

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

In the Matter of the Initial Petition and
Application of NSTAR Electric Company d/b/a
Eversource Energy for a Certificate of
Environmental Impact and Public Interest

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EFSB 18-03

FINAL DECISION

Robert J. Shea
Presiding Officer
March 7, 2019

On the Decision:

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Exhibit A to Final decision in EFSB 18-0365

ATTACHMENT 168

ATTACHMENT 273

The Massachusetts Energy Facilities Siting Board (“Siting Board” or “Board”) hereby (1) grants the Initial Petition, and (2) grants in part and denies in part the Application of NSTAR Electric Company d/b/a Eversource Energy (“Eversource” or “Company”) for a Certificate of Environmental Impact and Public Interest to construct a new 345 kilovolt (“kV”) underground electric transmission line between an existing substation in Woburn and an existing substation in Wakefield, Massachusetts.

I. INTRODUCTION

Pursuant to G.L. c. 164, §§ 69K - 69O (the “Certificate Statute”), Eversource filed with the Siting Board an Initial Petition and Application for a Certificate of Environmental Impact and Public Interest (“Certificate”) to: (1) construct a new electric transmission line that would pass through Woburn, Winchester, Stoneham, and Wakefield, Massachusetts (the “New Line”); and (2) make related substation improvements (Exh. EV-1, at 1). Eversource states that the filing of the Initial Petition and Application for a Certificate was necessitated by the Woburn City Council’s May 1, 2018 denial of the Company’s petition for a grant of location (“GOL”) in public ways for the portion of the New Line to be located in Woburn (Exhs. EV-1, at 2; EV-1, Attachment G).¹ Similarly, on April 13, 2018, Eversource filed a petition for a GOL in public ways for the portion of the New Line to be located in Winchester (Exh. EFSB-TW-1; Tr. 3, at 463).

The Certificate, appended to this Decision as Exhibit A, has the effect of granting: (1) the Woburn GOL, subject to conditions; and (2) the Winchester GOL, also subject to conditions.

A. Summary of the Proceeding

1. Project Description

On September 25, 2015, Eversource and New England Power d/b/a National Grid (“National Grid”) filed a petition with the Siting Board in which they proposed to construct, operate, and maintain a new approximately 8.5-mile-long 345 kV underground electric transmission line between an existing substation in Woburn owned by Eversource (“Woburn

¹ G.L. c. 166, §§ 21, 22 allows a company such as Eversource to request from a city or town permission to construct an electric line upon, along, under, or across a public way. After a public hearing, a city or town may grant a location for such a line, specifying where the conduits for underground lines may be placed. The process is referred to as a “grant of location.”

Substation”) and an existing substation in Wakefield owned by National Grid (“Wakefield Junction Substation”) (the “Substations”) (Exhs. EV-1, at 1, 2; EV-2, at 1, 2). The New Line would consist of three cables, each insulated with cross-linked polyethylene (“XLPE”) and placed within high-density polyethylene (“HDPE”) conduits within a concrete duct bank (Exhs. EV-1, at 3-4; EV-2, at 3). To accommodate the New Line, Eversource and National Grid would install new equipment at both the Woburn Substation and the Wakefield Junction Substation (Exhs. EV-1, at 1; EV-2, at 2). Construction of the New Line and the installation of new equipment at the Substations are collectively referred to as the “Project.” The Siting Board approved the petition to construct the Project on February 28, 2018. NSTAR Electric Company d/b/a Eversource Energy and New England Power Company d/b/a National Grid, EFSB 15-04/D.P.U. 15-140/15-141 (2018) (“Woburn-Wakefield” or “Final Decision”).^{2,3}

2. Relief Requested

The Woburn City Council denied Eversource’s GOL Petition on May 1, 2018 (Exh. EV-1, at 8). Eversource⁴ subsequently filed an Initial Petition followed by an Application with the Siting Board pursuant to the Certificate Statute.⁵ In its Application, Eversource requests that the Siting

² Both Stoneham and Winchester have filed appeals of the Siting Board’s Decision in Woburn-Wakefield with the Supreme Judicial Court. Stoneham has withdrawn its appeal. See SJ-2018-0136. On February 25, 2019, the single justice of the Supreme Judicial Court transferred Winchester’s appeal to the Appeals Court.

³ Since the Woburn-Wakefield Final Decision was issued, Eversource and National Grid have submitted a proposed change in order to comply with one of the conditions of the Final Decision. See Section II.B. infra.

⁴ Eversource and National Grid were co-petitioners in the Woburn-Wakefield proceeding Woburn-Wakefield at 1. In the present certificate proceeding, however, Eversource is the only petitioner (Exhs. EV-1, at 1; EV-2, at 1). Eversource is the sole petitioner for the Certificate because Eversource is responsible for obtaining the outstanding local permits for the Project in Woburn, Winchester, and Stoneham, the three municipalities named in this Certificate proceeding (Exh. EFSB-EV-1). National Grid has obtained, or expects to obtain, all of the local permits required from the Town of Wakefield, and those permits are not included in this proceeding (id.). Therefore, Eversource asserts that there is no need for National Grid to be a petitioner in this proceeding (id.).

⁵ Both the Company’s Initial Petition and its Application are under review in this proceeding. See Sections III and IV.

Board grant a Certificate equivalent to a GOL in public ways for the portion of the New Line to be located in Woburn as necessary for Project construction (Exh. EV-2, at 28). In addition, the Company also requests that the Siting Board include in the Certificate the equivalent of four other local permits, all of which the Company also asserts are necessary for construction of the Project.⁶

The requests that are the subject of this Certificate Proceeding are:

1. A Grant of Location in public ways for the portion of the New Line located in the City of Woburn pursuant to G.L. c. 166, §§ 21-22;
2. A Grant of Location in public ways for the portion of the New Line located in the Town of Winchester pursuant to G.L. c. 166, §§ 21-22;
3. A Street Opening Permit in the City of Woburn, pursuant to G.L. c. 82A, § 1, 520 CMR 7.00, and the City of Woburn Bylaws (Title 12);
4. A Street Opening Permit in the Town of Winchester, pursuant to G.L. c. 82A, § 1, 520 CMR 7.00, and the Town of Winchester Rules and Regulations Governing Street Opening Permits and Grants of Location in the Town of Winchester, Massachusetts; and
5. A Street Opening Permit in the Town of Stoneham, pursuant to G.L. c. 82A, § 1, 520 CMR 7.00, and the Town of Stoneham Bylaws (Section 13-15).

B. Jurisdiction

Eversource filed its Initial Petition and Application for a Certificate under G.L. c. 164, §§ 69K - 69O and 980 CMR 6.00 et seq. Pursuant to these provisions, any electric, gas, or oil company that proposes to construct or operate an approved jurisdictional energy facility in Massachusetts may seek a Certificate from the Siting Board if the applicant is prevented or delayed from building the facility because of an adverse state or local agency permitting decision or undue agency delay. See G.L. c. 164, § 69K; see also, Cape Wind Associates, LLC, EFSB 07-8, at 3 (2009) (“Cape Wind”); Exelon West Medway, LLC and Exelon West Medway II, LLC, EFSB 17-01, at 4 (2017) (“Exelon”). The Certificate, if granted, has the legal effect of granting the permit in question, and may grant additional project permits as well. The Siting Board makes a decision on a Certificate Application for a facility in accordance with: (1) G.L. c. 164, § 69L

⁶ Since the filing of the Initial Petition and Application, the Company has withdrawn its request for two permits: (1) a Grant of Location in public ways for the portion of the New Line located in the Town of Stoneham (RR-EFSB-11(S2)); and (2) Notice of Intent/Order of Conditions from the Winchester Conservation Commission, pursuant to G.L. c. 131, § 40, 310 CMR 10.00, and the Winchester Wetlands Bylaw (Chapter 13) (Exhs. EFSB-EV-16; EFSB-EV-16(3) Att.; EFSB-EV-17(S1); Company Brief at 12 n.7, 31).

(which requires that an Application contain certain information and representations); (2) G.L. c. 164, § 69O (which requires the Siting Board to include four specific findings and opinions in its decision on an Application); and (3) G.L. c. 164, § 69H (which requires the Siting Board to implement the energy policies in its statute to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost).

C. Chronology of Events Relating to the Certificate Request

The record in this proceeding proffered by Eversource, Woburn, and Winchester provide differing accounts of activities and events, over several years, that are relevant to the municipal permits and approvals Eversource is seeking in its Certificate Application to the Siting Board. Nevertheless, the following factual matters do not appear to be in dispute, and the Siting Board sets forth these activities to provide a context for the following sections. These are summarized below.

With regard to the Woburn GOL and Street Opening Permits (“SOPs”):

1. Late 2015, through 2016, and into 2017: the Department of Public Works (“DPW”) Superintendent issued numerous SOPs to the Company for geotechnical work and test pit activities.
2. During this same period Eversource and the City (represented by Mayor, DPW Superintendent, and City Engineer) discussed the development of a Host Community Agreement (“HCA”).
3. September 11, 2017: Eversource submitted preliminary, unstamped engineering plans to the City. City informs Eversource that the drawings are not sufficient for a Project of this magnitude and disruption.
4. Early December 2017: Meeting between Eversource’s Project Manager and DPW Superintendent and City Engineer. Eversource Project Manager suggested that Eversource was considering a GOL application to start the process. These Woburn employees stated that they could not recommend approving GOL application as it now stood and needed more information and development of plans.
5. December 15, 2017: Eversource filed GOL application with the Woburn City Council (filed plans are not stamped by a Massachusetts-licensed professional engineer (“PE”)); the Company did not inform the DPW or City Engineer when it filed the GOL application.
6. January 2, 2018: City Council held a first reading (meeting) regarding GOL application. City Council voted to refer GOL application to a February 8, 2018 public hearing; no substantive deliberation.
7. February 20, 2018: First public hearing on GOL application. Eversource brought three Company-affiliated personnel to answer questions (Project manager and two public relations personnel).

8. February 28, 2018: Siting Board issued Final Decision approving the Woburn-Wakefield Project.
9. March 20, 2018: Second public hearing on GOL application. Eversource brought nine Company-affiliated personnel.
10. April 17, 2018: Eversource provided City Council, but not DPW or City Engineer, with an updated set of unstamped plans dated January 26, 2018.
11. April 17, 2018: Company provided Woburn with extensive new information concerning geotechnical results.
12. April 17, 2018: Third public hearing on GOL application. Eversource brought ten Company-affiliated personnel.
13. April 25, 2018: Eversource met with DPW Superintendent and provided updated set of unstamped plans dated January 26, 2018.
14. May 1, 2018: Fourth public hearing on GOL application. City Council voted to deny the GOL application.
15. July 5, 2018: Eversource filed Initial Petition for a Certificate with the Siting Board.
16. January 15, 2019: Eversource provided parties with PE-stamped engineering plans, prepared by Black & Veatch.
17. February 21, 2019: Eversource filed a Memorandum of Understanding (“MOU”) dated February 21, 2019, entered into by and between the Company and the City of Woburn (EFSB-EV-25(S2)). No motion accompanied this filing. Nevertheless, the document itself indicates that Eversource and Woburn will jointly request that the Siting Board issue a Certificate in this proceeding that overrides the need for the Woburn City Council to approve the necessary Woburn GOLs.

(Exhs. CW-JFD-1, at 19, 24-28; CW-JEC-2, at 581-82; CW-6; CW-2, Att. (S1); EV-4(1) at 24-25; Tr. 3, at 510; Woburn Brief at 6-15).

With regard to the Winchester GOL and SOPs:

1. September 14, 2017: Eversource and Town signed an MOU for Mystic-Woburn Project, which addresses simultaneous construction between Mystic-Woburn and Woburn-Wakefield projects.
2. February 28, 2018: Siting Board issued Final Decision approving the Woburn-Wakefield Project.
3. March 29, 2018: Town of Winchester filed its Appeal of Woburn-Wakefield Final Decision in Supreme Judicial Court (“SJC”).
4. April 13, 2018: Eversource filed GOL application with Winchester Select Board.
5. May 18, 2018: Eversource filed its Notice of Intent (NOI) with the Winchester Conservation Commission requesting Order of Conditions (Order of Conditions was subsequently issued September 11, 2018).

6. June 26, 2018: Town and Eversource executed Agreement in Lieu of Stay Pending Appeal.
 7. July 5, 2018: Eversource filed Initial Petition for a Certificate with the Siting Board.
 8. July 26, 2018: Town Engineer and DPW Director met with Eversource to discuss Town's comments on the GOL application made on April 13, 2018. At the meeting, Eversource provided a set of plans dated June 8, 2018 showing proposed test pit locations.
 9. August 6, 2018: Winchester Town Engineer sent memo to Eversource Project Manager summarizing Town comments on both the GOL application and the test pit locations.
 10. August 21, 2018: Town staff met again with representatives from Eversource to review Town comments on the test pit locations and to discuss the process for obtaining SOPs associated with those test pits.
 11. September 13, 2018: The Town received a table summarizing Eversource's prioritized list of test pit locations.
 12. October 19, 2018: Eversource applied for 22 SOPs for test pits, and eleven were granted.
- (Exhs. TW-BER-1, at 2-3; EFSB-TW-1).

D. Procedural History

This proceeding commenced with the filing by Eversource of an Initial Petition for a Certificate with the Siting Board on July 5, 2018, pursuant to G.L. c. 164, § 69K (Exh. EV-1). On July 11, 2018, pursuant to 980 CMR 6.02(4), the Chairman of the Siting Board deferred the Board's decision on the Initial Petition until after the Company filed an Application for a Certificate, at which time the Board would consider the merits of the Initial Petition concurrently with the Application (see Determination on Initial Petition). The Company filed its Application for a Certificate on August 2, 2018, pursuant to G.L. c. 164, §§ 69K-69O (Exh. EV-2). The Initial Petition and Application were consolidated for review. The consolidated proceeding, referred to hereafter as the "Certificate Proceeding," was designated as EFSB 18-03.

Eversource provided public notice of the adjudication of its filings at the direction of the Board (Affidavit of Kristin Reynolds, August 2, 2018; Company Brief at 4). No new persons or entities filed either a petition to intervene or to be a limited participant. The entities that were parties to the original proceeding – EFSB 15-04/D.P.U. 15-140/15-141 ("Original Proceeding") – continued as parties in the Certificate Proceeding.

During the discovery phase of the proceeding, Siting Board staff issued a set of information requests to Woburn, Winchester, Stoneham, and the Company. In addition, the Company responded to discovery from both Woburn and Winchester. The Presiding Officer granted the

Company's request to take official notice of the record in the Original Proceeding and to incorporate that record into the record of the Certificate Proceeding.^{7,8} The Presiding Officer also granted a request by Winchester and by the Company to take official notice of a presidential executive order, a gubernatorial executive order, and the most recent Environmental Justice Policy.⁹

In accordance with the Procedural Schedule, Woburn submitted prefiled direct testimony of two witnesses: John Corey, Jr., City Engineer;¹⁰ and John Duran III, Superintendent of the DPW. Winchester presented the prefiled direct testimony of four witnesses: Richard Howard, Town Manager; Beth Rudolph, Town Engineer; Elaine Vreeland, Conservation Administrator; and James Gill, the Director of the DPW. All witnesses except Richard Howard and Elaine Vreeland testified at the evidentiary hearings. The Company did not submit prefiled direct testimony. Stoneham did not present any witnesses.

The Siting Board staff conducted three days of evidentiary hearings, on October 24, 25, and 30, 2018. During these hearings, the Company made available the following people for cross-examination: Michael Zylich, Senior Environmental Engineer for Eversource; David Klinch, Principal at Epsilon Associates; Nicole Bowden, Project Outreach Specialist for

⁷ Citations to exhibits and other documents from the Original Proceeding in this text will include the words "Original Proceeding" before the designation of the document.

⁸ The Original Proceeding commenced on September 25, 2015. Woburn-Wakefield at 3. The Siting Board staff conducted a public comment hearing in Stoneham on November 18, 2015. Woburn-Wakefield at 5. The Siting Board allowed nine intervenors and five limited participants. Woburn-Wakefield at 5-6. The parties and staff conducted discovery; and the Siting Board staff conducted 13 days of evidentiary hearings that concluded on November 2, 2016. More than 1,000 exhibits were admitted into the record. Woburn-Wakefield, Exhibit List dated November 18, 2018. All of the parties presented a total of 34 witnesses. Woburn-Wakefield at 6. The Siting Board approved a Final Decision on February 28, 2018.

⁹ These documents are: (1) Executive Order 12898 issued by President Clinton on February 11, 1994; (2) Executive Order 552 issued by Governor Patrick on November 25, 2014; and (3) the Commonwealth's Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs issued by Governor Baker in January 2017.

¹⁰ Mr. Corey's testimony was initially filed on October 17, 2018. On October 22, 2018, Woburn filed Mr. Corey's "corrected" testimony. All citations in this text to Mr. Corey's testimony are to his corrected testimony unless explicitly noted otherwise.

Eversource; Michael Hager, Lead Project Manager for EN Engineering; Jamil Abdullah, Lead Engineer for Transmission Line Engineering Group at Eversource; Demetrios Sakellaris, Lead Engineer for Transmission Line Engineering Group at Eversource; and Christopher Soderman, Manager for Transmission Line and Civil Engineering at Eversource. At the conclusion of the hearings, approximately 315 exhibits were admitted into the record (see Exhibit List dated November 21, 2018).

On February 21, 2019, the Company filed with the Siting Board a Memorandum of Understanding entered into between the Company and the City of Woburn. In this Memorandum, the Company and Woburn jointly request that the Siting Board issue a Certificate in this proceeding, pursuant to G.L. c. 164, § 69K, that would override the need for the Woburn City Council to approve a GOL for Eversource to construct that portion of the Project within Woburn city limits (Exh. EFSB-EV-25(S2)(1)).¹¹

Siting Board staff prepared a Tentative Decision and distributed it to the Siting Board members and all parties for review and comment on February 21, 2019. The parties were given until February 28, 2019, to file written comments. The Siting Board received written comments from the Town of Winchester, the City of Woburn, and the Company. The Board conducted a public meeting to consider the Tentative Decision on March 6, 2019, at which the parties were invited to present oral comments. Counsels for the Company, Town of Winchester, and the City of Woburn presented oral comments. After deliberation, the Board directed staff to prepare a Final Decision approving the Initial Petition and Application, in part, as set forth below.

II. COMPLIANCE WITH MAGNETIC FIELD MITIGATION CONDITION

A. Introduction

The Final Decision in the Original Proceeding contains a number of conditions, including one pertaining to mitigation of magnetic fields for the New Line. Woburn-Wakefield at 155-158. The Company's compliance with magnetic field mitigation in Condition P in the Final Decision occurred contemporaneously with, and was ultimately addressed in this Certificate Proceeding by

¹¹ The Memorandum of Understanding was submitted as an attachment to the second supplemental response to Information Request EFSB-EV-25. Therefore, it is designated as Exh. EFSB-EV-25(S2)(1).

the parties and the Siting Board. Accordingly, we address this issue first before turning to review of the Certificate's Initial Petition and Application.

Condition P states:

The Siting Board directs the Companies to further evaluate any site-specific additional magnetic field mitigation that can be feasibly engineered into the project design, particularly for close residences 20-30 feet from the New Line. The Companies shall file a compliance filing as soon as practicable, but not less than 90 days prior to the commencement of construction in residential areas, identifying additional feasible magnetic field mitigation. The Companies may commence construction at substations and in commercial areas, and may perform site preparation work.

Woburn-Wakefield at 157.

B. Company's Position in the Original Proceeding Regarding Compliance with Condition P

On June 19, 2018, Eversource and National Grid filed with the Siting Board evidence of compliance with Condition P (Original Proceeding Exh. COM-5). The compliance documents consisted of: (1) a cover letter addressed to the Presiding Officer ("Cover Letter"); (2) Eversource's and National Grid's Condition P Compliance Report ("Compliance Report"); (3) Attachment A to the Compliance Report, entitled "Updated Electric and Magnetic Field Analysis for the Woburn-Wakefield Junction Underground 345 kV Transmission Line" ("Attachment A"); and (4) Attachment B to the Compliance Report, entitled "Magnetic Field Modeling Analysis to Support the Condition P Compliance Report" ("Attachment B") (Original Proceeding Exh. COM-5) (referred to collectively as "Condition P Compliance Filing").

In the Condition P Compliance Filing, Eversource and National Grid analyze a number of separate magnetic field mitigation options (Compliance Report at 7-35). The Companies excluded four options on grounds unrelated to their costs: (1) the "delta isosceles" configuration would actually increase magnetic field rating (id. at 34); (2) the "delta equilateral" configuration would result in a significant reduction in ampacity (id. at 19); (3) increasing the Project voltage above 345 kV would be inconsistent with the Project design approved by ISO-NE and the Siting Board (id. at 8); and (4) increasing the number of circuits from one to two would also be inconsistent with the Project design approved by ISO-NE and the Siting Board (id. at 8).

