

Energy, EFSB-14-04/D.P.U. 14-153/14-154 (2017) (“Eversource 2017”). In addition to the Substation, the Project includes the installation of two 115-kilovolt (“kV”) transmission lines between two of the Company’s existing substations: (1) an approximately 3.2-mile line from Mystic Substation in Everett to the Substation; and (2) an approximately 1.5-mile line from the Substation to the Company’s Chelsea Substation in Chelsea. On February 26, 2021, the Siting Board approved the relocation of the East Eagle Substation approximately 190 feet to the west of the site that it had originally approved. NSTAR Electric Company d/b/a Eversource Energy, EFSB-14-04A/D.P.U. 14-153A/14-154A (2021) (“Eversource 2021”).

As approved in Eversource 2017, the two transmission lines would cross the Chelsea Creek via an existing duct bank and loop through the East Eagle Substation to bring much-needed transmission capability to East Boston. However, undue delay in the processing and granting of local permits, as well as pending appeals of state and local permits already granted, has stalled the construction of the Substation. The two transmission lines are constructed and are currently operating as one line connecting the Mystic and Chelsea Substations on the Chelsea side of the Chelsea Creek, but without supplying any transmission capacity into East Boston. Absent the East Eagle Substation, East Boston continues to be an electrical island without any transmission facilities serving the area, a situation designed to be remedied by the Siting Board’s orders in Eversource 2017 and Eversource 2021.²

Since receiving the two Siting Board approvals for the Project, the Company has actively and continuously engaged in the process of obtaining all other state and local permits needed to

² At present, East Boston is served only by distribution lines, without any transmission capacity existing in East Boston to provide for the area’s growing needs. This situation leaves East Boston particularly exposed to the limits of substation capacity in Chelsea, through which it is now served, and other contingencies on the Company’s system that restrict the amount of capacity that is available to supply East Boston and its increasing electric load.

construct the Substation. However, despite the Company's good-faith efforts, the processing and granting of four local approvals necessary to construct the Substation have been unduly delayed. These local approvals are: (1) an approval from the City of Boston Parks and Recreation Commission ("Commission") for all buildings and structures that are constructed or altered within 100 feet of a park or parkway pursuant to Boston Municipal Code Section 7-4.11; and (2) related approvals within the authority of the City of Boston Public Improvement Commission (the "PIC") to review, which are: (a) a Condor Street pedestrian easement; (b) grants of location ("GOLs") for new distribution duct bank and manholes in public ways (Condor Street, East Eagle Street, Glendon Street, Lexington Street, Shelby Street, and Chelsea Street) pursuant to G.L. c. 166, § 22; and (c) approval of a specific repair plan for Condor Street. As described in detail below, the Commission and the PIC have unduly delayed their processing and review of the Company's applications seeking such approvals, which is causing a consequent delay in the receipt of several other local permits and approvals.

Given the critical need for the Substation, which the Siting Board approved in both Eversource 2017 and Eversource 2021, and to minimize administrative burdens and allow this proceeding to advance expeditiously, this Initial Petition is filed contemporaneously with the Company's Application for a Certificate of Environmental Impact and Public Interest (the "Application") and the Company's Motion Requesting that the Energy Facilities Siting Board Accept its Application for a Certificate of Environmental Impact and Public Interest and Approve Service and Notice.

Because the Company's diligent efforts to obtain the aforementioned approvals have thus far been futile, the Siting Board should expeditiously exercise its authority pursuant to G.L. c. 164, § 69K and 980 C.M.R. §§ 6.00 et seq. and approve this Initial Petition and the Company's

accompanying Application for a Certificate.³ Time is of the essence for the Company to begin construction of the Substation so that it may continue to reliably serve its customers in East Boston, Chelsea and surrounding communities. Any further delay in obtaining all necessary permits and approvals to construct the Substation is unwarranted and places reliable electric service in the area at significant risk.

II. SUBSTATION DESCRIPTION

The Substation will include two bays of 115-kV gas-insulated switchgear with six 115-kV circuit breakers; a control enclosure; two 62.5-MVA, 115/14-kV transformers; distribution switchgear; and capacitor banks. Eversource 2017 at 33, 121, 135. Construction activities also will include the installation of footings, foundations, an underground electric raceway, grounding, lighting, an architectural screen, miscellaneous associated protective relaying, metering, control wiring, and related equipment, and isolation/fire barriers and oil spill containment systems for each of the transformers. Id.

