

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

KeySpan Energy Delivery New England
Order Opening Investigation

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January 8, 2003

ACTION BY CONSENT

I. INTRODUCTION

This "Action by Consent" is made pursuant to authority granted the Chairman of the Energy Facilities Siting Board (ASiting Board@) under 980 CMR 2.06. Section 2.06 provides the Siting Board with the authority to render a decision when the Siting Board determines that expeditious action is necessary. 980 CMR 2.06(1).

On September 9, 2002, Colonial Gas Company d/b/a/ KeySpan Energy Delivery New England (AKeySpan@ or ACompany@) filed with the Energy Facilities Siting Board (ASiting Board@) a petition for approval to replace approximately 32,000 feet of natural gas pipeline in the Towns of Bourne, Falmouth and Sandwich (AKeySpan project@). On October 4, 2002, in response to inquiries from Siting Board staff, KeySpan stated that it replaced approximately 6000 feet of 8-inch diameter pipeline with 12-inch diameter pipeline between January and May 2000 (AOctober 4 Letter@). During this time, the Company replaced pipeline in the Towns of Sandwich and Falmouth along Simpkins and Sandwich Roads (October 4 Letter at 1 and associated map).¹ KeySpan stated that it replaced the pipeline to address specific pressure constraints in the Sandwich and Falmouth area and that a majority of construction occurred on land within the Massachusetts Military Reservation (AMMR@) (October 4 Letter at 2 and associated map).

Pursuant to G.L. c. 164, ' 69J, natural gas pipelines that are longer than one mile and have a normal operating pressure in excess of 100 pounds per square inch gauge may not be constructed Aunless a petition for approval of construction of the facility has been approved by the [Siting B]oard.@ KeySpan's upgrade of 6000 feet of pipeline would appear to require Siting Board review; however KeySpan did not seek Siting Board approval prior to constructing the project. Therefore, the Siting Board is opening this investigation: (1) to examine the circumstances under which the approximately

¹ For a segment of the pipeline along Simpkins Road in Sandwich, the pipeline route is abutted along the east side of the road by property/public way located in Mashpee.

6000 feet of pipeline were constructed; (2) to determine whether the approximately 6000 feet of pipeline were constructed in violation of G.L. c. 164, ' 69J; (3) to determine whether KeySpan failed to seek other state permits for the upgrade project; (4) to assess whether any damage to the environment or harm to KeySpan's customers occurred due to the Company's failure to obtain Siting Board approval; and (5) to determine whether any redress is warranted. Redress could include monetary sanctions, environmental remediation, recommendations to the Department of Telecommunications and Energy regarding future rate treatment of the costs of the upgrade, or a recommendation to the Office of the Attorney General.

II. BACKGROUND

The legislative mandate of the Siting Board is to ensure a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. G.L. c. 164, ' 69H. As the agency of first permit,² the Siting Board provides coordinated review of critical energy infrastructure projects by officials representing consumer, environmental, and economic development interests, including representatives from the Executive Office of Environmental Affairs, the Department of Economic Development, and both the Department of Telecommunications and Energy and the Division of Energy Resources within the Office of Consumer Affairs. In addition, the Siting Board process provides members of the public an opportunity to be heard on important environmental and community issues associated with the construction of energy infrastructure.

Because the Siting Board review process addresses issues of reliability and energy costs, as well as environmental impacts, and because it provides for public input, compliance with individual environmental permitting programs is not a substitute for Siting Board review. Such compliance cannot ensure that Massachusetts energy needs are met through carefully planned infrastructure projects, rather than by a series of stop-gap measures that could result in deterioration of overall system reliability or increased costs to consumers. To allow utilities to substitute compliance with individual environmental permitting programs for Siting Board review would thwart the legislature's intent to provide for a coordinated approach to energy infrastructure projects.

KeySpan has suggested that the Siting Board conduct a post-construction review of the approximately 6000 feet of pipeline in the context of the Board's review of the KeySpan's 32,000 foot project. We will review the long-term impacts of the entire route, including the approximately 6000 feet of pipeline already constructed, during our review of the KeySpan project. However, post-construction review circumvents the major purposes of Siting Board review **B** to ensure that ratepayers are not charged for

² The Siting Board must approve a particular facility before any other state agency can issue a construction permit for that facility. G.L. c. 164, ' 69J.

unnecessary projects, to ensure that the best alternative is built, to address construction impacts and safety issues,³ and to seek community input.

