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January 17, 2020

2020 JAN 21 P 2:04

**George X. Pucci**  
[gpucci@k-plaw.com](mailto:gpucci@k-plaw.com)  
(617) 654-1718

CERTIFIED MAIL  
Return Receipt Requested  
No. 7016 3010 0001 1238 1200

Ms. Maura T. Healey  
Attorney General  
Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place, 20<sup>th</sup> Floor  
Boston, MA 02108

CERTIFIED MAIL  
Return Receipt Requested  
No. 7016 3010 0001 1238 1217

Ms. Kathleen Theoharides  
Secretary  
Executive Office of Energy and  
Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: Town of Sudbury v. Kathleen Theoharides, in her capacity as Secretary of the Executive Office of Energy and Environmental Affairs and NSTAR Electric Company d/b/a Eversource Energy  
Suffolk Superior Court C.A. No. 2084CV00151F

Dear Attorney General Healey and Secretary Theoharides:

Enclosed for service in connection with the above-referenced action please find the following:

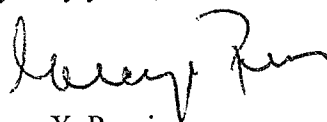
1. Summons;
2. Civil Action Cover Sheet;
3. Tracking Order; and
4. Complaint.

Pursuant to Mass.R.Civ.P. Rule 4(d)(6), please be advised that the complaint seeks judicial review of a MEPA Certificate issued by former EOEEA Secretary Beaton on September 14, 2018.

By copy of this letter, I am also notifying the project proponent, Eversource Energy's Assistant General Counsel of the lawsuit and am requesting acceptance of service on the enclosed summons and return to me in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter and please contact me if you have any questions.

Very truly yours,



George X. Pucci

GXP/man  
Enc.

cc: Interim Town Manager ✓  
Michael K. Callahan, Assistant General Counsel, Eversource Energy  
Audrey A. Eidelman, Esq.

709180/28814/0001

Commonwealth of Massachusetts

SUFFOLK, SS.

TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT  
CIVIL DOCKET NO. 2084CV00151F

TOWN OF SUDBURY, PLAINTIFF(S),

v.  
KATHLEEN THEOHARIDES, in her capacity  
as SECRETARY OF THE EXECUTIVE  
OFFICE OF ENERGY AND ENVIRONMENTAL  
AFFAIRS and NSTAR ELECTRIC COMPANY  
d/b/a EVERSOURCE ENERGY

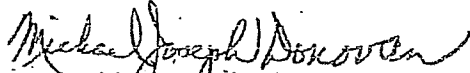
THIS SUMMONS IS DIRECTED TO Secretary, Executive Office of (Defendant's name)  
Energy and Environmental Affairs

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Suffolk Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**

1. **You must respond to this lawsuit in writing within 20 days.** If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**
2. **How to Respond.** To respond to this lawsuit, you must file a written response with the court and mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
  - a. Filing your signed original response with the Clerk's Office for Civil Business, Suffolk Superior Court, 3 Pemberton Square Boston, MA 02108 (address), by mail or in person, **AND**
  - b. Delivering or mailing a copy of your response to the Plaintiff's Attorney/Plaintiff at the following address: George X. Pucci, Esq., KP Law, P.C., 101 Arch Street, Boston, MA 02110
3. **What to include in your response.** An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as counterclaims) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a "Motion to Dismiss," if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under Mass. R. Civ. P. 12. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov/courts/case-legal-res/rules of court.

4. Legal Assistance. You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at [www.mass.gov/courts/selfhelp](http://www.mass.gov/courts/selfhelp).
5. Required information on all filings: The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Judith Fabricant, Chief Justice on January 17, 2020.

