

September 7, 2018

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BY ELECTRONIC MAIL (page.czepiga@state.ma.us)

Secretary of Energy and Environmental Affairs  
Executive Office of Energy and Environmental Affairs (EEA)  
Attn: MEPA Office  
Page Czepiga, EEA No. 15703  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: Sudbury-Hudson Transmission Reliability Project  
EEA# 15703  
(Town of Sudbury)

Dear Ms. Czepiga:

This firm serves as Town Counsel to the Town of Sudbury (“Town” or “Sudbury”). Please accept these comments on behalf of the Town for consideration by Secretary Beaton (“Secretary”) in response to the Final Environmental Impact Report (“FEIR”) submitted by Eversource Energy (“Proponent” or “Eversource”) for the above-referenced project (“Project”).

The Secretary’s Certificate on the Proponent’s Draft Environmental Impact report (“DEIR Certificate”) required that additional information and analysis be provided in the FEIR. In particular, the FEIR was to include additional evaluation of impacts to rare species and wetland resource areas and present a comprehensive mitigation proposal. The DEIR Certificate also concluded that the DEIR did not include discussion of construction methodologies and site design measures that have been incorporated into the Project to further avoid and minimize Damage to the Environment nor did it demonstrate that the Project could meet the performance standards for Bordering Land Subject to Flooding established in the Massachusetts Wetland Regulations at 310 CMR 10.57(4), particularly whether or not compensatory storage volume for placement of fill in Bordering Land Subject to Flooding can be provided incrementally equal to the volume of flood water at each elevation.

At this time, it is the Town’s position that the FEIR does not adequately address the issues required under the DEIR Certificate. Substantive issues remain to be addressed and Eversource has still inadequately described the Project and the effects of the Project on the environment. A Supplemental FEIR pursuant to 310 CMR 11.08(8)(c)(2) should be required.

As the Secretary may be aware, the Town is an Intervener in the MA Energy Facilities Siting Board (“EFSB”) proceedings currently in progress. The Town and its consulting firm, Nover-Armstrong Associates, Inc. had an opportunity to review the FEIR for preparation of comments

presented herein. Eversource's FEIR and its Petition before the EFSB including subsequent Responses to Information Requests from the EFSB and Interveners, has not begun to justly identify likely environmental impacts from the Project nor did it allow the Town to confirm testified environmental impact qualifications and quantifications. The Town is confident that the Secretary and this MEPA process will ultimately require a true accounting of environmental impacts from the Project.

### General Comment

Eversource presents 75% design level plans ("FEIR plans") showing a definitive design concept including temporary and permanent bridge construction over the two Hop Brook river crossings; final proposed limit of work/clearing; revised resource area boundary locations confirmed by the Sudbury Conservation Commission in the Order of Resource Area Delineation issued on 08/27/2018; limited stormwater management features; and slope stabilization changes along Hop Brook's banks to reportedly reduce direct alteration to Bank to Cold Water Fishery Resource. The FEIR provides a *Summary of Changes to Potential Impacts to Wetland Resource Areas Since DEIR Filing* showing a reduction in impacts to Bordering Vegetated Wetlands ("BVW") and Bordering Land Subject to Flooding ("BLSF") along with increases in impacts to Inland Bank, Isolated Land Subject to Flooding ("ILSF"), Riverfront Area ("RA"), Land Under Water ("LUW") and Isolated Vegetated Wetlands ("IVW"). According to the Summary, total disturbance in the 100-foot Buffer Zone has been slightly reduced.

The DEIR Certificate required Eversource to provide and update the structural analysis and provide updated plans for each of the proposed bridge crossings and to quantify potential impacts to wetland resource areas and Cold Water Fishery Resource ("CFR") at these locations. It is the Town's belief that the impacts to BLSF, Bank, LUW associated with Hop Brook, a CFR, are substantially under-estimated. The construction-related impacts to resource and sensitive areas associated with site preparation (fill/grading beyond that needed for the constructed Project) for the crane mats needed to support heavy equipment to lift the temporary steel bridge spans at the beginning of the construction project and removal at the end of the construction project at the two Hop Brook bridges are potentially significantly understated. Additionally, placement of "temporary" fill at Hop Brook Bridge #127 (East) is in FEMA Floodway. Cubic yards of fill in FEMA Floodway at incremental elevations is not presented in the FEIR nor an analysis of potential downstream or upstream flooding impacts.

