

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

ALGONQUIN GAS TRANSMISSION, LLC

Docket No. CP14-96-000

REQUEST FOR REHEARING OF TOWN OF DEDHAM

I. INTRODUCTION

Pursuant to 15 USC §717r(a) of the Natural Gas Act and 18 CFR §385.713 of the rules of the Federal Energy Regulatory Commission (“FERC”), the Town of Dedham, Massachusetts (“Dedham” or “Town”) hereby requests rehearing of the “Order Issuing Certificate and Approving Abandonment” (“Order”), 150 FERC ¶61,163, that was issued by FERC on March 3, 2015. The Order grants the application filed by Algonquin Gas Transmission, LLC (“Algonquin”) for construction of the Algonquin Incremental Market Project (“Project”) in New York, Connecticut, Rhode Island, and Massachusetts.

Dedham is directly and significantly impacted by the Project, insofar as approximately three miles of a new transmission pipeline will be constructed across the Town, passing through heavily-populated and highly-developed residential and commercial neighborhoods and along local streets and regional highways with high traffic volumes. The pipeline will connect Algonquin’s existing facilities to the south in the Town of Westwood, to a new meter and regulating station (“M&R Station”) to the north in the West Roxbury neighborhood of the City of Boston. As Dedham has demonstrated in comments submitted to FERC during the application process and has expressed to Algonquin officials on numerous occasions, the Project will impose significant adverse impacts on Dedham during the construction period by disrupting traffic, creating noise, and affecting business operations. Further, after the completion of the

Project, Dedham will be bisected, along its busiest roadway, by a high-pressure gas pipeline that poses a severe safety risk in the event of an accident or explosion.

Dedham contends that FERC has failed to assess adequately the Project's significant environmental impacts during construction, as well as the Project's long-term risks. Further, the scope of FERC's review of reasonable alternatives is wholly inadequate, and is seemingly controlled by the prior decisions of the companies that FERC ostensibly regulates, rather than by the requirements imposed on FERC by the Natural Gas Act and the National Environmental Policy Act. As a result, FERC has not engaged in a fair and credible evaluation of alternatives to the Project. Moreover, in the interests of meeting Algonquin's desired construction schedule, the Order allows the immediate commencement of the Project while leaving final details of the Project to be specified at a later date, an approach that has prevented full evaluation of the Project impacts and that places Algonquin in a superior negotiating position in respect to affected municipalities and private landowners.

Dedham requests, therefore, that FERC rescind the Order, expand the scope of its examination of alternatives to the Project, and issue a new Order only after fully considering all alternatives and specifying adequate mitigation measures, on a timetable that reflects the objective of a reasoned outcome and not the schedule desired by the regulated entity.

II. STATEMENT OF RELEVANT FACTS

The Order, at pages 1 through 5, provides the procedural history of the Project, its structural components, and the measures taken by Algonquin to solicit bids from local distribution companies and utilities for the supply of natural gas, as a basis for the construction of the Project.

Dedham first expressed its intent to be an Intervenor by a letter from the Dedham Town Administrator to FERC, dated March 25, 2014. In reviewing the docket at the time that the Draft

Environmental Impact Statement (“DEIS”) was issued, Dedham found that it had not been listed as an Intervenor. Dedham therefore filed both Town of Dedham’s Motion for Late Intervention and Town of Dedham’s Motion to Intervene on Basis of Draft Environmental Impact Statement. In Appendix A to the Order, Dedham is included in the list of timely Intervenors.

In response to the issuance of the DEIS, Dedham, through its Board of Selectmen, filed “Town of Dedham: Comments on Algonquin Incremental Market Project,” whereby the Board of Selectmen stated its opposition to the Project. Concurrently, Dedham, through counsel, filed “Town of Dedham Comments on Draft Environmental Impact Statement” (“Dedham DEIS Comments”), with detailed comments on issues that were addressed insufficiently in the DEIS, or on conclusions in the DEIS with which Dedham disagreed.

In the period since the issuance of the DEIS, Dedham has engaged in discussions with Algonquin representatives as to mitigation measures and necessary agreements for the use of Dedham’s property, on the understanding that Dedham remains opposed to the Project. Dedham has also monitored supplemental filings by Algonquin and FERC’s requests and orders, and filings by other parties, as well as reviewing the Final Environmental Impact Statement (“FEIS”) and the Order. As of this date, Dedham continues to engage in discussions with Algonquin representatives, but without waiving any rights to file this Request or pursue other avenues of appeal in opposition to the Project.

