

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

In the Matter of the Initial Petition and
Application of Colonial Gas Company d/b/a
National Grid for a Certificate of Environmental
Impact and Public Interest

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EFSB 18-05

FINAL DECISION

Robert J. Shea
Presiding Officer
September 26, 2019

On the Decision:

John Young

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The Massachusetts Energy Facilities Siting Board (“Siting Board” or “Board”) hereby (1) GRANTS the Initial Petition, (2) GRANTS the Application of Colonial Gas Company d/b/a National Grid (“Colonial” or “Company”) for a Certificate of Environmental Impact and Public Interest to construct Phase III of the Western Segment of the Sagamore Line Reinforcement Project, subject to conditions; (3) APPROVES Colonial’s requested project change allowing the Company permission to test the pipeline to be constructed hydrostatically rather than pneumatically, subject to conditions; and (4) GRANTS Colonial’s request for an extension of time in which to complete the Project.

I. INTRODUCTION

A. Summary of the Proceeding

Pursuant to G.L. c. 164, §§ 69K - 69O (the “Certificate Statute”), Colonial filed with the Siting Board an Initial Petition and Application for a Certificate of Environmental Impact and Public Interest (“Certificate”).¹ The Company requests that the Siting Board issue a Certificate comprising all local approvals and other authorizations needed for the Company to construct Phase III of the Western Segment of the Sagamore Line Reinforcement Project (“SLRP”) (Phase III of the Western Segment by itself is herein referred to as the “Project”) (Exhs. NG-1, at 1; NG-2, at 1). Other than the Project, all other elements of the SLRP have already been constructed (Exh. NG-1, at 3; Company Brief at 2 n.10).

The Company states that the filing of the Initial Petition and Application for a Certificate was necessitated by “two distinct and independently sufficient triggering events” (Exh. NG-1, at 2). The first event was the insertion of “unreasonable and burdensome conditions” by the Town of Barnstable (“Barnstable”) in its grant of the Company’s application for a Road Opening/Trench Permit (the “Original Barnstable Permit”) (Exh. NG-2, at 2). The second event was the failure of the Town of Sandwich (“Sandwich”) to take action on the Company’s application for a Public Property Road Work/Trench Permit (“Sandwich Permit”) (*id.*). The Certificate, appended to this Decision as Exhibit A, has the effect of granting: (1) a Barnstable Road Opening/Trench Permit (“Barnstable Permit”), subject to conditions; and (2) the Sandwich Permit, also subject to conditions.

¹ The Company filed the Initial Petition on December 14, 2018, and the Application on February 1, 2019. The procedural history of this case is set forth in section I.E, *infra*.

In the Initial Petition, the Company also requested that the Siting Board issue a Tree Work Permit from Barnstable and a Tree Work Permit from Sandwich as part of the Certificate (Exh. NG-1, at 13-15). Subsequently, the Barnstable Tree Warden and the Sandwich Tree Warden each issued the requested permits (Exhs. EFSB-NG-24(S1); EFSB-NG-24(S3); EFSB-NG-24(S2)(1); EFSB-NG-24(S1)(2)). The Company accepted the conditions imposed by these permits, and the Company has completed the tree trimming work in both Barnstable and Sandwich (Exh. EFSB-NG-24(S3)). Accordingly, the Company has withdrawn the Barnstable and Sandwich Tree Work Permits from the Certificate request (Exh. EFSB-NG-24(S3)).

The Petition also contains two other requests, neither of which is directly related to the Certificate. First, Colonial requests permission to test the pipeline to be constructed hydrostatically rather than pneumatically (Exh. NG-1, at 29-30; Company's Brief at 29-31). Pneumatic testing was the original method approved by the Siting Board for testing the SLRP (Exh. NG-1, at 29; Company Brief at 29-31). Second, the Company requests a two-year extension of time previously granted by the Siting Board (and extended by legislative action, described *infra*) to complete the Project (Exh. NG-1, at 30-33; Company Brief at 31-35). The Decision in this proceeding grants both requests.

B. History of Prior Proceedings and Summary of the Project

When completed, the SLRP would consist of three non-contiguous segments of natural gas distribution pipeline, approximately 13.1 miles in combined length. Colonial Gas Company d/b/a KeySpan Energy Delivery, EFSB 05-2, at 1 (2006) ("Sagamore I"). The three segments are designated as Western, Eastern, and Middle, and when completed would run through the towns of Sandwich, Barnstable, Yarmouth, Dennis, and Harwich, Massachusetts. Id. at 1-3. The SLRP's purpose has been to address low-pressure issues on the Sagamore Line and to provide deliverability for additional gas. Id. at 1. The Siting Board approved construction of the SLRP, pursuant to G.L. c. 164, § 69J, on May 17, 2006. Id. at 122.

In September 2006, the Company filed a certificate petition pursuant to G.L. c. 164, §§ 69K-69O, requesting that the Siting Board override the Cape Cod Commission's ("CCC") denial of the Company's application for a Development of Regional Impact ("DRI"). Colonial Gas Company d/b/a KeySpan Energy Delivery, EFSB 06-1 (2007) ("Sagamore II"). The Siting Board issued a Certificate that had the effect of granting DRI approval for the construction of the

first-built section of SLRP (Phase I of the Middle Segment), approximately 12,000 feet long, in Yarmouth. Sagamore II at 1, 2, 44-53.

On October 9, 2012, the Company filed a Notice of Project Change (“NOPC”) with the Siting Board. Colonial Gas Company d/b/a National Grid, EFSB 05-2A (2014) (“Sagamore III”). Pursuant to this NOPC, the Company sought permission to re-align the approved pipeline route for Phases I and II of the Western Segment approximately 15 feet northward and to test these portions of the pipeline hydrostatically rather than pneumatically. Sagamore III at 2-4. The Siting Board approved these project changes on August 14, 2014. Id. at 36-40.

C. Jurisdiction

The Siting Board is the state agency in Massachusetts charged by the Legislature with overseeing and permitting the siting, construction, and operation of jurisdictional energy facilities in the Commonwealth to ensure a reliable supply of energy at the lowest possible cost and with the least environmental impact. G.L. c. 164, §§ 69H; see, e.g., Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd., 457 Mass. 663, 668 (“Alliance II”); Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd., 448 Mass. 45, 46-47 (2006) (“Alliance I”); City Council of Agawam v. Energy Facilities Siting Bd., 437 Mass. 821, 822 (2002); Box Pond Ass’n. v. Energy Facilities Siting Bd., 435 Mass. 408, 409-10 (2001).

In accordance with this broad authority, the Siting Board has been delegated the statutory authority to issue Certificates of Environmental Impact and Public Interest for jurisdictional energy facilities that have been unable to obtain other state or local permits, approvals, licenses or other forms of authorizations.² G.L. c. 164, §§ 69K-69O; Sagamore II at 1. The authority to issue the Certificate is a fundamental component of the Siting Board’s jurisdiction over energy infrastructure projects in the Commonwealth. It represents an explicit recognition by the Legislature that energy facilities that satisfy the Siting Board’s statutory mandate under G.L. c. 164, §§ 69J-69O should not be thwarted by the contrary actions (or inactions) of other state or local governmental bodies. See Alliance II, 457 Mass. at 674-675; G.L. c. 164, § 69K; see also 980 CMR 6.05(3). In fact, the Supreme Judicial Court (“SJC”) has explicitly instructed the Siting

² The statutory terms “local government,” “local agency,” and “local agency or body” are used interchangeably in the Siting Board’s statutes and such terms include regional agencies such as the Cape Cod Commission. Alliance II, 457 Mass. at 675-676.

Board that Section 69K is “an express legislative directive to the [Siting Board] to stand in the shoes of any and all State and local agencies with permitting authority over a proposed ‘facility.’” Alliance II, 457 Mass. at 678.

National Grid filed its Initial Petition and Application for a Certificate under G.L. c. 164, §§ 69K - 69O and 980 CMR 6.00 et seq. Pursuant to these provisions, any electric, gas, or oil company that proposes to construct or operate an approved jurisdictional energy facility in Massachusetts may seek a Certificate from the Siting Board if the applicant is prevented or delayed from building the facility because of an adverse state or local agency permitting decision or undue agency delay.³ See G.L. c. 164, § 69K; see also, Cape Wind Associates, LLC, EFSB 07-8, at 3 (2009) (“Cape Wind”); Exelon West Medway, LLC and Exelon West Medway II, LLC, EFSB 17-01, at 4 (2017) (“Exelon”). The Certificate, if granted, has the legal effect of granting the permit in question, and may grant additional project permits as well. The Siting Board makes a decision on a Certificate Application for a facility in accordance with: (1) G.L. c. 164, § 69L (which requires that an Application contain certain information and representations); (2) G.L. c. 164, § 69O (which requires the Siting Board to include four specific findings and opinions in its decision on an Application); and (3) G.L. c. 164, § 69H (which requires the Siting Board to implement the energy policies in its statute to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost).

D. Chronology of Events Leading to the Certificate Request

1. Original Barnstable Permit

The following facts regarding the Company’s efforts to obtain the Original Barnstable Permit are not in dispute:

³ The statutory terms “local government,” “local agency,” and “local agency or body” are used interchangeably in the Siting Board’s statutes and such terms include regional agencies such as the Cape Cod Commission. Alliance II, 457 Mass. at 675 676.

1. Prior to the filing of the Original Barnstable Permit application, the Company met in person with municipal officials, including the Director of the DPW and the Town Manager regarding the Project on multiple occasions (Exhs. NG-1, at 8; NG-2, at 8; NG-2, Att. C).
2. Specifically, the Company held meetings with Barnstable officials on April 15, 2016, July 12, 2016, September 2, 2016, March 10, 2017, March 22, 2017, and October 16, 2017 (Exhs. NG-1, at 8, n.7; NG-2, at 8, n.11).
3. The Company filed its Original Barnstable Permit application with Barnstable on October 17, 2017 (Exhs. NG-1, at 7; NG-1, Att. B; NG-2, at 8).
4. Subsequent to the filing of the Original Barnstable Permit application, the Company continued discussions with officials from Barnstable, including a meeting on April 12, 2018, regarding outstanding issues related to the Project (Exhs. NG-1, at 8; NG-1, at Att. C; NG-2, at 8).
5. On May 15, 2018, the Company sent a certified letter to Barnstable officials pursuant to 980 CMR 6.02(2)(b), providing a detailed explanation of the requests by Barnstable that the Company could accommodate and those it could not (Exhs. NG-1, at 8; NG-1, Att. C; NG-2, at 8).
6. Barnstable granted the Company's application for the Original Barnstable Permit on July 5, 2018 (Exh. NG-1, at 18, and Att. D). The Original Barnstable Permit Approval contains 15 specific conditions (Exh. NG-1, at 18, and Att. D).
7. Condition 1 of the Original Barnstable Permit Approval requires the Company to restore Service Road in accordance with construction drawings and specifications to be provided by the Town of Barnstable, which restoration is to include but not necessarily be limited to the following:
 - a. Reconstruct full-depth of existing pavement and widen pavement to 32 feet.
 - b. Provide clear zones (unpaved shoulders) beyond edges of pavement where guardrails are not needed.
 - c. Install drainage systems (e.g., asphalt berms, catch basins, leaching basins, etc.) where needed to prevent erosion and standing water.
 - d. Remove and reset, replace, modify and/or add guardrails.
 - e. Remove and reset, replace, modify and/or add signage.(Exh. NG-1, Att. D, Conditions of Approval at 1).