With respect to three other options,¹² Eversource and National Grid conclude that “the extremely limited reductions . . . are not commensurate with the additional costs and construction impacts associated with those options” (Compliance Report at 35). The Companies stated that one option, described below, appears to be more promising and would require only a modest change to the configuration of the conductors in the New Line (*id.* at 35).

As originally proposed and approved, the Project provided that the three XLPE cables would be arranged in an isosceles triangle inverted delta configuration (Compliance Report at 2-3 figure 1; Original Proceeding Exh. EFSB-MF-1(Supp.) at 1).¹³ In the Condition P Compliance Filing, however, Eversource and National Grid represent that using an equilateral triangle inverted delta configuration for the conductors, instead of the original configuration, would reduce the magnetic field, albeit modestly (Compliance Report at 32-35).¹⁴ Furthermore, this modification would cost little or nothing and would not increase construction impacts (*id.* at 32, 35).

Eversource and National Grid served the Condition P Compliance Filing on the service list for the Original Proceeding on June 19, 2018. The Presiding Officer in Woburn-Wakefield requested comments regarding the Condition P Compliance Filing, and Winchester and the Woburn both filed comments on July 13, 2018, as part of the Original Proceeding (Original Proceeding Exhs. TOW-COM-1; COW-COM-1). The Companies filed a response to Winchester’s comments on July 23, 2018 (Original Proceeding Exh. COM-10).

¹² These three options are: (1) an increase in burial depth of the cables; (2) the addition of steel plates on the top or side of the duct bank enclosing the cables; and (3) the addition of a passive loop (Compliance Report at 32).

¹³ In the inverted isosceles arrangement, the two conduits in the upper level would be 14 inches above, and 7 inches to the side of the bottom conduit (Compliance Report at fig. 3). At splice vaults the arrangement of conductors would transition to a vertical configuration (*id.* at 4).

¹⁴ The Company would create an inverted equilateral arrangement by moving the bottom conduit up two inches, decreasing the lengths of two sides of the triangle formed by the conduits (Compliance Report at 14, 15).

C. Comments in the Original Proceeding.

In its comments, Woburn supports the Company's proposal to use an equilateral triangle inverted delta configuration (Original Proceeding Exh. COW-COM-1, at 2). Woburn also encourages the Siting Board Staff to reconsider the use of pipe-type-cable (id.).

In its comments, Winchester describes five "uncertain assumptions" underlying the Condition P Compliance Filing. First, Winchester argues that magnetic field evaluations should be based on the maximum ampacity (capacity) of the cables (e.g., normal summer ratings) rather than predicted average currents (Original Proceeding Exh. TOW-COM-1, at 2). Second, Winchester argues that use of an equilateral configuration is not a newly proposed mitigation because the possibility was discussed in the underlying proceeding (id. at 2-5). Third, Winchester argues that the Company has inappropriately neglected evaluation of sections of the route where a horizontal configuration would be used (id. at 5). Fourth, Winchester argues that the Company ignores locations where magnetic fields would exceed 85 milligauss ("mG") (a level often referenced in Siting Board Decisions and Department Orders) (Original Proceeding Exh. TOW-COM-1, at 5-6). Finally, Winchester argues that the cost of derating the line due to deeper burial is not captured in the Condition P Compliance Filing (id. at 6).

In its response, the Companies state that they do not respond to all of Winchester's assertions and argument, but only to the most pertinent issues raised (Original Proceeding Exh. COM-10, at 2). As a general matter, the Companies note that many of Winchester's statements and arguments were addressed in the underlying proceeding and were the subject of the Siting Board's findings in the Final Decision (id.).

The Companies argue that selection of predicted currents ("line loadings") rather than currents at line capacity ("line ratings") was settled in the underlying proceeding, so no changes are warranted on those grounds (Original Proceeding Exh. COM-10, at 2). The Companies also argue that additional consideration of horizontal configuration is not warranted in part because such a configuration would be limited to 500 linear feet of the Project and also because magnetic field in these areas would decline to 7.6 mG at a lateral distance of 20 feet (id. at 2, 3). Finally, the Companies argue that the effect of deeper burial on cost is not considered in the Condition P Compliance Filing because the Companies are not proposing any changes to project burial depths that would derate the cable or increase Project costs (id. at 3).

D. Comments in the Certificate Proceeding

In its initial brief in the Certificate case, the Company requested that the Siting Board approve the mitigation design proposed in its Condition P Compliance Filing (Company Brief at 8 n.5). Winchester questioned the effect of the Condition P Compliance Filing configuration in its brief; and the Town does not take a position on its adequacy (Winchester Brief at 6).

Woburn does not oppose the modification to the Project proposed in the Companies' Condition P Compliance Filing, but asserts that Eversource has failed to consider all low-cost mitigation measures (Woburn Brief at 38). In particular, Woburn asserts that continued magnetic field monitoring would "provide important information to affected communities" (*id.*). Woburn requests that the Company implement a magnetic field monitoring program protocol that includes both pre- and post-construction monitoring, and that the specifics of this process be agreed upon by the Woburn Superintendent of Public Works and Eversource (*id.*).

The Company asserts that Woburn's request for additional magnetic field monitoring by an independent consultant is unnecessary and unwarranted, as there is no public health and safety benefit to such a program and measurements would not be useful (Company Reply Brief at 20).

E. Analysis and Findings

In prior Siting Board decisions, the Siting Board has recognized public concern about magnetic fields and has encouraged the use of practical and low-cost design to minimize magnetic fields along transmission ROWs. See, e.g., NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77 (2018) ("West Roxbury/Needham") at 70; see also, New England Power Company d/b/a National Grid, EFSB 13-2/D.P.U. 13-151/13-152, at 88 (2014) ("Salem Cables"). The Siting Board requires magnetic field mitigation which, in its judgment, is consistent with minimizing cost. West Roxbury/Needham at 70.

The Companies identified a number of possible options for reducing magnetic fields. However, as the Compliance Report states, most of these options would provide only a minimal benefit that is not commensurate with their significant additional costs and impacts or are otherwise unsuitable. On the other hand, the Companies' assertion that changing the arrangement of the XLPE cables from an isosceles triangle inverted delta configuration to an equilateral triangle inverted delta configuration would mitigate the magnetic field at a minimal cost is not challenged.

Therefore, the Siting Board finds that, with this change, the Companies comply with Condition P of the Original Proceeding and we direct the Companies to make this modification.

Next we turn to Woburn's request in its comment that the Companies re-consider the use of pipe-type cable. That proposal has already been examined and rejected in the Final Decision. Woburn-Wakefield at 20-23, 29-34. Consequently, the Board will not reconsider that issue here.

With respect to the Winchester's criticisms of the Condition P Compliance Filing made in its comment filed in the Original Proceeding, we believe that they have been effectively rebutted by the Company. Specifically, several of the issues Winchester raises in its criticisms have already been addressed in the Final Decision. Additionally, Winchester implies that the option of burying the cables' duct bank deeper has not been sufficiently explored (Exh. TOW-1, at 6). In fact, the Compliance Filing addresses this issue in detail (Compliance Report at 9-13, 38; Compliance Report, Attachment B at 3-10). The Condition P Compliance Filing adequately supports the Company's recommended additional magnetic field mitigation.

We do find that there is merit, however, in Woburn's assertion that pre- and post-construction magnetic field monitoring would constitute a low-cost measure that would provide useful information to all four municipalities through which the New Line will traverse. The Siting Board required such monitoring in both the West Roxbury/Needham and Salem Cables decisions. West Roxbury/Needham at 71, 83; Salem Cables at 88, 106. Consequently, the Siting Board directs the Companies to: (1) consult with Winchester, Woburn, Stoneham and Wakefield and provide a magnetic field measurement protocol to the Siting Board within two months of the Final Decision in this proceeding; and (2) following one year of Project operation, submit a report identifying whether actual measurements of magnetic fields are consistent with projected measurements and, if not, identifying (a) additional steps that may be taken to reduce magnetic fields, and (b) whether such measures are warranted. These measures are in addition to the Siting Board's requirement that the Companies change the configuration of the XLPE cables as identified above.

III. INITIAL PETITION

A. Standard of Review

To initiate a Certificate Proceeding, an applicant must file an Initial Petition. G.L. c. 164, § 69K; 980 CMR 6.02. For facilities other than generating facilities, the Certificate Statute provides that the Siting Board shall consider an Initial Petition if: (1) the applicant asserts at least one of the six grounds for a Petition set forth in G.L. c. 164 § 69K; and (2) the Siting Board determines that, on the merits, at least one of the asserted grounds constitutes a valid basis for granting the Initial Petition. G.L. c. 164 § 69K; see Cape Wind at 9-10.

B. Grounds Asserted by the Company for Granting the Initial Petition

The Company asserts that Woburn's refusal to issue a GOL in public ways for the portion of the New Line to be located in Woburn triggered the filing of the Initial Petition (Exhs. EV-1, at 2; EV-1, Attachment G; Company Brief at 2). In the Initial Petition, the Company asserts that it is entitled to relief on the following statutory and regulatory grounds:

1. There are inconsistencies among resource use permits issued by state or local agencies (G.L. c. 164, § 69K; 980 CMR 6.02(2)(c));
2. A non-regulatory issue or condition has been raised or imposed by a state or local agency (G.L. c. 164, § 69K; 980 CMR 6.02(2)(d));
3. The Woburn City Council has imposed a burdensome condition or limitation (i.e., denial) on the Project, which has a substantial impact on the [Siting Board's] responsibilities as set forth in section sixty-nine H (G.L. c. 164, § 69K; 980 CMR 6.02(2)(e));
4. The subject facility cannot be constructed due to the disapproval, condition or denial by a local government (G.L. c. 164, § 69K; 980 CMR 6.02(2)(f)).

(Exh. EV-1, at 13; Company Brief at 19-26).

C. Positions of the Parties Regarding Jurisdiction Over the Initial Petition

Both Woburn and Winchester argue that the Siting Board lacks jurisdiction pursuant to G.L. c. 164, § 69K, which provides the statutory grounds for the Siting Board's jurisdiction over the Certificate.

Winchester argues that, "[t]here must be a good faith basis" for the Certificate request before an application "can be considered" (Winchester Reply Brief at 3, citing G.L. c. 164, § 69K).

Similarly, Woburn argues that: “[a]s to the Initial Petition, Eversource has not established its good faith in dealing with Woburn to secure a GOL from the City” (Woburn Brief at 26, citing G.L. c. 164, §§ 69K, 69L(A)(4)).

In addition, Winchester contends that another jurisdictional requirement of G.L. c. 164, § 69K is that all State and Local permits must either be in place or applied for (Winchester Reply Brief at 3). Winchester asserts that the Massachusetts Water Resources Authority (“MWRA”) Section 8(m) permit and the Massachusetts Department of Transportation (“MassDOT”) Highway Access Permit: (1) are required permits that must be in place before the Company may file a petition for a Certificate; (2) are not currently in place; and (3) cannot at this time be applied for as the location of the New Line is still not detailed (Winchester Brief at 3). Consequently, the Certificate Application “should not be considered by the Board” (Winchester Reply Brief at 6). Woburn makes a similar argument, that there is no jurisdictional basis for issuance of the Certificate because the Company never sought the SOPs that would or could be part of the Certificate (Woburn Brief at 24, 26).¹⁵

Woburn argues that the Company must establish a jurisdictional basis for each permit sought in a Certificate and that the Company has not done so with respect to the Woburn SOPs (Woburn Brief at 39-40). Woburn states that the Siting Board’s regulations require that a final agency action is a prerequisite to Siting Board jurisdiction, except where an applicant has alleged an undue delay (id. at 40). Woburn argues that since filing for a SOP is a prerequisite to a final agency action that has not occurred, the Company cannot rely upon any jurisdictional basis other than undue delay, and the Company did not argue it has been delayed (id.).

Winchester makes a related argument, that for the Siting Board to approve the Initial Petition under Section 69K “[t]here must be some evidence of unreasonable delay” regarding Winchester’s failure to issue a GOL (Winchester Reply Brief at 3-5). Winchester asserts that the Agreement in Lieu of Stay (“Stay Agreement”) “provides a reasonable process while awaiting appeal” (Winchester Reply Brief at 5). Therefore, Winchester contends that the Company can show no undue delay and has failed to meet the criteria of G.L. c. 164, § 69K (id. at 5).

¹⁵ Woburn also asserts that if the Siting Board accepts the Company’s argument that a Certificate must include all required state and local permits, then it must be denied because the Company has not yet obtained permits from the MBTA, the MWRA, and the MassDOT (Woburn Brief at 26).

Winchester also asserts that Section 69K requires that “[t]he construction plans submitted by the petitioner must be capable of constructing the project” in order for the Siting Board to have jurisdiction (id. at 3).

In response to these arguments, the Company replies that both Woburn and Winchester have conceded that the Company is unable to apply for SOPs in said municipalities because an approved GOL is a prerequisite for such filings (Company Reply Brief at 6, citing Exhs. EFSB-EV-3; EFSB-CW- 5; EFSB-TW-7). Therefore, it would be futile for the Company to submit applications for SOPs to Woburn and Winchester (Company Reply Brief at 6). The Company argues that Siting Board precedent establishes that the Company need not apply for presently unobtainable permits in order for these permits to be included in the Certificate (Company Reply Brief at 6, citing Cape Wind at 28-29; Footprint Power Salem Harbor Development LP, EFSB 13-1, at 26 (2014) (“Footprint”). The Company also maintains that the plans it has provided to the Winchester and Woburn are construction plans that can be used, with minor field adjustments during construction, as needed (Company Reply Brief at 25-26; Tr. 1, at 154-155).

D. Comments Received on the Tentative Decision

The Town of Winchester, the City of Woburn, and the Company all filed comments on the February 21 Tentative Decision. In its comments, Winchester notes that the Siting Board’s jurisdiction in the Certificate proceeding was triggered when the Woburn City Council denied Eversource’s Grant of Location application (Winchester Comments at 2). Winchester argues that the filing of the Woburn-Company Memorandum of Understanding (“Memorandum”) removes any obstacles to Woburn issuing the requested Grant of Location to the Company (id. at 2). Consequently, there is no longer any *de facto* denial, by Woburn, of a Grant of Location to the Company (id.). Without such a denial, Winchester argues, there is no basis on which the Board can invoke jurisdiction pursuant to Section 69K, and therefore the Siting Board has no authority to issue local permits in Winchester (id.).

The Company and the City of Woburn strongly disagree with Winchester. Woburn states that it entered into the Memorandum as a compromise in this Siting Board proceeding (Woburn Comments at 2). Woburn explicitly states in its comments that the Memorandum does not constitute an admission that the City Council improperly denied the Company’s application for a

Grant of Location (id.). Furthermore, Woburn states that the Company has not re-applied for a Grant of Location, and “Woburn does not contemplate issuing one” (id.). Woburn states that the Memorandum includes a set of provisions that would be complementary to the Certificate, and supports issuance of a Certificate in the form recommended in the Tentative Decision (id.).

The Company agrees with Woburn, stating it strongly supports the issuance of a Certificate in this proceeding (Company Comments at 2). The Company argues that the Memorandum does not negate the need for the Siting Board to issue the Certificate, which is based on the triggering event of the Woburn City Council’s denial of the Company’s request for a Grant of Location (id.). According to the Company, there are significant obstacles to Woburn issuing the Grant of Location. Furthermore, even though a majority of the Woburn City Council members support the Memorandum, there is “no guarantee whatsoever that a majority of the City Council would now vote to” issue a Grant of Location to the Company (id.). The Company argues that returning to the Woburn City Council for a Grant of Location would invite unnecessary and unwarranted complexity, delay and uncertainty into the remaining permitting for the Project (id. at 3). Eversource states that the purpose of the Memorandum is to “function as a complementary overlay to any Certificate” from the Siting Board (id.).

E. Analysis of the Company’s Asserted Grounds for Granting the Initial Petition

As an initial matter, we address the various arguments made by Woburn and Winchester regarding the Siting Board’s jurisdiction to consider the Initial Petition under Section 69K.

Regarding Woburn’s and Winchester’s contentions that good faith is a prerequisite to the Siting Board’s grant of an Initial Petition, the Siting Board notes that the requirement that an applicant make a representation of its good faith efforts to obtain required permits does not appear in Section 69K regarding the Initial Petition. Rather, the “good faith effort” requirement is found in G.L. c. 164, §69L(A)(4) as one of the requirements of an Application filing. Consequently, an applicant’s good faith efforts are not a prerequisite to the Siting Board’s consideration of an Initial Petition. Good faith, in the context of Section 69L(A)(4) is addressed below in Section IV.F.

Woburn and Winchester argue that because the Company did not apply for all permits required for construction of the New Line, the Siting Board cannot exercise jurisdiction under Section 69K. The Siting Board precedent consistently requires that in applying G.L. c. 164, § 69L’s requirement of good faith effort, applicants seek necessary permits before applying for a certificate except in limited circumstances. This requirement, however, does not establish a

prerequisite under Section 69K. In Agawam v. Energy Facilities Siting Board, 437 Mass. 821, 828 (2002), the SJC held that a Certificate petitioner’s failure to apply for a permit from the state fire marshal did not deprive the Siting Board of jurisdiction. Therefore, the failure of an applicant to apply for a necessary permit – including but not limited to SOPs – does not deprive the Siting Board of jurisdiction over the Initial Petition.¹⁶

Woburn and Winchester make arguments that amount to a requirement that an applicant prove a jurisdictional basis under Section 69K for each permit sought. However, the SJC expressly rejected this argument in Alliance to Protect Nantucket Sound v. Energy Facilities Siting Board, 457 Mass. 663, 678-679 (2010) (“Alliance II”). In that opinion, the SJC held that so long as there is a jurisdictional basis on which to file a petition, the Certificate may contain other permits that alone would not have been sufficient to confer jurisdiction on the Siting Board. Alliance II, 457 Mass. at 681.¹⁷ Consequently, the applicant need only establish that it is entitled to relief under the Certificate Statute with respect to one permit or approval. Alliance II, 457 Mass. at 681-682. Once this is established, the Siting Board has the authority to include additional permits within the Certificate. Alliance II, 457 Mass. at 681-682. In the present case, it is Woburn’s denial of the Company’s GOL application that the Company relies upon as grounds to bring this Certificate proceeding (Exh. EV-1, at 2, 16-21). Consequently, the Company need not establish an independent jurisdictional basis for each permit sought in a Certificate, including the Woburn SOPs.¹⁸ In addition, the Company is not required to prove undue delay on the part of Winchester in issuing a GOL in order to include the Winchester GOL in its Initial Petition and Application filings.

¹⁶ The Siting Board notes that, contrary to Winchester’s assertion, the Company has already applied for all the state permits required to construct the Project including the MWRA and MassDOT permits (Company Reply Brief at 4 n.6, citing Exh. CW-19). On January 14, 2019, the Company updated the record and provided the MassDOT license, issued January 7, 2019 (Exh. TW-EE-2(S1)).

¹⁷ The first and fifth paragraphs of Section 69K are to be read independently. Alliance II, 457 Mass. at 681-682.

¹⁸ Likewise, the Siting Board’s requirements of a final agency decision in order for a proponent to assert certain grounds for an Initial Petition only applies to the triggering permit; it is not necessary for a proponent to identify final agency action on other permits. See 980 CMR 6.02(1).

Finally, regarding finalized construction plans, Winchester does not cite to any language in Section 69K or to any SJC or Siting Board decision that would support its assertion that construction plans must be finalized before the Siting Board can take jurisdiction over a Certificate proceeding. While detailed construction plans may provide additional certainty requested by Winchester, such plans are not required under Section 69K in order for the Siting Board to consider the Company's Certificate filing.

Lastly we address the arguments provided by the parties in their comments on the effect of the Woburn Memorandum on the Siting Board's Tentative Decision. Section 69K requires the Board to consider a petition for a certificate if a proponent "is prevented from building a facility" due to certain enumerated events, including "the facility cannot be constructed due to any disapprovals, conditions, or denials by any state or local agency or body..." Siting Board regulations further refine requirements for an initial petition by including a prerequisite for bringing an initial petition that the permitting agency preventing construction of the facility must issue a final decision (and all appeals to state agencies of that final decision must be exhausted) before a proponent file for an initial petition.¹⁹ 980 CMR 6.02.

In this case, it is clear that the Company cannot construct the Project as approved by the Siting Board without a Grant of Location from Woburn. It is also undisputed that Woburn denied the Company's Grant of Location request on May 1, 2018. This denial by the Woburn City Council constitutes a final decision of that body, and that denial allowed Eversource to file for Certificate.

The Woburn-Company Memorandum does not change these facts. The Memorandum does not provide the Company a Grant of Location for Woburn. In addition, the Memorandum does not make the denial of the Grant of Location any less final. While there is a chance that Woburn may take up its permitting decision again and change some aspect of it, we think that withholding a required permit in the hopes Woburn might reconsider a previous final decision would be inconsistent with the Certificate statute which anticipates quick action by the Siting Board in order to remove obstacles to construction of a previously-approved facility. See G.L. c. 164, § 69O.

