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December 10, 2019

VIA ELECTRONIC MAIL

Ms. Joan Evans, Presiding Officer
Energy Facilities Siting Board
One South Station, 5th Floor
Boston, MA 02110

Re: *NSTAR Electric d/b/a Eversource Energy*
EFSB 17-02/DPU 17-82/17-83

Dear Ms. Evans:

Protect Sudbury, Inc. (“Protect Sudbury”), an intervenor in the above captioned matter, hereby submits written comments on the Tentative Decision issued on December 2, 2019 (“Tentative Decision”) in accordance with the Presiding Officer’s directive of December 2, 2019 with respect to such comments. The Tentative Decision approved, with various conditions, NSTAR Electric Company d/b/a Eversource Energy’s (“Eversource” or the “Company”) proposed 9 mile, 115 kV underground electric transmission in the MBTA right of way and related substation upgrades (“Project” or “MBTA Underground Route”).

Protect Sudbury recognizes that the Energy Facilities Siting Board (“Siting Board”) conducted an extensive proceeding to fulfill its statutory mandate under G.L. c. 164. Protect Sudbury does not support the Tentative Decision in that the Siting Board determined that the Project was needed and the superior option as compared to Transmission Alternative 2 (the National Grid alternative) or to the All-Street Route. See Tentative Decision, generally. Nor does Protect Sudbury agree that the Project, as compared to other viable alternatives, represents the best option to provide reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

As set forth below, Protect Sudbury submits that in material respects the Tentative Decision findings are not supported by the record, substantial evidence and are inconsistent with precedent. The four corners of the decision itself demonstrates that the MBTA Underground Route was a poor choice as compared to both the All-Street Route and Transmission Alternative 2. In particular, Protect Sudbury offers the following comments with respect to the Siting Board’s findings in its Tentative Decision:¹

(i) Overall consideration of due process, concluding that the Siting Board provided due process as required by the Massachusetts Administrative Procedures Act (“MAPA”), G G.L. c. 30A, §§ 10, 11. Tentative Decision at 13. Protect Sudbury objects to the Siting Board’s failure to account for the complexity, novel issues, staffing constraints, and developments in related cases as part of the initial schedule in this case. *See* Tentative Decision at 11, fn 11. These were identifiable concerns at the outset and Siting Board’s failure to take them into account in establishing a procedural schedule to allow full consideration of the complex issues as requested by the Town and Protect Sudbury was unreasonable and violated due process. Notwithstanding the Siting Board’s recognition that “[t]he hallmarks of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner” (citing *Daniels v. Board of Registration in Medicine*, 418 Mass. 380, 383 (1994) (citations

¹ This list is not intended to reference every objection to the Tentative Decision as issued and Protect Sudbury does not waive any rights with respect to any other issues.

omitted)(Tentative Decision at 13), at all relevant times, this was a “rocket docket” with unreasonable deadlines designed to compress a complex siting case into an admittedly artificially constrained time frame.

(ii) Overall consideration of Transmission Alternative 2 as an alternative approach to the Project, concluding that enhanced reliability and likely lower cost of the Project compared to Transmission Alternative 2 outweigh the clear environmental advantages of the National Grid alternative. Tentative Decision at 48, 49. This conclusion undervalues the significant environmental advantages of construction of this alternative on an existing disturbed transmission right-of-way and ignores record evidence that Transmission Alternative 2 would in fact meet reliability requirements as a feasible and practical design alternative as determined by ISO-NE as recently as 2015. See PS Init. Br. at 9-10, citing Exhs. SUD-MJN/RMG-1 at 53-54; Exh. Protect-RC/RH/ML/MO-2 at 21-22; Tr. 8 at 1250-1251; PS Init. Br. at 15, 23; 46-47; PS Rep. Br. at 14-15. Moreover, with respect to cost, the Tentative Decision ignores that Eversource failed to provide sufficient information to allow the Siting Board to properly compare the Project to the Transmission Alternative 2. See Tentative Decision at 38-39, citing record evidence of deficiencies in the estimates presented with respect to Transmission Alternative 2.²

Accordingly, Protect Sudbury submits that the record in this proceeding is missing a detailed cost and environmental assessment of Transmission Alternative 2 and this lack of significant and important documentation undermines the Company’s claims regarding the Transmission Alternative 2 and the Siting Board’s conclusions related thereto. Protect Sudbury reiterates its briefing position that Transmission Alternative 2 is a better option than the Project. See PS Init. Br at 15, 23; 46-47; PS Rep. Br. at 14-15.