8. Condition 2 of the Original Barnstable Permit Approval applies all of the above requirements to “the entire length and width of Service Road from the Sandwich/Barnstable Town Line to Route 149, approximately 9,500 linear feet” (Exh. NG 1, Att. D, Conditions of Approval at 1).
9. Conditions 1 and 2, set forth above, constitute conditions with which the Company asserts that it would be unable to comply; the Company articulated this position to Barnstable before the permit was issued (Exhs. NG-1, at 8-10; NG-1, Att. C; NG-2, at 8-9).
10. The Street Restoration Standards of the Department of Public Utilities as set forth in D.T.E. 98-22 (“DPU Standards”) apply to utility road restoration work (Exh. NG-1, at 9). The DPU Standards are reproduced as part of Attachment E to the Initial Petition (Exh. NG-1, Att. E, at 10-25).
11. The DPU Standards provide that: “a Utility, after excavating in any municipal street, lane and highway . . . [must] restore such street, lane and highway *to the same condition* in which they were found before the excavation” (emphasis supplied) (Exh. NG-1, at 9, and Att. E, at 10).
12. According to the Company, the widening of the road and the improvements that the Original Barnstable Permit require exceed the requirements set forth in the DPU Standards that apply to utility road restoration work (Exh. NG-1, at 9, and Att. E, at 10-25).
13. For example, condition 1.a of the Original Barnstable Permit Approval requires the Company to reconstruct and widen Service Road in Barnstable to 32 feet (Exh. NG-1, Att. D Conditions of Approval at 1). The current width of Service Road is 20 to 22 feet (Exh. NG-1, at 9, n.8).
14. In addition, the Original Barnstable Permit Approval also requires the Company to provide clear zones (unpaved shoulders) beyond edges of pavement where guardrails are not needed; install drainage systems (e.g., asphalt berms, catch basins, leaching basins, etc.) where needed to prevent erosion and standing water; remove and reset, replace, modify and/or add guardrails; and remove and reset, replace, modify and/or add signage (Exh. NG-1, Att. D Conditions of Approval at 1).
15. Barnstable has estimated that it would cost approximately \$3,875,000 to restore Service Road in accordance with its Original Barnstable Permit Approval (Exh. NG-1, at 9). This would be at least \$2,600,000 more than the Company’s original estimate to repave Service Road in Barnstable from curb to curb (Exh. NG-1, at 9).
16. Adding an additional \$2,600,000 to the current estimated total cost of the Project of \$15,500,000 would increase the cost of the Project by approximately 17 percent (Exh. NG-1, at 9).
17. According to the Company, this increase would impose additional costs on the Company’s customers that are not directly related to the installation of the Project (Exh. NG-1, at 9-10).

18. The Company addressed the issue of additional costs imposed by the Original Barnstable Permit in a letter to the Town of Barnstable Director of Public Works dated November 13, 2018 (Exh. NG-1, Att. E, at 1-5).⁴ In this letter, the Company states that it is unable to meet certain conditions imposed by the Original Barnstable Permit “because the requirements go well beyond standard restoration, and the increased costs in order to comply should not be borne by National Grid’s customers” (Exh. NG-1, Att. E, at 5). In this letter, the Company also references its obligations as “stewards of ratepayer funds” (Exh. NG-1, Att. E, at 5).
19. On December 14, 2018, the Company filed with the Siting Board the Initial Petition that commenced this proceeding.
20. On December 21, 2018, Matthew Beaton, Chair of the Siting Board, issued a Determination on Initial Petition for Certificate of Environmental Impact and Public Interest (“Determination”). The Determination provides that the Siting Board will accept a Certificate Application from the Company and will “consider the merits of the Initial Petition concurrently with a hearing on the Application” (Determination at 3).
21. On February 1, 2019, the Company filed an Application for a Certificate of Environmental Impact and Public Interest Pursuant to G.L. c. 164, §§ 69K-69O.
22. On March 28, 2019, the Company entered into a Memorandum of Understanding with the Town of Barnstable (the “Barnstable MOU”) (Exh. NG-3). The Barnstable MOU was revised on April 19, 2019, in order to be consistent with conditions in a Memorandum of Understanding entered into between the Company and Sandwich, and was memorialized in a First Amendment to the Barnstable MOU (“First Amendment”) (Exhs. EFSB-NG-33(S1)(1)). Per the terms of the Barnstable MOU, as amended, the Company and the Town of Barnstable jointly request that the Siting Board issue a Certificate that is consistent with the terms and conditions agreed to by the Company and Barnstable (Exhs. NG-3; EFSB-NG-24; EFSB-NG-33(S1)(1)).

2. Town of Sandwich Permit

The following facts regarding the Company’s efforts to obtain the Sandwich Permit are not in dispute:

1. Prior to filing the Sandwich Permit Application, the Company met in person with municipal officials, including the DPW Director and Town Manager prior to the filing on multiple occasions (Exhs. NG-1, at 10; NG-2, at 9; NG-2, Att. D).
2. On November 1, 2017, the Company filed the Sandwich Permit Application (Exhs. NG-1, at 10; NG-1, Att. F; NG-2, at 9). The Company represents that its application to Sandwich was consistent with the design and alignment approved by the Siting Board in Sagamore I (Exh. EFSB-NG-30).

⁴ Attachment E to Exhibit NG-1 consists of three separate documents. The pages of these three documents are numbered from 1 through 25.

3. Subsequent to the filing, the Company continued to have discussions with officials from Sandwich, including several rounds of correspondence and meetings regarding Sandwich's requests, including a meeting on April 12, 2018 to address outstanding issues relating to the Project (Exhs. NG-1, at 10-11; NG-2, at 9; NG-2, Att. D).
4. Sandwich did not and has not taken any formal action on the Company's application. On May 15, 2018, the Company sent a certified letter to the Sandwich DPW Director with copies to the Sandwich Town Manager and Chair of the Board of Selectmen (Exhs. NG-1, at 11; NG-1, Att. G; NG-2, at 9).
5. The May 15, 2018 letter documented the history of discussions between the Company and Sandwich and clarified the remaining issues in dispute (Exhs. NG-1, at 11; NG-1, Att. G; NG-2, at 9).
6. The Company did not receive a response to this letter and, as of the time the Company filed its Initial Petition and Application, Sandwich had not taken any action to approve or deny the Company's Sandwich Permit Application (Exhs. NG-1, at 11; NG-2, at 9-10).
7. On December 14, 2018, the Company filed with the Siting Board the Initial Petition that commenced this proceeding.
8. On December 21, 2018, Matthew Beaton, Chair of the Siting Board, issued a Determination on Initial Petition for Certificate of Environmental Impact and Public Interest ("Determination"). The Determination provides that the Siting Board will accept a Certificate Application from the Company and will "consider the merits of the Initial Petition concurrently with a hearing on the Application" (Determination at 3).
9. On February 1, 2019, the Company filed an Application for a Certificate of Environmental Impact and Public Interest Pursuant to G.L. c. 164, §§ 69K-69O.
10. On April 22, 2019, the Company and the Town of Sandwich executed a Memorandum of Understanding (the "Sandwich MOU") (Exhs. EFSB-NG-24(S1); EFSB-NG-24(S1)(1)).
11. Pursuant to the Sandwich MOU, the Company and Sandwich each jointly request that the Siting Board issue a Certificate consistent with the terms of the Sandwich MOU (Exhs. EFSB-NG-24(S1); EFSB-NG-24(S1)(1)).

E. Procedural History of the Certificate Proceeding

On December 14, 2018, the Company filed the Initial Petition that commenced this proceeding with the Siting Board. On December 21, 2018, Matthew Beaton, then-Chair of the Siting Board, issued a Determination on Initial Petition for Certificate of Environmental Impact and Public Interest ("Determination"). The Determination provided that the Siting Board would accept a Certificate Application from the Company and would "consider the merits of the Initial Petition concurrently with a hearing on the Application" (Determination at 3). On February 1,

2019, the Company filed an Application for a Certificate of Environmental Impact and Public Interest Pursuant to G.L. c. 164, §§ 69K-69O (“Application”). The consolidated proceeding, referred to hereafter as the “Certificate Proceeding,” was designated as EFSB 18-05.

All of the entities that were parties or limited participants in Sagamore I or Sagamore III⁵ were automatically parties or limited participants in the Certificate Proceeding (Affidavit of Kristen Reynolds dated February 8, 2019, ¶ 5; see also, Service List of January 24, 2019 at 4; Service List of March 25, 2019 at 2-3). The Company provided public notice of the adjudication of its filings at the direction of the Board (Affidavit of Kristen Reynolds dated February 8, 2019 ¶¶ 3-6; Company Brief at 4).

The towns of Barnstable and Sandwich (“Towns”) each filed petitions to intervene in this proceeding on March 11, 2019. On March 13, 2019, the Presiding Officer approved the Towns’ petitions to intervene. No other individuals or entities sought to participate in this proceeding. On March 15, 2019, the Presiding Officer issued an initial procedural schedule outlining the deadlines for discovery, pre-filed testimony from parties other than the Company, evidentiary hearings, and briefing.

During the proceedings, discovery was propounded to the Company, the Town of Sandwich, and the Town of Barnstable by the Siting Board. In total, 73 discovery questions were issued by the Siting Board and intervenors.⁶ Additionally, the Siting Board took official notice of the evidentiary record in Sagamore I, the underlying proceeding (Presiding Officer Ruling dated March 25, 2019), and the record in Sagamore III, the first project change proceeding (Presiding Officer Ruling dated September 5, 2019).

