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June 20, 2019

Donna Sharkey, Esq.
Energy Facilities Siting Board
One South Station, 5th Floor
Boston, MA 02110

Re: NSTAR Gas Company d/b/a Eversource Energy, EFSB 18-02

Dear Ms. Sharkey:

Enclosed please find the Reply Brief of NSTAR Gas Company d/b/a Eversource Energy in the above-referenced matter.

I have also enclosed a Certificate of Service. Thank you for your attention to this matter.

Very truly yours,

David S. Rosenzweig

Enclosures

cc: Mark D. Marini, Secretary, Department of Public Utilities
Service List

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

Petition of NSTAR Gas Company d/b/a Eversource Energy	)	EFSB 18-02

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing upon the Energy Facilities Siting Board and the Service List in the above-docketed proceeding in accordance with the requirements of 980 C.M.R. 1.03 (Siting Board's Rules of Practice and Procedure).

Erika J. Hafner, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
(617) 951-1400

Dated: June 20, 2019

COMMONWEALTH OF MASSACHUSETTS

ENERGY FACILITIES SITING BOARD

Petition of NSTAR Gas Company d/b/a Eversource Energy for Approval to Construct a Transfer Line Replacement Project in the Town of Hopkinton and the Town of Ashland Pursuant to G.L. c. 164, § 69J	EFSB 18-02

REPLY BRIEF OF NSTAR GAS COMPANY d/b/a EVERSOURCE ENERGY

NSTAR GAS COMPANY d/b/a EVERSOURCE ENERGY

By its attorneys,

David S. Rosenzweig, Esq.
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(617) 951-1400

Dated: June 20, 2019

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I. INTRODUCTION

In accordance with the Presiding Officer's procedural schedule in this proceeding, NSTAR Gas Company d/b/a Eversource Energy ("Eversource" or the "Company") submits this Reply Brief to the Energy Facilities Siting Board (the "Siting Board"). On May 23, 2019, the Company filed its Initial Brief in support of the Company's petition to replace approximately 3.7 miles of buried 6-inch diameter steel natural gas pipe, with new 12-inch diameter steel pipe in the Towns of Ashland and Hopkinton. Eversource is proposing the Hopkinton-Ashland Transfer Line Replacement Project (the "Project") to eliminate an existing pressure drop along the Company's Hopkinton to Ashland Transfer Line ("Transfer Line") and therefore improve the performance, reliability and integrity of the natural gas distribution system in the Greater Framingham Area. The Siting Board received an Initial Brief from the Town of Ashland (the "Town" or "Ashland") on May 23, 2019 and, subsequently, the Town's Reply Brief on June 6, 2019.

The Company hereby submits this Reply Brief in response to claims presented by Ashland. The Company will not repeat each argument made in its Initial Brief, nor will it respond to every argument made by the Town in this proceeding.[1] The Company addresses below only the most pertinent issues raised in the Town's Initial and Reply Briefs. As set forth in the Company's Initial Brief, a comprehensive record has been established before the Siting Board in this proceeding that demonstrates convincingly that the Project meets each element of the Siting Board's standards and precedent under G.L. c. 164, § 69J and, accordingly, should be approved.

[1] The Company's decision not to respond to certain items in Ashland's Initial and Reply Briefs does not reflect agreement with the positions taken therein. To the contrary, the Company relies upon the positions and arguments in the Company's Initial Brief.

II. ARGUMENT

A. The Siting Board Should Consider Public Opinion in a Manner Consistent with Its Overall Statutory Mandate Pursuant to Chapter 164.

In both its Initial and Reply Briefs, the Town argues that "the Siting Board should consider public support (or lack thereof) for a project as part of its balancing." Town Initial Brief at 27; Town Reply Brief at 3. In making such argument, the Town references the "vast public outcry" against the Project generally and the Preferred Route, in particular. Town Initial Brief at 27. To wit, the Town points to the public comments that were filed with the Siting Board, as part of the administrative record, between April 17 and May 23, 2019 and the "strongly" held belief of the commenters that the Project is not needed. Town Initial Brief at 28.

