

J. Raymond Miyares
Thomas J. Harrington
Christopher H. Heep
Donna M. Brewer
Jennie M. Merrill

Rebekah Lacey
Ivria Glass Fried
Eric Reustle
Blake M. Mensing
Katherine E. Stock

January 11, 2017

VIA FIRST CLASS MAIL AND EMAIL

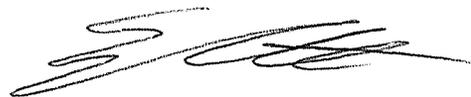
M. Kathryn Sedor, Presiding Officer
Energy Facilities Siting Board
One South Station
Boston, MA 02110

Re: NSTAR Electric Company d/b/a Eversource Energy,
EFSB 16-02/D.P.U. 16-77

Dear Ms. Sedor

On behalf of the Town of Needham, enclosed for filing are a Motion to Reopen Hearing and Certificate of Service. Thank you for your attention to this matter.

Sincerely,



Eric B. Reustle

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

Petition of NSTAR Electric Company d/b/a/
Eversource Energy for Approval to Construct
and Maintain a New 115-kV Combination
Overhead/Underground Transmission Line in
West Roxbury, Dedham and Needham
Pursuant to G.L. c. 164 § 69J

EFBS 16-02/D.P.U. 16-77

MOTION TO REOPEN HEARING

I. INTRODUCTION

Evidentiary hearings in this matter concluded on June 29, 2017. Due to the unique circumstances of this matter,¹ however, design plans for the proposed project were not submitted until after the close of the evidentiary hearing. On November 3, 2017, the Energy Facilities Siting Board (“Siting Board”) issued a Procedural Ruling and Amended Procedural Schedule (“Order”) establishing deadlines for the filing of design plans and permitting the parties to request additional process on the basis of the design plans. With respect to post-hearing process, the Board ruled: “[A]ny motion requesting such additional process (1) shall be limited to the Design Plans; and (2) shall identify, and explain in detail, what aspects of the Design Plans warrant or necessitate further briefing, written discovery or witness examination.” Order, p. 3.

Pursuant to the amended post-hearing procedural schedule, NSTAR Electric Company d/b/a Eversource Energy (“Eversource” or the “Company”) filed its 75% engineering design plans on November 30, 2017. Thereafter, on December 14, 2017, the

¹ Eversource changed its proposed route after the beginning of the evidentiary hearing and was therefore not able to present design plans for its new proposal during the hearing.

Town of Needham's Director of Public Works and Town Engineer met with Eversource representatives, provided written comments on the plans and requested certain modifications. A copy of those comments is attached hereto as "Exhibit A."

The requested modifications fall into four categories: (1) modifications necessary to preserve the proper functioning of the Town's sewer mains; (2) modifications intended to ensure that the project will conform to Eversource's representations regarding the shallowest depth of the duct bank and projected EMF levels; (3) modifications intended to ensure that the project will conform to Eversource's representations regarding the proximity of the transmission line to the roadway centerline; and (4) modifications intended to reserve space for future installation of Town utilities. The Town officials also informed Eversource that the 75% design plans lacked essential information regarding the location of existing Town utility connections and requested that updated plans be submitted showing the location of such connections. Finally, they informed Eversource that, as designed, the transmission line was not constructible, and that the Board of Selectmen could not reasonably be expected to issue a Grant of Location for a project that was not constructible.

Following this meeting, a representative of VHB, Inc., contacted the Town's Engineering Department on behalf of Eversource and requested data regarding the location of existing utility connections along the route. The Engineering Department provided that information to VHB on December 21, 2017.

Based on this interchange, the Town believed that Eversource was making a good faith effort to address the concerns that had been expressed by the Director of Public Works and Town Engineer. However, on December 28, 2017, Eversource submitted a letter in this proceeding stating that its 100% design drawings "have been completed on schedule," and that "[t]here are no material changes in the Project's design as a result of advancing the 75 percent drawings to 100 percent." Response to Record Request EFSB-14. Without

explanation, Eversource failed to incorporate any of the modifications requested by the Engineering Department or the necessary information regarding the location of existing utility connections. Indeed, the Company did not even inform the Siting Board of the December 14 requests.

Based on these developments, it is necessary to reopen the hearing in this matter to allow further discovery, witness examination and, if necessary, briefing regarding the completed design plans so that the Siting Board can review and consider the need for modifications to those plans or any explanation as to why the Town's December 14 requests were not honored. Rather than having the Siting Board issue its decision based on plans that likely cannot be approved in their current form and will likely require substantial modification before a Grant of Location can be issued, the Town hereby requests that the evidentiary hearing be reopened.