As described herein, the Company ultimately reached agreement with both Barnstable and Sandwich, resolving all remaining issues of dispute regarding the Company’s Project and request for a Certificate from the Siting Board. The Company entered into a Memorandum of

⁵ Sagamore II was a certificate proceeding that involved issues that were separate and different from the issues in the present case, and it addressed the SLRP in different towns. Sagamore II did not involve the Western Segment of the SLRP. Consequently, it was not necessary to include the parties and limited participants in that proceeding as parties and limited participants in the present case.

⁶ This number does not include the Information Requests that the Siting Board staff issued to Barnstable. Barnstable did not respond to these Information Requests (see Exhibit List at 10).

Understanding (“MOU”) with Barnstable on March 28, 2019; and it entered into an MOU with Sandwich on April 22, 2019 (Exhs. NG-3; EFSB-NG-24(S1)). Barnstable and the Company subsequently amended their MOU to include some of the conditions that were included in the Sandwich MOU (Exhs. EFSB-NG-33(S1)(1)); EFSB-NG-3, at ¶2).⁷

On April 29, 2019, the Presiding Officer issued a Notice and Order regarding the cancellation of all scheduled evidentiary hearing dates, to which no party objected. In total, the evidentiary record contains over 100 exhibits, consisting of the Company’s Initial Petition and Application and related attachments, pre-filed testimony, and responses to information requests.⁸ The Company and Sandwich each filed a brief on May 24, 2019. No other person or entity submitted a brief.

Siting Board staff prepared a Tentative Decision and distributed it to the Siting Board members and all parties for review and comment on Monday, September 16, 2019. The parties were given until Monday, September 23, 2019, to file written comments. The Siting Board received written comments from the Town of Sandwich, and the Company. The Board conducted a public meeting to consider the Tentative Decision on Wednesday, September 25, 2019, at which the parties were invited to present oral comments. Counsels for the Company and the Town of Sandwich presented oral comments. After deliberation, the Board directed staff to prepare a Final Decision approving the Initial Petition and Application, in part; the project change, and the extension request, as set forth below.

II. INITIAL PETITION

A. Standard of Review

To initiate a Certificate Proceeding, an applicant must file an Initial Petition. G.L. c. 164, § 69K; 980 CMR 6.02. For facilities other than generating facilities, the Certificate Statute

⁷ The original MOU entered into by and between the Company and Barnstable provides as follows: “National Grid agrees that, if it reaches agreement with the Town of Sandwich, it will provide Barnstable with the opportunity to include as part of this Agreement any additional, relevant conditions agreed to with the Town of Sandwich” (Exh. NG-3, at ¶2).

⁸ The SLRP was reviewed by MEPA and the CCC in the related previous proceedings (Exh. NG-1, at 6-7). See also, Sagamore II at 10, n.5, and at 13-16; Sagamore III at 5-6. The present proceeding did not exceed mandatory review thresholds established by the CCC or MEPA (Exhs. NG-1, at 13; NG-1, Att. A; NG-2, at 11).

provides that the Siting Board shall consider an Initial Petition if: (1) the applicant asserts at least one of the six grounds for a Petition set forth in G.L. c. 164, § 69K; and (2) the Siting Board determines that, on the merits, at least one of the asserted grounds constitutes a valid basis for granting the Initial Petition. G.L. c. 164, § 69K; NSTAR Electric Company d/b/a Eversource Energy, EFSB 18-03, at 14 (2019) (“Eversource”); Cape Wind at 9-10.

B. Positions of the Parties

1. The Company

The Company asserts that it experienced two separate and distinct statutory triggering events for its Initial Petition, each of which constitutes a valid basis for granting the Initial Petition (Company Brief at 17, citing Exhs. NG-1, at 18-20; NG-1, Att. C; NG-1, Att. D; NG-1, Att. G). First, the Company asserts that the Barnstable DPW imposed burdensome conditions in the July 5, 2018 Original Barnstable Permit that it issued (id. at 17; Exh. NG-1, at 18-19). Second, the Company asserts that Sandwich has unduly delayed ruling on the Company’s Application (id. at 17, citing Exhs. NG-1, at 18-20; NG-1, Att. C; NG-1, Att. D; NG-1, Att. G; see also, Exh. NG-1, at 19-20). The Company argues that due to these triggering events, the sufficiency of which the Company states are not disputed by Barnstable or Sandwich, the Company cannot construct the Project as approved by the Siting Board (Company Brief at 17; Exh. NG-1, at 20-29).

The Company asserts that the subsequent execution of the Barnstable MOU and the Sandwich MOU do not change these underlying facts (Company Brief at 17, citing Eversource at 19). The Company represents that neither the Barnstable MOU nor the Sandwich MOU grants the Company the road opening permits that are necessary to construct the Project (id. at 17). Indeed, a key provision in each MOU is that the parties jointly request that the Siting Board issue a Certificate overriding the need for each community’s DPW to issue a road opening permit (id. at 17-18, citing Exhs. NG-3, at ¶ 4; EFSB-NG-24(S1)(1) at ¶ 3). Accordingly, the Company argues, the Siting Board should approve Colonial’s Initial Petition (Company Brief at 18).

2. Barnstable and Sandwich

Barnstable did not file a brief in this proceeding. It did, however, request that the Siting Board issue a Final Decision that conforms to the terms of the Barnstable MOU (Exh. NG-3, at 4; see also, Exhs. EFSB-NG-33(1); EFSB-NG-33(2)). In its brief, Sandwich requested that the Siting

Board issue a Certificate that conforms to the conditions in the Sandwich MOU (Sandwich Brief at 1). In response to an Information Request, Sandwich took “no position” on the Company’s arguments that Sandwich had unduly delayed the Sandwich Permit Application (Exh. EFSB-SAN-13).

C. Analysis of the Company’s Asserted Grounds for Granting the Initial Petition

As described above in the Chronology (Section I.D), the Original Barnstable Permit included conditions requiring the Company to reconstruct Service Road, to widen the width of the road to 32 feet; to provide clear shoulders on both sides of the road where guardrails are not needed; to install items such as asphalt berms, catch basins, leaching basins to assist with street drainage; to remove, reset, replace, modify, and/or add guardrails, etc. These requirements go beyond mitigation of trench work and extend to providing Barnstable with a new, wider, rebuilt street. We note that these conditions exceed the Street Restoration Standards of the Department of Public Utilities (see Section I.D.1.6, *supra*). D.T.E. 98-22.

General Laws c. 164, § 69K, provides that: “the board shall, upon petition, consider an application for a certificate of environmental impact and public interest if it finds that any state or local agency has imposed a *burdensome condition* or limitation on any license or permit which has a substantial impact on the board’s responsibilities as set forth in section sixty-nine H” (emphasis supplied). Notwithstanding the MOU executed between Barnstable and the Company, the Company has not obtained the Barnstable Permit without these burdensome conditions.

Also as described in Section I.D, above, Sandwich did not and has not formally responded to the Sandwich Permit Application for a period exceeding a year and a half. Notwithstanding the MOU executed between Sandwich and the Company, the Company has not obtained the Sandwich Permit in a timely fashion.

The MOUs executed between the Company and both Barnstable and Sandwich contain terms requesting that the Siting Board issue a Certificate subject to the terms of each MOU. Consequently, there is no dispute among the parties regarding the issue of whether a Certificate should be granted. We agree with the Company that the subsequent execution of the two MOUs does not change the Company’s need for a Certificate. Eversource at 19 (the execution of a memorandum of understanding between a utility petitioning for a certificate of environmental impact and public interest and a municipality that has denied a permit does not negate or diminish

the utility's argument in favor of granting the initial petition). Based on the above, the Siting Board finds that the Original Barnstable Permit contains unduly burdensome conditions, and the Sandwich Permit has been unduly delayed. Therefore, the Siting Board finds that the Company has raised two valid bases for the Board's consideration of its Initial Petition pursuant to G.L. c. 164, § 69K and 980 CMR 6.02.

D. Decision on Initial Petition

The Company has asserted grounds on which the Siting Board's grant of an Initial Petition with respect to both Barnstable and Sandwich may be based. The Siting Board has found that the Company has established substantively valid bases for the Company's Initial Petition. Accordingly, the Siting Board GRANTS the Company's Initial Petition.

III. APPLICATION

A. Standard of Review

Pursuant to G.L. c. 164, § 69O, any Certificate issued must include the Siting Board's findings and opinions with respect to the following: (1) the need for the facility to meet the energy requirements of the applicant's market area taking into account wholesale bulk power or gas sales or purchases or other co-operative arrangements with other utilities and energy policies as adopted by the commonwealth; (2) the compatibility of the facility with considerations of environmental protection, public health, and public safety; (3) the extent to which construction and operation of the facility will fail to conform with existing state and local laws, ordinances, by laws, rules and regulations and reasonableness of exemptions thereunder, if any, consistent with the implementation of the energy policies contained in the Siting statute to provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost; and (4) the public interest, convenience and necessity requiring construction and operation of the facility. G.L. c. 164, § 69O. See Eversource at 24-25; Cape Wind at 12-13; Sagamore II at 12.

The Siting Board bases its findings and opinions on both the record developed in the Certificate proceeding and the record developed in the underlying Siting Board proceeding in which the Board reviewed and approved the proposed facility. Eversource at 25; Exelon at 12; Cape Wind at 13. The Siting Board does not relitigate in a Certificate proceeding issues already fully and fairly determined in the underlying proceeding. Eversource at 25; Exelon at 12;

Berkshire Power Development, Inc., EFSB 98-6, at 18-19 (1999). However, in order to provide a full review of a previously approved facility, the Siting Board: (1) reviews the decision from the underlying Siting Board proceeding; and (2) determines the extent to which new information has been developed or the circumstances of a project may have changed in the intervening period. See, e.g., Eversource at 25; Exelon at 12; Cape Wind at 13. Additionally, in Certificate cases where the applicant is challenging an adverse agency permitting decision, the Siting Board verifies that the issues raised by the agency have been addressed in a comprehensive manner by the Siting Board, either in its review of the facility under G.L. c. 164, § 69J, or in its review under G.L. c.164, § 69K. Eversource at 25; Cape Wind at 13; Sagamore II at 13 n.15. Finally, an applicant must demonstrate that it met the requirement in G.L. c. 164, § 69L, to make a “good faith effort” to obtain the permits the applicant seeks to include in the Certificate. Eversource at 25.