As an initial matter, the Town's reliance on the flurry of unsolicited emails submitted by certain residents of Ashland as evidence of public concerns and a purported absence of need for the Project is completely misplaced. As an administrative agency conducting adjudicatory proceedings, the Siting Board's decision must be based on substantial evidence.[2] Town of Andover v. Energy Facilities Siting Bd., 435 Mass. 377, 378-379 (2001); City Council of Agawam v. Energy Facilities Siting Bd., 437 Mass. 821, 826-827 (2002). The public comments referenced by the Town its briefs are categorically not record evidence,[3] never mind substantial evidence, and, thus, they have no legal or factual basis for influencing the Siting Board's decision in this proceeding. Therefore, the Siting Board must disregard the arguments presented by the Town that are based on such extra-record evidence. Town Reply Brief at 3-4, 8.

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[2] Under the state's Administrative Procedure Act, substantial evidence is defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." G.L. c. 30A, § 1.

[3] While the Siting Board as a matter of practice may retain those emails for purposes of its administrative record, they are not part of the evidentiary record and they have not been subject to discovery, testimony under oath, cross examination, or rebuttal, i.e., the hallmarks of record evidence. Addenda A and B to the Town's Reply Brief are exactly the kind of extra-record materials that cannot serve as the basis for the Siting Board's ultimate decision.

Nevertheless, the Company agrees that public input and involvement is important in the development, review and consideration of jurisdictional facilities; however, the Siting Board's overall statutory mandate and purpose must be paramount in any such evaluation. Accordingly, the Town is incorrect in its statement that "[w]here the sole intervenor and host community by and through its duly elected representatives, the Board of Selectmen, and the public it represents take a consistent position in opposition to the Project, the Siting Board should give special consideration to those concerns." Town Reply Brief at 3-4. By statute, the Siting Board is the first state agency to act on jurisdictional energy facilities and it is required by its enabling act to issue final decisions expeditiously (i.e., within one year). G.L. c. 164, §§ 69H, 69J. The very purpose of the Siting Board is "to provide a reliable energy supply *for the [C]ommonwealth* with a minimum impact on the environment at the lowest possible cost." Id. (emphasis added). In fact, to the extent a state or local agency unreasonably obstructs the construction of a facility that has been approved by the Siting Board, the Siting Board is authorized to stand in the shoes of the agency and grant the necessary permit. G.L. c. 164, § 69K; see Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd., 457 Mass. 663, 678 (2010) (finding G.L. c. 164, § 69K is "an express legislative directive to the Siting Board to stand in the shoes of any and all State and local agencies with permitting authority over a proposed facility").

Conditioning Siting Board approval on projects having community-wide support, as advocated by the Town, would frustrate the "intent and purpose of the statutory scheme applicable to the Siting Board, which is in part to ensure that local boards do not use their power over licenses and permits to thwart the needs of the broader community for a reliable, affordable, and environmentally sound energy supply." City Council of Agawam v. Energy Facilities Siting Bd., 437 Mass. 821, 828 (2002); Alliance to Protect Nantucket Sound, 457 Mass. at 674. This would

inevitably lead to the "balkanization of the Commonwealth" and would "permit a single municipality to deny access to vital public utility services to any and all other municipalities." See Pereira v. New England LNG Co., Inc., 364 Mass. 109, 121 (1973) (recognizing "the absolute interdependence of all parts of the Commonwealth and of all of its inhabitants in the matter of availability of public utility services," and giving to the Department "the power to take action necessary to insure that all may obtain a reasonable measure of such vital services"). One of the paramount reasons that there is a state agency, the Siting Board, with the authority and expertise to site needed energy facilities is to ensure that the regional interests that underlie a reliable, economic and minimal environmental impact supply of energy to consumers and businesses are not jeopardized by local concerns. In this context, for the Siting Board to place undue emphasis on local opinion (particularly local opinion that is not evidence) would be plainly inconsistent with the statutory mandate of the agency.[4]

As such, although public views can be a consideration in the Siting Board's decision-making process, it does not – and, in fact, cannot – warrant "special consideration" over and above the explicit requirements of G.L. c. 164, §§ 69H-69J.

B. Eversource Conducted a Comprehensive Route Selection Analysis That Properly Solicited and Considered Public Input.

In a related argument, the Town alleges that the Company's route selection process was flawed and "did not include coordination with or input from Ashland." Town Initial Brief at 21; Town Reply Brief at 5. In making its argument, the Town also alleges that there is not enough information on mitigation "to enable the Siting Board to make a determination as to the Preferred

[4] Moreover, the Town's reliance on the Siting Board's statement in Colonial Gas Company d/b/a KeySpan Energy Delivery New England, EFSB 05-2, at 31 (2006), is misplaced. There, the Siting Board's statement about "a fuller consideration of community views" was in reference to the site selection process only. As discussed below in Section III.B, the Company was diligent and thorough in soliciting and incorporating public opinion into its route selection analysis.