III. STATEMENT OF ISSUES

1. Whether FERC, in preparing the DEIS and FEIS, and in issuing the Order, has failed to comply with NEPA requirements as to the appropriate scope of review of alternatives to the Project.
2. Whether the Order improperly fails to resolve and define the complete and specific mitigation measures that are to be undertaken by Algonquin.
3. Whether FERC's review of potential safety hazards from the completed pipeline is inadequate, thereby rendering FERC's conclusions arbitrary and capricious, and not based on substantial evidence.
4. Whether Algonquin has failed to show, and FERC has erroneously concluded, that the public convenience and necessity require the construction of the Project.

IV. ARGUMENT

- A. FERC has erred by improperly limiting the scope of alternatives to the Project that are examined and considered in the FEIS.

The stated purpose of an environmental impact statement that must be prepared by a Federal agency is to “provide full and fair discussion of significant environmental impacts and . . . [to] inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts[.]” 40 CFR §1502.1. Further, in determining the scope of examined alternatives, the agency is to consider connected, cumulative, and similar actions. 40 CFR §1508.25. In this instance, FERC has erroneously limited the scope of its examination of alternatives to the Project, with the result that neither FERC nor the public are adequately informed of, or in a position to properly evaluate, reasonable alternatives to the Project.

Dedham is particularly and directly affected by the new pipeline, referred to as the West Roxbury Lateral (“Lateral”), which will be constructed through Dedham along a south to north

route, from an existing Algonquin facility in Westwood, Massachusetts to a new M&R Station in West Roxbury. Approximately three miles of the Lateral will be located within Dedham, nearly all of which will be located within densely developed residential and commercial areas. The Lateral will also pass through Gonzalez Field, a Town-owned park that is used for recreational purposes.

In commenting on the DEIS, Dedham stated:

...the DEIS does not take a sufficiently broad view of the available alternatives to meet the stated objective of the Lateral, which is to provide additional gas supplies to Boston Gas Instead, the DEIS assumes that, to meet that objective, the M&R Station must be built in West Roxbury, and the Lateral must pass through Dedham to reach the M&R Station. Further, even under an assumption that the Lateral is necessary to serve the Project purpose, the DEIS does not adequately evaluate alternative routes through Dedham that would reduce impacts on residential areas and avoid Gonzalez Field.

(Dedham DEIS Comments, p.1).

Dedham contended, further, that the construction of the Lateral, and its location, was based on the prior identification of a site in West Roxbury as the location of the M&R Station, as requested by Boston Gas, and that the DEIS failed to explore and evaluate other alternatives for connecting the Algonquin supply system to Boston Gas' distribution system. Such alternatives included other routes to serve a West Roxbury M&R Station from other existing or potential Algonquin facilities, and locations other than West Roxbury for a connection between the Algonquin and Boston Gas systems. As Dedham stated:

...based on the narrow focus of the DEIS, it appears that the selection of the West Roxbury M&R Station location was taken as a "given," as was the assumption that the new M&R Station was to be supplied through a connection to the existing Westwood facility. If the beginning and endpoints of the Lateral are accepted without examination, the most direct route is, indeed, through Dedham. The Town objects to this predetermination of the Lateral's route, and requests that the DEIS be revised to expand the geographical scope of the alternatives analysis.

(Dedham DEIS Comments, p.2).

The FEIS, and the resulting Order, do not respond adequately to Dedham's concerns, or satisfy the NEPA regulations. FERC and Algonquin rely on the decision by the Massachusetts Department of Public Utilities to approve a contract between Boston Gas and Algonquin, as a basis for accepting that West Roxbury is the only potential site for a connection between Algonquin's and Boston Gas's systems. As Dedham pointed out in its comments on the DEIS, other connection points and other routes were not considered. The FEIS does not cure this defect in the DEIS, and the resulting FERC decision is, therefore, flawed.

Further, FERC has refused to consider in this proceeding other Algonquin projects that are planned for the near term, which will deliver gas to the New England states and to the Boston area in particular. (Order, ¶¶108-111, 117-119). These are clearly "similar actions" under 40 CFR §1508.25, which should be evaluated together. These other projects are not merely conceptual or indefinite in timing: they are currently the subject of pre-filings with FERC and presentations by Algonquin to Boston-area communities. If those projects are on somewhat different planning and implementation schedules (though only by a year or two), that is the result of Algonquin's decisions.