  
Michael Joseph Donovan  
Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

### PROOF OF SERVICE OF PROCESS

I hereby certify that on 1/17, 2020, I served a copy of this summons, together with a copy of the complaint in this action, on the defendant named in this summons, in the following manner (See Mass. R. Civ. P. 4 (d)(1-5)):

By certified mail, return receipt requested

Dated: 1/17, 2020

Signature: Joseph X. Puer

N.B. TO PROCESS SERVER:

PLEASE ENTER THE DATE THAT YOU MADE SERVICE ON THE DEFENDANT IN THIS BOX — BOTH ON THE ORIGINAL SUMMONS AND ON THE COPY OF THE SUMMONS SERVED ON THE DEFENDANT.

--

Commonwealth of Massachusetts

SUFFOLK, SS.

TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT  
CIVIL DOCKET NO. 2084CV00151F

TOWN OF SUDBURY, PLAINTIFF(S),

v.  
KATHLEEN THEOHARIDES, in her capacity as  
SECRETARY OF THE EXECUTIVE DEFENDANT(S)  
OFFICE OF ENERGY AND ENVIRONMENTAL  
AFFAIRS and NSTAR ELECTRIC COMPANY SUMMONS  
d/b/a EVERSOURCE ENERGY

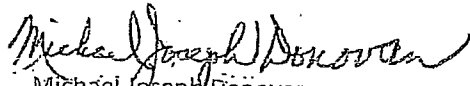
THIS SUMMONS IS DIRECTED TO NSTAR Electric Company d/b/a (Defendant's name)  
Eversource Energy

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Suffolk Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**

1. You must respond to this lawsuit in writing within 20 days. If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. If you need more time to respond, you may request an extension of time in writing from the Court.
2. **How to Respond.** To respond to this lawsuit, you must file a written response with the court and mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
  - a. Filing your signed original response with the Clerk's Office for Civil Business, Suffolk Superior Court, 3 Pemberton Square (address), by mail or in person, AND  
Boston, MA 02108
  - b. Delivering or mailing a copy of your response to the Plaintiff's Attorney/Plaintiff at the following address: George X. Pucci, Esq., KP Law, P.C., 101 Arch Street, Boston, MA 02110
3. **What to include in your response.** An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as **counterclaims**) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a "Motion to Dismiss," if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under Mass. R. Civ. P. 12. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov/courts/case-legal-res/rules of court.

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5. Required information on all filings: The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Judith Fabricant, Chief Justice on January 17, 2020.

  
Michael Joseph Donovan  
Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

### PROOF OF SERVICE OF PROCESS

I hereby certify that on \_\_\_\_\_, 20\_\_\_\_, I served a copy of this summons, together with a copy of the complaint in this action, on the defendant named in this summons, in the following manner (See Mass. R. Civ. P. 4 (d)(1-5)):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_

N.B. TO PROCESS SERVER:

PLEASE ENTER THE DATE THAT YOU MADE SERVICE ON THE DEFENDANT IN THIS BOX — BOTH ON THE ORIGINAL SUMMONS AND ON THE COPY OF THE SUMMONS SERVED ON THE DEFENDANT.

