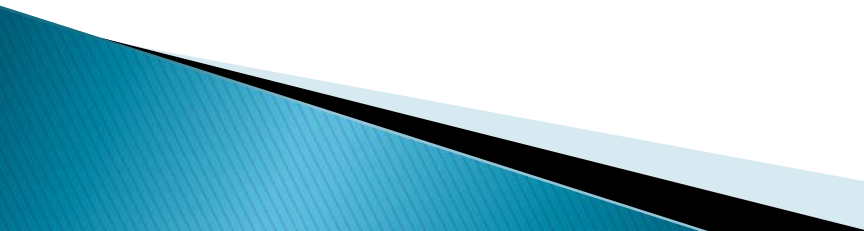


Permitting Process for an Interstate Natural Gas Pipeline Project

Northern Middlesex Council of Governments



Federal Agency Involvement

- ▶ The Federal Energy Commission (FERC) is the agency charged with evaluating whether the proposed route should be approved
 - ▶ Cooperating agencies generally include EPA, USDOT Pipeline and Hazardous Materials Safety Administration, Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS), and the Army Corps of Engineers (ACOE)
 - ▶ FERC also coordinates with a variety of local and state agencies
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The FERC Process

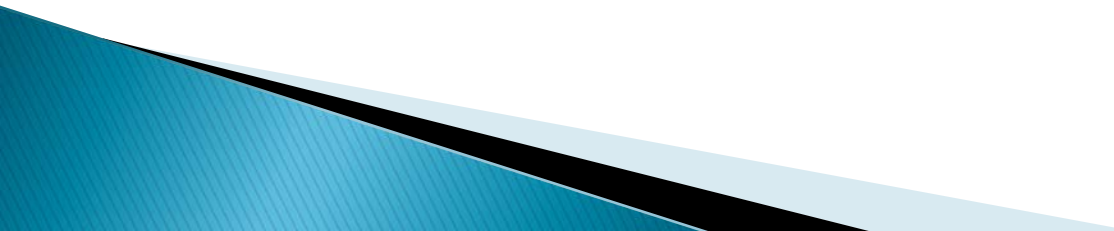
»» Natural Gas Interstate Pipeline Project

FERC Approval Process Steps

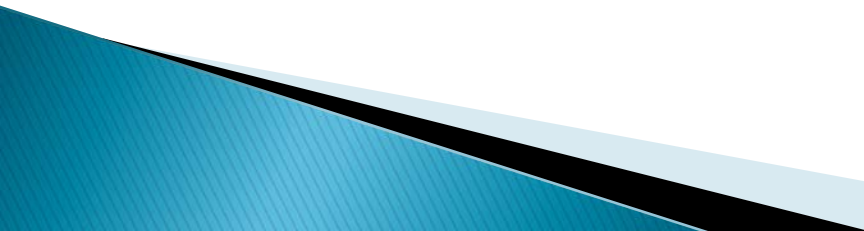
Three phases:

1. Voluntary pre-filing;
 2. Application for certificate; and
 3. Post-authorization
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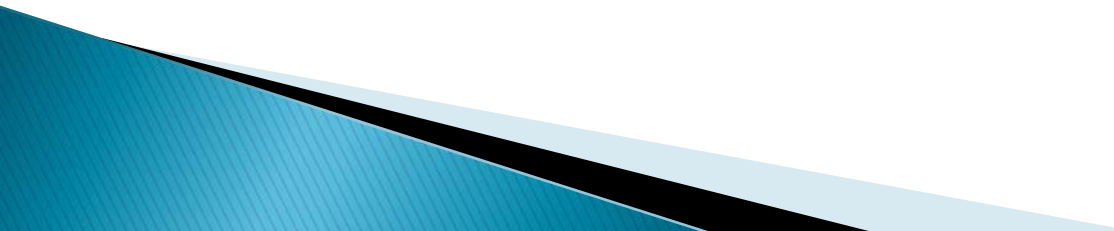
Initiating a Pre-filing

- ▶ Voluntary process established in 2002 to expedite the review of natural gas pipelines through early coordination
 - ▶ Pipeline company must file a pre-filing request 7–8 months prior to a certificate application
 - ▶ Company must notify state, local and federal agencies, and potentially affected property owners
- 

What happens after the Pre-Filing Request is approved by FERC?

