

Frequently Asked Questions (FAQs) about Review of Natural Gas Pipeline Survey Cases by the Massachusetts Department of Public Utilities

1. Does the Department of Public Utilities (“D.P.U.” or “Department”) have authority to allow a pipeline company to survey private land?

The D.P.U. has statutory authority, pursuant to G.L. c. 164, §§ 72A and 75D, to allow intrastate and interstate natural gas pipeline companies to enter upon landowner property to conduct surveys that may be necessary to construct a natural gas pipeline in Massachusetts. In addition, the D.P.U. also has the authority to grant eminent domain rights to both interstate and intrastate pipeline companies to secure easements or other property rights regarding an approved pipeline route.

2. Why don't I have the right to keep the pipeline company off my land?

It is true that the right to exclude is a very important element of property ownership. However, it is not absolute. Common law has long recognized exceptions to the right. As examples, there is common law privilege to enter private property without trespass liability for the purposes of averting a public disaster, to reclaim goods, or for law enforcement purposes. Another exception is the privilege to enter for the purpose of performing or exercising a legislative duty or authority; courts have found that this privilege extends to employees of a public utility for the purpose of making duly authorized surveys.

3. What Standard of Review does the Department apply to pipeline survey requests?

G.L. c. 164, §§ 72A and 75D require that the Department must give notice of the authorization granted, by registered mail, to the landowners involved at least five days prior to any entry by such pipeline company. In addition, these statutory provisions require that the company entering upon any such lands be subject to liability for any damages occasioned by such survey work. The Department's precedent on the standard of review requires it to find “that the requested survey work is a necessary activity incident to a proposed pipeline project.” Maritimes & Northeast Pipeline, LLC, D.T.E. 01-8 (2001). It is important to note that should the Department grant a pipeline company the right to survey a landowner's property, the Department's order need not, and does not take a position on the merits of the pipeline project itself and whether it should or should not be approved by the Federal Energy Regulatory Commission (“FERC”).

4. What types of surveys does the Department permit?

The Department has granted pipeline companies permission to conduct different types of surveys, including civil, environmental, archeological, soil, and geotechnical testing.

5. Has the Department ever denied a pipeline company petition to survey land?

No, it has not. However, the Department does routinely require a pipeline company to follow various mandated conditions when conducting the survey, often based on specific landowner comments and concerns. The statute also requires the pipeline company to be liable for any damages it may cause as a result of surveying activity. The Department also can impose specific conditions on the survey work, such as a requirement to restore the land to a condition reasonably consistent with its pre-survey condition.

6. Why does a pipeline company have to conduct surveys on my land?

Under the federal Natural Gas Act, FERC has jurisdiction over the siting of proposed interstate natural gas pipelines. As part of its decision-making process, FERC requires the development of an Environmental Impact Statement ("EIS") to understand the environmental impacts of the proposed project, and to identify potential mitigation measures. To document the potential environmental impacts, a pipeline company would typically seek permission to physically enter the property to perform various surveys that will inform FERC's decision-making process. Where a pipeline company is unable to obtain the landowners voluntary permission to survey the property, a pipeline has the right to seek the D.P.U.'s authorization to perform the survey, subject to applicable legal and regulatory provisions.

7. Will the pipeline company pay me for coming onto my land?

There is no payment associated with the pipeline company's survey work on your land. However, the pipeline company is responsible by statute for any liabilities associated with its survey work on your property, and it is required to compensate the landowner for any damages to property that are not repaired or restored.

8. Does the pipeline company have to give me notice before coming on my land?

Yes, it does. According to the statute, the Department shall give notice of the authorization to survey by registered mail to the landowners involved "at least five days prior to any entry by representatives of the pipeline company." The Department also requires a pipeline company to make reasonable efforts to arrange with each landowner a convenient date and time that the property will be surveyed so that the landowner may observe the surveying.

9. Are there any factors that would persuade the Department to deny a survey request on my land?

To date, in its review of survey petitions, the Department has not been presented with information or arguments that were sufficient to deny a pipeline company the opportunity to survey privately owned land. However, any future case would be judged on its own factual record and the arguments made during the proceeding. The Department has previously imposed conditions on authorized surveys by pipeline companies in order to address reasonable concerns of landowners.

10. Will there be a trial or hearing to resolve my objection to the survey?

No. Landowners will have an opportunity to give public comments at a public comment hearing, but there will not be an evidentiary trial or hearing. Comments can also be submitted in writing to the Department. Oral and written comments are given equal weight by the Department. Comments should specify the property location, identify landowner concerns about the survey, and request any relevant conditions to be placed on the pipeline company to protect property and/or to ensure the opportunity for the landowner to be present during the survey. Landowner properties included in a petition for survey authorization will be notified by mail by the pipeline company, and provided with a copy of the petition seeking survey D.P.U. survey authorization. This notice will include information about when and how to submit written comments, and where and when public comment hearings will be held.

11. Should I hire a lawyer to protect my interests before the Department?

Each landowner should make this decision based on his/her individual circumstances and preferences. However, the Department does not require a landowner to be represented by a lawyer in order to submit written or oral comments to the Department.