

**Town of Weymouth
Massachusetts**

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March 30, 2016

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs
Massachusetts Office of Coastal Zone Management
251 Causeway Street, Suite 800
Boston, Massachusetts 02114

***Re: Algonquin Gas Transmission, L.L.C. & Maritimes & Northeast
Pipeline, L.L.C. - Atlantic Bridge Project
Federal Consistency Review***

Dear Secretary Beaton:

On behalf of the Town of Weymouth, I respectfully submit these comments on the application of Algonquin Gas Transmission, L.L.C. and Maritimes & Northeast Pipeline, L.L.C. (collectively, the "Pipeline Companies") for a determination that their Atlantic Bridge Project is consistent with the *Coastal Zone Management Act*. The Town and I believe that the project is inconsistent in several different ways with well-established Massachusetts coastal management policies.

At the outset, I wish to stress the importance of the federal consistency review conducted by your Office. The Pipeline Companies requested that the Federal Energy Regulatory Commission ("FERC") issue a Certificate of Public Convenience and Necessity, pursuant to the *Natural Gas Act*, for the Atlantic Bridge Project (FERC Docket CP16-9). As part of that project, the Pipeline Companies propose a natural gas compressor station in North Weymouth.

The issuance of such a Certificate would preempt some state and local regulation of the project. However, the *Natural Gas Act* explicitly excludes from such preemption the "rights of States" under the *Coastal Zone Management Act*, the *Clean Air Act*, and the *Federal Water Pollution Control Act*.¹ Thus, the regulatory scheme relies on state regulators, such as yourself, to examine carefully and thoroughly the impacts of projects affecting the coastal zone.

As you know, the *Coastal Zone Management Act* allows the National Oceanic and Atmospheric Administration ("NOAA") to approve coastal zone management

¹ 15 U.S.C. §717b(d).

programs developed by the states.² Any applicant for a required federal license or permit for an activity in the coastal zone of a state with an approved management program must demonstrate “that the proposed activity complies with the enforceable policies of the state’s approved program and that such activity will be conducted in a manner consistent with the program.”³

NOAA approved Massachusetts’s program in 1978. The *Massachusetts Office of Coastal Zone Management Policy Guide*, published in October 2011 (the “*Policy Guide*”) contains the current official statement of that program’s policies.⁴

The detailed and thoughtful policies set forth in the *Policy Guide* show the value that we in the Commonwealth place on our coast. The cursory discussion provided in the Pipeline Companies’ application for federal consistency review falls well short of demonstrating that the construction of the proposed compressor station complies with those comprehensive policies.

I. The Available Information Shows That the Pipeline Companies’ Proposed Compressor Station Fails to Comply with Enforceable Policies of Massachusetts’ Approved Coastal Zone Management Plan.

The Pipeline Companies provided limited information that undermines the application’s conclusory assertions of compliance with the enforceable policies of Massachusetts’ approved coastal zone management plan.

A. The Proposed Project Fails to Comply With Energy Policy #1.

Energy Policy #1 (an enforceable policy) states:

For coastally dependent energy facilities, assess siting in alternative coastal locations. For non-coastally dependent energy facilities, assess siting in areas outside of the coastal zone. Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites.

The Pipeline Companies claim that the proposed compressor station “must be sited close to the I-10 pipeline system near the coastline both for engineering reasons related to the maximum operating pressure of the pipeline system and to minimize environmental impacts.” The Pipeline Companies fail to show, however, that the proposed station is “coastally dependent” as defined in Energy Policy #1.

² 16 U.S.C. §1455(d).

³ 16 U.S.C. §1456(c)(3)(A).

⁴ Available at <http://www.mass.gov/eea/agencies/czm/about-czm/czm-policy-guide/>.

The compressor station does not meet any of the criteria for coastally dependent facilities listed in the *Policy Guide*. Moreover, the *Policy Guide* specifically states (at p. 32) that “[g]as facilities that are not coastally dependent include...gas processing facilities and storage facilities.”