The Substation is the final component of the Project, and all other components of the Project are complete. When operational, the Substation will interconnect with the two 115-kV transmission lines that were approved by the Siting Board in Eversource 2017. These two lines are already in operation, interconnecting on the Chelsea side of Chelsea Creek, rather than crossing Chelsea Creek through the existing Chelsea Creek Crossing to the Substation site, as anticipated in both Eversource 2017 and Eversource 2021. Once the Substation is in operation, the lines will cross Chelsea Creek via the existing Chelsea Creek Crossing; connect directly into the Substation beneath the Substation

³ As required by G.L. c. 164, § 69K and 980 C.M.R. § 6.02(2)(b), the Company sent written notice to the Commission and the PIC by certified mail on January 14, 2022, thereby providing 30 days' advance notice of the Company's intent to file this Initial Petition if the agencies did not take immediate action to process the Company's permit applications. See Attachment 1 (Commission) and Attachment 2 (PIC).

Site; and loop back through the Chelsea Creek Crossing to both Chelsea and Mystic Substations, thereby bringing critically needed transmission capability to East Boston.

III. SITING BOARD PROCEDURAL HISTORY

A. Initial Proceeding

On December 23, 2014, Eversource filed a petition with the Siting Board pursuant to G.L. c. 164, § 69J and two petitions with the Department of Public Utilities (“Department”) pursuant to G.L. c. 164, § 72 and Chapter 665 of the Acts of 1956 for approval to construct and operate the Project (docketed as EFSB 14-4, D.P.U. 14-153 and D.P.U. 14-154, respectively). The Project included two primary components: (1) the East Eagle Substation, a new 115/14-kV substation in the Eagle Hill neighborhood of East Boston; and (2) the two new 115-kV transmission lines described above.

On December 1, 2017, after 12 days of evidentiary hearings, including the cross-examination of 18 witnesses and the introduction of approximately 700 exhibits into the evidentiary record, the Siting Board issued a final decision approving the Project. Eversource 2021 at 2, 7. The East Eagle Substation, where the new transmission lines would connect, provides both a new transmission link between the Company’s existing Mystic and Chelsea Substations to serve the Chelsea/East Boston/Lynn load area and a new transmission supply for 3.6 miles of 14-kV distribution feeders from the East Eagle Substation to serve electricity customers in East Boston. Id. at 2.

In approving the Project, the Siting Board authorized the construction of the Substation on a then Company-owned parcel of land located on the eastern side of a large tract of land owned by the City of Boston (the “City Parcel”), approximately 18 feet from the eastern boundary of the City Parcel. Eversource 2021 at 1. A condition of the 2017 approval directed the Company to enter in

discussions with the City of Boston (the “City”) with the goal of relocating the Substation to another location on the City Parcel away from the eastern boundary.⁴ Eversource 2017 at 91, 167. In compliance with this condition, the Company and the City entered in a land swap whereby the Company acquired a lot on the western side of the City Parcel in exchange for the initial Substation site. Eversource 2021 at 31. The new location has a street address of 400 Condor Street, Boston.

B. Project Change Proceeding

On November 15, 2018, Eversource filed a Notice of Project Change that sought approval from the Siting Board to shift the Substation approximately 190 feet to the west side of the City Parcel in East Boston. Eversource 2021 at 3, citing Eversource 2017 at 33. The scope of this proceeding was limited to: (1) the potential impacts of relocating the Substation 190 feet to the west of the initially approved site; and (2) if the new site were to be approved, whether the Project as a whole would continue to support the Siting Board’s finding in Eversource 2017 that approval of the Project would satisfy the Siting Board’s statutory mandate to ensure a reliable supply of energy, with minimum impact on the environment, at the lowest possible cost. Id.

The Siting Board granted a petition to intervene in the Project Change proceeding to GreenRoots, Inc. (“GreenRoots”) as a full party and limited-participant status to the Conservation Law Foundation and three individuals: (1) Erik Burkman, 294 Lexington Street, East Boston;

⁴ This condition was aimed at satisfying the concerns of an intervenor to the 2017 proceeding, Channel Fish, Inc. (“Channel Fish”), which owns property abutting the City Parcel on its eastern boundary. Channel Fish had opposed the location of the Substation and had asserted that the operation of the Substation at the approved location would produce magnetic fields that would disrupt its fish processing equipment. Eversource 2017 at 117-119. The Siting Board found that an adverse effect of magnetic fields from the Project on Channel Fish’s operations was “unlikely” and “that within the Channel Fish facility, power-frequency magnetic fields from the Project would be lower than typical existing fields created by existing equipment and wiring.” Id. at 122-123. Despite these findings, the Siting Board encouraged the Company to pursue the feasibility of relocating the Substation to another location on the City Parcel. Channel Fish supported the proposed relocation of the Substation. Id. at 69-70, 167 and Eversource 2021, EV-1 Appendix B (Channel Fish letter supporting relocation).