- ▶ FERC issues a Pre-filing docket number, but there is no opportunity for public comment
 - ▶ A planning or information meeting is held with the federal permitting agencies involved to discuss the environmental review process
 - ▶ The NEPA Scoping Process is initiated
 - ▶ The applicant holds an “open house” meeting to share information about the project
- 

What happens after the open house meeting(s)?

- ▶ FERC issues a Notice of Intent to prepare an EA/EIS in the Federal Register
 - ▶ FERC may also hold a public scoping meeting
 - ▶ This opens a scoping period during which public comments may be provided
 - ▶ There is no provision to become an “intervenor” during the pre-filing process
- 

Application for FERC Certificate

- ▶ Once the pre-filing activities are complete, the proponent submits an application for a Certificate of Convenience and Necessity.
- ▶ The application must contain the following:
 - ❑ A description of the project;
 - ❑ Route maps;
 - ❑ Construction plans;
 - ❑ Project schedules;
 - ❑ Information on permits required from other agencies;
 - ❑ Environmental reports and mitigation strategies; and
 - ❑ Route alternatives.

What happens after the application is filed?

- ▶ FERC issues a Notice of Application in the *Federal Register*, which includes the project docket number
- ▶ Affected property owners will receive a notice of application within 3 days and copy of application can be found on FERC's website (www.ferc.gov)

How is the application evaluated by FERC?

- ▶ FERC analyzes the information in the application and considers the following:
 - ❑ The project impact in pipeline competition;
 - ❑ The possibility of overdeveloping pipeline capacity;
 - ❑ Subsidization by existing customers;
 - ❑ Potential environmental impacts;
 - ❑ Avoiding the unnecessary use of eminent domain; and
 - ❑ Safety (FERC generally defers to USDOT)
- FERC's approval is highly contingent upon demonstrated market need as evidenced by long-term (10+ years) contracted customer commitments
- FERC may approve the project, with or without modifications, or reject it

When is the permit issued?

- ▶ There is no specific timeframe required for the FERC review and decision-making process
- ▶ A GAO study found that the average processing time from pre-filing to certification was 558 days (with a range of 370–886 days)
- ▶ FERC allows applicants to fund a third-party contractor to review applications and assist FERC in preparing NEPA documents (contractor works under FERC but is paid by the pipeline company)
- ▶ FERC may issue the Certificate of Public Convenience and Necessity before all permits, certifications, and authorizations are complete, but construction cannot begin until these items are addressed and FERC provides written authorization.

What happens after the Certificate of Convenience and Necessity is issued?

- ▶ Parties to the proceeding (intervenors) who object may formally request a rehearing (within 30 days) so that FERC can reconsider its decision
- ▶ There is no time limit for FERC to consider or conclude a rehearing
- ▶ If a pipeline certificate is approved after rehearing, the project may proceed, even if additional challenges have been filed in federal court
- ▶ Section 7 of the Natural Gas Act grants the pipeline company the right of eminent domain
- ▶ The pipeline company must file an implementation plan with FERC
 - Must describe how they will implement environmental mitigation, identify the number of environmental inspectors assigned to the project, and outline procedures to be followed if non-compliance occurs
 - Must file weekly reports documenting inspection and compliance (FERC regularly inspects the construction area)


Environmental Review Process

» NEPA

NEPA

- ▶ NEPA requires that FERC carefully consider the environmental impacts, including reasonable alternatives to the project
- ▶ This information must be made available to the public
- ▶ FERC begins the environmental review process by publishing a Notice of Intent to Prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) in the *Federal Register*
- ▶ Typically, an EA is filed first to determine if a Finding of No Significant Impact (FONSI) can be issued
- ▶ An EIS is required for large and complicated projects with significant environmental impacts

What must an EIS address?

