitting agencies, I find that the Waiver Request has merit and that the proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to submit a mandatory EIR would result in an undue hardship for the Proponent and would not serve to avoid or minimize Damage to the Environment.

In accordance with 301 CMR 11.11(3), the latter finding is based on my determination that:

- (a) the project is likely to cause no Damage to the Environment; and,
- (b) ample and unconstrained infrastructure facilities and services exist to support the project, or those aspects of the project within subject matter jurisdiction.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. MassDEP has sufficient permitting authority to ensure that the proponent complies with the findings of this Certificate. Therefore, I hereby propose to grant the waiver requested for the Fitchburg Gas Supply Expansion Project, subject to the above findings. This Draft Record of Decision shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

April 18, 2008
DATE

Ian A. Bowles, Secretary

Comments received:

04/09/08	Natural Heritage and Endangered Species Program (NHESP)
04/08/08	Massachusetts Historical Commission
04/09/08	Montachusett Regional Planning Commission
04/10/08	Massachusetts Development Finance Agency (MassDevelopment)
04/15/08	Massachusetts Department of Environmental Protection (MassDEP) - CERO

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