According to the FEIR, Eversource and the Massachusetts Department of Conservation and Recreation ("DCR") will file joint applications for some of the environmental permits required for each respective project so that the state agencies may have a chance to consider the sum of the two actions along the common alignment. If this is Eversource's intent then this MEPA process should have combined both projects to evaluate the overall cumulative environmental impacts. The Town

believes this joint permit application is a strategic effort by Eversource to benefit from less stringent MassDEP Stormwater Management Standards afforded to bike path projects.

FEIR and FEIR Plan Deficiencies, and Requested Requirements for a Supplemental FEIR

The Town requests the following requirements in a Supplemental FEIR (set forth below in bold and italics following the specific deficiencies at issue):

- The FEIR plans are deficient in describing the necessary grading required to place the crane mats on both the east and west sides of the Hop Brook Bridge crossings. As noted on the FEIR plans, the maximum crane pad dimensions at Hop Brook bridge #127 (East) of 40'x40' are allowed at any given time. A longer crane mat footprint is shown on the FEIR plans to allow the crane mat location to be shifted during construction of the steel sheeting and bridge. Both temporary and a small amount of permanent impacts to wetland resource areas associated with Hop Brook Bridge #127 (East), a CFR are presented including Bank, LUW, BVW and BLSF. Not identified on the FEIR plans and document is the placement of fill in FEMA Floodplain at the Hop Brook Bridge #127.

***The Supplemental FEIR and plans should provide sufficient detail to describe how the crane mats and required grading to create a level area of sufficient size (40' x 40') at Hop Brook Bridge #127 (East). If placement of steel sheeting beyond Bank and in LUW to support fill and limit further impact to LUW/CFR, then that should be presented and shown in detail. The Supplemental FEIR and plans should also provide sufficient detail to describe how the fill and potential steel sheeting will be removed from Hop Brook without permanently damaging the natural river channel substrate and its Bank and provide Bank and LUW restoration details to support the "temporary" impact qualification.***

- The FEIR plans depict an 85'x 90' and 95'x 40' crane mat areas at the Hop Brook Bridge #128 (West). It is likely that the placement of crane mats will require a level area over the existing steep slopes beyond the existing MBTA level platform. No slope stabilization to prevent impacts to Bank and LUW associated with Hop Brook, a CFR is presented. Based on the FEIR plans, it appears that there may be substantial impact to Bank on the east side of Bridge #128 that has not been quantified.

***The Supplemental FEIR and plans should provide sufficient detail to describe how the crane mats and required grading to create a level area of sufficient size at Hop Brook Bridge #128 (West) will be constructed without impacting the adjacent sensitive wetland resource areas, including CFR.***

- The FEIR is not clear if the temporary Bank, LUW and BLSF associated with the fill and grading for the crane mats will occur twice – once for the lifting and placement of the

temporary steel decks to support construction equipment loads (HS-20 rating) and again when the temporary steel decks are removed and replaced with a permanent wood deck (HS-10 rating) at the end of Project construction.

***The Supplemental FEIR and plans should provide a more detailed sequencing and Schedule Overview for Bridges #127 and #128 with respect to the fill/grading required for the crane mats and if fill in LUW and BLSF will remain in place until the temporary steel decks are removed and the permanent wood decks are placed at the end of the Project construction, including potential construction of the Massachusetts Central Rail Trail improvements.***

- The FEIR is deficient in describing that grading/fill associated with the placement of crane mats at Bridge #127 (East) will be in mapped FEMA Floodway.

***The Supplemental FEIR and plans should evaluate the feasibility of placement of temporary fill in FEMA Floodway associated with the grading/filling to create a level area for crane mats at the Hop Brook Bridge #127 (East) crossing. It should also detail how long the fill will remain in place. If a detailed hydraulics study is required to document that the fill in FEMA Floodway will not cause a Rise in FEMA's base flood elevation, then the FEIR should at a minimum, state that one will be performed.***

- The FEIR document and plans are deficient in demonstrating that placement of fill in BLSF will be compensated for pursuant to the performance standards found in the Massachusetts Wetland Regulations at 310 CMR 10.57(4). FEIR Table 5-2 *Project Impacts to Bordering Land Subject to Flooding* or the FEIR plan views and cross sections do not appear to quantify temporary fill associated with the crane mats at Hop Brook Bridge #127 (East).