- ▶ Generally prepared in two stage: a draft and final EIS
 - ▶ Must include the following:
 - ❑ a statement of purpose and need;
 - ❑ a description of all reasonable alternatives to meet that purpose and need;
 - ❑ A description of the environmental impacts associated with each alternative; and
 - ❑ An analysis of direct and indirect effects of the alternatives, including cumulative impacts
- 

Draft Environmental Impact Statement (DEIS)

- ▶ A DEIS is issued once FERC completes its environmental studies and consultations with cooperating agencies relative to the certificate application
- ▶ With issuance of the DEIS a public comment period of at least 45 days begins, during which FERC holds public meetings in the project area
- ▶ Notice of the availability of the DEIS and the times and locations of the public meetings are published in the *Federal Register*
- ▶ At the conclusion of the comment period, FERC revises the DEIS and issues a FEIS

The Final Environmental Impact Statement (FEIS)

- ▶ The FEIS contains final recommendations for approval or denial of the certificate
- ▶ A final agency Record of Decision (ROD) cannot be issued until at least 30 days after FERC publishes a notice of availability in the *Federal Register*
- ▶ There is no additional opportunity or public comment after the FEIS is issued
- ▶ After the 30-day period is over, FERC may issue an order approving or denying the pipeline certificate application

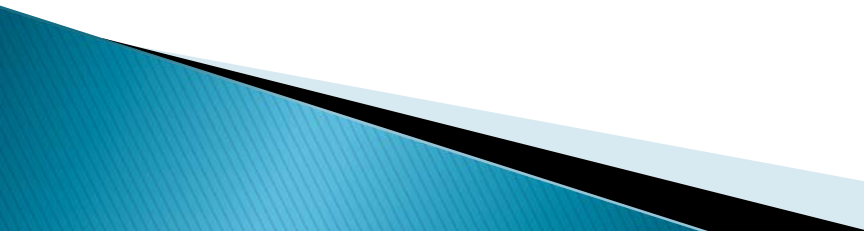
Submitting Comments to FERC

- ▶ Comments may be submitted in writing to the Secretary of FERC relative to environmental issues (use the docket number)
- ▶ Although FERC considers all public comments, only intervenors have the right to file briefs, attend hearings, appeal FERC's decision regarding the certificate, or challenge FERC actions in the U.S. Circuit Courts of Appeal

Becoming an Intervenor

- ▶ A person or entity seeking to become an intervenor must file a motion to intervene within 21 days of FERC's notice of application (see www.ferc.gov/help/how-to/intervene.asp)
- ▶ Intervenor receives all applicant filings and documents related to the project, as well as materials submitted by others
- ▶ Intervenor must mail copies of what they file to other parties at the time of filing (can number in the hundreds)

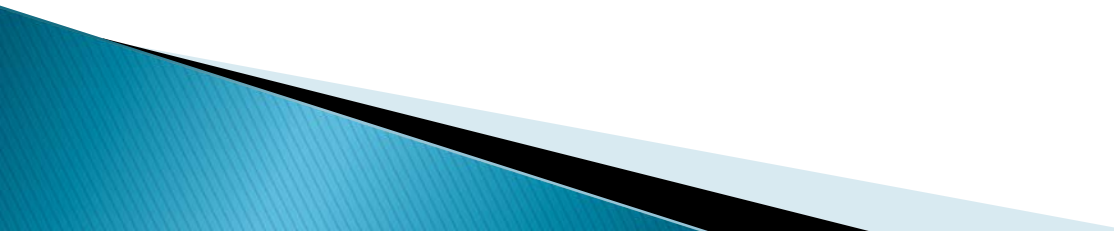
Other Federal Laws Involved

- ▶ Clean Water Act
 - ▶ Endangered Species Act
 - ▶ National Historic Preservation Act
 - ▶ Rivers and Harbors Act of 1899
- 

Clean Water Act

- ▶ Section 404 (Nationwide Permit)–projects involving the discharge of dredged or fill material into the waters of the US (issued by the ACOE)
- ▶ Section 402 –prohibits discharge of pollutants without an National Pollution Discharge Elimination System (NPDES) permit
- ▶ Section 401 – required for a project that may affect water quality (MADEP)