¹⁹ Siting Board regulations do not require a final decision from the permitting agency when an applicant for a Certificate asserts undue delay as its ground for filing an initial petition. 980 CMR 6.02(2)(b).

1. Company's Argument Regarding Inconsistencies Among Resource Use Permits

The Company argues that the Woburn City Council's denial of a GOL is inconsistent with the approvals granted by the Siting Board and by MEPA (Company Brief at 21).²⁰ The Company asserts that the Siting Board, in its approval of the Project, and MEPA, in issuing its ENF certificate,²¹ addressed most of the practical and environmental concerns raised by Woburn in its denial of the GOL (id. at 21-23). Consequently, the findings of fact and reasons for denial upon which Woburn relies are inconsistent with the findings of fact and conclusions of law set forth in the Siting Board approval of the Project and the MEPA Certificate (id.). Winchester and Woburn do not address this issue in their briefs.

A review of the "Findings of Fact and Reasons for Denial" of the Woburn GOL application which includes 75 numbered paragraphs (Exh. EV-1 Attachment G) reveals that many of the reasons for denying the GOL application directly conflict with findings made by the Siting Board in its original approval of the Project in Woburn-Wakefield. Thirteen of those paragraphs promote traffic issues as reasons for denial; nine paragraphs rely upon alleged defects in route selection; eight paragraphs are based on magnetic field concerns; two paragraphs alleged that insufficient notice of the Project was given; and one paragraph relies upon alleged defects in the type of cable to be used (Exh. EV-1, Attachment G).

The Siting Board's Final Decision in the Original Proceeding addressed all of these issues and the Woburn GOL denial is inconsistent with the findings of fact in the Final Decision.

²⁰ On November 6, 2015, the Secretary of Energy and Environmental Affairs ("Secretary") issued a certificate on the Environmental Notification Form ("ENF") filed by the Company ("MEPA Certificate") regarding the Project. In this document, the Secretary finds that: "[t]he ENF has . . . demonstrated that the project's environmental impacts will be avoided, minimized and/or mitigated to the extent practicable" (Exh. EV-1, Attachment A, at 8). Consequently, the Secretary stated that no further MEPA review – i.e., a Draft Environmental Impact Report ("DEIR") and Final Environmental Impact Report ("FEIR") – would be required (id.).

²¹ It is not clear whether the MEPA certificate finding the ENF adequate constitutes a "resource use permit." The Company itself has stated that "the MEPA process does not result in a 'permit' for a project" (Exh. EFSB-EV-23, at 2). In the present circumstances, however, this issue is moot given the conclusion that we reach regarding the inconsistency between Woburn's GOL denial and the findings of the Siting Board in Woburn-Wakefield.

See, generally, Woburn-Wakefield. With respect to traffic, the Woburn-Wakefield Final Decision imposed certain conditions, including a traffic management plan and restrictions on construction schedules. Woburn-Wakefield at 110, 155-156. With the implementation of these conditions, the “Siting Board finds that traffic impacts from construction and operation of the Project” would be minimized. Woburn-Wakefield at 110. Regarding route selection, the Final Decision states that: “Based on the route selection process described above . . . the Siting Board finds that the Companies have demonstrated that they examined a reasonable range of practical siting alternatives and that the proposed facilities are sited in locations that minimize cost and environmental impacts.” Woburn-Wakefield at 71. Regarding notice, the Final Decision recites in detail the Companies’ compliance with the Presiding Officer’s instructions. Woburn-Wakefield at 4-6. The issue of the proper cable to use was examined in the Woburn-Wakefield Decision in some depth. Woburn-Wakefield at 20-23, 29-34. After an extensive review of the evidence and argument, the Siting Board found that the cable system proposed by the Companies would be “superior” to the cable system advocated by Winchester and Stoneham “based on capacity, cost, potential environmental impacts, and reliability.” Woburn-Wakefield at 34.

Based on this analysis, we conclude that Woburn City Council’s denial of a GOL is inconsistent with the approvals granted by the Siting Board. Consequently, there are inconsistencies among resource use permits. See, e.g., Cape Wind at 11 (finding that the Cape Cod Commission’s denial of a Development of Regional Impact (“DRI”) application was inconsistent with a Siting Board decision that had authorized the Company to “use certain land, water, wetlands, and other natural resources for the transmission of electricity”); see also, Colonial Gas Company d/b/a KeySpan Energy Delivery New England, EFSB 06-1, at 10 (2007) (“KeySpan”) (“The [Cape Cod] Commission’s DRI denial for the project is inconsistent with the Siting Board’s approval of the same project”).

Accordingly, the Siting Board finds that Eversource has raised a valid basis for the Board’s consideration of the Company’s Initial Petition in accordance with G.L. c. 164, § 69K and 980 CMR 6.02(2)(c).

2. Company’s Argument Regarding a Non-regulatory Issue or Condition Has Been Raised or Imposed by a State or Local Agency

The Company argues that the Woburn City Council’s denial of Eversource’s GOL petition constitutes a “non-regulatory issue or condition [that] has been imposed by a state or local agency”

(Company Brief at 23, citing G.L. c. 164, § 69K; 980 CMR 6.02(2)(d)). The Siting Board regulations define a “non-regulatory issue or condition” as one that “relates to matters not within the statutory authority of the agency in question.” 980 CMR 6.02(2)(d). The “agency in question” in this case is the Woburn City Council, and the relevant “statutory authority” is G.L. c. 166, §§ 21, 22 (Exh. EV-1, at 18, 19; Company Brief at 23-24). Neither Woburn nor Winchester addressed this issue in their briefs.

Municipalities in which transmission lines are proposed to be located have significant, but not unlimited, authority regarding these lines, including the location of electric lines in the public way. Specifically, an electric distribution company, such as Eversource, may construct transmission lines so long as the lines do not incommode the public use of public ways or endanger or interrupt navigation. G.L. c. 166, § 21. A company that wishes to construct an electric transmission line upon, along, under, or across a public way must first file a written petition with the board of aldermen of the city or the board of selectmen of the town where the transmission line would be located. G.L. c. 166, § 22. After a public hearing, the municipality may issue an order granting the petitioner a location for such a line, specifying where the poles, piers, abutments, or conduits may be placed. G.L. c. 166, § 22.

The statutory scheme – i.e., G.L. c. 166, §§ 21, 22 – allows the affected municipality to regulate the transmission lines in order to prevent the lines from disrupting the public’s use of public ways. The Company argues that the “Findings of Fact and Reasons for Denial” issued by the Woburn City Council relies upon considerations outside the scope of G.L. c. 166, §§ 21, 22, particularly that the denial is based in part on the prevalence of existing electric transmission lines infrastructure in the City (Exh. EV-1, Att. G at ¶ 16), and in part upon the City Council’s preference for an (unspecified) alternative route for the Project (Exh. EV-1, Att. G at ¶ 75; Company Brief at 24). Denying the GOL petition on these grounds, in whole or part, the Company argues, creates a non-regulatory issue because there is no language in G.L. c. 166, §§ 21 or 22 that permits a City Council to evaluate a petition to construct a transmission line on the basis of need, alternatives, and routing options (Company Brief at 24). The Company maintains that by doing so, the Woburn City Council has exceeded its statutory authority and has thereby created a non-regulatory issue (id.).

The Company contends that the actions of the Woburn City Council are in direct conflict with the statutory scheme created by the Massachusetts General Court which places the Siting

Board in the preeminent role regarding ensuring a reliable supply of energy and permitting needed, least-cost and least-environmental-impact energy facilities (Company Brief at 24, citing G.L. c. 164, §§ 69G et seq.; Alliance II at 667-679; Box Pond Ass’n v. Energy Facilities Siting Board, 435 Mass. 408, 409-410 (2001); Town of Andover v. Energy Facilities Siting Board, 435 Mass. 377, 378-379 (2001)). The Company asserts that the issues raised by the Woburn City Council in its denial of the GOL are “within the preemptive province of the Siting Board for jurisdictional energy facilities such as the New Line” and, therefore, “the Woburn City Council must yield to the Siting Board’s earlier determination in Woburn-Wakefield” (Company Brief at 24-25).

In making its decision to deny a GOL for the Company, the Woburn City Council based its denial, in part, on matters such as route selection, traffic, magnetic fields, and alleged shortcomings in the type of cable proposed. Although Woburn was not among the parties voicing such concerns in the Original Proceeding, these very issues were actively litigated in the Original Proceeding, and the Siting Board addressed these issues in the Final Decision. Notwithstanding the pending appeal of the Final Decision (of which Woburn is not a party), we conclude that the Company has established that a non-regulatory issue or condition – Woburn City Council’s denial of a GOL permit – prevents the construction of the Project.

Accordingly, the Siting Board finds that Eversource has raised a second valid basis for the Board’s consideration of the Company’s Initial Petition in accordance with G.L. c. 164, § 69K and 980 CMR 6.02(2)(d).

3. Company’s Argument that the Woburn City Council’s Denial of a GOL Represents a Burdensome Condition or Limitation.

The Company asserts that by denying the Company’s GOL application, the Woburn City Council has “imposed a burdensome condition or limitation” on a “license or permit which has a substantial impact on the [Siting Board’s] responsibilities as set forth” in G.L. c. 164, § 69H (Company Brief at 25). Neither Woburn nor Winchester addressed this issue in their briefs.

The Siting Board’s responsibility under G.L. c. 164, § 69H is to provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost. In order to accomplish this, the Siting Board reviews the need for, cost of, and environmental impacts of transmission lines. G.L. c. 164, § 69H. The denial of the Woburn GOL prevents construction of this Project, which has been approved by the Siting Board (Exh. EV-1, at 15).

Therefore, the denial imposes a burdensome limitation which has a substantial impact on the Siting Board's statutory responsibilities.

The facts of the present case are similar to those of the Cape Wind and Keyspan certificate proceedings. Cape Wind at 10-11; Keyspan at 9-10. In both those cases, the Cape Cod Commission denied a DRI to projects that had received prior Siting Board approval. Cape Wind at 10-11; Keyspan at 9-10. In both cases, the Board found that the denial of the DRI imposed a burdensome condition or limitation on the Project which had a substantial impact on the Siting Board's responsibilities as set forth in G.L. c. 164, § 69H.

Accordingly, the Siting Board finds that Eversource has raised a third valid basis for the Board's consideration of the Company's Initial Petition in accordance with G.L. c. 164, § 69K and 980 CMR 6.02(2)(e).

4. Company's Argument that the Subject Facility Cannot Be Constructed Due to the Disapproval, Condition, or Denial By a Local Government.

The transmission line that constitutes a large portion of the Project approved by the Siting Board passes through Woburn. Woburn-Wakefield at 1, 2, 19. Without the Woburn GOL, the approved Project cannot be constructed (Exh. EV-1, at 15). Accordingly, the Siting Board finds that Eversource has raised a fourth valid basis for the Board's consideration of the Company's Initial Petition in accordance with G.L. c. 164, § 69K and 980 CMR 6.02(2)(f).

F. Decision on the Initial Petition

The Company asserted in its Initial Petition four grounds on which the Siting Board's grant of an Initial Petition may be based. The Siting Board has found that Eversource has established four substantively valid bases for consideration of the Company's Initial Petition. Accordingly, the Siting Board GRANTS the Company's Initial Petition.

IV. APPLICATION

A. Standard of Review

Pursuant to G.L. c. 164, § 69O, any Certificate issued must include the Siting Board's findings and opinions with respect to the following: (1) the need for the facility to meet the energy requirements of the applicant's market area taking into account wholesale bulk power or gas sales

or purchases or other co-operative arrangements with other utilities and energy policies as adopted by the commonwealth; (2) the compatibility of the facility with considerations of environmental protection, public health, and public safety; (3) the extent to which construction and operation of the facility will fail to conform with existing state and local laws, ordinances, by-laws, rules and regulations and reasonableness of exemptions thereunder, if any, consistent with the implementation of the energy policies contained in the Siting statute to provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost; and (4) the public interest, convenience and necessity requiring construction and operation of the facility. G.L. c. 164, § 69O. See Cape Wind at 12-13; Keyspan at 12-13.

The Siting Board bases its findings and opinions on both the record developed in the Certificate proceeding and the record developed in the underlying Siting Board proceeding in which the Board reviewed and approved the proposed facility. See Exelon at 12; Cape Wind at 3-4; see also G.L. c. 164, §§ 69O, 69O^{1/2}. The Siting Board does not relitigate in a Certificate proceeding issues already fully and fairly determined in the underlying proceeding. Exelon at 12; Berkshire Power Development, Inc., EFSB 98-6, at 18-19 (1999) (“Berkshire Power”). However, in order to provide a full review of a previously approved facility, the Siting Board: (1) reviews the decision from the underlying Siting Board proceeding; and (2) determines the extent to which new information has been developed or the circumstances of a project may have changed in the intervening period. See, e.g., Exelon at 12; Cape Wind at 13. Additionally, in Certificate cases where the applicant is challenging an adverse agency permitting decision, the Siting Board verifies that the issues raised by the agency have been addressed in a comprehensive manner by the Siting Board, either in its review of the facility under G.L. c. 164, § 69J or in its review under G.L. c.164, § 69K. See G.L. c. 164, § 69O; Exelon at 12; Cape Wind at 13. Finally, an applicant must demonstrate that it met the requirement in G.L. c. 164, § 69L to make a “good faith effort” to obtain the permits the applicant seeks to include in the Certificate.

The four specific findings the Siting Board must make pursuant to G.L. c. 164, § 69O to support the issuance of a Certificate of Environmental Impact and Public Interest for a facility are discussed below. These findings include: (1) need for the facility; (2) compatibility with environmental protection, public health and safety; (3) conformance with laws and reasonableness of exemption thereunder; and (4) public interest or convenience. In addition, pursuant to

G.L. c. 164, § 69L, the Siting Board reviews the good faith efforts of an applicant to seek necessary approvals for construction and operation of a proposed facility.

A discussion of the permits and approvals requested by the Company that are included in the Certificate follows in Section IV.C, below.

B. Need for the Facility

Pursuant to G. L. c. 164, § 69O, the Siting Board must make a finding with respect to the need for the facility to meet the energy requirements of the applicant's market area taking into account wholesale bulk power or gas sales or purchases or other cooperative arrangements with other utilities and energy policies as adopted by the Commonwealth.

Neither Winchester nor Woburn addresses this issue in their briefs. Woburn nevertheless tacitly acknowledges that the Project is needed (Woburn Brief at 2, 4, 28). For example, Woburn states: "Understanding the public's need for this Project, Woburn chose not to oppose Eversource's preferred route" (*id.* at 4); and "[t]he Siting Board is indisputably preeminent in its assessment of Statewide needs" (*id.* at 28). Consequently, we do not consider the issue of need to be a contested one.

The Woburn-Wakefield decision fully and fairly determined the issue of need, and the related issue of reliability, in significant detail. Woburn-Wakefield at 2, 9-18. The Siting Board found that additional energy resources are needed to maintain a reliable supply of electricity to the Greater Boston Area. Woburn-Wakefield at 17-18. There was no new evidence introduced in the Certificate Proceeding that would support a different finding. Therefore, the Siting Board finds that in accordance with G.L. c. 164, §§ 69J, 69O, additional energy resources are needed to maintain a reliable supply of electricity to the Greater Boston Area and the Project is needed.

C. Compatibility with Environmental Protection, Public Health and Public Safety

1. Certificate Requirements and Final Decision Findings

Pursuant to G. L. c. 164, § 69O, the Siting Board must make a finding with respect to the compatibility of the Facility with considerations of environmental protection, public health, and public safety. The Siting Board conducted a full adjudicatory proceeding on the Company's petition to construct the Facility, and issued a Final Decision approving the Project on February 28, 2018. In the underlying proceeding, the Siting Board conducted a comprehensive review of the environmental impacts of the proposed Facility. See Woburn-Wakefield at Section VI.C, 82-134.

The Siting Board found that with conditions relating to construction, land use, water resources, noise, traffic, visual, safety, magnetic fields, and hazardous and solid waste, the environmental impacts would be minimized. See Woburn-Wakefield at 136, 154-158. The Siting Board also found that the plans for the construction of the proposed Project are consistent with current health, environmental protection, and resource use and development policies of the Commonwealth. See Woburn-Wakefield at 139, 154.²²

2. Positions of the Parties

a. Woburn

As noted above, in its denial of Eversource's GOL application for the New Line, the City Council listed 75 findings of fact and reasons for denial, many relating to environmental concerns such as: (1) protection of City infrastructure and utilities; (2) location-specific traffic and construction impacts to Border Street, Cross Street, Lake Avenue, Montvale Avenue, Pickering Street, Washington Street, and the Scalley Dam area; and (3) potential health impacts regarding magnetic fields (Exh. EV-1, at G).²³

Woburn notes that the purpose of a GOL is to provide the City Council's permission for the New Line to be placed beneath Woburn's public ways (Exh. CW-JFD-1, at 4). Woburn asserts that given the number of utilities located under its streets (water, sewer, gas transmission lines, telephone, and subsurface drainage), the Project route area is already crowded with infrastructure, available space is limited, and that adequate clearances between these utilities and the New Line, both vertical and horizontal, must be achieved (id. at 5).

²² The Siting Board also compared alternatives to the proposed transmission line as part of (1) project approach analysis; (2) route selection analysis; and (3) comparison of primary and alternative routes. The Siting Board found that the proposed transmission line was preferable to all alternatives with respect to environmental impacts. In addition, the Siting Board found that the Companies had not overlooked or eliminated any routes which are clearly superior to the proposed Project, had identified a range of practical transmission line routes with some measure of geographic diversity, and consequently, that the Companies had demonstrated that they examined a reasonable range of practical siting alternatives. Woburn-Wakefield at 71, 154.

²³ The Siting Board addressed these issues in the environmental impacts portion of the Final Decision.

Woburn notes that some of its infrastructure is old and fragile and records of the location of this infrastructure are old or imprecise (Exh. CW-JFD-1, at 17). Woburn contends that it has made significant investments in upgrades and modernization to its infrastructure, which should not be compromised by the construction of the New Line (id.). Woburn emphasizes that sufficient clearance is necessary to prevent damage to the existing City utilities during construction of the New Line, as well as to afford sufficient worker access for maintenance and repairs, or to respond to an emergency (id. at 2). Woburn notes that its records show a sewer force main²⁴ runs somewhere under Washington Street and Montvale Avenue, but that the records do not show the exact location, nor do the Company's engineering plans (Woburn Brief at 36, citing Exh. CW-JD-1, at 15). Woburn asserts that if the Company damages the sewer force main during construction, there is no way Woburn can turn it off, and that the damage would constitute a significant public health and safety threat (Woburn Brief at 36). Moreover, Woburn contends that the Company's current Project plans are unstamped engineering drawings, and do not include provisions for adequate clearances between existing City utilities and the New Line (Exh. CW-JFD-1, at 31; Woburn Brief at 7).²⁵ Woburn contends that, to date, Eversource's contractor, Black & Veatch, has produced only preliminary, unstamped engineering drawings for the Project, and that Eversource has not yet produced a set of engineering drawings for the Project that is stamped by a Massachusetts-licensed PE (Woburn Brief at 7 n.4).

With regard to necessary clearances, the Woburn DPW Superintendent asserts that the City typically requires a minimum five-foot horizontal clearance, which can be reduced to three feet on a case-by-case basis (Exh. CW-JFD-1, at 9; Tr. 3, at 551-553; Woburn Brief at 7). Woburn points out that the Company has acknowledged that it directed its engineering contractor to develop engineering drawings with 18- to 24-inch horizontal clearances, and did not specify that greater clearances be included, when feasible (Woburn Brief at 21, citing Tr. 2, at 278-81). Woburn notes that the horizontal clearance requirement of the MWRA for its own infrastructure is five feet,

²⁴ A sewer force main transports sewage by pressure, where gravity is insufficient (Exh. CW-JFD-1, at 15 n.2).

²⁵ The Project drawings were prepared by an engineering firm but were not stamped by a PE (Exhs. CW-JEC-1, at 4; CW-JFD-1, at 30). On January 15, 2019, the Company submitted to the Siting Board Project plans with a Massachusetts-licensed PE stamp, prepared by Black & Veatch, Engineers (Exh. CW-2, Att. (S1)(1)).

which may be reduced to three feet, and that the Company agreed it would comply with the MWRA requirements (Exh. CW-15(2), at 76-77; RR-CW-1(1); Woburn Brief at 17).²⁶ Woburn faults the Company for agreeing to MWRA's clearance requirements, but rejecting the same clearances when requested by the City of Woburn (Woburn Brief at 17).

