

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ALGONQUIN GAS TRANSMISSION, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. __
)	
WEYMOUTH CONSERVATION COMMISSION,)	
and the TOWN OF WEYMOUTH, MASSACHUSETTS,)	
)	
Defendants.)	
)	

COMPLAINT

1. Algonquin Gas Transmission, LLC (“Algonquin”) brings this action for a judgment declaring that the Town of Weymouth’s Wetlands Protection Ordinance and the Weymouth Conservation Commission’s order denying a permit to Algonquin in reliance on the Ordinance are preempted by the Natural Gas Act (“NGA”), 15 U.S.C. §§ 717 et seq., and the Pipeline Safety Act (“PSA”), 49 U.S.C. §§ 60101 et seq. Algonquin also seeks a permanent injunction preventing the defendants from attempting to enforce or rely on the Ordinance or the denial of the permit to interfere with or prevent Algonquin’s proposed construction of a federally regulated and approved natural gas pipeline compressor station in the Town of Weymouth.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including but not limited to the NGA and the PSA, and this Court’s equitable powers.

3. Venue is proper in this Court under 28 U.S.C. § 1391(a)(2) because a substantial portion of the events that gave rise to this action occurred in this District.

PARTIES

4. Algonquin is a Delaware limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Houston, Texas and is a “natural gas company” as that term is defined in § 2(6) of the NGA, 15 U.S.C. § 717a(6), because it transports natural gas in interstate commerce.

5. The Town of Weymouth is a municipality organized and existing under the laws of the Commonwealth of Massachusetts. The Weymouth Town Hall is located at 75 Middle Street, Weymouth, Massachusetts.

6. The Weymouth Conservation Commission is a municipal commission organized and existing under the Massachusetts Conservation Commission Act, Mass.G.L.c. 40, § 8C. The offices of the Weymouth Conservation Commission are in the Weymouth Town Hall, 75 Middle Street, Weymouth, Massachusetts.

FACTS

7. Under the NGA, the Federal Energy Regulatory Commission (“FERC”) has exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce, including the location, design, construction, and operation of natural gas pipelines and related facilities that are used to transport natural gas in interstate commerce. Before a natural gas company can construct a natural gas pipeline and related facilities, it must obtain a certificate of public convenience and necessity (“Certificate”) from FERC. See 15 U.S.C. § 717f(e).

8. The PSA “provide[s] adequate protection,” at the federal level, “against risks to life and property posed by pipeline transportation and pipeline facilities.” 49 U.S.C. § 60102(a)(1). The

PSA directs the Secretary of Transportation to “prescribe minimum safety standards” for interstate natural gas pipeline facilities, defined to include a pipeline, right of way, and associated facilities, including buildings or equipment used in transporting natural gas. 49 U.S.C. § 60101(a)(3), 60102(a)(2). PSA safety standards apply to natural gas compressor stations. *See, e.g.*, 49 C.F.R. §§ 192.163-192.173. The PSA expressly preempts all state or local safety regulations of interstate pipeline facilities, providing that “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c).

FERC’s Pre-Filing Process

9. Prior to applying to FERC for a Certificate, a natural gas company may file a request with FERC to use the pre-filing procedures set forth in 18 C.F.R. § 157.21(b) (“Pre-Filing Process”) approximately seven to eight months prior to filing a Certificate application. (See also Federal Energy Regulatory Commission Guidance: FERC Staff NEPA Pre-Filing Process for Natural Gas Projects, 2004;http://www.fws.gov/habitatconservation/gas_prefiling_FERC_staff_NEPA_guidance_2004.pdf). If FERC approves a Pre-Filing Process request, then it will issue to the company a docket number for the Pre-Filing Process establishing an official public record for the proposed project.

10. On October 22, 2015, Algonquin and Maritimes & Northeast Pipeline, LLC (“Maritimes”) requested permission from FERC to use its Pre-Filing Process for the construction of a natural gas pipeline and related facilities referred to as the Atlantic Bridge Project (“AB Project”). FERC approved that request on February 20, 2015 in Docket No. PF15-12-000. (See Order Issuing Certificate and Authorizing Abandonment dated January 25, 2017 (“AB Certificate”), p. 15, ¶ 46; the AB Certificate is available on FERC’s website (<http://www.ferc.gov>) by using the eLibrary link

and Docket No. CP16-9-000).

