

July 3, 2017

Secretary of Energy and Environmental Affairs  
Executive Office of Energy and Environmental Affairs (EEA)  
Attn: MEPA Office  
Page Czepiga, EEA No. 15703  
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Dear Ms. Czepiga – It is with great concern that I write to you in reference to the Eversource Sudbury-Hudson transmission line project, EEA No. 15703, and specifically the “Environmental Notification Form – CORRECTED June 9, 2017” and the accompanying letter sent to you from Marc Bergeron of VHB on June 12, 2017. Copies of both are available here <https://s3-us-west-2.amazonaws.com/cdn.sudbury.ma.us/wp-content/uploads/sites/260/2017/06/MEPA-ENF-Correction-2017-06-12.pdf?version=9d16b0f684d93b5ee45cae68925bf479>.

My questions/comments are outlined below; I appreciate you taking the time to review.

- (1) On June 12, 2017 there was a MEPA Scoping session held at Lincoln-Sudbury Regional High School at 6pm as well as field visits earlier in the day yet copies of both of revised ENF as well as the VHB notes were only made available to the public mere hours before the meeting. This was not enough time for anyone to review the documents for accuracy and completeness. Based on this alone the corrections should have been rejected and the MEPA sessions rescheduled.
- (2) At the MEPA Scoping Session handouts were made available to the public titled “Overview of MEPA Review Process”, in which section “Q: What is the purpose of the MEPA Scoping Session” had the following passage  
“There will be time allocated for comments from members of the public. To assist in informing the Scope of the EIR, it is most helpful if comments focused on:
  - Clarification of issues to assist you in preparing written comments;
  - Identification of other measures that can be implemented to further avoid, minimize, or mitigate project impacts; or
  - Recommendation of data/analysis to require in the Scope of the EIR

Given the latitude described above public comment was limited to only 3 minutes. As one that was present in the hall that evening, and was eventually granted an additional 3 minutes, this simply was not enough time to relay anything of substance whatsoever related to a project of critical significance such as this.

- (3) In VHB’s June 12<sup>th</sup> letter they made the following corrections:
  - a. Page 2: Does this project meet or exceed a mandatory EIR threshold? Revise the response from “yes” to “no”.
  - b. Which MEPA review threshold(s) does the project meet or exceed? Correct the form to reflect that the Project does not alter one or more acres of bordering vegetated wetland. The correct MEPA review thresholds met or exceeded include:
    - 301 CMR 11.03 (1)(b)1. Direct alteration of 25 or more acres of land
    - 301 CMR 11.03 (3)(b)1.d. Alteration of 5,000 or more square feet of bordering

vegetated wetlands

- 301 CMR 11.03(3)(b)1.f. Alteration of ½ acre or more of any other wetlands
- 301 CMR 11.03(7)(b)4. Construction of electric transmission lines with a capacity of 69 or more kV, provided that the transmission lines are one or more miles in length along, new, unused or abandoned right of way.

My question is why was the initial submission incorrect? The fundamentals of the project did not change yet VHB and Eversource changed their answers. Did they not perform research prior to their original submittal? Is there reason to believe they performed research with this submittal?

- (4) Again from VHB's June 12<sup>th</sup> letter:

Page 3: New acres of land altered, Square feet of new bordering vegetated wetlands alteration, and Square feet of new other wetland alteration. Note that these numbers include the footprint of both tree clearing and permanent fill impacts. The revised ENF form reflects the total impact only. **In addition, the square feet of new "other wetland" alteration, that previously included local and state buffer zones, was revised to exclude buffer zones and to correctly present wetland areas only.**

Should buffers be excluded? And why wasn't this caught in the first submittal? See comment for #3 above.

- (5) Again from VHB's June 12<sup>th</sup> letter:

Page 9: Is there an Outstanding Resource Water (ORW) on or within a half-mile radius of the project site? Revised the response to "yes" and added detail that there are 15 Certified Vernal Pools (as mapped by NHESP) within a half-mile radius of the Project.

Why didn't they note the vernal pools in their previous submittal? See comment for #3 above.

