COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

July 15, 2022

In the Matter of
Algonquin Gas Transmission LLC

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

RECOMMENDED REMAND DECISION REMANDING MATTER TO MassDEP'S WATERWAYS PROGRAM FOR FURTHER PERMIT REVIEW

INTRODUCTION

This matter concerns two consolidated appeals filed in June 2017 challenging a Written Determination ("the Determination") issued by the Boston Office of the Massachusetts Department of Environmental Protection ("MassDEP" or "the Department") to Algonquin Gas Transmission LLC ("the Applicant") on June 7, 2017, pursuant to the Massachusetts Public Waterfront Act, G.L. c. 91 ("Chapter 91" or "c. 91"), and the Waterways Regulations at 310 CMR 9.00. The Determination authorized the Applicant's proposed construction of a natural gas compressor station ("the proposed Project") in the Weymouth Fore River Designated Port Area ("DPA") [1] on filled tidelands of the Fore River at 6 & 50 Bridge Street in Weymouth ("the

[1] "DPAs are land and water areas with certain physical and operational features that have been identified to have state, regional, and national significance with respect to the promotion of water-dependent industrial uses and commercial activities that rely on marine transportation or the withdrawal or discharge of large volumes of water." https://www.mass.gov/service-details/czm-port-and-harbor-planning-program-designated-port-areas. "State policy seeks to preserve and enhance the capacity of the DPAs to accommodate water-dependent industrial uses and prevent the exclusion of such uses from tidelands within DPAs." Id. "This policy includes preserving extensive amounts of DPA land for existing and prospective water-dependent industrial uses, particularly on waterfront sites, and maintaining (preserving) the predominately marine industrial character of the DPA." Id. "While water-dependent industrial uses vary in scale and intensity, they all generally share a need for infrastructure with three essential components: 1) a waterway and associated waterfront that has been developed for some form of commercial navigation or other direct utilization of the water; 2) backland space that is conducive in both physical

This information is available in alternate format. Contact Glynis Bugg at 617-348-4040.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep
Printed on Recycled Paper

Project Site"). Determination at 1. The Compressor Station is one component of the Applicant's Atlantic Bridge Project ("AB" or "AB Project"), an interstate natural gas transmission project that the Federal Energy Regulatory Commission ("FERC") authorized pursuant to the Natural Gas Act, 15 U.S.C. §§ 717 et seq. The appeals were filed by a Ten Residents Group ("the Residents") and the Town of Weymouth ("Weymouth")[2] by its mayor, Robert Hedlund, in his capacity as Mayor of the Town of Weymouth and acting on behalf of the Town (collectively "the Petitioners").

On November 21, 2018, after conducting an evidentiary adjudicatory hearing addressing three of eight issues in the appeals, I issued a Recommended Interlocutory Decision ("RID") finding, inter alia, that pursuant to 310 CMR 9.02 the compressor station was an ancillary facility to the I-10 pipeline, known as the Hubline, operated by the Applicant. I found that the compressor station was operationally related to and required an adjacent location to the HubLine. On October 16, 2019, after an additional evidentiary adjudicatory hearing on the remaining issues raised by the Petitioners in their appeals, I issued a Recommended Final Decision ("RFD") incorporating the RID and addressing those remaining issues. On October 24, 2019, MassDEP's Commissioner issued a Final Decision adopting the RFD and affirming the Determination.

The Petitioners appealed the Final Decision to Superior Court pursuant to M.G.L. c. 30A. On the Petitioners' Complaint for Judicial Review before the Norfolk Superior Court, the

---

configuration and use character to the siting of industrial facilities and operations; and 3) land-based transportation and public utility services appropriate for general industrial purposes." Id.

[2] The Town of Weymouth has since settled its claims against MassDEP. See Robert Hedlund, as Mayor of the Town of Weymouth on behalf of the Town of Weymouth in its Corporate Capacity, and acting by and through its Conservation Commissioner v. The Department of Environmental Protection, et al, Superior Court Civil Action No. 1982CV01502.