11. The Pre-Filing Process is part of the regulatory process that begins FERC's early project review pursuant to its obligations under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq. In addition, FERC established the Pre-Filing Process to encourage natural gas companies to engage with the relevant members of the public and government agencies early in the process of project development.

12. Once FERC approves the request to use the Pre-Filing Process, the company must notify all stakeholders—including state, local, and other federal agencies, and potentially affected property owners—about the proposed project so that the company and FERC staff can provide a forum to hear stakeholder concerns. The company must also engage in various activities that typically include studying potential project sites, making project information publically available for comment, coordinating with federal and state environmental agencies, and holding open houses for stakeholders to discuss the project.

13. Throughout the Pre-Filing Process, the company refines its pipeline route studies, field survey activities, and reviews and responds to comments in order to diminish environmental impacts and develop the comprehensive exhibits that are needed for a Certificate application.

14. FERC's staff participates in the open houses. FERC also publishes in the Federal Register a Notice of Intent for Preparation of an Environmental Assessment or an Environmental Impact Statement (see 40 CFR § 1508.22), opening a scoping period to seek public comments. In addition, FERC consults with interested stakeholders, including government agencies, and also holds public scoping meetings and site visits in the proposed project area.

(See Federal Energy Regulatory Commission Pre-Filing Environmental Review Process; <http://www.ferc.gov/help/processes/flow/process-eis.asp>).

The Atlantic Bridge Project

15. Both Algonquin and Maritimes operate interstate natural gas pipeline transmission systems. The AB Project was designed to expand the capacity of Algonquin's system in New York, Connecticut, and Massachusetts and enable Maritimes' system in Massachusetts and Maine to transport additional volumes of natural gas and thereby deliver additional supplies of natural gas to meet the demand requirements in the Northeast market area. (See Order Issuing Certificate and Authorizing Abandonment dated January 25, 2017 ("AB Certificate"), p. 3, ¶¶ 8-9).

16. Algonquin's customers for the AB Project include five local distribution companies, two manufacturing companies, and a municipal utility. (AB Certificate, p. 3, ¶ 10 & n. 5).

17. The only new facility that Algonquin will construct in Massachusetts is a compressor station in the Town of Weymouth ("Weymouth Compressor Station"). (AB Certificate, p. 2, ¶ 5). The Weymouth Compressor Station will be built on land near the Fore River Bridge that is owned by Algonquin and on which Algonquin operates a pipeline and a Metering and Regulating Station.

18. Compressor stations are necessary facilities located at various points along a pipeline system. A compressor station performs the essential task of compressing natural gas as it travels throughout the pipeline system to maintain adequate pressures that are necessary to meet the company's service obligations. Compressor stations act in concert with each other in balancing the overall system pressure to adjust to the variable factors of supply and demand.

The AB Project Pre-Filing Process

19. As part of the AB Project Pre-Filing Process, FERC participated in thirteen (13) open houses sponsored by Algonquin and Maritimes during the weeks of March 2, 9, 16, and 23, 2015, to explain the environmental review process to interested stakeholders. (AB Certificate, p. 15, ¶ 46).

20. On April 27, 2015, FERC issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Atlantic Bridge Project, Request of Comments on Environmental Issues, and Notice of Public Scoping Meetings* (“NOI”). (AB Certificate, p. 15, ¶ 47).

21. The NOI was published in the Federal Register and was sent to more than 2,300 interested parties including federal, state, and local officials; agency representatives; conservation organizations; local libraries and newspapers; Native American groups; and property owners affected by the proposed facilities. (AB Certificate, p. 15, ¶ 47).