Route" (Town Initial Brief at 21-22) and asserts that "the Company has failed to sufficiently develop the Noticed Alternative to any useful degree, resulting in a lack of information for comparing the routes." Town Reply Brief at 6.[5] To the contrary, the Company's route selection analysis was thorough and objective, consistent with Siting Board precedent, and included a proper weighing of local interests as well as a robust public outreach process. As explained below, with regard to the Town's concerns, it is well-settled that: (1) certain aspects of mitigation are developed closer to the time of construction; and (2) the Siting Board does not require identical levels of information for all routes analyzed when conducting an applicant's route selection process. In addition, by any reasonable measure, the Company conducted extensive municipal and public outreach in evaluating potential routes. For these reasons, the Town's criticisms of the Company's route selection analysis are unfounded and should be rejected.

1. All Mitigation Measures Will Be Finalized Prior to Construction.

In its Initial Brief, the Town argues that "there is no specific, well-defined plan" for crossing each parcel along the easement and Traffic Management Plans ("TMPs") have not been finalized. Town Initial Brief at 23-24. Similarly, the Town advances in its Reply Brief that the Company has not yet received the necessary approval from the Ashland Conservation Commission. Town Reply Brief at 7-8. However, these allegations have no merit to support an argument that the Project should not be approved by the Siting Board and, in fact, it is standard practice for such issues to be handled as a matter of course as Project permitting proceeds.

[5] The Town makes a similar argument with regard to the "speculative" nature of the estimated Project costs. Town Initial Brief, at 26. As with above, the Company provided the standard and usual level of certainty for cost estimates in Siting Board proceedings. NSTAR Electric Company d/b/a Eversource Energy, EFSB 18-02/D.P.U. 18-77, at 18, 28, 72, 80 (2018) (accepting initial cost estimates of -25%/+50%); 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, at 2, 20 (2018) (planning grade cost estimates of -25%/+25%).

With regard to agreements with parcel owners along the easement, the Company explains below that the proper timing of such discussions would occur once a final route has been approved, approximately one year prior to construction of a particular pipe segment. In any event, as a matter of precedent, even if the validity of the Company's property rights were uncertain (which the Company expressly does not believe is the case), it is well established that property rights are not required as a prerequisite for obtaining Siting Board approval. See Section III.D, below. Moreover, it is customary for projects of this nature for final construction plans and TMPs to be developed *after* issuance of a Siting Board decision. See, e.g., Colonial Gas Company d/b/a National Grid, EFSB 16-01, at 53, Condition E (2016); Colonial Gas Company d/b/a KeySpan Energy Delivery New England, EFSB 05-2, at 119, Condition A (2015). Accordingly, the Town's criticisms are misplaced.

With respect to the consideration of wetland impacts, the Ashland Conservation Commission process is ongoing. The Company's Notice of Intent was filed on December 18, 2019 and public hearings began in January 2019 and proceedings are continuing. Exhs. EFSB-W-7; TOA-13; Tr. 3, at 342, 367-69. Regardless, there is no requirement that local Orders of Conditions be secured prior to receiving Siting Board approval and, to the contrary, it is far more common for such local permitting to occur *after* the Siting Board's review. See, e.g., NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-04/D.P.U. 14-153/D.P.U. 14-154, at 124 (2017). Because such agreements, plans and authorizations can and will be developed and secured pursuant to the Siting Board order and on a schedule consistent with Siting Board precedent, the Town's arguments are totally without merit.

2. The Company Has Provided Ample Information, Consistent with Siting Board Standards, on Both the Preferred and Noticed Alternative Routes.

With regard to the Town's complaint that less information was provided on the Noticed Alternative Route than for the Preferred Route, and, as such, a proper comparison of the two routes could not be conducted, Ashland's argument should be rejected. As the Siting Board has explicitly stated:

> As an initial matter, the Siting Board notes that it requires applicants to analyze the primary route in greater detail than the alternative route, and to analyze both the primary and alternative routes in far greater detail than the routes which are discarded as a result of the site selection process. Thus, a disparity in the level of detail available in the record on the different routes does not indicate a flaw in the site selection process. However, the site selection analysis must be detailed enough to capture any significant differences between the route options, and the criteria used to evaluate the various route options must be carefully selected and weighted to ensure that an unintended bias does not lead the applicant to overlook or eliminate superior routes.