(iii) Overall consideration that the Project was subject to appropriate ISO-NE review, concluding that the Project was part of a “rigorous stakeholder process” and evaluated in the 2015 Needs Assessment, including review by the ISO-NE Planning Advisory Committee and ISO-NE’s energy efficiency working group. Tentative Decision at 16, 17, 26. In fact, the MBTA Underground Route was not reviewed by ISO-NE and was not selected as a “preferred solution” in the 2015 Needs Assessment or in any other assessment. See PS Init. Br. at 12; PS Rep. Br. at 2-4; Tr. 8 at 1209. While the Siting Board cites to the importance of the ISO-NE process with a clear understanding of the significant role of ISO-NE in determining what transmission alternatives are selected to meet a determined need (Tentative Decision at 16-21) at least cost, it completely ignores that the MBTA Underground Route was not evaluated as part of any solution. The Tentative Decision should be clear that the Project was not submitted for or subject to any ISO-NE review.³ PS Int. Br, at 24; Tr. 8, 1229-1230.

The record indicates that Eversource will, should the Siting Board approve the Project as set forth in the Tentative Decision, submit the Project for ISO-NE review. See Tr. 8 at 1271. The submittal must comply with Planning Procedure No. 4 (“PP-4”) and the PP-4 process includes, as set forth in PP-4 Section 1.6.1.3(i), the submittal of any feasible and practical alternatives to the Project. See PS Init. Br. at 23-24. In the record of this case, Eversource agreed that the All-Street Route is a feasible and practical alternative. Id., citing Tr. 8 at 1248-51.

² As noted in the Tentative Decision, the record evidence establishes that the cost estimate for Transmission Alternative 2 “was developed from a desktop review of line characteristics and historical costs from other projects, that no property surveys, evaluations of soil conditions, or environmental studies were conducted; and that details such as crew sizes and specific construction equipment were not presented.” Tentative Decision at 38, fn 51. There is no specific explanation detailing the reasons why the current estimate of cost of Transmission Alternative 2 deviated so much (almost doubled) from the ISO-NE’s estimate of \$60 million in 2015 based upon a complete PP-4 cost template review. Tr. 1193.

³ The Tentative Decision incorrectly states that Protect Sudbury argues, citing East Eagle, that the *Siting Board requires* any transmission project to have been reviewed and evaluated by ISO-NE prior to filing a petition with Board. See FN 54 at 41. Protect Sudbury did not state that that the Siting Board has any requirement for ISO-NE review but notes that the Siting Board is “familiar with the ISO-NE transmission line process” and may have “assumed” that the Project would be reviewed and evaluated by ISO-NE. PS Brief at 11, 20-21; see also Rep. Br. at 2-4. Protect Sudbury clearly states that *Eversource* has the obligation to have the Project vetted by ISO-NE under ISO-NE rules and it failed to undertake that review for this Project. Id.

Accordingly, as an additional condition in this case, the Siting Board should require in the Final Decision that Eversource submit the Project to ISO-NE for review and that filing and ISO-NE determination be subject to review by the Siting Board. Protect Sudbury requests that the Tentative Decision be amended to include the following condition:

“The Siting Board directs the Company to submit to ISO-NE an application for Project review, as soon as practical, such application to include any feasible and practical alternatives to the Project as required by PP-4. The Company’s submittal shall include a request that ISO-NE evaluate, as practical and feasible alternatives, the All-Street Route, and compare the Project with a National Grid alternative. The Company shall not commence construction until such time as the ISO-NE determination has been completed, including a review of the Project, the All-Street Route and a National Grid alternative, and its conclusions are submitted to the Board for its review.”⁴

(iv) Overall consideration of environmental impacts, concluding that that the environmental impacts of the MBTA Underground Route are comparable with those of the All-Street Route. Tentative Decision at 163. The record does not support equivalency between the MBTA Underground Route and the All-Street Route. See PS. Br. at 37-49; Sudbury Br. 56-64. In reaching its conclusion, the Tentative Decision places undue reliance on mitigation and undervalues known impacts, particularly impacts from the Project on water and wetland areas, public water supplies, cold water fisheries and stormwater management as referenced in the record. See Tentative Decision at 116-121. Similarly, the Siting Board discounts significant impacts associated with hazardous waste and incorrectly determined that the “MBTA Underground Route and the All-Street Route are comparable with respect to hazardous waste impacts.” Tentative Decision at 149. The Tentative Decision fails to adequately consider the extensive risks and costs associated with hazardous wastes on the MBTA Underground Route⁵ and avoids any meaningful consideration (beyond a limited discussion of the small differential in MCP sites) or comparison of the hazardous waste on the All-Street Route vs. MBTA Underground Route. Tentative Decision at 149-150. In short, the Siting Board’s analysis in the Tentative Decision dismisses known impacts, particularly those associated with water and wetland areas, public water supplies, cold water fisheries and stormwater management and hazardous waste associated the MBTA Underground Route and instead relies upon mitigation as justification for its analysis of route options.

