



CAPE COD COMMISSION

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Date: August 10, 2006

To: KeySpan Energy Delivery New England

From: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, Section 12 and 13

Applicant: KeySpan Energy Delivery New England
C/o Mr. Ed Wencis
52 Second Avenue,
Waltham, MA 02451

Project: KeySpan Sagamore Line Reinforcement Project

Project #: EIR – DRI 06007

Book/Page: Plan Book 193, Pages 61-63

DECISION OF THE CAPE COD COMMISSION

SUMMARY

In accordance with the Cape Cod Commission Act (Act), the Cape Cod Commission (Commission) hereby denies the application of Colonial Gas Company, doing business as KeySpan Energy Delivery New England (Applicant) as a Development of Regional Impact (DRI) pursuant to Section 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended, for the Sagamore Line Reinforcement Project in the towns of Sandwich, Barnstable, Yarmouth, Dennis and Harwich, Massachusetts. The decision is rendered pursuant to a vote of the Commission on August 10, 2006.

PROJECT DESCRIPTION

As presented by the Applicant, the proposed project involves the construction of approximately 13.1 miles of new high-pressure, distribution gas pipeline that is planned to be constructed in several segments or phases as described briefly below:

Western Segment

This phase of construction involves the installation of 6.6 miles of 20-inch diameter pipe from near the intersection of Route 130 and Service Road in Sandwich and extending along Service Road to Route 149 in Barnstable.

Middle Segment

This phase will involve installation of 4.9 miles of 12-inch diameter pipe from KeySpan's South Yarmouth LNG facility on White's Path to the Depot Street and Main Street intersection in Harwich. This segment is planned to be installed in two phases. The first phase is planned to consist of a 12,000-foot pipeline that runs from the KeySpan South Yarmouth LNG facility on White's Path to the intersection of Great Western Road and Highbank Road in Yarmouth (referred to herein as Phase 1 Middle Segment). The second phase of the Middle Segment will continue from the intersection of Great Western Road and Highbank Road to the end of the Middle Segment in Harwich (referred to herein as Phase 2 Middle Segment).

Eastern Segment

This phase will involve the installation of 1.6 miles of 12-inch diameter pipeline from the Depot Road and Route 139 intersection in Harwich to the intersection of Church Street and Route 39 in Harwich.

The pipeline is proposed to be installed over a period of years, as described in the following table:

	<u>Construction Date</u>
Phase 1 Middle Segment	Fall 2006
Phase 2 Middle Segment	2008-2009
Western Segment	2009-2014
Eastern Segment	2010-2013

PROCEDURAL HISTORY

The project required the preparation of an Environmental Impact Report (EIR) pursuant to the Massachusetts Environmental Policy Act (MEPA). On February 17, 2006, the Secretary of Environmental Affairs certified that the EIR prepared for the project adequately and properly complied with MEPA.

On March 17, 2006, the Applicant submitted a Development of Regional Impact (DRI) application under Section 6 of the DRI Enabling Regulations. The public hearing period was opened by Hearing Officer on March 30, 2006. A duly noticed substantive public hearing was conducted by an authorized subcommittee of the Commission pursuant to Section 5 of the Act on May 22, 2006 at the Yarmouth Town Hall and continued to the offices of the Cape Cod Commission on June 15, 2006. A continued public hearing was conducted at the Commission Offices on June 15, 2006 at which the subcommittee voted to enter in to an Executive Session. The subcommittee re-convened the public hearing at the Assembly of Delegates Chambers, Barnstable following the Executive Session and continued the public hearing to a Hearing Officer on July 26, 2006. A Hearing Officer closed the public hearing on June 26, 2006.

The subcommittee held meetings on June 15, June 26, July 5, July 27 and August 1, 2006 to deliberate on the project. At the July 5, 2006 meeting the subcommittee voted (3-1) to recommend to the full Commission that the DRI application for Phase 1 Middle Segment be denied and on July 27, 2006 the subcommittee voted unanimously (4-0) to recommend to the full Commission that the DRI application for a master plan of the Eastern, Western and Phase 2 Middle Segment be denied. At the July 27, 2006 meeting, the subcommittee twice asked the Applicant to consider a short extension to the DRI timeframes in order that the subcommittee could hear from the Boards of Selectmen of Yarmouth and Dennis and the subcommittee supported a fee waiver request for such extension. However, KeySpan declined both requests for an extension citing construction scheduling concerns. The Project was subject to review under the 2002 Regional Policy Plan (RPP). The subcommittee met on July 27, 2006 and August 1, 2006 to review the draft decision. A final public hearing was noticed for the July 27, 2006 Commission meeting and continued without discussion to the August 10, 2006 Commission meeting. On August 10, 2006, a public hearing was held before the full Commission and the Commission voted unanimously to deny without prejudice the Development of Regional Impact.

MATERIALS SUBMITTED FOR THE RECORD

By Applicant:

- Email dated March 13, 2006 from Sam Mygatt, Re: KeySpan DRI filing
- Letter dated March 17, 2006 from Katie Lesser, Re: DRI Application
- Email dated March 20, 2006 from Katie Lesser, Re: KeySpan DRI signature
- Letter dated March 21, 2006 from Sam Mygatt, Re: DRI Application
- Email dated April 28, 2006 from Sam Mygatt, Re: Exhibits
- Letter dated April 6, 2006 from Katie Lesser, Re: Circulation lists
- Letter dated April 13, 2006 from Katie Lesser, Re: Circulation lists
- Transmittal dated May 17, 2006 from Katie Lesser, Re: EFSB decision
- Email dated May 24, 2006 from Katie Lesser, Re: KeySpan Hearing
- Letter dated June 7, 2006 from Patricia Crowe, Re: May 22nd Hearing follow up
- Email dated June 20, 2006 from Katie Lesser, Re: Construction Schedule
- Letter dated June 20, 2006 from Patricia Crowe, Re: June 15th Hearing follow up
- Email dated June 20, 2006 from Katie Lesser, Re: June 15th Hearing follow up
- Email dated June 22, 2006 from Katie Lesser, Re: Minutes
- Email dated June 27, 2006 from Katie Lesser, Re: Minutes

- Email dated June 28, 2006 from Katie Lesser, Re: Minutes
- Letter dated June 30, 2006 from Patricia Crowe, Re: June 26th Meeting follow up
- Email dated June 30, 2006 from Katie Lesser, Re: June 26th Meeting follow up
- Email dated July 10, 2006 from Katie Lesser, Re: Tape
- Email dated July 12, 2006 from Katie Lesser, Re: Dennis Consistency
- Email dated July 13, 2006 from Katie Lesser, Re: Minutes
- Two emails dated July 14, 2006 from Katie Lesser, Re: Delay of meeting
- Letter dated July 14, 2006 from Patricia Crowe, Re: Delay of meeting
- Email dated July 21, 2006 from Katie Lesser, Re: Minutes Revisions
- Letter dated July 27, 2006 from Patricia Crowe, Re: Sagamore Project
- Email dated July 28, 2006 from Katie Lesser, Re: Information

