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VIA ELECTRONIC MAIL

Ms. Tori Kim, MEPA Director
Executive Office of Energy and Environmental Affairs
Commonwealth of Massachusetts
MEPA-regs@mass.gov

Re: MEPA Regulatory Review

Dear Ms. Kim:

On behalf of New England Power Company, Massachusetts Electric Company, Nantucket Electric Company and Boston Gas Company (collectively referred to as "National Grid"), thank you for the opportunity to provide general comments and suggestions on the MEPA review process. National Grid operates electric transmission and electric and gas distribution facilities, including overhead and underground lines, underground pipelines and substations throughout the Commonwealth. As outlined below, we believe that the current regulations could be modified in a variety of ways that would improve the environmental review process.

Create a Separate Exemption for Utility Maintenance, Replacement and Repair Projects

National Grid strongly recommends adding a separate utility maintenance, repair and replacement exemption to the MEPA regulations. The MEPA statute, at G.L. c. 30, §62A, expressly exempts from MEPA review "the placing, maintaining, repairing or relocating of poles, wires, conduits, cables, pipes and associated fixtures by public utility companies under section seventy-one of chapter one hundred and sixty-four and sections twenty-one to twenty-two, inclusive, of chapter one hundred and sixty-six." Exempting utility maintenance, repair and replacement projects is critical to the ability of public utilities to efficiently maintain reliable service throughout the Commonwealth. Work that would qualify for such an exemption would take place within existing rights-of-way and established facility footprints and is unlikely to cause significant environmental impacts. Any environmental impacts that do occur and are material enough to require environmental permits can be addressed through those permitting processes.

The current regulatory exemptions for Routine Maintenance and Replacement Projects are inadequate for utility maintenance, repair and replacement. They are not directly based on the statutory exemption and, because they are generic and applicable to any type of project, they do not address utility-specific issues that may arise. Continued reliance on these exemptions is unnecessary and can lead to continued misunderstandings and confusion about the scope of the exemptions for utility work.

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National Grid acknowledges that not all utility work should fall under the utility maintenance, repair and replacement exemption. New utility infrastructure, including new electric transmission and distribution lines, new substations and new natural gas pipelines, and expansions of existing utility infrastructure are not exempt from MEPA review. Additionally, there are instances where new infrastructure may be needed to maintain existing utilities. For example, the construction of new access roads may be required to maintain, repair or replace an existing electric transmission line. When this occurs, the new infrastructure should be subject to MEPA review if the new infrastructure, on its own, triggers MEPA review (e.g. it requires Agency Action and exceeds an impact threshold). However, for MEPA purposes, the new infrastructure should be treated as a separate, distinct project from any exempt maintenance, repair or replacement work on existing utility infrastructure.

To address these utility specific considerations, National Grid proposes the following changes to the MEPA regulations:

- Add "Utility Maintenance, Repair and Replacement Work" to the list of exemptions in 301 CMR 11.01(2)(b)3.

- Add the following definitions:

    - **Public Utility Maintenance, Repair and Replacement Work**. Any activities undertaken by a public utility to maintain, repair, replace, modify, upgrade or relocate existing utility infrastructure that takes place within the legal limits of an existing right-of-way for linear utilities infrastructure (e.g. electric transmission or distribution lines or natural gas transmission or distribution) the footprint of an existing utility facility (e.g. electric substation) Utility Maintenance, Repair and Replacement Work shall not include New Public Utility Infrastructure.

    - **New Public Utility Infrastructure**. Any activities undertaken by a public utility to construct a new electric or gas transmission or distribution line, expand the length of an existing electric or gas transmission or distribution line, construct new utility facilities or expand existing, non-linear utility facilities beyond their existing, footprint. Any New Public Utility Infrastructure that is needed for Public Utility Maintenance, Repair and Replacement Work (*e.g.* the construction of new access roads) shall not be considered part of the Public Utility Maintenance, Repair and Replacement Work and shall be subject to MEPA review as an independent undertaking if it requires Agency Action and exceeds an impact threshold.

Exempt Construction Mats from Wetland Impact Calculations

For some utility projects, the only impacts that trigger MEPA review are from the use of construction mats that are placed over wetlands to protect them from permanent impacts. By using construction mats, utilities can avoid the permanent impacts of constructing access roads. They should be encouraged. Detailed best management practices (BMPs) that have been carefully vetted by environmental regulators govern the use of construction mats and ensure that, once the construction mats are removed, the wetlands are fully restored to their previous condition. To

ensure they are followed, the BMPs are incorporated into wetland-related permits. In short, there is no added value to reviewing the impacts associated with construction mats through MEPA and we propose that the impacts of construction mats be excluded from the calculation of wetland impacts by adding the following to the end of 301 CMR 11.03(3):

- (c) Temporary impacts to wetlands that are caused by the use of construction mats shall not be considered an alteration that counts towards any wetland thresholds in 301 CMR 11.03(3).

Adopt Provisions that Streamline the Utility Infrastructure Necessary to Support the Commonwealth's Renewable Energy Goals

A critical component of the Commonwealth's climate change strategy is a substantial increase in the generation and use of renewable energy over a relatively short period of time. National Grid supports this goal, but we are concerned that unless efforts are made to streamline and expedite all aspects of renewable energy delivery, the goals will not be met. This includes substantial and rapid investment in electric public utility transmission and distribution networks, including new electric transmission and distribution systems, modifications and upgrades to the existing electric networks. These projects include new, expanded, refurbished, replaced, modified or upgraded transmission/distribution lines or substations and interconnections of renewable energy generation to transmission/distribution facilities ("Renewable Energy Enabling Projects"). In order to minimize unnecessary and time consuming permitting hurdles for projects that will achieve substantial environmental benefits through greenhouse gas and other emissions reductions, we recommend two changes to the MEPA regulations that will streamline the permitting process for Renewable Energy Enabling Projects:

Limited Exemptions for Renewable Energy Enabling Projects. Many Renewable Energy Enabling Projects have predictable environmental impacts that can be addressed through well-established BMPs. We recommend exempting projects that trigger MEPA review if the impacts that trigger review are covered by BMPs that have been reviewed and approved by the Secretary after public notice and comment. For example, if a project requires MEPA review because it exceeds a wetlands threshold, but the Secretary has approved BMPs covering wetland impacts, then the project would be exempt from MEPA.

