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January 17, 2020

VIA HAND DELIVERY

Clerk Maura S. Doyle, County of Suffolk
John Adams Courthouse, 1st Floor
One Pemberton Square, Suite 1300
Boston, MA 02108-1707

Re: Town of Sudbury v. Energy Facilities Siting Board

Dear Clerk Doyle,

Enclosed for filing please find the Town of Sudbury's Petition for Appeal of the Final Decision of the Energy Facilities Siting Board in EFSB 17-02/D.P.U. 17-82/83, to be docketed with the Court (of note, this will be one of two appeals from this Final Decision filed with the Court today). Also enclosed please find a check payable to the Commonwealth of Massachusetts in the amount of \$315.00. Thank you for your attention to this matter. Please contact me directly at (617) 244-9500 x 203 or aaidelman@bck.com with any questions.

Sincerely,

Audrey A. Eidelman

AAE/drb
Enclosures

cc: Mark D. Marini, Secretary, Department of Public Utilities (w/enc.) (via hand delivery)
Joan Foster Evans, Esq., Presiding Officer and General Counsel, EFSB (w/enc.) (via hand delivery)
Service List, EFSB 17-02/D.P.U. 17-82/17-83 (w/enc.) (via email only)
Maryanne Bilodeau, Sudbury Interim Town Manager (w/enc.) (via email and first class mail)

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
No. SJ-2020-

THE TOWN OF SUDBURY, MASSACHUSETTS)

Plaintiff - Petitioner,)

v.)

ENERGY FACILITIES SITING BOARD)

Defendant - Respondent.)

PETITION APPEALING EFSB 17-02/D.P.U. 17-82/83 FINAL DECISION

Petition

1. On December 18, 2019, the Energy Facilities Siting Board (the "Board") issued a final decision in EFSB 17-02/D.P.U. 17-82/83 (the "Final Decision"). The Final Decision, subject to certain conditions, approved the following petitions of NSTAR Electric Company d/b/a Eversource Energy ("Eversource"): (a) pursuant to G.L. c. 164, §69J, a petition to construct an approximately 9-mile 115 kilovolt ("kV") underground electric transmission line in the towns of Sudbury ("Sudbury"), Hudson, Stow and Marlborough (the "Project") (the "Section 69J Petition"); (b) pursuant to G.L. c. 164, §72, a petition for a determination that the proposed transmission line is necessary, serves the public interest and is consistent with the public interest (the "Section 72 Petition"); and (c) pursuant to G.L. c. 40A, §3, a petition for individual and comprehensive zoning exemptions from the Sudbury, Hudson and Stow zoning bylaws in connection with the proposed transmission facility, as well as upgrades to the Sudbury substation. Final Decision at 1.

2. Approximately 7.6 miles of the Project route will consist of an underground segment within an inactive Massachusetts Bay Transportation Authority ("MBTA") right-of-way ("ROW") in the towns of Sudbury, Stow, Marlborough, and Hudson.

Final Decision at 2. The Project construction work along the underground MBTA ROW will include (a) vegetation removal (e.g., tree clearing); (b) implementation of erosion and sedimentation controls; (c) steel rail and wooden tie removal and access road subgrade construction; (d) construction of the duct bank and splice vault system; (e) cable pulling and splicing, testing, and commissioning; and (f) access road final grading and site restoration. *Id.*, at 81. In addition, to accommodate the Project, Eversource will need to upgrade three existing bridges along the MBTA ROW (two that cross over the Hop Brook (a Massachusetts Division of Fisheries and Wildlife designated coldwater fishery) in Sudbury). *Id.* at 82, 112.

3. A petition seeking approval to construct a transmission line under G.L. c. 164, §69J must include: (a) a description of the transmission line, site and surrounding areas; (b) an analysis of the need for the transmission line; (c) a description of the alternatives to the transmission line, such as other methods of transmitting or storing energy, alternative site locations or routes for the transmission line, other sources of electrical power, or a reduction of requirements through load management; and (d) a description of the environmental impacts of the facility. G.L. c. 164, §69J.

4. In approving a petition to construct a transmission line under G.L. c. 164, §69J, the Board must determine, among other things, that: (a) the petitioner's projections of the demand for electric power are based on substantially accurate historical information and reasonable statistical projection methods and include an adequate consideration of conservation and load management; (b) the petitioner's plans for construction of the transmission line are consistent with current health, environmental protection, and resource use and development policies as adopted by the Commonwealth; and (c) the transmission line is consistent with the policies stated in G.L. c. 164, §69H to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at lowest possible cost. G.L. c. 164, §69J.
5. Eversource's chosen underground route for the Project along the MBTA ROW in Sudbury would cross or abut an "expanse of protected land and restricted land areas" (e.g., streams, marshes, swamps, forest, recreational open space, vernal pools, wellhead protection areas, natural heritage and endangered species priority and estimated habitat, lands protected pursuant to Article 97 of the Articles of Amendment to the Massachusetts Constitution, local water

districts, historic properties and local historic districts. Final Decision at 95.