In its denial of the GOL, Woburn identifies three specific geographic areas of concern that it contends require additional information and detailed planning to avoid construction-related problems: Lake Avenue and Scalley Dam, Pickering and Border Streets, and Washington Street and Montvale Avenue (Exh. CW-JFD-1, at 9-16; Woburn Brief at 6). With regard to traffic, Woburn asserts that extended construction beneath Lake Avenue, including jack-and-bore construction under Horn Pond Brook, would significantly disrupt traffic and pose conflicts with existing utilities beneath the roadway (Woburn Brief at 6, citing Exh. CW-JFD-1, at 9-10). Woburn also point out that construction along Washington Street and Montvale Avenue would occur on two of the more heavily trafficked roadways in Woburn that provide a direct route to the Interstate-93 entrance and exit ramps on Montvale Avenue (Woburn Brief at 7, citing Exh. CW-JFD-1, at 14-16). Woburn contends that the Company's Pickering and Border Streets feasibility study shows that water lines would need to be relocated, and the Company has provided inadequate depth to protect the line from freezing (Woburn Brief at 36-37, citing RR-EFSB-25). Similarly, Woburn asserts it requested another feasibility analysis regarding the routing on Lake Street and the impact on the Scalley Dam (Exhs. EFSB-CW-9; CW-JEC-1, at 4-5). Woburn notes that the Lake Street feasibility study was completed on May 15, 2018, but not received by the DPW until September 19, 2018 (Exh. CW-JFD-1, at 22; Tr. 3, at 516-517). Woburn argues that these two feasibility studies require further discussion with Eversource and possibly additional information to determine the best course of action (EFSB-RR-27).

b. Winchester

Winchester asserts that the plans submitted by Eversource as part of the GOL Application dated April 13, 2108, do not meet the applicable standard for construction (Winchester Brief at 6, citing Exh. EV-1, exh. D, at 14; Tr. 2, at 314-317). Further, Winchester contends that the plans

²⁶ The MWRA Water Operation Requirements state "a minimum of three (3)-feet to five (5)-feet horizontal clearance is required between adjacent utilities and the side of any MWRA main" (RR-CW-2(1)).

submitted are not sufficiently accurate or detailed to enable the construction of the New Line (Exh. TW-BER-1, at 3-4; Winchester Brief at 6).²⁷ Winchester faults Eversource for what it sees as the Company giving short-shrift to appropriate pre-construction planning and design work (such as completing an ample number of test pits and developing fully detailed engineering plans) and instead proposing to open the town's roadways prematurely, and make "on-site corrections as construction proceeds" (Winchester Brief, at 6).

Winchester notes that it has identified numerous errors in the survey information from which the GOL plans were developed, and therefore argues that additional test pit data is necessary (Exh. TW-BER-1, at 4). Winchester asserts that the Company has failed to honor the commitments it made in the Original Proceeding, and in the Stay Agreement, to provide "significant test pitting and subsequent consultation with the Town to determine the best line location in the right-of-way, and close consultation with National Grid for relocation opportunities" (Winchester Reply Brief at 8).

Winchester's specific areas of concern include: (1) protection of Town-owned utilities and bridge infrastructure to avoid damage during the jack-and-bore activities; (2) traffic impacts, including extended road closures at the jack-and-bore exit pit on Cross Street, located in the middle of the street west of the Railroad Crossing;²⁸ (3) the location of the jacking pits on Washington Street at the Aberjona River crossing, which are very close to the right of way, and may require a temporary construction easement on the abutting Town property; and (4) the status of the MWRA Section 8(m) permits for test pits and additional Section 8(m) MWRA approval for actual construction of the New Line (Winchester Brief at 7, 9).

Finally, Winchester states that with regard to utility spacing, its current request is for three feet of horizontal clearance and one foot of vertical clearance between the proposed duct bank and

²⁷ Winchester cites General Note 2 in the Project plans prepared by Black and Veatch as stating: "[e]xisting underground installations within the construction limits of the work are indicated on the drawings only to the extent information on such installations have been made available to or discovered by the engineer in the performance of the design work. The accuracy and completeness of this information is unknown and is presented solely to assist the engineer in an approximate determination of the underground installations" (Tr. 2, at 316, citing Exh. EV-1, Attachment I, Exhibit D).

²⁸ The Town asserts that the Company should have provided more definitive information as to the extent of time that Cross Street would be closed (Winchester Brief at 7, 9)

existing town infrastructure (Winchester Reply Brief at 6).²⁹ Winchester notes that this was agreed to by Eversource and included in the GOL for the Mystic-Woburn 115 kV line approved by the Select Board on December 3, 2018 (Winchester Reply Brief at 6; RR-EFSB-9(S)). Winchester also notes that Wakefield has required, and National Grid has agreed to, three feet of horizontal separation for the New Line and town utilities in Wakefield's GOL (Tr. 3, at 426). Winchester argues that such separation would ensure that there is adequate space for crews to maintain utilities if there is an emergency such as a break in a water or sewer line, and also that those lines can be adequately supported during construction (*id.*).

c. Company

The Company notes that the Siting Board fully analyzed the compatibility of the Project with the Commonwealth's policies concerning environmental protection, public health and safety during the underlying proceeding (Exh. EV-2, at 21). The Company recounts that during its review process, the Siting Board evaluated all relevant environmental issues including, but not limited to, land use, wetland and water resources, traffic, noise, visual, magnetic fields, safety, air, and subsurface contamination; and that the Board ultimately found, based upon the comprehensive factual record, that, with proposed mitigation measures, Eversource minimized these impacts (*id. citing Woburn-Wakefield* at 94-131). The Company observes that the Siting Board has already approved the Project, finding that it is needed and that it will contribute to a reliable energy supply for the Commonwealth, with a minimum impact on the environment and at the lowest possible cost (*id. citing Woburn-Wakefield* at 135-136, 143, 153). The Company asserts that no evidence was presented during the Certificate Proceeding that necessitates the Siting Board to revisit these findings (Company Brief at 30). Therefore, Eversource concludes that the Project is compatible with the Commonwealth's policies concerning environmental protection, public health and safety (Exh. EV-2, at 23, *citing* G.L. c. 164, § 69O; *KeySpan* at 39).³⁰

²⁹ In the Original Proceeding, Winchester requested that the Siting Board require a minimum horizontal separation of four feet between the duct bank and existing municipal utilities. *Woburn-Wakefield* at 86. The Siting Board declined to impose this requirement noting that, it "would require moving some of the existing utilities and would likely add significant time to the duration of the Project and expense." *Woburn-Wakefield* at 93.

³⁰ The Company notes that "regardless of the Woburn City Council's claimed reasons for the [GOL] denial, they are in direct conflict with the Siting Board's determinations from the initial Section 69J proceeding that the Project is needed, least cost and has the least

The Company states that its use of a baseline minimum horizontal clearance of 18-24 inches is safe, reasonable, and consistent with Company standards and is usual practice in areas where roadways may be narrow and congested with infrastructure (Company Reply Brief at 13, citing Tr. 1, at 74-78, 91-92; Tr. 2, at 278, 384-386).³¹ The Company states that requiring a larger clearance would lead to increased costs, longer construction duration, and greater impacts (id. At 14, citing Tr. 2, at 384-386). The Company indicated that in areas where a larger minimum clearance is practicable, it would use reasonable efforts to design the Project with a minimum three-foot clearance (id. citing RR-EFSB-14).³²

With regard to Woburn's GOL denial, the Company asserts that Woburn's "requirement" of a five-foot horizontal clearance between the utilities is not a "requirement," as it is not found in Woburn's ordinances and bylaws governing GOLs and SOPs (Company Reply Brief at 13). The Company argues that prior to October 2018, Eversource did not have a record of a previous "requirement" or even a preference expressed by Woburn representatives for a five-foot clearance (id.). The Company highlights contradictory testimony in which Woburn requested a three-foot horizontal clearance (id. citing Exh. EFSB-CW-11).

The Company argues that, due to additional utility relocations, requiring a three-foot or five-foot minimum clearance throughout the Project route would lead to increased costs, a longer

environmental impact..." (Company Brief at 32, n.13). The Company cites to testimony of Woburn's witnesses in which they acknowledge that many of the stated reasons in the Woburn City Council's denial of the GOL actually relate to issues previously adjudicated by the Siting Board in the Final Decision (Company Brief at 32, n.13, citing Tr. 3, at 580-589). Woburn acknowledged that, as an intervenor, it did not contest, in the underlying proceeding, any of the issues on which the City Council based its GOL denial, such as route selection, cable technology, and magnetic fields (id.).

³¹ The Company argues that it proposed a two-foot horizontal clearance between the Project and municipal infrastructure in the Original Proceeding and that the clearance requested in this proceeding is consistent (Company Reply Brief at 13, n.14, citing Original Proceeding Exh. COM-BAS-1, at 18).

³² An approved GOL by the Town of Wakefield provides for a minimum three-foot horizontal clearance (Exh. EFSB-EV-20(2) at 3). Stoneham and the Company have agreed to a Memorandum of Understanding (and a subsequent GOL) which provides for a minimum two-foot horizontal clearance and requires the Company to relocate any municipal utilities that are within two feet (Exh. EFSB-EV-25(S1)(1) at 10-11; RR-EFSB-10(S1)(1)). The Mystic-Woburn GOL issued by Winchester provides for a minimum three foot horizontal clearance (RR-EFSB-9(S)).

duration of Project construction, and greater impacts on residents and businesses (Company Reply Brief at 13-14, citing Tr. 2, at 384-386). In addition, during “cutovers” from existing utility lines, to relocated lines, the Company notes that there would be brief interruptions in service (Tr. 2, at 384-386). The Company notes that “minimum means minimum,” and in areas where there’s not much congestion, a much greater clearance would be incorporated into the Project design (Company Reply Brief at 14, citing Tr. 2, at 278; 280-281).³³ The Company also distinguishes between its acceptance of MWRA’s separation requirements of five feet (down to three feet on a case-by-case basis) and Woburn’s and Winchester’s interest in obtaining similar clearances (id. at 15). The Company notes that MWRA’s large 48-inch water main parallels the Project route for only a limited portion along Montvale Avenue, whereas “much smaller” municipal utilities parallel the Project for a majority of the route (id. at 15, citing Exh. EFSB-EV-9(9), Att. at 20-21). The Company argues that, as a practical matter, larger facilities, like MWRA’s lines, require more room within the street and greater clearance for access to allow for the larger equipment that may be needed for repair and maintenance (id. at 15).³⁴

The Company notes that it has identified where it believes the sewer force main is located, a location on Washington Street and Montvale Avenue in Woburn (Company Reply Brief at 17). The Company recognizes the importance of the sewer force main and commits to taking all reasonable measures to ensure that it is not damaged during construction of the Project (id. at 18). With regard to the relocation of the manhole on Pickering Street, the Company notes that if Woburn is not satisfied with the proposed relocation, the Company is willing to continue to work with Woburn to address its concerns (id.). Finally, at the request of Woburn, the Company conducted a feasibility analysis of the ability to relocate the New Line off of Lake Avenue and onto City property closer to Horn Brook Pond and the Scalley Dam (Exh. EFSB-EV-5). The Company indicated that the feasibility analysis concluded that while technically feasible, the relocation would result in increased costs and environmental impacts and increased permitting, and

³³ The Company estimates that it will be able to maintain a minimum three-foot clearance for approximately 60 percent of the route in Woburn (RR-EFSB-5; Att. RR-EFSB-5(1)).

³⁴ The Company’s construction plans for the Project include notes pertaining to: “MWRA Requirements,” which specify that “Hand excavation shall be completed within 2’-0” of MWRA facilities” (Exhs. EFSB-EV-9(9) at 6; EV-1, Att. I, Exh. D at 14).

therefore the Company intended to construct the New Line as approved by the Siting Board in the Final Decision (Exh. EFSB-EV-5).

The Company contends that Winchester is requiring an “unprecedented test pit program to provide Winchester with a level of pre-construction detail that is well beyond what any municipality has ever required of the Company, even in much more congested areas of other municipalities” (Company Brief at 33). The Company notes that Winchester has requested curb-to-curb test pits at approximately 25 locations, which are far more extensive in size (and number) than standard test pits and atypical in the Company’s experience” (*id.* at 33).³⁵ The Company argues that, based on test pits performed to date, the Company “has not learned anything of consequence that has necessitated a material change to the Project plans” (*id.* citing Tr. 1, at 191; Tr. 2, at 342). Thus, the Company concludes that the test pit information sought by Winchester is excessive, unnecessary, and imposes a substantial and continuing cost and delay in the consideration of the Company’s GOL application in Winchester (*id.* at 33, n.17).³⁶

The Company asserts that it has provided substantial evidence documenting its ability to address issues of concern expressed by Woburn and Winchester regarding Project construction plans, consistent with the proper balancing of cost, reliability, and environmental impacts (Company Brief at 31-32). The Company contends that it has provided each community with complete and comprehensive plan sets (including traffic management plans) that, based on the

³⁵ The Company states that Winchester does not accept the Company’s standard method of test pitting, which typically involves excavating a two-foot by two-foot hole in the roadway to identify the location of existing utilities in the vicinity of a proposed project (Tr. 1, at 172-174). Instead, the Company reports that Winchester requires that a two-foot wide, curb-to-curb cross section of the roadway be excavated, to a depth of 12-15 feet, using vacuum excavation methods rather than mechanical excavation, and that cross-sectional drawings of everything in the roadway be developed and submitted to the Town Engineer (*id.*). The Company contends that given Winchester’s preferred method of test pitting, and its more expansive and exacting requirements, it takes the Company two to three days to complete a single test pit (*id.* at 173). The Company maintains that it is normally able to complete three or four test pits in a single day using its standard test pitting approach (*id.*). The Company contends that Winchester’s requirements also result in a significant increase in costs (*id.*).

³⁶ The Company asserts that Wakefield and Stoneham have already issued GOLs for the Project for exactly the same facilities, in streets that are similar to those of Woburn and Winchester, “without much of the superfluous detail now required as a ‘must have’ by Woburn and Winchester” (Company Brief at 34 n.19).

Company's extensive experience with underground transmission line installations across the Commonwealth and New England, are detailed, thorough, and fully constructible (id. at 32, citing Exhs. EV-1, Att. B; EFSB-EV-9; Att. EFSB-EV-9(9); CW-2; CW-3; TW-EE-1; Tr. 1, at 38). The Company concludes that whatever concerns Woburn and Winchester may have with respect to the Project, they can be addressed with the reasonable conditions already imposed by the Siting Board in the underlying proceeding, as well as with the construction practices and commitments made by the Company in seeking the proposed Certificate (Company Brief at 35).

3. Analysis and Findings

The Siting Board: (1) reviews the decision from the underlying Siting Board proceeding; and (2) determines the extent to which new information has been developed or the circumstances of a project may have changed in the intervening period. The Siting Board does not relitigate in a Certificate proceeding issues that have been fully and fairly decided in the underlying proceeding. This practice reflects considerations of both fairness and administrative efficiency. See Exelon at 16; Footprint at 13; Berkshire Power at 18-19.

It is the Siting Board's view that, as a general rule, a Certificate proceeding should not serve as a vehicle for the re-litigation of issues that have already been fully and fairly determined in the related facility approval proceeding, particularly where the issue in question is one that is central to the Board's fulfillment of its statutory obligations. To allow it to do so would effectively render the Facility approval proceeding meaningless. It also would violate accepted principles of due process for those parties, including the project applicant, who participated in the facility approval proceeding, litigated the issues in question, and justifiably held the expectation that they could rely upon the finality of the Siting Board's Final Decision in that proceeding.

Berkshire Power at 18-19.

As discussed in Section IV.C. above, in the underlying proceeding, the Board conducted a comprehensive review of the Facility's potential impacts. Siting Board precedent in Certificate proceedings also considers the extent to which new information has been developed or the circumstances of a project may have changed in the intervening period. See Exelon at 16; Footprint at 10; Cape Wind at 9-10. The Siting Board compares the record evidence and the decision in the underlying Siting Board proceeding with the record in a Certificate proceeding to make a determination of whether new information has been developed or the circumstances of a

project have changed in the intervening period. With regard to compatibility with environmental protection and public health and safety, the Siting Board finds that there has been new information in the intervening period that warrants review and analysis beyond that contained in the Final Decision.

At the request of municipal officials in Woburn and Winchester, the Company has conducted a number of environmental and other supplemental studies in pursuit of GOLs in these communities. These efforts include numerous test pit locations (some requiring curb-to-curb methods); additional engineering feasibility studies; and continued refinement of the Project's engineering plans. In response to Woburn's concerns, the Company has recommended that a manhole be relocated on Pickering Street and the Company has committed to working with Woburn to facilitate the relocation and address any current concerns associated with the relocation. By and large, the ongoing engineering design process being undertaken in pursuit of the GOLs for the Project has yielded few, and only modest changes in the Project design. The most significant design change reviewed in this proceeding concerns the Company's compliance filing regarding Condition P in the Final Decision. In response, the Company has proposed certain modifications to the cable alignment that would further mitigate magnetic fields and none of the parties objects to incorporating these changes into the Project, and the Board has accepted these modifications, above.

The Woburn City Council, in its denial of the Company's GOL application, provided sufficient grounds for the Company to seek a Certificate from the Siting Board, as found earlier. Regarding the "findings of fact" accompanying the Woburn GOL denial, as acknowledged by Woburn's own witnesses, many of these findings clearly relate to decisions previously made by the Siting Board in the Final Decision, such as route selection, traffic, cable technology, and magnetic field impacts.^{37,38} These issues were fully and fairly adjudicated by the Siting Board in the Final Decision. Considering the additional information presented in this proceeding, along with the adjudication in the Original Proceeding, the Siting Board finds that this information does not alter

³⁷ These issues are subject of the current appeal of the Final Decision now pending before the Appeals Court.

³⁸ Although Woburn's GOL denial reflects many of the issues now on appeal in the Final Decision, as an intervenor in the underlying proceeding, Woburn supported the proposed Project and Board's Tentative Decision, and it did not appeal the Final Decision. Woburn-Wakefield at 58.

its findings in the Final Decision. The Siting Board finds that construction and operation of the proposed Facility is compatible with considerations of environmental protection, public health and public safety.

One issue that warrants additional review in this proceeding concerns the necessary clearances between the Project's duct bank edges and adjacent municipal utilities. It should be noted that this is not a new issue. In the Original Proceeding, Winchester sought to have the Siting Board impose a condition mandating a minimum four-foot horizontal separation between the Project and municipal utility lines. The Siting Board declined to adopt this proposal, citing its inflexible approach that would increase both the duration of Project construction, and its cost. The Final Decision noted that "...the Companies committed to working with the individual municipalities to identify the most efficient use of underground space to allow future utility development or repair in these towns." Woburn-Wakefield at 92. In the present proceeding, Winchester has revisited this concern, and now asks the Siting Board to impose a three-foot minimum horizontal separation between the Project and its utilities. Woburn too, identifies this as an issue of concern (and included this as a basis for its denial of the GOL) and seeks a minimum horizontal separation of five feet, with as little as three feet on a case-by-case basis.

The Final Decision did not resolve the issue of how much clearance is necessary, at a minimum, to achieve safe, efficient, and cost-effective construction, operation, and maintenance of the Project in proximity to adjacent utility lines. The record in this proceeding contains a substantial amount of additional information on this subject, and the Siting Board revisits this topic as it relates to its issuance of Approvals in Lieu of GOLs in this Certificate for both Woburn and Winchester.

The record in both the underlying proceeding, and in this proceeding, indicates that specific minimum clearances between underground transmission lines and other subsurface utilities are not prescribed by state codes or standards, and instead reflect the qualitative judgments of state and local permit officials, and utility project proponents, concerning safety, cost, and construction impacts.³⁹ The record in this proceeding demonstrates a range of views across different

³⁹ For example, Department regulations pertaining to the location of underground transmission lines, 220 CMR 125.30(1), specify that "[u]nderground systems of electric conductors should be located so as to be subject to the least practicable disturbance. Railway tracks and underground structures, including catch basins, gas pipes, etc., should be avoided where practicable." With regard to construction of duct and cable systems,

municipalities – even for the same transmission project, placed in similar types of streets, with similar utility infrastructure present in roadways. The Company maintains that in congested areas beneath roadways, its standard practice is to maintain a clearance of 18-24 inches between the edges of its underground duct banks and adjacent municipal utilities. MWRA, which operates large diameter (48-inch) water lines in Woburn and Winchester requires a five-foot separation from adjacent utilities, which can be reduced to three feet on a case-by-case basis.⁴⁰ Stoneham recently issued a GOL to Eversource requiring a minimum separation of two feet; Wakefield issued a GOL to National Grid requiring a minimum separation of three feet. The Mystic-Woburn project GOL, recently issued by Winchester, also requires a minimum separation of three feet. In this proceeding Woburn seeks five feet of clearance, and Winchester seeks three feet, at a minimum.

There is broad agreement among the parties, consistent with Department regulations, that designing and constructing the Project with as much clearance as possible between the duct bank and adjacent municipal utility lines is appropriate, where practicable. However, the Company maintains that having to relocate municipal utilities – when 18-24 inches of clearance can be maintained – is not practicable, and needlessly imposes costs, delays and disruption to this time-sensitive system reliability project. The Company has testified that 18-24 inches of horizontal clearance is its typical practice in congested roadways, where its facilities co-exist with numerous municipal utilities in close proximity.