Separate Renewable Energy Generation Projects from Renewable Energy Enabling Projects. MEPA contains requirements that prevent the "segmentation" of projects that are interrelated and dependent on each other. The application of the anti-segmentation rules to Renewable Energy Enabling Projects could result in unnecessarily delaying the review of those projects if the renewable energy generation project has more complicated environmental impacts. We suggest adding a provision that would expressly allow Renewable Energy Enabling Projects to be reviewed separately from related generation projects.

Adopt Clear De Minimis Exemptions for Certain Utility Infrastructure under the GHG Policy and Protocol

National Grid does not recommend any specific changes to the GHG Policy and Protocol, with one exception. While we strongly support retaining the existing general de minimis exemption as a

reasonable and transparent way to exclude projects that will have insignificant or no GHG emissions, we propose adding an express list of projects that, based on past determinations, are routinely exempted from the Protocol and should not be required to seek approval for the exemption in the ENF filing. For example, public utility electric transmission and distribution line projects in Massachusetts do not generate any direct or indirect GHG emissions outside of de minimis construction emissions. Because of this, they are routinely determined exempt from the Protocol. It would save time and resources, and eliminate any uncertainty, to explicitly state that such projects are exempt in the Protocol.

Changes to the Energy Threshold for Electric Transmission Lines

We understand that the MEPA Office is considering lowering the Mandatory EIR Energy threshold for transmission lines at 301 CMR 11.03(7)(a)4 from 230 kV to 115 kV. National Grid opposes this change for three reasons. First, we are unaware of any environmental impacts that are caused solely by the kV rating of the transmission line, so it is unclear what environmental impacts a 115 kV threshold intends to capture or what benefits a Mandatory EIR would provide to the Secretary, reviewing agencies or the public. In contrast, such a mandatory requirement has a clear cost that will be borne by utility customers statewide. Second, a 115 kV line that meets the other criteria for a Mandatory EIR would trigger the ENF threshold at 301 CMR 11.03(7)(b)4. Thus, there is no risk that the project would evade environmental review. If additional review is warranted for an individual 115 kV project that did not trigger any other Mandatory EIR threshold (which we believe would be rare), the Secretary already has the discretion to require an EIR. Third, the impact of this change is likely to affect utility system modifications and upgrades that are necessary to accommodate the expansion of solar, wind and other renewable energy projects. Slowing down these critical projects, especially under circumstances where there is no clear benefit to requiring an EIR, is at odds with the Commonwealth's laudable and ambitious renewable energy goals.

Flexibility in the ACEC Threshold

National Grid supports adding more flexibility to the ENF threshold from ACECs. Presently, the only exemption from work in an ACEC is for one single family dwelling. However, in practice, there are other types of projects that are unlikely to impact an ACEC. For utility work, National Grid supports an exemption for work that takes place entirely within existing roadways that are within the boundary of the ACEC. Based on our experience with these projects, the roadways are previously disturbed and provide a sufficient buffer to prevent any significant impacts to the environmental resources within the ACEC. In these circumstances, where no other ENF threshold is triggered, an ENF is unlikely to raise issues that warrant the time and expense of MEPA review. Additionally, National Grid supports adding an impact area threshold since the current threshold covers any project work within an ACEC regardless of size or potential impact. National Grid supports an impact area threshold of ½ acre of disturbance within an ACEC.

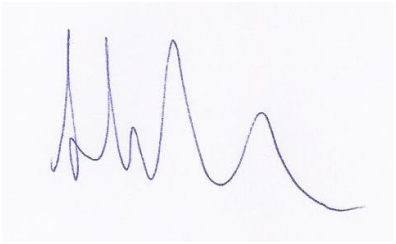
Streamlining the Notice of Project Change Process

While we would like the opportunity to review and comment on any particular proposals to streamline the NPC requirements and procedures to ensure they will be effective, we are generally

in favor of efforts to streamline the NPC process and minimize unnecessary reviews and project delays. For example, we suggest changing the NPC threshold for project changes that result in increases to impacts. Under the current threshold in 310 CMR 11.10(6)(b), any increase in impacts that equals 25% or more of relevant impact threshold presumptively triggers an NPC. This is the case regardless of whether (a) that increase is material in the context of type of environmental resource and the information provided in the ENF/EIR; and (b) whether it materially changes obligations for mitigation in a manner that the relevant permitting agency cannot adequately address. In our experience, NPCs in these situations do not result in any additional, meaningful engagement beyond addressing the change in the permit with the permitting agency. To address this, we suggest that unless the project change results in triggering the threshold of an impact category that was not previously evaluated in an ENF/EIR or pushes impacts from an ENF threshold to an EIR threshold, then no notice of project change should be required since the change can effectively be addressed by the relevant permitting agency through the permitting process.

Thank you again for the opportunity to provide these comments and we look forward to working with you as you continue the process of reviewing and updating the MEPA regulations. If you have any questions, please do not hesitate to call me (978-732-3051) or Wendy Levine (617-594-5210).

Very truly yours,



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