In re Cape Wind Associates, LLC, EFSB 02-2, at 46 (2005); see also NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77, at 6 (2018). This is a standard that the Company has met by a wide and convincing margin.

As part of its site selection standards, the Siting Board requires a petitioner to demonstrate that it has considered a reasonable range of practical siting alternatives, and that the proposed facilities are sited at locations that minimize costs and environmental impacts while ensuring supply reliability. 2006 KeySpan Decision, 15 DOMSB at 306; NEP Salem at 34. To meet this standard, an applicant must satisfy a two-pronged test: (1) the applicant must first establish that it developed and applied a reasonable set of criteria for identifying and evaluating alternative routes in a manner that ensures that it has not overlooked or eliminated any routes that, on balance, are clearly superior to the proposed route; and (2) the applicant must establish that it identified at least two noticed sites or routes with some measure of geographic diversity. 2006 KeySpan Decision, 15 DOMSB at 307; NEP Salem at 35.

The fact is that the Company's route selection process and its scoring of alternative routes were conducted in accordance with Siting Board precedent. The issue is not whether the Town would have scored those attributes in the same manner; rather, what is required and what was shown during the case is that the process used by the Company was objective, that reasonable criteria were selected to identify candidate routes, that an appropriate and thorough evaluation of those routes took place and that the Company exercised reasonable judgment in ranking those routes. 2006 KeySpan Decision, 15 DOMSB at 307; NEP Salem at 35. The record is clear on these issues and the Town has failed to show that the Company overlooked or eliminated a route that, on balance, is clearly superior to the proposed route. Ironically, contrary to Ashland's claims on brief, most of the Town's witnesses in the proceeding, including its Police Chief, Fire Chief and Director of Public Works, expressed the belief that the Company's Preferred Route was superior to the Noticed Alternative Route. Exhs. EFSB-TOA-28; EFSB-TOA-29; EFSB-TOA-30; Tr. 4, at 553-554.

Relatedly, the Town takes issue with the fact that the Company has not presented or designed an "in shoulder" route for the Noticed Alternative that would allow an equal comparison of the two proposed routes, arguing that the "Noticed Alternative Route is essentially a line shown on a plan." Town Reply Brief at 6. First, as described above, there is no requirement or obligation for the Company to design its Noticed Alternative to the same level as the Preferred Route. Cape Wind, EFSB 02-2, at 46; NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77, at 6. Second, as the Company's witnesses explained, placing the Project in the shoulder of roadways along the Noticed Alternative Route is not the panacea that the Town wishes it to be. Exh. EFSB-TOA-1; Tr. 4, at 578-579.

If the Noticed Alternative Route were a superior route, which it clearly is not,[6] the Company would not be opposed to an in-shoulder alignment; it generally designs such roadway projects to be approximately 3 feet from the edge of the roadway. Tr. 2, at 252. Such an installation, however, would still require a 20-foot work area and may, at times, make use of the sidewalk. Tr. 2, at 226, 252. These factors would necessarily mean that travel lanes of the roadway would be incorporated into the Project's construction work area and significant traffic impacts would result. Tr. 2, at 350. Additionally, work along the shoulder of a roadway raises significant challenges relating to overhead components, that may include trees and branches or utility poles. Tr. 2, at 253. In addition to environmental considerations, such as tree clearing or damage to public shade trees, such impediments can cause safety concerns because arrangements must be made for safe passage of equipment or to shore up existing utility poles. Tr. 2, at 253, 350. Indeed, areas along the shoulder of the road are not cleared pathways but could include front yards, mailboxes and other features that would be disturbed and require restoration. Tr. 5, at 632. Further, any slope adjacent to such a roadway layout would also impact construction techniques and pose safety considerations. Tr. 2, at 254. Lastly, placing any in-street route in the shoulder, as opposed to within the roadway itself, would necessarily mean that impacts would be closer to the landowners located along the roadway, increasing impacts to those abutters. Tr. 2, at 351.

Based upon the above, it is clear that the Company has provided ample evidence to support its route selection analysis, including the identification of the Preferred Route, and that the benefits the Town asserts on brief with in-shoulder construction along the Noticed Alternative Route are

[6] As the record reflects, the Noticed Alterative Route is wholly inferior on the basis of cost, environmental impacts and its ability to meet the needed pressure on an annual basis. Exhs. ES-1, at 4-21; 4-23; EFSB-C-1; EFSB-C-2; TOA-1; TOA-4.

not based in fact. Accordingly, the Company has satisfied the Siting Board's standards for site selection.