Superior Court, by Leighton, J., allowed the Ten Residents Group's Motion for Judgment on the Pleadings, finding that the Final Decision was based on an error of law. See Ten Residents Group v. Massachusetts Department of Environmental Protection, Norfolk Superior Court C.A. No. 1982-01503, Memorandum of Decision and Order On [Parties' Cross-Motions] for Judgment on the Pleadings (May 2, 2022)("Algonquin Superior Court Remand Decision"). The Court set aside the Final Decision and remanded the matter to MassDEP directing that "upon remand, [MassDEP] shall reassess whether the Compressor Station is an ancillary facility to the HubLine as discussed [in the court's decision]."[3] On May 23, 2022, MassDEP's Commissioner remanded the proceedings in these consolidated appeals to me to reassess whether the Compressor Station is an ancillary facility to the HubLine pursuant to 310 CMR 9.02 and 9.12(2)(d) by applying the definition of "require" as determined by the Court in its decision. See MassDEP Commissioner's Remand Order at p. 3.

I conducted a status conference with the parties on May 26, 2022 and directed them to file legal briefs addressing the issue remanded by the Superior Court. At the request of the Ten Residents Group, I conducted a hearing with the parties on June 21, 2022, at which they presented their arguments. After examining those arguments and reviewing and re-evaluating the administrative record[4] in this appeal in light of the Superior Court's decision, I recommend that MassDEP's Commissioner issue a Remand Decision: (1) finding that the compressor station is not an ancillary facility pursuant to 310 CMR 9.02 or 310 CMR 9.12(2)(d); and (2) remanding

[3] The reasons for the Court's decision are discussed more fully below.

[4] The Administrative Record includes the witnesses' testimony at the evidentiary adjudicatory hearings that I conducted in this matter and all of the documentary evidence submitted by the parties to these appeals. For descriptions of the witnesses, refer to pp. 5-8 of the RID as incorporated into the RFD. Throughout this Recommended Final Decision on Remand the witnesses' Pre-Filed Direct Testimony will be referred to as "[Witness] PFT at ¶ or Page/Line"; Pre-Filed Rebuttal Testimony will be referred to as "[Witness] PFR at ¶ ". The Hearing Transcript will be referred to as "Tr. 1 [for Day 1] or Tr. 2 [for Day 2] at [page:line(s)].

the Applicant's Chapter 91 License application in this matter to the Department's Waterways Program for further permit review of the Application, including the Program's consideration of the compressor station as a non-water dependent project, as agreed to by the parties at the pre-hearing conference I conducted in early on in this matter at which the parties agreed that the compressor stations should be reviewed by the Program as a non-water dependent project if it was determined in the adjudication of these appeals that the facility was not an ancillary facility pursuant to 310 CMR 9.02 or 310 CMR 9.12(2)(d). I have made these recommendations because a preponderance of the evidence applying the definition of "require" as determined by the Superior Court in its decision supports a finding that the compressor station does not require a location adjacent to the HubLine because it can reasonably and feasibly be located in one of several alternative locations and it is not integral to the operation of the Infrastructure Crossing Facility.[5]

BACKGROUND

By way of background, the Applicant operates a natural gas pipeline which runs between Lambertville, New Jersey and Beverly, Massachusetts. In the Matter of Algonquin Gas Transmission, LLC, OADR Docket Nos. 2017-011 and 2017-012, Recommended Interlocutory Decision (November 21, 2018) ("Algonquin RID"), at p. 10, adopted as Recommended Final Decision (October 16, 2019) and Final Decision (October 24, 2019), remanded by Ten Residents Group v. Massachusetts Department of Environmental Protection, Norfolk Superior Court C.A. No. 1982-01503, Memorandum of Decision and Order On [Parties' Cross-Motions] for Judgment on the Pleadings (May 2, 2022) ("Algonquin Superior Court Remand Decision"), at

[5] I have attached as Addendum No. 1, at pp. 21-23 of this Decision, a proposed Remand Schedule for the Commissioner's consideration.

p. 1. The pipeline includes two segments that interconnect in Weymouth: the I-9 and the I-10. Algonquin RID, at p. 10; Algonquin Superior Court Remand Decision, at pp. 1-2.

The I-9 runs between Weymouth and Braintree, beneath the Fore River, and connects on its southern end to the pipeline network running south into New Jersey. Id. The I-10 runs under the Fore River Basin, outer Boston Harbor, and Massachusetts Bay between Weymouth and Beverly, where it connects to a pipeline operated by Maritimes and Northeast. Algonquin RID, at p. 10. The I-10 is also known as the HubLine. Id. There are three lateral pipelines connected to the HubLine. Id. Two of the lateral pipelines connect the HubLine to offshore liquefied natural gas ("LNG") ports and the Salem Lateral connects the HubLine to Footprint Power's Salem Harbor natural gas power plant. Id., at pp.10-11.