22. FERC also conducted four public scoping meetings in the AB Project area to provide an opportunity for agencies and the general public to learn more about the AB Project and to participate in the environmental analysis by identifying issues to be addressed in an Environmental Assessment (“EA”). Meetings were held between May 11 and May 14, 2015, in Yorktown Heights, New York; Glastonbury, Connecticut; Weymouth, Massachusetts; and Franklin, Massachusetts during which 113 individuals provided verbal comments on the AB Project. (AB Certificate, p. 15, ¶ 48).

AB Project - Certificate Proceeding

23. On October 22, 2015, Algonquin and Maritimes filed an application with FERC for a Certificate in Docket No. CP16-9-000 to construct and operate the AB Project. (AB Certificate, p. 1, ¶ 1).

24. In a Certificate proceeding, FERC considers a number of factors relating to the proposed project. Among other things, FERC examines the need for the project, the project's environmental impacts, land use issues, and any conditions or other measures related to the safe construction and operation of the pipeline and any related facilities, including compressor stations.

25. FERC's evaluation of the safety of proposed natural gas pipelines and related facilities is undertaken in accordance with the PSA which requires the United States Department of Transportation ("USDOT") to prescribe "minimum pipeline safety standards for pipeline transportation and for pipeline facilities." Those standards "apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement and maintenance of pipeline facilities." 49 U.S.C. § 60102(a)(1)(B). The regulations promulgated by the USDOT are commonly referred to as the DOT Code. See 49 C.F.R. Part 192.

26. The PSA states that an applicant for a Certificate for the construction and operation of a natural gas pipeline or related facility that "is subject to an applicable safety standard shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain" such facility in accordance with the DOT Code. 49 U.S.C. § 60104(d)(2). The DOT Code includes safety standards for the design and construction of compressor stations. See 49 C.F.R. §§ 192.163-.173.

27. FERC can only issue a Certificate "if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the [NGA] and the requirements, rules, and regulations of [FERC] . . . , and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be

denied.” 15 U.S.C. § 717f(e).

28. On November 18, 2015, the Town of Weymouth filed a timely, unopposed Petition to Intervene in the Certificate application proceeding for the AB Project.

FERC Issues an Environmental Assessment for the AB Project

29. Environmental review of a proposed project typically is one of FERC’s primary areas of focus in the Certificate application process. The Energy Policy Act of 2005 amended the NGA to provide that FERC shall act as the lead agency for NEPA purposes. NEPA requires federal agencies to consider the environmental impacts of, and reasonable alternatives to, their proposed actions.

30. NEPA requires an environmental inquiry for “major Federal actions.” 42 U.S.C. § 4332(2)(C). For all major federal actions significantly affecting the quality of the human environment, NEPA requires federal agencies to prepare an environmental impact statement (“EIS”).

31. If FERC “believes that a proposed action . . . may not be a major federal action significantly affecting the quality of human environment,” then an Environmental Assessment (“EA”) “rather than an EIS, will be prepared first. Depending on the outcome of the EA, an EIS may or may not be prepared.” 18 C.F.R. § 380.6(b). An EA must contain “sufficient evidence and analysis for determining whether to prepare an EIS or issue a finding of no significant impact.” 18 CFR. § 380.2(d)(1).

32. On November 19, 2015, FERC issued a Supplemental NOI to provide an opportunity for comment by affected landowners who were not on the original Project mailing list due to changes in scope. The Supplemental NOI was sent to the entire FERC environmental mailing list. (AB Certificate, pp. 15-16, ¶ 50).

33. On May 2, 2016, FERC issued an EA for the AB Project for a 30-day comment period. (AB Certificate, p. 16, ¶ 53; the EA is available at FERC's eLibrary)

34. The United States Environmental Protection Agency cooperated with FERC in the preparation of the EA because of its "special expertise with respect to environmental impacts associated with the" AB Project. (EA, p. 1-1, § 1.1).

35. FERC received about 290 comments on the EA, the vast majority of which related to the Weymouth Compressor Station. (AB Certificate, p. 16, ¶¶ 54-55).

36. In the EA, FERC stated that it was "fulfilling [its] obligation under NEPA to consider and disclose the environmental impacts of the Project. . . . This EA addresses the impacts that could occur on a wide range of resources, should the Project be approved and constructed." (EA, p. 1-3, § 1.3).