3. The Company Pursued Extensive Municipal and Public Outreach as Part of Its Route Selection Process.

In identifying possible routes and amassing information about those potential routes, the Company engaged municipal officials and the public in Ashland prior to filing its Siting Board petition. Exh. ES-1, at 1-7. Specifically, the Company conducted nine meetings with municipalities and state agencies, with attendees including the Ashland Town Manager, Ashland Town Engineer, Ashland Director of Public Works, Ashland Fire Chief, Ashland Police Chief, and Ashland Conservation Administrator. Exhs. ES-1, at 1-7; EFSB-TOA-11; EFSB-TOA-15. The Company also presented the Project to the Ashland Board of Selectmen in October of 2018. Exh. EFSB-G-9.[7]

In addition to outreach to municipal officials, the Company has also proactively consulted with abutters and customers who could be affected by the Project. Exh. ES-1, at 1-8. The Company held four different open houses, two in Ashland and two in Hopkinton, to familiarize landowners and public officials with the Preferred and Noticed Alternative Routes as identified by the Company, answer questions and gather input. Exhs. ES-1, at 1-8; EFSB-G-8. All of these open houses were held in February and March 2018 – significantly in advance of the Company's June Siting Board filing – to ensure the ability to incorporate public input and adjust the

[7] It bears noting that the Town's position on the Project has evolved significantly and belatedly over the course of this proceeding, as reflected in the evidentiary record. The direct testimony of the Town as well as the Town's responses to the Siting Board's information requests deal almost exclusively with the mitigation of construction impacts and do not, as the Town now alleges, question the need for the Project or the extent of the Company's local outreach. See, e.g., Exhs. TOA-GA; EFSB-TOA-2; EFSB-TOA-3; EFSB-TOA-4; EFSB-TOA-5; EFSB-TOA-6; EFSB-TOA-14; EFSB-TOA-19; EFSB-TOA-20; EFSB-TOA-22; EFSB-TOA-23; EFSB-TOA-24; EFSB-TOA-28. Tellingly, the Town acknowledges that as recently as March 2019 it was interested in "pursuing discussions with the Company and/or an agreement as to mitigation." Exh. EFSB-TOA-6. Thus, the Town's position now that there has been a consistent groundswell of opposition to the Project, led by municipal officials, is baseless.

Company's analysis, if appropriate. Exhs. ES-1, at 1-8; EFSB-G-9. Moreover, these open houses were coordinated with municipal officials to select the times and locations of the meetings and the Company sent invitations to all abutters within 300 feet of the Preferred and/or Noticed Alternative Routes. Exh. EFSB-G-8. Comments and concerns were collected at all meetings with municipal and safety officials, during conversations at the open houses, and with direct contact with abutters or concerned individuals and/or organizations. Exh. EFSB-G-8. Then the Company incorporated such input into its route selection process. The evidence of the extent of these efforts is unrebutted in the record of this proceeding.

Based upon the above, the Company's route selection process, and its solicitation of public input regarding the Project and potential routes, was thorough, reasoned and entirely consistent with Siting Board precedent.

C. The Project Provides Specific Benefits to Ashland While Also Meeting the Identified Regional Need of the Greater Framingham Area.

The Town wrongly asserts that there is no direct benefit to the Town from the Project. Town Initial Brief at 4-5; Town Reply Brief at 4. As stated above, the Siting Board's statutory mandate is "to provide a reliable energy supply *for the [C]ommonwealth*." Id. (emphasis added). There is no statutory requirement for an applicant to show any particular benefit to the specific municipality where construction will occur; nor does the Town point to any such legal precedent. Thus, the Town's argument is legally without merit.

Regardless, as a factual matter, the Town's assertion is contrary to the record. The Company has described the existing district regulator station on the west side of Prospect Street, serving the Town of Ashland (i.e., Prospect Street Regulator), and explained that this district regulator: (1) is supplied only via the Transfer Line; and (2) is one of the primary sources of natural gas to the Town. Exh. ES-1, at 5-2; EFSB-N-2; Tr. 1, at 28-29; Tr. 5, at 656. As such, any

improvement to pressure along the Transfer Line will necessarily support pressure at the Prospect Street Regulator in Ashland. Exhs. EFSB-N-2; RR-EFSB-16; RR-EFSB-17. Moreover, the Company specifically considered the ability of potential routes to serve the Prospect Street Regulator as a critical element in its evaluation of viable routes. Tr. 1, at 126. Thus, the Project will improve the flexibility and performance of the Prospect Street District Regulator, thereby directly benefitting the residents of Ashland served from this regulator. Exh. EFSB-N-2. Here again, the record is uncontroverted on these factual issues.