Despite Woburn and Winchester’s objections, there is nothing on the record that indicates that the Company’s existing practices regarding minimum clearances between its transmission facilities and adjacent municipal utility lines are inconsistent with applicable regulatory requirements, or good utility practice. In addition, the municipalities argue that the Company’s standard clearances are unsafe but fail to provide any instances where Eversource’s existing

220 CMR 125.31(4)(a) specifies that “[t]he clearance between the duct or cable system and other underground structures paralleling them, shall be as great as practicable.” In contrast, federal regulations pertaining to the construction of underground natural gas transmission lines provide more specific requirements: “[e]ach transmission line must be installed with at least 12 inches (305 millimeters) of clearance from any other underground structure not associated with the transmission line.” See 49 CFR 192.325(a).

⁴⁰ The Company has agreed to abide by MWRA’s requirements, and has opted not to seek Certificate in lieu of MWRA’s permit approvals (Tr. 2, at 209, 213-214).

minimum transmission line clearances have jeopardized public health and safety, or the safe operation and maintenance of adjacent utility infrastructure. Absent such a record, the Siting Board finds no basis to require deviations from the Company's established design and construction methods, or reject its proposed minimum horizontal clearances in this proceeding, or adopt the municipalities' preferred minimum clearances.

The Siting Board notes that Eversource's request for 18-24 inches of minimum horizontal clearance, is actually a range, and not a single "minimum" distance. The record indicates that this range reflects the Company's stated intention to provide additional clearance when possible, but also retain flexibility to avoid unnecessarily relocating other utility lines. To provide a more certain formulation of the Company's "minimum clearance" proposal, and one that addresses some of the concerns expressed by the municipalities, the Siting Board views additional provisions as appropriate for excavation methods used by the Company during construction of the New Line.

The record shows that Winchester has required the Company to use vacuum excavation for test pit locations in the town as a less invasive method than mechanical excavation, which is intended to avoid inadvertent damage to the utilities encountered during excavation work. Similarly, the Company's construction plans indicate that MWRA requires "hand excavation" if Project excavation is within two feet of MWRA lines. The Department's Dig Safe regulations reflect similar concerns for excavation, noting: "[w]hen excavating in close proximity to the underground facilities of any company, non-mechanical means shall be employed, as necessary, to avoid damage in locating such facility, and any further excavation shall be performed employing reasonable precautions to avoid damage to any underground facilities...". See 220 CMR 99.06(1). The record also shows that both vacuum and hand excavation, while less likely to disturb adjacent municipal utility lines, do impose considerably greater construction time requirements and costs than typical mechanical methods of excavation.

The Siting Board finds that, should safety, cost, and construction disruption considerations warrant the use of the 18-inch minimum horizontal clearance, the Company should take additional precautions during construction to prevent any inadvertent damage to adjacent utility municipal utility lines. To achieve this outcome, the Siting Board directs the Company to employ vacuum or hand excavation methods for any excavation between 18 and 24 inches from adjacent municipal utility lines. Specifically, up to six inches of excavation width (the portion closest to the adjacent municipal utilities, and only that portion below the pavement) would necessitate vacuum or hand

excavation, while the other portions of the trench could use mechanical excavation methods. The Siting Board will allow the Company to select whether vacuum or hand excavation method is best suited in such circumstances. As reflected in the attached Approval in Lieu of GOL, the municipalities may elect to waive the Siting Board's requirements for vacuum or hand excavation, in favor of mechanical excavation methods, in their issuance of SOPs, if they deem it appropriate to do so. We expect that the Company, consistent with its representations in this proceeding, shall provide more than the minimum clearance from municipal utilities, where practicable.

The record indicates that the Company has performed numerous test pit locations in Woburn and Winchester since the construction plans were last revised substantively. Although the Company represents that the test pits performed to date have yield little additional information, and largely confirmed the prior Company's understanding of subsurface conditions already reflected in the existing plans, we encourage the Company to continue performing agreed-upon test pitting activities. Should significant disparities arise between test pit information, and the representations shown in Company's current construction plans, the Siting Board directs the Company to make any necessary revisions to its construction plans, and submit them to the Siting Board and municipal officials prior to commencing construction.

With regard to magnetic fields, in Section II.E. above the Siting Board approved the Condition P Compliance Filing and directed the Company to implement a magnetic field monitoring plan, both of which apply to the entire route.

With respect to the impacts of the Project, the Siting Board therefore finds that the conclusions and findings reached in the Woburn-Wakefield Decision regarding environmental impacts, and public health and safety remain valid and will be used for purposes of our findings in this Decision. The Siting Board notes that as appropriate, the Certificate itself contains directives and conditions that reflect the issues raised in this proceeding, applicable to any permit contained therein. Accordingly, the Siting Board finds that construction and operation of the proposed Facility is compatible with considerations of environmental protection, public health and public safety.

D. Conformance with Laws and Reasonableness of Exemption Thereunder

Pursuant to G. L. c. 164, § 69O, the Siting Board must make a finding with respect to the extent to which construction and operation of the Facility will fail to conform with existing state or

local laws, ordinances, by-laws, rules and regulations and the reasonableness of exemption thereunder, if any, consistent with the implementation of the energy policies applicable to the Siting statute. Exelon at 22; Cape Wind at 24.

1. Positions of the Parties

a. Woburn and Winchester

To the extent that environmental issues come within the scope of conformance with the laws and the reasonableness of exemptions, those issues are addressed above. Both Woburn and Winchester, however, request that if the Board issues a Certificate that certain conditions be imposed (Woburn Brief at 40-41; Winchester Brief at 5-6).

Woburn proposes numerous conditions to be included in any Certificate including the majority of conditions imposed by Wakefield in its GOL (Exh. EFSB-CW-11; RR-EFSB-23; Woburn Brief at 41 and Attachment A).

Winchester contends that the Certificate request violates the statutory requirements of Sections 69K - 69O and is in breach of Stay Agreement between the Town and Eversource to follow the GOL and Street Opening Process provided by G.L. c. 166, §§ 21, 22, and the Town's Rules and Regulations (Winchester Brief at 2). Winchester requests that if the Siting Board issues a Certificate, that it include the following conditions: (1) either the Winchester Town meeting must approve the grant of a construction easement on Winchester land adjacent to the Aberjona River crossing on Washington Street, or the Company must finalize the details of the proposed construction at the Cross Street Railroad Bridge and the MassDOT must approve the construction plans; and (2) the Company must comply with the terms of the Stay Agreement dated July 26, 2018, including the requirement that the Company obtain the GOL from the Winchester Select Board (id. at 5-6).

b. Company

In its brief, the Company notes the ways that it has complied with many existing state and local requirements. With respect to state requirements, the Company notes: (1) the Siting Board's approval of the Project demonstrates that the Project complies with G.L. c. 164, § 69J; (2) the Siting Board found that construction of the Project would satisfy the mandate of G.L. c. 164, § 69H to provide a reliable energy supply to the Commonwealth with a minimum impact on the

environment at the lowest possible cost; and (3) the Secretary has found that, on the basis of the ENF, the Project's environmental impacts will be avoided, minimized, and/or mitigated to the extent practicable (Company Brief at 30-31, citing Original Proceeding Exh. EFSB-G-1(2) at 8). With respect to local approvals, the Company notes that it has obtained: (1) a GOL from the Stoneham Board of Selectman; (2) an Order of Conditions from the Winchester Conservation Commission; (3) an Order of Conditions from the Stoneham Conservation Commission; and (4) an Order of Conditions from the Woburn Conservation Commission (id. at 31).

As to those permits not yet obtained, the Company asserts that it has provided "a very substantial amount of information as part of the [Woburn] City Council's review of the Company's GOL application" (Company Brief at 32, citing Exhs. CW-1; EV-1, Atts. C, D, E, F). For issues and locations where Woburn and Winchester are not satisfied, the Company asserts that it makes detailed commitments regarding construction (id. at 34). These measures, the Company argues, have been successfully used in other communities and with similar projects and so should be "more than sufficient to address" the concerns raised by Woburn and Winchester (id. at 34). The Company argues that it is not necessary to require additional conditions in the Certificate (Company Brief at 34-35).

2. Analysis and Findings

The Siting Board acknowledges that the granting of a Certificate in this proceeding will allow the Company to proceed with construction of the Project notwithstanding Woburn's denial of the Company's GOL application and Winchester's pending consideration of the Company's GOL application. The Siting Board notes that this result was intended by the Legislature in enacting the Certificate Statute, and is consistent with the statute. Further, although the Certificate Statute does not require it, the Board provided both Woburn and Winchester with the opportunity to recommend appropriate GOL conditions and to indicate whether either municipality opposed inclusion of an approval in lieu of its GOL in the Siting Board Certificate. Woburn and Winchester provided specific conditions each advocated to be included in any Certificate if granted by the Siting Board over their objections.

In the Final Decision, the Siting Board directed the Companies to comply with all federal, state and local laws and ordinances. Woburn-Wakefield at 157. In addition, the Siting Board found that the Companies' plans for construction and operation of the Project are consistent with health, environmental protection, and resource use and development policies as adopted by the

Commonwealth. Woburn-Wakefield at 136-139. The record in this proceeding contains no new information that would alter the Siting Board's conclusion that the Project is needed and that impacts would be minimized. Woburn-Wakefield at 17-18, 136. Furthermore, without the Certificate, the Project cannot be constructed. Without construction of the Project, the Siting Board will not have fulfilled its mandate pursuant to G.L. c. 164, § 69H.

The Siting Board finds that Woburn's and Winchester's concerns are appropriately addressed in the conditions imposed the approval in lieu of GOLs, as set forth in the Certificate and in the "Conditions" section of this Decision. See Section IV.H., below. The Siting Board finds that while all approvals for construction of the Project have not yet been obtained, there is no evidence of non-conformance with any other applicable state or local laws. The Siting Board further finds, pursuant to G.L. c. 164, § 69O, that exempting the Company from need to obtain GOLs from Winchester and Woburn – subject to conditions – is reasonable and is consistent with the Siting Board's duty to implement the energy policies articulated in and incorporated into G.L. c. 164 so as to provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

E. Public Interest or Convenience

Pursuant to G. L. c. 164, § 69O, the Siting Board must make a finding with respect to the public interest or convenience requiring construction and operation of the Facility.

1. Positions of the Parties

In their briefs, neither Woburn nor Winchester specifically addresses public interest or convenience in the context of G.L. c. 164, § 69O. Woburn does state that if the Siting Board decides to issue a Certificate, then the "public interest" requires that such a Certificate contain certain conditions, articulated in response to EFSB-CW-11, RR-EFSB-23, and the conditions articulated in Exhibit A to the brief (Woburn Brief at 40-41).

The Company states the Siting Board extensively reviewed need, cost, project alternatives, routing alternatives and environmental impacts of the Project and the Board determined that the Project would contribute to a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost (Exh. EV-2, at 24, citing Woburn-Wakefield at 153-155). Further, the Company indicates that the Siting Board determined pursuant to

G.L. c. 164, § 72, that the proposed transmission line was necessary for the purpose alleged, would serve the public convenience, and is consistent with the public interest (id. at 25, citing Woburn-Wakefield at 152). The Company asserts that no evidence was presented during the Certificate Proceeding that necessitates that the Siting Board revisit these findings (Company Brief at 36). Accordingly, the Company asserts that the Project is needed and compatible with considerations of environmental protection, public health and public safety; therefore, the public interest requires the construction and operation of the Project (Exh. EV-2, at 24; Company Brief at 35).

2. Analysis and Findings

After conducting an extensive review of the need for the Project, project alternatives and alternative routes, and potential environmental impacts, the Siting Board found in the underlying proceeding that upon compliance with specific conditions set forth in Woburn-Wakefield, construction and operation of the transmission lines along the primary route is needed, and will provide a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost, in keeping with the Siting Board's statutory obligations under G.L. c. 164, § 69H. Woburn-Wakefield at 136, 154. The Siting Board found that the Project is necessary, will serve the public convenience and is consistent with the general public interest, under G.L. c. 164, § 72. The Siting Board further found that the general public interest in constructing the Project outweighs identifiable adverse local impacts. See Woburn-Wakefield at 143. Accordingly, the Siting Board found that the Project is reasonably necessary for the convenience or welfare of the public. See Woburn-Wakefield at 143.

The Siting Board fully reviewed and determined that the public interest requires construction of the Project. In determining the public interest, the Siting Board considered benefits and impacts, and balanced multiple factors. Nothing in the record of the instant proceeding changes the Siting Board's findings in the underlying proceeding. Accordingly, the Siting Board finds, that pursuant to G. L. c. 164, § 69O, the public interest or convenience requires the construction and operation of the Project as described in this proceeding.⁴¹

⁴¹ Conditions to be imposed as part of the Certificate are addressed in Section IV.H., below.

F. Representation of Good Faith Effort

Pursuant to G.L. c. 164, § 69L(A)(4), one of the required elements of an Application is:

a representation by the applicant as to the *good faith effort* made by the applicant to obtain from state agencies and local governments the licenses, permits, and other regulatory approvals required by law for the construction or operation of the facility.

(Emphasis supplied). See also, Exelon at 34-35; Cape Wind at 7 n.8, 31-32.

While Section 69O does not require a finding of good faith effort in order to grant a Certificate (see Section IV.A, above), the Siting Board recognizes the importance of an applicant's good faith efforts to work with affected communities to seek the permits it requires. Therefore we review the Company's actions to secure the necessary local approvals it requires to build the Project.

1. Positions of the Parties

a. Woburn and Winchester

Woburn devotes a substantial portion of its brief to the argument that the Company has failed to act in good faith in its application for a GOL (Woburn Brief at 27-36). Woburn contends that Eversource has consistently failed to provide timely, critical information to the City; to incorporate the City's reasonable input and requirements into its engineering drawings; and to evenly weigh the City's interests against the interests of other regulators, such as the MWRA (Woburn Brief at 27; Exhs. CW-JFD-1, at 3, 20-25, 30; CW-JEC-1, at 3-5; Tr. 1, at 75-76). Woburn enumerates the Company's alleged failures to provide "necessary, critical information to Woburn concerning this Project" (Woburn Brief at 29-31).⁴² Much of this information was in the form of engineering drawings, which Woburn asserts were not timely supplied or supplied in an inappropriate form (id. at 29; Exh. CW-JFD-1, at 24, 30-31).

As further evidence of bad faith, Woburn argues that in those instances in which the City was able to give feedback to the Company, the Company simply ignored that feedback (Woburn Brief at 31-35). This is particularly true, Woburn argues, with respect to the clearances between the Project's transmission line and existing City utilities, where it requires a minimum five-foot

⁴² Woburn stated that it received both the Pickering/Border Street and Lake Street/Scalley Dam reports for the first time on September 19, 2018 in response to information requests by the Siting Board to Eversource in this proceeding (Exhs. CW-JFD-1, at 21-22; EFSB-EV-5; EFSB-EV-6).

horizontal clearance from existing utilities (with a reduction to three feet on a case-by-case basis) (id. at 32; Exh. CW-1, at 17-18, 34). Woburn alleges that Eversource failed to instruct its engineers to satisfy Woburn's requirements and that this is evidence of the Company's lack of good faith (Woburn Brief at 32, citing Tr. 2, at 278-81).

Winchester makes three arguments that the Company has failed to comply with the good faith requirement of G.L. c. 164, § 69L(A)(4). First, Winchester asserts that before a Certificate application can be considered, "all state and local permits must either be applied for or in place" (Winchester Brief at 2). Winchester asserts that the Company has failed to apply for the MWRA Section 8(m) permits and the MassDOT Highway Access Permit (Winchester Brief at 3). Consequently, Winchester argues, the Company cannot assert that it has made a good faith effort to obtain from state agencies all of the permits required by law for the construction of the Facility (Winchester Brief at 2-3).

Second, Winchester notes that it and the Company entered into the Stay Agreement on June 26, 2018 (Exh. TW-BER-1, at 3; Winchester Brief at 2). In the Stay Agreement, Winchester promises to review and render a decision on the Eversource's GOL petition "in an expeditious and good faith manner" (RR-EFSB-15(1); Winchester Brief at 2). Less than two weeks after the date of the Stay Agreement, however, the Company filed the present Certificate Proceeding in which it requests that the Siting Board grant a Winchester GOL, and that the "hasty" filing of a Certificate request constitutes a breach of the Stay Agreement, which is evidence of a lack of good faith (Winchester Brief at 2). Winchester argues that the Siting Board should not allow the Company to cancel its contractual obligations with the Town contained in the Stay Agreement (id. at 6).

Winchester's third argument relates to a memorandum of understanding ("MOU") entered into between Winchester and the Company with respect to construction of the 115 kV line approved in NSTAR Electric Company d/b/a Eversource Energy, EFSB 15-03/D.P.U. 15-64/15-65 (2017) ("Mystic-Woburn") (RR-EFSB-16(1) Att.). In this MOU, the Company promised to provide "construction-level design plans" to Winchester as part of any GOL application, and that the project plans for the 345 kV line "do not meet this standard" (Winchester Brief at 8-9). By submitting plans that, Winchester alleges, did not meet the level of detail in the Mystic-Woburn plans, Winchester contends that the Company has acted in bad faith (id.).

In the event that the Siting Board does decide to grant Eversource a Certificate, Winchester requests that "at a very minimum" the Siting Board include as a condition of such Certificate that

the Company must comply with all provisions of the Stay Agreement including the “requirement” to obtain a GOL from the Winchester Select Board (Winchester Brief at 6).

b. Company

In its Brief, the Company asserts that it has acted in good faith (Company Brief at 37-38). The Company asserts that the Board has previously held that the good faith requirement is satisfied where: (1) the applicant has provided the permitting authority with sufficient information upon which it could issue a permit; or (2) where applying for the permit is futile or unreasonable under the circumstances (Company Brief at 37, citing Footprint at 26 and Cape Wind at 7 n.8, 28-29). The Company then provides a list of information that it has provided in this proceeding (Company Brief at 37-38).

In its Reply Brief, the Company denies Woburn’s assertion that it failed to provide “timely, critical information” to Woburn (Company Reply Brief at 9-12). To the contrary, the Company asserts that Woburn’s DPW Superintendent and City Engineer had been working “constructively” with the Company “in a concerted effort since 2014 to address any concerns Woburn had with the Project” (id. at 9). This joint effort ceased when “the Woburn City Council short-circuited the process and denied the Company’s GOL Application” (id. citing Exhs. EV-1, Att. G; EV-1, Att. K; CW-5; Att. CW-5(1); CW-26; Tr. 1, at 132-33). Up until this point, the Company asserts, “Woburn had been a strong supporter of the Project” (Company Reply Brief at 9, citing Woburn-Wakefield at 58, 66, 147).⁴³ The Company also quotes testimony of the Woburn City Engineer regarding progress on design of the Project, and whether the Company had made a good-faith effort in attempting to obtain a GOL from the City Council (Company Reply Brief at 9, citing Tr. 3, at 544-45). Based on Woburn’s response, the Company argues that its progress “is

⁴³ The Siting Board notes that Woburn had supported the Project in the underlying proceeding even though the route would pass through the City: “[t]he City of Woburn supports the Primary Route based on Woburn’s understanding that the Project is needed for all Eversource customers” (Woburn-Wakefield at 58); “both Woburn and Wakefield support the Primary Route” (Woburn-Wakefield at 66 n.56); “Scott Galvin, the Mayor of Woburn . . . [has] written letters supporting the granting of zoning relief” (Woburn-Wakefield at 147, citing Original Proceeding Exh. JP-5, Att. G, Att. H). In addition, Scott Galvin, Woburn’s Mayor, made statements in support of the Project at the first day of evidentiary hearing in the Original Proceeding (Original Proceeding Tr. 1, at 33-34).

consistent with the good-faith interactions that the Company had with the City for the previous several years” (id. at 9-10).

The Company disputes the City’s assertion that the disagreement between the Company and Woburn regarding reasonable clearance is evidence of bad faith (Company Reply Brief at 12-16). The Company asserts that Woburn’s five-foot “requirement” is essentially a preference, and that it was expressed by the DPW Superintendent only late in this proceeding (id. at 13). On September 26, 2018, the DPW Superintendent requested only a three-foot clearance between utilities in response to an information request, and that the three-foot clearance changed to a five-foot clearance between September 26, 2018 and October 17, 2018 (id., citing Exhs. EFSB-CW-11; CW-JFD-1, at 9, 14). The Company asserts that this “newly-articulated preference for five-foot horizontal clearances” does not exist in Woburn’s ordinances and bylaws governing GOLs and SOPs (Company Reply Brief at 13, citing Exh. EFSB-EV-2(10)).⁴⁴

Regarding Winchester’s first argument concerning good faith, the Company asserts that Winchester is simply wrong to assert that Eversource must apply for all state and local permits before commencing a Certificate proceeding (Company Reply Brief at 4 n.6). Furthermore, the Company asserts that it has in fact applied for all state permits necessary including permits from the MWRA and MassDOT (id. citing Exhs. CW-15; CW-19).