37. As FERC stated, the principal purposes of the EA were to:

- a. identify and assess potential impacts on the natural and human environment that would result from the implementation of the proposed action;
- b. assess reasonable alternatives to the proposed action that would avoid or minimize adverse effects on the environment, while meeting the Project purpose; and
- c. identify and recommend specific mitigation measures, as necessary, to minimize environmental impacts.

(EA, p. 1-1, § 1.1).

38. The EA states that it "describes the affected environment as it currently exists, discusses the environmental consequences of the [AB] Project, and compares these potential impacts with that of various alternatives." (EA, pp. 1-2, § 1.3).

39. FERC reviewed the AB Project's anticipated impact on the following aspects of the

environment:

geology; soils; groundwater; surface waters; wetlands; vegetation; wildlife and aquatic resources; special status species; land use, recreation, special interest, areas, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives.

The EA also contains FERC's recommended mitigation measures. (EA, p. 1-2, § 1.3).

40. In the EA, FERC also addressed the environmental issues raised during the public scoping process. (EA, p. 1-4, § 1.4). Table 1.4-1 lists those environmental issues. (EA, pp. 1-5, 1-6).

41. FERC specifically examined the AB Project's possible impacts on wetlands and noted that Algonquin would not permanently fill any wetlands in connection with the AB Project. (EA, p. 2-27, § 2.2.3).

42. FERC concluded that "[b]ased on our analysis, the extent and content of comments received during the scoping period . . . the impacts associated with this Project can be mitigated to support a finding of no significant impact. Thus, an EIS is not warranted." (EA, p. 1-3 § 1.3).

FERC Issues a Certificate for the AB Project

43. On January 25, 2017, FERC issued a Certificate authorizing Algonquin and Maritimes to construct and operate the AB Project.

44. In the AB Certificate, FERC addressed "substantive comments" that it had received on the EA. (AB Certificate, p. 16, ¶ 54; see pp. 17-88). FERC concluded that it had:

reviewed the information and analysis contained in the EA regarding potential environmental effects of the [AB] Project. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the EA and find that the [P]roject, if constructed and operated as described in the EA, and in

compliance with the environmental conditions in the appendix to this order, does not constitute a major federal action significantly affecting the quality of the human environment.

(AB Certificate, p. 88, ¶ 252).

45. In the AB Certificate Order, FERC specifically noted that “Algonquin has committed to complying with applicable [Department of Transportation] regulations” regarding the safety of pipeline facilities, including the Weymouth Compressor Station, and discussed and responded to a range of safety-related concerns raised by stakeholders. (AB Certificate, pp. 80-84, ¶¶ 227-238). The AB Certificate Order also imposed 23 separate environmental conditions on the construction and operation of AB Project facilities, including the Weymouth Compressor Station. (*Id.* pp. 93-100).

46. The AB Certificate found that because “the proposed facilities will be used to transport natural gas in interstate commerce” and the facilities to be abandoned have been used to transport natural gas in interstate commerce, the proposed abandonment, construction, and operation of the AB Project facilities, including the Weymouth Compressor Station, “are subject to subsections (b), (c), and (e) of section 7 of the NGA.” (AB Certificate, p. 7, ¶ 24).

47. In the AB Certificate, FERC applied the criteria in its Certificate Policy Statement and “balance[d] the public benefits against the potential adverse consequences.” (AB Certificate, p. 8, ¶ 25) FERC further found that “the public convenience and necessity require approval and certification of the Atlantic Bridge Project under section 7 of the NGA, subject to the environmental and other conditions in this order.” (*Id.* at 9, ¶ 31)

Algonquin Files a Notice of Intent with the Weymouth Conservation Commission

48. The Massachusetts Wetland Protection Act (“WPA”), Mass.G.L.c. 131, § 40,

requires an applicant that seeks to perform work that will affect a resource area subject to the WPA to file a Notice of Intent with the appropriate local conservation commission for an Order of Conditions (“OOC”) allowing the work to be performed.