For non-coastally dependent facilities, the applicant must “propose, evaluate and compare at least one inland site.” The *Policy Guide* provides a list of nine factors that must be considered in all evaluations. In addition, evaluations of alternative gas facility sites must include assessment of the risks to public safety and evaluation of the size of available buffer zones between the proposed facility and other land or water uses.

The Pipeline Companies admit that the compressor station could be located on other parcels of land, many of them away from the coastal zone, while still allowing for the operation of the HubLine and the proposed pipeline expansion. Indeed, the alternatives analysis submitted as Appendix A to their application shows five alternative compressor sites away the coastal zone that would meet engineering requirements.

One of the identified alternatives is in Franklin, more than 22 miles away from the coast. The cursory analysis rejects all of the alternatives without considering all of the required factors. Moreover, the Pipeline Companies failed to specify how they identified the alternative locations, making it impossible to determine whether other more appropriate alternatives may be available.

The Town believes that a detailed and thorough alternatives analysis would show that there are better locations for the proposed compressor station than on the waterfront in a densely populated area. In particular, a more comprehensive evaluation would identify the unnecessary risks posed by siting the facility in the proposed location, including the public safety implications of the proposed location compared to other possible locations.

In addition, inclusion of the Pipeline Companies’ proposed Access Northeast project (FERC Docket PF16-1) in the evaluation would likely identify alternatives that are more feasible. In the Town’s view, the Pipeline Companies impermissibly segmented the Access Northeast project from the Atlantic Bridge project in order to mask the true environmental impacts of the compressor facility.

The segmentation of these projects also prevents a thorough and robust alternative analysis. For example, the Pipeline Companies argue that the Franklin alternative would require the construction of at least 30 miles of new pipeline.⁵ However, since the Pipeline Companies would construct much of this pipeline length

⁵ FERC CP16-9, Resource Report 10, p. 10-35.

anyway as part of the Access Northeast Project, siting the compressor station in Franklin would require the construction of only 5.7 miles of additional pipeline.⁶

The Pipeline Companies admitted this fact only after detailed follow-up questions from FERC as opposed to their voluminous FERC filings. The Massachusetts Energy Facilities Siting Board comments provided in Exhibit A similarly raise additional concerns about the omission of the Access Northeast project from the Weymouth compressor station alternatives analysis.

CZM as part of its federal consistency review should require a comprehensive review of both Atlantic Bridge and Access Northeast Projects to ensure a proper alternatives analysis, considering both projects' impacts, actually demonstrates, as opposed to presupposes, that the projects are truly "coastally dependent." I wrote a similar letter requesting that the Massachusetts Environmental Policy Act Unit conduct such a review to determine whether both projects require a combined environmental review.

B. The Proposed Project Fails to Comply With Coastal Hazards Policy #1.

Coastal Hazards Policy #1 (an enforceable policy) states:

Preserve, protect, restore and enhance the beneficial features of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, land subject to coastal storm flowage, salt marshes, and land under the ocean.

In the introduction to the Coastal Hazards section of the *Policy Guide*, CZM states that one of CZM's intentions is to "prevent, eliminate or significantly reduce threats to public safety, property, and environmental resources resulting from hazards such as erosion, flooding, and storm damage." The discussion of Coastal Hazards Policy #1 explains the problems created by siting facilities too close to the water and building coastal engineering structures to protect them; it recommends siting facilities as far landward as possible and using non-structural approaches to protect the coast.

The proposed Weymouth compressor station contradicts these goals. According to the federal consistency application, the proposed location of the compressor station is on filled tidelands, artificially elevated above the 100-year flood zone, on a manmade peninsula edged with riprap.

The proposed site is within a Hurricane Surge Inundation Zone. A Category 2 hurricane would render the compressor station inaccessible. A Category 4 hurricane

⁶ See FERC CP16-9, Pipeline Companies' Response to January 21, 2016 Data Request, at Resource Report 10, Question 5, fn. 4.

would completely submerge the station. A review of historical storm data demonstrates that Category 2 storms have occurred in the area. *See Exhibit A.*

C. The Proposed Project Fails to Comply With Several Ports and Harbors Policies regarding Siting Non-Water Dependent Uses in Designated Port Areas, such as the Weymouth Fore River.