The HubLine is an approximately 30-mile long, 30" diameter pipeline. Id., at p. 11. In 2002, the Department issued a c. 91 license for the HubLine ("the HubLine Chapter 91 License"), authorizing its use as a "water-dependent infrastructure crossing facility for the transmission of natural gas in accordance with 310 CMR 9. l 2(2)(b)9 and 9. l 2(2)d and the Secretary of Environmental Affair's [sic] Certificate dated March 19, 2002."[6] Algonquin RID, at pp. 11-12; Algonquin Superior Court Remand Decision, at p. 2. At the time, the HubLine was intended to transport natural gas north to south from Canada. The HubLine Chapter 91 License does not, however, restrict the direction of flow within the pipe. Id. The HubLine has functioned without a compressor station since it was built and does not need a compressor station to function. Tr. Day 1, p. 235, lns. 12-18.

[6] The provisions of 310 CMR 9.12(2)(d), which are at issue in these consolidated appeals, are discussed below, at pp. 7-8.

Sections of the Applicant's pipeline network that ultimately connect into the HubLine in Weymouth, including the I-9, all have smaller diameter pipe size and lower Maximum Allowable Operating Pressures ("MAOP") than the HubLine. Algonquin RID, at p. 12. The lower MAOPs range from 750 to 958 Pounds Per Square Inch Gauge ("PSIG"). Id. The HubLine's MAOP is 1440 PSIG. Id. The I-9 normally operates within a range of 500-700 PSIG; the HubLine normally operates within a range of 900-1200 PSIG. Id. However, the HubLine has operated at a pressure as low at 750 PSIG during peak demand events. Id. Because of the different MAOPs in the Applicant's pipeline segments, natural gas could not flow from the southern segments with lower pressures, most specifically the I-9, into the higher pressure HubLine, resulting in a "bottleneck" at the I-9/HubLine, interconnection in Weymouth. Id. The Applicant sought to remedy this issue as part of the AB Project. Id., at pp. 12-13.

To allow gas to flow south to north, the Applicant proposed the siting of the Compressor Station in Weymouth. Algonquin RID, at pp. 13-16; Algonquin Superior Court Remand Decision, at p. 2. The Applicant then applied to and obtained approval from the Department for a c. 91 license to construct the Compressor Station in Weymouth's Fore River DPA on filled tidelands of the Fore River at 6 & 50 Bridge Street in Weymouth ("the Project Site"). Algonquin RID, at pp. 19-41; Algonquin Superior Court Remand Decision, at pp. 3-5. The Compressor Station consists of a natural gas-fired compressor unit, a 6,100-square-foot auxiliary building, parking spaces, internal roadways, underground utilities, a 6,200-square-foot stormwater basin, and 12,000 cubic yards of fill. Id. It is physically connected to the HubLine and is intended to enable the flow of natural gas from the existing pipeline network into and through the HubLine. Id.

APPLICABLE LAW

Under the Waterways Regulations at 310 CMR 9.32(1)(b), generally only water-dependent industrial uses are allowed in a DPA.[7] Here, the Department issued the Determination authorizing the Applicant's construction of the Compressor Station after concluding that the Compressor Station would be an ancillary facility to the Hubline, a water-dependent industrial crossing facility pursuant to 310 CMR 9.02 and 9.12(2)(d). Algonquin RID, at pp. 19-41; Algonquin Superior Court Remand Decision, at pp. 3-5.

Under 310 CMR 9.12(2)(d), the Department is required to find that a proposed facility is water-dependent if it is "an infrastructure crossing facility, ***or any ancillary facility thereto*** for which an [Environmental Impact Report ("EIR") has been submitted]" to the Secretary of the Executive Office Energy and Environmental Affairs ("EEA") pursuant to the Massachusetts Environmental Policy Act ("MEPA"), G.L. c. 30, §§ 61-62H, and the "Secretary has determined that [the proposed] facility cannot reasonably be located or operated away from tidal or inland waters, based on a comprehensive analysis of alternatives and other information analyzing measures that [could] be taken to avoid or minimize adverse impacts on the environment . . . ." (emphasis supplied). 310 CMR 9.12(2)(d) also provides that "[i]f an EIR [has not been] submitted [for a proposed facility], [a] finding [of water-dependency] may be made by the Department based on information presented in the application and during the public comment period thereon."

