

151 FERC ¶ 61,118  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Algonquin Gas Transmission, LLC

Docket No. CP14-522-000

ORDER ISSUING CERTIFICATE

(Issued May 14, 2015)

1. On July 10, 2014, Algonquin Gas Transmission, LLC (Algonquin) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> to construct and operate approximately 1.2 miles of 16-inch-diameter lateral pipeline and a metering and regulating station in Salem, Massachusetts (Salem Lateral Project).

2. As discussed below, the Commission will grant the requested authorization, subject to the conditions herein.

**I. Background and Proposal**

3. Algonquin is a natural gas company, as defined by section 2(6) of the NGA,<sup>3</sup> engaged in the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction.<sup>4</sup> Algonquin's transmission system extends from New Jersey, through Connecticut, Massachusetts, New York, and Rhode Island.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2014).

<sup>3</sup> 15 U.S.C. § 717a(6) (2012).

<sup>4</sup> Algonquin, a Delaware corporation, is an indirect, wholly owned subsidiary of Spectra Energy Partners, LP.

4. Algonquin proposes to construct and operate a 1.2-mile-long, 16-inch-diameter lateral pipeline (Salem Lateral Pipeline) to provide 115,000 dekatherms (Dth) per day of firm natural gas transportation service to Footprint Power Salem Harbor Development, LP's (Footprint) redeveloped Salem Harbor Station, a 630-megawatt quick-start combined-cycle, natural gas-fired generation facility, in Salem, Massachusetts.<sup>5</sup> In addition, Algonquin proposes to construct and operate a new metering and regulating station (Meter Station) on Footprint's property. The proposed Salem Lateral Pipeline will extend from a subsea interconnection with Algonquin's existing HubLine pipeline<sup>6</sup> in Beverly Harbor, across a peninsula jutting into the harbor, under another body of water (Collins Cove), and make landfall again before ending at the proposed Meter Station. The pipeline will be constructed in approximately 0.58 miles of open waters and the onshore portion of the pipeline will cross two industrial properties,<sup>7</sup> one commercial property,<sup>8</sup> and one residential property.<sup>9</sup> Algonquin will install approximately 1 mile of the Salem Lateral pipeline using horizontal directional drilling (HDD). Algonquin estimates the cost of the project to be \$62,700,000.

5. Algonquin proposes to establish a new incremental recourse rate for firm transportation service on the Salem Lateral Pipeline under its existing Rate Schedule AFT-CL. Algonquin and Footprint have entered into a precedent agreement for firm transportation service on the Salem Lateral Pipeline at negotiated rates for a primary term of 15 years.

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<sup>5</sup> On October 10, 2013, the Massachusetts Energy Facilities Siting Board approved the construction and operation of the Salem Harbor Station.

<sup>6</sup> *Maritimes & Northeast Pipeline, L.L.C.*, 95 FERC ¶ 61,077 (2001) (order issuing a certificate to construct and operate the HubLine Project).

<sup>7</sup> The pipeline crosses (1) property owned by National Grid Gas Delivery Companies that has an existing liquefied natural gas (LNG) facility and electric transmission facilities, which is where the horizontal directional drilling (HDD) across Beverly Harbor will make landfall and where the HDD across Collins Cove will begin, and (2) Footprint's property, which is where the HDD across Collins Cove will exit and connect to the Meter Station.

<sup>8</sup> The second HDD will cross under the Ward 2 Social Club property.

<sup>9</sup> The second HDD will cross a residential property before entering Collins Cove.

## II. Notice, Interventions, and Comments

6. Notice of Algonquin's application was issued by the Commission on July 24, 2014, and published in the *Federal Register* on July 31, 2014, with interventions, comments, and protests due by August 14, 2014.<sup>10</sup> The following parties filed timely, unopposed motions to intervene: Jeffrey R. Brooks; Massachusetts Energy Facilities Siting Board (Massachusetts Siting Board); Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.; Exelon Corporation; Footprint; Jubilee Yacht Club, Inc.; National Grid Gas Delivery Companies (National Grid); and jointly and severally, the New England Local Distribution Companies.<sup>11</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>12</sup>

7. On January 22, 2015, Allegheny Defense Project filed an untimely motion to intervene. On February 6, 2015, Algonquin filed an answer in opposition to Allegheny Defense Project's motion. While Allegheny Defense Project's motion was filed relatively late in the course of this proceeding, the Commission's practice in certificate proceedings has been generally to grant motions to intervene filed prior to issuance of the Commission's order on the merits. Accordingly, we will grant Allegheny Defense Project's late-filed motion to intervene.<sup>13</sup>

8. Several parties filed comments about the proposed project. Mr. Jeffrey R. Brooks expresses concern with the proposed pipeline route and supports an alternative route. He also raises safety issues associated with the pipeline's proximity to residential neighborhoods, environmental impacts associated with running the pipeline across a contaminated piece of city property, local zoning rules, property values, and the potential for turning Salem into a host city for a gas liquefaction plant.<sup>14</sup> The Massachusetts Siting

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<sup>10</sup> 79 Fed. Reg. 44,447 (2014).