(2) Joseph Aponte, 294 Lexington Street, East Boston; and (3) Julia Ivy, 296 Lexington Street, East Boston. Eversource 2021 at 10.

On February 26, 2021, after three days of evidentiary hearings, the cross-examination of nine witnesses and the introduction of approximately 265 exhibits into the evidentiary record, the Siting Board approved the relocation of the Substation.⁵ Eversource 2021. The Siting Board performed a thorough analysis of the environmental impacts to evaluate whether such environmental impacts were properly minimized, consistent with ensuring reliability and minimizing costs. Eversource 2021 at 33-69. In so doing, the Siting Board comprehensively reviewed impacts to land use, safety, visual, hazardous waste/remediation, noise, traffic, water/wetlands/sea level and magnetic fields associated with both the construction and operation of the Substation. Id. Consistent with the standards set forth in G.L. c. 164, § 69J, the Siting Board made explicit findings on the potential environmental impacts associated with the relocation of the Substation. Id. The Siting Board also evaluated the cost of the relocation as well as the relocation's consistency with the other "policies of the Commonwealth, such as environmental justice, language access, and resource use and development policies." Id. at 81-91. Based on the extensive factual record, the Siting Board approved the relocation, finding that the new site would maintain the appropriate balance among conflicting environmental concerns as well as among environmental impacts, reliability, and cost of the Project. Id. at 92-94.

IV. SUBSTATION PERMITTING HISTORY

Since the inception of the Project, there has been opposition regarding the location of the Substation in the Eagle Hill neighborhood that has led to significant delays in obtaining the permits

⁵ For purposes of the Siting Board's current review, Eversource requests that, pursuant to 980 C.M.R. § 1.06, the Presiding Officer incorporate the evidentiary records from both Eversource 2017 and Eversource 2021 into the record of this proceeding.

and approvals needed to construct the Substation. Notably, the selection of the Substation location was governed by the terms of two land swaps with the City. Eversource 2017 at 69-70; Eversource 2021 at 31. First, at the City's request, the Company and the City entered into a real estate transaction in 2011 whereby the City-owned East Eagle site was swapped for Eversource-owned property at 365 Bremen Street – property that the City wanted as the location of a new East Boston Branch of the Boston Public Library.⁶ Id. The City indicated that it could use its eminent domain power to acquire the Bremen Street property if an agreement with the Company were not reached.⁷ Id.

The Company then searched for an alternative site in East Boston for the Substation and, ultimately, the City offered to exchange a parcel located at 338 East Eagle Street for the Bremen Street property. As noted in footnote 4, supra, the Company agreed to this exchange. However, this site was opposed by Channel Fish and this opposition was ultimately addressed in Condition A by the Siting Board in Eversource 2017, requiring the Company to investigate the feasibility of relocating the Substation within the City Parcel. Id. at 117-119. The proceeding to consider the original substation site was lengthy, stalling the Project for three years due to active participation by Channel Fish and other intervenors.

Following the Siting Board's ruling in Eversource 2017, discussions between the Company and the City ensued and a second land swap between the Company and the City resulted, whereby the Company acquired a lot on the western side of the City Parcel in exchange for the initial Substation site. Eversource 2021 at 31. The new location has a street address of 400 Condor Street, Boston. This new location was the subject of the Company's project change filing in Eversource

⁶ Originally, prior to the Company's filings in 2014 seeking Siting Board approval for the Project, the Company had identified the Bremen Street location as the site for a proposed East Boston substation. Id. at 69.

⁷ The East Boston Branch of the Boston Public Library opened on Bremen Street in 2013. Id. at 69.

2021, proposing the relocation of the Substation on the newly acquired parcel abutting Condor Street, approximately 190 feet to the west of the originally approved site.⁸ Eversource 2021 at 31. Channel Fish, satisfied with the new location for the Substation, did not participate in the project change proceeding; however, GreenRoots intervened to challenge the relocation. Id. at 30-31.