By Towns:

- Letter dated March 29, 2006 from Kenneth Kimmell, Re: KeySpan Project
- Letter dated April 12, 2006 from Edmond Nickerson, Re: Historic District
- Letter dated May 2, 2006 from Douglas Lapp, Re: Town requests
- Memorandum dated June 22, 2006 from Susan Leven, Re: Comprehensive Plan
- Email and letter dated June 23, 2006 from Lincoln Hooper, Re: KeySpan Letter
- Two emails dated July 11, 2006 from Dan Fortier, Re: Zoning consistency
- Email dated July 11, 2006 from Susan Leven, Re: Zoning consistency
- Email dated July 12, 2006 from Terry Sylvia, Re: Zoning consistency
- Letter dated July 13, 2006 from Ruth Weil, Re: LCP and Zoning consistency
- Email dated July 20, 2006 from Robert Fultz, Re: Zoning consistency
- Email dated July 26, 2006 from Karen Greene, Re: Submitting comments
- Memorandum dated July 26, 2006 from Robert Lawton, Re: Status
- Email dated July 28, 2006 from Robert Lawton, Re: Yarmouth Selectmen
- Letter dated July 28, 2006 from Donald Trepte, Re: Dennis Selectmen Input
- Letter dated July 28, 2006 from James Saben, Re: Yarmouth Selectmen Input
- Letter dated August 2, 2006 from David Whitcom, Re: Chatham Selectmen request for delay
- Letter dated August 3, 2006 from Robert Lawton, Re: Road opening permit minutes

By Commission Staff:

- Email dated March 13, 2006 from Phil Dascombe, Re: Application fees
- Email dated April 5, 2006 from Phil Dascombe, Re: Hearing date
- Email dated April 6, 2006 from Phil Dascombe, Re: Subcommittee hearing
- Email dated April 28, 2006 from Phil Dascombe, Re: Exhibits
- Staff Report dated May 22, 2006
- Email dated May 25, 2006 from Phil Dascombe, Re: Hearing follow up
- Email dated June 6, 2006 from Phil Dascombe, Re: KeySpan update
- Memorandum dated June 8, 2006 from Phil Dascombe, Re: Subcommittee meeting
- Memorandum dated June 21, 2006 from Phil Dascombe, Re: Subcommittee meeting
- Email dated June 28, 2006 from Phil Dascombe, Re: Minutes
- Email dated July 5, 2006 from Phil Dascombe, Re: KeySpan recommendation
- Two emails dated July 11, 2006 from Phil Dascombe, Re: KeySpan recommendation

- Two emails dated July 14, 2006 from Phil Dascombe, Re: Meeting delay
- Three emails dated July 18, 2006 from Phil Dascombe, Re: Rescheduled meeting
- Memorandum dated July 18, 2006 from Phil Dascombe, Re: Subcommittee meeting
- Memorandum dated July 24, 2006 from Phil Dascombe, Re: Minutes
- Email dated July 26, 2006 from Phil Dascombe, Re: Submitting comments
- Two emails dated July 28, 2006 from Phil Dascombe, Re: Meeting & Yarmouth Comments
- Letter dated August 7, 2006 from Phil Dascombe, Re: Chatham Selectmen request for delay

By Interested Parties:

- Letter dated May 22, 2006 from Thomas Kelley, Re: water service
- Letter dated July 7, 2006 from The Board of Directors of the Old South Dennis Village Association
- Letter dated July 14, 2006 from Mary Louise Burke, Re: Opposition
- Letter dated July 21, 2006 from Claire Graystoke, Re: Opposition
- Letter undated, received July 24, 2006 from Russell Potter, Re: Support
- Letter dated July 30, 2006 from Philip Doyle, Re: Support
- Letter dated August 8, 2006 from June Jones, Habitat for Humanity, Re: Support
- Letter dated August 9, 2006 from Louis and Anne Seminara, Re: Support
- Letter dated August 10, 2006 from Michael Berry, Housing Assistance Corporation Re: Support

The application and notices of public hearings relative thereto, the Commission staff notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

Hearing 1: May 22, 2006

Mr. Crowell opened the hearing at 6:30 pm. Dr. Marasco read the hearing notice. Mr. Crowell explained the procedure for the hearing and asked the Applicant to make their presentation.

Ms. Pat Crow, representing KeySpan, gave an explanation of the Applicant's presentation. Mr. Ed Wencis of KeySpan gave an overview of the proposed project. He said the project is needed in order to bolster the existing natural gas pipeline so that there is sufficient gas supply on the Cape. Mr. Wencis described the existing KeySpan infrastructure on the Cape and then described the three proposed segments of the project. The western segment was described as running along Service Road in Sandwich and into Barnstable at Route 149. The Middle Segment was described as starting at the KeySpan facility on White's Path in Yarmouth and proceeding along Great Western Road through Yarmouth and Dennis and ending in Harwich. Mr. Wencis noted that this segment would be completed in two phases, Phase I from White's Path to the intersection of Highbank Road and Great Western Road and Phase II for the balance of the route. The Eastern Segment was described as being located entirely in Harwich, running along Route 39 between Queen Anne Road and Church Street. Mr. Wencis noted that the construction would take place between the fall of 2006 and 2013, with the first 12,000 feet of the Middle Segment (Phase I) to be constructed first.

Mr. Ted Barten of Epsilon Associates, representing KeySpan, explained the regulatory review that the project has completed so far, including the concurrent Energy Facilities Siting Board (EFSB) review and Massachusetts' MEPA

review. Mr. Barten provided detailed comments on the important dates and process involved in these reviews. He noted that KeySpan's preferred route, described by Mr. Wencis earlier, was approved by the EFSB on May 16, 2006 and that the same route was analyzed in the Final Environmental Impact Report (FEIR) that was certified as adequate by the Secretary of Environmental Affairs in February, 2006.

Mr. Wencis noted that there would be continued outreach with members of the communities and that KeySpan would continue discussions with the town's historic committees and public works departments.

Mr. Crowell asked the Commission staff for their presentation. Mr. Dascombe, planner at the Cape Cod Commission, described briefly how the EFSB and MEPA process had been completed and how the Commission's Development of Regional Impact (DRI) review was initiated. Mr. Dascombe noted that the MEPA process required that alternatives to the preferred route be assessed for their relative environmental impacts and that a "noticed alternative" was weighed against the proposed route in the EIR. Mr. Dascombe noted that in order that the project not be considered a segmented project as defined in both the Commission and MEPA regulations, KeySpan must provide information on the entire route regardless of whether final engineered drawings were available. Mr. Dascombe said that it was anticipated that as future phases of the project were developed, that the Commission would hold further public hearings but that the Commission could review the specifics of the Middle Segment Phase I as those plans had been engineered. Mr. Dascombe briefly noted the findings that the Commission would need to make to approve the project.