In its Initial and Reply Briefs, the Town disputes the more general need for the Project because "both Ashland and the State as a whole are working to reduce carbon emission: and "it makes no sense to invest in infrastructure to increase fossil fuel use when the State should be switching to efficient carbon-free power for heating…." Town Initial Brief at 28; see also Reply Brief at 3. Such generalized and long-term aspirational goals of the Commonwealth, while laudable and appropriate, are frankly irrelevant to the salient issue of whether the Project is needed at this time to ensure customer reliability; such arguments also ignore the vast amount of evidence showing that the Project is required to address an existing pressure drop condition along the Transfer Line and at Pond Street during foreseeable contingency situations. To that end, the Company has clearly demonstrated the benefit to customers served via Pond Street, especially during times of peak load. Exh. ES-1, at 2-4; EFSB-N-22. With the decrease of inlet pressure at Pond Street (i.e., down to 88 psig) as a result in decreased supply at Pond Street from Algonquin Gas Transmission, LLC, the Company has shown that 3,300 customers, many of which would be in Ashland, could be lost. Exh. ES-1, at 2-4. The Company has also demonstrated such a decrease in pressure from transmission providers is foreseeable and has occurred on other parts of its system during the most recent winter season. Exh. EFSB-N-22; Tr. 1, at 37. Even aside from important

reliability issues concerning continuity of gas supply, such loss of service can present serious safety issues if gas begins flowing through the system where there may not be pilot lights or appliances running in a home to burn the gas once service is restored.[8] Tr. 2, at 295. This situation is immediately mitigated as the Company work isolates the service to each customer, but still represents a safety issue that the Company is striving to avoid entirely. Tr. 2, at 295. As the record reflects, the need for capacity during high demands will continue to grow overtime given the current system infrastructure. Exh. ES-1, at 2-5. In point of fact, the Company continues to see: (1) increases in annual gas loads in the Greater Framingham Area at a rate that is higher than the rest of the Company's system (Exh. ES-1, Table 2-3.; Tr. 1, at 52); and (2) new customer growth in the area served by the Pond Street Gate Station. Exh. ES-1, at 2-8. Exh. EFSB-N-1.

Thus, the Town's arguments on need are unsupported because, in addition to explaining the specific benefit that will be realized at the Prospect Street District Regulator in Ashland, the Company has clearly demonstrated a regional need for the Project to serve the gas distribution system in the greater Framingham Area, including Ashland.

D. No Specific Property Interest Is Required to Seek or Receive Siting Board Approval but, Regardless, the Company Has All Necessary Easement Rights to Construct and Operate the Project.

On brief, the Town asserts, without any accompanying legal argument, that the Company does not have the necessary easement rights that would allow it to construct and operate the Project, as proposed. Town Reply Brief at 8. Specifically, the Town takes issue the Company's

[8] Such a contingency event is not speculative and, in fact, occurred on the regional natural gas distribution system during the cold snap in mid-January 2019. Exh. EFSB-N-22. During that period of high demand, delivery pressures from interstate pipeline companies in the area decreased because of high demand associated with the cold weather period. Tr. 1, at 37-38, 55-56. As a result, there were areas of National Grid's Rhode Island service territory in Newport that experienced such low pressures that service customers was interrupted. Exh. EFSB-N-22. This low-pressure situation, coupled with high demand, resulted in a loss of service in that area. Tr. 1, at 37. The same result could occur under contingency conditions elsewhere in Massachusetts, including the Company's system, if low pressures persist.

failure "to acknowledge the ongoing and unsettled posture of the Company's alleged rights, the outcry from public commenters disputing the Company's rights, and the significance should it be determined that the Company lacks rights to proceed as please within the easement." Town Reply Brief at 8. These issues, even if taken as true (which they are not), are simply not relevant to the Siting Board's review pursuant to G.L. c. 164, § 69J.

At the outset, it bears emphasizing that no particular legal property interest is required for an applicant to file a petition for Siting Board review and approval of a jurisdictional facility. See, e.g., G.L. c. 164, §§ 69G, 69H, 69J. The Supreme Judicial Court itself has said:

> There is no merit to the argument that [the petitioner] lacks standing to petition for a permit to construct the proposed … facility at the selected site because it had not secured an ownership, leasehold, or other interest in the site. The statute does not require such an interest."