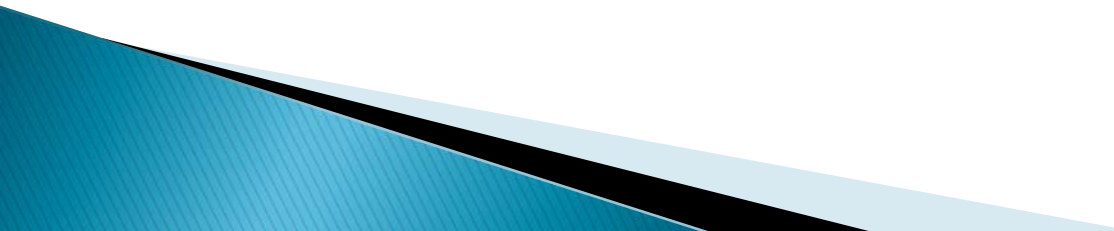
Endangered Species Act

- ▶ Impacts to endangered species and their habitat
 - ▶ Consult with U.S. Fish and Wildlife Service, which issues a “biological opinion” regarding the effects on listed species or critical habitat
 - ▶ If the pipeline project will have a significant impact, a “reasonable and prudent alternative” must be provided
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National Historic Preservation Act

- ▶ Section 106–FERC must take into account the impact on any historic site, building, structure or object listed on the National Register of Historic Places
- ▶ Regulatory authority is delegated to the State Historic Preservation Officer (SHPO) –Massachusetts Historical Commission (MHC)

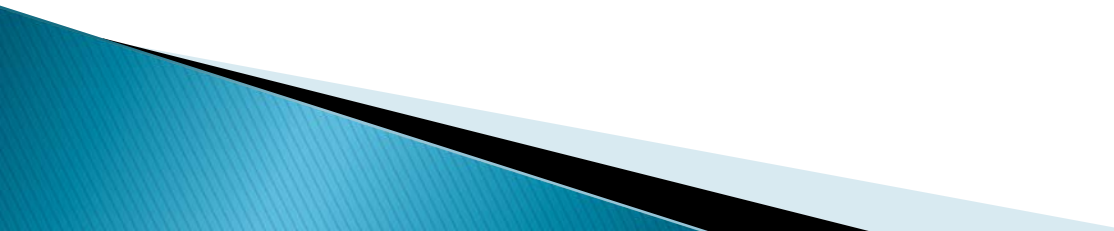
Rivers and Harbors Act of 1899

- ▶ Section 10– must consider impacts to navigable waters
 - ▶ Authorization from the ACOE
- 

State and Local Permitting Issues

- ▶ Federal Law preempts any state or local law (that duplicates or obstructs that federal law (e.g. siting or zoning))
- ▶ FERC has established regulations requiring certificate-related final decisions from federal agencies or state agencies (with delegated federal authority) no later than 90 days after FERC issues its FEIS
- ▶ Although a FERC certificate authorizes a pipeline under the Natural Gas Act, it cannot pre-empt other federal laws that may apply

MEPA Process

- ▶ Usually a concurrent process with NEPA (same documents meet federal and state requirements)
 - ▶ MEPA is a study and assessment process, not a regulatory process
 - ▶ The pipeline project will meet several MEPA thresholds, including construction of a pipeline ten (10) miles or more in length
 - ▶ The process provides additional public comment opportunities relative to environmental impact and mitigation
- 

Other State entities that will review the project

- Department of Public Utilities (limited role)
 - ❑ Granting of zoning exemptions (e.g. Southwick compressor station)
 - ❑ Rulings on petitions for survey rights
- Energy Facilities Siting Board
 - ❑ Often intervenes on behalf of the citizens of the Commonwealth
 - ❑ Provides comments on the environmental documents
- Massachusetts Historical Commission (SHPO)
- MassDOT (Highway Access permit)
- Department of Environmental Protection (wetlands and waterways)
- Natural Heritage and Endangered Species Program

Proposed Project Schedule

Schedule outlined by Kinder Morgan

Schedule	Submittal/Action
October 2014	Pre-filing with FERC
November–December 2014	Open House meetings
January–February 2015	FERC Scoping Meetings
September 2015	Submit FERC application for certificate
November 2015	Anticipated FERC approval of certificate
January 2017	Begin construction
November 2018	Pipeline is in service

Thank you!



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