<sup>11</sup> The New England Local Distribution Companies include: Bay State Gas Company d/b/a Columbia Gas of Massachusetts; Connecticut Natural Gas Corporation; Liberty Utilities Corp. d/b/a Liberty Utilities; Middleborough Gas & Electric Department; NSTAR Gas Company; Northern Utilities, Inc.; City of Norwich, Department of Public Utilities; The Southern Connecticut Gas Company; and Yankee Gas Services Company.

<sup>12</sup> 18 C.F.R. § 385.214(c) (2014).

<sup>13</sup> *See* 18 C.F.R. § 385.214(d) (2014).

<sup>14</sup> On August 28, 2014, Algonquin filed an answer responding to Mr. Brooks's comments.

Board filed comments raising issues regarding construction timing and hours, noise and vibration impacts, traffic planning, and historic conservation.<sup>15</sup> Footprint filed a comment in support of the project.

9. The issues raised in the comments were addressed in the Environmental Assessment (EA) prepared for the project and are discussed below.

### **III. Discussion**

10. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>16</sup>

#### **A. Application of the Certificate Policy Statement**

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>17</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their

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<sup>15</sup> On September 30, 2014, Algonquin filed an answer to the Massachusetts Siting Board's concerns.

<sup>16</sup> 15 U.S.C. §§ 717f(c), (e) (2012).

<sup>17</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

13. As discussed above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. Algonquin proposes to charge an initial incremental rate for firm transportation service on the Salem Lateral Pipeline. Accordingly, the project will not be subsidized by existing customers, and the threshold requirement of no subsidization is met.

14. The Salem Lateral Project involves the construction and operation of a delivery lateral off of Algonquin's HubLine pipeline to serve the natural gas needs of Footprint's Salem Harbor Station, a new customer. We find that the proposal will not adversely affect Algonquin's existing customers because there will be no degradation of existing service. In addition, there will be no adverse impact on other existing pipelines in the region or their captive customers because the proposal is not intended to replace existing customers' service on other pipelines. Also, no pipeline company has protested Algonquin's application.

15. The Salem Lateral Project consists of 1.2 miles of natural gas pipeline and a delivery meter station at the pipeline's terminus at the Salem Harbor Station. Approximately half of the pipeline would be constructed through open waters, with the remaining portions crossing underneath industrial, commercial, and residential land, and land owned by the City of Salem. The Meter Station would be constructed on Footprint's property. Algonquin further minimizes adverse impacts on landowners by proposing to use HDD for the majority of the pipeline construction. The pipeline route crosses underneath a small portion of residential and commercial land, avoiding ground disturbance due to the use of HDD. Thus, we find that Algonquin has designed the Salem Lateral Project to minimize adverse effects on landowners and surrounding communities.

16. The Salem Lateral Project will serve the natural gas needs of Footprint's Salem Harbor Station. Based on the benefits the Salem Lateral Project will provide, the lack of adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Algonquin's proposal, subject to the conditions discussed below.

## B. Rates

17. Algonquin proposes an initial incremental recourse rate for firm service on the Salem Lateral Pipeline under Rate Schedule AFT-CL.<sup>18</sup> Algonquin proposes a monthly reservation charge of \$10.9380 per Dth and a commodity charge of \$0.00 per Dth under Rate Schedule AFT-CL. Algonquin's proposed incremental rates are based on a projected cost of service (after costs are allocated to interruptible service) of \$15,094,381 and billing determinants of 1,380,000 Dth (115,000 Dth per day times 12 months). Algonquin applied a rate of return of 10.37 percent, which is the rate of return underlying its currently effective rates as approved in Docket No. RP99-262-000.<sup>19</sup> Algonquin used a depreciation rate of 6.67 percent, which corresponds to the terms of the 15-year precedent agreement.

18. Algonquin does not propose to charge fuel or assess a charge for lost and unaccounted for service on the project, as the Salem Lateral Pipeline is a closed lateral and does not include compression facilities. Algonquin proposes to charge a rate of \$0.3596 per Dth for interruptible service on the lateral under incremental Rate Schedule AIT-2. This rate is derived from Algonquin's proposed rate for firm transportation service on the Salem Lateral Pipeline under Rate Schedule AFT-CL using a 100 percent load factor.

19. We have reviewed the proposed cost-of-service and the proposed firm and interruptible initial incremental rates for the Salem Lateral Project and find they are reasonable, except as discussed below.