Mr. Dascombe noted that the Commission Staff Report focuses on the proposed route as that is the route KeySpan is submitting for approval in their application, and that it is intended to identify whether the project is consistent with the Commission's Minimum Performance Standards (MPS). He noted that many of the Commission's standards are not applicable to a pipeline project.

Mr. Dascombe noted that the project was consistent with the water resources MPS as groundwater was unlikely to be encountered and that KeySpan had committed to do doing all refueling at commercial service stations and that field maintenance was prohibited. Mr. Dascombe noted that the goal of maintaining water quality would be met by these commitments. Mr. Dascombe said that in regard to natural resources, the route would cross the Bass River in an empty utility chase under the existing High Bank bridge and avoids vegetated wetland areas. He stated that the RPP requires that vegetation clearing be minimized and that rare species not be adversely impacted. Mr. Dascombe said that most of the route is within the road right-of-way and vegetation will be replaced if cleared, and noted that there was rare species habitat in part of the route on Service Road in Sandwich. He noted that Natural Heritage and Endangered Species Program would have to provide comment on the rare species impacts, but only when engineered drawings show the exact route. Mr. Dascombe also noted that there would not be an open space requirement because the route followed previously disturbed areas.

Mr. Dascombe described how the transportation standards did not apply to this kind of project but that the staff recommend that the construction take place in the off-season and that the transportation management plan be submitted to the Commission for comment. Mr. Dascombe briefly noted that archaeological sensitive resources were present along parts of each of the segments, and that the Massachusetts Historical Commission (MHC) had found that negative impacts were unlikely in the Middle Segment Phase I because construction was within the street and recommended that future segments also be constructed in the street. Mr. Dascombe said that the route passes through the South Dennis Historic District and that both the town and MHC had concerns about these potential impacts.

Mr. Dascombe concluded that the project was consistent with the Commission's regulatory standards, but that more information was needed on specific details on the later proposed segments. Mr. Dascombe said that the Commission staff had not evaluated the alternate route but the subcommittee could request additional information about the alternate route if they felt it was appropriate.

Mr. Jones asked about the condition of the railroad right-of-way and whos permission is needed to use it. Mr. Barten said that the state owns the right of way and that other than the road crossings, the rails and tracks remain. He noted

that the town had recently cleared a portion of the right-of-way and that construction along this route would require clearing up to 80 feet in width. Mr. Barten said that he thought that the portion along the bike trail was wide enough to allow the bike route to remain open during construction.

Mr. Jones asked Mr. Fox what affect the EFSB decision would have on the Commission's decision and whether it would have supremacy over the Commission Act. Mr. Fox said that the Commission staff would have to seek that legal opinion if desired.

Mr. Jones asked what would happen to the timeframes outlined if the alternate route was to be pursued. Mr. Wencis said that it would mean that the pipeline couldn't be constructed this year. Mr. Barten added that there would be significant delay in securing the Executive Office of Transportation (EOT) approval, which was based on the experiences of the Town of Yarmouth trying to get EOT approval for the proposed bike route extension.

Mr. Cakounes asked how the alternate route would cross the Bass River. Mr. Wencis said that there were several options, including using the existing abutment or a rehabilitated abutment or a horizontal directional drill.

Mr. Cakounes asked what was the benefit of going down the proposed route. Mr. Wencis said that as the route followed an existing pipeline, if they encountered unforeseen circumstances that delayed construction of the entire route that there was only a short distance to tie back into the existing pipeline. He said that the alternate route would require more pipe to re-connect if circumstances required a tie-in sooner.

Dr. Marasco stated that he was concerned that the route went through a heavily populated part of Yarmouth, whereas the alternate route passes through sparsely populated areas. He said that he believed that timing and licensing issues can be overcome, but that an installed pipeline would be there for a long time. Mr. Wencis stated that they had selected the proposed route based on three main criteria, reliability, environmental impacts and cost. He noted that to be competitive, that cost is important and that after their analysis they believed that the proposed route was superior.

Mr. Cakounes asked if there would be any tie ins to the proposed pipeline. Mr. Wencis said that there would be no tie ins and that the pipeline formed a west to east artery.

Dr. Marasco said that he was concerned that such a high pressure pipeline was located near so many residences and that safety was a concern and that he would prefer the route to follow the railroad right-of-way.

Mr. Crowell asked if there were any above ground features. Mr. Wencis described how everything was to be underground and that shut off devices would be located underground with a cover flush to the pavement. He noted that there was a requirement for markers that are typically posts in areas off pavement, but flush with the ground in the pavement. He also noted that the markers in the South Dennis Historic District would be flush with the pavement. Mr. Crowell asked if KeySpan would accept a condition requiring markers all be flush with the pavement. Ms. Crow said that the EFSB decision required flush markers in the Historic District.

Mr. Crowell asked what would happen if the Commission denied the project. Mr. Wencis said he didn't want to think about that consequence but if there was another harsh winter, service to some customers would have to be curtailed. Mr. Crowell asked whether a route along Route 6 had been considered. Mr. Wencis said that Mass Highway said that a utility of this type would not be allowed and it was therefore discounted. Mr. Crowell asked what standing the Commission Act gives the subcommittee. Mr. Dascombe said that the EFSB has the power to overrule a local actions, but it is unclear whether that same power exists over the Commission and he stated that the staff would consult counsel to give the subcommittee a fuller understanding of this issue. Ms. Crow stated that the EFSB was the final arbiter of the route.

Mr. Harris expressed concerns that the costs of the various routes had not been clearly articulated and were needed to evaluate the benefits of the two routes.

Mr. Crowell asked what the Commission was being asked to approve. Mr. Dascombe explained the initial master plan concept but said the subcommittee could consider alternate approaches if desired. Mr. Barten said that KeySpan had applied for conceptual approval of the entire route.

Mr. Crowell invited testimony from the audience.

Representative Cleon Turner asked that the subcommittee deny the proposed route and approve the alternate route. He stated that he believed the costs for the alternate would be lower and that KeySpan should have done a better job of working with the community. Rep. Turner said that KeySpan should switch routes and believed it could be reviewed quickly.

Senator Robert O'Leary said that he had only recently learned of the route in Yarmouth and Dennis and said that he would facilitate any state actions needed if KeySpan pursued the alternate route. He acknowledged the need for more capacity but urged KeySpan to reconsider the route and work with the community.

Mr. George Allaire, Yarmouth DPW Director, clarified that the railroad right-of-way is leased by Bay Colony and that the lease expires on June 30th. He said that he believed that the State has the final word on the route but would like all parties to get together and work out a way for the alternate route to work.

Mr. Robert Canevazzi, Dennis Town Administrator, said that the town prefers the alternate route as the preferred route goes through the South Dennis Historic District. He noted that clearing of the railroad right-of-way has recently occurred which would facilitate the construction on the alternate. Mr. Canevazzi stated that KeySpan had not been a good neighbor and that the company did not work cooperatively with the Dennis DPW. He urged the subcommittee to request more information.

Mr. Ron Slowek, Dennis Road Safety Task Force, stated that the alternate route was preferable and that KeySpan had failed to do outreach with the community to gauge public opinion.