--

RECEIVED

CIVIL ACTION COVER SHEET		DOCKET NUMBER	<b>Trial Court of Massachusetts</b> <b>The Superior Court</b> SUPERIOR COURT - CIVIL MICHAEL JOSEPH DONOVAN CLERK MAGISTRATE JAN 16 2020								
<b>PLAINTIFF(S):</b> Town of Sudbury <b>ADDRESS:</b> Flynn Building 278 Old Sudbury Road Sudbury, MA 01776 <b>ATTORNEY:</b> George X. Pucci <b>ADDRESS:</b> KP Law, P.C. 101 Arch Street Boston, MA 02110 <b>BBO:</b> 555346	<b>DEFENDANT(S):</b> Kathleen Theoharides, in her capacity as Secretary of the Executive Office of Energy and Environmental Affairs and NSTAR Electric Company d/b/a Eversource Energy 100 Cambridge Street, Suite 900, Boston, MA 800 Boylston Street, Boston, MA										
<table style="width: 100%; border: none;"> <tr> <th style="text-align: left; width: 15%;">CODE NO.</th> <th style="text-align: left; width: 40%;">TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)</th> <th style="text-align: left; width: 15%;">TRACK</th> <th style="text-align: left; width: 30%;">HAS A JURY CLAIM BEEN MADE?</th> </tr> <tr> <td>E02</td> <td>Appeal from Administrative Agency, G.L. c.30A</td> <td>X</td> <td><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</td> </tr> </table>				CODE NO.	TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)	TRACK	HAS A JURY CLAIM BEEN MADE?	E02	Appeal from Administrative Agency, G.L. c.30A	X	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
CODE NO.	TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)	TRACK	HAS A JURY CLAIM BEEN MADE?								
E02	Appeal from Administrative Agency, G.L. c.30A	X	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO								
*If "Other" please describe:											
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">           Is there a claim under G.L. c. 93A?  <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO         </td> <td style="width: 50%;">           Is this a class action under Mass. R. Civ. P. 23?  <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO         </td> </tr> </table>				Is there a claim under G.L. c. 93A? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Is this a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO						
Is there a claim under G.L. c. 93A? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Is this a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO										
<b>STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A</b>											
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.											
<b>TORT CLAIMS</b> (attach additional sheets as necessary)											
A. Documented medical expenses to date:											
1. Total hospital expenses .....			Not applicable								
2. Total doctor expenses .....			\$								
3. Total chiropractic expenses .....			\$								
4. Total physical therapy expenses .....			\$								
5. Total other expenses (describe below) .....			\$								
<b>Subtotal (A):</b>			\$								
B. Documented lost wages and compensation to date .....											
C. Documented property damages to date .....											
D. Reasonably anticipated future medical and hospital expenses .....											
E. Reasonably anticipated lost wages .....											
F. Other documented items of damages (describe below) .....											
G. Briefly describe plaintiff's injury, including the nature and extent of injury:											
<b>TOTAL (A-F):</b>			\$								
<b>CONTRACT CLAIMS</b> (attach additional sheets as necessary)											
<input type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).											
Provide a detailed description of claim(s):											
<b>TOTAL:</b>			\$ Not applicable								
Signature of Attorney/ Unrepresented Plaintiff: X <i>George X. Pucci</i>											
<b>Date:</b> 1/16/20											
<b>RELATED ACTIONS:</b> Please provide the case number, case name, and county of any related actions pending in the Superior Court.											
<b>CERTIFICATION PURSUANT TO SJC RULE 1:18</b>											
I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.											
Signature of Attorney of Record: X <i>George X. Pucci</i>											
<b>Date:</b> 1/16/20											

# CIVIL ACTION COVER SHEET INSTRUCTIONS

## SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

### AC Actions Involving the State/Municipality \*

- AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
- AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)

### CN Contract/Business Cases

- A01 Services, Labor, and Materials (F)
- A02 Goods Sold and Delivered (F)
- A03 Commercial Paper (F)
- A04 Employment Contract (F)
- A05 Consumer Revolving Credit - M.R.C.P. § 8.1 (F)
- A06 Insurance Contract (F)
- A08 Sale or Lease of Real Estate (F)
- A12 Construction Dispute (A)
- A14 Interpleader (F)
- BA1 Governance, Conduct, Internal Affairs of Entities (A)
- BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
- BB1 Shareholder Derivative (A)
- BB2 Securities Transactions (A)
- BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
- BD1 Intellectual Property (A)
- BD2 Proprietary Information or Trade Secrets (A)
- BG1 Financial Institutions/Funds (A)
- BH1 Violation of Antitrust or Trade Regulation Laws (A)
- A99 Other Contract/Business Action - Specify (F)

\* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

### ER Equitable Remedies

- D01 Specific Performance of a Contract (A)
- D02 Reach and Apply (F)
- D03 Injunction (F)
- D04 Reform/ Cancel Instrument (F)
- D05 Equitable Replevin (F)
- D06 Contribution or Indemnification (F)
- D07 Imposition of a Trust (A)
- D08 Minority Shareholder's Suit (A)
- D09 Interference in Contractual Relationship (F)
- D10 Accounting (A)
- D11 Enforcement of Restrictive Covenant (F)
- D12 Dissolution of a Partnership (F)
- D13 Declaratory Judgment, G.L. c.231A (A)
- D14 Dissolution of a Corporation (F)
- D99 Other Equity Action (F)