20. Algonquin proposes to include variable costs in its calculation of the firm reservation charge for the Salem Lateral Project service under Rate Schedule AFT-CL. In a November 20, 2014 data request, Commission staff directed Algonquin to identify the fixed and variable costs included in its estimated transportation costs in Exhibit P, Schedule 3.

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<sup>18</sup> Rate Schedule AFT-CL is a firm transportation service for "closed laterals." Shippers under Rate Schedule AFT-CL have no rights to receive service on any portion of Algonquin's system other than the specified lateral facilities and other customers have no rights to receive service on any portion of a closed lateral. *See* Algonquin November 26, 2014 Data Response, Response 2.

<sup>19</sup> *Algonquin Gas Transmission, LLC*, 87 FERC ¶ 61,008 (1999) (order approving revised tariff sheets filed by Algonquin under section 4 of the NGA to implement an offer of settlement reducing its transmission rates).

21. In its November 26, 2014 response, Algonquin states that all O&M<sup>20</sup> accounts in Exhibit P, Schedule 3 “include variable costs.”<sup>21</sup> Algonquin states “that the variable component of the incremental O&M costs for incremental projects is *de minimis*.”<sup>22</sup> In addition, Algonquin notes that “[t]he Commission has approved Algonquin’s recourse rates for prior incremental projects all of which have included 100% of the incremental O&M costs in the demand charge, including those projects that added horsepower and compression costs.”<sup>23</sup>

22. As the Commission previously stated, Section 284.7(e) does not allow the recovery of variable costs in the reservation charge, and there is no “*de minimis*” cost exception to the rule.<sup>24</sup> Section 284.10(c)(2) states that variable costs should be used to determine the volumetric rate.<sup>25</sup> Therefore, we will require Algonquin to calculate its firm reservation charge consistent with sections 284.7(e) and 284.10(c)(2) of the Commission’s regulations.

23. When Algonquin submits its tariff records 30 to 60 days before placing the project facilities into service, we direct Algonquin to submit a revised incremental recourse reservation charge under Rate Schedule AFT-CL for firm service that does not include variable costs<sup>26</sup> associated with the project, consistent with the Commission’s regulations. At that time, Algonquin may also propose a usage charge under Rate Schedule AFT-CL to recover any variable costs of providing service on the Salem Lateral Project, pursuant to section 284.10(c)(2) of the Commission’s regulations.

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<sup>20</sup> Algonquin labels O&M costs as “M&O” in Exhibit P, Schedule 3.

<sup>21</sup> Algonquin November 26, 2014 Data Response, Response No. 1.

<sup>22</sup> *Id.*

<sup>23</sup> Algonquin November 26, 2014 Data Response, Response No. 1, note 2.

<sup>24</sup> *See Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163, at P 34 (2015).

<sup>25</sup> 18 C.F.R. §§ 284.7(e), 284.10(c)(2) (2014).

<sup>26</sup> Variable costs include any costs that vary based on throughput including, but not limited to, non-labor or materials and supplies portions of compression O&M costs. *See, e.g., Ozark Gas Transmission System*, 64 FERC ¶ 61,298, at n.5 (1993) (“The Commission has classified non-labor compression and processing O&M costs as variable for more than 40 years [citations omitted].”); *Alabama-Tennessee Natural Gas Co.*, 38 FERC ¶ 61,315, at 62,023 (1987) (“Account No. 858 costs should be classified on an as-billed basis.”).

24. Algonquin states that it will provide service to Footprint at a negotiated rate. The negotiated rate agreement includes a provision to adjust the negotiated rate to reflect the final capital cost of the project facilities.<sup>27</sup> Algonquin must file tariff records reflecting its negotiated rate agreement within 30 to 60 days prior to the date the negotiated rates are proposed to become effective.

25. To ensure that costs are properly allocated between Algonquin's existing shippers and the incremental services proposed in this proceeding, we will require Algonquin to keep separate books and accounting of costs attributable to the proposed incremental services. Further, the books should be maintained with applicable cross-references, as required by section 154.309 of the Commission regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and provided consistent with Order No. 710 on incremental facilities.<sup>28</sup> Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.<sup>29</sup>

### C. Environmental Analysis

26. The Commission began its initial review of the proposed project following approval for Algonquin to use the pre-filing process on November 4, 2013, in Docket No. PF14-5-000. As part of the pre-filing review, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI) on February 7, 2014. This notice was published in the Federal Register on February 14, 2014,<sup>30</sup> and was mailed to interested parties including federal, state, and local officials; agency representatives; conservation organizations; local libraries and newspapers; Native American tribes; property owners affected by the proposed facilities; and other interested stakeholders.