II. Argument

A party seeking to reopen a Siting Board hearing or evidentiary record must: "(1) explain the nature and relevance of the evidence offered; (2) explain why the evidence was unavailable at the time of hearing; and (3) show clearly that good cause exists for re-opening." 980 CMR 1.09(1). "To show good cause, a party must show that the new evidence, if allowed into the record, would be likely to have a significant impact on the Siting Board's decision in the proceeding." NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-04/D.P.U. 14-53/14-54, Hearing Officer Ruling on Four Post-Hearing Evidentiary Motions at 3-4, 5-7 (November 8, 2017).

A. Interference with Town Sewer Mains

Eversource has represented that, in the event of conflicts between its proposed transmission line and existing utilities, it would relocate those existing utilities at its own expense to allow the transmission line to be installed. Letter from Eversource to the Town

of Needham, dated September 12, 2017 (Exh. A to the Initial Brief of the Town of Needham). Prior to the submission of design plans, however, neither the Town nor the Board had the opportunity to review the specific conflicts that would arise from Eversource's choice of location or whether the relocation of Town utilities was even possible in every individual case.

In its 75% design submission to the Board, Eversource identified multiple conflicts with certain segments of the Town's existing sewer mains. Eversource, however, did not propose any resolution of those conflicts. As Town officials explained to Eversource at the December 14 meeting, the Town's sewer is a gravity-based system, and the proper placement of sewer mains is critical to maintaining their proper functioning. It is the Engineering Department's opinion that impacts on the sewer system's proper functionality cannot be assessed without information as to where Eversource plans to relocate the relevant sewer main segments, and how those relocated segments will be designed. Nevertheless, in its submissions in this proceeding, Eversource has declined even to acknowledge the Engineering Department's concerns, and has offered no explanation as to where these sewer segments could be relocated and configured. In short, Eversource has failed to provide the Board with information sufficient to perform any meaningful review of the conflicts between the Town's sewer mains and the proposed transmission line duct bank.

The Town must have the opportunity to present evidence regarding the operation of its sewer system and to examine Eversource's witnesses regarding the relocation of segments of the Town's sewer main, as this evidence bears directly on whether the duct bank can be installed in the manner depicted by Eversource to the Board, whether a Grant of Location can be issued and whether, as a consequence, the design drawings submitted to the Board are sufficient for the Board to render a decision in this case.

B. Duct Bank Depth

1. Inconsistency Between Design Plans and EMF Modeling Assumptions

Eversource represented to the Town and the Siting Board that the shallowest anticipated duct bank depth for its proposed transmission line would be approximately 30 inches below the pavement, “where the uppermost 115-kV phase conductors in the duct bank are located at 3.5 feet below grade.” Appendix C to EMF Report Exh. EV-3, Appendix C to EMF Report; TON-1-1(f). This assumption is built into Eversource’s EMF Report as what the Company’s contractor referred to as “the general Eversource policy to model EMF for the most conservative location of the lowest conductor sag (*i.e.*, closest to the ground surface)...” Exh. EV-3, p. 8-9 (emphasis added). Despite these representations, however, Eversource’s 75% design plans show a shallowest depth of only 0.9 feet. See Exhibit A, Drawing No. 18.

This difference between Eversource’s representations and plans render its EMF modeling inaccurate for a portion of the project route. The Town must have the opportunity to examine the need for installing the transmission line closer to the surface than previously represented, what implications the proposed installation may have on Eversource’s EMF modeling, and whether there are any mitigating measures that may be implemented.

2. Failure to Identify Existing Utility Connection Locations

At the December 14 meeting, the DPW Director and Town Engineer noted the lack of information on Eversource’s 75% design plans regarding existing Town utility connections and requested that the plans be updated so that all conflicts could be identified and addressed. See Exhibit A. The Engineering Department believes that the duct bank will need to be lower (at least 3.5 feet from grade to the top of the duct bank) than depicted

in Eversource's plans for much of the project route in order to avoid conflicts with existing water service and sewer lateral lines that connect houses to the water and sewer mains along the route. As noted, however, the Town's Engineering Department provided data regarding the location of existing utility connections along the route on December 21, 2017. Based on these interactions, it is the Town's understanding that Eversource has the information necessary to perform an analysis of conflicts between its proposed transmission line and existing utility connections, and to make a more precise determination regarding the actual installation depth that will be necessary.

Eversource, however, has thus far failed to provide corrected plans to the Town or the Siting Board, and has not explained why it has failed to do so. It is the Town's belief that, if Eversource proceeds with the plans as submitted to the Siting Board, Eversource will quickly encounter a large number of water and sewer lateral line conflicts that prevent it from installing the duct bank as shown on its design plans. This appears to be a very significant deficiency in the design plans.