GreenRoots was an active intervenor, filing motions to include Project need in the scope of the project-change proceeding and to reopen the evidentiary record on need. The Siting Board ultimately denied these motions. Id. at 14-26. GreenRoots issued a set of information requests to Eversource during discovery; presented five witnesses for cross-examination at the evidentiary hearing; and filed a post-hearing brief. Id. at 10-11. After the relocation was approved in February 2021, GreenRoots filed a motion with the Siting Board on March 17, 2021, to stay the effect of the final decision, which motion is pending before the Siting Board. Also on March 17, 2021, GreenRoots filed an appeal with the Supreme Judicial Court challenging the final decision, which appeal is ongoing (Docket No. SJC-13233). The length of the proceeding, the final decision of which is under appeal, was over two years.

In parallel with the Siting Board's review, the Company has actively pursued the state and local permits needed to commence construction of the Substation. On January 22, 2020, Eversource filed a Notice of Intent ("NOI") with the Boston Conservation Commission pursuant to both the Wetlands Protection Act and the Boston Wetlands Ordinance seeking an Order of Conditions ("OOC") that would authorize the construction of the Substation within a small area of

⁸ The existing Chelsea Creek Crossing infrastructure is located beneath the new site and, therefore, the new lines will be able to connect to the Substation *directly within the Substation Site* without having to be routed onto public streets. Eversource 2021, Exh. EV-1, at 6. This is a significant beneficial improvement from the original location where approximately 650 feet of both new transmission lines would have been routed on Condor and East Eagle Streets to connect to the Chelsea Creek Crossing. Id. In addition, the proposed distribution network for services from the Substation will be shortened at the new location. Id. The Substation's new location, therefore, will reduce costs and the construction duration on the public streets, thereby lessening traffic impacts, particularly on East Eagle Street. Id.

jurisdictional buffer zone on the Substation Site. See Attachment 3. The Conservation Commission conducted three public hearing sessions on the NOI, which were attended by opponents of the Substation. On November 19, 2020, the Conservation Commission issued an OOC under both the Wetlands Protection Act and the Boston Wetlands Ordinance allowing the work proposed in the NOI. See Eversource 2021, Exh. EFSB-W-6(S1)(1) Att.

On December 4, 2020, residents of the City of Boston filed a Request for a Superseding Order of Conditions (“SOC”) with the Massachusetts Department of Environmental Protection (“MassDEP”) as a ten-resident group to challenge the OOC issued under the Wetlands Protection Act. See Attachment 4. After a 10-month review period, MassDEP issued an SOC on October 29, 2021, affirming the OOC. See Attachment 5. On November 15, 2021, the ten-resident group filed a Notice of Claim for Adjudicatory Hearing with MassDEP’s Office of Appeals and Dispute Resolution to challenge the SOC. See Attachment 6. A Scheduling Order was issued by MassDEP on January 31, 2022, which established various interim deadlines and an adjudicatory hearing date of May 18, 2022. See Attachment 7.

On December 18, 2020, a Boston resident, Gail Miller, appealed the OOC issued under the Boston Wetlands Ordinance by filing a complaint with the Superior Court pursuant to G.L. c. 249, § 4. See Attachment 8. After briefing and oral argument, on December 2, 2021, judgment was granted in favor of the Company and the Conservation Commission, thereby denying the appeal. See Attachment 9. On December 17, 2021, Ms. Miller filed a notice of appeal with the Appeals Court. See Attachment 10. The parties await the Appeals Court’s notice that the appeal has been docketed. Thereafter, briefing and oral argument will be scheduled.

Regarding licensing under G.L. c. 91 (“Chapter 91”), the Company applied for a Chapter 91 license with MassDEP in November of 2014 relative to the original site. The Chapter 91 review

process was put on hold during the pendency of the Siting Board proceeding in Eversource 2017. After the issuance of the Siting Board's Final Decision in Eversource 2017, the Company re-initiated review with MassDEP regarding the new site on November 15, 2018. Since that time, MassDEP established two additional public comment periods, during which GreenRoots and Conservation Law Foundation filed written comments on behalf of their organizations and other advocacy groups and residents. On January 3, 2022, MassDEP issued a Draft Chapter 91 Waterways License for the Substation. See Attachment 11. On January 24, 2022, Gail Miller filed a Notice of Claim with MassDEP to challenge the draft license. See Attachment 12. On the same day, the Conservation Law Foundation (on behalf of itself and a purported 10-resident group) also filed a Notice of Claim to challenge the draft license.⁹ See Attachment 13. The parties await MassDEP's issuance of a scheduling order.