49. The WPA establishes certain standards for the protection of various resource areas, but the Massachusetts Home Rule Act permits municipalities to enact local ordinances or bylaws that extend beyond the WPA’s standards. The Town of Weymouth has adopted such an ordinance as part of its Code of Ordinances. Weymouth’s Wetlands Protection Ordinance (“WPO”) is found in Section 7-300 of the Weymouth Code of Ordinances. The WPO states that it is intended “to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the” WPA and its implementing regulations set forth in 310 CMR 10.00.

50. Although FERC has exclusive jurisdiction over the design, location, construction and operation of facilities, such as compressor stations, used in the transportation of natural gas in interstate commerce, FERC encourages natural gas companies to cooperate with state and local authorities, but cautions that state and local laws cannot prohibit or unreasonably delay the construction or operation of facilities approved by FERC. (AB Certificate, p. 19, ¶ 61).

51. The Weymouth Compressor Station will be located entirely on uplands. But a portion of the property on which the Station will be built includes buffer and riverfront areas subject to the WPA, the regulations implementing the WPA at 310 C.M.R. 10.00, and the Weymouth WPO.

52. In accordance with FERC’s policy of cooperating with local agencies, Algonquin filed a Notice of Intent with the Weymouth Conservation Commission on February 22, 2016 seeking an OOC under the WPA and a permit under the Weymouth WPO (“WPO Permit”). The cover letter for

Algonquin's Notice of Intent stated that Algonquin's request was not to be:

construed to indicate that any state, regional or local agency referred to has the power to impose any requirement inconsistent with federal law or to refuse to issue or to unreasonably delay the issuance or processing of any state, regional or local permit, license, certificate, approval, review or other requirement: nor shall this document be construed to limit Algonquin's legal rights under the NGA (15 U.S.C. § 717 et seq.), Pipeline Safety Act (49 U.S.C. § 60,101 et seq.), or the United States ("U.S.") Constitution, including, but not limited to, the Supremacy Clause and Commerce Clause.

The Weymouth Conservation Commission's Denial Decision

53. The Weymouth Conservation Commission held two public hearings on Algonquin's Notice of Intent. At a meeting on May 25, 2016, the Weymouth Conservation Commission closed the public hearing and voted to deny Algonquin's request for an OOC and a WPO Permit.

54. On June 15, 2016, the Weymouth Conservation Commission issued a decision denying Algonquin's request for an OOC and a WPO Permit (the "Denial Decision").

55. The Denial Decision states that it is based on both the WPA and the WPO. See Denial Order, Section B. Findings and Section D. Findings Under Municipal Wetlands Bylaw or Ordinance.

56. The Denial Decision further states that while "some of the potential impacts of the [compressor station] project could be conditioned" to prevent what the Weymouth Conservation Commission claimed were unacceptable impacts to certain resource areas, other "aspects of the project cannot be conditioned to adequately protect the resource areas and interests protected both under the WPA and the WPO." (Denial Decision, p. 11). Among those aspects were the following:

- a. "[a]n explosion at the facility is likely to adversely impact all of the relevant resource areas and interests protected under both the WPA and the WPO... Therefore, the Commission finds that it cannot adequately condition the project to prevent harm to the interests described in the WPA and WPO from detrimental alteration of the

resource areas at and adjacent to the project site that would result from an explosion at the facility;”

- b. “a hurricane could result in inundation of the facility which would also adversely impact all of the relevant resource areas and interest protected under the WPA and the WPO”;
- c. “the proposed facility, under anticipated operating conditions, will pose unacceptable negative effects on the interests of recreation and aesthetics due to odors, noise and visual impacts;” and
- d. “the project cannot be adequately conditioned to reduce the risk of an explosion at the facility and its likely significant negative effect on the adjacent public open space area, to an insignificant level.” (Denial Decision, pp. 11-12).

Algonquin Appeals the Denial Decision

57. Under the WPA, an applicant whose request for an OOC was denied can file a request for a Superseding Order of Conditions (“SOC”) with the appropriate Regional Office of the Massachusetts Department of Environmental Protection (“DEP”) within ten days of the date of the negative determination. See 310 C.M.R. 10.05(7)(c).

