

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

September 26, 2016

In the Matter of
Algonquin Gas Transmission LLC

OADR Docket No. WET-2016-025
Weymouth, MA

SCHEDULING ORDER

1. This matter is an appeal of a Reviewable Decision in a Wetlands Permit case, and this Scheduling Order (“the Order”) has been issued to secure the just and speedy determination of this appeal in accordance with the requirements of 310 CMR 1.01 and 310 CMR 10.05(7)(j). This Order informs the parties to this appeal of the dates of the Pre-Hearing Conference and Hearing with the Office of Appeals and Dispute Resolution.¹ The issuance of this Order does not necessarily mean that the Petitioner has filed this appeal in accordance with the requirements of 310 CMR 1.01 and 310 CMR 10.05(7)(j). The Presiding Officer assigned to this appeal may

¹ The Office of Appeals and Dispute Resolution (“OADR”) is separate and independent of MassDEP’s program offices, Regional Offices, and Office of General Counsel (“OGC”). OADR is staffed by Case Administrators, an Administrator of Alternative Dispute Resolution (“ADR”), and Presiding Officers. Presiding Officers in OADR are experienced attorneys at MassDEP appointed by MassDEP’s Commissioner to serve as neutral hearing officers. They are responsible for facilitating settlement discussions between the parties and conducting adjudicatory proceedings. See 310 CMR 1.01(1)(a); 310 CMR 1.01(1)(b); 310 CMR 1.01(5)(a)15. Under 310 CMR 1.03(7), ex parte communications between OADR’s Presiding Officers and MassDEP personnel regarding a pending appeal are expressly prohibited and all MassDEP staff involved in the appeals process are informed of these requirements. Additionally, Recommended Final Decisions of Presiding Officers in appeals are subject to review by MassDEP’s Commissioner pursuant to 310 CMR 1.01(14). Under the regulation, the Commissioner may issue a Final Decision adopting, modifying, or rejecting a Recommended Final Decision. All Final Decisions may be subject to judicial review pursuant to G.L. c. 30A, § 14. These provisions help to provide an appeal process at MassDEP will be fair and will result in unbiased decision-making.

vacate, modify, or stay this Order at a later date if he or she recommends that the appeal be dismissed or stayed on his or her initiative, or in response to a motion filed by a party to this appeal. See 310 CMR 1.01(5)(a)2.; 310 CMR 1.01(5)(a)3.; 310 CMR 1.01(5)(a)15.d.; 310 CMR 1.01(5)(a)15.f.; 310 CMR 1.01(6)(h); 310 CMR 10.05(7)(j)5.d.; 310 CMR 10.05(7)(j)7.d.

2. On September 22, 2016, OADR received this appeal by Town of Weymouth Conservation Commission (“Petitioner” or “the Commission”) concerning a project located at 6 & 9 Bridge Street, Weymouth, Massachusetts (“the Project”). The Petitioner challenges the Superseding Order of Conditions (“SOC”) that the Department’s Southeast Regional Office issued to Algonquin Gas Transmission LLC (“the Applicant” or “Algonquin”) on September 7, 2016.

3. A Presiding Officer of OADR will conduct a Pre-Hearing Conference with the parties to this appeal, at **10:00 AM on Monday, October 17, 2016** in the Department’s Southeast Regional Office, Lakeville, MA. The Department is responsible for scheduling a conference room. The purpose of the conference is to determine the appeal’s potential amenability to settlement through alternative dispute resolution or other means, to identify the issues to be adjudicated, and to establish a schedule for resolution of the appeal.

If any party to this appeal has a scheduling conflict that will prevent the party from attending the scheduled Pre-Hearing Conference, that party must inform OADR and the parties to this appeal in writing of that scheduling conflict within seven (7) calendar days of the date of this Order. Within the same period, the parties must confer and propose to OADR three alternative dates that occur before the 14th day after the currently scheduled conference.

All written notifications to the Presiding Officer required by this Order must be made through Bridget Munster, OADR’s Case Administrator, by (1) sending an email message to Ms.

Munster at CaseAdmin.oadr@state.ma.us, or (2) written correspondence to Ms. Munster by hand delivery, mail, or facsimile delivery at (617) 574-6880.

4. All parties to this appeal are required to attend the Pre-Hearing Conference, and the parties should be prepared to fully discuss their respective positions in the appeal at the Conference. The failure of any party to attend the Pre-Hearing Conference, to participate in the Conference in good faith, or to comply with any requirements of this Order may result in the imposition of appropriate sanctions on that party pursuant to 310 CMR 1.01.²

5. Prior to the Pre-Hearing Conference, the parties to this appeal shall confer to discuss the possibility of settlement of this appeal, and the amenability of this appeal to mediation or other forms of alternative dispute resolution. It shall be the responsibility of the Petitioner to initiate these settlement discussions at least **ten (10) calendar days** prior to the Pre-

² Possible sanctions under 310 CMR 1.01(10) include, without limitation:

- (a) taking designated facts or issues as established against the party being sanctioned;
- (b) prohibiting the party being sanctioned from supporting or opposing designated claims or defenses, or introducing designated matters into evidence;
- (c) denying summarily late-filed motions or motions failing to comply with requirements of 310 CMR 1.01(4);
- (d) striking the party's pleadings in whole or in part;
- (e) dismissing the appeal as to some or all of the disputed issues;
- (f) dismissing the party being sanctioned from the appeal; and
- (g) issuing a final decision against the party being sanctioned.