27. We received scoping comments in response to the NOI from the National Park Service, National Oceanic and Atmospheric Administration's National Marine Fisheries

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<sup>27</sup> Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement.

<sup>28</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

<sup>29</sup> 18 C.F.R. § 154.309 (2014).

<sup>30</sup> 79 Fed. Reg. 8,956-58 (2014).

Service, Massachusetts Historical Commission, Commonwealth of Massachusetts Board of Underwater Archaeological Resources, Massachusetts Siting Board, the Mashpee Wampanoag Tribe, City of Salem, Salem Historical Commission, Jubilee Yacht Club, Sandy Point Sailing Association, National Grid, and multiple landowners and other interested stakeholders. The primary issues raised by the commenters were public safety (including impacts on boaters during construction), fishery impacts, management of existing contaminated soils, construction impacts on traffic, offshore alternatives, and impacts on cultural resources.

28. To satisfy the requirements of the National Environmental Policy Act,<sup>31</sup> Commission staff prepared an EA for Algonquin's proposal. The EA was prepared with the cooperation of the U.S. Army Corps of Engineers. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics (including traffic impacts), cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

29. The EA was issued for a 30-day comment period and placed into the public record on December 2, 2014. The Commission received general comments on the EA from Carolyn Barthel, Rand Barthel, Turner Bledsoe, Eva Das, Jay Devin, Rachel Eckles, John Eskew, Emily Hart, Grace Hall, Samuel King, Jonathan Russ, and Laura Wagner (collectively "commenters"). In addition to filing comments on the application, the Massachusetts Siting Board and Jeffrey Brooks each filed comments on the EA. Algonquin filed a response to the comments.

30. On April 2, 2015 Algonquin filed a letter from the Jubilee Yacht Club. Jubilee Yacht Club's letter, dated February 20, 2015, notified Algonquin that Algonquin addressed all of its concerns regarding the Salem Lateral Project.

31. On April 2, 2015, Algonquin also filed a letter from the Massachusetts Office of Coastal Zone Management. Massachusetts Office of Coastal Zone Management's letter, dated March 30, 2015, found the Salem Lateral Project to be consistent with the state's coastal zone management policies. Therefore, we are not including the environmental recommendation from the EA that required Algonquin to file the determination of consistency with the Coastal Zone Management Act as a condition of this order.

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<sup>31</sup> 42 U.S.C. §§ 4321 *et. seq.* (2012).

## 1. General Environmental Comments

32. The Commission received several comments on the potential impacts the Salem Lateral Project could have on climate change. Specifically, commenters request that renewable energy sources be considered as an alternative to the project, that the amount of carbon dioxide emissions be included in the EA, that impacts on climate change be analyzed, that a determination of the Salem Lateral Project's compliance with Massachusetts' Global Warming Solutions Act be reached, and that the potential for liquefied natural gas (LNG) export be evaluated.

33. The EA indicates that the evaluation criteria used in the analysis of alternatives include: technical feasibility, conveying a significant environmental advantage over the proposed action, and ability to meet the objective of the Salem Lateral Project, which is to provide natural gas to the Salem Harbor Station. Thus, an alternative, such as the use of solar or wind power, could not meet the objective of the Salem Lateral Project, which is to enable delivery of natural gas to Footprint's power plant. A renewable energy alternative could possibly serve as a replacement for the Salem Harbor Station. However, the purpose of this project, and the action under our review, is to provide a timely source of fuel to meet Footprint's generation needs. Any recommendation of a renewable energy alternative in place of the Salem Lateral Project would be a recommendation of the no-action alternative because it would not allow for delivery of natural gas to Footprint's power plant.<sup>32</sup> We do not find renewable energy sources to be a viable alternative to the Salem Lateral Project.

34. The EA expresses greenhouse gas emissions in terms of carbon dioxide equivalents.<sup>33</sup> Section 2.7.1 of the EA presents the amount of greenhouse gas emissions that are anticipated from the project. Specifically, table 2.7-2 includes the potential amount of greenhouse gas emissions expected from the construction of the Salem Lateral Project, and the greenhouse gas emissions expected from fugitive emissions during operation of the Salem Lateral Project are included in the text of the EA.<sup>34</sup> The EA also discloses existing and projected emissions associated with construction and operation of the Salem Harbor Station.<sup>35</sup>

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<sup>32</sup> The EA provides an analysis of the no-action alternative. *See* EA at 3-1.

<sup>33</sup> *See* EA at 2-57.

<sup>34</sup> *See* EA at 2-59.

<sup>35</sup> *See* EA at 2-84 – 2-85 and Tables 2.9-2 and 2.9-3.

