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July 14, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Algonquin Cape Cod Project
PROJECT MUNICIPALITY : Sandwich and Bourne
PROJECT WATERSHED : Cape Cod and Buzzards Bay
EOEA NUMBER : 13796
PROJECT PROPONENT : Algonquin Gas Transmission, LLC
DATE NOTICED IN MONITOR : May 10, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

The proposed project consists of a 3.5-mile natural gas pipeline, which begins at the Mirant Energy Facility in Sandwich and extends to a new meter station to be located west of Route 130 in Sandwich. The proposed gas pipeline will supply the KeySpan system on Cape Cod. Above-ground facilities associated with the pipeline, which will occupy approximately 1.5 acres, include an internal inspection device (known as a "pig") launcher and receiver, and the meter station.

The proposed alignment for the pipeline crosses through the Shawme-Crowell State Forest and the Massachusetts Military Reservation (MMR), and is located in areas protected under Article 97 of the State Constitution. The project site also includes areas mapped as priority habitat for rare species.

The project as proposed in the Environmental Notification Form (ENF) will impact approximately 45 acres of land. These impacts include approximately 20.39 acres of forest clearance associated with construction and operation of the pipeline, and maintenance of the Right-of-Way (ROW). The remainder of the land impact is associated with use of existing access roads and related vegetation trimming and road grading. Upon completion of the project's construction phase, a total of 21.68 acres will be maintained as new permanent ROW, including

20.39 acres of previously forested areas, which will be maintained in an herbaceous/scrub-shrub state. The project involves several wetlands crossings, which will result in 7,840 square feet of bordering vegetated wetlands alteration.

The project is undergoing review pursuant to Section 11.03 (1)(b)(1) because it will result in alteration of 25 or more acres of land, Section 11:03(b)(3) because it will result in conversion of land held for natural resource purposes in accordance with Article 97 of the amendments to the Constitution of the Commonwealth, and Section 11:03(3)(b)(1)(c) because it will result in alteration of 5,000 or more square feet (sf) of bordering vegetated wetlands (BVW). The project is also under review pursuant to Section 11:03(2)(b)(2) because it may result in a taking of a rare species.

The proposed project requires an Act of Legislation for disposition of Article 97 land and will require easements from the Department of Fisheries and Wildlife (DFW), Department of Conservation and Recreation (DCR). The project requires a 401 Water Quality Certification from the Department of Environmental Protection (DEP) and an Order of Conditions from the Sandwich Conservation Commission (and, on appeal only, a Superseding Order from DEP). The project requires Road Crossing Permits from the Massachusetts Highway Department (MHD). The project will not require a Conservation and Management Permit from the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP) providing that the proponent adhere to the conditions specified by NHESP to avoid a "take" of rare species.

The project is also under review by the Massachusetts Energy Facilities Siting Board and will require a Certificate of Public Necessity and Convenience from the Federal Energy Regulatory Commission (FERC). The project is subject to a Coastal Zone Management (CZM) federal consistency review and requires an Army Corps of Engineers 404 permit. The project will also require a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the U.S. Environmental Protection Agency (EPA).

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 as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to land and related Article 97 issues, rare species, wetlands and water quality, stormwater and drainage, and transportation.

Alternatives

The ENF included a detailed alternatives analysis, including four alternative routes, which were rejected primarily due to potential impacts to residential and commercial areas, and safety concerns. One of the alternative routes (Alternative D) would also result in a longer alignment with additional forest and recreational impacts. The ENF also described alternative locations considered for the pig launcher station, as well as potential variations in the proposed route, and changes made based on consultations with DCR to reduce impacts to recreational activities at Shawme-Crowell.