The fact that Algonquin (and local distribution companies) have one project ready, while others are still on the drawing board, is an insufficient reason to approve the one without considering the others. The projects are similar in nature in purpose, and an overall examination, on a regional basis, of planning to increase gas supplies to New England may reveal feasible alternatives or desirable modifications to the Project.

To consider this Project in isolation fails to comply with NEPA requirements, and lacks common sense. In approving the Project, FERC is allowing the segmentation of its review and evaluation, on both environmental and economic grounds, of Algonquin's several projects.

FERC should not allow its review and approval process to be subject to such manipulation by the regulated entity.

Even assuming that the West Roxbury M&R Station is the necessary endpoint, FERC and Algonquin have inadequately examined an alternative that Dedham suggested, which was to route the southern section of the Lateral within the right of way of an interstate highway, so as to avoid a residential area. (Dedham DEIS Comments, pp. 2-3). The justification for dismissing the feasibility of this alternative was that the alternative is inconsistent with policies of the Massachusetts Highway Department. Where FERC approval preempts both state and municipal regulations, it cannot be said that overriding the preferences of a municipality is feasible, while setting aside the policy of a state agency is not.

Dedham recognizes that some minor modifications have been made to the proposed route of the Lateral during the development of the FEIS in the interest of reducing and mitigating impacts, including a revision of the route across the Town-owned Gonzalez Field. (Order, ¶¶132-133). Nonetheless, this has been “tinkering at the margins” of the Project, without fully evaluating the potential alternatives, on a region-wide basis. Dedham concludes that FERC’s decision making has been driven by Algonquin’s entreaties to reach a speedy decision that will allow construction to begin immediately on one project while Algonquin develops others, which will be presented to FERC within the next year or two, after the current Project is a fait accompli. This does not satisfy the objectives and requirements of NEPA review, and the Order must be rescinded for that reason.

- B. The Order is incomplete, insofar as it fails to define fully the mitigation measures that are to be undertaken by Algonquin.

If (notwithstanding the objections of Dedham and many other respondents) the Project is to be approved and proceed forward, Dedham recognizes that Algonquin has committed to some mitigation measures to reduce impacts on Dedham during the construction period, and that some specific measures have been incorporated, by reference, in the Order. These relate particularly to the timing and manner of construction, with the objective of reducing impacts on traffic flow and (in the case of Gonzalez Field) coordinating construction timing with the existing use of the facility, to lessen (though not eliminate) disruption and displacement.

Nonetheless, other potential measures are indefinite or unaddressed, and have been left, essentially, to be the subject of further negotiations between Algonquin and both municipal and state officials, as well as private landowners. See, e.g., Order, ¶¶79-81, 92-93; Appendix B, Conditions No. 22, 26). Dedham is now engaged in such negotiations with Algonquin concerning additional mitigation measures, beyond those already described in documents referenced in the FEIS and/or Order, to reduce noise and traffic impacts on residences in proximity to the construction route.

FERC's "conditional" approval of mitigation measures reflects the rushed nature of FERC's review, as a result of which FERC has issued its Order while determination of mitigation measures is still ongoing. Given the numerous comments that were filed in response to the issuance of the DEIS, FERC requested additional information from Algonquin, which, in turn, made several submissions of supplemental information, prior to the issuance of the FEIS. Dedham welcomes this process and the efforts made to address the issues raised by comments on the DEIS, but believes that the process of revising the Project and developing mitigation measures has been curtailed by FERC's apparent desire to meet a self-imposed deadline for

issuing the FEIS and the Order. As a result, the Order imposes conditions that, effectively, allow and require that the process of developing measures to mitigate the Project's impacts continue after the Order has already been issued.

FERC's approach of "approve now, figure out the details later" has several negative effects on the development and definition of additional mitigation measures. One effect is that Dedham, and others, find it necessary to file objections to the Order, given the uncertainty as to what mitigation measures will actually be required and implemented. This places some parties in the position of negotiating mitigation measures, while at the same time formally adopting adversarial positions. Further, given the preemptive effect of FERC approval (see Order, ¶151), the Order places Algonquin in a superior negotiating position with respect to state and local entities, to a degree that was not the case prior to the Order being issued.