V. STATUS OF REQUIRED STATE AND LOCAL PERMITS

A. Permits for Which Processing by Local Agencies Has Been Unduly Conditioned and Delayed.

As previously stated, the Company must obtain four City of Boston approvals, the processing and granting of which have been unduly delayed, before it can complete its local permitting and move forward with construction of the Substation.¹⁰

⁹ At issue in both appeals is MassDEP's November 25, 2014, determination that the Project is a Water-Dependent Use per the Chapter 91 regulations.

¹⁰ The Company is committed to continuing its good-faith efforts to obtain all of its remaining permits and approvals from the City's agencies in parallel with the Siting Board's certificate review. If the Company were to obtain any of these permits in an acceptable form during the pendency of this proceeding, the Company would be amenable to eliminating that permit from its Certificate request once that permit becomes non-appealable and final in all respects. See, e.g., NSTAR Electric Company d/b/a Eversource Energy, EFSB 18-03, at 3, n.6 (2019), which notes that that the Company withdrew its request for two permits during the course of the Certificate proceeding because the local agencies had subsequently issued the permits and no appeals had been taken.

1. Boston Parks and Recreation Commission

Eversource requires a single approval from the City of Boston Parks and Recreation Commission. Pursuant to the requirements of the City's Municipal Code Section 7-4.11, review and approval of the Commission is required for all buildings and structures that are constructed or altered within 100 feet of a park or parkway (the "BPRD Application"). The Substation Site is within 100 feet of American Legion Playground and the Condor Street Urban Wild and, therefore, is subject to review by the Commission.

Eversource filed its BPRD Application on March 5, 2021. See Attachments 14 and 15. More than six months later, with no action having been taken on the BPRD Application, the Commission notified the Company on October 8, 2021, that the BPRD Application would not be placed on the Commission's agenda until all other state and local permits and approvals have been granted. See Attachment 16.

As described in further detail below, the PIC has yet to act on three petitions within its jurisdiction. The PIC has indicated that it will not advance the petitions until it has received the consent of, among other agencies, the BPRD. On January 26, 2022, the Commission indicated that the plans provided by the Company on January 7, 2022, completed BPRD's review for the PIC process and that "PIC acknowledged there is nothing outstanding from Parks." See Attachment 17.¹¹ However, despite BPRD's consent to advance the PIC review process, the PIC has not taken further action on the PIC Petitions. Further, despite the Company's diligent and continuing efforts to obtain approval from the Commission, the Commission has not advanced the review of the BPRD Application. Taken together, and without any specific or identified action items that Eversource

¹¹ This communication from Commissioner Woods was in response to the Company's voicemail message on January 21, 2022, wherein the Company expressed its interest in continuing the permitting process with the Commission. See Attachment 17. Commissioner Woods' response indicates that the Commission would proceed with its review of the Application only after the PIC Petitions are approved. Id.

may take to advance the permit reviews, the Company's local permitting stands at an indefinite impasse.

2. Boston Public Improvement Commission

Eversource requires three approvals from the PIC. The PIC is a board within the City's Department of Public Works ("DPW") and its review of certain applications is a prerequisite to the issuance of permits by DPW. The first approval needed for the Substation is a pedestrian easement associated with proposed improvements to the existing sidewalk abutting the Substation Site on Condor Street. The pedestrian easement is necessitated by the Boston Conservation Commission's request during the local wetlands proceeding that the Company plant street trees along this portion of the sidewalk. Because the street trees will reduce the width of the travelled path along the sidewalk, the City requests an easement for the public to pass over the portion of the sidewalk that is on the private property – that is, a small portion of Company-owned property approximately 2.5 to 3 feet in width and approximately 203 feet in length for a total of approximately 349 square feet. If the PIC were to complete its review of the Company's proposed easement language, the easement would be reviewed by City of Boston Corporation Counsel; accepted by the PIC on behalf of the City; and recorded at the Suffolk County Registry of Deeds. However, the PIC has not initiated any such review or action, as noted above.