- (6) Again from VHB's June 12<sup>th</sup> letter:

Page 12: I.A. Does the project meet or exceed any review thresholds related to land? Revised the response to "yes", the Project involves alteration of 25 or more acres of land.

Why was this incorrect in their previous submittal? See comment for #3 above.

- (7) Again from VHB's June 12<sup>th</sup> letter:

Page 16: I.A. Will the project meet or exceed any review thresholds related to wetlands, waterways, and tidelands? Corrected the response to identify that the Project involves alteration of more than 5,000 square feet of bordering vegetated wetland and alteration of ½ or more acre of any other wetlands.

Why was this incorrect in their previous submittal? See comment for #3 above.

- (8) From "Environmental Notification Form – CORRECTED June 9, 2017", page 2  
**Identify any financial assistance or land transfer from an Agency of the Commonwealth, including the Agency name and the amount of funding or land area in acres:**  
None

This is simply factually incorrect. This land is owned by the MBTA and currently under lease by the Department of Conservation and Recreation (DCR), both agencies of the Commonwealth. As part of the Eversource/MBTA/DCR “agreement” the MBTA stands to receive a significant financial payment for the use for corridor. Why was this omitted?

- (9) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 3

**Has any project on this site been filed with MEPA before?**

Yes (EEA # 15123 )

It is important to note this as it serves as a good reference point. EEA #15123 was submitted by the DCR for the Mass Central Rail Trail (MCRT) project. Throughout this submittal I will reference two related documents; “Certificate of the Secretary of Energy and Environmental Affairs on the Expanded Environmental Notification Form” dated Jan 10 2014 (<http://www.mass.gov/eea/docs/dcr/projects/mcrt/certificate-20140110.pdf>) and “Mass Central Rail Trail – Wayside Branch Expanded Environmental Notification Form” dated November 2013 (<http://www.mass.gov/eea/docs/dcr/projects/mcrt/mcrt-expanded-notification.pdf>).

While a good reference point please understand that these projects are not identical; the MCRT called for cutting a 19’ path and allowing for regrowth, not the 30’ to 40’ clear cut and permanent vegetation control that Eversource proposes.

Also of note – it was determined that the MCRT project did not merit further MEPA review due in large part to “financial hardship”. From “[Mass Central Rail Trail – Wayside Branch Expanded Environmental Notification Form](#)”, pages B2 – B3 “**Project Will Result in an Undue Hardship for the Proponent**” The requirement to prepare an EIR would cause an undue hardship for the Massachusetts Department of Conservation and Recreation...As with many state agencies, DCR has limited financial resources to support conservation and recreation goals and areas in the Commonwealth. Rather than expending funding on environmental analyses associated with the preparation of an EIR for the MCRT-WB, finances conserved could be utilized for constructing improvements and developing important conservation and recreation resources in order to meet the needs of the general public.” I do not agree that environmental impact should be decided on whether a project can or can’t afford to move forward but that decision was made in the case of DCR and the MCRT. This most certainly should not be a factor in considering a project proposed by Eversource; they certainly are not facing “financial hardship”.

- (10) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 4  
“Construction of the Project will serve the public interest by increasing the reliability of the regional electric transmission system. In addition, the Project provides the opportunity to couple construction of the New Line with the development of a portion of the planned regional Mass Central Rail Trail (“MCRT”), a multi-use trail that will be managed by the Massachusetts Department of Conservation and Recreation. The proposed MCRT, traversing the state from west to east, will bring a number of advantages to its users, surrounding communities, and the Commonwealth as a whole.”

From the MEPA website “MEPA further requires that state agencies “use all practicable means and measures to minimize damage to the environment,” by studying alternatives to the proposed

project, and developing enforceable mitigation commitments, which will become conditions for the project if and when they are permitted.” I do not believe a recreational trail, while socially beneficial, either minimizes environmental damage, mitigates it, or is a viable alternative. It should not be considered as part of this review; either the environment will be damaged or it won't.