Ports and Harbors Policies #3, #4, and #5 (all of which are enforceable) state:

Preserve and enhance the capacity of Designated Port Areas to accommodate water-dependent industrial uses and prevent the exclusion of such uses from tidelands and any other DPA lands over which an EEA agency exerts control by virtue of ownership or other legal authority.

For development on tidelands and other coastal waterways, preserve and enhance the immediate waterfront for vessel-related activities that require sufficient space and suitable facilities along the water's edge for operational purposes.

Encourage, through technical and financial assistance, expansion of water-dependent uses in Designated Port Areas and developed harbors, re-development of urban waterfronts, and expansion of physical and visual access.

The proposed compressor station is wholly located within the Weymouth Fore River Designated Port Area. The *Policy Guide* articulates the purpose of Designated Port Areas (DPAs) as follows:

DPAs are land and water areas with certain physical and operational features that have been identified to have particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce and to manufacturing, processing, and production activities reliant upon marine transportation or the withdrawal or discharge of large volumes of water. The two central principles of the state's DPA policy are to promote water-dependent industries as an important sector of the state's economy and to prevent the loss of areas that have key characteristics.... Because economic, environmental and social factors now virtually preclude further development of such an intensive nature, what remains of the industrialized coast should be preserved to the maximum extent practicable in order to meet the long-term, cumulative space needs of water-dependent industries. State policy seeks to protect these areas from the irretrievable commitment to, or significant impairment by, non-industrial or nonwater-dependent types of

development, which enjoy a far greater range of locational options.

To make use of this scarce waterfront property for a facility that could be located inland clearly contravenes these CZM Ports and Harbors Policies. As I wrote above regarding the project failing to be “coastally dependent,” in violation of Energy Policy #1, because the project is similarly not water dependent, the project fails several Ports and Harbors Policies.

D. The Proposed Project Fails to Comply With Public Access Policy #1.

Public Access Policy #1 (an enforceable policy) states:

Ensure that development (both water-dependent or nonwater-dependent) of coastal sites subject to state waterways regulation will promote general public use and enjoyment of the water's edge, to an extent commensurate with the Commonwealth's interests in flowed and filled tidelands under the Public Trust Doctrine.

The Commonwealth highly values and strongly protects the public trust interest in flowed and filled tidelands, as shown by Public Access Policy #1, which is enforceable through *G.L. c. 91* and the Department of Environmental Protection's Waterways Regulations.⁷ The Pipeline Companies' federal consistency review application gives short shrift to this important policy. It does not even provide a figure showing the extent of filled tidelands on the proposed site of the Weymouth compressor station. One must refer to the Pipeline Companies' Chapter 91 application to learn that:

[The] Weymouth Compressor Station will be fenced and occupy approximately 3.0 acres of filled private tidelands, and construction work space will temporarily occupy 6.6 acres of filled private tidelands and 1.7 acres of filled commonwealth tidelands, within the 16.2- acre parcel.

The federal consistency review application claims that public access requirements “are inapplicable and inappropriate” for water-dependent projects. However, as detailed above, the proposed project does not need to be located at the coast.

The project is neither “coastally dependent,” in violation of Energy Policy #1, nor water dependent, in violation of several Ports and Harbors Policies. Therefore, it

⁷ 310 CMR 9.00.

does not meet the criteria for water dependency requirements set forth in the Waterways Regulations.⁸

Providing public access to the property was the subject of a series of conditions of the approval granted by the Energy Facilities Siting Board for construction of the Calpine power generating facility located south of the proposed compressor station.⁹ The original owner of that facility, Sithe Edgar Development LLC, set aside for public recreation the Lovell's Grove and King's Cove areas, which are located on the parcel of the proposed compressor station.

In addition, EFSB required Sithe to work with Weymouth, the Fore River Watershed Association and state agencies to provide additional public access on the site. Neither Calpine, nor Sithe have fulfilled this condition, as discussed in the EFSB comments in Exhibit A. Instead of serving the interest of fulfilling these requirements, the large compressor station and associated fencing necessary for the project would obstruct the public's view of and access to the harbor.¹⁰ Construction of the facility would also seriously impinge on the community's ability to enjoy the Lovell's Grove and King's Cove areas, which regulators promised more than 15 years ago would be more open to the public.