The second approval needed from the PIC include GOLs for approximately 7,000 linear feet of distribution duct bank and 17 manholes in six public ways (Condor Street, East Eagle Street, Glendon Street, Lexington Street, Shelby Street, and Chelsea Street) pursuant to G.L. c. 166, § 22. The GOLs are required to supply the new transmission capacity to be provided from the East Eagle Substation to customers located in East Boston.

Third, approval from the PIC is required for a “specific repair plan” for Condor Street, which includes a curb cut for vehicular access to the Substation Site from Condor Street; the installation of proposed street trees; the relocation of one streetlight and fire hydrant; and the restoration of the sidewalk after the above work is complete.

The PIC has checklists to guide applicants through its approval processes. See Attachment 18 for the PIC Checklists for Grant of Location, Easement and Specific Repairs. The steps for all three approvals leading to the PIC’s public hearing are largely the same and consist of the following:

- The applicant provides the relevant plans to various City agencies and utilities, the names of which are provided on the PIC website.
- The applicant then provides a full package to the PIC, consisting of the plans, the petition, the public agency comments and the applicant’s responses thereto, and utility company delivery receipts.
- The applicant solicits and receives consents from City agencies to proceed to a “New Business” meeting.
- The applicant appears at a PIC meeting under “New Business.”
- The applicant revises the plans as directed by the PIC at the New Business meeting.
- The applicant appears at a PIC meeting under “Public Hearing.”

The Company initiated the PIC approval process over ten months ago. On April 1, 2021, the Company circulated its plans for the three required permits and approvals to the PIC and the City agencies and utilities listed on the PIC website (the “PIC Petitions”). See Attachment 19.

On May 26, 2021, the Company submitted to the PIC petitions requesting the three approvals and related documents;¹² updated plans associated with the petitions; an engineering report in support of the petitions; copies of comment letters from all relevant City agencies and utilities; an affirmation from the Company that it had addressed all agency comments received; and

¹² These documents include drafts of the pedestrian easement and the License Maintenance Indemnification Agreement that will be executed in connection with the PIC Petitions.

a request that the petitions be placed on the PIC’s New Business agenda. See Attachment 20. In response to this request, the Company was informed on May 26, 2021, that the PIC Petitions would not be placed on its New Business agenda until “written consent” was received from the Boston Transportation Department (“BTD”) and the Office of Neighborhood Services (“ONS”). See Attachment 21.

ONS provided its consent for the PIC Petitions be placed on the PIC’s New Business agenda on August 17, 2021, and BTD provided its consent on August 26, 2021. See Attachments 22 and 23. On September 21, 2021, the PIC Petitions were placed on the PIC’s September 23, 2021, meeting agenda under New Business. See Attachments 24 and 25.

However, on September 22, 2021, one day before the PIC meeting, the Company was unexpectedly notified that the PIC Petitions had been pulled from the PIC New Business agenda pending submittal of written consents to proceed to the PIC from three other City agencies, including: Boston Water & Sewer Commission (“BWSC”), Boston Parks and Recreation Department (“BPRD”) and Boston Planning and Development Agency (“BPDA”). See Attachment 24. The Company’s subsequent correspondence with these three agencies to satisfy any concerns and obtain their prompt consent is as follows:

BWSC:

- On September 23, 2021, BWSC consented to the Petitions proceeding to the PIC’s New Business agenda. See Attachment 26.

BPRD:

- On October 4, 2021, BPRD responded with a request for additional trees and a tree species substitution on the Company’s landscape plan. This late request was unexpected because the BPRD had been involved with the development of the Company’s landscape plan since February 2020. Such landscaping had been requested by the Boston Conservation Commission during the wetland hearing and had been incorporated in the OOC issued by the Conservation Commission on November 19, 2020, and included in the plans submitted to the PIC, the City agencies and utilities on April 2, 2021. See Attachment 27.

- On December 15, 2021, the Company provided an updated landscape plan for BPRD's review. See Attachment 27.
- On January 5, 2022, BPRD accepted the added tree and tree species substitution. See Attachment 27.
- On January 7, 2022, the Company provided BPRD an updated Specific Repair Plan incorporating the added tree and tree species substitution. See Attachment 28.