Instead of issuing an Order with open-ended conditions and undefined mitigation measures, FERC should have withheld the Order until it was possible to include all mitigation measures and modifications within the Project approval. FERC's failure to do so renders its decision arbitrary and capricious, as it leaves important measures to be determined at a future date, and cedes control of key Project details to the applicant.

- C. FERC has inadequately reviewed potential safety hazards from the constructed pipeline, and has failed to require sufficient and reasonable monitoring requirements.

The construction and operation of Algonquin's high-pressure natural gas transmission line raises significant public safety concerns. The route within Dedham, for the most part, passes through heavily populated and developed commercial and residential areas, which are classified as "High Consequence Areas" for purposes of federal natural gas pipeline safety standards. While this classification is noted in the FEIS, Algonquin's and FERC's response is merely to reiterate that the pipeline will be constructed to Federal safety standards. (Order, ¶105).

Dedham certainly hopes that this will be the case, but this ought not to be accepted as conclusive as to the pipeline's safety. An evaluation of risk must involve both the assessment of the likelihood of failure of pipeline construction, and the consequences of failure. Where the consequences would be high (i.e., where, as here, a pipeline passes through a highly-developed and densely-populated area), safety measures ought to be more rigorous.

Safety concerns for the Lateral are heightened by the selected location of the West Roxbury M&R Station, adjacent to an active quarry where blasting occurs. (Order, ¶¶61-66). Dedham accepts and joins in the arguments made in the "Request for Rehearing of the City of Boston Delegation," which addresses the dangers posed by the proximity of the station to the quarry, and the inadequacy of the safety study on which the FEIS bases its conclusion that public safety will not be put at risk. Further, Dedham contends that FERC has not adequately considered the effects of a potential explosion at the M&R Station, or at the portion of the pipeline line in its vicinity, on the remainder of the Lateral that passes through Dedham.

Given the location of nearly the entire Lateral within a High Consequence Area, FERC has not taken adequate measures to minimize risk. Dedham continues to urge, as it did in its comments on the DEIS, that FERC impose specific requirements for post-construction assessment and ongoing monitoring of the pipeline throughout the period of its use, not only at the time of its construction and installation. (Dedham DEIS Comments, p.6). This is not a burdensome requirement, and is certainly a reasonable mitigation measure.

D. Algonquin has failed to show, and FERC has erroneously concluded, that the public convenience and necessity require the construction of the Project.

FERC's inadequate review of reasonable alternatives to the Project, and its failure to consider Algonquin's multiple pipeline-construction and capacity-expansion projects in a unified fashion, is not only a violation of NEPA requirements: it also prevents FERC from making a reasonable determination as to whether the Project will serve the public convenience and necessity. FERC should require that Algonquin determine and evaluate natural-gas demand and supply options on a regional basis (i.e., for eastern Massachusetts, at a minimum), and that Algonquin, in conjunction with the local utilities that it serves, demonstrate that its individual projects will, in combination, address regional needs in a comprehensive and cost-efficient manner.

Instead of such regional planning, FERC has adopted a reactive and short-sighted approach that considers the "public necessity" to be met as long as the natural-gas supplier can show that local utilities are willing to purchase the product. By basing its decision on the interests and choices of the suppliers and the utilities, FERC abdicates its responsibility to the public at large who are the ultimate consumers, and to the communities that will be affected by the construction and presence of the approved pipelines. As a result, in this instance, the Order is arbitrary and capricious, and not grounded in substantial evidence.

V. COMMUNICATIONS

Communications and correspondence regarding this proceeding should be served upon:

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VI. CONCLUSION

For the reasons stated herein, the Town of Dedham respectfully requests that its request for rehearing be granted, and that FERC rescind its Order issuing a certificate of public convenience and necessity for the Algonquin Incremental Market Project.

TOWN OF DEDHAM,

By its attorney,

/s/ John J. Goldrosen
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Date: April 2, 2015

CERTIFICATE OF SERVICE

I, John J. Goldrosen, hereby certify that on the below date, I served copies of the foregoing "Request for Rehearing of Town of Dedham" by electronic mail upon the parties designated on the service list in this proceeding.

Dated: April 2, 2015

/s/ John J. Goldrosen
John J. Goldrosen

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