### PA Civil Actions Involving Incarcerated Party †

- PA1 Contract Action involving an Incarcerated Party (A)
- PB1 Tortious Action involving an Incarcerated Party (A)
- PC1 Real Property Action involving an Incarcerated Party (F)
- PD1 Equity Action involving an Incarcerated Party (F)
- PE1 Administrative Action involving an Incarcerated Party (F)

### TR Torts

- B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
- B04 Other Negligence - Personal Injury/Property Damage (F)
- B05 Products Liability (A)
- B06 Malpractice - Medical (A)
- B07 Malpractice - Other (A)
- B08 Wrongful Death - Non-medical (A)
- B15 Defamation (A)
- B19 Asbestos (A)
- B20 Personal Injury - Slip & Fall (F)
- B21 Environmental (F)
- B22 Employment Discrimination (F)
- BE1 Fraud, Business Torts, etc. (A)
- B99 Other Tortious Action (F)

### RP Summary Process (Real Property)

- S01 Summary Process - Residential (X)
- S02 Summary Process - Commercial/ Non-residential (F)

### RP Real Property

- C01 Land Taking (F)
- C02 Zoning Appeal, G.L. c. 40A (F)
- C03 Dispute Concerning Title (F)
- C04 Foreclosure of a Mortgage (X)
- C05 Condominium Lien & Charges (X)
- C99 Other Real Property Action (F)

### MC Miscellaneous Civil Actions

- E18 Foreign Discovery Proceeding (X)
- E97 Prisoner Habeas Corpus (X)
- E22 Lottery Assignment, G.L. c. 10 §28 (X)

### AB Abuse/Harassment Prevention

- E15 Abuse Prevention Petition, G.L. c. 209A (X)
- E21 Protection from Harassment, G.L. c. 258E(X)

### AA Administrative Civil Actions

- E02 Appeal from Administrative Agency, G.L. c. 30A (X)
- E03 Certiorari Action, G.L. c.249 §4 (X)
- E05 Confirmation of Arbitration Awards (X)
- E06 Mass Antitrust Act, G. L. c. 93 §9 (A)
- E07 Mass Antitrust Act, G. L. c. 93 §8 (X)
- E08 Appointment of a Receiver (X)
- E09 Construction Surety Bond, G.L. c. 149 §§29, 29A (A)
- E10 Summary Process Appeal (X)
- E11 Worker's Compensation (X)
- E16 Auto Surcharge Appeal (X)
- E17 Civil Rights Act, G.L. c.12 §11H (A)
- E24 Appeal from District Court Commitment, G.L. c.123 §9(b) (X)
- E25 Pleural Registry (Asbestos cases) (X)
- E95 Forfeiture, G.L. c.94C §47 (F)
- E99 Other Administrative Action (X)
- Z01 Medical Malpractice - Tribunal only, G.L. c. 231 §60B (F)
- Z02 Appeal Bond Denial (X)

### SO Sex Offender Review

- E12 SDP Commitment, G.L. c. 123A §12 (X)
- E14 SDP Petition, G.L. c. 123A §9(b) (X)

### RC Restricted Civil Actions

- E19 Sex Offender Registry, G.L. c.6 §178M (X)
- E27 Minor Seeking Consent, G.L. c.112 §12S (X)

**TRANSFER YOUR SELECTION TO THE FACE SHEET**

#### **EXAMPLE:**


CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
B03	Motor Vehicle Negligence-Personal Injury	<u>F</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

### STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

**DUTY OF THE PLAINTIFF** - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or self-represented litigant.

**DUTY OF THE DEFENDANT** - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.  
FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY  
MAY RESULT IN DISMISSAL OF THIS ACTION.**