35. Section 2.9 of the EA discusses climate change and the potential impacts of climate change generally in the Northeast region of the United States. We concur with the EA's conclusion that there is no standard methodology to determine how the delivery of natural gas by the Salem Lateral Project, and any incremental greenhouse gas emissions, would result in physical effects on the environment, either locally or globally.<sup>36</sup>

36. Commenters also assert that the project is inconsistent with the goals of the Massachusetts Global Warming Solutions Act.<sup>37</sup> The Global Warming Solutions Act is a Massachusetts regulatory program enacted in 2008 to address climate change. Under section 7 of the NGA, the Commission is authorized to issue a certificate of public convenience and necessity to a company engaged in the transportation of natural gas in interstate commerce. The NGA does not require compliance with state laws. In determining whether the proposed project satisfies the statutory requirements of section 7 of the NGA, the Commission does not interpret and apply the goals of the Global Warming Solutions Act. Nonetheless, we note that the Salem Lateral Project is designed to transport natural gas to the Salem Harbor Station and, in approving Footprint's Salem Harbor Station, the Massachusetts Siting Board concluded that the construction and operation of the Salem Harbor Station was consistent with the Global Warming Solutions Act.<sup>38</sup>

37. Commenters also express concern that the pipeline would be utilized for LNG export. As previously stated, the purpose of the project is to deliver gas to the Salem Harbor Station for use in natural gas-fired power generation. While National Grid operates an LNG storage facility in the vicinity of the Salem Harbor Station for peak day and peak season requirements, there are no import or export facilities at this location. There is no indication that the Salem Lateral Project could or will be used as an export facility.

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<sup>36</sup> Table 2.9-3 of the EA includes the operational emissions from the Salem Harbor Station for the previous coal-fired generation facility and the planned natural-gas fired generation facility.

<sup>37</sup> MASS. GEN. LAWS ch. 21N § 1 *et seq.* (2014).

<sup>38</sup> See Commonwealth of Massachusetts Energy Facilities Siting Board, *In the Matter of the Petition of Footprint Power Salem Harbor Development LP for Approval to Construct a Bulk Generating Facility in the City of Salem, Massachusetts*, EFSB 12-2, at 32, 104 (October 10, 2013).

## 2. Comments Received from the Massachusetts Siting Board

38. The Massachusetts Siting Board comments that the EA does not contain any additional information on specific scheduling or alternatives that address recreational boating in Beverly Harbor. The Massachusetts Siting Board recommends that, in addition to the filing of the Marine Boating Coordination and Safety Plan, Algonquin should commence in-water work in Beverly Harbor no earlier than September 1, 2015.

39. The EA indicates that the current schedule for project construction is anticipated to take six months. Thus, in order to balance weather, environmental, and construction constraints, Algonquin proposes to begin construction of the project in July 2015. If Algonquin began construction in September, as suggested by the Massachusetts Siting Board, any delays or adverse weather might require construction to occur during the National Marine Fisheries Service's February 15 to June 30 time-of-year restriction for winter flounder.<sup>39</sup> Algonquin also indicated that if construction extended into the late fall and winter, the shorter daylight hours would require construction timeframes to be extended. Further, Algonquin reports that, according to the harbormasters, a September start date would require the removal of moorings beginning in July and August, which is in the middle of the recreational boating season and might lead to greater confusion.

40. The EA concludes that a start date of July 2015 would balance the environmental and seasonal weather conditions and we concur.<sup>40</sup> Thus, Environmental Condition 16 in the appendix to this order, requires the filing of the Marine Boating Coordination and Safety Plan, developed in consultation with the Beverly and Salem Harbor Masters, the U.S. Coast Guard (Gloucester, Massachusetts Station), the Jubilee Yacht Club, Sandy Point Sailing Association and, as applicable, other marina owners and mariners to further minimize impacts on boating in Salem Harbor.

41. The Massachusetts Siting Board expresses concern about the work hours for typical pipeline and meter station construction lasting from 7:00 a.m. to 5:30 p.m., Monday through Saturday. The Massachusetts Siting Board also expresses concern about the proposed hours for HDD construction, which is projected to occur from 7:00 a.m. to 7:00 p.m. Monday through Saturday, except when pipe pullback activity is projected to require a continuous 24-hour period. The Massachusetts Siting Board points out that these proposed work hours exceed the construction work hours allowed by the City of Salem's noise ordinance, and that they are longer than the construction work hours recently allowed by the Massachusetts Siting Board for construction of Footprint's Salem Harbor Station.

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<sup>39</sup> See EA at 2-34.

<sup>40</sup> See EA at 2-51.