The four specific findings the Siting Board must make pursuant to G.L. c. 164, § 69O to support the issuance of a Certificate of Environmental Impact and Public Interest for a facility are discussed below. In summary form, these findings are: (1) need for the facility; (2) compatibility with environmental protection, public health and safety; (3) conformance with laws and reasonableness of exemption thereunder; and (4) public interest or convenience. In addition, pursuant to G.L. c. 164, § 69L, the Siting Board reviews the good faith efforts of an applicant to seek necessary approvals for construction and operation of a proposed facility.

B. Need for the Project

1. Certificate Requirements

Pursuant to G. L. c. 164, § 69O(1), the Siting Board must make a finding with respect to the need for a facility to meet the energy requirements of the applicant’s market area taking into account wholesale bulk power or gas sales or purchases or other cooperative arrangements with other utilities and energy policies as adopted by the Commonwealth. Neither Barnstable nor Sandwich contested the need for the Project in the instant proceeding (Company Brief at 19, n.13; Sandwich Brief at 1-2).

2. Record and Company Position

The Company notes that in the initial Section 69J proceeding, after extensive investigation and consideration of the evidence, the Siting Board determined that the Project would be needed:

“(1) to ensure continued gas delivery to the eastern extremities of National Grid’s distribution system on Cape Cod at a minimum operating pressure of 10 psig [pounds per square inch gauge], and to the regulator outlets serving those extremities at a minimum operating pressure of 60 psig; and (2) to avoid operating the Company’s LNG [liquefied natural gas] facilities in excess of its operating criteria” (Company Brief at 19, citing Sagamore I at 14). Additionally, in that proceeding the Siting Board found that “the Company has identified a need for incremental design day and design year capacity that begins with the 2006/2007 heating season and increases with load growth throughout the ten-year planning horizon” (id. at 19, citing Sagamore I at 15).⁹

The Siting Board found that the Project “is consistent with the Company’s most recently approved long-range forecast” pursuant to G.L. c. 164, § 69I. Sagamore I at 16. Based on this finding and related findings, the Siting Board concluded that the overall SLRP was superior to alternative approaches considered with respect to providing a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. Id. at 31.

The Company asserts that the Siting Board’s initial conclusions on the need for the Project are still valid (Company Brief at 19, citing Exh. NG-2, at 23). Specifically, the Company asserts that the Project is needed to ensure that the 270-psig system (“270-psig system”), of which the Project will be a part, is capable of delivering a sufficient volume of natural gas to maintain pressure at the South Yarmouth inlet to the 200-psig system (“200-psig system”) (id. at 19-20, citing Exh. NG-2, at 23). The 200-psig system is supplemented at the South Yarmouth location by the Company’s LNG facility located at White’s Path, South Yarmouth (“White’s Path Facility”) to feed downstream demand, under design-day winter conditions, on the 200-psig system (Exh.

⁹ In our discussion regarding each of the statutory criteria for granting an application in this matter, we review the previous related cases – Sagamore I, Sagamore II, and Sagamore III; the record in the present case; and the Company’s position. Unlike other Certificate decisions involving multiple parties – see, e.g., Exelon – in the present case we do not explore the positions of the various parties in detail. In this matter, unlike some others, there is a lack of disagreement among the parties on whether the statutory criteria for issuing a Certificate have been met. See e.g., Exelon at 10-11, 13-14, 23, 27, 33. As stated above, Barnstable, Sandwich, and the Company have entered into MOUs pursuant to which these towns request that the Siting Board issue the Certificate containing the requested permits – i.e., the Barnstable Permit and the Sandwich Permit – subject to agreed-upon conditions (Exhs. NG 3; EFSB NG 33(S1)(1); EFSB NG 24(S1)(1)).

NG-2, at 23).¹⁰ The Company argues that, if the Project is not in service for the 2019/2020 season, the 270-psig system will not be able to maintain transmission pressure at or above 125 psig to the regulator station that feeds the 200-psig system (Company Brief at 20, citing Exh. NG-2, at 23).

The Company also asserts that the Project is consistent with both the Company's most recently approved long-range forecast and supply plan, D.P.U. 16-181, which was approved by the Department in 2017, and with the Company's most recently submitted long-range forecast and supply plan, D.P.U. 18-148, currently under consideration by the Department¹¹ (id., citing Exhs. NG-2, at 23-24; NG-2, Att. F, Table G-21; NG-2, Att. G, Table G-21). The Company notes, however, that the 2018 forecast pending Department review (the "2018 Forecast"), however, has increased substantially from the Company's 2017 forecast data (the "2017 Forecast") (id. at 20-21, citing Exhs. NG-2, at 24; NG-2 Att. G). In 2017, the demand that was forecast to occur in 2024 is now forecast to occur in 2020 (Exh. NG-2, at 24).

The increase seen in the 2018 Forecast compared to the 2017 Forecast is attributable to an increase by 6,949 dekatherms ("Dth") in the actual demand experienced in the 2017/2018 heating season (id.). Overall, the 2018 Forecast projects that the Cape service territory demand will grow by a total of 9,062 Dth or 6.8 percent over the next five years (id.).

Therefore, the Company asserts, the Project is now needed for the 2019/2020 season and not the 2022/2023 season that the Company had been projecting using the 2017 Forecast (Company Brief at 21, citing Exh. NG-2, at 24). The Company asserts that the Project is likely to be in service in time for the 2019/2020 heating season only if the Company is able to commence construction of the Project immediately after Labor Day 2019, once the summer construction moratorium on the Cape is lifted (id. at 21, citing Exh. NG-2, at 24). If the Project is not in service during the 2019/2020 winter due to the permitting delays, the Company represents it will need to

¹⁰ The Company asserts the Project has the added benefit of reducing the dependence on LNG vaporization in off-peak winter conditions (Company Brief at 20, n.14; Exh. NG-2, at 23, n.20).

¹¹ The Company has included the Western Segment of the SLRP in prior submitted forecast and supply plans. See, e.g., Boston Gas Company and Colonial Gas Company d/b/a National Grid, D.P.U. 15-36, at Table G-21; Boston Gas Company and Colonial Gas Company d/b/a National Grid, D.P.U. 13-01, at Table G-21; Boston Gas Company and Colonial Gas Company d/b/a National Grid, D.P.U. 11-09, at Table G-21; Boston Gas Company and Colonial Gas Company d/b/a National Grid, D.P.U. 08-108, at Table G-21.

continue its use of portable LNG operations located in Chatham in order to maintain adequate system pressures and ensure safe and reliable gas service to natural gas customers in eastern Cape Cod (id. at 21, citing Exh. NG-2, at 24).

Finally, the Certificate requirements for §69(O)(1) state that the Siting Board must take into “account wholesale bulk power or gas sales or purchases or other cooperative arrangements with other utilities.” Any such purchases or arrangements would be included in the forecast and supply plans (Exh. NG-2, Att. F and G). Consequently, there is no need to address this issue separately.

3. Analysis and Findings

In the underlying proceeding, the Siting Board found that the SLRP project is needed. The Company continues to include the Project in its submitted and approved forecast and supply plans (Exhs. NG-2, Att. F, at Table G-21; NG-2, Att. G, at Table G-21). These approved forecast and supply plans, as shown above, indicate that there is a need for additional gas in the Cape Cod service area. Based on the evidence presented in this Certificate proceeding, the Company continues to need the Project consistent with the need determined by the Siting Board in Sagamore I. Therefore, in accordance with the Siting Board’s statutory mandate, the statutory criteria of G.L. c. 164, §69O, the Board’s factual findings in Sagamore I, and the record in this case, the Siting Board finds that there is a need for construction of the Project in order to maintain a reliable supply of energy to Cape Cod.

C. Compatibility with the Environmental Protection, Public Health, and Public Safety Policies of the Commonwealth

1. Certificate Requirements

Pursuant to G.L. c. 164, §69O(2), the Siting Board must make a finding with respect to the compatibility of a facility with considerations of environmental protection, public health, and public safety.

2. Record and Company Position

a) Environmental Protection and Public Health

As noted above, the Project consists of the construction of Phase III of the Western Segment of the SLRP (Section I.A, *supra*). The Siting Board fully analyzed the compatibility of

construction of the Western Segment with the Commonwealth's policies and statutes concerning environmental protection and public health during the previous Section 69J proceeding.

Sagamore I at 59-73, 118. Based on said analysis, the Siting Board found that the Project met the statutory requirements of Section 69J and thereby approved it. Id. at 1, 59-74, 118.

Specifically, in Sagamore I, the Siting Board analyzed the SLRP in the context of the requirements of sections 69H and 69J. Id. at 1, 3, 4, 5, 15, 16, 16 n.14, 17 n.15, 31, 32, 117. Section 69H requires the Siting Board to review projects to "provide a necessary energy supply for the commonwealth with a *minimum impact on the environment* at lowest possible cost." G.L. c. 164, § 69H (emphasis supplied). Section 69J states that the Siting Board shall approve a petition to construct a facility if it determines that "plans for expansion and construction of the applicant's new facilities are consistent with current *health, environmental protection*, and resource use and development policies as adopted by the Commonwealth." G.L. c. 164, §69J (emphasis supplied). Consequently, in the previous Section 69J proceeding, the Siting Board addressed the health and environmental protection impacts of the Project and approved the Project based on its analysis of these issues. Sagamore I at 59-74, 118.

In order for the Siting Board to make these findings, the Company was required to show that its project plans minimize environmental impacts, consistent with the minimization of costs associated with mitigation, control and reduction of environmental impacts of the Project. G.L. c. 164, § 69J; Sagamore I at 59-74, 117-118. Accordingly, the Siting Board systematically conducted an assessment of all environmental impacts of the proposed facility and relevant state policies in the initial Section 69J proceeding to determine whether an appropriate balance would be achieved both among conflicting environmental concerns, as well as among environmental impacts, reliability, and cost. Sagamore I at 117-118. The Company asserts that a facility that achieves the appropriate balance between environmental impacts, reliability, and costs, such as this facility, meets the Siting Board's statutory requirements and is thus in accordance with the Commonwealth's policies (Company Brief at 23, citing NSTAR Electric Company d/b/a Eversource Energy and New England Power Company d/b/a National Grid, EFSB 15-04/D.P.U. 15-140/15-141, at 8, 72 (2018); NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77, at 8, 32 (2018); EFSB 05-2, at 5, 60, and 74; Boston Edison Company d/b/a NSTAR Electric, EFSB 04-1/D.T.E. 04-5/D.T.E. 04-7 at 52 (2005)).