58. On June 29, 2016, Algonquin timely filed a request for an SOC under the WPA with DEP’s Southeast Regional Office.

59. However, the DEP does not have jurisdiction over an appeal from the denial of a wetlands permit that is based on a municipality’s by-law or ordinance. In that situation, the applicant may file an appeal in the Massachusetts Superior Court within 60 days. See Mass.G.Lc. 249, § 4.

60. Algonquin did not file an action in the Massachusetts Superior Court appealing the Weymouth Conservation Commission’s denial of a WPO Permit because the Weymouth WPO and the denial of the WPO Permit are preempted by the NGA and/or the PSA.

61. On September 7, 2016, the DEP’s Southeast Regional Office issued an SOC to

Algonquin under the WPA.

The DEP's Adjudicatory Proceeding

62. On September 21, 2016, the Weymouth Conservation Commission appealed the decision of the DEP's Southeast Regional Office to grant an SOC to Algonquin by filing a Notice of Appeal with the DEP's Office of Appeals and Dispute Resolution ("OADR"). The appeal was assigned OADR Docket No. WET-2016-025.

63. An appeal of an SOC takes the form of an adjudicatory proceeding conducted by a Presiding Officer ("Adjudicatory Proceeding"). See 310 C.M.R. §10.05(7)(j). The DEP is a party to every Adjudicatory Proceeding. See 310 C.M.R. § 10.05(7)(j)f.

64. The regulations governing an Adjudicatory Proceeding are set forth in 310 C.M.R. § 1.01.

65. On October 28, 2016, the DEP filed a Motion for Stay in which it requested that the Presiding Officer stay the Adjudicatory Proceeding pursuant to 310 C.M.R. § 1.01(5)(a)(3) which states that the Presiding Officer:

may on the Presiding Officer's own initiative or on a party's motion where appropriate . . .

3. stay appeals where the failure to previously obtain a final decision required under another law would result in an unnecessary expenditure of the Department's administrative resources, or for other good cause.

66. In its Motion for Stay, the DEP argued, among other things, that Condition 3 of the SOC states that the SOC "does not relieve the [applicant] . . . of the necessity of complying with other federal, state, or local statutes, ordinances, bylaws, or regulations," and so an applicant who has

been denied a permit under a municipal wetlands protection ordinance cannot perform the requested work until a Massachusetts court reverses that denial. The DEP argued that since Algonquin had not appealed the Conservation Commission's denial of a WPO Permit in Superior Court, the Adjudicatory Proceeding was a "futile academic exercise" and an unnecessary expenditure of the DEP's administrative resources. Therefore, the DEP maintained the Adjudicatory Proceeding should be stayed until Algonquin had obtained a ruling from either FERC or a court of competent jurisdiction that the Weymouth Conservation Commission's denial of a WPO Permit to Algonquin was preempted. The Weymouth Conservation Commission supported the DEP's Motion.

67. On November 14, 2016, Algonquin filed a Partial Objection to Department's Motion to Stay.

68. On November 21, 2016, the Presiding Officer issued an Order Staying Proceedings stating that it would be an unnecessary expenditure of the DEP's administrative resources to proceed with the Adjudicatory Proceeding since FERC had not issued a Certificate to Algonquin for the AB Project.

69. On January 25, 2017, FERC issued a Certificate authorizing Algonquin and Maritimes to construct and operate the AB Project.

70. On February 13, 2017, Algonquin filed a Motion to Vacate Stay in the Adjudicatory Proceeding. The DEP and the Weymouth Conservation Commission opposed that Motion.

71. On April 7, 2017, the Presiding Officer issued an Order extending the stay. The Order stated that:

To date, neither FERC nor any court has applied the law of preemption to the Weymouth wetlands ordinance and [Algonquin] has opted not to pursue available options for

obtaining a ruling on the application of that law to the particular facts of this case. The uncertainty resulting from this constitutes good cause for extending the stay. For the reasons stated in the Department's opposition to the motion, I have determined that the stay shall remain in effect until [Algonquin] submits to OADR a ruling from the FERC or a court of competent jurisdiction finding that the denial of the [AB Project] under Weymouth Wetlands Ordinance is preempted by federal law. While I stated at the hearing that the interests of justice require that the case move forward to a hearing on the merits of the Petitioner's appeal, it will move forward when the cloud of uncertainty has cleared. The Motion to Vacate the stay is denied.

