

## Helen Dennen

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**From:** Howitt, Steven - Rep. (HOU) <Steven.Howitt@mahouse.gov>  
**Sent:** Monday, October 31, 2016 6:11 PM  
**To:** Helen Dennen  
**Subject:** Fw: Status of Proposed Access Northeast Pipeline Project  
**Attachments:** OnePager\_Pipelines&EFSB.docx

**Importance:** High

Helen,  
Here is information in an attachment that was sent to me answering a request detailing the process.  
Steven

*Sent from my Verizon LG Smartphone*

----- Original message-----

**From:** Singleton, Stolle (EEA)  
**Date:** Mon, Oct 31, 2016 4:31 PM  
**To:** Howitt, Steven - Rep. (HOU);  
**Cc:**  
**Subject:** Status of Proposed Access Northeast Pipeline Project

Representative Howitt –

Thanks for contacting us regarding Spectra's proposed Access Northeast pipeline project. Here is some background regarding the status of the project and the State's limited jurisdiction over *interstate* pipelines.

The electric distribution companies (EDCs) filed motions to withdraw their petitions to the Massachusetts Department of Public Utilities (DPU) to procure natural gas capacity along the proposed Access Northeast pipeline on August 22, 2016. This followed the SJC decision which ruled the DPU does not have the authority to review and approve ratepayer-backed, long-term contracts entered into by electric distribution companies for additional natural gas pipeline capacity in the Commonwealth. The DPU granted the EDCs motions to withdraw on October 7, 2016.

At this time, no other petitions relative to this proposed pipeline are before the DPU and any potential future petition by local gas distribution companies (LDCs) would provide ample opportunity for public input.

Furthermore, the Federal Energy Regulatory Commission (FERC) is the regulatory entity that reviews and approves *interstate* gas pipelines. The Massachusetts Energy Facilities Siting Board (EFSB) does not have jurisdiction over siting *interstate* natural gas pipelines and the authority of the Massachusetts DPU is limited to reviewing precedent agreements (preliminary contracts) and requests for survey access. The DPU does not determine if an interstate pipeline rate is "just and reasonable," as FERC is the entity responsible for approving a mechanism for pipeline companies to recover the costs of constructing, owning and operating a pipeline.

Please do not hesitate to contact me if you have questions. I've also attached our frequently asked Q&A regarding the pipeline process.

Best,

Stolle

**C. Stolle Singleton**

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## FAQs - Natural Gas Pipelines

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### What Entity Has Jurisdiction For Review And Approval Of Natural Gas Pipelines?

- The **Federal Energy Regulatory Commission (FERC)** is the regulatory entity that reviews and approves *interstate* gas pipelines.
- The **Massachusetts Energy Facilities Siting Board (Siting Board or EFSB)** has primary jurisdiction over the siting of *intrastate* natural gas pipelines.

### What is the process for siting an *interstate* pipeline?

1. **Open Season Process: Does the Market Need Additional Pipeline Capacity?**
  - a. Pipeline Companies analyze market demand & cost of providing service.
  - b. Customers who need gas sign precedent agreements (e.g. preliminary contracts).
  - c. Customers submit precedent agreements to the DPU for review.
2. **Survey Process**
  - a. Pipeline Company seeks landowners' approval to survey the possible route.
  - b. DPU reviews survey petitions if a private landowner denies access.
3. **FERC Pre-Filing Phase**
  - a. Opportunity for landowners and state and local officials to provide feedback before the formal FERC application process begins.
  - b. FERC holds hearings & sets deadline for public comment.
4. **FERC Certificate Application Filing Phase**
  - a. Pipeline Companies apply to obtain a certificate from FERC before they can begin construction of a interstate pipeline.
  - b. FERC evaluates whether or not there is a demonstrated need for gas.
  - c. FERC identifies environmental issues & may require environmental assessments.
5. **Granting or Denial of a Certificate**
  - a. A FERC certificate allows a pipeline company to begin construction.
  - b. FERC does require applicants to cooperate with state and local entities regarding state local laws and regulations.

### What limited involvement does the DPU/EFSB have?

- The **Energy Facilities Siting Board (EFSB)** may:
  - hold public hearings during the pre-filing and certificate application phase;
  - submit comments to FERC;
  - obtain intervenor status in the certificate application filing phase.
- The **Department of Public Utilities** reviews:
  - the precedent agreements submitted by companies; and
  - the survey petitions for access to landowners property along the proposed route.

