

**COMMONWEALTH OF MASSACHUSETTS**  
**ENERGY FACILITIES SITING BOARD**

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MATTER OF NSTAR ELECTRIC COMPANY  
d/b/a EVERSOURCE ENERGY

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EFSB 17-02, DPU 17-82  
& DPU 17-83

BRIEF OF THE INTERVENER TOWN OF STOW<sup>1</sup>

The Intervener Town of Stow respectfully files this Brief in the above-captioned consolidated proceedings, pursuant to which NSTAR Electric Company d/b/a Eversource Energy ("Eversource" or "Company") seeks approval to construct, operate and maintain a 115-kilovolt electric transmission line between Eversource's Sudbury Substation in Sudbury and the Hudson Light & Power Department's Substation in Hudson. In the case docketed as DPU 17-82, Eversource seeks, pursuant to G.L. c. 40A, s. 3, exemptions from operation of the Stow Zoning Bylaw (and those of the other municipalities).

As discussed below, the Town of Stow supports Eversource's Preferred Alternative (also referred to as "the Project"), in which an approximately 9-mile transmission line would travel underground along an inactive railroad right-of-way owned by the MBTA through the municipalities of Sudbury, Marlborough, Hudson and Stow, and within public roadways in Hudson. With respect to Eversource's request for exemptions from the Stow Zoning Bylaw, the Town of Stow believes that the project may properly be exempted from application of the individual Bylaw Sections 3.10 and 3.8.1.3. The Town of Stow does not believe that, with

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<sup>1</sup> The Town's Petition for Intervention was allowed on June 26, 2017. See Ruling on Petitions to Intervene and for Limited Participant Status. With the permission of counsel for the Siting Board, the Town of Stow files this Brief at the Reply Brief stage, without having submitted a brief during the initial round of briefing.

respect to construction of the project in Stow, a comprehensive zoning exemption will be necessary under the Preferred Alternative.

I. The Town of Stow Supports Eversource's Preferred Alternative

Eversource's Preferred Alternative entails a 9.01-mile transmission line buried underground along an MBTA right-of-way through Sudbury, Marlborough, Hudson and Stow, and within Hudson public ways. Under the Preferred Alternative, the total distance along the MBTA right-of-way is 7.64 miles, .07 miles of which is through Stow. See Ex. EV-2 at 5-3. Eversource has noticed a variation of this alternative, which would travel the same route, but through overhead lines along the MBTA right-of-way, including through Stow. See *id.*<sup>2</sup> The Town of Stow strongly supports the Preferred Alternative, for several reasons.

First, as noted in a comment letter filed by Stow's Conservation Coordinator in the Project's MEPA proceedings, burial of the transmission line within the MBTA right-of-way offer the opportunity to advance the Mass Central Rail Trail, as planned by DCR. See Ex. EFSB-G-1(3) at 340-341 (letter of Kathy Sferra on behalf of Stow Conservation Commission dated June 17, 2017) at p. 1 Although only a small portion of the Project and the Rail Trail will be located within the Town of Stow, significant opportunities to connect with, and benefit from this regional recreational resource will be created for Town residents and visitors. See *id.* Such an improved opportunity for walking and bicycling meets goals and needs identified in Stow's 2016 Open Space and Recreation Plan; further, the proposed section of the rail trail will bring area towns a step closer to linking with the Assabet River Rail Trail now under construction in Maynard and Acton.

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<sup>2</sup> A third alternative, the Noticed Alternative Route, would travel underground through public ways for a distance of 10.30 miles, including .75 miles in Stow. The Town of Stow does not take a position on the merits of the Noticed Alternative Route.

Second, an underground line will reduce visual and environmental impacts of the Project by reducing the amount of clearing required, as compared to overhead lines, and will eliminate the need for tall transmission line towers. See id. Further, as an underground line will entail a narrower width of clearing than an overhead line would require, the underground line will allow for more shading of the corridor within the right-of-way. Such shading of the corridor is more consistent with recreational use. See id. at p. 2. In sum, the Town of Stow views the Preferred Alternative as aligned with Stow's goals for expanded recreational through the Mass Central Rail Trail, and the Town's concern for minimization of visual impacts along the right-of-way corridor.

## II. Individual Exemptions from Stow Zoning Bylaw Sections may be Properly Allowed

Eversource seeks individual zoning exemptions from two provisions of the Stow Zoning Bylaw. The first is Section 3.10 of the Bylaw, Table of Principal Uses, pursuant to which, in the Residential district in which the transmission line would be located, public service corporation use is "[a]llowed in accordance with the provisions of M.G.L., Ch. 40A, Section 3." Eversource argues that an exemption from this Bylaw is *per se* required, as use variances are not permitted under the Zoning Bylaw; that is, an exemption by the Department is the *only* means of obtaining relief. See Eversource Brief at p. 150. The Town of Stow agrees that use variances are unavailable under the Zoning Bylaw, and that Section 3.10 provides for relief to public service corporations from use restrictions under G.L. c. 40A, s. 3. As Section 3.10 of the Bylaw in fact *provides for* relief under G.L. c. 40A, s. 3, it is not clear that the Eversource requires an exemption from this Bylaw. In any event, the Town of Stow does not disagree with that the three-part test for an exemption is met with respect to this Bylaw. See Petition of NSTAR Electric Company d/b/a Eversource Energy pursuant to G.L. c. 40A s. 3 for exemptions from the Bylaws of the Town of Hopkinton, 2015 WL 7574346 (Mass.D.P.U.), discussion at pp. 19-24.

The second individual exemption sought is from Section 3.8.1.3 of the Zoning Bylaw, which regulates and limits noise. Eversource argues that construction activities may exceed the Bylaw limit of 3 dBA above ambient; it seeks an exemption from this Bylaw section in place of a variance "because of the legal uncertainty in obtaining variances, and the potential for adverse interpretations, delay, burden and undue expense associated with the permitting process and appeals therefrom." See Eversource Brief at pp. at pp. 150-151. While there are no grounds for the Company to conclude that it would be subject to "adverse interpretations, delay, burden and/or undue expense" in connection with any variance proceedings in the Town of Stow, the Town again does not disagree with that the three-part test for an exemption is met with respect to this Bylaw. See Petition of NSTAR, supra. at p. 19-24.

Finally, the Company seeks a "comprehensive exemption" from Stow's Zoning Bylaw and those of the other affected municipalities. See Eversource Brief at pp. 151-153. The Company argues that such comprehensive exemption is needed to protect the Project from any *future* zoning enactment that "has the potential to jeopardize the Project." Id. at p. 152. The Town of Stow believes that under the Preferred Alternative, it is highly unlikely that any future zoning enactment would have such potential, and accordingly that such comprehensive exemption is unnecessary.

### Conclusion

The Town of Stow supports the Preferred Alternative as aligned with the Town's goals for increased recreational opportunities, through construction of the Project in conjunction with the Mass Central Rail Trail through Stow and neighboring communities.

Respectfully submitted,

The Town of Stow,

by its attorneys, acting as Town Counsel

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 980 CMR 1.03(4), I have on this day served a true copy of the above Brief of the Intervener Town of Stow, electronically, upon all parties of record in these proceedings.

HUGGINS AND WITTEN, LLC

*/s/ Barbara H. Carboni*

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