

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

)	
Petition of NSTAR Electric Company d/b/a)	
Eversource Energy Pursuant to G.L. c. 164, § 69J)	EFSB 17-02
for Approval to Construct a New 115 kV Transmission)	
Line in the Towns of Sudbury, Hudson, and Stow and the)	
City of Marlborough, and to Make Modifications to an)	
Existing Substation in Sudbury, Massachusetts)	
)	
)	
Petition of NSTAR Electric Company)	
d/b/a Eversource Energy Pursuant to G.L. c. 40A, § 3)	D.P.U. 17-82
for Exemptions from the Operation of the Towns of)	
Sudbury, Hudson and Stow Zoning Bylaws)	
)	
)	
Petition of NSTAR Electric Company)	
d/b/a Eversource Energy Pursuant to G.L. c. 164, § 72)	D.P.U. 17-83
for Approval to Construct, Operate and Maintain)	
a New 115 kV Transmission Line in the Towns of)	
Sudbury, Hudson, and Stow and the City of Marlborough,)	
Massachusetts)	October 26, 2017
)	

**PRESIDING OFFICER RULING ON TOWN OF SUDBURY’S MOTION TO EXTEND
THE PROCEDURAL SCHEDULE, FILE ADDITIONAL DISCOVERY AND
TESTIMONY, AND FOR ADDITIONAL HEARING DAYS**

On October 23, 2017, the Town of Sudbury (“Town”) filed a motion to extend the procedural schedule, file additional discovery and pre-filed testimony, and for additional hearing days in the above-referenced proceeding (“Motion”). The Motion requests an extension of the procedural schedule for one month after the filing of the draft environmental impact report (“DEIR”) (Motion at 1). The Motion states that the Town of Hudson and Protect Sudbury, Inc., intervenors, have indicated their assent to the Motion (*id.* at 10). On October 24, 2017, NSTAR Electric Company d/b/a Eversource Energy (“Eversource” or “Company”) filed its opposition to the Motion (“Opposition”), and the Town of Stow filed its assent to the Motion. On October 25, 2017, the Town filed its response to the Opposition (“Town Response”). The Company is currently scheduled to file the DEIR on October 27, 2017.

The Town states that the DEIR “will contain the vast majority of the information the Town (and other parties) sought but could not consider during the discovery process, as the Company’s routine response was ‘we do not yet have that information’” (Motion at 6). According to the Town, “[d]espite the Company’s commitment that reports or analysis that are components of the DEIR would be promptly provided for the record in the form of supplemental responses prior to filing the DEIR, no such reports or analysis were filed, with the exception of the Hazardous Waste Assessment, which was filed late in the day on October 20, 2017” (*id.* at 7). Given this case’s active litigation, the Town argues that the timing of the Company’s filing of the DEIR on October 27, 2017, when evidentiary hearings are scheduled to begin on October 31, 2017, is “clearly prejudicial,” and does not afford the Town “adequate due process” (*id.* at 8).

Given the expansive scope of the DEIR, the Town must have time to review the DEIR, compare the information in the DEIR to the information presented by the Company in the Analysis and information request responses, issue discovery to the Company on the DEIR, consider what elements of the Town’s testimony must be amended, revised or supplemented and then participate in evidentiary hearings on the DEIR.

Motion at 8. According to the Town, it is actively participating in both the MEPA process for the Project, and in this proceeding because it “has a duty to protect the interests of its land and its citizenry” (*id.* at 9). The Town maintains that it has submitted the testimony of several witnesses in this case on matters that directly go to environmental impact concerns, and that therefore, due process and the public interest necessitate that the procedural schedule afford the Town the opportunity to review and fully discover the evidence that will be presented in the DEIR (*id.* at 9).

The Town maintains that the Siting Board “routinely grants extensions to the procedural schedule when new evidence is received during the course of a proceeding” (*id.* at 9 (citations omitted)). The Town argues that the Massachusetts Administrative Procedure Act, G.L. c. 30A (“APA”) governs the Siting Board’s adjudication of the proceeding, and mandates that in the case of delayed information “sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare evidence and argument respecting the issues” (*id.* at 10, *citing* G.L. c. 30A, § 11).

The Company opposes the Motion, arguing that the Motion is untimely and fails to show good cause for an extension of the previously established deadlines in the Revised Procedural Schedule (Opposition at 1). The Company contends that the “basic premise” of the Town’s Motion is misplaced because “there is no requirement for the Company to present the DEIR, or any document through the MEPA process, as a prerequisite to commencing evidentiary hearings before the Siting Board” (*id.* at 3). According to the Company, the Legislature has specifically provided by statute that the MEPA process and the Siting Board’s review “are independent of one another and that the Siting Board need not await the results of any MEPA studies to conduct its reviews” (*id.*, *citing* G.L. c. 164, § 69I).

The Company challenges the Motion as untimely because the date for commencement of the evidentiary hearings (the week of October 30, 2017) was established over three and one-half

months ago on July 10, 2017 with the issuance of the Procedural Schedule (id. at 3). The Company also contends that the Town has had knowledge of the Company's DEIR filing date for over a month, as set forth in the Company's supplemental response to Information Request EFSB-G-2, filed on September 22, 2017 (id. at 3). The Company maintains that the procedural schedule already addresses the Town's concerns because the Presiding Officer's rulings have specifically noted that "witnesses at the evidentiary hearings will be given latitude to address issues in their testimony arising out of information that becomes available as a result of the DEIR" (id. at 4). As a result, the Company states that the Town "will be able to cross examine the Company's witnesses about any issue in the DEIR and will be able to have its witnesses supplement their testimony on issues arising out of the DEIR" (id.).