Regarding Winchester’s second argument, the Company asserts that its actions in applying for a Certificate do not constitute breach of the Stay Agreement nor do those actions evince bad faith (Company Reply Brief at 24). Before the Stay Agreement was executed, the Company claims it told Winchester that it planned to include a request for a Winchester GOL and SOP in a Certificate proceeding that it would file if Woburn denied the Company’s GOL application (Company Brief at 25, citing RR-EFSB-8). Furthermore, the Stay Agreement “was structured primarily to address procedural issues relating to Winchester’s pending appeal at the SJC” of the Woburn-Wakefield Decision (Company Reply Brief at 24). The Stay Agreement is “completely silent with respect to the Company’s right to seek a Certificate from the Siting Board inclusive of the Winchester GOL” (Company Reply Brief at 24). The Company notes that the Certificate filing does not interfere with Winchester’s right to process the Company’s GOL application and Winchester remains free to process the Company’s GOL Application to completion through its

⁴⁴ Exhibit EFSB-EV-2(10) is a copy of the Woburn bylaws governing SOPs.

Select Board, but to date, despite the GOL Application having been filed nearly eight months ago, it has not done so (id. at 25).

Regarding Winchester's third argument concerning the Company's construction plans, the Company asserts that "the GOL Application filed in Winchester . . . is complete and . . . the Project can be constructed as shown on those plans" (Company Reply Brief at 26). The Company notes its construction experience and addresses specific areas of concern (id. at 25-28).⁴⁵ The Company further notes that even Ms. Rudolph, Winchester's Town Engineer, has acknowledged that, "construction could theoretically start based on the plans filed in support of the April 13, 2018 Request" (id. at 26-27, citing Exh. TW-BER-1, at 4).

2. Analysis and Findings

The necessity for an applicant to make a representation as to its good faith efforts in its application was discussed in the legislative history of the statutes establishing the Siting Board. See House No. 6190, Third Report of the Massachusetts Electric Power Plan Siting Commission at 25 (March 30, 1974).

"The 'good faith effort' requirement places the companies on notice as to what standard they must conduct themselves by, while at the same time eliminating frivolous claims. In addition by requiring that the electric companies disclose which permits and approvals they have already obtained, this siting bill manifests a clear intention that a certificate should not be granted to an applicant who has failed to make a substantial effort to obtain the required licenses, permits and other regulatory approvals."

In light of the language of § 69L that an applicant make a good faith effort to obtain the permits sought to be included in a Certificate, and the legislative history quoted above, Siting Board precedent consistently requires that applicants seek necessary permits before applying for a

⁴⁵ In RR-TW-3, Winchester asks the Company to "identify the number of underground 345 kV transmission lines it has constructed in Massachusetts." In response, Company witnesses testified that the Company has constructed 16 underground 345 kV transmission lines totaling approximately 89 miles (RR-TW-3). In its brief, Winchester moves that passages of this response be stricken as unresponsive (Winchester Brief at 11). The Company asserts that its response was thorough and entirely responsive (Company Reply Brief at 26 n.27). We decline to strike the response for two reasons: we find the Company's answer to RR TW 3 to be responsive; and a request to strike should be brought by motion and not within a brief.

Certificate except in limited circumstances. See, e.g., Exelon at 35; Footprint at 25-26; Cape Wind at 31-34. This requirement does not mandate that an applicant must apply for all permits before requesting a Certificate, as there may be factors that make applying for a particular permit unreasonable or futile under the circumstances. Exelon at 35. However, the applicant must make a substantial effort to obtain required approvals, and describe those efforts in its Certificate Application.

The history of this Project spans multiple years. The Company filed the Woburn-Wakefield petitions in September of 2015. Woburn-Wakefield at 3. Therefore, the Project has been the subject of administrative review for more than three years. The Original Proceeding involved 13 days of evidentiary hearings and more than 1,000 documents; the present case required three days of evidentiary hearings and the submission of approximately 315 exhibits. In addition, the Company has been involved in various permitting activities with the four affected municipalities as well as various state agencies since at least 2014. Consequently, we find that the Company has devoted a significant amount of time and effort to obtain approvals for this Project. The alleged “defects” in the Company’s communications with Woburn, to extent they are valid, seem reflective primarily of the inherently complicated ongoing process of refining construction details for a complex project. Similarly, the dispute between Woburn and the Company regarding clearances strikes us as a legitimate divergence of substantive judgments, and not a lack of good faith on the Company’s part.

We note that Woburn’s mayor supported the Project in the underlying proceeding; the City Council, however, opposes it as evidenced by the City Council’s refusal to issue a GOL. As noted above, many of the objections expressed by the City Council in its denial of the Company’s GOL application mirror issues raised on appeal of the Final Decision by Winchester and Stoneham – a remedy available to Woburn as an intervenor, but one it did not avail itself.

Similarly, we agree with the Company that Winchester is incorrect in asserting that G.L. c. 164, § 69K requires Eversource to apply for all necessary state and local permits before commencing a Certificate proceeding. There is no such requirement in the statute and therefore the fact that the Company has not applied for all permits does not evince a lack of good-faith dealing by the Company.

With respect to Winchester’s argument regarding the Stay Agreement, it does not forbid the Company to include a request for a Winchester GOL and SOP in its Certificate filing, nor does

it prevent Winchester from processing the Company's GOL application. The Company's decision to pursue a Certificate with the Siting Board at the same time it continues to work with Winchester is not inconsistent with the Company's good faith obligations.⁴⁶

Finally, we address Winchester's third argument, which relies upon the alleged defects in construction plans the Company has submitted. Although the plans submitted may not meet with Winchester's approval, the record does not support a finding that these plans constitute evidence of bad faith. The conditions imposed in the GOLs granted in this Certificate Proceeding appropriately address construction plan considerations of importance.

For these reasons, we find that the Company has acted in good faith in seeking the permits for this Project.

In our conclusion on good faith, the Siting Board notes the various commitments made by the Company in the underlying proceeding and this proceeding to continue working with the municipalities to develop construction plan sets and HCAs (as well as TMPs). See Woburn-Wakefield at 88-89. Nothing in this Decision replaces the responsibility of the Company to cooperatively work together with Woburn, Winchester, Stoneham and Wakefield.

G. Decision on the Application

The Siting Board has made the four findings that are required in order to issue the Certificate pursuant to § 69O. Specifically, the Siting Board has found that: (1) the Project is needed; (2) granting a Certificate containing approval(s) for the Project is compatible with considerations of environmental protection, public health and public safety; (3) there is no evidence of non-compliance with any applicable state and local laws, ordinances, by-laws, rules or regulations; and (4) issuing a Certificate would serve the public interest or convenience. In addition, the Siting Board has found that the Company has made a good faith effort to acquire permits from Woburn and Winchester as required by G.L. c. 164, § 69L. The findings made by the Siting Board support granting a Certificate for the Project so that it may go forward, and the Siting Board hereby grants such a Certificate.

⁴⁶ We do not address whether the Company's pursuit of a Certificate from the Siting Board constitutes a breach of the Stay Agreement. The parties to that agreement may pursue remedies under the agreement, not through this agency.

H. Scope of the Certificate

As noted in Section I.A.2, above, Eversource has requested that the Certificate include five separate permits identified by the Company as necessary for Project construction and operation. The Siting Board considers below which of these permits should be included in the Certificate.

As a threshold matter, throughout this proceeding, Eversource has argued that the Board must issue a Certificate that “shall be in the form of a composite of all individual permits, approvals or authorizations that would be necessary for the construction and operation of the generating facility,” and, therefore, any Certificate granted must include the Woburn GOL as well as the Winchester GOL and the three SOPs (Exh. EV-1, at 21-22; Company Brief at 39-45, citing G.L. c. 164, § 69K; Company Reply Brief at 5-7). The Board’s Certificate regulations provide that if the application relates to more than one permit, the Board may issue a Certificate with regard to all such permits *or less than all*. 980 CMR 6.05(3) (emphasis added); see also Exelon at 38-39;⁴⁷ Keyspan at 45.⁴⁸

The Siting Board first addresses the denial of the Woburn GOL, then the Winchester GOL, and finally the three SOPs.

1. Woburn Grant of Location

As discussed above, Eversource filed with the Woburn City Council its application for a Grant of location on December 15, 2017, and the Woburn City Council denied Eversource’s application for a GOL on May 1, 2018 (Exh. EV-1 at 2, 7).

a. Positions of the Parties

Woburn asserts that the GOL application was filed prematurely by the Company as information needed for a review by the DPW, City Engineer and the City Council was missing, rendering the application deficient (Exhs. CW-JEC-1, at 3; CW-JFD-1, at 3, 4). Specifically, the DPW Superintendent asserts that Eversource has not provided sufficient documentation and other information to his satisfaction in order to install the transmission line and related infrastructure

⁴⁷ In the Exelon Decision, the Board declined to grant eleven permits. See Exelon at 39-40.

⁴⁸ In the Keyspan Decision, the Board declined to grant two permits. The Board then directed the Company to file for and seek to obtain those two permits from the respective agencies. See Keyspan at 45.

without substantially disrupting and negatively affecting Woburn's infrastructure (Exh. CW-JFD-1, at 4).

The Company stated that prior to receiving the denial, it worked diligently and in good faith to provide the Woburn City Council and the DPW Superintendent and his staff, details and information that would demonstrate the New Line could be properly constructed and positioned to minimize impacts, to allow reasonable access to the City's existing infrastructure, and to avoid adverse health effects (Exhs. EV-1, at 15; EV-2, at 18).

b. Analysis and Finding

Eversource has requested that the Siting Board issue an approval in lieu of a GOL normally issued by the Woburn City Council. The Company has completed the application and review process before the City of Woburn for the GOL, and as discussed above, the application was denied. The Company cannot build the Project in Woburn absent the Woburn GOL. In Section IV above, the Siting Board reviewed the four findings with regard to the Woburn GOL including, need, environmental impacts, applicable laws, ordinances and regulations, and public interest, that must be made by the Board. In that review, the Board determined that the findings made in the Final Decision are still applicable and support granting the Woburn GOL in furtherance of construction of the New Line.

As discussed in Section IV.F.2, above, the Company has demonstrated that it made a good faith effort to secure the requested permits with regard to this local approval for in-road construction. Woburn has had the opportunity to provide conditions that it believes would be appropriate for the GOL, if issued over its objection. The Siting Board has reviewed Woburn's recommended conditions. The Siting Board includes many of those conditions, some with modifications, where consistent with our obligations under the Certificate statute, the record in this proceeding, and the Final Decision in the underlying proceeding. In crafting these conditions, the Siting Board's intent is to facilitate the expeditious construction of the Project in a safe and responsible manner, without inviting further disputes between the parties that may result in delay. The Siting Board hereby includes the City of Woburn GOL in the Certificate issued in this proceeding. This approval is set forth in Exhibit A, Attachment 1.

2. Remaining Permits
a. Winchester Grant of Location

Eversource has requested that the Board issue a GOL normally issued by the Winchester Board of Selectman. Eversource filed with the Winchester Board of Selection its application for a GOL on April 13, 2018 (Exh. EV-1, at 11). On June 26, 2018, Eversource and Winchester signed the Stay Agreement, where among other things, Winchester agreed to review and render a decision on the Eversource GOL in an “expeditious and good faith manner” (Exh. EV-13(1)).⁴⁹

The Company asserted that Winchester has taken no action on its application for a GOL (Exh. EV-2, at 27). The Company questions that Winchester’s review of the GOL application would be complete in a “timely manner,” where Winchester has been unreasonably slow to review the GOL Application, and questions the certainty of the six month review schedule put forth by Winchester as of September 26, 2018 (Company Brief at 43; Exh. TW-BER-1, at 6). The Company notes that the Select Board itself has not agreed to the six-month schedule and therefore an expectation that the GOL would be approved by March 2019 is unrealistic (Company Brief at 43). In addition, the Company states that the test pit requirements of Winchester have been unusual and atypical and could extend the Project schedule (id.). Finally, the Company asserts that Winchester has consistently opposed the Project including appealing its approval and that there is substantial evidence that the Company’s ability to secure a favorable, reasonably conditioned, and timely determination from the Winchester Select Board is at best uncertain, and unfortunately, unlikely (id.).

The Company argues that the Winchester GOL should be included in the Certificate as it is not necessary for the Siting Board to find that Winchester has unduly delayed or otherwise acted improperly with respect to the Company’s pending GOL application. (Company Brief at 40, citing Alliance II, 457 Mass. at 682). Specifically, the Company asserts that although it maintains that

⁴⁹ Item 4 of the Stay Agreement reads “Notwithstanding the pendency of Winchester's SJC Appeal, Winchester agrees to review and render a decision on Eversource's GOL application for the Project as filed on April 13, 2018, in an expeditious and good faith manner. Consistent with the terms of paragraph # 1, above, Eversource agrees not to perform any in-road construction in Winchester associated with the Project during the pendency of Winchester's SJC Appeal” (Exh. EV-13(1) at 2).

Winchester's actions have clearly and unduly delayed the issuance of a GOL, that issue is not determinative concerning whether the GOL should be included in the Certificate (id. at 41).⁵⁰

Regarding the timing of its construction in Winchester, the Company testified that it would complete in-street construction in Winchester of the 115 kV line before constructing the Project (Tr. 1, at 30-32; Exh. EFSB-EV-24).⁵¹ In addition, the MOU between Eversource and Winchester for the 115 kV Mystic-Woburn Project, prohibits simultaneous civil construction within Winchester on the 115 kV line and the Project, which includes trench excavation, manhole placement and trenchless crossings, unless Eversource receives the consent of the Winchester Town Manager (see footnote 49, above) (RR-EFSB-16(1)). On reply brief, the Company states that there is nothing to prevent it from constructing the Project before construction begins for the 115 kV line through Winchester, and that such scheduling is within the Company's sole discretion (Company Reply Brief at 29). The Company also maintains that the Stay Agreement allows for simultaneous construction of both projects with the express consent of the Winchester Town Manager (id.).

Winchester states that its current estimate of a decision on the Company's GOL Application remains six months from September 26, 2018, assuming test pitting can occur during the winter street opening moratorium period (Exh. EFSB-TW-1(S-1)). In the Stay Agreement, Winchester agrees to review and render a decision on the GOL application for the Project in an expeditious and good faith manner (Exh. EFSB-EV-13(1) at 2).

Winchester asserts that the Company is essentially asking for the April 13, 2018 GOL application to be approved before the test pits are completed, where those plans do not meet the applicable standard for construction, and are currently inadequate, all of which make the GOL application clearly flawed (Exh. TW-BER-1, at 3; Winchester Brief at 6). Winchester states that

⁵⁰ Winchester argues the Stay Agreement prohibits the grant of a GOL and SOPs in the Certificate Proceeding, and the Company argues that nothing in the Stay Agreement prohibits the Company from pursuing a Winchester GOL from the Siting Board. The Siting Board addressed the Stay Agreement in connection with the good faith effort requirement above.

⁵¹ The Company's project schedule shows the Project construction in Winchester to begin no earlier than November 2019 (Exh. CW-18(1)). The Company maintains that with approval of the Winchester Town Manager to construct both projects simultaneously, it could begin construction of the Project in Winchester summer 2019 (RR-EFSB-2).

the GOL plans submitted in April 13, 2018 should be refined to address actual conditions in the line based upon the test pit data and to protect the Town's streets, sidewalks, and MWRA sewer lines (Winchester Reply Brief at 9-10). Winchester states that the better approach would be to follow the same process that Eversource and the Winchester are undertaking for the Mystic-Woburn Project (Exh. TW-BER-1, at 4).⁵²

Further, Winchester states that based on the MOU between Eversource and Winchester for the Mystic-Woburn Project, any in-street construction in Winchester cannot occur simultaneously on both the Woburn-Wakefield Project and the Mystic-Woburn Project (RR-EFSB-16(1); Tr. 1, at 30-31).⁵³ Therefore, Winchester asserts that based on the information provided by the Company for construction of the Mystic-Woburn Project, which is expected to begin in spring of 2019, in-street construction in Winchester on the New Line cannot begin until approximately June 2020 (EFSB-RR-2; Tr. 1, at 30-32; Winchester Brief at 9).⁵⁴ Accordingly, Winchester requests that the Siting Board should not grant the GOL and SOP, or alternatively, that the Siting Board incorporate into the Certificate Decision the condition "that the Petitioner continue with the GOL request for the New Line filed with the Winchester Select Board on April 13, 2018 and comply with all reasonable terms and conditions contained therein upon issuance by the Select Board" (RR-EFSB-15; Winchester Brief at 11).

⁵² The first public hearing on the Mystic-Woburn GOL took place on October 22, 2018 (RR-EFSB-9; Tr. 1, at 32). The Winchester Select Board approved the GOL for the Mystic-Woburn Project on December 3, 2018 (RR-EFSB-9(S)).

⁵³ Item 2.1 of the Mystic-Woburn MOU provides in part: "The Parties acknowledge that, in addition to the Project, a second transmission line project, the Woburn-Wakefield Line Project, is being proposed by Eversource to be routed partially within Winchester. Eversource acknowledges the Municipality's concern that the construction of both projects simultaneously could exacerbate traffic impacts and that careful planning and coordination of the two projects is therefore required. To minimize the potential for such impact, except due to extraordinary unforeseen circumstances beyond Eversource's control, Eversource agrees that it will not conduct civil construction, including trench excavation, manhole placement and trenchless crossings, within Winchester on more than one transmission line project (e.g., on the Mystic-Woburn Project and the proposed Woburn-Wakefield Transmission Line) at any given time, without the express consent of the Town Manager. Cable pulling, splicing and testing are excepted from this prohibition on simultaneous construction" (RR-EFSB-16(1)).

⁵⁴ Winchester and the Company noted that construction of the Mystic-Woburn line in Winchester is expected to take 14 months (RR-EFSB-2; Winchester Brief at 9).

b. Street Opening Permits

The Company requested that the Siting Board issue a certificate that includes SOPs for Woburn, Wakefield and Stoneham (Exh. EV-2, at 7, 28; Company Brief at 46). The Company has been unable to apply for the SOPs because an approved GOL is a prerequisite for such application (Exh. EV-3; Company Brief at 44).⁵⁵ The Company asserts that in a case where one or more of the statutory triggers in Section 69K have been met, and the record evidence supports the requested relief, the Siting Board not only has the power, but the duty, to grant a composite Certificate (Company Brief at 15).

Eversource argues that there is no benefit to requiring further action, time, or expense on the Company's part to obtain remaining local permits, especially when there is uncertainty as to the outcome, timing and potential appeals, as there is here (Company Brief at 40). The Company states that once a GOL is approved, the grant of an SOP is largely ministerial in nature and that no substantive inquiry needs to be performed because the SOP is based on the same plans as the GOL (Company Brief at 44, citing Tr. 1, at 88, 151-52; Tr. 3, at 418-419). The Company explains that an SOP initiates the actual construction, and it provides specific information to the DPW as to who is performing the work and where that work is going to be performed (Tr. 1, at 25). The Company states that it sometimes applies for an SOP before it hires its contractor, although in a large project where the Company works closely with the DPW, it is helpful to have the contractor on board before having in-depth discussions regarding the SOPs and locations (id. at 42). The Company states that it typically applies for an SOP 30 days in advance of construction because Dig Safe authorization (required for in-street construction) expires 30 days after issuance (id. at 40). For the portion of the New Line that would be located in Wakefield and constructed by National Grid, the SOPs will not be applied for until closer to the commencement of construction (Exh. EFSB-EV-20). In addition, the Company indicated it had not yet applied for SOPs in any of the communities for the Mystic-Woburn Project, which is scheduled to begin before the Woburn-Wakefield Project (Tr. 1, at 37, 41, 42).

The Woburn DPW Superintendent explains that he issues SOPs to persons or entities that would be doing the actual excavation, who are typically contractors (Exh. CW-JFD-1, at 6). This

⁵⁵ Stoneham granted a GOL on October 23, 2018, and therefore the Company can now apply for SOPs in Stoneham.

process ensures that the Superintendent knows: (1) who is actually performing the work; (2) whether they are qualified; (3) that all work is identified and monitored; (4) that the work is coordinated; and (5) that the installation is safe (id. at 6-7). Further, SOPs require bonding and insurance to ensure proper recourse if there are problems (id. at 7). The Woburn Superintendent urges the Siting Board not to override the SOP as it would make it far more difficult to control construction work related to the Project (id. at 35).