The ENF proposed a 75-foot wide construction workspace. In order to minimize construction impacts, the proponent has arranged a temporary easement on a 25-foot portion of the adjacent KeySpan easement, thus reducing the amount of forest clearing required for the construction phase. A new 50-foot permanent easement is proposed in the ENF, which will be maintained in an herbaceous/scrub-shrub state following construction. In wetland resource areas, the ROW maintenance will be limited to 10-foot wide area. Based on comments received during MEPA review, the proponent has considered alternative configurations of the workspace, and opportunities to reduce clearing associated with construction and long-term maintenance activities. The proponent has agreed to reduce the construction workspace width to 70 feet and the permanent easement clearing width to 45-foot, subject to FERC approval. This change will result in a decrease in forest clearing by approximately 1.5 acres. Other alternatives that would further reduce land alteration associated with construction and operation were considered infeasible by the proponent due to operational safety considerations and emergency response access needs.

Article 97 Disposition

The proponent has been in consultation with the Division of Fisheries and Wildlife and the Department of Conservation and Recreation regarding proposed easements on state-owned land, and development of a mitigation package and other measures to ensure no net loss of Article 97 lands pursuant to the EOEA Article 97 Land Disposition Policy. As indicated in the proponent's letter of June 27, 2006, the proponent has committed to reimburse the Commonwealth's General fund for the market value of the easements within Shawme-Crowell and the MMR, and to provide an additional sum (estimated at two to three times the anticipated market value) towards mitigation of project-related impacts.

The majority of the land area affected by the project is within MMR property, which is under the ownership and control of the Division of Fisheries and Wildlife (DFW). The Administrative Board of DFW has voted to approve the disposition of a permanent easement on 13.7 acres of the proposed pipeline route that is within the Town of Sandwich. The proposed project will also affect approximately four acres of public forest land within Shawme-Crowell State Forest, which is owned and managed by the Department of Conservation and Recreation (DCR). The proposed pipeline route through Shawme-Crowell will require an easement over undisturbed forestland. As noted in the DCR comment letter, transfer of this easement, and subsequent clearing, construction, and maintenance activities will have a permanent impact on state forest. In accordance with the EOEA Article 97 Land Disposition Policy, the proponent must compensate DCR in an amount equal to or greater than the current fair market value of the state forest land acquired by the proponent. Consultations between the proponent and DCR are on-going with regard to compensation for loss of public park land. As stated in the DCR comment letter, the DCR Lands Committee will evaluate the disposition component of the project proposal in early July and will provide additional comments to the proponent at that time.

The proponent should implement DCR recommendations and provide additional information as requested in its comment letter. DCR has requested that the proponent:

- Maintain close contact with the Shawme-Crowell Park Supervisor, Mr. Les Perry during work activities and consult with Mr. Perry regarding trail connections, removal of vegetative debris, the status of turtles and other wildlife, and other project-related issues;
- Upgrade an existing gate adjacent to the proposed Temporary Access Road #9 to limit off-road vehicle (ORV) use and consult with the Park Supervisor regarding additional gates to address any problems relating to ORV that may arise in the future;
- Avoid conducting work during the summer recreation season to the extent feasible;
- Consult with DCR Ecologist Jack Lash regarding the occurrence of a "Watch-listed" coastal heath plan adjacent to the proposed pipeline corridor; and
- Provide a copy of the Public Archaeology Lab's report to DCR Archaeologist Tom Mahlstedt.

The proponent should continue consultations with DCR and DFW to finalize details of the mitigation package pursuant to the conditions for disposition exceptions of the EOEA Article 97 Land Disposition Policy.

Erosion and Sedimentation

The permanent easement and associated land clearing opens up additional areas that may encourage the use of off-road vehicles (ORV), which are already a source of erosion problems in the project area. The Environmental Management Commission (EMC) and other commenters raised concerns that the proposed project will likely exacerbate the erosion problem unless adequate steps are taken to control illegal ORV use along the pipeline route.

According to a letter received from the proponent during ENF review (dated June 27, 2006), the proponent has agreed to work closely with the EMC to develop effective strategies to restrict or otherwise discourage ORV use along its right-of-way. The proponent has agreed to implement measures such as gates or other barriers, and working with local law enforcement officials to address the ORV problem. The proponent should work closely with the EMC to develop and implement a detailed off-road vehicle management plan to avoid and minimize erosion impacts associated with construction and operation of the pipeline.