As demonstrated throughout the initial Section 69J proceeding, the Company will implement specific plans to mitigate environmental impacts in the Western Segment of the SLRP consistent with the minimization of costs. Sagamore I at 61-72. During its review process, the Siting Board evaluated all relevant environmental issues including, but not limited to, land use and land resources, wetland and water resources, and noise and traffic impacts. Id. at 61-72. Based upon the comprehensive factual record, the Siting Board ultimately found that, with proposed mitigation measures, Colonial would minimize land use impacts, wetland and water resource impacts, and traffic and noise and impacts. Id. at 61-72, 117-118.

More recently, the Project has received approvals, exemptions, or concurrences from, or has otherwise met its obligations with, the following permitting authorities: (1) the Barnstable Conservation Commission in the form of a determination that the Project did not require the filing of a Notice of Intent, issued on June 5, 2018; (2) completion of consultation with the Massachusetts Historical Commission (“MHC”); (3) concurrence from the Natural Heritage and Endangered Species Program (“NHESP”) within the Massachusetts Division of Fisheries & Wildlife that the Project meets the Massachusetts Endangered Species Act (“MESA”) Exemption; and (4) approval of the Company’s DRI Exemption Application by the CCC (Exh. NG-2, at 27). In approving the Company’s DRI Exemption Application, the CCC found that the “Project will have no permanent impacts to land uses, and will not change existing land uses or land use patterns” (Exh. NG-1, Att. A, at 4). In making this finding, the CCC relied in part upon plans to install the Project either beneath pavement or within ten feet of pavement and entirely within existing previously disturbed areas (id.).

b) Public Safety

The initial Section 69J decision examined public safety in some detail. Sagamore I at 70, 88, 90, and 112. Much of this examination focused on the effect of Project construction on traffic and pedestrian safety, and the Company’s efforts to mitigate said impacts. Id. at 70, 90, and 112.

The CCC determined that the Project, as of 2017, was designed to avoid, minimize, and mitigate construction related impacts; that the Project would have no permanent impacts on traffic; and that traffic management plans would help mitigate temporary, construction-related impacts (Exh. NG-1, Att. A, at 4).

2. Analysis and Findings

Based upon the foregoing, the Siting Board finds that construction of the Project will be compatible with the Commonwealth's policies concerning environmental protection, public health and public safety. G.L. c. 164, §69O(2). This compatibility was established in Sagamore I, and no evidence was presented during the Certificate proceeding that necessitates the Siting Board to revisit its earlier findings. Furthermore, the Siting Board's conclusions have been reinforced by the more recent findings of several administrative agencies as set forth above. Therefore, the Siting Board finds that granting the Certificate containing the requested approvals for the Project is compatible with the Commonwealth's policies concerning environmental protection, public health and public safety.

D. Conformance with Existing State and Local Requirements and the Reasonableness of any Exemption Thereunder

1. Certificate Requirements

The Siting Board must make a finding with respect to the "extent to which construction and operation of the facility will fail to conform with existing state or local laws, ordinances, by-laws, rules and regulations and the reasonableness of exemption thereunder, if any" consistent with the Siting Board's mandate to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. G.L. c. 164, § 69O(3); Eversource at 40-41; Cape Wind at 24.

2. Record and Company Position

The facility has been previously approved by the Siting Board as being consistent with the requirements of G.L. c. 164, §§ 69J and 69H. Sagamore I at 117-118. In addition, shortly before the Sagamore I Decision was issued, the Secretary of Energy and Environmental Affairs ("Secretary") specifically addressed the Company's compliance with Massachusetts Environmental Policy Act ("MEPA") in the context of permitting the SLRP. Specifically, the Secretary found that "the FEIR [submitted by the Company] is sufficiently responsive to the requirements of the MEPA regulations and the Scope to meet the regulatory standard for adequacy" (Exh. NG-2, Att. P, at 4).

With respect to the Project's compliance with other state and local requirements, the Project has completed consultation with, or received favorable determinations from, MHC,

NHESP, CCC, the Barnstable Conservation Commission, the Barnstable Tree Warden and the Sandwich Tree Warden (Exhs. NG-2, at 28; EFSB-NG-24(S1)(2); EFSB-NG-24(S2)(1)). The Company maintains that, given that the Project will be located either beneath pavement or within ten feet of pavement, the Project will: (1) have no permanent impact to existing land uses; (2) require no alteration of floodplain or wetland resource areas; (3) avoid impacts to rare species and protected habitats pursuant to location and the implementation of contractor training for state-listed species; (4) not require any tree cutting or removal (only side trimming of branches overhanging Service Road in select locations); (5) not require any significant cut or fill activities, thereby minimizing the amount of soil disturbance, overall duration of construction, and the number of construction vehicles accessing the Project area; (6) have no significant adverse impact to archaeological or historical resources; (7) have no impact on existing or future municipal utilities; (8) not adversely affect any future municipal projects (e.g., bike paths); and (9) not result in any significant visual impacts (Exhs. NG-2, at 28-29; EFSB-NG-31).

Furthermore, any impacts associated with the Project will be mitigated in accordance with the Company's commitment to comply with the terms and conditions of the Barnstable MOU, as amended, and the Sandwich MOU (Exhs. NG-3; EFSB-NG-24(S1); EFSB-NG-24(S1)(1); EFSB-NG-33; EFSB-NG-33(2)). The MOUs executed with both Barnstable and Sandwich constitute significant evidence of the consistency of the Project with local requirements and reducing impacts on the environment (Exhs. NG-3; EFSB-NG-24(S1); EFSB-NG-24(S1)(1); EFSB-NG-33; EFSB-NG-33(2)).

3. Analysis and Findings

Based on the findings in the underlying proceeding, and the record and reasoning articulated above, the Siting Board finds that construction of the Project will conform to existing state and local laws, ordinances, by-laws, rules, and regulations. G.L. c. 164, § 69O(3). No evidence was introduced in this proceeding that identifies further exemptions from those laws, ordinances, bylaws, rules, and regulations that would be needed for construction and operation of the Project. Furthermore, the Siting Board finds that the grant of the Certificate and subsequent construction of the Project will be consistent with the implementation of the energy policies set forth in General Laws Chapter 164 to supply a reliable energy supply for the Commonwealth with a minimum environmental impact at the lowest possible cost. G.L. c. 164, § 69H.

E. The Public Interest, Convenience and Necessity

1. Certificate Requirements

The Siting Board must make a finding with respect to the public interest, convenience and necessity that requires the construction of the Project. G.L. c. 164, § 69O(4).

2. Record and Related Proceedings

During its initial Section 69J proceeding, the Siting Board extensively reviewed need, cost, project alternatives, routing alternatives, and environmental impacts of the Project. Sagamore I. The Siting Board determined that the Project would contribute to a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. Id. at 117-118. The Siting Board's approval of the Project under G.L. c. 164, § 69J, is strong evidence that the Project is needed to further the public interest in a reliable, least-cost and least-environmentally impactful supply of energy for the benefit of the citizens of the Commonwealth. No evidence was submitted in this proceeding that suggests that the Siting Board should re-examine the findings it made in Sagamore I.

Further, as noted above, the Company has continually forecasted a need for the Project in its forecast and supply plans and continues to forecast a need for the Project (Exhs. NG-2, Att. F, at Table G-21; NG-2, Att. G, at Table G-21). See Section III. B, above.

3. Analysis and Findings

Based on the findings of the underlying proceeding, the record here and reasons articulated above, the Siting Board finds that the public interest, convenience and necessity require construction of the Project. G.L. c. 164, § 69O(4).

F. Representation of Good Faith Effort

1. Certificate Requirements

Pursuant to G.L. c. 164, § 69L(A)(4), one of the required elements of an Application is: a representation by the applicant as to the *good faith effort* made by the applicant to obtain from state agencies and local governments the licenses, permits, and other regulatory approvals required by law for the construction or operation of the facility.

(Emphasis supplied). See also, Eversource at 45; Cape Wind at 28.

2. Record and Company Position

The Siting Board has found previously that the “good-faith” requirement is satisfied where: (1) the applicant has provided the permitting authority with sufficient information upon which it could issue the permit; or (2) where applying for the permit is futile or unreasonable under the circumstances. See, e.g., Eversource at 49-50; Cape Wind at 7 n.8, 28 n.23. The Siting Board has also previously accepted “as demonstrative of a good faith permitting effort the Company’s permit table, accompanying permit applications, and actual success in obtaining permits.” Cape Wind at 29.

Colonial Gas argues that it has made diligent and good-faith efforts to obtain from local permitting authorities all of the approvals for which it seeks a Certificate in this proceeding (Company Brief at 28, citing Exh. NG-2, at 7-9). The Company has obtained two permits that it originally sought to be included in this Certificate proceeding: the Barnstable Tree Work Permit and the Sandwich Tree Work Permit (Exh. EFSB-NG-24(S1)(1); EFSB-EV-24(S1)(2); EFSB-NG-24(S2)(1)). The Company has accepted the conditions imposed by Barnstable and Sandwich on the Tree Work permits; and the Company has performed the tree trimming work in those two towns as authorized by the permits (Exh. EFSB-NG-24(S3)). Consequently, the Company has withdrawn its request that these permits be included in the Certificate (Exh. EFSB-NG-24(S3)).

Furthermore, the Company provided the following information in this proceeding, all of which relate to the applications it seeks:

- An Affidavit from Luke J. Macdonald, Project Manager for the Company, attesting to the accuracy of the factual representations contained in the Company’s Application and certifying the Company’s reasonable, good-faith efforts to obtain all local permits for which the Company seeks a Certificate (Exh. NG-2, Att. E);
- A complete list of remaining state and local permits and a description of the status of each permit (Exh. NG-2, at 10);
- Complete permit applications for the permits requested to be included in the Certificate (Exh. NG-1, Atts. B, F, H, and I);
- Evidence of actual success in obtaining certain local permits (see, e.g., EFSB-NG-24(S1)(2); EFSB-NG-24(S2)(1); EFSB-NG-24(S3)); and

- Substantial evidence of the Company's efforts to address concerns raised by local permitting authorities for the local permits not yet obtained (see, e.g., Exhs. NG-2, at 8-9; NG-2 Att. C; NG-2, Att. D; EFSB-NG-4).