Winchester asserts that the inclusion of an SOP in a certificate would be both premature and likely unnecessary (Winchester Reply Brief at 11). Winchester contends that the request for an SOP is premature as the GOL plans presented to the Siting Board in these proceedings are currently not sufficient to construct the line as contemplated in the Woburn-Wakefield Final Decision (id. at 12). Winchester states that it plans to issue its SOPs for the New Line (as well as the Mystic-Woburn Project) in segments in order to control traffic impacts (Tr. 3, at 424-425, 453).

c. Analysis and Findings

In addition to the Woburn GOL, Eversource has requested that the Board issue a Winchester GOL and SOPs for Woburn, Winchester and Stoneham, respectively. With regard to the Winchester GOL, the Company's application is currently pending with the Winchester Select Board. The Company needs the Winchester GOL in order to construct the Project in Winchester. The record indicates that Winchester issued the Mystic-Woburn GOL on December 3, 2018, but has not yet acted upon the Wakefield-Woburn GOL application. Winchester officials have sought additional information and analyses, including extensive test pitting and other engineering studies, as part of their ongoing review of the pending GOL application. Nevertheless, Winchester acknowledges that the Stay Agreement it entered into with Eversource requires the Town to make a decision on the GOL in an expeditious and good faith manner. In addition, Winchester's witnesses have testified that, if left to the Town's normal jurisdictional process, the GOL *could* be acted upon as early as March 2019. However, they also acknowledged that they do not speak for, and cannot bind the Select Board, nor can they ensure that delays in the public process for the GOL, directed and decided by the Select Board, would not occur.

The record provides strong indications that construction of the Project in Winchester is not imminent, and that this timing is not solely attributable to the Town's extensive information gathering requirements for its review of the GOL application. For example, Winchester has

entered into an MOU with the Company regarding the Mystic-Woburn Project, which prohibits simultaneous in-road construction of both the Mystic-Woburn Project and the Woburn-Wakefield Project, unless allowed by the Winchester Town Manager (however the Town has indicated its preference that the two projects do not proceed simultaneously). Construction of the Mystic-Woburn Project is slated to begin in April-May 2019 in Winchester for a 14-month period. Although the Company contends that the Mystic-Woburn MOU would allow it construct the Project prior to construction of the Mystic-Woburn line (or during a construction pause for the Mystic-Woburn line), the record evidence in total indicates that the Company likely will build the previously-approved Mystic-Woburn line before the Project. In addition, the Company has agreed in the MOU not to perform any in-road construction of the Project in Winchester during the pendency of Winchester's appeal, an impediment that does not exist for the Mystic-Woburn project.

The Company contends that, while Winchester has not necessarily been acting in bad faith in its review of the GOL, the Town has required a level of information that the Company regards as both unprecedented and excessive. Further, the Company suggests that Winchester's actions should be viewed skeptically, given its record of opposition to the Project, and role as an appellant of the Final Decision.

With respect to the conditions of a GOL in Winchester, whether issued by the Town or the Siting Board, there are clear and sharp disagreements between the Company and the Town on basic design parameters, most significantly, the minimum horizontal clearances between the Project and adjacent municipal utilities. If the Company is left with no recourse other than a Town-issued GOL, the record indicates that the Town's stated intention of establishing a three-foot minimum horizontal clearance – if not more – would be imposed and required for the Company to obtain the GOL. As noted above, the Siting Board finds an 18-inch minimum horizontal clearance to be sufficient for the Project. Absent the Board's issuance of the Winchester GOL, there would be no mechanism for the Board to effect this finding in the Winchester GOL. As a consequence, the disagreement between the Company and the Town would persist, and ultimately delay the Project, inflate its cost unnecessarily, and increase both the duration and disruption of Project construction in the community.

Although the Company has stopped short of alleging bad faith on Winchester's part in its GOL review, there is legitimate cause for concern as to whether the Town's expansive GOL

review requirements are completely necessary. The Siting Board finds that, while its issuance of the Winchester GOL is now necessary to resolve the obvious impasse between the Company and the Town, the effective date of a Board-issued GOL need not be immediate. As noted above, there is a window of time of several months, or more, before the lack of an effective Winchester GOL would have a likely impact on the Project's construction schedule.

Given the above facts in this proceeding, the Board finds that inclusion of the Winchester GOL in this Certificate is necessary and appropriate. However, the Board is reluctant to act in a manner that would abruptly, and perhaps prematurely, curtail the ongoing and seemingly cooperative efforts of the Company and Winchester, including completion of the agreed-upon test pits, and other specified information requests. Accordingly, the Siting Board deems it appropriate to delay the effectiveness of the attached approval in lieu of the Winchester GOL for a four-month period.^{56,57} This brief delay in the effectiveness of the GOL will allow for further test pitting, and the collection of additional information by the Company. Should the Company deem it necessary, this additional information may be used in any final Project construction plans. If the Company revises the construction plans, it must file them with the Siting Board at least 30 days prior to the Company's commencement of construction.

Winchester has had the opportunity to provide conditions that it believes would be appropriate for the GOL, if issued over its objection. The Siting Board has reviewed Winchester's recommended conditions. The Siting Board includes many of those conditions, some with modifications, where consistent with our obligations under the Certificate statute, the record in this proceeding, and the Final Decision in the underlying proceeding. In crafting these conditions, the Siting Board's intent is to facilitate the expeditious construction of the Project in a safe and responsible manner, without inviting further disputes between the parties that may result in delay.

⁵⁶ This brief delay in the effectiveness of the GOL is consistent with testimony of Winchester's witness as to when the Town might have otherwise been able to make its own determination on the GOL application. Should the Town and the Company jointly seek, and arrive at a mutually acceptable GOL during this interim period, they are welcome to submit such a joint proposal for the Board's consideration.

⁵⁷ Given the denial of the Company's GOL application by the City of Woburn, the Siting Board does not view any prescribed delay in the effectiveness of the approval in lieu of Woburn's GOL as appropriate, notwithstanding other compliance conditions relevant to the approval.

The Siting Board hereby includes the approval in lieu of the Winchester GOL in the Certificate issued in this proceeding. This approval is set forth in Exhibit A, Attachment 2.

Turning to the SOPs, Woburn and Winchester urge the Siting Board not to issue SOPs for the Project in their communities.⁵⁸ The Company argues that the Board should issue the SOPs to prevent delay of Project construction. In previous Certificate decisions, the Siting Board reviewed specific facts to determine whether to issue some or all of the permits requested by an applicant.

In certain circumstances, the Siting Board has issued permits where an applicant was precluded from applying for those permits. In Cape Wind, the applicant had applied for four local permits from municipalities on Cape Cod; however, the municipalities were prohibited by statute from issuing the permits until the Cape Cod Commission had approved the Company's application for a DRI. Cape Wind at 31. In the Cape Wind decision, the Board included in the Certificate an approval in lieu of the four remaining local permits based on the relatively unusual situation where an applicant has already made a good faith effort to obtain certain necessary project permits, but is precluded by operation of law from obtaining them, it may be appropriate to avoid further permitting delay by including the otherwise unobtainable local permits in a Certificate as opposed to requiring the applicant to undertake an entire *de novo* permitting process. Cape Wind at 34.

Similarly, in Footprint the Board granted a Certificate which included certain state and local permits that either had been granted by or draft permits had been issued by the appropriate authorities. In addition, the Board included a state permit in the Certificate for the construction of a proposed ammonia storage tank and a related storage and use permit, which the applicant had not yet applied for based on both timing constraints set forth in the State Fire Marshal's regulations and the lack of financing to finalize the design plans for the tank. Footprint at 24-25. In that Decision, the Board found that the petitioner could not apply for or reasonably obtain the permit at that stage in the project's development. Footprint at 25. Nevertheless, the petitioner had completed a necessary prerequisite for applying for the Fire Marshal permits by applying for the necessary local permit for the storage tank, where the State Fire Marshal stated that he had no concerns with the Siting Board issuing the necessary permit so long as the Company complied with applicable codes, standards, and good engineering practices. Footprint at 25.

⁵⁸ Stoneham objects to the Company's request to include SOPs for Stoneham in its Certificate (Exh. EFSB-TS-6).

In contrast, the Siting Board has declined to issue certain permits where given the construction schedule of the project in question, it was premature to issue the requested permits. In the Keyspan proceeding, the Siting Board granted a DRI approval for the project, but declined to grant two remaining permits in Yarmouth: a SOP, and a wetlands buffer zone work permit. Keyspan at 45. In Keyspan, the Board noted “if a Certificate is granted, the identified obstacle to pursuit and potential receipt of these two local approvals will be removed. There is no indication in the record, that with this obstacle removed, Keyspan would be unable to obtain required local approvals, or that any non-conformance with the laws or related regulatory provisions applicable for these approvals would exist.” In the Final Decision granting a Certificate to Keyspan, the Board directed Keyspan to file for two remaining local approvals and report on its efforts to obtain those permits to the Board. Keyspan at 41-45.

Similarly, in Exelon, the Siting Board issued an air permit, but declined to issue all remaining permits. In the Initial Petition and Application, Exelon requested that the Siting Board grant a Certificate representing the equivalent of the final Major Comprehensive Air Plan Approval (that had been issued by MassDEP but appealed) and eleven other state and local permits, approvals, or authorizations that otherwise would have been necessary to construct and operate the Facility. Exelon at 2. In the Final Decision, the Siting Board issued a certificate that included the MassDEP’s Air Plan Approval. Exelon at 41. The Certificate did not, however, grant the eleven other state and local permits, approvals, or authorizations requested. Exelon at 38. Because Exelon had not applied for those eleven permits, the Board lacked sufficient information to allow it to step into the shoes of the granting authority. Exelon at 38. Without this information, the Siting Board declined to include the local permits in the Certificate, and required Exelon to acquire the permits at a time more typical in the project development process. Exelon at 37-38.

The facts of the present case are more similar to those found in Exelon and Keyspan than they are to the facts of Cape Wind or Footprint. In the present case, the Company has applied for GOLs from Woburn and Winchester and the Certificate grants those GOLs. The Company has not yet applied for SOPs from those municipalities, and in fact, cannot apply until a GOL is approved. However now, upon the issuance of the Siting Board’s approvals in lieu of GOLs in this Certificate for Woburn and Winchester, and the recently issued GOL from Stoneham, the Company is not facing a bar which prevents it from pursuing the SOPs with the appropriate agencies, at the appropriate time. With the Board’s resolution of the issue of clearances between the Project and

municipal facilities, and other conditions specified in the GOLs included in this Certificate, the Board finds that it appropriate, at this time, for Woburn, Winchester, and Stoneham to retain the administrative responsibilities of issuing SOPs. As noted below, the Siting Board exclusion of the SOPs in the Certificate at this time comes with the caution to these municipalities to exercise this authority consistent with the GOLs included in the Certificate, without any further impediments or delays that would provide grounds for the Company to seek to amend this Certificate.

Importantly, the Siting Board notes that the SOPs are regularly issued closer to the commencement of construction. In-street construction is anticipated to begin in Woburn and Stoneham in September 2019, and in Winchester likely in 2020, based on the completion of in-road construction of the Mystic-Woburn Project. Given the length of the New Line, it is anticipated that the DPWs in each municipality would be issuing the SOPs in segments, both in order to control construction in an orderly manner and to comply with Dig-Safe timing requirements. Further, as testified by the DPW Superintendents and Town Engineers, SOPs involve collaboration between the Company, its contractor, and the DPW in order to adhere to the GOL requirements, as well as to ensure construction is based on updated information, include ongoing construction activities and even anticipated weather conditions during winter months.

At this time, the Company has not yet hired a contractor for the Project. Since a close, productive working relationship between the DPWs and the contractor is essential to the successful construction of a project of this size and complexity, it would be appropriate to initiate these discussions closer in time to actual construction. Finally, in this instance, there is no evidence that the application for the SOPs at the time that the Company and Woburn and Winchester have identified as more typical in the development process would indeed be futile. Therefore the Siting Board declines to include the Woburn, Winchester and Stoneham SOPs in the Certificate in this proceeding.

With the grant of a Certificate including the approvals in lieu of GOLs for Woburn and Winchester, the Company should proceed with the pursuit of SOPs, as necessary, through ordinary local review procedures. We emphasize that under Massachusetts law, the review of SOPs by Woburn and Winchester must observe the conditions of the Siting Board-issued approvals in lieu of GOLs, as if the municipalities had issued these approvals themselves. If Eversource is unable to obtain SOPs as a result of inconsistencies with the Siting Board's approvals in lieu of GOLs, or a denial, rejection, conditions, undue delay, or appeal, the Company may request that the Siting

Board amend its Certificate of Environmental Impact and Public Interest to include such permit(s) or approval(s) within the Certificate. 980 CMR 6.05(4). Upon such a filing, the Board may elect whether to conduct additional inquiry into the relevant circumstances and may decide at that time to supplement the Certificate granted herein.⁵⁹ G.L. c. 164, § 69L; 980 CMR 6.05; see Exelon at 38-39; Keyspan at 45.

V. CONCLUSION

The Siting Board grants the Initial Petition and grants in part and denies in part the Application of NSTAR Electric Company d/b/a Eversource Energy for a Certificate of Environmental Impact and Public Interest, pursuant to G.L. c. 164, §§ 69K-69O. The Certificate granted is an approval that is the equivalent of a GOL for the City of Woburn and a GOL for the Town of Winchester. This Decision, the appended Certificate of Environmental Impact and Public Interest, and the approvals in lieu of the GOL contained in the Certificate, are each conditioned on compliance by the Company with Conditions C.1 through C.11 set forth in the Certificate.

In addition, the Siting Board approves the Condition P Compliance Filing modification to the arrangement of the cables as magnetic field mitigation consistent with Condition P of the Final Decision.



Robert J. Shea
Presiding Officer

Dated March 7, 2019

⁵⁹ In the event that the Company finds it necessary to amend the Certificate to include SOPs for Winchester, Woburn, or Stoneham, then, provided the proposed SOP terms and conditions are consistent with the provisions of the approved GOLs, and the facts and findings of the Final Decision and this decision, the Siting Board may act administratively to expeditiously approve such a Certificate amendment. See 980 CMR 2.05.

II. APPROVALS

This Certificate contains the following two approvals.

- A. A final approval that is the equivalent of a Grant of Location in public ways, pursuant to G.L. c. 166, §§ 21-22, ordinarily issued by the Woburn City Council. This approval is appended hereto as Attachment 1.
- B. A final approval that is the equivalent of a Grant of Location in public ways, pursuant to G.L. c. 166, §§ 21-22, ordinarily issued by the Winchester Board of Selectmen. This approval is appended hereto as Attachment 2.

III. CONDITIONS

The granting by the Siting Board of this Certificate and each of the Approvals herein is subject to the following conditions:

- C.1 Conditions A-U, of the Woburn-Wakefield Decision are incorporated by reference into, and are conditions to, this Certificate.
- C.2 The Siting Board directs the Companies to: (1) consult with Winchester, Woburn, Stoneham, and Wakefield and provide a magnetic field measurement protocol to the Siting Board within two months of the Final Decision in this proceeding; and (2) following one year of Project operation, submit a report identifying whether actual measurements of magnetic fields are consistent with projected measurements and, if not, identifying (a) additional steps that may be taken to reduce magnetic fields, and (b) whether such measures are warranted.
- C.3 The Company shall comply with all applicable federal, Massachusetts, City of Woburn, and Town of Winchester, statutes, regulations, guidelines, ordinances and permitting conditions in the construction and operation of the proposed Project.
- C.4 The Woburn-Wakefield Decision provides that construction of the proposed Project must begin within three years of the issuance date of that Decision, i.e., on or about February 28, 2021. This Certificate does not change that date. The approval granted in this Certificate also shall expire on or about February 28, 2021, if construction of the Project has not yet begun by that date. Extensions may be granted by written request to the Siting Board filed prior to the expiration date.
- C.5 The Company has an absolute obligation to construct the Project in conformance in all aspects as presented to and approved by the Siting Board in Woburn-Wakefield and this Certificate Proceeding. The Company is required to notify the Siting Board of any changes other than minor variations to the Project so that the Siting Board may determine whether to inquire further into a particular issue. The Company is obligated to provide the Siting Board with sufficient information on changes to the Project to enable the Siting Board to make these determinations.

- C.6 The Company shall provide a copy of this Certificate, including all Attachments, to its general contractor prior to the commencement of construction.
- C.7 In accordance with G.L. c. 164, § 69K, the City of Woburn and the Town of Winchester in conjunction with their respective GOLs, shall not require any approval, consent, permit, certificate or condition for the construction, operation, or maintenance of the Project. The City of Woburn and the Town of Winchester in conjunction with their respective GOLs shall not impose or enforce any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action which would delay or prevent construction, operation, or maintenance of the Project.
- C.8 In accordance with G.L. c. 164, § 69K, that portion of the Certificate which relates to subject matters within the jurisdiction of the City of Woburn shall be enforced by the City of Woburn as if it had been directly granted by the City of Woburn.
- C.9 In accordance with G.L. c. 164, § 69K, that portion of the Certificate which relates to subject matters within the jurisdiction of the Town of Winchester shall be enforced by the Town of Winchester as if it had been directly granted by the Town of Winchester.
- C.10 This Certificate shall be appealable only by timely appeal of Woburn-Wakefield Certificate Decision, EFSB 18-03, to the Massachusetts Supreme Judicial Court, in accordance with G.L. c. 25, § 5 and G. L. c. 164, § 69P.
- C.11 Eversource shall file this Certificate, including all Attachments, with the City Clerk for Woburn and the Town Clerk for Winchester.


Matthew A. Beaton, Chairman
Energy Facilities Siting Board

March 7, 2019

ATTACHMENT 1

**EFSB 18-03, NSTAR ELECTRIC COMPANY D/B/A EVERSOURCE ENERGY
CERTIFICATE OF ENVIRONMENTAL IMPACT AND PUBLIC INTEREST**

APPROVAL IN LIEU OF CITY OF WOBURN GRANT OF LOCATION

1. Pursuant to its authority under G.L. c. 164, §§ 69K - 69O, the Energy Facilities Siting Board hereby grants an Approval in lieu of a Grant of Location from the Woburn City Council. This Approval authorizes construction of the Project as approved by the Energy Facilities Siting Board in NSTAR Electric Company d/b/a Eversource Energy, EFSB 15-04/D.P.U. 15-140/15-141 (February 28, 2018) (“Woburn-Wakefield Decision”). As used herein, “Eversource” and “Company” shall refer to both Eversource Energy and its contractors and subcontractors engaged in the construction and maintenance of the Project.
2. This Approval provides for the installation of a new subsurface 345 kilovolt transmission conduit duct bank with appurtenant communication/signal wires beneath Lake Avenue (approximately 1485 linear feet), Pickering Street (approximately 475 linear feet), Border Street (approximately 540 linear feet), Cross Street (approximately 365 linear feet), Washington Street (approximately 2,375 linear feet), and Montvale Avenue (approximately 2090 linear feet) in Woburn. The duct bank is comprised of four eight-inch high-density polyethylene (“HDPE”) conduits and two four-inch and two two-inch polyvinyl chloride (“PVC”) conduits encased in thermal concrete.
3. This Approval is issued subject to Conditions C.1 through C.11 in the Certificate of Environmental Impact and Public Interest that is appended as Exhibit A to Woburn-Wakefield Certificate Decision, EFSB 18-03 (2019).
4. **Finalized Project Design.** Prior to commencing construction, Eversource shall work diligently and in good faith with City officials, including the Department of Public Works (“DPW”) Superintendent and City Engineer, to address all of the City’s concerns with respect to the Project design, where reasonable and practicable. Such actions may include, but are not limited to:
 - Furnishing updated sets of engineering plans, prepared and stamped by a licensed Massachusetts professional engineer for the Project, as may be deemed necessary;
 - Timely furnishing any subsequent, updated sets of engineering plans as they may be developed;
 - Providing all information reasonably requested by the City concerning the Project;
 - Consulting with the City in conducting any reasonable and necessary additional investigations;

- Consulting with the City in considering any modifications to duct bank alignment, manhole vault placement, or other aspects of the Project;
 - Timely and reasonably scheduling meetings with City officials, as the City may request.
5. **Minimum Utility Clearances.** Eversource shall maintain a minimum vertical clearance of 12 inches between the Project facilities and all City utility crossings, unless a lesser clearance is approved in writing by the DPW Superintendent. Eversource shall maintain a minimum of 18 inches horizontal clearance, as provided for in the Woburn-Wakefield Certificate Decision, between Project facilities and all adjacent City utilities. The Company shall employ vacuum or hand excavation methods for any excavation between 18 and 24 inches from adjacent municipal utility lines. Up to six inches of excavation width (the portion closest to the adjacent municipal utilities, and only that portion below the pavement) would necessitate vacuum or hand excavation, while the other portions of the trench could use mechanical excavation methods. The Company may select whether vacuum or hand excavation methods is best suited in such circumstances. The City may elect to waive the Siting Board's requirements for vacuum or hand excavation, in favor of mechanical excavation methods, in its issuance of Street Opening Permits, if it deems it appropriate to do so. The Company shall, consistent with its representations in this Certificate proceeding, provide more than the minimum clearance from municipal utilities, where practicable.
 6. **Utility Relocations.** Eversource shall not relocate any City utility for any reason without first receiving approval from the Superintendent, which approval shall not be unreasonably withheld, and issued as soon as practicable, and no more than five business days from Eversource's request. Eversource shall provide drawings prepared by a Massachusetts-licensed professional engineer depicting the relocation and a proposed relocation plan. The relocation plan shall state if the relocation is permanent or temporary during Project construction, and, if temporary, Eversource shall cause the infrastructure to be returned to its original location prior to restoration. Eversource shall pay all costs associated with utility relocations and shall perform all work associated with utility relocations in accordance with the reasonable specification and directives of the DPW Superintendent.
 7. **Field Engineer.** Eversource shall timely and reasonably pay for the services of a field engineer in order for the City to assist the City in furtherance of the Project consistent with the Final Decisions in both Woburn-Wakefield and this Certificate Proceeding.
 8. **Pre- and Post-Construction Video Sweeps.** Eversource shall conduct a pre-construction video sweep from of public way to document pre-construction conditions. Eversource shall conduct a post-construction video sweep of the public way to document as-built construction conditions.
 9. **Massachusetts Department of Transportation ("MassDOT") Coordination.** Eversource shall consult with MassDOT to ensure, to the maximum extent practicable,

coordination between the Project and MassDOT's Montvale Avenue construction, and to limit, to the greatest extent practicable, disruption to the public resulting from the cumulative impacts of both projects.