The ENF includes an Erosion and Sedimentation Plan that addresses construction methods, procedures for water bodies and wetlands crossings, spill prevention and post-construction activities. The plan should incorporate post-construction monitoring and maintenance of erosion problems over the life of the pipeline in erosion-sensitive areas.

Vegetation Management

The proponent should consult with the EMC and the Natural Resources staff at the Mass National Guard's Environmental and Readiness Center (E&RC) regarding the proposed vegetation management plan. I encourage the proponent to incorporate the EMC recommendations to the extent feasible in order to avoid any unnecessary vegetation clearance, and to develop a revegetation and maintenance program that can promote habitat diversity, as recommended by the Cape Cod Commission. The proponent should establish an invasive species management plan to avoid potential problems associated with invasive species in the easement

footprint. The timing of vegetation clearance should be coordinated with the Mass National Guard E&RC, and the proponent should ensure that the vegetation management plan is designed and implemented in accordance with any NHESP conditions to protect the Eastern Box Turtle.

Rare Species

The proposed project is located within the Massachusetts Military Reservation (MMR), which provides habitat for a wide variety of state-listed rare invertebrates, vertebrates, and plant species. NHESP has determined that the project as proposed in the ENF largely avoids habitats for many state-listed species with the exception of the Eastern Box Turtle (*Terrapene carolina*). The Natural Heritage and Endangered Species Program (NHESP) has determined that the project has the potential to result in a "take" and requires the project to file in compliance with the Massachusetts Endangered Species Act (MESA). The proponent has been in consultation with NHESP and received guidance to avoid and minimize impacts to the Eastern Box Turtle. NHESP is concerned with protecting turtles during construction work and future maintenance of the pipeline easement. The proponent has made commitments to avoid and minimize impacts to Eastern Box Turtle. The proponent should ensure that the project adheres to conditions specified by NHESP in order to avoid a "take" and the need for a Conservation and Management Permit.

The proponent should file a MESA Project Review Checklist with NHESP along with the results of pre-construction turtle surveys and a long-term maintenance protocol for the easement, which should include plans for on-going surveys and future radio-tracking efforts relating to the Eastern Box Turtle.

The project alignment includes Spotted Turtle (*Clemmys guttata*) habitat. The Spotted Turtle was recently de-listed as part of MESA List amendments. All MESA list amendments will become official once the Secretary of State's office publishes the Amendments in the coming month(s) in the Massachusetts Register.

The proponent has committed to a range of measures to avoid and minimize rare species impacts, which include:

- Prior to forest clearing, areas will be surveyed for barn owl roosts, and measures to minimize forest clearing will be implemented;
- Pre-construction turtle surveys and removal of individuals (which will be identified and marked) outside of the work area. Species identification forms will be submitted to NHESP;
- Radio-telemetry: all turtles identified during pre-construction surveys will be tracked using radio-telemetry to ensure they remain outside of the construction area;
- Daily surveys of workspace will be conducted to find and remove turtles, and transfer them to a similar habitat outside the workspace; and
- Contractors will be trained on turtle identification and a detailed protocol will be established to ensure appropriate course of action is taken by contractors to protect any turtles encountered.

Unexploded Ordinances (UXO) and Site Contamination

As further detailed in the DEP comment letter, the proposed pipeline alignment is located in an area that includes an abandoned jet fuel pipeline (DEP site RTN 4-11812). The former jet fuel pipeline extends for 11.25 miles from the Cape Cod Canal to the MMR. Approximately one mile of the proposed gas pipeline parallels the abandoned jet fuel line. The proponent should exercise caution to avoid any disturbance of the jet fuel pipeline and any oil contamination should be promptly reported to DEP. Contaminated soils should be excavated and removed from the area in accordance with the Massachusetts Contingency Plan 310 CMR 40.0000, and in no instances should contaminated soils be used as backfill in the area.