In addition to the dismissal authority conferred by 310 CMR 1.01(10)(e) above, under 310 CMR 1.01(11)(a)2.f, a "Presiding Officer may [also] summarily dismiss [an appeal] sua sponte," when the appellant fails to prosecute the appeal or fails to comply with an order issued by the Presiding Officer. For the same reasons, the Presiding Officer may also dismiss an appeal pursuant to the Officer's appellate pre-Hearing authority under 310 CMR 1.01(5)(a)15 which authorizes the Officer to "issu[e] orders to parties, including without limitation, ordering parties to show cause, ordering parties to prosecute their appeal by attending pre-Hearing conferences and ordering parties to provide more definite statements in support of their positions."

Hearing Conference. The settlement discussions may be conducted in person, or by the telephone.

6. Prior to the Conference, the parties to this appeal may request the services of a Department mediator or facilitator to assist with their settlement discussions. The parties should confer, and if they agree to request mediation or facilitated discussion, the request should be made in writing to the Presiding Officer by (1) sending an email to Ms. Munster at Caseadmin.oadr@state.ma.us, or (2) written correspondence to Ms. Munster by hand delivery, mail, or facsimile delivery at (617) 574-6880. Regardless of any such request, the Presiding Officer may also order the parties to attend an Alternative Dispute Resolution Information Session that will be facilitated by Aprel McCabe, Administrator of OADR's ADR Program. In either instance, the Conference will proceed as scheduled unless the appeal is settled prior to the Conference.

7. **No later than (3) business days** prior to the scheduled Pre-Hearing Conference, the Petitioner shall file a written statement with OADR confirming that the Petitioner initiated and conducted settlement discussions with the other parties to this appeal in accordance with this Order. The Petitioner's statement shall set forth the time, date, location and duration of the settlement discussions; who was present for each party; and whether the parties reached a settlement of the appeal.

If the Petitioner's statement reports that the appeal has not been settled, the Petitioner shall, **simultaneously with its settlement report**, file a Pre-Hearing Statement with OADR containing the information set forth in ¶ 8 of this Order. All other parties to this appeal shall file their respective Pre-Hearing Statements as soon as possible thereafter, but no later than **one (1) business day** prior to the Pre-Hearing Conference.

8. At the Pre-Hearing Conference, the Presiding Officer will identify the issues for resolution in this appeal, and the parties should be prepared to fully discuss their respective positions in the appeal. In accordance with the schedule set forth in ¶ 7 of this Order, each party shall file a Pre-Hearing Statement with the Presiding Officer containing the following information:

- (1) a brief summary of the Reviewable Decision being appealed in this case;
- (2) a brief summary of the final relief that the party seeks in this appeal;
- (3) a list of disputed relevant facts for resolution in this appeal and the party's position on each issue (what the party expects to prove at the Hearing on the appeal);
- (4) a list of legal issues for resolution in this appeal, and the party's position on the issue **with citations to supporting legal authority**; and
- (5) the names and addresses of each party's witnesses, including expert witnesses, who will be filing Pre-filed Testimony.³

At the Pre-Hearing Conference, the parties shall be prepared to discuss their list of potential witnesses for the Hearing, and should determine by the Conference date the availability of their potential witnesses for the scheduled Hearing.

9. For any appeal not resolved at the Pre-Hearing Conference, the Presiding Officer will issue a Pre-Hearing Conference Report and Order to the parties to this appeal within seven (7) calendar days after the Conference ("the Report"). The Report will contain a Statement of Issues setting forth the contested issues of material fact and legal issues to be resolved at the Hearing on this appeal. All subsequent Pre-filed Testimony in the appeal shall be limited to resolving those issues and shall not raise any additional issues. The schedule for filing

³ The only witnesses who will be permitted to testify at the Hearing are those individuals who have filed timely Pre-filed Testimony in the appeal. A party's failure to list a witness in the Pre-Hearing Statement may lead to an order precluding the testimony of that witness unless the party demonstrates good cause for having omitted the individual from the witness list.

Pre-filed Testimony will be set forth in the Report in accordance with the requirements of 310 CMR 10.05(7)(j)7.g.

10. The Hearing on this appeal (“the Hearing”) has been scheduled for 9:00 AM on Wednesday, February 15, 2017, in the Department’s Southeast Regional Office. The Department is responsible for scheduling a conference room. The Hearing will be limited to one day, and its primary function will be the cross-examination of witnesses who have filed timely Pre-filed Testimony in this appeal. At the Hearing, the only witnesses who will be cross-examined are those individuals who have filed timely Pre-filed Testimony in this appeal. Their cross-examination will be limited to the matters asserted in their Pre-filed Testimony as to which there are disputed facts.

Date: 9/26/2016



Jane Rothchild
Presiding Officer

SERVICE LIST

IN THE MATTER OF:

ALGONQUIN GAS TRANSMISSION LLC

Docket No. WET-2016-025

Weymouth

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