42. In considering Algonquin's HDD construction schedule, the EA took into account the National Marine Fisheries Service's and Massachusetts Division of Marine Fisheries' seasonal timing windows for offshore construction, as well as the overall length of construction. While the EA acknowledges that Algonquin's construction schedule for HDD operations exceeds the City of Salem's noise ordinance, it finds that Algonquin's current construction schedule will reduce the overall length of construction.<sup>41</sup>

43. We concur with the EA's conclusion that the HDD noise impact at the nearest noise-sensitive areas will not be significant because Algonquin will implement site-specific measures and the noise impacts will be short-term.<sup>42</sup> In addition, Environmental Condition 17 in the appendix to this order, requires Algonquin to file the noise measurements at the prescriptive noise-sensitive areas at the start of drilling operations, including the noise mitigation measures employed at that time and any additional noise mitigation measures needed if the initial measurements exceed a day-night noise level of 55 decibels on the A-weighted scale at any noise-sensitive area.

44. Nonetheless, we understand that Algonquin continues to negotiate a construction protocol agreement to remediate the construction-related impacts noted by the Massachusetts Siting Board, including work hours and noise impacts. Further, Algonquin set up a hotline telephone number to provide project information for interested parties and to log and initiate resolutions for complaints that may arise during construction. Algonquin also committed to make available to the Commission and the public the name and contact information for a liaison prior to the start of construction. As required by Environmental Condition 7 in the appendix to this order, Algonquin will file with the Commission weekly construction status reports documenting any landowner or resident complaints and Algonquin's mitigation to resolve these concerns.

45. The Massachusetts Siting Board acknowledges Algonquin's offer to conduct vibration monitoring, including video surveys, for all property owners within a 300-foot radius of the HDD exit and entrance points who request such monitoring. The Siting Board requests that Algonquin notify each property owner in writing of the offer to conduct such monitoring prior to construction. As explained in the EA, Algonquin already completed a vibration study which concluded that vibration levels would be within the permissible level for all buildings outside of the construction workspace.<sup>43</sup> In addition, in response to the Massachusetts Siting Board's comment, Algonquin has further clarified that it will conduct pre- and post-construction inspections of structures

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<sup>41</sup> See EA at 2-64.

<sup>42</sup> See EA at 2-61 to 2-65.

<sup>43</sup> See EA at 2-44.

located up to 300 feet from the HDD entry and exit points if requested to do so by the landowner. Algonquin has committed to notify the applicable landowners of this inspection offer in writing prior to construction. We find Algonquin's vibration study and offer of structural inspections responsive to the Massachusetts Siting Board's comment.

46. The Massachusetts Siting Board is concerned about traffic coordination along the Webb Street driveway on the Footprint Salem Harbor Station property, especially as it relates to overlapping construction activities. The Massachusetts Siting Board notes coordination of the Salem Lateral Project and the Salem Harbor Station Project is premature due to uncertainty about actual timing of each project. It also reiterates that equipment and material delivery would be prohibited south of Webb Street, in order to avoid historic Derby Street as well as the downtown area.

47. Section 2.5 of the EA indicates that approximately 71 workers would be required during construction and that no in-street work or road closures are anticipated.<sup>44</sup> Based on the number of employees and lack of in-street work, the EA does not anticipate any noticeable traffic issues. In addition, Algonquin's Traffic Management Plan addresses continued outreach to local communities to address traffic issues and provides a map indicating that construction traffic would not occur south of Webb Street. Environmental Condition 15 in the appendix to this order requires Algonquin to file its final Traffic Management Plan with the Commission prior to construction. This will ensure any additional requirements, final coordination efforts, and updates are addressed and will include additional input from the City of Salem, Footprint, and National Grid.<sup>45</sup>

### **3. Comments Received from Mr. Jeffrey Brooks**

48. Mr. Jeffrey Brooks's comments on the EA generally reiterate the comments in his motion to intervene. The EA addresses these comments. However, we will respond to Mr. Brooks's additional comments on the EA about safety concerns as it relates to the route of the Salem Lateral Pipeline, the use of HDD, and the project's impacts on property values.

49. Mr. Brooks expressed concern about the potential safety implications of locating Algonquin's pipeline in the densely populated City of Salem and near residential and business properties, as well as an elementary school, playing fields, a public park (Beattie Park), a social club (Ward 2 Social Club), playgrounds, and senior citizen housing.

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<sup>44</sup> See EA at 2-45 to 2-46.

<sup>45</sup> See *supra* note 7.

50. Section 2.8.1 of the EA addresses siting a high-pressure pipeline in an urban and developed setting in proximity to residential areas, schools, and hospitals. This section of the EA details the design requirements set forth by the U.S. Department of Transportation (DOT) for natural gas transmission pipelines, as well as Algonquin's integrity management program which includes risk assessment and preventative and mitigative measures, among other aspects.<sup>46</sup> The EA concludes that operation of the project will meet or exceed all applicable DOT safety standards and regulations.