Town of Andover v. Energy Facilities Siting Bd., 435 Mass. 377, 395 (2001). Thus, whether the Company currently has (or how the Company will obtain) the necessary legal rights to construct, operate and maintain the proposed Project is irrelevant to the Siting Board's determination on this matter.

Notwithstanding the fact that these issues are not part of the Siting Board's statutory review process, the Company strongly maintains that it has all necessary legal rights to place the new, 12-inch diameter pipeline in the existing Transfer Line easement. Company Initial Brief at 50-51; Exhs. RR-EFSB-30; Att. RR-EFSB-30(1). Pursuant to an order from the Department issued in docket D.P.U. 9582 on July 13, 1951, the Company's predecessor was authorized to take an easement by eminent domain: "[t]he perpetual and exclusive right and easement to enter upon and lay, construct, maintain, operate, alter, repair, remove, change the size of, and replace a pipe line (with fittings and appliances, including cathodic protection equipment) for the transportation of natural gas and by-products thereof under, upon, over and through a strip of land consisting of a

permanent easement …." Exhs. RR-EFSB-30; Att. RR-EFSB-30(1). As the Company's witnesses testified, abandoning pipe in place has been the common, long-standing practice for utilities with underground facilities, including gas, water, sewer, drainage. Exh. RR-EFSB-30; Tr. 2, at 166-67, 199; Tr. 3, at 364. To the witnesses' knowledge, the Company has never removed a substantial length of pipe, such as the 3.71 miles of the Transfer Line, when conducting a replacement project of this nature. Exh. RR-EFSB-30; Tr. 5, at 634-35. As the Company noted, consistent with industry practice, the existing 6-inch Transfer Line will be abandoned by purging all-natural gas from the existing pipe and capping each end to ensure that it will not act as a conduit for the movement of groundwater. Exh. RR-EFSB-30; Tr. 2, at 199-201.

The specific language of the eminent domain decision by the Department gave the Company the authority to "change the size of" and "replace" the pipeline. Exh. RR-EFSB-30. Within the context of the natural gas industry, it has been and continues to be standard practice to abandon pipe in the ground when changing the size of or replacing an underground pipeline. Exh. RR-EFSB-30. Removing the existing pipe would be of limited value to the property owner, result in additional impacts as part of the removal process and increase the overall cost of the project to ratepayers. Exh. RR-EFSB-30. When the new Transfer Line is installed, the existing Transfer Line would be abandoned in place and only one pipeline would be left operational. Exh. RR-EFSB-30. For those reasons, the Company does not plan on removing the existing pipe after the new pipeline is commissioned. Exh. RR-EFSB-30. If, however, a property owner has a specific need for the existing pipe to be removed, the Company will consider the request on a case-by-case basis.[9] Exh. RR-EFSB-30.

[9] In any event, if landowners or others with appropriate standing seek to challenge the Company's assessment of its land rights, there are forums for doing so – but the Siting Board is not one of them. See Town of Andover, 435 Mass. at 395. Those entities or individuals would need to advance those arguments in the proper setting with the appropriate legal authority for determining the legal land rights of those involved.

In addition to the Department's order on the taking, the Company's position is fully supported and consistent with the rules that are applicable to natural gas facilities. The definitions in the Massachusetts Gas Pipeline Safety Code state that a "pipeline" "means all parts of those physical facilities *through which gas moves* in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies." 220 C.M.R. 1.01(3) (emphasis added). Conversely, a "pipe" "means any pipe or tubing used in the transportation of gas, including pipe-type holders." Id. Therefore, in order for a pipe to be a pipeline, it needs to have gas passing through it. Exh. RR-EFSB-32. Without gas flowing through a pipe, it is not a pipeline but merely a single component piece of such a pipeline system. Id. In accordance with these definitions, there will not be two "pipelines" in the Transfer Line easement under this configuration and the Company's plan to abandon the existing pipe in place is entirely consistent with the Department's Order of Taking, the language of the easement and the applicable regulatory definitions. Id.[10]

At the crux of the Town's position on easement rights is the notion that Company can have only one "pipe" within the easement and, therefore, cannot abandon the existing pipe in place upon construction of the Project. Town Reply Brief at 9. The Town goes on to make the self-evident conclusion that "[i]f the existing pipeline must be removed within the easement, the existing environmental analysis will be meaningless." Town Reply Brief at 9. This is the same point made by the Company's witnesses repeatedly at hearings, that – irrespective of the Company's rights to abandon the existing pipe in place – to require removal of the entire existing pipeline would have