II. The Pipeline Companies' Application Fails to Provide Required Certification or the Necessary Data and Information.

NOAA's regulations implementing the *Coastal Zone Management Act* federal consistency review process for federal licenses and permits require that the applicant provide a certification that "[t]he proposed activity complies with the enforceable policies of [the State's] approved management program and will be conducted in a manner consistent with such program."¹¹

No such certification was in the federal consistency review application materials provided by the Pipeline Companies' consultant. This certification is the fundamental requirement of the federal consistency review process; without it, CZM cannot consider the application complete. Moreover, the absence of the certification calls into question the Pipeline Companies' commitment to compliance with their obligations under the *Coastal Zone Management Act*.

⁸ Specifically, the project is not "ancillary" to a water-dependent infrastructure crossing facility. See 310 CMR 9.12(2)(d).

⁹ *In the Matter of Sithe Edgar Development LLC, Final Decision*, EFSB 98-7, February 11, 2000.

¹⁰ FERC CP16-9, Resource Report 1, p. 1-21.

¹¹ 15 CFR §930.57.

In addition, NOAA’s regulations call for states to specify the “necessary data and information” required for an applicant’s consistency certification.¹² The *Policy Guide* (at pp. 11-12) provides a detailed list of necessary data and information for federal consistency review. The list makes clear that the applicant must provide detailed and specific information about the proposed activity, as well as detailed and comprehensive analysis of the project’s effect and alternatives. The 26-page federal consistency review application submitted by the applicant, accompanied by the Resource Reports previously submitted to FERC, does not come close to meeting these requirements.

The Resource Reports address the entire project. They do not include sufficient information about the Weymouth compressor station, and one must comb through copious amounts of information in the reports regarding other components of the project to find what limited information there is on the compressor station. Numerous commenters, including the Town and the Massachusetts Energy Facilities Siting Board, have identified deficiencies in the information provided about the Weymouth compressor station, and the Town has submitted relevant factual information from various Town departments that raises concerns about the project.¹³

The Pipeline Companies’ federal consistency review application fails to address meaningfully these deficiencies and concerns. In addition, the Pipeline Companies have been submitting updated information to FERC that they do not appear to have provided to your Office. The Pipeline Companies should be required to resubmit an up-to-date application that provides the latest information on the project as well as all of the necessary data and information required by the *Policy Guide*.

III. Conclusion

For all of the above reasons, the proposed Weymouth compressor station fails to comply with the enforceable policies of Massachusetts’ approved coastal management program. CZM should determine that the Pipeline Companies’ Atlantic Bridge fails to adequately protect to state’s interest in the public waterfront and is inconsistent with applicable state and Federal laws.

¹² 15 CFR §930.58(2).

¹³ See comment letters attached as Exhibit A.

Office of Coastal Zone Management

Federal Consistency Review

Algonquin Gas Transmission, LLC and Northeast Pipeline, LLC

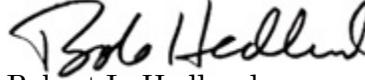
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Thank you for your courtesy and attention to these comments.

Sincerely,

A handwritten signature in black ink that reads "Bob Hedlund". The signature is written in a cursive, slightly slanted style.

Robert L. Hedlund

Mayor

cc: Chris Harvey, Director of Rates and Certificates, Spectra Energy Partners
Ralph Child, Attorney for Algonquin Gas Transmission, LLC
Terrance Doyle, Algonquin Gas Transmission, LLC
Michael Tyrrell, Algonquin Gas Transmission, LLC
Robert Shea, Presiding Officer EFSB
Ben Lynch, Director, Waterways Program, DEP
Frank Taomina, Waterways Program, DEP
Charles D. Baker, Governor
Elizabeth Warren, U.S. Senator
Edward Markey, U.S. Senator
Stephen Lynch, U.S. House of Representatives
James Murphy, State Representative
Ronald Mariano, State Representative
Rebecca Haugh, District 1 Council, Weymouth
Joseph Callanan, Town Solicitor
J. Raymond Miyares, Special Town Counsel