310 CMR 9.02 defines an "infrastructure crossing facility as "a facility which produces, delivers, or otherwise provides electric, gas, water, sewage, transportation, or telecommunication services to the public." Undisputedly, the HubLine is an Infrastructure Crossing Facility because

---

[7] See n. 1, at pp. 1-2 above.

it delivers or otherwise provides natural gas to the public and received a c. 91 License in 2002 as previously discussed above as a water-dependent infrastructure crossing facility.

310 CMR 9.02 defines an "infrastructure crossing facility" as including "[a] pipeline, . . . which is located over or under the water and which connects existing or new infrastructure facilities located on the opposite banks of the waterway." The definition of infrastructure crossing facility also provides that "[a]ny structure which ***[1] is operationally related*** to such crossing facility and ***[2] requires an adjacent location shall be considered an ancillary facility thereto***." 310 CMR 9.02 definition of "infrastructure crossing facility" (emphasis and numerical references supplied). In addition, 310 CMR 9.02 provides a non-exclusive list of examples of ancillary facilities, including;

> power transmission substations, gas meter stations, sewage headworks and pumping facilities, toll booths, tunnel ventilation buildings, drainage structures, and approaches, ramps, and interchanges which connect bridges or tunnels to adjacent highways or railroads.

Prior to these appeals, the term "requires an adjacent location" had not been defined by the Waterways Regulations and had not previously been interpreted in any prior Final Decisions of the Department in administrative appeals of Department permits or enforcement orders, nor explained in Department guidance or policy. Because of this, I relied on traditional rules of construction established by Massachusetts appellate courts to interpret the regulatory requirements in the context of the waterways licensing program and applied the dictionary definition of "required" as "suitable or appropriate". Algonquin RID, at pp. 20-21. These traditional rules of construction include that "[w]here [a regulation's] language is unclear, the regulation should be construed with regard to the 'objects sought to be obtained and the general structure of the [regulation] as a whole.'" Id., at p. 21, citing, Haynes v. Grasso, 353 Mass. 731, 734 (1968); See also In the Matter of Blackinton Commons LLC, OADR Docket Nos. 2007-115

& 147, Recommended Final Decision (September 25, 2009), 2009 MA ENV LEXIS 5, at 158-159, adopted as Final Decision (January 27, 2010). In this interpretation, the Superior Court found error in vacating the Commissioner's Final Decision affirming the Department's issuance of the Chapter 91 License to the Applicant. Algonquin Superior Court Remand Decision at pp. 6-7.

In the Superior Court, the crux of the parties' dispute concerned this interpretation of "requires" as meaning "suitable or appropriate". The Court found the word "requires" to be unambiguous and, therefore, the Court interpreted the word according to its plain terms without deference to MassDEP's interpretation, citing DeCosmo v. Blue Tarp Redev., LLC, 487 Mass. 690, 699-700 (2021). Id. at p. 6. The Court found that MassDEP failed to apply the usual and ordinary meaning of "requires" by omitting from the definition the words "to call for as" preceding "suitable or appropriate" and thereby distorted the definition. The Court stated that "'to call for as suitable or appropriate' means that something is *required, demanded, or made necessary* because it is suitable or appropriate, not that it is simply suitable or appropriate." Algonquin Superior Court Remand Decision at pp. 6-7. Because the Court determined that MassDEP's interpretation was inconsistent with the plain terms of the regulation, there was an error of law necessitating the remand to the agency. Id. The Court also rejected MassDEP's and the Applicant's argument that to interpret "requires" as meaning "necessary" would lead to absurd results because "it would significantly limit what could qualify as an ancillary facility." In the Court's words, "[s]uch an interpretation does not foreclose ancillary facilities altogether and there is nothing unreasonable about limiting ancillary facilities to those for which a location adjacent to an infrastructure crossing facility is necessary." Id. at p. 7.

SCOPE OF THE REMAND

The Superior Court's remand to MassDEP is limited to the single question of law regarding whether the compressor station is an ancillary facility.

PETITIONERS' BURDEN OF PROOF

The Petitioners had the burden of proving by a preponderance of credible evidence that the Determination does not meet the requirements of the waterways regulations. In the Matter of Renata Legowski, OADR Docket No. 2011-039, Recommended Final Decision (October 25, 2012), 2012 MA ENV LEXIS 128, at 7-8 (party challenging Chapter 91 determination has burden of proof), adopted as Final Decision (November 5, 2012), 2012 MA ENV LEXIS 131. Specifically, as related to this remand proceeding, they had the burden of proving by a preponderance of evidence that the compressor station is not ancillary to the HubLine. The ultimate resolution of factual disputes depends on where the preponderance of the evidence lies. Matter of Town of Hamilton, DEP Docket Nos. 2003-065 and 068, Recommended Final Decision (January 19, 2006), adopted by Final Decision (March 27, 2006).