The Town must have the opportunity to present evidence regarding conflicts between existing utility connections and the proposed location of the duct bank, and the Town and the Siting Board must have the opportunity to examine Eversource's witnesses regarding the resolution of such conflicts if this project is going to be allowed to proceed. This evidence bears directly on whether the duct bank can be installed as depicted by Eversource, and thus whether the project proposal meets the Siting Board's standard of review.

C. Proximity to Roadway Centerline

On November 14, 2017, representatives from Eversource met with the Board of Selectmen to discuss the project route and installation details. A copy of the minutes from

that meeting are included herewith as “Exhibit B.”² Based on the representations made in that meeting, the Board of Selectmen understood that Eversource would honor the Town’s request to keep the duct bank as close to the center of the roadway as possible. See Exhibit B, p. 7 (“Mr. Nicotera said there are existing constraints including...Town requirements to stay as close to the center of the roadway as possible.”)

As shown on Exhibit A, Drawings 28-30 and 31-33, segments of the duct bank along Valley Road and Peacedale Road run underneath the gutter and grass berm along the roadway. The DPW Director and Town Engineer requested that the duct bank be moved closer to the centerline along these sections of Peacedale Road and Valley Road.

Eversource, however, has neither informed the Siting Board of these requests or provided a response thereto. The Town must have the opportunity to examine Eversource’s witnesses to determine whether the placement of the duct bank as depicted in Eversource’s plans is necessary, or whether the duct bank may be located closer to the centerline of the roadway, as promised. This issue is an essential component of the Siting Board’s standard of review in this proceeding.

D. Areas Reserved for Installation of Town Utilities

The Town anticipates installing additional utilities along the project route in the future. In order to accommodate these installations, the DPW Director and Town Engineer requested certain modifications related to the duct bank location and depth in those areas where the Town anticipates such installation, so as to reserve depths nearer to grade that will be needed for those installations. Installation of the duct bank without consideration of potential utility installations will likely result in significantly increased costs to the Town

² The evidentiary hearing in this matter concluded on June 29, 2017. Initial Briefs were filed on September 21, 2017, and reply briefs were filed on October 5, 2017. As such, the representations made in the November 14, 2017, meeting could not have been addressed by the Town at any earlier stage of this proceeding.

in the future. This was explained to Eversource by the DPW Director and Town Engineer in response to the submission of the 75% design plans. Again, however, Eversource, did not address or even acknowledge to the Town's requests. The Town should have the opportunity to examine Eversource's witnesses regarding the specific location of the duct bank as shown in the design plans in order to determine whether the duct bank may be located in a manner that will accommodate the future installation of Town utilities. The Siting Board should not be asked to approve a design plan that the Company well knows is not acceptable to Town officials.

Conclusion

Each of the categories of evidence described above bears directly on whether installation of the project can be achieved as depicted in Eversource's design plans or whether the project conforms to the representations made to the Town and the Siting Board. These questions relate directly to whether the Siting Board's standard of review has been shown to be satisfied (or even can be satisfied). This evidence was not available at the time of the hearing as it could not be known prior to the completion of the design plans and Eversource has, in fact, still not produced much of the information necessary for the Siting Board to make essential findings in this case. The admission of such evidence is likely to have a significant impact on the Siting Board's decision as it will directly affect the Board's determination as to whether the project meets its standard of review.

For the reasons set forth above, the Town requests that the Siting Board reopen the evidentiary hearing to allow for additional discovery, witness examination and, if necessary, additional briefing for the purposes of examining the issues outlined herein.

SIGNATURE PAGE FOLLOWS

Respectfully Submitted,

The Town of Needham,
By its attorneys,



J. Raymond Miyares, BBO #350120
Eric Reustle, BBO #681933
Miyares and Harrington LLP
40 Grove Street • Suite 190
Wellesley, MA 02482
t: (617) 489-1600
f: (617) 489-1630

Dated: January 11, 2018

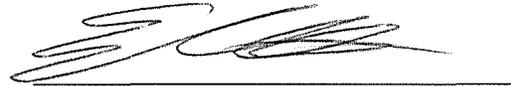
COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

Petition of NSTAR Electric Company d/b/a/
Eversource Energy for Approval to Construct
and Maintain a New 115-kV Combination
Overhead/Underground Transmission Line in
West Roxbury, Dedham and Needham
Pursuant to G.L. c. 164 § 69J

EFSB 16-02/D.P.U. 16-77

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing Motion to Reopen Hearing upon the Energy Facilities Siting Board and the Service List in the above-docketed proceeding in accordance with the requirements of 980 CMR 1.03.



Eric Reustle, BBO #681933
Miyares and Harrington LLP
40 Grove Street • Suite 190
Wellesley, MA 02482
t: (617) 489-1600
f: (617) 489-1630

Dated: January 11, 2018