51. Mr. Brooks comments that a site-specific diagram was missing for the Ward 2 Social Club. As required, Algonquin provided site-specific residential construction drawings for structures within 50 feet of the construction workspace. These are included in the EA. The Ward 2 Social Club will be approximately 60 feet from the pipeline right-of-way. In addition, the pipeline will be installed by HDD at this location and not require any ground or surface disturbance. Thus, a site-specific construction drawing is not necessary.

52. Mr. Brooks comments that the EA's deepwater alternatives 4A and 4B should be selected and inquired whether the cost of the alternatives is factored into staff's analysis. Section 3.3.5 of the EA compares the project to alternatives 4A and 4B, both of which would avoid construction near residential areas. The EA finds that based on multiple factors including: an increase in pipeline length, an increase in seafloor disturbance, proximity of the Salem Navigational Channel, and an increased amount of waterbody crossings, alternatives 4A and 4B would each result in a greater environmental impact.<sup>47</sup> As such, the EA does not recommend these alternatives and we agree. Whether or not the alternatives would be economically feasible was not part of the criteria staff used when evaluating alternatives 4A and 4B.

53. Mr. Brooks inquires whether it would be a safety concern if Algonquin installed aboveground facilities (exposed piping or valves) next to National Grid's existing LNG facility. Section 1.5 of the EA details the aboveground facilities that are proposed as part of the project. The HDD entry and exit points on National Grid's facility will not have permanent aboveground exposed pipes or valves. All of the aboveground facilities for this project are within the Meter Station that will be constructed on Footprint's Salem Harbor Station site.<sup>48</sup> Section 1.7 of the EA indicates that the pipeline segment on National Grid's property would be trenched where it is not installed by HDD, which would ensure that the pipeline is below grade.

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<sup>46</sup> See EA at 2-66 to 2-76.

<sup>47</sup> See EA at 3-9 to 3-12.

<sup>48</sup> See EA at 1-5 to 1-6.

54. Mr. Brooks also suggests that Algonquin's change in pipeline construction method from conventional lay to HDD was because there were safety concerns about pipeline facilities being sited next to National Grid's existing electric transmission line corridor and LNG facility. In a response to Mr. Brooks's comment, Algonquin clarifies that concerns National Grid expressed during the pre-filing process were related to site-specific considerations about the access, maintenance, and repair of the existing infrastructure at the site. National Grid's concerns also included potential site constraints due to the limited space available during the construction of the pipeline and future constraints associated with heavy equipment being able to work over the pipeline. As stated in the EA, Algonquin's HDD installation method was adopted to address the potential constraints associated with siting the pipeline near National Grid's facilities.<sup>49</sup>

55. Mr. Brooks is concerned about the potential consequences of a pipeline explosion and questions whether the average depths of cover at the entry and exit points of the HDD provide for adequate levels of safety. The depths of cover at the HDD entry and exit points must be consistent with DOT's safety standard regulations. We concur with the analysis and safety data reported in the EA, showing that natural gas transmission pipelines continue to be a safe, reliable means of energy transportation, as pipelines must adhere to all applicable DOT safety standards. Mr. Brooks also comments on the safety record of Algonquin's parent, Spectra Energy Partners, LP. The EA includes information regarding Spectra Energy Partners, LP's safety record, which is contained in section 2.8.2 of the EA. We find this acceptable.

56. Mr. Brooks expresses concern about the potential decrease in property values near the pipeline due to safety issues. The impact a pipeline could have on the value of a tract of land would depend on many factors including the size of the tract, local zoning, the values of adjacent properties, the presence of other utilities, the current value of the land or nearby properties, and the current land use.<sup>50</sup> Subjective valuation is generally not considered in appraisals. This is not to say that the pipeline would not affect resale values. A potential purchaser of property may make a decision to purchase land based on the purchasers planned use. If the presence of a pipeline renders a planned use not feasible, it is possible that a potential purchaser would decide not to purchase the property. However, each potential purchaser has different criteria and differing capabilities to purchase land.

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<sup>49</sup> See EA at 1-3.

<sup>50</sup> See, e.g., *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199, at P 95 (2014) (finding that significant loss of property value due to construction of a pipeline is not supported by the literature); *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163, at P 97-98 (2015) (affirming the conclusions of the Final Environmental Impact Statement that installation of pipeline is not likely to negatively impact property values).

57. Mr. Brooks comments on zoning in the project area. Although the area is zoned residential, a pipeline is not incompatible with the current zoning and will not require any change in zoning where it is installed. Most of the project will be installed underground via HDD, which will minimize the surface impacts compared with traditional aboveground trenched construction methods.