- (11) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 5  
“It is assumed that the duct bank can be installed above all existing culverts along the ROW. There are three existing bridges over waterbodies along the ROW. Based on a preliminary engineering review, the Company plans to reuse the existing bridge structures and rehabilitate them to accommodate a utility crossing. The bridge improvements will also incorporate the future multi-use path in accordance with DCR’s proposed design plans.”

Looking at <http://www.mass.gov/eea/docs/dcr/projects/mcrt/mcrt-expanded-notification.pdf> page A-23 in reference to Bridge #127 over Hop Brook in Sudbury “Due to extensive repairs required at this location, full bridge replacement is a viable alternative to rehabilitation.” If they are going to use a recreational trail as a “benefit” to this project they need to account for all water crossings, including bridges and culverts.

- (12) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 6  
“Other roadway options, including routes located entirely in roadways, would result in greater impacts to the natural and/or developed environments than the proposed route.”

From the MEPA website <http://www.mass.gov/eea/agencies/mepa/about-mepa/> “MEPA further requires that state agencies “use all practicable means and measures to minimize damage to the environment,” by studying alternatives to the proposed project, and developing enforceable mitigation commitments, which will become conditions for the project if and when they are permitted.” Eversource makes a one sentence comment about the environmental impacts of the roadway option, saying only that they would result in greater impacts. This should not be allowed with backing information. Just because they say so does not mean it is true!

- (13) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 7  
“Final details regarding the overall wetland-related mitigation approach will be determined when final design is complete. Mitigation plans will be included in the various permit applications to be submitted to local, state, and federal regulatory agencies for review, and the permits issued will contain conditions specifying the mitigation required..”

From the MEPA website <http://www.mass.gov/eea/agencies/mepa/about-mepa/> “MEPA further requires that state agencies “use all practicable means and measures to minimize damage to the environment,” by studying alternatives to the proposed project, and developing enforceable mitigation commitments, which will become conditions for the project if and when they are permitted.” This should be the time and place to discuss mitigation, not once the damage is done.

- (14) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 7 under Rare Species  
“Typical mitigation options under a CMP may include offsite habitat protection or funding of programs that directly benefit the affected species. Offsite habitat

protection typically requires the acquisition of land, under fee ownership or conservation restriction, for permanent habitat conservation. Other mitigation options consist of financial contribution toward land acquisition, conservation research funding, habitat management, or other programs that directly benefit the affected species...”

While this certainly is not unique to this project it does seem to run counter to common sense. We will allow for the killing of rare species but make up for it by funding programs to help save that species?

- (15) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 9 under Rare Species  
“Does the project site include Estimated and/or Priority Habitat of State-Listed Rare Species?  
([http://www.mass.gov/dfwele/dfw/nhosp/regulatory\\_review/priority\\_habitat/priority\\_habitat\\_home.htm](http://www.mass.gov/dfwele/dfw/nhosp/regulatory_review/priority_habitat/priority_habitat_home.htm)) Yes (Specify: PH 687/EH 648, PH1516/EH 38)”

A non-functional hyperlink was provided. Thus this answer should be deemed incomplete and unacceptable.

- (16) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 9 under Water Resources  
“Is there an Outstanding Resource Water (ORW) on or within a half-mile radius of the project site? Yes ... There are 15 certified vernal pools within a half-mile radius of the Project.

It should be noted that the vernal pools are all within feet of the project, not just a half-mile.

- (17) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 9 under Water Resources  
“Are there any impaired water bodies on or within a half-mile radius of the project site? No”.

I believe this to be factually incorrect. Looking at <http://www.mass.gov/eea/docs/dcr/projects/mcrt/mcrt-expanded-notification.pdf> page A-39 Table 6 both Hop Brook and Wash Brook are noted as Impaired Category 5. It is also worth noting that these bodies are not just within a half mile of the project, the project will be built in and over them.

- (18) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 10 under Solid and Hazardous Waste  
“If the project will generate solid waste during demolition or construction, describe alternatives considered for re-use, recycling, and disposal of, e.g., asphalt, brick, concrete, gypsum, metal, wood: The Project may generate solid waste including railroad tracks and ties, pavement, and minor amounts of construction debris such as wood pallets and wooden spools. The Company will recycle all such material as required by regulation.”.