Mr. Donald Applegate said that he lived in New Jersey when a gas pipeline breach incinerated an apartment building and said that safety was an important consideration and that the location of the pipeline can affect property values.

Mr. Michael Berry, Housing Assistance Corporation, said that there was a need for additional gas pressure down the Cape and that the subcommittee should take account of the services provided to the community by KeySpan.

Mr. Dick Nietz said he would like to know the difference in cost between the alternate and preferred routes and what affect any additional costs would have on rate payers.

Mr. Barry Clamon said that the alternate route goes by his house and he wanted to know more about the impacts.

Ms. Marilyn McCloughlin said that her impression was that the route was a done deal but stated that there are major differences in the alternate and preferred route in terms of traffic and resident impact.

Mr. Bob DuBois said that he was concerned that the jurisdictional issue had not been resolved and that costs were still unknown. He said he understood the need for more capacity but thought that more time needed to be spent on the decision.

Mr. Barten said that KeySpan believed that they had met the burden for approval and noted that the Energy Facilities Siting Board was the final arbiter of the route.

Mr. Dascombe clarified that no official legal opinion had been sought due to the EFSB being in the recent past. He noted that the staff would follow up for a legal opinion of the EFSB powers to override the Commission's decision.

Mr. Cakounes asked if the clearing of the right-of-way had secured the necessary environmental clearances. Mr. Canevazzi said he did not know. Mr. Richardson and Dr. Marasco suggested that KeySpan work more with the towns. Mr. Cakounes asked if the other utilities under the road were shown on the plans. Mr. Dascombe said the engineered drawings for the Phase 1 Middle Segment were included in Tab D of the application package.

Mr. Jones made a motion to continue the hearing to June 15th at 12 p.m. at the Commission offices in Barnstable. Ms. Tinkham seconded the motion, which passed unanimously.

Mr. Cakounes asked for more information provided to the EFSB at the June 15th hearing, including the costs of the alternate route. Dr. Marasco asked that the staff look into the appeal process for the EFSB as clearing had already been done and asked whether the EFSB could re-open its proceeding. Ms. Crow said that as the EFSB decision had been made, that the proceeding could not be re-opened. Mr. Jones said he would be surprised if the EFSB did not re-open the proceeding if KeySpan requested a different route and said that if KeySpan could offer its analysis of the pros and cons of the routes, that the towns should be allowed to as well. Mr. Barten offered to submit copies of KeySpan's original petition to the EFSB that covered much of the information requested by the subcommittee.

Hearing adjourned at 8.45 p.m.

Hearing 1: June 15, 2006

Mr. Crowell called the hearing to order at 12:00 p.m. and noted that it was a continued hearing from May 22, 2006. Mr. Crowell announced that the hearing was going to be moved to the Assembly of Delegates Chambers, as there were a lot of people in attendance. Mr. Cakounes made a motion to approve the minutes from the May 22, 2006 hearing, Mr. Jones seconded the motion, that passed unanimously. Mr. Cakounes made a motion to enter into executive session to discuss potential litigation, Mr. Jones seconded the motion. Each member of the subcommittee voted approval of the motion and the subcommittee entered into an executive session.

Mr. Crowell re-convened the hearing at 1PM at the Assembly of Delegates Chambers. He provided a procedural overview and asked if anyone in the audience wished to comment.

Mr. Link Hooper, Harwich DPW Director, said the town has concerns about the proposed route but that he hopes to work them out with Keyspan. He noted he had met a representative of the applicant at the site earlier in the week.

Mr. Ed Wencis, representing KeySpan, gave a brief update on what has happened since the last meeting. He noted that they've been in contact with town officials in Harwich, Dennis, and Yarmouth and mentioned the additional information that's been submitted to the Commission.

Dr. William Marasco asked whether a break-down/analysis of cost estimates was provided in the recent information. Ms. Pat Crowe, representing KeySpan, responded that the information is provided on page 9 of their letter dated June 7, 2006 and that the breakdown is shown in the tables of the Energy Facilities Siting Board (EFSB) petition. Dr. Marasco asked whether the clearing costs were estimated or altered as a result of the reported clearing by the town. Mr. Wencis explained that they use unit pricing as presented in the table and said that while some clearing has been done along the railroad ROW, Keyspan would need to clear more which represents additional cost.

Robert Jones asked what is the cost of the entire project. Ms. Crowe said it's about \$17 million. Mr. Jones noted that the middle segment represents just a small piece of the project and asked to what extent the proposed route is driven by the interest of reducing cost. Ms. Crowe said that cost is just one factor in determining the route. She noted that as a public utility project, keeping cost down is a requirement and that they also need to balance environmental impacts/factors with cost. Mr. Wencis added that reliability is a factor too and that the preferred route could be ready the most quickly.

Mr. Jones asked how long Keyspan had been contemplating this project. Mr. Wencis said since 2004, explaining that the extreme cold that January plus forecasted growth led Keyspan to develop this proposal to meet customers' needs in the future.

Mr. Cakounes asked about the impact of not constructing the 12,000 ft piece of the middle segment. Mr. Wencis explained that the sequence of construction is driven by the growth forecast and that if they don't construct that piece this fall, some customers could lose service. Mr. Cakounes asked whether the middle segment work would be stopped if the growth doesn't occur. Ms. Crowe and Mr. Wencis said that if the growth isn't as expected, the construction schedule for the remaining portion of the Middle Segment could be modified.

Mr. Cakounes suggested that if the Commission approves the project, it should include time-frame requirements so the work and disruption isn't dragged out. Mr. Wencis explained the anticipated timeframe, noting that the first 12,000 ft of the middle section would be built this fall and the rest of the middle section would follow in about a year to a year and a half, then the remaining segments.

Mr. Richardson asked why approval is being requested now, noting that the need to meet the 2006-07 heating season puts the Commission under pressure. Ms. Crowe said before filing with any review boards, Keyspan met with town officials to get their input and that they sent letters to property owners along the routes. She said the process has been ongoing since late 2004. Mr. Richardson asked whether they heard any indication that there was concern about the preferred route. Ms. Crowe said they heard pro and cons and that they took the comments into account.

Dr. Marasco asked whether a breach can occur to the gas-line and if that has occurred. Ms. Crowe said it is possible and explained the Dig-Safe program. Dr. Marasco asked whether a breach would affect pressure down the line too which Mr. Wencis said it wouldn't because of the valves and monitoring measures in place. Dr. Marasco asked whether a breach in a densely populated area would raise more concern than in a less populated area, to which Mr. Wencis said it would be more of a concern and that cost is one factor among several factors considered in choosing to locate the pipeline in a more populated area. He explained the different grades of pipe and said that safety is a top priority.