As for the relevancy, admissibility, and weight of evidence that the Petitioners, the Applicant, and the Department introduced in the Hearing, this is governed by G.L. c. 30A, § 11(2) and 310 CMR 1.01(13)(h)(1). Under G.L. c. 30A, § 11(2):

> [u]nless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

Under 310 CMR 1.01(13)(h), "[t]he weight to be attached to any evidence in the record will rest within the sound discretion of the Presiding Officer. . . ."

THE EVIDENCE AT THE PRIOR EVIDENTIARY ADJUDICATORY HEARINGS

The remand from Superior Court required a reassessment of the compressor station as an ancillary facility applying what the Court found to be the plain meaning of the word "requires" in the phrase "requires an adjacent location" in the definition of Infrastructure Crossing Facility at 310 CMR 9.02. As discussed in detail in the RID, a preponderance of the evidence supported a finding that the location on the North Parcel was a "suitable" or "appropriate" location for the compressor station. RID at pp. 35-37. In my judgement, those findings remain sound. However, those findings do not support a conclusion that the location is "required" as the Court has directed that term be interpreted and applied.

The Infrastructure Crossing Facility – the HubLine - has functioned without a compressor station since it was built and does not need a compressor station to function. Tr. Day 1, p. 235, lns. 12-18. As noted earlier, the compressor station on the North Parcel was proposed as part of the Applicant's AB project and would serve the purpose of enabling gas to flow from the south to the north through the HubLine. The Applicant did not state anywhere in the c. 91 license application that the location on the North Parcel was required and MassDEP did not plausibly determine that it was required.[8] The Application presented the location on the North Parcel as its preferred location but did not describe the compressor station as requiring a location adjacent to the HubLine. Application at p. 4-2. The Application contained a statement that the facility would be ancillary to the HubLine; the Applicant acknowledged that this statement was conclusory. Application at Section 4.0 Alternatives and Section 2.2 Energy; Tr. Day 1, p. 218, lns. 9-23. MassDEP accepted this statement but did not analyze it further to conclude that it was accurate.

---

[8] MassDEP's witness testified that "It means that, in order to meet that definition, it has to be located within jurisdiction…it's located within a [DPA] and that it interconnects to the crossing facility at the bank, and in conjunction, both of those things we applied and we determined that it met the definition and therefore, meets that—passes the test that it's required to be there." Tr. Day 2 at 76:13 – 77:14.

In his testimony at the hearing, Mr. Taormina of the Department's Waterways Program acknowledged that the Department did not do an independent review of whether the compressor station requires an adjacent location but accepted the Applicant's statements in the Application. Tr. 2 at 35:6-12. The Department simply accepted the Applicant's assertion. Mr. Taormina testified on cross-examination that:

> "An ancillary facility, a compressor station can only be ancillary if it is operationally connected to and adjacent to an infrastructure crossing facility" Tr. 2 at 46:21-24 and "The Department is not -- it's not within the Department's purview to question an interstate pipeline company whether a compressor station is required or not. They proposed the project which included an accessory -- or excuse me -- a ancillary -- strike that -- an ancillary facility to their pipeline for the reasons stated in their application, and it meets the regulations within a designated port area, and the Department approved it accordingly."

Tr. 2 at 47:14-23.

The Applicant acknowledged that the project purpose of increasing pressure in the pipeline could be achieved by adding compression at a location other than adjacent to the HubLine. Bocock PFT at p. 15, lns. 325-327. In its application for the c. 91 license, the Applicant presented seven alternative locations for the compressor station. Application, Appendix A. Five of those locations are landlocked. Id. Each of the alternative locations would require building the compressor station at a distant location and installing suction and discharge pipes to reach the south end of the HubLine. Tyrell PFT at p. 19, lns. 418-420. Each of the alternative locations for the compressor station is technically feasible. Id.; Tr. Day 1, p. 195, lns. 10-14 (Mr. Tyrell confirming that each of the alternative location is technically feasible). The Applicant determined that each of the alternative locations for the compressor station was reasonable. Tyrell PFT at p, 3, lns. 49-51 (discussing RR 10; "This alternatives analysis examines reasonable alternatives to the proposed project facilities….); Tr. Day 1, p. 175, lns. 13-23 (Mr. Tyrell confirming that reasonable alternatives to a proposed project must be included in