3. Analysis and Findings

Based on a review of the record, the Siting Board finds that the Company has acted reasonably, diligently, and in good faith to obtain the local permits needed to construct the Project and to address the concerns of the communities involved in a manner that is consistent with the Siting Board's original approval of the Project. Specifically, the Siting Board finds that the Company has provided the permitting authorities with sufficient information upon which they could issue the requested permits. Furthermore, the Siting Board finds that the Company's good-faith and diligence ultimately helped the Company to negotiate mutually satisfactory MOUs with Barnstable and Sandwich, respectively. For the foregoing reasons, the Siting Board finds that the Company has satisfied the good-faith effort requirement of G.L. c. 164, § 69L.

G. Decision on the Application

The Siting Board has made the four findings that are required in order to issue the Certificate pursuant to § 69O. Specifically, the Siting Board has found that: (1) the Project is needed; (2) granting a Certificate containing approvals for the Project is compatible with considerations of environmental protection, public health, and public safety; (3) construction of the Project will conform to existing state and local laws, ordinances, by-laws, rules, and regulations, and that no evidence was introduced in this proceeding that identifies further exemptions from those laws, ordinances, bylaws, rules, and regulations that would be needed for construction and operation of the Project; and (4) issuing a Certificate would serve the public interest or convenience. In addition, the Siting Board has found that the Company has made a good faith effort to acquire permits from Barnstable and Sandwich as required by G.L. c. 164, § 69L. The findings made by the Siting Board support granting a Certificate for the Project, and the Siting Board hereby grants such a Certificate.

H. Scope of the Certificate

The Certificate grants to the Company the Barnstable Permit (Attachment 1) and the Sandwich Permit (Attachment 2) subject to the conditions set forth therein, which are based upon

the respective MOUs. The Siting Board includes many of the conditions set forth in the MOUs, some with modifications, where consistent with our obligations under the Certificate statute, the record in this proceeding, and the Final Decision in the underlying proceeding.¹² The permits granted by the Certificate are attached hereto.

IV. PROJECT CHANGE

A. Standard of Review

In Sagamore I, the Siting Board required the petitioner to “notify the Siting Board of any changes other than minor variations to the proposal so that the Siting Board may decide whether to inquire further into a particular issue.” Sagamore I at 121. The standard of review to determine whether further inquiry is warranted was first articulated by the Siting Board in Berkshire Power Development, Inc., EFSB 95-1, at 10 (1997). In Sagamore III at 7-8, the Siting Board stated that it would decline to make further inquiry regarding a project change if the change does not alter in any substantive way either the assumptions or conclusions reached in the Board’s underlying decision.

Where the Siting Board determines that further inquiry is warranted, the scope of the inquiry extends to, and is limited to, the issues raised by the proposed project change. See Cape Wind Associates, LLC and Commonwealth Electric Company d/b/a NSTAR Electric, EFSB 02-2A/D.T.E. 02-53, at 4-16 (2008) (“Cape Wind 2008 Project Change”); Sagamore III at 8. The Siting Board will approve the proposed project change if the Board determines that the project as modified, like the project as originally proposed, would contribute to a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost, as required by G.L. c. 164, § 69H. See Cape Wind 2008 Project Change at 26.

¹² While the Siting Board does not include all conditions verbatim from the MOUs submitted in this proceeding, the Siting Board notes that the MOUs contain agreements between the Company and each municipality. The issuance of the Certificate does not affect the ability of the parties to enforce the terms of the MOUs. See Sandwich MOU at ¶ 4; Barnstable MOU at ¶ 5. See City Council of Agawam v. Energy Facilities Siting Board, 437 Mass. 821, 829-830 (2002) (Board certificate decision did not interfere with rights under separate settlement agreement).

B. Background and Company Position

As originally approved by the Siting Board, in 2006, the Company would test the pipeline pneumatically: i.e., using gas or air pressure. Sagamore I at 59. In the present filing, the Company proposes a project change: it would test Phase III of the Western Segment hydrostatically (Exh. NG-1, at 29-30).¹³ Phase III of the Western Segment is the only section of the pipeline left to be constructed (id. at 2 n.3).

This is the second such project change proposed by the Company. See Sagamore III. In the first project change filing, the Company sought to change the method of testing for Phases I and II of the Western Segment from pneumatic to hydrostatic. Id. at 4. The MAOP for Phases I, II, and III is 270 psig (Exh. NG-1, at 30). Sagamore III at 4. Hydrostatic testing would qualify all three phases to increase their MAOP to 575 psig, subject to review and approval by the Siting Board before such pressure could be implemented (Exh. NG-1, at 30). Sagamore III at 4.

The Siting Board approved the Company's request to test Phases I and II of the Western Segment hydrostatically, subject to conditions. Id. at 1, 36-40. In approving this change, the Siting Board noted that there were no anticipated environmental impacts resulting from hydrostatic testing. Id. at 34. Furthermore, the Siting Board also found that qualifying Phases I and II of the Western Segment to increase their MAOP to 575 psig "could provide a significant reliability benefit." Id. In the first project change decision, the Siting Board did, however, impose a condition: "[i]f the Company seeks to operate the Pipeline at an MAOP in excess of 270 psig in the future, the Siting Board directs that the Company must request permission to do so from the Board in a compliance filing." Id. at 38-39 (Condition S). In the present case, the Company requests that the Siting Board approve the project change subject to the same condition (Company Brief at 30, citing Exh. NG-1, at 30). In addition, Barnstable and Sandwich have explicitly waived any objections to this project change (Exhs. NG-3, at 4-5; EFSB-NG-24(S1)(1) at 6).

¹³ Once a pipeline is constructed, hydrostatic testing verifies the structural integrity of the pipeline segments (Exh. NG-1, at 29, n.21). The pipeline's structural integrity is tested by capping pipeline segments with test manifolds and filling the capped segments with water (id.). The water is then pressurized to at or above the MAOP of the pipeline and held for a period of time depending on the length of pipeline being tested (id.). Any significant loss of pressure indicates that a leak may have occurred and that the pipeline needs to be repaired and re-tested prior to being put into service (id.).

C. Analysis and Findings

The reasons that led the Siting Board to approve the previous and similar project change filing are also present in this case (Company Brief at 30-31; Exh. EFSB-NG-20). Environmental impacts will be minimized; and hydrostatic testing would allow for a future increase in the pipeline's MAOP (Exhs. NG-1, at 30-31; EFSB-NG-20).¹⁴ Furthermore, allowing hydrostatic testing for Phases I and II of the Western Segment, while denying hydrostatic testing for Phase III of the same segment would create an inconsistency that would be likely to hamper the Company's testing and would provide no corresponding benefit. Finally, the Company remains bound by all of the conditions imposed in the previous related cases: Sagamore I, Sagamore II, and Sagamore III. Consequently, the Company remains obligated to conform with Condition S from the previous project change case, Sagamore III; and this condition adds an additional safeguard (Exh. NG-1, at 30). Consequently, the Siting Board approves the Company's requested project change subject to conditions referred to herein (see Section VI, *infra*).

V. REQUEST FOR AN EXTENSION OF TIME

A. Background

In Sagamore I, the Siting Board required that construction of the SLRP be completed by December 31, 2015. Sagamore I at 120. After the Board issued the Final Decision in Sagamore I, the Massachusetts Legislature enacted two statutes that extended the deadlines of various permits and approvals then in effect, including Siting Board approvals, for a period of four years beyond

¹⁴ Colonial asserted that its hydrostatic testing methods will avoid and minimize impacts on the natural and man-made environment (Company Brief at 30, citing Exh. EFSB-NG-20). The Company will purchase and obtain water for the hydrostatic test either from a nearby municipal source (i.e., fire hydrant), or from a commercial water vendor who would truck the water to the Project site; no withdrawal from surface waters is proposed by the Company (Exhs. EFSB-NG-18; EFSB-NG-20). With respect to water discharge, the Company's prefers to discharge the test water to the ground in accordance with the terms and conditions of the Underground Injection Control program overseen by the Massachusetts Department of Environmental Protection (Company Brief at 31, citing Exh. EFSB-NG-20). The Company stated that by cleaning the pipe prior to filling the pipe with test water, using clean water for the test, and directing discharge through filter bags, it would ensure that any shards of metal, oil, or other undesirable matter is eliminated from the test water before being released into the environment (Exhs. EFSB-NG-20; EFSB-NG-28). Alternatively, the Company will transport and dispose of the test water at a National Grid-approved disposal facility (Exh. EFSB-NG-27).

their original expiration date. Sagamore III at 5, citing Section 173 of Chapter 240 of the Acts of 2010 and Sections 74 and 75 of Chapter 238 of the Acts of 2012. Consequently, the Siting Board approval to complete the Project is effective through December 31, 2019 (Exh. NG-1, at 31).

Sagamore III at 5.

Because the Company will not be able to complete construction by December 31, 2019, it seeks Siting Board approval in this proceeding for an extension of time for two years, to December 31, 2021, to finish construction of the Project (Exh. NG-1, at 31). The Company asserts that it is unable to complete construction due to “the permitting delays experienced in Barnstable and Sandwich” (id.). The Company asserts that these delays have been “extensive” and have been “beyond the control of the Company” (id.). No party opposed the Company’s extension request.

B. Standard of Review

In order to determine whether good cause exists to grant the Company’s extension of time request, the Siting Board must determine, inter alia: (1) whether there have been changes either in background conditions (e.g., land use surrounding the site) or applicable regulations sufficient to alter the underlying assumptions upon which the Siting Board based its approval; and (2) whether the length of the requested extension is reasonable. Cape Wind Associates, LLC and Commonwealth Electric Company d/b/a NSTAR Electric, EFSB 02-2C/Cape Wind Associates LLC, EFSB 07-8B, at 16 (2016); Cape Wind 2008 Project Change at 17.

C. Company Request

1. Changes in Background Conditions

The record in this proceeding indicates that there have been no changes in background conditions that would alter the underlying assumptions upon which the Siting Board based its prior approval of the Project (Exh. NG-1, at 32). The Project for which the Company is seeking a Certificate is consistent with the Project as approved by the Siting Board in Sagamore I (id.). Service Road remains a public way; and no evidence has been submitted indicating material changes to any of the underlying conditions upon which the Siting Board based its findings on routing alternatives and environmental impacts (id.). The Project also remains consistent with the Company’s most recently approved long-range forecast. See Boston Gas Company and Colonial Gas Company, each d/b/a National Grid, D.P.U. 16-181 (2017). Further, the Project is unchanged

from the alignment for which the Company received a final MEPA certificate in 2006; and the CCC reviewed the proposed Project, with the Siting Board-approved alignment, and approved the Company's DRI Exemption Application on September 14, 2017 (Exhs. NG-1, at 32; EFSB-NG-30). Accordingly, the Company argues that Siting Board find that there have been no changes in background conditions or applicable regulations sufficient to alter the underlying assumptions upon which the Siting Board based its approval of the Project in Sagamore I (Company Brief at 33-34).