Mr. Cakounes asked whether Keyspan would be willing to look at an alternate route through Harwich and change the DRI application and current proposal. Mr. Ted Barten of Epsilon, KeySpan's consultants, said that the preferred route near where the existing pipeline is located is more reliable and would have less impact. KeySpan was informed of the planned improvements in Harwich during the route selection process. He discussed potential alternative methods of pipeline construction (such as jacking or boring under sensitive intersections) and said that they had time to work on it since this section is not scheduled until 2010. Mr. Crowell asked if Keyspan would consider changing the application now. Ms. Crowe said they are willing to work with Harwich on how to engineer the work and discuss potential methods. She said they are not willing to change the plans now.

Mr. Hooper expressed concern about impacts to the new infrastructure in Harwich, and stated that directional boring is not an option at the Route 137/Route 39 intersection. Keyspan representatives explained their standards for paving.

Mr. Kelly expressed his concerns about impacts to the South Dennis Historic District and the disruption caused by the preferred route, explaining that disruption would be less through the railroad bed and that he would like to provide information about that. Mr. Wencis said that the disruption would only be temporary, noting that one lane of traffic would remain open and that an arborist would ensure protection of specimen trees.

Following a brief discussion regarding the review timeframe, Mr. Jones moved to continue the hearing to June 26th at 10 am for a hearing officer to close the hearing period for procedural purposes. Mr. Richardson seconded and all voted in favor.

Mr. Richardson asked about LCP consistency. Mr. Dascombe said that only two of the towns have certified LCPs and noted that there is no specific references to pipelines.

The subcommittee scheduled its next meeting for June 26 at 12:30 at the Commission offices.

The meeting adjourned at 2:30 pm

JURISDICTION

The Sagamore Line Reinforcement Project qualifies as a Development of Regional Impact under Section 12(i) and 13(b) of the Cape Cod Commission Act as a project for which the Secretary of Environmental Affairs has required the preparation of an Environmental Impact Report (EIR).

FINDINGS

The Commission has considered the application of KeySpan Energy Delivery New England for the proposed Sagamore Line Reinforcement Project, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to the 2002 Regional Policy Plan and Section 12 and 13 of the Act:

General Findings:

- G1. The proposed project involves the construction of approximately 13.1 miles of new high-pressure, distribution gas pipeline that is proposed to be constructed in several segments or phases. The Western Segment consists of 6.6 miles of 20-inch diameter pipe in the towns of Sandwich and Barnstable, the Eastern Segment consists of 1.6 miles of 12-inch diameter pipeline in Harwich and the Middle Segment consists of 4.9 miles of 12-inch diameter pipe through the towns of Yarmouth, Dennis and Harwich. The Middle Segment is planned to be constructed in two phases, the first phase of the Middle Segment includes the first a 12, 000-foot section from the KeySpan Liquefied Natural Gas (LNG) plant in Yarmouth along White's Path to the intersection of Great Western Road and Highbank Road in Yarmouth (referred to herein as Phase 1 Middle Segment). The second phase of the Middle Segment will continue from the intersection of Great Western Road and Highbank Road to the end of the Middle Segment in Harwich (referred to herein as Phase 2 Middle Segment). These segments are described more fully in the project description above.
- G2. On May 16, 2005, Epsilon Associates, representing KeySpan, submitted an Environmental Notification Form (ENF) to the Executive Office of Environmental Affairs – MEPA Unit (MEPA). This ENF filing started the MEPA environmental review process. On June 24, 2005, the Secretary of Environmental Affairs determined that the project requires the preparation of an Environmental Impact Report (EIR). Epsilon Associates subsequently submitted a draft EIR (DEIR) to MEPA, and on November 30, 2005 the Secretary of Environmental Affairs certified that the DEIR adequately and properly complied with MEPA. Epsilon Associates subsequently submitted a final EIR (FEIR) to MEPA, and on February 17, 2006 the Secretary of Environmental Affairs

certified that the FEIR adequately and properly complied with MEPA. The ENF, DEIR and FEIR included the proposed route of the pipeline and an alternative route.

- G3. KeySpan declined to apply for a Joint Review, which is a process established through a Memorandum of Understanding (MOU) between the Commission and MEPA that aims to coordinate the review processes of the two agencies and allows concurrent understanding of project impacts. In letters submitted to MEPA by the Commission staff in June 14, 2005 and November 22, 2005 on the ENF and DEIR, KeySpan was advised that because the Joint Review process had been declined, that the proposed construction schedule was “overly ambitious” given the length of time needed to complete the MEPA and Commission process after one another. As such, the Commission’s DRI process did not commence until after the Secretary of Environmental Affairs certified that the FEIR adequately and properly complied with MEPA on February 17, 2006. A Joint Review would have required joint Commission and MEPA hearings in the affected communities and would have allowed a more thorough analysis, review and weighing of both routes included in the ENF, DEIR and FEIR. However, as KeySpan did not elect to seek Joint Review, the DRI application submitted made no reference to the alternate routes. While the Commission fully understands that the application before it is for the proposed route, the Commission finds that there may be other less detrimental alternatives to KeySpan’s proposed route as articulated by the public testimony received at the public hearings of May 22 and June 15, 2006 and correspondence submitted for the record by the Towns of Yarmouth and Dennis and that these alternate routes were unable to be explored through the Commission’s DRI process. The Commission finds that the MEPA process is created to identify the environmental impacts of the proposed project but does not include an analysis of the human or social impacts. The Commission’s goal is in part to protect the communities of Barnstable County and therefore must weigh both the environmental and human impacts of the project in this context.
- G4. The Applicant has not fully designed the location of the proposed pipeline in the later segments and therefore the only fully developed and completely engineered plans submitted for Commission review are those for the Phase 1 Middle Segment. Although the route of the remainder of the pipeline was conceptually described, plans that showed the location of the pipeline with respect to the roadway, adjacent buildings, vegetation and other infrastructure was not available.
- G5. The DRI application included a request for a master plan approval of the entire route, and included specific plans for the pipeline location for the Phase 1 Middle Segment. The applicant requested conceptual approval of the remainder of the route and proposed that as future portions of the project are developed and engineered, separate hearings would be held for comment on the specific plans in the affected municipalities.
- G6. In the DRI application, KeySpan stated that the new pipeline is necessary to ensure the reliability of the KeySpan distribution system pressures, as well as the availability of new gas supply and capacity. The DRI application and materials submitted for the record state

that the Phase 1 Middle Segment needs to be constructed in the autumn of 2006 before the next heating season to alleviate existing low-pressure problems on the eastern portions of the Cape Cod distribution system. KeySpan's DRI application also states that unacceptably low pressure at the eastern extremities of the distribution system are hindering the ability of KeySpan to deliver adequate gas supplies to meet load requirements in those areas. The Applicant anticipates that this problem will worsen over the next few years unless the new pipeline is installed, as the existing pipeline is not large enough to move the required volumes of gas to the middle and eastern end of the distribution system. The Commission found insufficient, verifiable evidence submitted for the DRI application that indicated that these statements accurately characterized the situation and that KeySpan was at fault for failing to address the immediate need as part of their long range planning for gas supply to the area. Because KeySpan declined to participate in the Joint Review process, there was insufficient time to explore any alternatives in time to meet the KeySpan imposed construction schedule.

