



Andrea D. Agostino  
Manager  
New England Environmental Permitting and  
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November 14, 2022

**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 and Boston Gas Company (collectively referred to as “National Grid”), thank you for the opportunity to provide comments on the proposed changes to the MEPA regulations. National Grid operates electric transmission and electric and gas distribution facilities, including overhead and underground lines, underground pipelines and substations throughout the Commonwealth. National Grid supports the goals of the Commonwealth to address climate change by achieving net zero emissions by 2050, which align with our own plans. Achieving this and related goals of energy flexibility, resiliency and decarbonization will require broad investment in our utility infrastructure networks, including work on existing infrastructure to ensure that it is sufficient to support critical modernization efforts. Towards this end, National Grid appreciates the attention given to the exemptions for Routine Maintenance and Replacement Projects. National Grid continues to believe that a separate exemption for utility maintenance and replacement projects should be added to the MEPA regulations to address ambiguities that can arise in applying the current or the proposed exemptions to utility work. However, short of that, National Grid agrees that the definitions for the two existing exemptions should be revised to add flexibility. However, as discussed in more detail below, we believe that the proposed definitions should be further revised to meet these goals while remaining protective of the environment. We also continue to believe that the use of construction mats to protect wetlands should not count towards wetland impact thresholds. Finally, National Grid supports the proposed changes to the review thresholds and the added flexibility for addressing insignificant project changes.

**Create a Separate Exemption for Utility Maintenance, Replacement and Repair Projects or Further Modify the Definitions of Routine Maintenance and Replacement Project**

National Grid continues to strongly recommend adding a separate utility maintenance, repair and replacement exemption to the MEPA regulations. Adding a specific exemption for utility maintenance, repair and replacement projects will avoid the uncertainty and confusion that can arise is applying the existing exemptions – which are drafted to apply to any type of project – to the unique issues that arise with utility projects. Work that would qualify for such an exemption would take place within existing right-of-ways 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.

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) or the footprint of an existing non-linear utility facility (e.g. electric substation). Utility Maintenance, Repair and Replacement Work shall not include New 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.

If a utility-specific exemption is not adopted, both National Grid and Eversource strongly urge you to further revise the definitions of Routine Maintenance and Replacement Project as set forth in the attached document.

The purpose of these revisions is to meet the stated goal of providing greater flexibility by using language that more generally encompasses all potential types of maintenance and replacement work, including work on utility infrastructure. A significant portion of the utility infrastructure in the Commonwealth pre-dates the MEPA process and modern environmental statutes and permitting regimes. To address this, we suggest removing the phrase “previously authorized use or Project” and replacing it with a more generic term such as “existing structure, facility or activity.” We also recommend adding language to the definition of Replacement Project to clarify that a project does not need to meet both tests in the definition to qualify for the exemption. The definition contains two tests, one for the materiality of increased environmental impacts and one for the extent of project expansions. MEPA has consistently interpreted the existing language as only requiring a Proponent to meet one test (not both). The language we are recommending eliminates any ambiguity that both are required. Finally, we are concerned that the addition of

the phrase “within substantially the same footprint, depth, or other relevant physical dimensions of the Project, using primarily the same methods” to the definition of Routine Maintenance adds a number of ambiguities that could be particularly problematic for typical utility maintenance projects that can require the use of modern construction materials and methods and require the movement of structures to address environmental, safety and engineering concerns.

If you do not add the proposed new exemption for utility work or revise the definitions of Routine Maintenance and Replacement Project as suggested, we strongly urge you to make no changes to the existing definitions.

Additionally, whether or not you adopt any changes to the definitions, we strongly recommend that you delete the added language in 301 CMR 11.03 that references the utility exemption in M.G.L. c. 30, § 62A, and then goes on to state that any such exempt projects must meet the revised definitions of Replacement Project or Routine Maintenance. While we understand the intent of this language was to clarify the relationship between the statutory and regulatory exemptions, we are concerned about the regulations inadvertently limiting the scope of the statutory exemption. Since a statutory mandate cannot be limited by regulation, the added language must be removed.

### **Exempt Construction Mats from Wetland Impact Calculations**

For some utility projects, the only impacts that trigger MEPA review are temporary impacts 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. Through careful project planning, National Grid is able to minimize the footprint of construction matting to what is necessary for the safe construction of the project. This not only protects the environment, but reduces costs that are ultimately paid for by our customers. Additionally, our detailed best management practices (BMPs) that 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).

### **Proposed Changes to the Impact Thresholds**

National Grid generally supports each of the proposed changes to the impact thresholds, which are common sense measures to add more flexibility and eliminate reviews where no significant impacts to the environment are likely to occur.

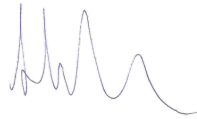
## **Insignificant Project Changes**

National Grid supports adding the option of an advisory opinion for determining whether a project change or lapse in time triggers an EIR. An advisory opinion may not always be the most effective or efficient option, but adding it as an option at the election of the Proponent will give Proponents and the MEPA office another tool to address more complicated situations.

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Thank you again for the opportunity to provide these comments. If you have any questions, please do not hesitate to call me (978-732-3051) or Wendy Levine (617-594-5210).

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Andrea D. Agostino', with a stylized, cursive-like script.

Andrea D. Agostino  
Manager – New England Environmental Permitting  
and Compliance

CC: Wendy B. Levine, Esq., National Grid  
Lauren Peloquin Shea, Esq., National Grid  
Peter Harley, National Grid

## Attachment to National Grid Comment Letter, November 14, 2022

### MEPA Proposed:

Replacement Project. Any Project to repair, replace, or reconstruct a previously ~~authorized~~ use of or Project on a Project site that does not:

- (a) ~~materially~~ increase potential environmental impacts ~~beyond those associated with the previously authorized use or Project or need additional or changed environmental Permits~~; or
- (b) result in any substantial (10% or more) Expansion of the use or Project, provided that the previous use or Project has not been discontinued for more than three years and that the Expansion does not meet or exceed any review thresholds.

### Utility Proposed:

Replacement Project. Any ~~work to~~ replace or reconstruct ~~an existing structure, facility, or activity that meets one or more of the following conditions:~~

- (a) ~~the work does not materially~~ increase potential environmental impacts ~~of the existing structure, facility, or activity~~; or
- (b) ~~the work utilizes performance standards or best management practices that have been developed to avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable~~; or
- (c) ~~the work does not~~ result in any substantial (10% or more) Expansion of ~~an existing structure, facility, or activity~~, provided that ~~such an existing structure, facility, or activity~~ has not been discontinued for more than three years and that the Expansion does not meet or exceed any review thresholds.

### MEPA Proposed:

Routine Maintenance. Any maintenance work or activity ~~for a previously authorized use of or Project on a Project site that:~~

- (a) ~~is~~ carried out on a regular or periodic basis in a manner ~~within substantially the same footprint, depth, or other relevant physical dimensions of the Project, using primarily the same methods~~; and
- (b) ~~that~~ has no potential for Damage to the Environment or ~~utilizes for which~~ performance standards ~~that~~ have been developed ~~and approved by regulatory agencies to that~~ avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable.

### Utility Proposed:

Routine Maintenance. Any maintenance work ~~on an existing structure or facility performed~~ on a regular or periodic basis ~~that meets one or both of the following conditions:~~

- (a) ~~the work does not materially~~ increase potential environmental impacts of such existing structure or facility; or
- (b) ~~the work is conducted in accordance with performance standards or construction best management practices that have been developed to avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable.~~