58. In conclusion, we have analyzed the information and analysis contained in the record, including the EA, concerning the project's potential environmental impacts. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the EA, and find that if constructed and operated in accordance with Algonquin's application and the conditions imposed herein, approving this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

59. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>51</sup>

60. At a hearing held on May 14, 2015, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, and all comments submitted, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Algonquin to construct and operate the Salem Lateral Project, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Algonquin's:

- (1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commissions' regulations;

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<sup>51</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply Corp. v. Pub. Serv. Comm'n of State of N.Y.*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission Sys., L.P.*, 52 FERC ¶ 61,091 (1990), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

(2) compliance with all of the Commission's applicable regulations including, but not limited to, Parts 154, 157, 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions in the appendix to this order; and

(4) execution of a firm service agreement equal to the level of service and in accordance with the terms of service represented in its precedent agreement prior to commencing construction.

(C) Algonquin's proposed incremental recourse rates for service on the Salem Lateral Pipeline under Rate Schedules AFT-CL and AIT-2 are approved, except as more fully discussed above.

(D) Algonquin must file actual tariff records setting forth its initial incremental recourse rates in accordance with section 154.207 of the Commission's regulations and other proposed changes to its tariff records implementing the project not less than 30 days, or more than 60 days, prior to placing the Salem Lateral Project in service.

(E) Algonquin shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Algonquin. Algonquin shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(F) Allegheny Defense Project's untimely motion to intervene is granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix**  
**Environmental Conditions**

As recommended in the EA, this authorization includes the following conditions:

1. Algonquin shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Algonquin must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Algonquin shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Algonquin's exercise of eminent domain authority, granted under section 7(h) of the NGA, in any condemnation proceedings related to the Order, must be consistent with these authorized facilities and locations. Algonquin's right of eminent domain granted under section 7(h) of the NGA does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Algonquin shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Algonquin shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Algonquin must file revisions to the plan as schedules change. The plan shall identify:

- a. how Algonquin will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how Algonquin will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. how Algonquin will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Algonquin will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Algonquin's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Algonquin will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Algonquin shall file updated status reports with the Secretary on a **weekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Algonquin's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Algonquin from other federal, state, or local permitting agencies concerning instances of noncompliance, and Algonquin's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Algonquin shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
  9. Algonquin must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
  10. **Within 30 days of placing the authorized facilities in service**, Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official:
    - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
    - b. identifying which of the certificate conditions Algonquin has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
  11. **Prior to construction**, Algonquin shall either verify that no excavation greater than 15 feet would occur within the Salem Harbor Station site, or if excavations greater than 15 feet would occur, file with the Secretary a copy of the Opinion of a Licensed Site Professional and the Health and Safety Plan prepared by a Certified Industrial Hygienist or appropriately qualified specialist in compliance with the Activity and Use Limitation.
  12. **Prior to construction**, Algonquin shall file with the Secretary for the review and written approval of the Director of OEP its Final Water Quality Monitoring Plan detailing water quality monitoring during construction at the Beverly Harbor

horizontal directional drill/tie-in workspace, developed in consultation with the applicable federal and state agencies.

13. **Prior to construction** and after Algonquin has selected an HDD contractor, Algonquin shall file its final Best Drilling Practices Plan (BDP Plan) for the review and written approval of the Director of OEP.
14. **Prior to construction**, Algonquin shall file with the Secretary the results of its consultations with the Massachusetts Department of Environmental Protection, U.S. Army Corps of Engineers, National Marine Fisheries Service, Massachusetts Division of Marine Fisheries, and Massachusetts Office of Coastal Zone Management (MCZM) concerning Algonquin's plan to mitigate and/or monitor recovery of marine benthic resources, including recovery of the habitat and any additional measures recommended for incorporation into its BDP Plan.
15. **Prior to construction**, Algonquin shall file its final Traffic Management Plan.
16. **Prior to construction**, Algonquin shall file with the Secretary for the review and written approval of the Director of OEP, its Marine Boating Coordination and Safety Plan, developed in consultation with the Beverly and Salem Harbor Masters, the U.S. Coast Guard (Gloucester, Massachusetts Station), the Jubilee Yacht Club, Sandy Point Sailing Association, and, as applicable, other marina owners/mariners.
17. Algonquin shall file **in the weekly construction status reports** the following for noise sensitive area (NSA) 3 near the Beverly Harbor HDD site and NSAs 3, 4, 4a, and 5 near the Collins Cove HDD site:
  - a. the noise measurements from the nearest NSA, obtained at the start of drilling operations;
  - b. the noise mitigation that Algonquin implemented at the start of drilling operations; and
  - c. any additional mitigation measures that Algonquin will implement if the initial noise measurements exceed a day-night noise level of 55 decibels on the A-weighted scale at these NSAs and/or increased noise over ambient conditions greater than 10 decibels.