- G7. On June 3, 2005, KeySpan filed for approval of the proposed route to the Energy Facilities Siting Board (EFSB); a state agency that has purview over the siting of energy related infrastructure. The Towns of Dennis and Yarmouth jointly intervened in the EFSB process and testified that the alternate routes proposed in their respective towns were superior to the proposed route. Specifically, the opening brief dated January 6, 2006 submitted jointly on behalf of the Towns of Dennis and Yarmouth to the EFSB by Kenneth Kimmell states that "the railroad right of way alternative is in a remote, unpopulated area, and placing a pipeline there involves virtually no noise, no disruption to businesses or homeowners, no traffic snarls, and no damage to town roads. Moreover, using the railroad right of way will benefit the towns, because the clearing of vegetation will facilitate the long-planned and now-federally-funded extension of the bike trail. In contrast, KeySpan's preferred route places the pipeline in busy commercial and densely populated residential areas in Yarmouth, and through the center of the South Dennis Historic District, thereby ensuring noise, disruption, traffic back-ups, potential harm to the District, and actual damage to the town roads, many of which have been recently resurfaced." On May 17, 2006 the EFSB issued a decision with conditions approving KeySpan's request to construct the proposed pipeline project.
- G8. At the May 22 and June 15, 2006 public hearing, a number of elected officials, town officials and members of the public spoke about concerns over the proposed route, particularly the Middle Segment that passes through a densely populated residential area and the South Dennis Historic District. These concerns included impacts to traffic, safety, historic resources and standards of workmanship in the right-of-way.
- G9. In a letter dated July 28, 2006, the Dennis Board of Selectmen stated their opposition to the proposed pipeline route through the South Dennis Historic District and expressed concern over the potential impacts to shade trees and above ground structures in the district and disruption to residents and traffic impacts.

- G10. In testimony submitted to the EFSB, and submitted to the Commission on March 29, 2006 by Kenneth Kimmell, Mr. Joseph Rodericks, Town of Dennis Engineer, stated concerns about traffic impacts resulting from the proposed construction along Highbank Road in Dennis, which he described as the main bypass for traffic between Yarmouth and Dennis. He noted that the narrow right-of-way and large shade trees in the South Dennis Historic District would likely mean that construction would occur under the roadway and that this in combination with the heavy traffic and poor intersection geometry in the District would create significant traffic impacts. Mr. Rodericks also noted that existing utilities in the roadway may result in construction difficulties and conflicts with the pipeline construction. Mr. Rodericks also noted that the town had recently resurfaced the road in the District (2002) and that the town did not want patches in the new surface so soon after the resurfacing. In testimony submitted to the EFSB, and submitted to the Commission on March 29, 2006 by Kenneth Kimmell, Mr. Edmond Nickerson, Chair of the South Dennis Historic District, noted that the District was the oldest district in Barnstable County and that the route passed very close to historic and architecturally significant buildings, including Liberty Hall at the intersection of Main Street and Highbank Road, and that there was a potential for significant detrimental impacts to the District resulting from the route selected.
- G11. In a letter dated July 28, 2006, the Yarmouth Board of Selectmen stated their opposition to the proposed pipeline due to the “disruption and inconvenience to town residents and business” caused by the route selected through a densely populated area. In draft minutes of the August 1, 2006 public hearing for KeySpan’s proposed road opening permit to the Town of Yarmouth, submitted to the Commission on August 3, 2006, the Yarmouth Board of Selectmen noted concerns about impacts to residential property owners along the proposed route, including trenching over driveways, noise and traffic disruption. Several of the Selectmen were concerned about the potential safety impacts associated with installation of a second high-pressure gas pipeline in the street.
- G12. In testimony submitted to the EFSB, and submitted to the Commission on March 29, 2006 by Kenneth Kimmell, Mr. George Allaire, Department of Public Works Director, stated that the proposed route would cause disruption to businesses, traffic delays to motorists, and significant noise impact and disruption to many residents. Mr. Allaire stated the alternate route would not disrupt homeowners living along the preferred route or motorists traveling along the roadways. Mr. Allaire noted that the proposed KeySpan route was also a major truck route and that if the alternate route was followed that there would be no disruption to the businesses along White’s Path and the residents who access Great Western Road. In draft minutes of the August 1, 2006 public hearing for KeySpan’s proposed road opening permit to the Town of Yarmouth, submitted to the Commission on August 3, 2006, Mr. Randall Sherman, Yarmouth Fire Chief, stated his concern about safety of additional high-pressure pipelines in Great Western Road and noted that he believed that the alternate route along the railroad right-of-way would be a safer project both during construction and during operation.

Transportation Findings

T1. The MPSs of the transportation section of the RPP deal with transportation impacts from uses that generate traffic or affect the transportation system for an extended period of time. As the proposed project does not generate traffic other than temporary construction trips, none of the RPP's MPSs are applicable to the project. In materials submitted for the record, KeySpan committed to completing all construction between Labor Day and Memorial Day and the conditions of the EFSB approval stipulate that construction may only occur between 7:00 a.m. and 6:00 p.m. unless otherwise authorized by the affected municipality. The DRI application also contained a Construction Traffic Management Plan that included provisions for notification to the Cape Cod Commission prior to closure of any major roadway. However, the Commission finds that the proposed route is likely to disrupt traffic flow along regional roads during the course of construction and that in certain locations heavily traveled streets will be negatively impacted.

Natural Resources and Open Space Findings

NR1. The proposed route passes within the wetland resource areas on its Bass River crossing (at the Yarmouth/Dennis line) and at a culverted stream crossing on Great Western Road in Dennis. MPS 2.3.1.2 prohibits development within the 100 foot wetland buffer area, though MPS 2.3.1.3 makes provisions to allow for installation of new utility lines. To address concerns about work within the wetland buffer areas, the Applicant has proposed construction plans and a description of mitigation measures to minimize impacts to wetland resources. The pipeline would avoid work in vegetated wetland areas, as the proposed Bass River crossing is in an empty utility chase below the Highbank Road bridge, and the stream crossing on Great Western Road occurs within paved road. The project's Environmental Construction Plan (ECP) describes clearing methods and sediment and erosion control measures designed to minimize impacts to wetland resources from construction activities.

NR2. MPS 2.4.1.2 requires the clearing of vegetation and alteration of topography to be minimized, with native vegetation planted as needed to enhance or restore wildlife habitat. The DRI application indicates that most of the pipeline work would occur within previously disturbed areas, and additional clearing or grading would be minimal. The DRI application also indicates that the proponent would consult with local authorities for the restoration, loaming, and re-vegetation of highway shoulder areas and also would check the work in the vicinity of wetlands to ensure invasive species are not introduced.

NR3. A portion of the proposed Western Segment (in Sandwich, between Route 130 and Great Hill Road) is located within an area mapped by the Natural Heritage and Endangered Species Program (NHESP) as Priority and Estimated habitat for rare species. A comment letter from NHESP (submitted with the Draft EIR) identifies rare plant and animal species found in the vicinity of the proposed route. Under MPS 2.4.1.4, the project proponent would need to demonstrate that the proposed development would not adversely impact rare species or their habitat.