an alternatives analysis in the environmental assessment and further confirming that an alternative would not have been included in the alternatives analysis if the Applicant did not consider it to be reasonable). Mr. Tyrell acknowledged that Exhibit 2 to his PFT, a table showing various impacts from each alternative, includes both permanent and temporary impacts without distinction, and that the permanent impacts will be smaller than the total impacts depicted in the table. The record does not contain information quantifying the permanent impacts. Tr. 1 at 232:19-24; 233:1-11. After considering the alternatives, the Applicant determined that the preferable location for the compressor station was on the North Parcel. Bocock PFT at p. 18, lns. 396-406. The Applicant admitted that from a technical perspective the compressor station at that location is not essential to meeting the Applicant's precedent agreements with its customers and it could be located elsewhere and meet those agreements. Tr. Day 1, p. 113, lns. 12-22.

DISCUSSION/FINDINGS

Based on the record before me, and specifically the evidence discussed above, and applying the definition of "requires an adjacent location" as directed by the Superior Court, I find that the compressor station is not ancillary to the HubLine because a preponderance of the evidence presented at the previous evidentiary adjudicatory hearings I conducted in this matter demonstrates that the compressor station does not require a location adjacent to the HubLine. Although the project site is within the Weymouth Fore River DPA, this fact alone does not mean the project meets the definition of ancillary facility to the HubLine. The regulation requires a determination that something is ancillary based on more than just its intended placement in a DPA adjacent to the ICF. Its location there must be required.

The evidence detailed in the RID demonstrated that the location on the north parcel adjacent to the HubLine was the Applicant's preferred location and for the reasons stated in the RID, was a suitable or appropriate location. Compared to the alternative locations evaluated by the Applicant in its application to FERC, the location on the north parcel would have the fewest environmental impacts. But those reasons do not sustain the project if it does not meet the plain meaning of the phrase "requires an adjacent location" as that phrase must be interpreted in light of the Superior Court's order. The regulation does not apparently contemplate considering that an alternative location may present greater engineering and/or economic challenges and costs to the Applicant.

Based on the evidence discussed above at pp. 11-13, I find that a preponderance of the evidence demonstrates that a location on the North Parcel adjacent to the HubLine is not required. A preponderance of the evidence demonstrates that a compressor station somewhere on the pipeline is needed to overcome the pressure differential within segments of the pipeline. But the evidence proved that a compressor station in one of several alternative locations could achieve the Applicant's goal of overcoming the pressure differential, albeit at greater cost to the Applicant and with greater impact to the environment. And some of those impacts will be temporary construction-related impacts and not permanent. Tr, Day 1, p. 185, Lines 3-7

As a result, it cannot be said that the location on the north parcel is "required", i.e., is "called for as suitable or appropriate" because it is "required, demanded or made necessary". Applying the usual and accepted meaning of "required" in 310 CMR 9.02, I find that it is not required for the compressor station to be adjacent to the HubLine because the Applicant's own witnesses testified that it could be feasibly and reasonably be located elsewhere and still serve its purpose in the Applicant's AB project. While the compressor station is needed for the

Applicant's project, it is not required to be in the location adjacent to the HubLine. The Applicant and MassDEP would prefer to limit the scope of the Court's decision, but the Court stated that "there is nothing unreasonable about limiting ancillary facilities to those for which a location adjacent to an infrastructure crossing facility is necessary."

In the earlier stage of this proceeding, the Applicant and the Department analogized the compressor station to the operation of the meter station licensed as part of the Salem Lateral project,[9] considered the Salem Lateral project a precedent for this one and relied on the non-exclusive list examples of ancillary facilities in 310 CMR 9.02 as easily including a compressor station. I respectfully disagree for the following reasons.

First, the meter station licensed as part of the Salem Lateral project is integral to the operation of Salem Lateral pipeline; it measures gas flow between the pipeline and the Footprint Power Station in Salem and cannot be located distance from the pipeline. The Salem Lateral could not function without the metering station at that location. Tr. 1 at 234; 235:1-7; Tr. 2 at 30:9-20.