6. In contrast, Eversource noticed an alternative route for the transmission line that would avoid the MBTA ROW entirely, consisting of an approximately 10.3-mile underground route located entirely within public roadways in Sudbury and the town of Hudson, with no impacts to wetlands resource areas, public water supplies or coldwater fisheries and the lowest land use impacts to the natural environment (as compared to the Project) because the transmission line construction will take place in an existing roadway and will not require any habitat loss or conversion. *Id.* at 2, 102, 114.
7. In approving construction of Eversource's Project along the underground MBTA ROW route, the Board committed several reversible errors of law, made several findings of fact that were not based upon substantial evidence, or were otherwise unwarranted by the facts on the record, by determining that: (a) the load forecasts presented by Eversource were reviewable and reliable to support a showing of need for the Project; (b) Eversource's non-transmission alternatives ("NTAs" or "NTA") analysis was reliable and justified rejection of Sudbury's proposed NTA solutions; (c) the Project is superior to Eversource's

proposed transmission alternative; (d) Eversource developed and applied a reasonable route selection methodology to select the underground MBTA ROW route; (e) the environmental impacts of the underground MBTA ROW route are comparable with those of Eversource's noticed alternative all-in streets route; (f) the record contained sufficient information on cost to compare the Project to its alternatives; (g) the Project is consistent with the health, environmental protection, and resource use and development policies of the Commonwealth; and (h) Sudbury failed to show good cause to reopen the record to consider the Project need and NTAs. Final Decision at 26, 48-49, 178, 232-33.

8. In approving the Section 72 Petition, the Board erroneously determined that subject to its required conditions, the Project is necessary for the purpose alleged, and will serve the public convenience, and is consistent with the public interest. Final Decision at 233.
9. Sudbury is a full party to EFSB 17-02/D.P.U. 17-82/83 and a party aggrieved by the Final Decision. Sudbury hereby appeals the Final Decision pursuant to G.L. c. 25, §5 and respectfully requests that the Court reverse and vacate the Final Decision because it violates G.L. c. 30A, §14(7) in that it is based upon errors of law, made upon unlawful

procedure, unsupported by substantial evidence, unwarranted by facts on record and is arbitrary and capricious and an abuse of discretion.

Jurisdiction

10. The Supreme Judicial Court for Suffolk County has jurisdiction over the subject matter of this action, and authority to order the relief requested, pursuant to G.L. c. 25, §5.

Parties

11. Sudbury is a Massachusetts municipal corporation with a usual place of business at 278 Old Sudbury Road, Sudbury, Massachusetts.
12. The Board is an agency of the Commonwealth of Massachusetts, established pursuant to G.L. c. 164, §69H, having its offices at One South Station, Boston, Massachusetts.

Legal Claims

13. The Final Decision should be set aside because it violates G.L. c. 30A, §14(7) in that it is based upon errors of law, made upon unlawful procedure, unsupported by substantial evidence, unwarranted by facts on record and is arbitrary and capricious and an abuse of discretion.
14. The Board committed reversible error in determining, unwarranted by the facts on record, that Eversource's load

forecasts supporting its Section 69J Petition were reviewable and reliable. The load forecasts undertaken and presented by Eversource do not clearly explain Eversource's forecast method and the supporting forecasts from the ISO-New England are based on outdated and significantly overstated need data.

15. The Board committed reversible error, acting arbitrarily and capriciously, in relying on Eversource's record evidence of NTAs to determine that the Project is superior to Eversource's identified NTAs. The record clearly establishes that Eversource's NTA analysis was faulty and undependable.
16. The Board committed reversible error in rejecting Sudbury's proposed NTA solution. The Board's findings with respect to NTAs are unwarranted based on the record. The Board improperly relies on Eversource's defective NTA analysis and questionable methodology for determining reasonable and appropriate NTA duration requirements to support the Board's findings on Sudbury's proposed NTAs.
17. The Board committed reversible error in finding, without substantial record evidence on cost and environmental impact, that constructing the transmission line along the underground MBTA ROW route is superior to Eversource's

identified transmission alternative (which would involve upgrading existing transmission lines in the area).

18. The Board committed reversible error in determining that Eversource did not overlook or eliminate any routes for the transmission line that, on balance, are clearly superior to Eversource's chosen underground MBTA ROW route.
19. The Board committed reversible error in its finding, which was unwarranted based on the facts on record, and unsupported by substantial record evidence, that the environmental impacts of Eversource's chosen underground MBTA ROW route are comparable with those of Eversource's noticed alternative. The record is clear that the noticed alternative would have far less environmental and permanent impacts. Impacts from traffic disruption and noise associated with construction of the transmission line under streets along the noticed alternative, which are temporary, cannot be considered comparable to the significant, long-term, environmental impacts to the natural environment from underground construction along the MBTA ROW.
20. The Board committed reversible error in relying on insufficient record evidence of costs presented by Eversource to approve the Project. The Board must be able to meaningfully review the cost of the preferred transmission line in comparison to the stated alternatives

and it cannot do so without substantial record evidence. The record contains a pattern of corrected and revised restatements of cost estimates but is devoid of any meaningful cost analysis or supporting calculations.