Further, we note that the Siting Board's coordinated review would have been particularly valuable in this instance since multiple state and federal agencies already are cooperating relative to land use issues on the MMR. Specifically, the Acts of 2002, c. 47 (the Act) establishes an environmental management commission to monitor the activities on the MMR. The Act, at ' 4. The commission consists of the Commissioner of the Department of Fisheries, Wildlife and Environmental Law Enforcement; the Commissioner of Environmental Management, and the Commissioner of Environmental Protection. Id. The commission is assisted by a community advisory council that includes representatives from the Towns of Falmouth, Bourne and Sandwich, and a science advisory council appointed by the Governor. Id. at ' 6. In addition, federal entities such as the national guard are required to provide the commission with annual reports regarding various activities on the MMR. Id. at ' 9.

III. ORDER

The Siting Board hereby opens an investigation regarding the circumstances under which KeySpan constructed approximately 6000 feet of natural gas pipeline in the Towns of Sandwich and Falmouth between January and May 2000. The Siting Board directs KeySpan to cooperate fully with this investigation and requires KeySpan, inter alia, to provide all information requested by Siting Board staff and to present oral testimony, if requested to do so. Attached to this Order is a list of questions which the Siting Board expects KeySpan to answer no later than January 22, 2003. At the conclusion of this investigation, the Siting Board will take such further action as it deems necessary.

This Action by Consent may be executed in any number of counterparts, each of which shall be an original, but all of which constitute one agreement, and shall be dated and become effective when the copies bearing all of the signatures of the Siting Board members are received by the Chairman. 980 CMR 2.06(2).

³ The Siting Board has consulted with the Pipeline Safety and Engineering Division of the Department of Telecommunications and Energy ("Pipeline Safety Division"). The Pipeline Safety Division stated that it has reviewed construction records regarding the approximately 6000 feet of replacement pipeline and has found no safety-related issues.

Signed:

Paul B. Vasington
Chairman
Energy Facilities Siting Board/
Department of Telecommunications and Energy

Date

W. Robert Keating
Commissioner
Department of Telecommunications and Energy

Date

Deirdre K. Manning
Commissioner
Department of Telecommunications and Energy

Date

David L. O'Connor
Commissioner
Division of Energy Resources

Date

Joseph Donovan
for Peter J. Abair, Director
Department of Economic Development

Date

Sonia Hamel
for Robert Durand
Secretary of Environmental Affairs

Date

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

**FIRST SET OF INFORMATION REQUESTS
SITING BOARD INVESTIGATION
COLONIAL GAS COMPANY
D/B/A/ KEYSpan ENERGY DELIVERY NEW ENGLAND
EFSB 02-3**

Pursuant to EFSB 02-3, Colonial Gas Company d/b/a/ KeySpan Energy Delivery New England (“KeySpan” or “Company”) is directed to answer the following questions no later than January 22, 2003. KeySpan shall provide five copies of its answers to the Presiding Officer in this matter, Jolette Westbrook. Each question shall be answered in writing on a separate 3-hole punched paper with a recitation of the Information Request, a reference to the request number, the docket number of the case, the date of the response and the name of the person responsible for the response.

- INV-1 Please state the exact length of the natural gas pipeline replaced in the Towns of Sandwich and Falmouth along the route of the proposed pipeline in EFSB 02-1.
- INV-2 Please state the precise dates of the replacement project referenced in INV-1 and the length of the construction period.
- INV-3 Please state the cost of constructing the replacement project referenced in INV-1.
- INV-4 Please state in detail the purpose(s) of the pipeline replacement project referenced in INV-1. Include in your answer whether KeySpan considered other alternatives to building the pipeline. For any such alternative(s), please state why pipeline construction was chosen over the alternative.
- INV-5 Please list all permits that KeySpan sought before it built the pipeline replacement project referenced in INV-1, and any permits sought during construction or after construction. For each permit listed, state at which stage of the construction process the permit was sought, whether the permit was actually issued to KeySpan and, if so, the date the permit was issued.
- INV-6 Please list all state, federal, and local entities that were informed of the pipeline replacement project referenced in INV-1, including as applicable, the U.S. Coast Guard and the Department of the Air Force. Please state how and when KeySpan informed each entity of the pipeline construction.

First Set of Information Requests

- INV-7 Please state whether property owners along the pipeline route were informed about construction of the pipeline. Please state when and how KeySpan informed property owners of the pipeline construction. Please provide a copy of any and all correspondence KeySpan sent to property owners concerning construction of the replacement project referenced in INV-1
- INV-8 Please provide three maps. Each map should clearly show the route of the pipeline replacement project referred to in INV-1, including the precise starting and end points and interconnections. In addition, Map 1 should show the location of abutting residences and other sensitive receptors along the route. Map 2 should show the location of any wildlife habitat along the route, wetlands or water resources along the route, and any vernal pools along the route. Map 3 should show the location of any hazardous materials along the route. All maps must be of a readable scale and clearly labeled.