NR4. Under MPS 2.5.1.3, DRIs are required to provide permanently protected open space in an amount proportional to the project's total development area. An open space provision would not be necessary for this project, as the work would occur primarily within paved areas or immediately adjacent to the roadway.

Noise/Air Quality Findings

N1. The RPP requires that DRIs "*shall be in compliance with...the [Department of Environmental Protection's] Air Pollution Control Regulations.*" (MPS 2.6.1.1.). Under state regulations, noise is considered to be an air contaminant. The project's anticipated sound impacts are likely to be limited in scope and duration, primarily resulting from construction activities. In the Draft EIR and DRI application, KeySpan committed to establishing procedures to address noise complaints. Given the nature of the project, that noise impacts will be temporary, and that KeySpan has committed to establishing a procedure to address noise complaints, KeySpan has adequately addressed MPS 2.6.1.1.

Hazardous Materials/Waste

HM1. The proposed route involves work in areas overlain by Wellhead Protection Areas (WHPAs), a critical resource recognized in the RPP (MPS 4.3.1.3). Based on the application materials, this project will use hazardous materials, and is likely to generate hazardous waste. Appendix F of the DRI application is KeySpan's proposed Environmental Construction Plan (ECP) for this project, which states that "*no refueling of construction vehicles will occur within 100 feet of Wellhead Protection Area*" and that "*Field Maintenance and refueling in the field will be prohibited*" (Section 8.0, pg. 8-1). These precautions committed to by KeySpan reduce the potential for releases of hazardous materials or wastes, and lessen the possible impacts to WHPAs and therefore the Commission finds that the project would comply with MPS 4.3.1.3.

HM2. The RPP includes three other hazardous materials/waste related standards that deal with waste minimization, compliance with state Hazardous Waste regulations, and emergency planning (MPS 4.3.1.1, 4.3.1.2 and 4.3.1.4). Given the nature of the project, and the information submitted to date, including the proposed ECP, KeySpan has adequately addressed these standards.

Lighting Findings

FL1. The RPP requires that "*exterior lighting in new development or redevelopment shall comply with... Technical Bulletin 95-001.*" (MPS 6.2.10) Based on the information included in the DRI application, no permanent lights will be needed, and the bulk of construction will occur during daylight hours. Some temporary lights may be required in limited circumstances (DRI application, pg. 1-21) for night work to complete the project and the application states that KeySpan will establish a procedure to respond to complaints related to lights used for night work. The EFSB decision also includes a condition limiting construction work to between 7:00 a.m. and 6:00 p.m. unless specifically authorized by the affected municipality. Given the nature of the project and

the commitments made in the DRI application, KeySpan would have adequately addressed MPS 6.2.10.

Historic and Archaeological Resource Findings

- HR1. Portions of all phases of the proposed project pass through archaeologically sensitive areas. The RPP requires an archaeological survey be conducted when development is proposed in archaeologically sensitive areas (MPS 6.1.3). An archaeological reconnaissance survey was conducted for this project, and in response KeySpan has proposed to lay the pipeline for the Middle Segment within existing paved roadway areas in order to avoid impacting archaeological resources.
- HR2. Massachusetts Historical Commission (MHC) determined in a letter dated February 8, 2006, that with the pipeline located in existing paved areas, the proposed work in the Middle Segment is unlikely to affect any significant archaeological resources. Any deviation from the existing paved surfaces, however, would require additional archaeological survey work and evaluation of possible archaeological impacts.
- HR3. To be consistent with MPS 6.1.3, development proposed on or adjacent to archaeological sites shall be configured to maintain and/or enhance such resources where possible. As such, if it is not possible to locate the pipeline within existing paved or disturbed areas, alternative mitigation must be considered. The Commission finds that the plans submitted with the DRI application for the Future Segments were insufficiently detailed to establish the project's consistency with MPS 6.1.3.
- HR4. The proposed project will pass through the South Dennis Historic District and other areas of historic significance such as Union Cemetery in Harwich. MPS 6.1.1 and 6.1.2 seek to preserve historic structures and cultural landscapes. Because of the close proximity of the proposed work to historic structures, as well as to mature trees, fences and walls that help define the character of the historic district, both the town of Dennis and MHC have identified concerns about the proposed work. In order for the project to be consistent with MPS 6.1.2, the applicant must demonstrate that the proposed work will retain the distinctive qualities and character-defining features of the historic district. The Commission finds that the plans submitted with the DRI application for the Future Segments were insufficiently detailed to establish the projects consistency with MPS 6.1.2.

Phase 1 Middle Segment Findings

- M1. The Commission makes separate findings for the Phase 1 Middle Segment because of variations in the completeness of project plans and information for this segment. The proposed Phase 1 Middle Segment fails to satisfy one of the requirements for DRI approval set out by the Cape Cod Commission Act, Section 13(d) as described below.
- M2. The Phase 1 Middle Segment is consistent with the Minimum Performance Standards (MPS) of the Regional Policy Plan (RPP).

- M3. In an email dated July 12, 2006, Terry Sylvia, Yarmouth Town Planner, confirmed that the project is not inconsistent with Yarmouth zoning bylaws.
- M4. The Phase 1 Middle Segment is located entirely within Yarmouth, which does not have a Local Comprehensive Plan (LCP) that is certified by the Commission. Therefore, the Phase 1 Middle Segment portion of the project does not need to be consistent with the Yarmouth Local Comprehensive Plan.
- M5. The Phase 1 Middle Segment of the project is not located within a District of Planning Concern (DCPC).
- M6. The Commission finds that the probable benefits of the Phase 1 Middle Segment do not outweigh the probable detriments as articulated in Findings M7 and M8 below.
- M7. The Commission finds that the detriments of the Phase 1 Middle Segment portion of the project arise from the local impacts on community character, including the disruption of a densely populated neighborhood and the inconvenience caused by construction to the activities of residents of adjacent properties and businesses along the proposed route. The Commission also finds that detriments of the project include safety issues arising from the location of an additional industrial sized, high-pressure distribution gas pipeline through a well-established and high-density residential neighborhood and through an established commercial area along White's Path. The Commission also finds that the Phase 1 Middle Segment route will largely pre-determine the route of the Phase 2 Middle Segment that would follow Highbank Road and Great Western Road into Dennis and then Harwich through the South Dennis Historic District and would therefore be detrimental to historic resources in that district. The Commission also finds that the project will result in detrimental traffic impacts resulting from the construction of the pipeline along a heavily traveled roadway and local truck route and the associated detrimental impacts and inconvenience to businesses and residents along the route.
- M8. The Commission finds that the Applicant has relied upon reliability of service, the minimization of environmental impacts and cost effectiveness as justification for the project but the Applicants have not provided any persuasive argument that the proposed route has the least environmental impacts. While the Commission finds that the objective of supplying natural gas is important, the Commission also finds that the proposed route's probable detriments outweigh this benefit. The Commission finds that because KeySpan declined to file for a Joint Review, that no opportunity exists for the Commission to understand if a less injurious and less detrimental alternative exists. Information submitted in the DEIR indicates that the alternate route would impact less residences, would be slightly shorter and disturb less acreage, would cross less wellhead protection area and affect less traffic than the proposed route. The DEIR also indicates that the alternate route would cross more wetland buffer and priority/estimated habitat, cross more of the South Dennis Historic District and result in the clearance of more vegetation