Due to the proximity of the MMR, the proponent should be aware of the potential to encounter military ordinances/munitions during pipeline installation. Any ordinances/munitions found should be immediately reported to public safety officials, the MMR and DEP, and should not be handled until the appropriate authorities can respond. I encourage the proponent to work closely with the appropriate agencies to ensure UXO or other contamination issues are adequately addressed.

Water Supply

The Cape Water Supply Reserve is managed as a Zone II groundwater recharge area. Any refueling or field maintenance of vehicles should be managed in accordance with the Environmental Performance Standards and Camp Edward's regulations. Hazardous materials management and spill prevention plans should be implemented in accordance with Camp Edward's regulation and State and Federal requirements. The proponent should coordinate with the Mass National Guard E&RC and the EMC to develop plans that are integrated with the Camp Edwards Spill Contingency Plan. I ask that the proponent also consult with the Cape Cod Commission regarding its comments and recommendations, including any issues relating to project consistency with the Regional Policy Plan (RPP).

The ENF indicates that herbicides or pesticides will not be used within 100 feet of a wetland or water body except as specified by the appropriate land management or state agency. This measure should be expanded to upland areas of the Upper Cape Water Supply Reserve and reports (as further detailed in Section 8.3 of the ENF Erosion and Sedimentation Control Plan) should be sent to the E&RC.

As noted by DEP in its comment letter, the Cape Cod Aquifer is particularly susceptible to perchlorate contamination and no blasting should be performed with materials containing perchlorate in their formulation. I refer the proponent to the DEP Memorandum entitled "Potential Environmental Contamination From the Use of Perchlorate-Containing Explosive Products" available at <http://www.mass.gov/dep/cleanup/laws/blasting.htm>

Wetlands and Water Quality

According to the ENF, the proposed project includes two vegetated wetlands crossings and will impact approximately 7,840 sf of BVW. A total of 158 linear feet of wetlands will be

crossed. A boring technique will be used for 98 feet of the proposed crossings. As further detailed in the DEP comment letter, use of the boring technique will not result in a direct discharge of fill to wetlands. If the boring technique is utilized, and total impacts to wetlands are less than 5,000 sf, the local Order of Conditions can serve as the 401 Water Quality Certificate. If the boring technique is not utilized, the project will require a 401 Water Quality Certificate from the DEP. As further detailed in the ENF, maintenance of wetlands resource areas along the pipeline easement will be limited to a 10-foot wide area that will be maintained in an herbaceous or scrub-shrub vegetative state.

Mitigation

The proponent has committed to a range of mitigation measures as further detailed in the ENF and correspondence received from the proponent during MEPA review. I expect that the mitigation package will be further developed during the Article 97 disposition process and based on consultations with state agencies. Mitigation measures to which the proponent has committed include:

- Reimbursement to the Commonwealth's General fund for the market value of the easements within Shawme-Crowell and the MMR, and an additional sum (estimated at two to three times the anticipated market value) towards mitigation of project-related impacts;
- Development and implementation of an ORV/ATV management plan, Erosion and Sedimentation Control Plan, and Spill Prevention Plan;
- Measures to protect Eastern Box Turtle and other rare species, including project area surveys, radio-telemetry tracking and monitoring of turtles, and contractor training;
- Revegetation of disturbed areas and restoration of drainage channels to pre-construction or improved conditions;
- An Environmental Inspector to oversee environmental aspects of construction activities;
- Construction practices in accordance with FERC plans and procedures to avoid, minimize, and mitigate environmental impacts.

The ENF has defined the nature and general elements of the project and proposed measures to avoid and minimize, and mitigate environmental impacts. I am satisfied that any remaining issues can be adequately addressed during the state and local permit and review processes. The proposed project requires no further review under MEPA.

July 14, 2006

DATE


Stephen R. Pritchard, Secretary

Comments Received:

5/26/06 Division of Fisheries and Wildlife
6/05/06 Cape Cod Commission
6/08/06 Executive Office of Environmental Affairs, Environmental Management
Commission
6/13/06 Department of Conservation and Recreation
6/13/06 Department of Environmental Protection (DEP)
6/27/06 Keegan Werlin LLP (on behalf of the proponent)

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