This is inconsistent with earlier and later statements in the document. They say here that “The Project may generate solid waste” where in other places they elaborate on how

it will generate solid waste (railroad ties debris, etc.). This is clearly a case where they are softening their answer rather than being honest and transparent.

- (19) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 12 under Land Section, Section II D,E

“D. Does any part of the project involve conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97? No.”

“E. Is any part of the project site currently subject to a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction? No”

In 1972 Massachusetts voters approved Article 97, granting people the right to a clean environment and authorizing the Commonwealth to acquire conservation easements. Article 97 was intended to be a legislative ‘check’ to ensure that lands acquired for conservation purposes were not converted to other inconsistent uses. This project runs next to or through conservation land. I would I would ask that the section D answer be checked for accuracy as I believe it should have been answered “yes”

Similarly I would ask that the section E answer be checked for accuracy. I do not believe there to be any agricultural restrictions but there may be conservation, preservation, and/or watershed restrictions in the path of this project.

- (20) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 13 under Land Section, Sections III B 3

“Describe the project’s consistency with that plan with regard to open space impacts: The Project will be built within an existing inactive MBTA corridor and will not have any direct impacts to open space”

I do not understand how they can answer that there will be no direct impact when they will be cutting down thousands of trees. I do not think it would be any more direct.

- (21) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 14 under Rare Species Sections I A, B, C

“A. Will the project meet or exceed any review thresholds related to rare species or habitat (see 301 CMR 11.03(2))? To be determined. The Company will continue to work with NHESP to minimize impacts to habitat for the listed species to the extent possible.”

“B. Does the project require any state permits related to rare species or habitat? There is a possibility that the Project may require a Conservation and Management Permit. The Company is continuing to coordinate with NHESP to finalize plans to avoid and minimize impacts to rare species and habitat..”

“C. Does the project site fall within mapped rare species habitat (Priority or Estimated Habitat?) in the current Massachusetts Natural Heritage Atlas (attach relevant page)? Yes . The Project ROW crosses two areas of mapped habitat: PH 1516/EH 38 in the vicinity of the Sudbury Substation, and PH 687/EH 648, in the vicinity of Hop Brook and the large complex of conservation lands at the municipal borders of Sudbury, Marlborough, and Hudson.”

Eversource replied "To be determined" in section A. Are TBDs allowed in a decision as critical as this? In section B they answer "The company is continuing to coordinate with NEHSP to finalize plans...." Is their progress to date available, or is there any evidence that they have met and discussed? Finally in section C they acknowledge PH 1516/EH 38 and PH 687/EH 648 but I believe that PH 1305/EH 485 should also be considered as Blandings turtles, and threatened species in Massachusetts, are known to inhabit Sudbury.

- (22) From "Environmental Notification Form – CORRECTED June 9, 2017", page 14 under Rare Species Section II A
- "1. Have you consulted with the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP)? Yes if yes, have you received a determination as to whether the project will result in the "take" of a rare species? No."
- "2. Will the project "take" an endangered, threatened, and/or species of special concern in accordance with M.G.L. c.131A (see also 321 CMR 10.04. To be determined. The Company will continue to work with NHESP to minimize impacts to habitat for the listed species to the extent possible."

Eversource replied "No" in section 1. When will the determination be made, and should that be done prior to MEPA review? In section 2 they again answer "to be determined" with regards to NHESP. Again when will this be completed and should that be done prior to MEPA review?

- (23) From "Environmental Notification Form – CORRECTED June 9, 2017", page 15 under Rare Species Section II A
- "4. Has the site been surveyed for rare species in accordance with the Massachusetts Endangered Species Act? No."