21. The Board committed reversible error in its finding, completely contrary to and unsupported by the facts on the record, that the Project is consistent with the current health, environmental protection and resource and development policies of the Commonwealth. Rather, the record clearly establishes that the Project: (a) has adverse impacts to wetlands resources; (b) will be constructed adjacent to, with potential to adversely impact, conservation land and heritage landscape; (c) is not compatible with the Commonwealth's sustainable development and smart growth policies which specifically seek to protect and restore environmentally sensitive lands and natural resources and seek to maximize energy efficiency and renewable energy opportunities; and (d) is not compatible with the energy efficiency, demand response and energy storage policies of the Commonwealth.
22. The Board committed reversible error in approving the Section 72 Petition. The Board relied on unreviewable and unreliable record evidence of need for the Project to support the proposition that the Project is necessary for

the purpose alleged and it relied on insufficient record evidence of environmental mitigation to condition its approval of the Project in order to find that the Project will serve the public convenience and is consistent with the public interest.

23. The Board committed reversible error in dismissing Sudbury's due process claims and determining that Sudbury was afforded a full and fair hearing. Final Decision at 13. The Board also violated Sudbury's due process rights when, upon unlawful procedure, it denied Sudbury's June 13, 2019 Motion to Reopen the Record and Hearing ("Motion to Reopen"). *Id.* at 230-32. The Board prejudiced Sudbury's right to a fair hearing by unlawfully relying on extra-record information presented by Eversource in its opposition to Sudbury's Motion to Reopen in the Board's determination that Sudbury failed to present good cause to reopen the record. *Id.*

Prayer for Relief

WHEREFORE, Sudbury requests that this Court:

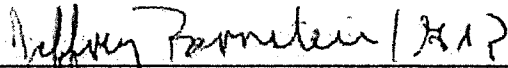
1. Reverse and vacate the Board's approval of the Section 69J Petition;
2. Reverse and vacate the Board's approval of the Section 72 Petition;

3. Reverse the Board's denial of Sudbury's Motion to Reopen and require the Board to undertake additional process as requested in Sudbury's Motion to Reopen; and
4. Grant such other relief as the Court deems necessary and proper.

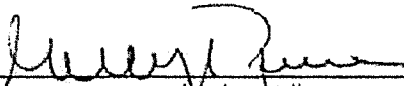
Respectfully submitted,

TOWN OF SUDBURY

By its attorneys,



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Dated: January 7, 2020

COMMONWEALTH OF MASSACHUSETTS


ENERGY FACILITIES SITING BOARD

Petition of NSTAR Electric Company d/b/a
Eversource Energy Pursuant to G.L. c. 164, §69J
for Approval to Construct, Operate and Maintain a
New 115-kV Transmission Line in the Towns of
Sudbury, Hudson and Stow and the City of
Marlborough and to Make Modifications to an
Existing Substation in Sudbury

EFSB 17-02/D.P.U. 17-82/17-83

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing document(s) upon Mark Marini, DPU Secretary and Joan Foster Evans, EFSB Presiding Officer via electronic mail and hand delivery and upon the Service List via electronic mail only in the above-docketed proceeding, in accordance with the requirements of 980 C.M.R. §1.03 (4).


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Dated: January 7, 2020

COMMONWEALTH OF MASSACHUSETTS


SUFFOLK, SS.

SUPREME JUDICIAL COURT
No. SJ-2020-

_____)
THE TOWN OF SUDBURY, MASSACHUSETTS)
)
Plaintiff - Petitioner,)
)
v.)
)
ENERGY FACILITIES SITING BOARD)
)
Defendant - Respondent.)
_____)

CERTIFICATE OF GOOD CAUSE
FOR PETITION APPEALING EFSB 17-02/D.P.U. 17-82/83 FINAL DECISION

Pursuant to G.L. c. 25, §5, the Town of Sudbury, by its undersigned counsel, certifies that it is of the opinion that there are such probable grounds for appeal as to make it a fit subject for judicial inquiry, and that this appeal is not intended for delay.



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Dated: January 17, 2020

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
No. SJ-2020-

_____)
THE TOWN OF SUDBURY, MASSACHUSETTS)
)
Plaintiff - Petitioner,)
)
v.)
)
ENERGY FACILITIES SITING BOARD)
)
Defendant - Respondent.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the forgoing documents, as filed today with the Supreme Judicial Court for Suffolk County, were served on January 17, 2020 by hand delivery, to the Energy Facilities Siting Board, as follows:

Secretary Mark D. Marini
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110
dpu.efiling@mass.gov

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Presiding Officer and General Counsel
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Dated: January 17, 2020