[10] Even further, the Federal regulations governing gas pipeline safety, include the same definition of "pipe" and "pipeline" as the Massachusetts regulations and specifically define "abandon" as "permanently removed from service." 49 C.F.R. 192.3. The Federal regulations also provide particular requirements for the abandonment of such pipelines in 49 C.F.R. 192.727. Thus, it is clear based upon both the state and Federal regulatory definitions, that an abandoned pipe is not a pipeline and that such abandonment is the industry standard for replacing existing pipelines. See also Exhs. RR-EFSB-32(1); RR-EFSB-32(2).

more extensive environmental impacts and increase Project cost. Tr. 3, at 340 ("If we were to remove the abandoned pipe, that means we'd have to go back and essentially construct again, with the same environmental impacts, with the same coordination impacts, the same additional costs of removing that abandoned main, with no applicable benefit to anybody"). Specific environmental impacts of such pipe removal were identified as: wetlands and waterways from excavating the soil, managing groundwater, traffic, and increased construction duration. Tr. 3, at 341. There is no reason to pursue this matter from any perspective because: (1) the Company has the *legal* rights it requires to build the pipeline and abandon the pipe in place; (2) requiring removal of the existing pipe would essentially double the *environmental* impacts of construction; (3) removal would also substantially increase the *cost* of the Project; and (4) there is no corresponding *reliability* benefit.

For all of the above reasons, the Town's arguments with regard to the Company's easement rights should be rejected.

E. The Record Is Consistent and Clear That Eversource Will Execute Individual Agreements With Landowners for Restoration and Has Committed to Return Property to Pre-Construction Conditions.

The Company has articulated repeatedly that it will work with individual property owners to address concerns on a case-by-case basis and, once construction is complete, the Preferred Route easement will be restored in accordance with the Company's specifications, landowner restoration agreements and permit conditions. Exhs. ES-1, at 5-32; EFSB-V-4; EFSB-V-6; RR-TOA-4. The Company will execute agreements with landowners but the timing of those discussions is based upon selection of the final route and the ultimate schedule for construction. Tr. 2, at 218. Because construction is proposed to occur over a five-year period, the Company plans to execute agreements with landowners approximately one year prior to the start of construction at a particular location. Tr. 2, at 218, 235. Contrary to the assertions of the Town, the Company *has* committed to: "meet with each resident and reach that restoration agreement prior to construction, and the

property will be restored to like-new, if not better, condition prior – subsequent to construction." Tr. 2, at 228. The specific topics the Company anticipates such agreements to cover are, inter alia, provisions for notice, plantings, landscaping, sprinkler systems, mulch, re-seeding, sodding, grading, replacement of driveways, fences and mailboxes, as well as the relocation of sheds and gardens at the Company's expense. Exh. RR-TOA-4; Tr. 2, at 232.

The Town seems to want these contracts executed now, including an explicit analysis of any legal recourse available to the landowner. Town Reply Brief at 9. But, as described above, the appropriate time for such negotiations is after selection of the final route by the Siting Board and approximately one year prior to construction. To require agreements to be entered into now would be speculative and, most likely, counterproductive. Moreover, the Town's interest in landowner recourse is puzzling because these will be legally valid contracts that either party can seek to enforce in the appropriate venue. Property rights disputes between landowners and easement holders are not matters in which a municipality has standing. See Slama v. Attorney General, 384 Mass. 620, 624 (1981) ("Representative standing is generally limited to cases in which it is difficult or impossible for the actual rightholders to assert their claims"). The Company has committed to entering into these restoration agreements and presumably will be bound to do so as part of the Siting Board's approval.

III. CONCLUSION

For the foregoing reasons, Eversource has demonstrated, consistent with the requirements of G.L. c. 164, § 69J, that the Project is necessary to maintain safe and reliable natural gas service in the Commonwealth, and that the Project along the Preferred Route is superior to other identified project alternatives and routing alternatives with respect to providing a reliable energy supply with a minimum impact on the environment at the lowest possible cost. Therefore, the Company

respectfully requests that the Siting Board approve its request under G.L. c. 164, § 69J to construct, operate and maintain the Project.

Respectfully submitted,

NSTAR GAS COMPANY d/b/a EVERSOURCE ENERGY

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