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Petitioner

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Joint Intervenor

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	Page 1
A.	<u>Jurisdiction</u>	Page 1
B.	<u>Procedural History</u>	Page 2
1.	<u>Previous Proceedings</u>	Page 2
2.	<u>Current Proceeding</u>	Page 3
a.	<u>Scope of the Proceeding</u>	Page 3
b.	<u>Adjudication</u>	Page 4
3.	<u>Intervenor Motions</u>	Page 5
a.	<u>Motions for Partial Dismissal of the Application</u>	Page 6
b.	<u>Motion to Dismiss Amended Application</u>	Page 6
c.	<u>Motion to Limit Evidence to Commission Record</u>	Page 6
C.	<u>Phase I Description</u>	Page 7
II.	<u>THE INITIAL PETITION</u>	Page 8
A.	<u>Standard of Review</u>	Page 8
B.	<u>The Company's Initial Petition</u>	Page 8
1.	<u>Denial Precluding Facility Construction</u>	Page 8
2.	<u>A Burdensome Condition</u>	Page 9
3.	<u>Inconsistencies Among Resource Use Permits</u>	Page 10
4.	<u>Nonregulatory Issues or Conditions</u>	Page 11
C.	<u>Decision on the Petition</u>	Page 11
III.	<u>THE APPLICATION</u>	Page 12
A.	<u>Standard of Review</u>	Page 12
B.	<u>Addressing Issues Raised by the Commission</u>	Page 13
1.	<u>Issues Raised by the Commission</u>	Page 13
2.	<u>Commission Issues Within Scope of the Proceeding</u>	Page 15
C.	<u>Need, Project Impacts, Cost, and Reliability</u>	Page 16
1.	<u>Need for the Facility</u>	Page 16
2.	<u>Project Impacts</u>	Page 19
a.	<u>Project Impacts in the Underlying EFSB Proceeding</u>	Page 20
(1)	<u>Wetlands and Water Resources</u>	Page 20
(2)	<u>Land Use and Land Resources</u>	Page 21
(3)	<u>South Dennis Historic District</u>	Page 22
(4)	<u>Noise and Traffic</u>	Page 22
(5)	<u>Safety</u>	Page 23
(6)	<u>Route Comparison</u>	Page 24
b.	<u>Updates on Project Impacts</u>	Page 26

	(1)	<u>Alternative Route Right-of-Way Updates</u>	Page 26
	(2)	<u>New Wetlands Impacts Information</u>	Page 27
	(3)	<u>New Protected Species Information</u>	Page 28
	(4)	<u>New Archaeological Resources Information</u>	Page 29
	(5)	<u>Traffic Impacts Updates</u>	Page 30
	(6)	<u>Pipeline Safety Updates</u>	Page 31
	c.	<u>Summary of Project Impacts</u>	Page 32
3.		<u>Cost</u>	Page 32
4.		<u>Reliability</u>	Page 35
5.		<u>Route Comparison</u>	Page 38
D.		<u>Conclusions and Findings</u>	Page 38
	1.	<u>Need for the Facility</u>	Page 39
	2.	<u>Compatibility With Environmental Protection, Public Health and Safety</u>	Page 39
	3.	<u>Conformance with Laws and Reasonableness of Exemption Thereunder</u>	Page 39
	4.	<u>Public Interest or Convenience</u>	Page 43
E.		<u>Decision on the Application</u>	Page 44

entered into the record, consisting primarily of responses by the Company and the Commission to information requests and record requests issued by Siting Board staff and the parties. In November, 2006, the Company submitted prefiled direct testimony of three witnesses: Walter F. Fromm, Manager, Project Engineering, for KeySpan; Theodore Poe, Jr., Manager, Energy Planning, for KeySpan; and Theodore A. Barten, Managing Principal, Epsilon Associates, Inc., the Company's environmental and engineering consultants. In early December, 2006, the Commission submitted the prefiled direct testimony of four witnesses: Margo Fenn, Executive Director of the Commission; Phil Dascombe, Planner for the Commission; Leslie Richardson, Economic Development Officer for the Commission; and Lev Malakoff, Senior Transportation Engineer for the Commission. In late December, 2006, the Towns submitted the prefiled direct testimony of two witnesses: Laurence F. Keegan, Jr., and Michael E. Martel, engineering consultants with Weston & Sampson and Associates.

Adjudicatory hearings began on March 20, 2007, continuing on March 22, 26, and 30, 2007.¹⁰ Briefing questions were issued to the parties on March 28, 2007. The parties filed initial briefs on April 25, 2007, and reply briefs on May 2, 2007.

3. Intervenor Motions

Two parties were granted intervenor status in the proceeding: the Towns of Yarmouth, Dennis, and Harwich, jointly ("Towns"), and the Commission. During the course of the proceeding, the intervenors filed three motions, each of which raised a question of first impression with respect to the nature and scope of the Siting Board's review under the override statute. Rulings on all three motions were issued on May 10, 2007, and are summarized below.

a. Motions for Partial Dismissal of the Application

On November 28, 2006, the Commission filed a motion seeking dismissal of that portion of the Company's Application requesting issuance of the eight local permits. On December 1,

¹⁰ Hearings originally were scheduled to begin in January 2007. Hearings were moved to March 2007, to allow for compliance by KeySpan with notice requirements for the Company's Supplemental Notice and Amended Application. See n. 7, above.

2006, the Towns filed a similar motion. The intervenors asserted that, pursuant to the override statute and its implementing regulations, an override Petition may not be filed until a final decision has been issued by the state or local agency whose action is being challenged. See 980 CMR § 6.02(1). On May 10, 2007, the presiding officer ruled that the issuance of a final agency decision is a jurisdictional prerequisite to the filing of an override Petition, and granted the intervenors' motions for partial dismissal. *Ruling on Motions for Partial Dismissal by the Cape Cod Commission and the Towns of Yarmouth and Dennis* (May 10, 2007).¹¹

b. Motion to Dismiss Amended Application

On January 31, 2007, the Commission filed a motion to dismiss the Company's Amended Application, on the ground that the Commission's DRI Decision is not a final agency decision. In its Initial Brief, filed on April 25, 2007, the Commission subsequently reversed its position, asserting that the DRI Decision was a final agency decision. On March 2, 2007, the presiding officer issued a memorandum ruling denying the Commission's motion to dismiss, and indicating that a written ruling on the motion would follow. On May 10, 2007, the presiding officer ruled that the DRI Decision was a final agency decision, and denied the Commission's motion to dismiss the Company's Application. *Ruling on Cape Cod Commission Motion to Dismiss KeySpan's Amended Application* (May 10, 2007).

c. Motion to Limit Evidence to Commission Record

In oral objections during hearing, and in their briefs, the Towns and the Commission asserted that the Siting Board's review of factual findings made by the Commission in its DRI Decision should be limited to the record of the DRI proceeding. The intervenors' position is based on 980 CMR § 6.03, which provides, in relevant part, that when the Siting Board is reviewing "adjudicatory findings of fact" contained in a final agency decision, the Board's review of those findings shall be limited to the record presented before the agency. On May 10,

¹¹ On May 17, 2007, KeySpan filed a motion for reconsideration of this ruling. The Commission and the Towns filed opposition to the motion. In a ruling issued on June 15, 2007, the Company's motion for reconsideration was denied.

MIDDLE SEGMENT ALTERNATIVES