***The Supplemental FEIR should demonstrate the Project's ability to fully comply with the BLSF performance standards outlined in 310 CMR 10.57(4) as required by the DEIR Certificate.***

- The FEIR presents a Project construction schedule that will adhere to time-of-year restrictions related to state-listed species, non-listed species, CFR, and vernal pools. No in-stream work in Hop Brook is allowed from October 1 to June 30. In-stream work is defined as work in LUW.

***The Supplemental FEIR and plans should evaluate the scheduling feasibility of the temporary fill placed for the construction of the crane mat work area associated with the placement and removal of the temporary steel bridge decking at the end of the construction project. Fill should be removed as soon as feasible as it is in FEMA Floodway and CFR which is an Outstanding Resource Water and Critical Area.***

- The FEIR does not provide sufficient information to describe the work and the environmental impact associated with construction of the Project's stormwater management best



management practices. The FEIR states that Eversource and DCR will file joint applications for some of the environmental permits required for their projects. According to the Chapter 1 of the Massachusetts Stormwater Handbook, the Stormwater Standards (“Standards”) shall only apply to the maximum extent practicable. According to the Massachusetts Wetland Regulations, the Eversource Project must fully comply with the Standards. The Wetland Regulations at 310 CMR 10.53(3) state that notwithstanding the provisions of 310 CMR 10.54 through 10.58 and 10.60, an Order of Conditions may be issued permitting Limited Projects. This provision does not relieve Eversource’s Project from fully complying with 310 CMR 10.05(6)(k), the stormwater provisions. As presented in the FEIR and FEIR plans, the Project currently does not fully comply with the Standards.

***The Supplemental FEIR and plans should demonstrate that the Project can fully comply with the Standards and quantify the total environmental impact from this compliance. As indicated in the FEIR, full compliance will substantially increase total impact to wetland and sensitive resource areas.***

- Although specifically required by the DEIR Certificate, the FEIR has not presented an adequate evaluation of impacts to rare species or comprehensive mitigation proposal. There will be 2.1 acres of permanent loss of State-listed Species Habitat (PH 1040/EH 1440) with a total disturbance of 4.0 acres. The DEIR Certificate highlights that the Project requires a direct filing with NHESP for compliance with the Massachusetts Endangered Species Act (MESA, MGL c.131A) and its implementing regulations (321 CMR 10.00) and indicates the MESA Project Review Checklist will be submitted to NHESP in April 2018. According to the FEIR, the project filing of the NHESP Project Review Checklist and Conservation Management Permit under MESA was scheduled for July 2018. It has yet to be determined by NHESP if the Project will result in a “take”.

***The Supplemental FEIR should include the results of the “Appendix B” Detailed Wildlife Habitat Evaluations in accordance with MassDEP’s Wildlife Habitat Protection Guidance for Inland Wetlands and identify measures to avoid, minimize, and mitigate impacts to identified key habitat features. It should also include whether the Project will result in a “take”, thereby requiring a MESA Conservation Management Permit. Until this is complete, mitigation proposals are not comprehensive and effective.***

- The FEIR does not provide sufficient information to describe the work and the environmental impact associated with construction of the Project or whether it can comply with applicable environmental permitting performance standards. It continues to appear that, on balance, from an environmental perspective, both the Noticed Alternative and the NEP Alternative may still be superior to the Project.

***The Supplemental FEIR should quantify all temporary and permanent impacts that will result from the Project and state whether the Project will result in a “take” of rare and endangered species. Evaluation of Alternatives requires complete and accurate project-related impacts.***

- The Project’s limit of work shown on the FEIR Plans is within 0 feet to 18 feet of 16 vernal pools. It has been the Town’s opinion that such work will cause significant adverse impacts – both temporary and permanent to the VP breeding habitat. The FEIR addresses this by saying no area Subject to Protection Under the WPA associated with these vernal pools will be altered. Eversource imposed a time of year (“TOY”) restriction (during breeding season) where no construction activities will occur within 450 feet of these vernal pools (other than construction vehicle access over the ROW to construction areas).