<b>CIVIL TRACKING ORDER</b> (STANDING ORDER 1- 88)	DOCKET NUMBER 2084CV00151 <b>F</b>	<b>Trial Court of Massachusetts</b> <b>The Superior Court</b> 
CASE NAME: Town of Sudbury vs. Kathleen Theoharides in her capacity as Secretary for the Executive Office of Energy and Environmental Affairs for the		Michael Joseph Donovan, Clerk of Court
TO: Commonwealth of Massachusetts et al		COURT NAME & ADDRESS Suffolk County Superior Court - Civil Suffolk County Courthouse, 12th Floor Three Pemberton Square Boston, MA 02108

**TRACKING ORDER - X - Accelerated**

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

**STAGES OF LITIGATION**

**DEADLINE**

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		04/15/2020	
Response to the complaint filed (also see MRCP 12)		01/15/2021	
All motions under MRCP 12, 19, and 20			
All motions under MRCP 15			
All discovery requests <b>and depositions</b> served and non-expert depositions completed			
All motions under MRCP 56			
Final pre-trial conference held and/or firm trial date set			
Case shall be resolved and judgment shall issue by			

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.  
Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.  
This case is assigned to

DATE ISSUED <b>01/16/2020</b>	ASSISTANT CLERK <b>Anh T Bungcayao</b>	PHONE <b>(617)788-8131</b>
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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
C.A. NO. 2084CV00151F

TOWN OF SUDBURY,

Plaintiff

v.

KATHLEEN THEOHARIDES, in her capacity  
as SECRETARY OF THE EXECUTIVE  
OFFICE OF ENERGY AND  
ENVIRONMENTAL AFFAIRS and NSTAR  
ELECTRIC COMPANY d/b/a  
EVERSOURCE ENERGY,

Defendants.

COMPLAINT

INTRODUCTION

This is a civil action pursuant to Massachusetts General Laws Chapter 30, § 62H and 301 Code Mass. Regs. 11.14, seeking judicial review of an administrative agency decision, and declaratory judgment under Massachusetts General Laws Chapter 231A and related injunctive relief, challenging the legal sufficiency of a Final Environmental Impact Report and the related Certificate of Approval issued by the Secretary of the Executive Office of Energy and Environmental Affairs, pursuant to the Massachusetts Environmental Policy Act, G.L. c. 30, §§ 61-62I, and its implementing regulations, 301 Code Mass. Regs. 11.00 et seq.

JURISDICTION

1. The Superior Court is vested with jurisdiction to hear and adjudicate this matter pursuant of the provisions of G.L. c. 231A, §§ 1-2 (declaratory judgment), and G.L. c. 30, § 62H (Certificates issued under MEPA).

## PARTIES

2. The Plaintiff, Town of Sudbury (“Town” or “Sudbury”) is a Massachusetts municipality with a usual place of business at 322 Concord Road in Sudbury, Massachusetts.

3. The Defendant, Kathleen Theoharides, in her capacity as Secretary for the Executive Office of Energy and Environmental Affairs for the Commonwealth of Massachusetts (“Secretary”),<sup>1</sup> has a usual place of business at 100 Cambridge Street, Suite 900 in Boston, Massachusetts.

4. The Defendant, NSTAR Electric Company d/b/a Eversource Energy (“Eversource”) is an electric utility company and the project proponent in this matter, with a usual place of business at 800 Boylston Street in Boston, Massachusetts.

## BRIEF STATEMENT OF FACTS AND CLAIMS

5. The Massachusetts Environmental Policy Act (“MEPA”), G.L. c. 30, §§ 61-62I, establishes an official policy of environmental protection in the Commonwealth by directing that State agencies review, evaluate, and determine the impact on the natural environment of all proposed works, projects, or activities conducted by them, and directs that such proponents use all practicable means and measures to minimize damage to the environment.

6. MEPA directs that, before an agency undertakes any action on a proposed project, it make substantive findings describing the environmental impact, if any, of the project, and certify that all feasible measures have been taken to avoid or minimize said impact to the environment.