Significantly as well, the overall summary ranking overstates the environmental impacts of the All-Street Route and understates the environmental impacts of the MBTA Underground Route, particularly with respect to wetland and hazardous waste as noted above. See Tentative Decision at 163. A more appropriate determination regarding the relative impacts of the three routes would warrant a change in the impacts associated with Water and Wetlands and Hazardous Waste with respect to the MBTA Underground Route from 2 to 3 in both cases. These changes, supported by the record as set forth above, would more accurately show that the MBTA Underground Route has more significant environmental impacts than the All-Street Route.

(v) Overall consideration of costs, concluding that the MBTA Overhead Route is preferable to the MBTA Underground Route with respect to cost and that both the MBTA Overhead Route and MBTA Underground Route are preferable to the All-Street Route. Tentative Decision at 177. For the reasons detailed in Town of Sudbury and Protect Sudbury’s briefs, in reaching its conclusions, the Tentative Decision ignores, among other things, overlapping estimates, deficiencies in the Company’s cost methodology, the uncertainties around early stage estimates, the cost and risks of hazardous materials in the MBTA Underground Route and the associated cost of hazardous material management and disposal. PS Brief at 11-12, 26-37; Sudbury Brief at 73-82. Moreover, the Tentative Decision approves the accounting fiction that annual lease payments, in the significant amount of

⁴ Eversource agreed to submit restart the ISO review process and submit cost estimates for the Project and the NEP Alternative. Tr. at 1271. The All-Street Route should be included in this submittal.

⁵ Protect Sudbury and the Town of Sudbury provided detailed information in the record regarding the inherent contamination risks associated with construction of the MBTA Underground Route. PS Init. Brief at 33-34; Sudbury Brief at 70.

\$9,358,077 should not be considered in the cost of the Project. Tentative Decision at 164. Even assuming, *arguendo*, the accuracy of the cost estimates and related methodology (which Protect Sudbury does not concede), the difference between the MBTA Underground Route and the All-Street Route is approximately \$9 million dollars (\$105.2 million vs. \$114.3 million). Notwithstanding the Tentative Decision conclusion to the contrary, the relatively small difference between these choices, particularly given the inherent unreliability of the estimates, does not justify on this record approval of the MBTA Underground Route.

Nor is this choice justified on a cost basis as a result of any review by ISO-NE. As noted in (iii) above and in Protect Sudbury's briefs, ISO-NE has not reviewed and approved the Project as part of its ISO-NE PP-4 review process and there is no confirmation that the MBTA Underground Route is consistent with ISO-NE's planning process or justified on any basis, including cost, as a solution to need as part of the ISO-NE's 2015 Needs Assessment. PS Initial Brief, at 10-26; Rep. Brief, 2-4. Accordingly, as noted, the Siting Board should require, as set forth above in paragraph (iii) and as a specific condition, that the Company submit the Project to a formal ISO-NE review to allow for stakeholder participation and confirmation that it is consistent with current ISO-NE planning procedures.

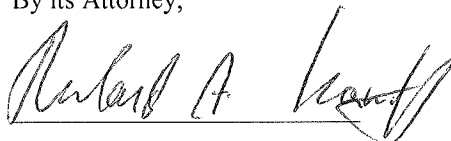
(vi) Overall consideration of community support, concluding that the Company engaged with stakeholders early in its route selection process and incorporated significant public input into its analysis. Tentative Decision at 76. In fact, the Tentative Decision ignores the compelling record evidence that the community and the Town of Sudbury and Hudson, have strongly supported and promoted the need for an alternative to the MBTA Underground Route. See PS Reply Brief at 4-7. The Siting Board should have acknowledged and further considered the input of the community as a dispositive and significant factor in its determination.

In conclusion, for the reasons noted herein and in the Protect Sudbury's briefs, the Siting Board should reject the Company's request for approval of the MBTA Underground Route.

Respectfully submitted,

PROTECT SUDBURY, INC.

By its Attorney,



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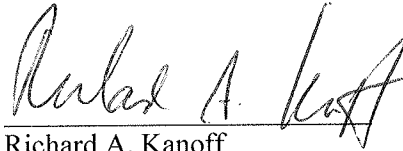
cc: Service List EFSB 17-02/DPU 17-82/17-83 (w/enc.)(via email only)

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

Petition of NSTAR Electric Company d/b/a)	
Eversource Energy Pursuant to G.L. c. 164, §69J)	
for Approval to Construct, Operate and Maintain a)	
New 115-kV Transmission Line in the Towns of)	EFSB 17-02/D.P.U. 17-82/17-83
Sudbury, Hudson and Stow and the City of)	
Marlborough and to Make Modifications to an)	
Existing Substation in Sudbury)	

CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the foregoing document via email upon each person as designated by the Energy Facilities Siting Board for the above-captioned proceeding in accordance with the requirements of 980 C.M.R. § 1.03.



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Dated: December 10, 2019