***The Supplemental FEIR should address the practicality of the 450 foot TOY during the VP breeding season (March 1 through May 14) with respect to the projected 2-year construction completion schedule especially when coupled with the remaining TOY restrictions proposed including no construction in areas mapped for eastern whip-poor-will (May 1 through July 31); no work within 100 feet of black racer hibernaculum (November 1 through March 31) and no active in-stream work in Hop Brook (October 1 through June 30). It should be noted that the Wildlife Habitat Evaluation has not been presented and therefore, there will likely be far more wildlife habitat mitigation required including potentially additional TOY construction restrictions. The Supplemental FEIR should also address expected mortality of vernal pool breeding species migrating to the pools from construction equipment and machinery and worker vehicles travelling along the ROW during the VP breeding season.***

- The Project involves construction of an underground utility line and will result in potentially contaminated soil management activities well beyond that normally required for rail trail construction. As a result, Project compliance with DCR’s Standards for Rail Trails, may not be adequate to protect public health, safety and the environment. The evaluation of subsurface soil and groundwater in Sudbury has not been completed and therefore, the extent and cost of contaminated media handling and disposal is not known. It is understood that the evaluation of subsurface soil and groundwater is nearing completion in the Town of Hudson.

***The Supplemental FEIR at a minimum should present the findings from subsurface investigation conducted in Hudson and consequential construction and cost implications. It is likely that these findings will be similar to what will be found in Sudbury. Construction activities in contaminated areas have potentially significant effects on adjacent wetland resource areas and wildlife habitat including CFR as well as protected public lands used for passive recreation. Mitigation and public protection costs should be addressed as it is needed for the Project Alternatives Analysis.***

Project Description and Permitting

The DEIR Certificate provided that the FEIR should provide a brief description and analysis of the applicable statutory and regulatory standards and requirements, and a description of how the project will meet those standards.

The FEIR document and FEIR plans are deficient in describing the project change associated with the addition of the crane mats at the bridge locations. The necessary grading and BLSF fill required to prepare the ground beneath the crane mat areas on both the east and west sides of each of the Hop Brook Bridge crossings is not described.

***The Supplemental FEIR and plans should provide sufficient detail to describe the required grading and construction methodologies to create a level area of sufficient size for the crane mats at each of the Hop Brook Bridges. If placement of steel sheeting beyond Bank and in LUW is required to limit further impact to LUW / CFR, then that should be provided and presented in detail. Resource restoration details for Bank and LUW should be included. The Supplemental FEIR and updated plans should evaluate the feasibility of placement of temporary fill in FEMA Floodway associated with the grading/filling to create a level area for crane mats at the Hop Brook Bridge #127 (East) crossing. The documents should also detail how long the fill will remain in place.***

The FEIR is deficient in describing the grading / fill associated with the placement of crane mats at Bridge #127 (East) will be in FEMA Floodway and whether that fill will cause a Rise in the FEMA base flood elevation.

***If a detailed hydraulics study is required to document that the fill in FEMA Floodway will not cause a Rise in FEMA's base flood elevation, then the Supplemental FEIR should at a minimum, state that one will be performed.***

The FEIR does not demonstrate the Project's ability to fully comply with the BLSF performance standards outlined in the Massachusetts Wetland Regulations at 310 CMR 10.57(4) as required by the DEIR Certificate associated with the temporary fill associated with the crane mats.

The FEIR is not clear if the temporary Bank, LUW and BLSF associated with the fill and grading for the crane mats will occur twice – once for the lifting and placement of the temporary steel decks to support construction equipment loads (HS-20 rating) and again when the temporary steel decks are removed and replaced with a permanent wood deck (HS-10 rating) at the end of Project Construction.

Alternative Analysis

***The Supplemental FEIR should include a comparison of the environmental impacts associated with the No-Build, Noticed Variation Alternative, Routing Alternative, and the Preferred Alternative and a summary table of anticipated wetlands, rare species, land alternation, public water supply protection areas, cold water fisheries, traffic, and construction period impacts including those anticipated for the construction activities at the crane mat areas on each side of the Hop Brook bridges. The Supplemental FEIR should provide the NHESP finding whether the Project will result in a “take” of rare and endangered species. This accurate Project impact data is critical to the comparison of environmental impacts associated with each of the Project Alternatives.***

In their DEIR comment letter, the Town presented a detailed argument that it appears, on balance, from an environmental perspective, the Noticed Alternative or NEP Alternative may be superior to the Project. The fact that impacts to several wetland resource areas have increased as a result of a more defined Project design and updated wetland resource area boundaries in addition to the undocumented environmental impacts associated with the placement and removal of fill in BLSF and FEMA Floodway further supports the Town’s position that the NEP Alternative and Noticed Alternative will result in considerably less Environmental Damage than the Project.