2. Length of the Requested Extension

In order to complete the Project (including inspection, testing, repaving and other restoration) by December 31, 2019, the Company would have had to commence construction by no later than Fall 2018 (Exh. NG-1, at 33). Obviously, this has not happened. Furthermore, the Company still does not have the permits necessary to commence construction (Exhs. NG-1, at 18-20; NG-1, Att. C; NG-1, Att. D; NG-1, Att. G). The permits needed will be obtained through this Certificate proceeding, pursuant to MOUs executed by the Company, Barnstable, and Sandwich (Exh. NG-3; EFSB-NG-33(2); EFSB-NG-24(S)(1)).

Consequently, the Company has adjusted its anticipated construction time frame to account for the time necessary for the Siting Board to review the Company's Certificate request (approximately 6 months) and for any appeal of a decision from the Siting Board, if taken, to be decided by the Supreme Judicial Court pursuant to G.L. c. 164, § 69P (approximately 12-18 months) (Exh. NG-1, at 33). These additional steps could add anywhere from 18 to 27 months or more to the Project timeline (id.).

3. Analysis and Findings

Colonial has requested an extension of two years in the time in which it is required to complete the Project. The record shows that the facts and circumstances upon which the Siting Board based its approval in Sagamore I have not significantly changed, with respect to sections of the Project remaining to be constructed. Therefore, the Siting Board finds that an extension of time would be consistent with the original decision. Furthermore, the Siting Board also finds that the length of the Company's requested extension is reasonable under the circumstances.

Consequently, the Siting Board hereby grants to the Company an extension of the deadline to complete the Project construction for two additional years – to December 31, 2021.

VI. CONCLUSION

The Siting Board grants the Initial Petition and grants the Application of Colonial Gas Company d/b/a National Grid for a Certificate of Environmental Impact and Public Interest, pursuant to G.L. c. 164, §§ 69K-69O. The Siting Board also approves the Project Change request and grants the request for an extension of time. This Decision, the appended Certificate of Environmental Impact and Public Interest, and the approvals contained in the Certificate, are each conditioned on compliance by the Company with both the conditions set forth in Attachments 1 and 2 herein, and Conditions A through S set forth in Sagamore I and Sagamore III.



Robert J. Shea
Presiding Officer

Dated this 26th day of September, 2019

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

In the Matter of the Initial Petition and)
 Application of Colonial Gas Company d/b/a)
 National Grid for a Certificate of Environmental)
 Impact and Public Interest)
 _____)

EXHIBIT A TO THE FINAL DECISION IN EFSB 18-05

CERTIFICATE OF ENVIRONMENTAL IMPACT AND PUBLIC INTEREST

Pursuant to its authority under G.L. c. 164, §§ 69K – 69O, the Energy Facilities Siting Board hereby: (1) grants the Initial Petition and Application of Colonial Gas Company d/b/a National Grid (“Colonial” or “Company”); and (2) issues this Certificate of Environmental Impact and Public Interest (“Certificate”) to Colonial Gas Company d/b/a National Grid. This Certificate constitutes Exhibit A to, and is a part of, the Final Decision in EFSB 18-05.

I. SCOPE OF CERTIFICATE

The Certificate authorizes the applicant to construct Phase III of the Western Segment of the Sagamore Line Reinforcement Project (“SLRP”) which was originally approved by the Siting Board on May 17, 2006, in Colonial Gas Company d/b/a KeySpan Energy Delivery New England, EFSB 05-2 (2006) (“Sagamore I”), and modified by the Siting Board’s decision in Colonial Gas Company d/b/a National Grid Project Change, EFSB 05-2A (2014) (“Sagamore III”).

II. APPROVALS

This Certificate contains the following two approvals.

- (1) A final approval that is the equivalent of a Road Opening/Trench Permit, pursuant to G.L. c. 82A and 520 CMR 14.00 et seq., ordinarily issued by the Town of Barnstable Department of Public Works.
- (2) A final approval that is the equivalent of a Public Property Road Work/Trench Permit, pursuant to G.L. c. 82A and 520 CMR 14.00 et seq., ordinarily issued by the Town of Sandwich Department of Public Works.

III. CONDITIONS

The granting by the Siting Board of this Certificate and each of the Approvals herein is subject to the following conditions: (1) Conditions A through S set forth in Sagamore I and Sagamore III; and (2) all restrictions and conditions set forth in Attachments 1 and 2 below.



Patrick Woodcock, Acting Chairman
Energy Facilities Siting Board

Dated this 26th day of September, 2019

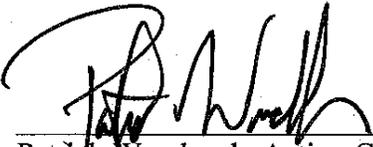
ATTACHMENT 1**EFSB 18-05, COLONIAL GAS COMPANY D/B/A NATIONAL GRID
APPROVAL IN LIEU OF TOWN OF BARNSTABLE ROAD OPENING/TRENCH
PERMIT**

1. Pursuant to its authority under G.L. c. 164, §§ 69K-69O, the Energy Facilities Siting Board hereby grants to Colonial Gas Company d/b/a National Grid an Approval in lieu of a Road Opening/Trench Permit from the Town of Barnstable. This Approval authorizes construction and operation of Phase III of the Western Segment of the Sagamore Line Reinforcement Project (“SLRP”) which was originally approved by the Siting Board on May 17, 2006, in Colonial Gas Company d/b/a KeySpan Energy Delivery New England, EFSB 05-2 (2006).
2. This Approval provides for the installation of approximately 1.7 miles of new 20-inch diameter coated-steel underground gas main.
3. This Approval allows road openings in Service Road, Barnstable, between the Barnstable/Sandwich town line to a termination point a short distance west of Route 149, to install new gas main.
4. This Approval is issued subject to Conditions A through S set forth in Sagamore I and Sagamore III.
5. Colonial shall conform to all applicable Massachusetts General Laws and Town of Barnstable ordinances.
6. Colonial shall be responsible for trench maintenance during the period of construction as well as trench repairs caused by settlement or poor construction for a period of two years from the date of project completion. If the Town of Barnstable identifies pavement defects or premature deterioration during the two-year warranty period, Colonial shall be responsible for correcting the defects or deteriorations in a manner acceptable to the Town.
7. Colonial’s construction contractor or paving contractor shall provide financial assurance to the Town of Barnstable in the form of a performance bond or other means acceptable to the Town of Barnstable, for the full estimated cost of roadway restoration. The Town of Barnstable will release Colonial and its contractor(s) from this financial assurance at the completion of roadway restoration, subject to Town inspection and written acceptance.

8. Colonial shall provide the director of the Barnstable Department of Public Works (“DPW”) with a comprehensive project schedule and conduct a preconstruction meeting with the DPW director at least two weeks prior to construction start, or prior to resumption of construction after a month or more of inactivity. Colonial shall not commence construction until holding such meeting with the DPW director. Additionally, Colonial shall hold weekly meetings with the DPW director at the DPW director’s office to discuss work status, work schedule, and any pertinent work issues.
9. Colonial or its contractor(s) shall call Dig Safe System, Inc., and the Barnstable DPW, at least 72 hours prior to initiating any work.
10. Colonial shall maintain the presence of an on-site construction supervisor at all times during periods of construction. The on-site supervisor will answer questions and respond to complaints from abutters in an expeditious fashion. Colonial will provide a short Project description suitable for the Town of Barnstable to post on its website and to distribute to the public. In addition, Colonial will also provide a hotline to abutters to call with any questions and concerns.
11. Colonial shall notify the Town of Barnstable of any significant questions and issues arising during construction, such as the discovery of any unknown underground utilities or drainage and shall cooperate with the Town toward mutually acceptable outcomes.
12. Tanks, valves, controls, and other equipment and appurtenances related to the gas main and its construction shall be installed in a location and manner that does not present a hazard to traffic safety or public safety, and that does not infringe on the public welfare.
13. Colonial shall not perform construction from the Friday preceding Memorial Day through the day after Labor Day, inclusive, except that in 2020, Colonial may conduct pipeline testing and inspection and road restoration from May 26 to June 19, 2020.
14. Construction and pipeline installation but not final paving can be performed on the hardened surface between November 15 and April 1. For construction between November 15 and April 1, Colonial shall comply with the following conditions:
 - a. Temporary binder patching will be provided daily and road restoration will occur at least five months following patching to allow for compaction.
 - b. To ensure proper construction and the longevity of the road, no snow, ice, frozen, or other deleterious material shall be used to backfill the trench.
 - c. Work will be suspended if the weather becomes too cold or snowy.
 - d. Except as needed to allow for construction, Service Road will remain a passable road throughout the winter and spring until the asphalt plants open and Colonial can complete the final paving.

- e. Any defects in the temporary patching during this period will be repaired immediately to ensure the safety of the traveling public and to prevent damage to snow plows.
15. Colonial shall limit the extent of construction work, pipeline inspection, and road restoration to allow at least one lane of traffic through the construction zone, with flagmen or signals, from 6 a.m. to 6 p.m. The construction zone may be closed to traffic from 6 p.m. to 6 a.m., subject to detours, signage, and message boards, as approved by the Town of Barnstable.
16. Colonial shall maintain Service Road in Barnstable in a safe condition, open to traffic, during periods of time when construction is inactive between construction commencement and construction completion.
17. Colonial will restore the roadway for a distance along Service Road (of approximately 9,500 linear feet) from the Sandwich/Barnstable town line to Route 149 by May 20, 2021. All repair work shall meet Massachusetts Department of Public Utilities Street Restoration Standards, D.T.E. 98-22.
18. Colonial shall ensure that: (1) the centerline is solid double-yellow except in passing zones, which shall be marked with broken yellow lines; (2) the outside edges of the 10-foot travel lanes are solid white lines; and (3) all striping shall be of chlorinated rubber and not reflective thermoplastic material.
19. Colonial shall provide rumble strips along the inside edges of the paved shoulders along Service Road from the Sandwich/Barnstable town line to Route 149.
20. Colonial shall construct asphalt berms along the outside edges of paved shoulders where necessary along the Project route to direct runoff to drainage structures or discharge locations to prevent erosion or standing water on the roadway.
21. Colonial shall replace any guardrails along Service Road in Barnstable adversely affected by construction with timber-backed weathered steel (i.e., corten steel) W-beam with safe ends.
22. Within six months of completing pipe construction in Barnstable, Colonial shall provide to the Town as-built drawings detailing the horizontal and vertical location of the pipe in relation to the paved road surface.
23. Colonial shall provide the names, addresses, and 24-hour, 7-day/week phone numbers to the DPW, Police Department and Fire Department of at least two contacts to handle emergency requirements such as settled trenches. In the event a road opening failure presents a nuisance or public safety problem, Colonial shall respond to all trench restoration requests from the Town within 48 hours.