Per <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/regulatory-review/mass-endangered-species-act-mesa/> The Massachusetts Endangered Species Act protects rare species and their habitats by prohibiting the "Take " of any plant or animal species listed as Endangered, Threatened, or Special Concern by the MA Division of Fisheries & Wildlife. "Take" is defined as, "in reference to animals to harass, harm, pursue, hunt, shoot, hound, kill, trap, capture, collect, process, disrupt the nesting, breeding, feeding or migratory activity or attempt to engage in any such conduct, or to assist such conduct, and in reference to plants, means to collect, pick, kill, transplant, cut or process or attempt to engage or to assist in any such conduct. Disruption of nesting, breeding, feeding or migratory activity may result from, but is not limited to, the modification, degradation or destruction of Habitat." Permits for "taking" rare species for scientific, educational, conservation, or management purposes can be granted by the Division of Fisheries & Wildlife.

Included in the Massachusetts List of Endangered, Threatened and Special Concern Species include those called out I PH 1516/EH 38 and PH 687/EH 648 and PH 1305/EH 485. Thus I believe a survey is warranted prior to a MEPA submittal.

- (24) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 16 under Wetlands, Waterways, and Tidelands Section, IIA  
“Will the project require a Variance from the Wetlands regulations? No.”

I ask that MEPA investigate this matter further as I believe variances would be covered under M.G.L. c.131A, section 3 Exceptions and section 5 Habitat alteration permits. Section 3 states “The director may permit the taking, possession, purchase, sale, transportation, exportation or shipment of any species appearing on the list of endangered or threatened species or species of special concern developed by the director pursuant to section four for scientific, conservation, management or educational purposes, or for or from propagation in captivity and may permit the taking of special concern species for the purposes of falconry pursuant to regulations promulgated by the director. The director may permit the removal, capture, or destruction of any species appearing on the list of endangered or threatened species or species of special concern developed by the director pursuant to section four to protect human health, when a public health hazard exists as certified by the department of public health.” Section 5 details out how and when alterations are allowed. I am not sure how Eversource can definitely answer No to this when they have so many “to be determined” answers in related sections and how section 3 and section 5 do not seem to have been addressed.

- (25) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 16 under Wetlands, Waterways, and Tidelands Section, III A

“A. Does the project site contain waterways or tidelands (including filled former tidelands) that are subject to the Waterways Act, M.G.L.c.91? {no answer given} if yes, is there a current Chapter 91 License or Permit affecting the project site? {no answer given} if yes, list the date and license or permit number and provide a copy of the historic map used to determine extent of filled tidelands: Potential navigable waters the Project will cross include: Fort Meadow Brook in Hudson and Hop Brook in Sudbury.”

I believe this to be an incorrect and incomplete answer and would ask MEPA to investigate further. In Sudbury Wash Brook and Dudley Brook, in addition to Hop Brook, and navigable waters and should trigger a Chapter 91 permit. The answer is incomplete as even though Hop Brook was identified they did not provide the date and permit number as well as the historic map as requested.

- (26) From “Environmental Notification Form – CORRECTED June 9, 2017”, page 16 under Wetlands, Waterways, and Tidelands Section, III B

“B. Does the project require a new or modified license or permit under M.G.L. c.91? {no answer given} if yes, how many acres of the project site subject to M.G.L. c.91 will be for non-water-dependent use? Current Change Total If yes, how many square feet of solid fill or pile-supported structures (in sf)? To be determined upon final design. It is the Company’s intention to stay within the original footprint for these crossings, which would not require a new or modified Chapter 91 license or permit.

As mentioned previously in my submittal it is very likely that Bridge #127 over Hop brook would need to be replaced, and multiple culverts along this path have also failed and/or collapsed. Please investigate this answer as I do not believe this to be correct.

I appreciate your attention to this matter. In my six minutes presenting during the June 12 scoping session I mentioned that being a normal citizen I found these discrepancies, omissions, and errors in about an hour. I would imagine that trained professionals might find more. I simply as that Eversource's answers be fact-checked. Our environment is too critical – and irreplaceable – to be risked, especially when there are available alternatives that would avoid these issues altogether.

Given the scale and severity of these impacts and unanswered questions, permitting for this project should be denied, but at the very least, an EIR should be required to address all of the above concerns. In addition, all items marked TBD in the ENF need to be presented with details.

Thank you,

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