Second, even though the list of examples of "ancillary facilities" in the definition of "infrastructure crossing facility" is not exclusive, the examples inform what the Department's use of the phrase "require an adjacent location" is intended to mean: structures that cannot reasonably and feasibly be located away from the ICF because each is integral to the operation of the ICF and locating them away from the IFC would defeat their purpose. The compressor station can be distinguished. For example, power transmission substations are key parts of electrical generation, transmission, and distribution systems. They are needed for the system to function. A gas metering station is an essential component of a gas pipeline system because

[9] Waterways License No. 13871, Ex. 6 to Tyrell PFT.

product in the pipeline must be measured so that suppliers and purchasers of the gas supply know what they are supplying and what they are purchasing. A pipeline cannot function as a business without metering stations. Likewise, sewage headworks to control the flow of sewage and tunnel ventilation buildings can only serve their function if they are located adjacent to the IFC. The evidence demonstrates persuasively that the compressor station can be located away from the HubLine and still serve its purpose in the Applicant's AB project.

The DPA regulations make clear that tidelands available for industrial development are limited and the strong implication is that the industrial tidelands in a DPA should be reserved for projects and facilities that need to be there and/or enhance the resource itself, e.g. maritime-related activities. That is not the case with the compressor station. As well, the use of the phrase "requires an adjacent location" in 310 CMR 9.02 evidences a recognition by MassDEP that coastal resources are limited, particularly coastal resources for industrial activities and facilities, and these resources should be reserved for activities and facilities that require a location in the tidelands. The analysis of the regulatory language requires greater scrutiny on remand, given how the Superior Court directed the regulation to be reexamined. Finally, 310 CMR 9.12(2)(d) clearly indicates a preference for water-dependent ancillary facilities to be those that cannot reasonably be located or operated away from tidal or inland waters. A preponderance of the evidence demonstrates that the compressor station can reasonably be located and operated away from tidal waters.

CONCLUSION

For the foregoing reasons, I recommend that MassDEP's Commissioner issue a Remand Decision: (1) finding that the compressor station is not an ancillary facility pursuant to 310 CMR 9.02 or 310 CMR 9.12(2)(d); and (2) remanding the Applicant's Chapter 91 License application in this matter to the Department's Waterways Program for further permit review of the Application, including the Program's consideration of the compressor station as a non-water dependent project, as agreed to by the parties at the pre-hearing conference I conducted in early on in this matter at which the parties agreed that the compressor stations should be reviewed by the Program as a non-water dependent project if it was determined in the adjudication of these appeals that the facility was not an ancillary facility pursuant to 310 CMR 9.02 or 310 CMR 9.12(2)(d). As discussed in detail above, I have made these recommendations because a preponderance of the evidence applying the definition of "require" as determined by the Superior Court in its recent decision vacating the Commissioner's Final Decision adopting my earlier Recommended Final Decision and affirming the Department's issuance of the Chapter 91 License to the Applicant supports a finding that the compressor station does not require a location adjacent to the HubLine because it can reasonably and feasibly be located in one of several alternative locations and it is not integral to the operation of the Infrastructure Crossing Facility. Attached as Addendum No. 1, at pp. 21-23 below, is a proposed Remand Schedule for the Commissioner's consideration.

Date: 7/15/2022

Jane A Rothchild
Presiding Officer

NOTICE- RECOMMENDED REMAND DECISION

This decision is a Recommended Remand Decision of the Presiding Officer. It has been transmitted to the Commissioner for his Final Decision ion Remand n this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision on Remand is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Remand Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.

SERVICE LIST

In the Matter of	**OADR Docket Nos. 2017-011, 012**
Algonquin Gas Transmission LLC	**Waterways Application No. W16-4600** **Weymouth, MA**

REPRESENTATIVE	PARTY
Michael H. Hayden, Esq. Morrison Mahoney LLP 250 Summer Street Boston, MA 02210-1181 mhayden@morrisonmahoney.com	PETITIONER Intervenors/Ten Residents Group
J. Raymond Miyares, Esq. Ivria G. Fried, Esq. Miyares and Harrington, LLP 40 Grove Street, Suite 190 Wellesley, MA 02482 ray@miyares-harrington.com ifried@miyares-harrington.com	PETITIONER Town of Weymouth
Caitlin A. Hill, Esq. Nicholas C. Cramb, Esq. Amanda L. Clairmont, Esq. Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111 CAHill@mintz.com nccramb@mintz.com alclairmont@mintz.com	APPLICANT Algonquin Gas Transmission LLC
MacDara Fallon, Senior Counsel MassDEP Office of General Counsel One Winter Street Boston, MA 02108 Macdara.Fallon@mass.gov	DEPARTMENT

[continued next page]

[continued from preceding page]

Cc.