10. **Construction Schedule.** Eversource shall prepare a construction schedule, which shall be provided to the Mayor, City Council, Superintendent, and City Engineer at least 60 days before construction begins. The Construction Schedule shall include a construction sequencing schedule.
11. **Traffic Control.** Construction activities within the City shall be subject to appropriate traffic controls and the requirements of a Traffic Management Plan ("TMP"), to be developed in consultation with the Mayor or his designee.
12. **Blasting.** Eversource shall not use construction methods that utilize blasting, except by prior written agreement with the City.
13. **Street Restoration.** Eversource shall restore all public ways and other streets and driveways that it excavates as part of or in any way related to the Project to the standards specified in all applicable provisions of the Woburn Municipal Code, including but not limited to the provisions of Title 12. If not otherwise required by the standards specified in all applicable provisions of the Woburn Municipal Code, Eversource shall at a minimum restore all public ways and other streets and driveways through curb-to-curb repaving and granite curbing (if present prior to construction) and in accordance with all requirements of the Rehabilitation Act of 1974, as amended, the Americans with Disabilities Act of 1990, as amended, and all other Federal and State disability laws applicable to that restoration.
14. **Sidewalk Restoration.** Where directly or indirectly impacted, Eversource shall replace sidewalks in the Project area with concrete or other materials to match reasonably with walkways to which replacement sidewalks connect. Handicap ramps and curb cuts on sidewalks shall be replaced, if impacted by construction, by Eversource in accordance with all requirements of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, and all other Federal and State disability laws applicable to that restoration.
15. **Snow Plowing.** Eversource shall cause all portions public ways and other streets and driveways that are impacted by Project construction at the time of a snow event, to be plowed from intersection to intersection. Eversource shall consult with the DPW Superintendent regarding snow plowing and shall comply with all directives issued by the DPW Superintendent with respect to that snow plowing.
16. **Pickering and Border Streets.** Eversource shall restore to original condition or better Pickering Street and Border Street after installing the Project's new transmission line.
17. **Sewer and Storm Drain Survey.** Before commencing construction of the Project, Eversource shall make a closed-circuit recording of the sewer and storm drain system

located within five feet of the proposed excavation area along the entire Project route within City limits.

18. **Field Adjustments.** After consultation with the DPW Superintendent, or the Field Engineer provided above, Eversource may adjust the duct bank alignment as necessary based on actual field conditions. Any such duct bank alignment adjustments shall be identified and coordinated with the City and documented on as-built plans provided for recording.
19. **Existing Utility Support.** At least 21 days before commencing construction within ten feet of any existing municipal utility or service connection, Eversource shall provide, to the DPW Superintendent and City Engineer for consultation and review, support of excavation (“SOE”) plans, prepared and stamped by a Massachusetts-licensed professional engineer depicting means and methods of trench shoring, and existing utility temporary support systems. Where utility mains cannot be safely supported in place or service cannot be operationally maintained, Eversource shall, at least 30 days prior to performing duct bank work, submit water, sewer or drain line bypass plans to the DPW Superintendent and City Engineer in accordance with documented City specifications, and all necessary permits to be obtained for that work.
20. **Temporary Service Lines.** Where service connections cannot be maintained in operation during construction, Eversource shall, at least 45 days prior to performing duct bank work, submit to the DPW Superintendent and City Engineer temporary customer service line plans for review and approval, which approval shall not be unreasonably withheld, and issued as soon as practicable, and no more than five business days from Eversource’s request, and otherwise seek and secure all other necessary permits and authorizations.
21. **Stop Work.** The Woburn Chief of Police, Fire Chief, DPW Superintendent, or City Engineer, or the designee of any of those officials, shall be authorized to order the work stopped if they deem it necessary in case of emergency and for the protection of public health and safety.
22. **As-Built Diagrams.** At the conclusion of Project construction, Eversource shall provide the City with as-built diagrams showing the location of the Project and all related equipment. As-built diagrams shall depict the locations and top and bottom elevations of all structures and duct Banks, and adjacent utilities identified during Project excavation or field testing, at intervals of 25 feet.
23. **Construction-Related Damage.** Eversource shall be responsible for the preservation of all public and private property, and shall use every precaution necessary to prevent damage thereto. All existing buildings, utilities, pipes, poles, wires, fences, curbs, signs, stone bounds, and other structures not otherwise called for relocation, removal, or replacement shall be carefully supported and protected from damage by the contractor. If any direct or indirect damage is done to public or private property by or on account of any act, omission,

neglect, or misconduct in the execution of the work on the part of Eversource or its contractor, such property shall be promptly restored to a condition similar or equal to that existing before the damage was done the satisfaction of the City or, if private property, the property owner. Restoration of existing property shall be carried out as promptly as practicable and shall not be left until the end of the construction period, unless otherwise requested by the City or the affected property owner.

24. **Gas.** Eversource shall provide notification of any gas leaks identified during Project construction for response by National Grid.
25. **Scalley Dam.** Eversource shall make test borings to bedrock to confirm that construction will pose no risks to the integrity of the Scalley Dam.
26. **Public Shade Trees.** Prior to any public tree work, the contractor will contact the DPW's Tree Warden for an inspection and direction regarding tree root cutting, tree trimming or tree removal.
27. **Dust Control.** Eversource and its contractor shall be responsible for dust control within the work zones at all times, and shall maintain water within the City to use for such purposes.
28. **Daily Close Up.** As construction will take place in a heavily traveled area around schools, and on heavily traveled roadway, it is critical that the roadway and sidewalks are safe for passage and kept clean. Eversource will pave completed trench areas daily, but will install road plates over the unfinished portions of the trench in accordance with City of Woburn requirements.
29. **Contractor Bonding and Insurance.** Eversource shall ensure, prior to commencing construction and at all times during Project construction, that any and all of its contractors are bonded and insured as required by the DPW Superintendent and City Engineer, pursuant to all applicable provisions of the Woburn Municipal Code.
30. **Contacts.** Eversource shall provide contact (cell, office, email) information for the site supervisor and others involved in the Project that can respond to emergency issues or snow and ice events.



Matthew A. Beaton, Chairman
Energy Facilities Siting Board

ATTACHMENT 2**EFSB 18-03, NSTAR ELECTRIC COMPANY D/B/A EVERSOURCE ENERGY
CERTIFICATE OF ENVIRONMENTAL IMPACT AND PUBLIC INTEREST
APPROVAL IN LIEU OF TOWN OF WINCHESTER GRANT OF LOCATION**

1. Pursuant to its authority under G.L. c. 164, §§ 69K - 69O, the Energy Facilities Siting Board hereby grants an Approval in lieu of a Grant of Location from the Winchester Board of Selectmen. This Approval authorizes construction of the Project as approved by the Energy Facilities Siting Board in NSTAR Electric Company d/b/a Eversource Energy, EFSB 15-04/D.P.U. 15-140/15-141 (February 28, 2018) (“Woburn-Wakefield Decision”).
2. This Approval provides for the installation of a new subsurface 345 kilovolt transmission conduit duct bank with appurtenant communication/signal wires beneath Border Street (approximately 50 linear feet), Cross Street (approximately 5,400 linear feet), and Washington Street (approximately 3065 linear feet) in Winchester. The duct bank is comprised of four eight-inch high-density polyethylene (“HDPE”) conduits and two four-inch and two two-inch polyvinyl chloride (“PVC”) conduits encased in thermal concrete.
3. This Approval is issued subject to Conditions C.1 through C.11 in the Certificate of Environmental Impact and Public Interest that is appended as Exhibit A to Woburn-Wakefield Certificate Decision, EFSB 18-03 (2019).
4. This Approval shall become effective in four months, on July 8, 2019.
5. The Town of Winchester intends to hire a Field Engineer to observe the civil construction and to act as a liaison between the Town and Eversource's contractor on matters related to municipal utilities and private water and sewer services. Eversource shall timely and reasonably pay for the services of a field-engineer in order for the Company to assist the Town in furtherance of the Project consistent with the Final Decision.
6. For installation of the 345 kV duct bank, Eversource or its contractor shall correspond regularly with property owners abutting the workzone, and shall notify abutters of any anticipated impacts to their properties at least 48 hours prior to the start of construction, including impacts to driveway access, water, sewer, or other utility services. For manhole installation, Eversource shall notify properties within 300 feet of the manhole locations one week prior to the start of construction detailing the construction scope, schedule and impacts.
7. Eversource and its contractor shall designate a representative who will be available to respond to emergency calls by the Town 24 hours a day, 7 days a week, including holidays.

8. Eversource shall hold semi-monthly project meetings with the Town to discuss the status of the construction project. At least 30 days prior to the start of construction, Eversource and its contractor shall attend a pre-construction meeting with the Town and provide a copy of the overall schedule for work in Winchester, including manhole and conduit installation and line splicing. Any repair or restoration of public or private property associated with the Project shall be conducted in accordance with the "Town of Winchester Standard Construction Specifications and Details" dated September 2018. Any deviations from the specifications included therein must be provided in writing to the Town Engineer and DPW Director.
9. Eversource or its contractor shall be required to apply to the DPW for Street Opening Permits in order to complete the Project. The Town may issue the permits in phases, as deemed appropriate by the DPW Director, to allow for proper oversight of the project by the Town, consistent with the Certificate Decision and the Woburn-Wakefield Decision.
10. The Town does not allow the use of public hydrants for water on construction projects. Eversource and its contractor may coordinate with DPW to obtain water from the DPW yard. Eversource shall not operate valves on Town-owned water mains; Eversource or its contractor shall contact DPW if water gates need to be adjusted.
11. Unless otherwise agreed to in writing, there shall be no stockpiling of material or equipment within the public right-of-way or on any other Town-owned property. The Town shall designate areas around the Project as "no parking zones" for Eversource contractors and its employees during the Project.
12. Eversource shall be responsible for daily site clean-up, including removal of all refuse, rubbish, scrap and surplus material, and debris. Eversource shall sweep the work zone daily and adjacent areas as needed, if directed by the Town or Field Engineer. The site and adjacent areas shall present a neat and orderly appearance.
13. Eversource and its contractor shall be responsible for dust control within the work zones at all times, and shall maintain water within the Town to use for such purposes.
14. Eversource shall work with the Winchester Police and Fire Department to ensure safe passage of vehicles, bicycles, and pedestrians at all points during the project construction. Particular care will be given the safe passage of children to and from schools near the project route.
15. Eversource shall provide and erect acceptable barricades, traffic signs, temporary lighting such as flashers, and all other traffic devices to safely isolate the work from traffic, pedestrians, and animals, as shown in the Traffic Management Plans and/or as directed by the Winchester Police Department. Construction signage and barriers shall be in accordance with the Manual on Uniform Traffic Control Devices ("MUTCD"), as amended, published by the U.S. Department of Transportation.

16. Eversource and its contractor shall comply with MGL c.82A ("Jackie's law") related to excavation and trench safety, particularly as it relates to extended trenching limits
17. If, in the opinion of the Town or Field Engineer, an excavation becomes a safety and/or utility hazard, or if it excessively restricts traffic at any point, then the Town may require special construction procedures, such as limiting the length of the trenching and/or prohibiting stocking excavated material in the street.
18. Eversource shall provide notification of any gas leaks identified during Project construction for response by National Grid.
19. Prior to the start of construction, Eversource shall make a color video recording along the entire project route. One complete the recording shall be provided to the Town of Winchester on DVD prior to the start of work. The visual recording shall be identified by street name, as applicable, and station. Additionally, Eversource shall perform a pre- and post-construction video documentation of the exterior of private property along the project route upon the request of the property owner.
20. Eversource shall be responsible for securing all necessary temporary construction easements from public and private property owners along the project route.
21. Eversource shall be responsible for the preservation of all public and private property, and shall use every precaution necessary to prevent damage thereto. All existing buildings, utilities, pipes, poles, wires, fences, curbing, signs, stone bounds, and other structures not otherwise called for relocation, removal, or replacement shall be carefully supported and protected from damage by the contractor. If any direct or indirect damage is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work on the part of Eversource or its contractor, such property shall be promptly restored to a condition similar or equal to that existing before the damage was done the satisfaction of the Town or, if private property, the property owner. Restoration of existing property shall be carried out as promptly as practicable and shall not be left until the end of the construction period, unless otherwise requested by the Town or the affected property owner.
22. Eversource shall be responsible for identifying all stone bounds that will be impacted along the project route prior to the start of construction. Where bounds are impacted, Eversource shall hire a registered professional land surveyor to reset the bound and shall provide documentation to the Town Engineer at the completion of the work. Bounds shall be set in accordance with Section 7.10.2 and 7.10.3 of the "Rules and Regulations Governing the Subdivision of Land in the Town of Winchester, Massachusetts."
23. Pavement restoration of disturbed trenches within existing driveway aprons shall include full replacement of the driveway apron to maintain control of surface runoff in the driveway.

24. All existing drainage facilities including but not limited to brooks, streams, channels, ditches, culverts, catch basins, and drainage piping shall be adequately safeguarded so as not to impede drainage or to cause siltation of downstream areas in any manner whatsoever. If Eversource damages or impairs any of the aforesaid drainage facilities, it shall repair the same within the same day.
25. Eversource shall consult with the Town to develop a Traffic Management Plan (“TMP”), including TMPs for the manhole locations, and submit said plan to the Town no later than 60 days prior to beginning open excavation. Special attention shall be given to the concerns raised by the Town related to traffic mitigation at the proposed jack and bore locations on Cross Street, and the Town's concerns regarding the safe passage of vehicular and pedestrian traffic in that area, and the impacts to adjacent properties and driveways.
26. Any changes or amendments to the TMPs must be made in consultation with the Town, the Town Engineer, or the Winchester Police Department.
27. When driveway access to abutting properties is blocked, Eversource or its contractor shall be prepared to temporarily halt construction and restore access at any point during the workday within a reasonable timeframe. Driveway access shall be restored to safe, passable conditions at the end of each workday. Special attention shall be given to this requirement at specified locations as further defined by the Town during the construction process.
28. Backfilling or use of steel plates of adequate strength to carry traffic shall be used to completely close all street excavations at the end of each workday.
29. After backfilling and compacting the trench, Eversource shall be responsible for maintaining any temporary patch installed. Final street repaving shall take place after one full season to allow adequate time for the settlement of trenches.
30. Eversource shall notify the Town of Winchester within two days of determining that it is necessary to install a manhole using cast-in-place construction techniques rather than pre-cast structures so that the Town can assess any impacts to the TMPs.
31. Eversource shall maintain and protect existing municipal utility mains and service connections during construction. Further, Eversource's contractor shall submit support of excavation (“SOE”) plans, depicting the means and methods of trench shoring, and existing utility temporary support systems. Copies of the proposed SOE plans shall be submitted to the Town of Winchester and the Field Engineer for review and comment prior to approval by Eversource.
32. Eversource shall maintain a minimum vertical clearance of 12 inches between the Project facilities and all Town utility crossings, unless a lesser clearance is approved in writing by the DPW Director, such approval shall not be unreasonably withheld and issued as soon as practicable, and no more than five business days from Eversource’s request. Eversource

shall maintain a minimum of 18 inches horizontal clearance, as provided for in the Certificate Decision, between Project facilities and all adjacent Town utilities. Up to six inches of excavation width (the portion closest to the adjacent municipal utilities, and only that portion below the pavement) would necessitate vacuum or hand excavation, while the other portions of the trench could use mechanical excavation methods. The Siting Board directs the Company to employ vacuum or hand excavation methods for any excavation between 18 and 24 inches from adjacent municipal utility lines. The Company may select whether vacuum or hand excavation methods is best suited in such circumstances. The Town may elect to waive the Siting Board's requirements for vacuum or hand excavation, in favor of mechanical excavation methods, in its issuance of Street Opening Permits, if it deems it appropriate to do so. The Company shall, consistent with its representations in this Certificate proceeding, provide more than the minimum clearance from municipal utilities, where practicable.

33. All privately-owned water and sewer services within the work zone shall be identified and located prior to the start of construction in each area of open excavation. Eversource and its contractor shall work with the Town and the Field Engineer to determine if relocation or replacement of services is necessary.
34. Eversource shall ensure continuous operation of all existing water, sewer, and drainage utilities along the project route, including privately-owned water and sewer services during the construction project. There shall be no scheduled shutdowns or service interruptions unless approved by the DPW Director, which approval shall not be unreasonably withheld and issued as soon as practicable, and no more than five business days from Eversource's request.
35. If it is determined during the course of construction that modification to a Town-owned utility is required, Eversource or its contractor shall immediately stop work and notify the Field Engineer, DPW Director, and Town Engineer of the requested change. Review of such requests shall be performed in a timely manner, and approval of any changes shall be provided in writing by the DPW Director, which approval shall not be unreasonably withheld and issued as soon as practicable, and no more than five business days from Eversource's request.
36. If at any point during the construction project there is damage to a Town-owned water, sewer, or drain utility, or to a privately-owned water or sewer service, all construction within the affected work zone shall immediately stop and the DPW Director shall be notified of the issue. The Town, the Field Engineer, Eversource, and its contractor shall immediately determine a plan of action to remedy the situation. Work on the remainder of the portion of the Project affected shall not recommence until permission has been granted by the DPW Director.

37. Eversource and its contractor shall have the following materials on-site or immediately accessible for the repair of municipal or privately-owned water, sewer, and drain utilities:
 - a. PVC Pipe in the following sizes- 5, 6, 8, 10 and 12 inches;
 - b. Ductile iron pipe in the following sizes- 6, 8, 10, and 12 inches;
 - c. Hymax and Femco couplings;
 - d. $\frac{3}{4}$ and 1 inch copper pipe and brass couplings; and
 - e. Water service boxes.
38. Work to repair any damage to public or private utilities shall begin immediately and be completed within 12 hours of such damage, to the extent practicable. The DPW Director shall approve any temporary services or by-pass pumping, if required such approval shall not be unreasonably withheld and issued as soon as practicable, and no more than five business days from Eversource's request.
39. Handling of any asbestos-containing material encountered during the work shall be in accordance with applicable OSHA and other federal and state standards. The Town shall not be responsible for the handling, removal, or disposal of any asbestos containing material encountered.
40. Eversource or its contractor shall, to the extent practicable, provide sufficient information to way-finding applications such as Waze and Google Maps to allow those services to re-route traffic where necessary.
41. At the conclusion of Project construction, Eversource shall provide the Town of Winchester with as-built diagrams showing the location of the Project and all related equipment. As-built diagrams shall depict the locations and top and bottom elevations of all structures and duct banks and adjacent utilities identified during the pit field testing or Project excavation at intervals of 25 feet.



Matthew A. Beaton, Chairman
Energy Facilities Siting Board

APPROVED by a vote of the Energy Facilities Siting Board at its meeting on March 6, 2019, by the members present and voting. Voting for the Tentative Decision as amended: Matthew A. Beaton, Secretary of the Executive Office of Energy and Environmental Affairs, Siting Board Chairman; Matthew Nelson, Chair of the Department of Public Utilities; Cecile M. Fraser, Commissioner of the Department of Public Utilities; Judith Judson, Commissioner of the Department of Energy Resources; Jonathan Cosco, Senior Deputy General Counsel and designee for the Secretary of the Executive Office of Housing and Economic Development; Gary Moran, Deputy Commissioner and designee for the Commissioner of Massachusetts Department of Environmental Protection; and Joseph C. Bonfiglio, Public Member.



Matthew A. Beaton, Chairman
Energy Facilities Siting Board

Dated this 7th day of March 2019

Appeal as to matters of law from any final decision, order or ruling of the Siting Board may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Siting Board be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Siting Board within twenty days after the date of service of the decision, order or ruling of the Siting Board, or within such further time as the Siting Board may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the clerk of said court. Massachusetts General Laws, Chapter 164, Sec. 69P; Chapter 25, Sec. 5.