### What are Precedent Agreements?

A precedent agreement is a preliminary contract for gas capacity between a pipeline company and a customer setting forth the terms and conditions of service. Pipeline companies rely on approved precedent agreements to show FERC that there is a demand for the natural gas pipeline. A precedent agreement is replaced by a long-term firm gas transportation agreement after a project is approved by FERC and built.

### **Who pays for the Gas Pipeline Projects?**

- **Cost of the Pipeline Infrastructure:**
  - The Interstate Pipeline Company bears all of the upfront capital costs for the project.
- **Cost of the Pipeline Capacity:**
  - Gas pipeline companies rely on FERC-approved mechanism to recover the costs of constructing, owning and operating a natural gas pipeline.
  - Local Gas Distribution Companies (LDCs) enter into long-term contracts to procure capacity on interstate pipelines at FERC-approved rates.
- **Cost of the Gas Commodity (the natural gas itself):**
  - LDCs also procure gas commodity on behalf of customers that do not choose their own supplier, typically under short-term contracts at market based prices, the cost of which is a direct pass through to customers.

*The DPU does not determine if a pipeline rate is “just and reasonable.” This is FERC jurisdiction.*

### **Who is Authorized to Grant/Deny Access to Companies seeking to Survey Private Land?**

- When private landowners deny access to land, pipeline companies may request authorization from the Massachusetts Department of Public Utilities (DPU) to conduct land survey’s (*M.G.L. c. 164, § 72A & 75D*).
- A DPU order granting or denying a pipeline company the right to survey a landowner’s property does not take a position on the merits of a pipeline project.

### **What happens if the DPU denies Survey Access?**

If the DPU does not grant survey access to a pipeline company, then the company has two options:

1. Appeal the DPU’s decision to the SJC; or
2. the company can obtain FERC certificate approval that contains eminent domain authority. (*See Section 7(h) of the Natural Gas Act.*)

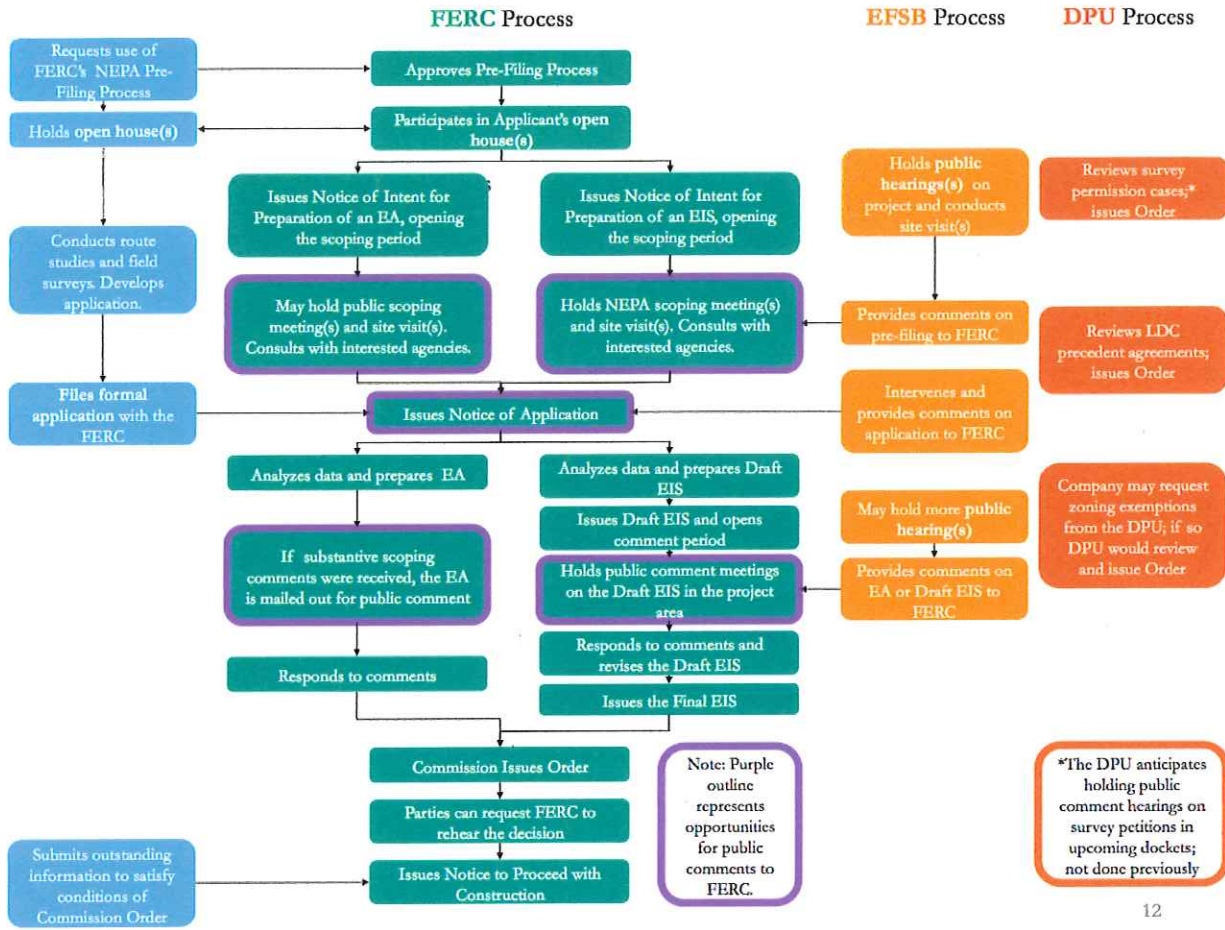
### **Who is Authorized to Grant/Deny Access to Companies seeking to Survey Public Land?**