7. In aid of those directives, MEPA establishes an explicit process, supervised by the Secretary, to thoroughly consider and evaluate the potential environmental impacts of such

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<sup>1</sup> Matthew Beaton, who issued the challenged-certificates in this matter, is no longer the Secretary of the Executive Office of Energy and Environmental Affairs, and as such, is not named as a party to this action.

proposed projects, which involves the preparation of draft and final environmental impact reports, and submission of those reports to interested State and municipal agencies, and to the general public, for comment.

8. On October 31, 2017, Eversource submitted a draft environmental impact report in connection with a proposed project to construct a nine-mile underground transmission line from the Eversource substation in Sudbury, Massachusetts, through parts of Stow and Marlborough, to the Hudson Light & Power Department's substation in Hudson, Massachusetts.

9. On December 15, 2017, former Secretary Matthew Beaton issued a Certificate ("2017 Certificate"), approving the draft environmental impact report submitted by Eversource.

10. In that 2017 Certificate, the Secretary identified several issues requiring further analysis in Eversource's Final Environmental Impact Report ("FEIR"), including assessment of the impact of the project to rare species and habitats, protected wetlands resource areas, and the preparation of a comprehensive mitigation program for environmental harms.

11. In August of 2018, Eversource submitted its FEIR.

12. On September 14, 2018, former Secretary Beaton issued a Certificate ("2018 Certificate") approving the FEIR, finding that it adequately and properly complied with MEPA and its implementing regulations. Despite approving the FEIR and declining to require the submission of a Supplemental FEIR by Eversource, the former Secretary noted that there nonetheless were several "[o]utstanding issues" requiring "additional analysis and review," but left such inadequacies to be "addressed during State and local permitting and review."

13. In the FEIR approved by the Secretary, Eversource proposes to construct a 22 to 30-foot corridor along an inactive railroad right of way owned by the Massachusetts Bay Transportation Authority ("MBTA"), to build an 18 to 22-foot construction platform, and to

construct gravel access roads, underground splice vaults and related electric utility infrastructure through undeveloped areas to serve as the base for the subsequent construction of the underground utility line.

14. To do so, Eversource's FEIR outlines the proposed alteration of approximately 29.93 acres of sensitive and protected land and resource areas, including undeveloped conservation and open space areas and cold water fisheries managed by the Town of Sudbury, the Sudbury Valley Trustees, and the United States Fish and Wildlife Service. Eversource also proposes to develop approximately 4 acres of land in rare species Priority and Estimated Habitat Areas, as mapped by the Natural Heritage and Endangered Species Program ("NHESP").

15. Additionally, Eversource's FEIR will impact, alter, and pollute protected wetlands resource areas that provide, *inter alia*, public drinking water for the Towns of Sudbury and Hudson.

16. During the notice and public comment periods, the Town submitted timely comments in response to Eversource's MEPA filings in this case, in accordance with applicable regulations, requesting that Eversource consider, analyze, and adequately address or mitigate several such deficiencies and environmental harms in accordance with the requirements under MEPA and its implementing regulations.

17. Eversource failed to adequately comply with such requirements under MEPA and its implementing regulations in its FEIR, and as such, the Secretary lacked a rational basis to conclude that Eversource's FEIR did adequately and properly comply with the same.

18. Specifically, for example, Eversource's FEIR failed to study appropriate alternatives that would avoid and/or mitigate damage to the environment, including without limitation, protected wetlands resource areas, coldwater fishery resources, adjacent vernal pool

resources, public drinking water supplies, and the permanent loss of State-listed rare and endangered species habitats, all of which were explicitly required by the Secretary in the 2017 Certificate and pursuant to MEPA, G.L. c. 30, §§ 61-62B, and its implementing regulations 301 Code Mass. Regs. 11.00.