In response to the Company's Opposition, the Town states that the Motion is not untimely because no party, nor the Siting Board, "has had assurance that Eversource will actually file the DEIR on the required date" (Town Response at 1). According to the Town, this case is different from past cases because there is controversy about the adequacy of information Eversource has so far provided, and the Company is planning to provide the DEIR "just days before the hearings are scheduled to commence" (id.).

General Laws c. 164, § 69J provides that the Siting Board shall approve a petition to construct if the Siting Board determines that the petition meets certain requirements, including that the plans for the construction of the applicant's facilities are consistent with the policies stated in G.L. c. 164, § 69H to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. This statutory mandate requires the Siting Board, among other things, to carefully consider all environmental impacts attributable to a proposed project. The Siting Board uses the environmental information presented in a DEIR about a proposed project to better understand the potential environmental impacts and associated available mitigation whenever a DEIR is required, and therefore, prepared by a project proponent. It is an extremely important primary source document in the Siting Board process because it enables the Siting Board "to consider the positive and negative, short-term and long-term potential environmental impacts for all phases of a [p]roject" 301 CMR 11.01(1)(d).

The purpose of MEPA and 301 CMR 11.00 is to provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required, *and to assist each Agency in using (in addition to applying any other applicable statutory and regulatory standards and requirements) all feasible means to avoid Damage to the Environment* or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable.

301 CMR 11.01(1)(a) (emphasis added). General Laws c. 164, § 69I, as identified by the Company, exempts the Siting Board from making a G.L. c. 30, § 61 finding that describes the environmental impact, if any, of a project, and finding that all feasible measures have been taken

to avoid or minimize said impact.¹ However, the Siting Board's exemption from MEPA requirements does not relieve the Siting Board from its broader statutory mandate "to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost." G.L. c. 164, § 69H. To fulfill this mandate, the DEIR is a valuable and comprehensive source of environmental impact information. While the Company conceivably might have been able to provide much of the information typically included in a DEIR in another vehicle, such as discovery responses, the vast majority of the information was apparently not yet available.

The DEIR is scheduled to be filed on October 27, 2017; the existing procedural schedule does not provide adequate time for review of this information. The record will benefit from this further examination. Accordingly, upon consideration of the arguments presented above, the Presiding Officer finds good cause to revise the procedural schedule as identified below.²

So ordered.



Stephen H. August, Presiding Officer

¹ The relevant provision of G.L. c. 164, § 69I states that "[n]either said department, the board, nor any other person, in taking any action pursuant to sections 69I to 69J¹/₄, inclusive, shall be subject to any of the provisions of section 61 to 62H, inclusive, of chapter 30." The Siting Board is required to make Section 61 findings in this case for the Company's petitions for approval of the transmission line pursuant to G.L. c. 164, § 72, and for individual and comprehensive zoning exemptions pursuant to G.L. c. 40A, § 3.

² The revised procedural schedule shown below is based on and reliant upon the Company filing the DEIR on or before Friday, October 27, 2017.

Date	Case Activity	Evidentiary Hearing Subject of Testimony³
10/27/17 (Friday)	Company files Draft Environmental Impact Report (“DEIR”)	
10/31/17 (Tuesday)	Protect Sudbury Prefiled Testimony due	Eversource witnesses on Need and Project Approach
11/1/17 (Wednesday)		Continue with Eversource witnesses on Need and Project Approach
11/6/17 (Monday)		Eversource NTA witnesses on Non-Transmission Alternatives, including Julia Frayer
11/7/17 (Tuesday)	IRs by staff and parties on Protect Sudbury prefiled testimony Company Rebuttal (if any) on Protect Sudbury prefiled testimony	Eversource witness on EMF and Route Selection
11/8/17 (Wednesday)	IRs by staff and parties on DEIR only	
11/15/17 (Wednesday)	Protect Sudbury responses to IRs on Protect Sudbury prefiled testimony due	Intervenor witnesses on Need and Project Approach
11/17/17 (Friday)	Company responses due concerning DEIR IRs	
12/1/17 (Friday)	Intervenor Supplemental Prefiled Testimony due on DEIR issues <u>only</u>	
12/5/17 (Tuesday)		Eversource witnesses on Cost, Construction Methods, Noise, and Traffic
12/6/17 (Wednesday)		Eversource witnesses on Land Use, Visual, Safety, and Hazardous Waste

³ Record request responses are due five business days after issuance.

Date	Case Activity	Evidentiary Hearing Subject of Testimony³
12/8/17 (Friday)		Eversource witnesses on Water and Wetlands
12/13/17 (Wednesday)		Intervenor witnesses
12/14/17 (Thursday)		Intervenor witnesses continued
12/15/17 (Friday)		Intervenor witnesses continued Company Rebuttal witnesses concerning intervenor supplemental prefiled testimony on DEIR issues (if any)
12/18/17 (Monday)		Clean-up evidentiary hearing day, as needed
12/19/17 (Tuesday)		Clean-up evidentiary hearing day, as needed
1/12/18 (Friday)	Initial Briefs due	
1/26/18 (Friday)	Reply Briefs due	