COUNT I -- FEDERAL PREEMPTION

(DECLARATORY JUDGMENT – 28 U.S.C. § 2201)

72. Algonquin repeats the allegations set forth in paragraphs 1-71 as if fully set forth herein.

73. Under the NGA, FERC has exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce, including over construction and operation of the Weymouth Compressor Station. FERC conducted a comprehensive review of the potential effects on the environment and public safety from the construction and operation of Weymouth Compressor Station and determined that the Compressor Station will not have any significant environmental impacts or present any safety concerns. FERC's determination that the construction and operation of the Weymouth Compressor Station serves the public interest cannot be challenged in this Court.

74. Algonquin's construction and operation of the Weymouth Compressor Station is not subject to the Weymouth WPO and the Weymouth Conservation Commission's denial of a WPO Permit because the NGA and PSA preempt the WPO and all other state and local laws, regulations,

and ordinances that purport to regulate the construction and operation of all natural gas pipeline facilities that are used in the transportation of natural gas in interstate commerce, including but not limited to the field of environmental and safety regulation of such facilities.

75. Algonquin's construction and operation of the Weymouth Compressor Station is not subject to the Weymouth WPO and the Weymouth Conservation Commission's denial of a WPO Permit because the PSA expressly preempts all state and local safety standards for interstate natural gas pipelines and related facilities, including compressor stations.

76. By denying Algonquin's application for a WPO Permit to construct the Weymouth Compressor Station, Defendants are seeking to implement and enforce municipal laws in a manner that conflicts with federal law, because the denial purports to prohibit, and would delay and stand as an obstacle to, the NGA and PSA's exclusive federal regulation over the siting, construction, and operation of facilities for the interstate transportation of natural gas, including the Weymouth Compressor station authorized in the AB Certificate.

77. An actual controversy exists between Algonquin and the Town of Weymouth and the Weymouth Conservation Commission with respect to the preemptive effect of the NGA and PSA on the WPO and the Weymouth Conservation Commission's denial of a WPO Permit.

78. Algonquin has standing to seek declaratory relief because it is being subjected to a preempted law and decision, i.e., the Weymouth WPO and the denial of a WPO Permit.

79. The controversy is ripe for review because the Presiding Officer's Order extending the stay prevents Algonquin from obtaining a final order from the DEP under the WPA for the construction of the Weymouth Compressor Station.

WHEREFORE, Algonquin requests the following relief:

1. a judgment declaring that the Weymouth Wetlands Protection Ordinance and the Weymouth Conservation Commission's denial of a WPO Permit to Algonquin are preempted by the Natural Gas Act and the Pipeline Safety Act;
2. a permanent injunction enjoining the Town of Weymouth and the Weymouth Conservation Commission from, directly or indirectly:
 - a. seeking to enforce the Weymouth Wetlands Protection Ordinance and the Weymouth Conservation Commission's denial of a WPO Permit in connection with Algonquin's design, construction, and operation of the Weymouth Compressor Station; and
 - b. relying on or invoking the Weymouth Wetlands Protection Ordinance or the Weymouth Conservation Commission's denial of a WPO Permit to interfere with Algonquin's efforts to obtain any permits or approvals it has applied or may apply for from any state or federal agency or the Town of Weymouth relating to the construction and operation of the Weymouth Compressor Station;
3. maintain jurisdiction over this action in the event that the Town of Weymouth and the Weymouth Conservation Commission rely on the Weymouth WPO to directly or indirectly interfere with Algonquin's efforts to obtain any permits or approvals it has applied for or may apply for from any state or federal agency relating to the construction and operation of the Weymouth Compressor Station; and
4. for such other relief that the Court deems to be appropriate or necessary.

ALGONQUIN GAS TRANSMISSION, LLC

By its attorneys,

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Dated: May 4, 2017