Richard M. McLeod, Esq.
Town Solicitor
Town of Weymouth
75 Middle Street
Weymouth, MA 02189
RMcleod@weymouth.ma.us

TOWN OF WEYMOUTH

Daniel Padien, Program Chief
Waterways Regulation Program
MassDEP-Boston
One Winter Street
Boston, MA 02108
Daniel.Padien@mass.gov

DEPARTMENT

Chrissy Hopps, Assistant Director
Waterways Regulation Program
MassDEP-Boston
One Winter Street
Boston, MA 02108
Christine.Hopps@mass.gov

DEPARTMENT

Frank Taormina, Regional Planner
MassDEP, Bureau of Water Resources
One Winter Street
Boston, MA 02108
frank.taormina@mass.gov

DEPARTMENT

Leslie DeFilippis, Paralegal
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108
Leslie.Defilippis@mass.gov

DEPARTMENT

ADDENDUM No. 1: PROPOSED REMAND SCHEDULE

Action	Timeframe
Applicant submits necessary information to MassDEP's Waterways Program ("MassDEP") for the Program to make a determination whether the compressor station as a non-water dependent use serves a public purpose within the meaning of 310 CMR 9.14(3). The Applicant's information must be supported by the sworn Pre-filed Testimony ("PFT") and documentary evidence of the individual or individuals who provided the information on behalf of the Applicant.	30 days after MassDEP Commissioner's Remand Order to MassDEP's Waterways Program
If MassDEP determines the information submitted by the Applicant is administratively or technically deficient, MassDEP informs the Applicant and the Applicant remedies deficiencies. The Applicant may revise its sworn PFT based on any changes.	30 days after receiving the Applicant's information
MassDEP issues a determination regarding whether the compressor station as a non-water dependent use serves a public purpose within the meaning of 310 CMR 9.14(3). MassDEP's determination must be supported by the sworn PFT and documentary evidence of the MassDEP staff who made the Determination and/or oversaw the making of the Determination.	30 days after receiving the Applicant's information if the Applicant's information is administratively or technically sufficient for MassDEP to make its determination
(Proposed Remand Schedule p. 1 of 3)	

Proposed Remand Schedule (continued from preceding page (p. 2 of 3))	
The Petitioners and the Applicant review MassDEP's determination and if they are not satisfied with the determination, they notify OADR in writing that they are appealing the determination.	30 days after receiving MassDEP's determination
The appealing party or parties file(s) sworn PFT and documentary evidence with OADR supporting the party or parties' position on MassDEP's determination. If the appealing party is a Petitioner, then their PFT shall include rebuttal testimony and documentary evidence directed to the Applicant's and MassDEP's PFT. If the appealing party is the Applicant, then their PFT shall include rebuttal testimony and documentary evidence directed to MassDEP's PFT.	30 days after a Petitioner's and/or the Applicant's written notification to OADR that they are appealing the determination.
MassDEP files sworn rebuttal PFT of the MassDEP staff who reviewed and/or oversaw MassDEP's review of the appealing party's (a Petitioner's and/or the Applicant's) claims challenging MassDEP's determination. Non-appealing party or parties file sworn rebuttal PFT of the individual or individuals who, on behalf of the non-appealing party, reviewed the appealing party's (a Petitioner's or Applicant's) claims challenging MassDEP's determination;	30 days after receiving an appealing party's (a Petitioner's and/or the Applicant's) sworn PFT and documentary evidence
(Proposed Remand Schedule p. 2 of 3)	

Proposed Remand Schedule (continued from preceding page (p. 3 of 3))	
Remand Evidentiary Hearing conducted by Presiding Officer	7 days after MassDEP and non-appealing parties files sworn rebuttal PFT
Post-hearing briefs submitted	30 days after transcript of Remand Evidentiary Hearing is filed with OADR[10]
Presiding Officer's Issuance of Recommended Final Decision on Remand	30 days after Post-hearing briefs are filed
MassDEP Commissioner's issuance of Final Decision on Remand	30 days after receiving Presiding Officer's Recommended Final Decision on Remand

[10] Private parties in the appeal are responsible for retaining a certified court reporter/stenographer for the Remand Evidentiary Hearing at the parties' expense.