Land Alteration

The DEIR Certificate requires that the FEIR should include a copy of the MOU that is currently being developed with DCR. The MOU should clarify the parties responsible for maintenance activities. It should specify the method of vegetation maintenance and should address how the ROW will be maintained over time.

The draft Memorandum of Understanding between Eversource and DCR with respect to paragraph 6.0 states that once constructed, Eversource will not be responsible for maintenance of the gravel base, bridges, box culvert, surface, shoulders, road crossings, landscaping, bridge decking, etc. If the MCRT is not constructed, the FEIR is unclear as to Eversource’s legal and permit conditions responsibilities.

***The Supplemental FEIR should provide assurances on how the maintenance of Stormwater BMPs, culverts, erodible surfaces created, and success of the resource area mitigation areas will achieved and who the responsible party will be.***



### Wetlands/Stormwater

The DEIR Certificate requires that the FEIR include detailed site plans and a narrative that describes the work within the wetland areas. The FEIR should quantify the potential impacts to wetland resource areas and CFR in the locations of the bridges.

The FEIR is deficient in describing the effects of the work on the wetland resource areas and CFR in the two Hop Brook Bridge locations specifically with respect to the crane mats. No BLSF fill is quantified; no methods for constructing the level crane mats over Bank and in LUW/FEMA Floodway is provided. No resource area restoration details for Bank and LUW is provided. Further, the FEIR presents that impacts to Bank and LUW will be temporary but no detail on how the fill/grading below Hop Brook's Bank will be placed and removed without causing permanent Damage to the Environment is provided. The document also does not state the length of time the fill will be in place and if this fill activity will need to be conducted twice – once for placement of the temporary steel bridge decking and again for its removal at the end of the construction project.

***The FEIR should quantify the area and volume (cubic feet) of impacts to BLSF, identify the location and volume of proposed compensatory flood storage, and include a narrative that demonstrates the project's compliance with the Performance Standards for BLSF.***

As stated earlier, the FEIR is deficient in describing the grading/fill associated with the placement of crane mats at Bridge #127 (East) will be in BLSF and FEMA Floodway and whether that fill will cause a Rise in the FEMA base flood elevation. It also does not demonstrate the Project's ability to fully comply with the BLSF performance standards outlined in the Massachusetts Wetland Regulations at 310 CMR 10.57(4)) as required by the DEIR Certificate.

***The FEIR should evaluate impacts from stormwater runoff during construction and post-construction and demonstrate that post-construction drainage system will be designed in compliance with MassDEP Stormwater Management Standards.***

As indicated in the FEIR, full compliance is not provided but if provided, it would result in a significant increase in total impact to wetland and sensitive resource areas.

***The Supplemental FEIR should demonstrate that it is feasible for the Project to fully comply with the Stormwater Standards as required by the Wetland Regulations, 310 CMR 10.00 and if feasible, qualify and quantify the total environmental impact from such compliance.***

### Rare Species

The DEIR indicated that the Proponent anticipates submitting a MESA Project Review Checklist to NHESP in April 2018. The DEIR Certificate required that the Proponent consult with

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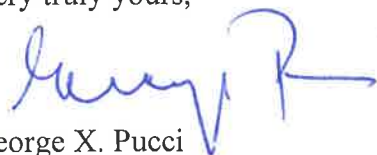
the MEPA Office and NHESP regarding the status of the rare species impact assessment and the ability to incorporate sufficient information into the FEIR.

The DEIR Certificate highlights that the Project requires a direct filing with NHESP for compliance with the Massachusetts Endangered Species Act (MESA, MGL c.131A) and its implementing regulations (321 CMR 10.00) and indicates the MESA Project Review Checklist will be submitted to NHESP in April 2018. According to the FEIR, the project filing of the NHESP Project Review Checklist and Conservation Management Permit under MESA was scheduled for July 2018. It has yet to be determined by NHESP if the Project will result in a "take". As noted above, until the results of this MESA review, Project permitting feasibility cannot be confirmed and species and habitat location specific protection and mitigation measures cannot be developed.

Conclusion

The Town appreciates your consideration and respectfully requests that the Secretary require a Supplemental FEIR addressing the foregoing issues and requirements.

Very truly yours,



George X. Pucci

GXP/man

cc: Town Manager (by electronic mail)  
Jeffery M. Bernstein, Esq. (by electronic mail)  
Catherine J. Keuthen, Esq. (by electronic mail)  
Ms. Vivian Kimball, VHB, Watertown (by electronic mail)