The Secretary of Energy and Environmental Affairs (EEA) and Commissioners of land agencies have the authority over the parcels of land that fall under their jurisdiction (e.g. Department of Conservation and Recreation (DCR), Department of Fish and Game (DFG), and Department of Agricultural Resources (DAR)).

### **What happens if the Secretary or Commissioner(s) deny access to public land?**

If the Commonwealth denies the pipeline company access to public land, the company can obtain FERC certificate approval that contains eminent domain authority. (*See Section 7(h) of the Natural Gas Act.*)

# Overview of FERC, EFSB and DPU Processes for Interstate Pipeline Review



## **Energy Facility Siting Board (EFSB)**

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The Energy Facility Siting Board is a 9-member board charged with ensuring that proposed energy facilities provide a “reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.” (M.G.L. c.164 § 69H)

Categories of facilities reviewed by the EFSB include, but are not limited to:

- large electric generating plants;
- electric transmission lines;
- *intrastate* natural gas pipelines;
- facilities for the manufacture or storage of natural gas; and
- oil pipelines, oil refineries and very large oil storage facilities in MA.

The EFSB **does not** have jurisdiction over siting *interstate* natural gas pipelines.

The scope of the EFSB’s review varies by the type or project; however, for *all facilities* within the EFSB jurisdictional authority, the EFSB reviews whether or not the plans for expansion and construction are consistent with current health, environmental protection, and resource use and development policies adopted by the Commonwealth.

The EFSB may also represent the Commonwealth in interstate pipeline proceedings before the Federal Energy Regulatory Commission (FERC).

**Siting Board Review Process:** The EFSB review process is an adjudicatory process (M.G.L. c.30A and 980 CMR 1.00) with 3 general phases: (1) procedural; (2) evidentiary; and (3) decision.

### **(1) Procedural Phase**

- a. Proponent files petition with EFSB;
- b. Notice Issued for Public Comment Hearing(s)
- c. Public Comment Hearing(s) in the area the facility is proposed to be located;
- d. Persons/Groups solicit Intervenor or Limited Participant status;
- e. Hearing Officers Rule on Petitions for Intervention
- f. Procedural Conference

### **(2) Evidentiary Phase**

- a. Proponent submits ‘direct case’ as pre-filed testimony in conjunction with initial petition;
- b. EFSB staff and all parties submit written discovery;
- c. Intervenors may pre-file testimony; if they do, must respond to written discovery;
- d. Evidentiary Hearing(s), EFSB staff and all parties cross-examine witnesses;

### **(3) Decision Phase**

- a. Parties submit briefs;
- b. The EFSB issues a Tentative Decision;
- c. 7-Day Comment Period;
- d. EFSB Board Meeting; and
- e. The EFSB issues a Final Decision.

***For more information about the EFSB see: <http://www.mass.gov/eea/energy-utilities-clean-tech/energy-facilities-siting-board/>***