than the proposed route. However, the Town of Yarmouth and Dennis have testified that the clearing of vegetation is overstated and that this vegetation would likely be removed in the near future as construction begins on the bike path extension along the right-of-way. Furthermore, Mr. Nickerson's testimony to the EFSB noted that the railroad right-of-way route through the South Dennis Historic District is at the northern edge of the District and is not near the architecturally significant buildings. The Commission finds that the public testimony received during the DRI process raised a number of concerns about the proposed project route that were inadequately addressed in the DRI application process and that the DEIR and FEIR do not describe issues related to the human and economic impacts of the project that are the purview of the Commission.

Phase 2 Middle Segment, Eastern Segment and Western Segment (Future Segments) Findings

- FS1. The Commission makes separate findings for the Phase 2 Middle Segment, Eastern Segment and Western Segment (collectively called the Future Segments for the purposes of this decision) because of variations in the completeness of project plans and information for these segments. The proposed Future Segments fails to satisfy two of the requirements for DRI approval set out by the Cape Cod Commission Act, Section 13(d) as described below.
- FS2. The Commission finds that the information on the Future Segments of the project are insufficiently detailed for the Commission to adequately determine that the Future Segments are consistent with the Minimum Performance Standards (MPS) of the Regional Policy Plan (RPP).
- FS3. According to an email dated July 11, 2006 from Dan Fortier, Dennis Town Planner, the Phase 2 Middle Segment may require a Special Permit from the Town of Dennis and would be subject to review by the Dennis Board of Appeals. If a Special Permit is required, approval of the Special Permit would confirm the project's consistency with local zoning. In an email dated July 11, 2006, Susan Leven, Harwich Town Planner, confirmed that the Town of Harwich bylaws are silent on the installation of utilities in the right-of-way and in a telephone conversation with Lincoln Hooper, Director of Harwich Highways and Maintenance, confirmed that there are no bylaws applicable to work in the right-of-way. In an email dated July 12, 2006, Terry Sylvia, Yarmouth Town Planner, confirmed that the project is not inconsistent with Yarmouth zoning bylaws. In a letter dated July 13, 2006, Ruth Weil, Director of Growth Management in Barnstable, confirmed that the project is not inconsistent with the Barnstable zoning ordinance as the ordinance does not specifically address the installation of underground gas mains. In an email dated July 20, 2006, Robert Fultz, Director of Planning and Development in Sandwich confirmed that public utilities are not mentioned in the local zoning by-law and that the project appears compatible with the zoning.
- FS4. The Future Segments are located within Sandwich and Barnstable (Western Segment), Yarmouth, Dennis and Harwich (Phase 2 Middle Segment) and Harwich (Eastern

Segment) respectively. Of these towns, only Barnstable and Harwich have Local Comprehensive Plans (LCP) that have been certified by the Commission. Correspondence from the Town of Harwich dated June 22, 2006 confirmed that the Future Segments located in Harwich are consistent with the Harwich LCP as the installation of natural gas pipelines are not addressed in the plan. Ruth Weil, Director of Growth Management in Barnstable, raised issues regarding the proposed routes consistency with the Barnstable LCP in a letter dated July 13, 2006. Specifically, the letter notes that “with appropriate conditions, the gas main could be considered consistent with the Barnstable LCP” and notes that the Barnstable Planning Board must act and hold public hearings as Service Road in Barnstable is designated a “Scenic Road”. The Commission finds that with appropriate review by the Barnstable Planning Board, that the project would be consistent with the Barnstable LCP.

- FS5. A portion of the proposed route of the Eastern Segment runs along the southern edge of the Six Ponds District of Planning Concern (DCPC). Construction of an underground pipeline within the right-of-way of a bounding street to this DCPC is consistent with the implementing regulations of the Six Ponds DCPC.
- FS6. The Commission finds that the information on the Future Segments of the project are insufficiently detailed for the Commission to adequately determine that the probable benefits of the Future Segments outweigh the probable detriments.
- FS7. The Commission invites KeySpan to make separate DRI applications for each portion of the Future Segments as they are developed and engineered. The Commission will consider each separately for its consistency with Section 13(d) of the Act. Such application shall be made no less than 9 months prior to anticipated construction for that phase.

CONCLUSION

Based on the findings above, the Commission hereby concludes:

- 1) That the probable benefits of the proposed project either do not outweigh the probable detriments in accordance with the Act and as articulated in Findings M7 and M8 for the Phase 1 Middle Segment or insufficient information has been provided to determine if the probable benefits of the project outweigh the probable detriments in the case of the Future Phases.
- 2) The Phase 1 Middle Segment of the project complies with the applicable Minimum Performance Standards of the 2002 Regional Policy Plan. Insufficient information on the Phase 2 Middle Segment, Western Segment and Eastern Segment was presented in which to determine the consistency of these future phases with the 2002 Regional Policy Plan.
- 3) The project is consistent with the applicable local development bylaws and the applicable Local Comprehensive Plans of the affected communities.

- 4) Part of Eastern Segment borders the Six Ponds District of Critical Planning Concern and is consistent with the implementing regulations for the District of Critical Planning Concern. The remainder of the proposed project does not fall within a District of Critical Planning Concern

The Cape Cod Commission hereby denies without prejudice the application of KeySpan Energy Delivery New England as a Development of Regional Impact pursuant to Section 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Sagamore Line Reinforcement Project. The Cape Cod Commissions denies without prejudice the proposed route due to insufficient information on the Future Segments and its disruptive and detrimental impacts on the residential and commercial areas along the route of the Phase 1 Middle Segment, including impacts on the regional economy and the economy of the towns affected by the construction activities, the associated disruption of traffic and businesses and potential impacts on historic resources and public safety.

Based on the testimony received in the DRI process, and information presented in the Environmental Impact Report, the Commission finds that an alternate route exists that may present fewer detriments to the affected communities and the environment than the proposed pipeline route. The Commission invites KeySpan to return with a DRI application for the alternate route so that a full understanding of the benefits and detriments of the alternate route may be considered in an expedited fashion and compared to the proposed route.

Should the Commission find that the current proposed route is superior to the alternate route based on the findings for DRI approval, the Commission will reconsider the proposed project and act in an expedited manner.

W. Bradford Crowell, Chair

Date

Commonwealth of Massachusetts

Barnstable, ss.

On this _____ day of August, 2006, before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public, Commonwealth of Massachusetts

My Commission Expires: _____