19. Eversource's FEIR also failed to adequately or properly comply with the mitigation, avoidance, and alternatives analyses required by MEPA and its implementing regulations, because the FEIR did not address or quantify the temporary or permanent construction-related pollution impacts to adjacent sensitive wetlands areas, state-listed rare and endangered species, wildlife habitats, vernal pools, public drinking water supplies, and Outstanding Resource Water and Critical Areas, rendering an alternative route through Sudbury,<sup>2</sup> a superior alternative to the selected project for its comparably minimal impact to the environment.

20. Eversource's FEIR also failed to adequately and properly comply with the requirements under MEPA and its implementing regulations because the FEIR did not evaluate the environmental impacts associated with construction of the project's stormwater management best practices. Specifically, the FEIR states that Eversource and the Massachusetts Department of Conservation and Recreation ("DCR") will file joint-applications for the environmental permits required to undertake this project,<sup>3</sup> yet the FEIR did not actually set out to evaluate the cumulative environmental impacts of the projects, as required. Instead, the FEIR assessed those environmental harms independently, which violated the MEPA environmental mitigation and

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<sup>2</sup> The Town has been willing to work with Eversource on an alternative proposal which involves construction of the electric utility project beneath existing public streets and would not involve construction through the MBTA right of way.

<sup>3</sup> Eversource proposes that DCR will maintain the paved access road it intends to construct in order to provide truck access through the otherwise naturally preserved areas in order to serve a so-called dual purpose of a "bike path."

alternatives requirements, ran afoul of the applicable stormwater standards and wetlands regulations, and improperly sought to benefit from the less stringent stormwater management standards afforded to bike path projects.

21. Eversource's FEIR also failed to adequately or properly comply with the requirements under MEPA and its implementing regulations because the FEIR fails to present the findings from the subsurface soil investigation conducted in the Town of Hudson, and the potential pollution of soil and groundwater brought by the construction of an underground utility line, rendering the FEIR wholly inadequate in its analyses of costs and protection of public health, safety, and the environment necessary to its Project Alternatives Analysis.

22. Eversource's FEIR also failed to adequately or properly comply with the requirements under MEPA and its implementing regulations because the FEIR is deficient in evaluating the feasibility of the placement of crane mats and required grading mapped in the FEMA Floodway area, among several other construction- and alternatives-related environmental deficiencies, as set forth in the Town's public comments to Eversource and to the Secretary.

23. The Town has complied with all prerequisites necessary to challenge the legal sufficiency of the FEIR and 2018 Certificate, as required under G.L. c. 30, § 62H and 301 CMR 11.14, including without limitation the timely submission of public comments in response to Eversource's MEPA filings in this case, the exhaustion of administrative remedies, and the timely notice of its intent to file suit following the issuance of the first permit by the Commonwealth's Energy Facilities Siting Board with respect to this project.

24. The Town now seeks judicial review and reversal of the approval of the FEIR, set forth in the Secretary's 2018 Certificate, where such agency action was wholly lacking in a rational basis to conclude that the project proponent adequately and properly complied with the

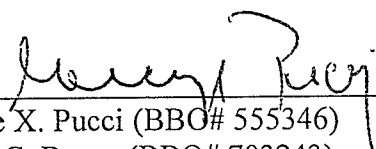
requirements under the Massachusetts Environmental Policy Act, and where the decision to locate such a project on critically protected land and resource areas owned by the Town and affecting the health and safety of its residents would immediately and irreparably impair the Town's rights.

REQUEST FOR RELIEF

WHEREFORE, the Town respectfully requests judicial review and reversal of the Secretary's approval of the FEIR on the basis that it was arbitrary and capricious to conclude that the FEIR adequately and properly complied with the requirements under MEPA and its implementing regulations, and/or declaratory and injunctive relief enjoining Eversource from beginning construction of the project absent the filing of a Supplemental FEIR to mitigate such environmental harms, or reasonably consider the under the streets option through Sudbury, or other non-construction related energy alternatives to meet the stated need for the project, together with any such further relief as this Honorable Court deems appropriate.

Respectfully submitted,

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By its attorneys,

  
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