



Department of Environmental Protection

Charles D. Baker
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Karyn E. Polito
Lieutenant Governor

Bethany A. Card
Secretary

Martin Suuberg
Commissioner

August 31, 2022

In the Matter of
Algonquin Gas Transmission LLC

OADR Docket Nos. 2017-011, 012
Waterways License Application
No. W16-4600
Weymouth, MA

INTERLOCUTORY REMAND ORDER

I have reviewed the Presiding Officer's July 15, 2022 Recommended Remand Decision ("RRD") in these appeals.¹ Based on my review, I issue the following Orders.

1. In her RRD, the Presiding Officer recommended that I issue a Remand Decision finding that the compressor station at issue in these appeals is not an ancillary facility pursuant to 310 CMR 9.02 or 310 CMR 9.12(2)(d). The Presiding Officer also recommended that I remand the Applicant's Chapter 91 License Application ("Application") in this matter to MassDEP's Waterways Program for further review of the Application, including the Program's consideration of the compressor station as a non-water dependent project, as agreed to by the Parties at the pre-hearing conference that the Presiding Officer conducted early on in this matter at which the Parties agreed that the compressor station should be reviewed by the Program as a non-water dependent project if it was determined in the

¹ The Presiding Officer's RRD is officially titled "Recommended Remand Decision Remanding Matter to MassDEP's Waterways Program for Further Permit Review."

adjudication of these appeals that the facility was not an ancillary facility pursuant to 310 CMR 9.02 or 310 CMR 9.12(2)(d).

2. At this time I am deferring making a final decision regarding whether to adopt, modify, or reject the Presiding Officer's finding that the compressor station at issue in these appeals is not an ancillary facility pursuant to 310 CMR 9.02 or 310 CMR 9.12(2)(d) because I would like a complete record before me that includes the further review of the Application that not only includes the review that the Presiding Officer recommended that I require MassDEP's Waterways Program to perform, specifically, the Program's consideration of the compressor station as a non-water dependent project, but also the Program's consideration of any other potentially relevant provisions of the Chapter 91 regulations. I would also like the Parties' respective positions on the Program's determinations resulting from its further review of the Application.

3. In her RRD, the Presiding Officer proposed a Remand Schedule for: (1) MassDEP's Waterways Program to perform the further license review of the Application; (2) the Parties to submit responses to the Program's determinations resulting from that review; and (3) MassDEP's Office of Appeals and Dispute Resolution ("OADR") to adjudicate any administrative appeal filed by the Parties of the Program's determinations. I find the proposed Remand Schedule acceptable and I therefore adopt it here with one modification to make clear that the Program is to perform a further license review based on the Program's consideration of the compressor station: (1) as a non-water dependent project; and (2) under any other potentially relevant provisions of the Chapter 91 regulations. The Remand Schedule, as modified, is as follows:

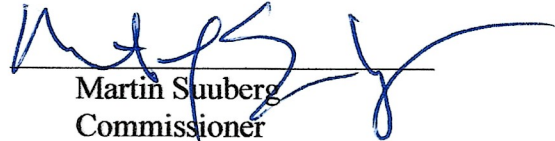
- A. Within 30 days after this Interlocutory Remand Order, the Applicant shall submit all necessary information to MassDEP's Waterways Program to enable the Program to make a determination regarding whether the compressor station as a non-water dependent use serves a public purpose within the meaning of 310 CMR 9.14(3) as well as the applicability of any other potentially relevant provisions of the Chapter 91 regulations ("the Determination"). The Applicant's information must be supported by the sworn Pre-filed Testimony ("PFT") and

documentary evidence of the individual or individuals who provided the information on behalf of the Applicant.

- B. Within 30 days after receiving the Applicant's information, MassDEP's Waterways Program shall inform the Applicant whether the information is administratively or technically sufficient or deficient for the Program to make the Determination.
 - (1) If the Applicant's information is administratively or technically deficient, the Applicant must remedy the deficiencies within 30 days after being notified of the deficiencies by the Program. The Applicant shall revise its previously submitted sworn PFT to reflect any deficiencies it has remedied.
 - (2) If the Applicant's information is administratively or technically sufficient, the Program shall, within 30 days thereafter, make the Determination. The Determination must be supported by the sworn PFT and documentary evidence of the Program staff who made the Determination and/or oversaw the making of the Determination.
- C. Within 30 days of receiving the Determination, the Applicant and the Petitioners shall review the Determination and if they are not satisfied with the Determination, they shall notify OADR in writing that they are appealing the Determination to OADR.
- D. Within 30 days after the appealing party's (a Petitioner's and/or the Applicant's) written notification to OADR that they are appealing the Determination, they shall file with OADR sworn PFT and documentary evidence supporting their position on the Determination.
 - (1) If the appealing party is a Petitioner, then their PFT shall include rebuttal testimony and documentary evidence directed to the Applicant's and MassDEP's PFT.
 - (2) If the appealing party is the Applicant, then their PFT shall include rebuttal testimony and documentary evidence directed to MassDEP's PFT.
- E. Within 30 days after the filing of the appealing party's (a Petitioner's and/or the Applicant's) sworn PFT and documentary evidence:
 - (1) MassDEP shall file sworn rebuttal PFT of the MassDEP staff who reviewed and/or oversaw MassDEP's review of the appealing party's (a Petitioner's and/or the Applicant's) claims challenging the Determination; and
 - (2) The non-appealing party or parties shall file sworn rebuttal PFT of the individual or individuals who, on behalf of the non-appealing party, reviewed the appealing party's (a Petitioner's or Applicant's) claims challenging the Determination.
- F. Within seven (7) days after the filing of MassDEP's and the non-appealing

parties' filing of sworn rebuttal PFT, an OADR Presiding Officer shall conduct a Remand Evidentiary Adjudicatory Hearing ("Hearing") to adjudicate the Determination's validity.

- G. Within 30 days after the Hearing Transcript is filed with OADR,² the appealing parties, non-appealing parties, and MassDEP shall file with OADR Post-Hearing Briefs supporting their positions on the Determination's validity based on the testimonial and documentary evidence presented at the Hearing.
- H. Within 30 days after the Post-Hearing Briefs are filed with OADR, the Presiding Officer shall issue a Recommended Final Decision on Remand for my review.
- I. Within 30 days after receiving the Presiding Officer's Recommended Final Decision on Remand, I will issue my Final Decision on Remand addressing all issues on remand in these appeals including the deferred issue of whether the Applicant's compressor station is or is not an ancillary facility pursuant to 310 CMR 9.02 or 310 CMR 9.12(2)(d).



Martin Suuberg
Commissioner

² Private parties in the appeal are responsible for retaining a certified court reporter/stenographer for the Hearing at the parties' expense.

SERVICE LIST

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OADR Docket Nos. 2017-011, 012

Algonquin Gas Transmission LLC

**Waterways Application No. W16-4600
Weymouth, MA**

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