24. Any work deemed necessary by the Company that would otherwise deviate from calendar or time limitations included in this approval may be performed with the prior written permission of the Barnstable DPW director. In the event the Barnstable DPW director does not approve a calendar deviation to extend the May 20, 2021 deadline within 21 days, Colonial may seek the approval of the Siting Board by filing the request along with the justification for the extension.



Patrick Woodcock, Acting Chairman
Energy Facilities Siting Board

Dated this 26th day of September, 2019

ATTACHMENT 2**EFSB 18-05, COLONIAL GAS COMPANY D/B/A NATIONAL GRID
APPROVAL IN LIEU OF TOWN OF SANDWICH PUBLIC PROPERTY ROAD
WORK/TRENCH PERMIT**

1. Pursuant to its authority under G.L. c. 164, §§ 69K-69O, the Energy Facilities Siting Board hereby grants to Colonial Gas Company d/b/a National Grid an Approval in lieu of a Public Property Road Work/Trench Permit from the Town of Sandwich. This Approval authorizes construction and operation of Phase III of the Western Segment of the Sagamore Line Reinforcement Project (“SLRP”) which was originally approved by the Siting Board on May 17, 2006, in Colonial Gas Company d/b/a KeySpan Energy Delivery New England, EFSB 05-2 (2006).
2. This Approval provides for the installation of approximately 0.5 miles of new 20-inch diameter coated-steel underground gas main.
3. This Approval allows road openings in Service Road, Sandwich, between Chase Road and the Barnstable/Sandwich town line, to install new gas main.
4. This Approval is issued subject to Conditions A through S set forth in Sagamore I and Sagamore III.
5. Colonial shall conform to all applicable Massachusetts General Laws and Town of Sandwich ordinances.
6. Colonial shall be responsible for trench maintenance during the period of construction as well as trench repairs caused by settlement or poor construction for a period of two years from the date of project completion. If the Town of Sandwich identifies pavement defects or premature deterioration during the two-year warranty period, Colonial shall be responsible for correcting the defects or deteriorations in a manner acceptable to the Town.
7. Colonial’s construction contractor or paving contractor shall provide financial assurance to the Town of Sandwich in the form of a performance bond or other means acceptable to the Town of Sandwich, for the full estimated cost of roadway restoration. The Town of Sandwich will release Colonial and its contractor(s) from this financial assurance at the completion of roadway restoration, subject to Town inspection and written acceptance.
8. Colonial shall provide its contractor qualification requirements to the paving contractors identified by the Town of Sandwich. These paving contractors may participate in Colonial’s bid event if, before the event, the contractors satisfy Colonial’s qualification requirements.

9. Colonial shall provide the director of the Sandwich Department of Public Works (“DPW”) with a comprehensive project schedule and conduct a preconstruction meeting with the DPW director at least two weeks prior to construction start, or prior to resumption of construction after a month or more of inactivity. Colonial shall not commence construction until holding such meeting with the DPW director. Additionally, Colonial shall hold weekly meetings with the DPW director at the DPW director’s office to discuss work status, work schedule, and any pertinent work issues.
10. Colonial or its contractor(s) shall call Dig Safe System, Inc., and the Sandwich DPW, at least 72 hours prior to initiating any work.
11. Colonial shall maintain the presence of an on-site construction supervisor at all times during periods of construction. The on-site supervisor will answer questions and respond to complaints from abutters in an expeditious fashion. Colonial will provide a short Project description suitable for the Town of Sandwich to post on its website and to distribute to the public. In addition, Colonial will also provide a hotline to abutters to call with any questions and concerns.
12. Colonial shall notify the Town of Sandwich of any significant questions and issues arising during construction, such as the discovery of any unknown underground utilities or drainage and shall cooperate with the Town toward mutually acceptable outcomes.
13. Tanks, valves, controls, and other equipment and appurtenances related to the gas main and its construction shall be installed in a location and manner that does not present a hazard to traffic safety or public safety, and that does not infringe on the public welfare.
14. Construction from May 10 through the day after Labor Day, inclusive, is limited to the hours of 7 a.m. to 5 p.m., Monday through Thursday, and 7 a.m. to 1 p.m. on Fridays. Work outside this limitation may be performed with the prior written permission of the Sandwich DPW director; additionally, Colonial may conduct tree trimming during 2019, and pipeline testing and inspection and road restoration between the Tuesday after Memorial Day 2020, and June 19, 2020. No work shall be performed on Saturdays, Sundays, or Commonwealth of Massachusetts holidays or on the Friday before such holidays without prior written permission of the DPW director. All other work is restricted to Monday to Friday from 7 a.m. to 5 p.m. for daytime work, and 6 p.m. to 6 a.m. for nighttime work.

15. Construction and pipeline installation but not final paving can be performed on the hardened surface between November 15 and April 1. For construction between November 15 and April 1, Colonial shall comply with the following conditions:
 - a. Temporary binder patching will be provided daily and road restoration will occur at least five months following patching to allow for compaction.
 - b. To ensure proper construction and the longevity of the road, no snow, ice, frozen, or other deleterious material shall be used to backfill the trench.
 - c. Work will be suspended if the weather becomes too cold or snowy.
 - d. Except as needed to allow for construction, Service Road will remain a passable road throughout the winter and spring until the asphalt plants open and Colonial can complete the final paving.
 - e. Any defects in the temporary patching during this period will be repaired immediately to ensure the safety of the traveling public and to prevent damage to snow plows.
16. Colonial shall limit the extent of daytime work such that no construction equipment or trucks shall occupy any part of the travelled way except during the hours of work authorized above. For day work, Colonial may close down Service Road in Sandwich to through-traffic only. Detours with signage and message boards approved by the Town of Sandwich shall be provided for all detours. Additionally, one travel lane shall be kept available during road closures for access by abutters, bus routes, and emergency vehicles. Colonial shall request that its contractor use two crews to construct in Sandwich in order to minimize the amount of time that Service Road is closed during daytime hours.
17. Colonial shall maintain Service Road in Sandwich in a safe condition, open to traffic, during periods of time when construction is inactive between construction commencement and construction completion.
18. Colonial will restore roadway for a distance along Service Road (of approximately 0.5 miles) from the intersection of Chase Road to the Sandwich/Barnstable town line, by November 15, 2020. All repair work shall meet Massachusetts Department of Public Utilities Street Restoration Standards, D.T.E. 98-22.
19. Upon completion of gas pipeline construction in Sandwich, Colonial shall allow for at least a five-month settling period prior to undertaking curb-to-curb roadway restoration associated with the Project.

20. All paving work shall conform to the Massachusetts Department of Transportation Highway Division Standard Specifications for Highways and Bridges, dated 1988, and Supplemental Specifications, dated June 15, 2012; the Construction Standard Details, dated June 2014; the current Manual on Uniform Traffic Control Devices for Streets and Highways, with latest revisions; the 1990 Standard Drawings for Signs and Supports; the 1968 Standard Drawings for Traffic Signals and Highway Lighting; and the American Standards for Nursery Stock, all as amended.
21. Colonial shall ensure that: (1) the centerline is solid double-yellow except in passing zones, which shall be marked with broken yellow lines; (2) the outside edges of the 10-foot travel lanes are solid white lines; and (3) all striping shall be of chlorinated rubber and not reflective thermoplastic material.
22. Colonial will not provide rumble strips along the inside edges of the paved shoulders in Sandwich.
23. Colonial shall construct asphalt berms along the outside edges of paved shoulders where necessary along the Project route to direct runoff to drainage structures or discharge locations to prevent erosion or standing water on the roadway.
24. Colonial shall replace any guardrails along Service Road in Sandwich adversely affected by construction with timber-backed weathered steel (i.e., corten steel) W-beam with safe ends.
25. Within six months of completing pipe construction in Sandwich, Colonial shall provide to the Town as-built drawings detailing the horizontal and vertical location of the pipe in relation to the paved road surface.
26. Colonial shall provide the names, addresses, and 24-hour, 7-day/week phone numbers to the DPW, Police Department, and Fire Department of at least two contacts to handle emergency requirements such as settled trenches. In the event a road opening failure presents a nuisance or public safety problem, Colonial shall respond to all trench restoration requests from the Town within 48 hours.
27. Any work deemed necessary by the Company that would otherwise deviate from calendar or time limitations included in this approval may be performed with the prior written permission of the Sandwich DPW director. In the event the Sandwich DPW director does not approve a calendar deviation to extend the November 15, 2020 deadline within 21 days, Colonial may seek the approval of the Siting Board by filing the request along with the justification for the extension.



Patrick Woodcock, Acting Chairman
Energy Facilities Siting Board

Dated this 26th day of September, 2019

APPROVED by a vote of the Energy Facilities Siting Board at its meeting on September 26, 2019, by the members present and voting. Voting for the Tentative Decision as amended: Patrick Woodcock, Undersecretary of the Executive Office of Energy and Environmental Affairs and Acting Siting Board Chairman; Matthew Nelson, Chair of the Department of Public Utilities; Cecile M. Fraser, Commissioner of the Department of Public Utilities; Judith Judson, Commissioner of the Department of Energy Resources; Robert McGovern, Deputy General Counsel and designee for the Secretary of the Executive Office of Housing and Economic Development; Gary Moran, Deputy Commissioner and designee for the Commissioner of Massachusetts Department of Environmental Protection; and Brian Casey, Public Member.



Patrick Woodcock, Acting Chairman
Energy Facilities Siting Board

Dated this 26th day of September, 2019

Appeal as to matters of law from any final decision, order or ruling of the Siting Board may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Siting Board be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Siting Board within twenty days after the date of service of the decision, order or ruling of the Siting Board, or within such further time as the Siting Board may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the clerk of said court. Massachusetts General Laws, Chapter 164, Sec. 69P; Chapter 25, Sec. 5.