BPDA:

- On September 22, 2021, BPDA requested the Company resend the plans it had submitted to the PIC, which the Company provided to BPDA on September 23, 2021. See Attachment 29.
- On September 28, October 4 and October 14, 2021, Eversource contacted BPDA by email requesting the status of its plan review, inquiring if the agency had any questions or comments, and requesting its consent to be placed on the PIC New Business agenda. See Attachment 29.
- On October 14, 2021, BPDA declined to provide written consent to proceed to the PIC New Business Agenda until after the October 25th Façade Focus Group meeting and BPDA had been updated on any updates to the façade design.¹³ See Attachment 29.
- On October 25, 2021, the Company held the first Façade Focus Group meeting. Although the BPDA was invited, no representatives from BPDA attended. See Attachment 30.
- On October 26, 2021, the Company provided BPDA with an update of the Façade Focus Group meeting. See Attachment 31.
- On November 15, 2021, the Company held the second Façade Focus Group meeting. Although BPDA was invited, no representatives from BPDA attended. See Attachment 32.
- On November 17, 2021, the Company provided BPDA with an update of the second Façade Focus Group meeting. See Attachment 32.

¹³

The Company has implemented a thorough public engagement process, including creation of the Façade Focus Group, to obtain input regarding the aesthetic design for the enclosure surrounding the New Substation. Eversource 2021 at 97, Condition U. The Façade Focus Group consists of 21 members of the Eagle Hill Civic Association who volunteered to be part of this initiative. Invitations to the Focus Group meetings were also sent to several municipal and state officials, including State Senator Joseph Boncore, City Councilor (now State Senator) Lydia Edwards, Boston Parks and Recreation Commissioner Ryan Woods, State Representative Adrian Madaro, Jill Zick (BPDA), Meera Deean (BPDA), Jason Ruggiero (BPDA), Lina Tramelli (ONS), and Mariama White-Hammond (City of Boston Chief of Environment, Energy and Open Space).

- On December 13, 2021, the Company held the third Façade Focus Group meeting. Although the BPDA was invited, no representatives from BPDA attended. See Attachment 33.
- On December 15, 2021, the Company provided BPDA with an update of the third Façade Focus Group meeting. See Attachment 33.
- On December 15, 2021, BPDA verbally informed the Company that it consented for the Petitions to proceed to the PIC New Business Agenda.
- On January 7, 2022, despite already having provided its consent, BPDA informed the Company that it needs an unspecified amount of additional time to review the PIC Petitions. See Attachment 34.

On January 10, 2022, the Company received an email from the PIC indicating that the PIC Petitions would not be placed on the PIC New Business agenda because ONS, BPDA and Boston City Councilor Lydia Edward’s office had contacted the PIC, asserting that the Project is “not ready to be considered by the PIC.” See Attachment 35. No further information was provided as to what information was missing or needed before these agencies would consent to the inclusion of the PIC Petitions on the PIC New Business agenda. In the January 10th email, the PIC also requested that the Company provide its most recent plans to these agencies, which the Company did on January 12, 2022. See Attachment 28. Notably, the updated plans do not reflect any material changes, and the comments by ONS and BPDA provide no explanation for their current reversal of position, thereby withholding consent for the Petitions to be placed on the PIC New Business agenda.

Notwithstanding the Company’s diligent and continuing efforts to obtain the consent of BPDA and the substantial outreach it has conducted with affected agencies,¹⁴ these entities have continued to withhold their consent for the PIC Petitions to move to the PIC New Business agenda and the PIC has otherwise been unwilling to process and review the PIC Petitions. As a result,

¹⁴ The Company notes that the Boston City Council is not a participating agency that is identified as a prerequisite to the PIC review process. See Attachment 36, PIC Public Agency Contact Information.

despite ongoing attempts by Eversource to advance the PIC review process as diligently as possible and to respond to any inquiries by City agencies, as of the date hereof, approval of the PIC Petitions has not been received, nor is there an identified timeline or list of information sought by the PIC or its participating agencies to initiate the PIC’s review.¹⁵

B. Permits Already Granted by State and Local Agencies

The tables below list the state and local permits that have been granted by local and state entities. The MassDEP permits and the Boston Conservation Commission OOC are all subject to pending appeals, the status of which is discussed in more detail in Section IV, above.

State Permits

Regulatory Agency	Program	Application Date	Status
MHC	G.L. c. 9, § 27C, effect on historic and archaeological properties	Project Change Notification with updated plans for new site submitted on 01/21/19	No further action is anticipated.
MassDEP	G.L. c. 91 Waterways License	11/19/2014	Draft Waterways License issued by MassDEP on 01/02/22. Two appeals filed on 01/24/2022 to challenge the Draft Waterways License.
MassDEP	G.L. c. 131, § 40 Superseding Order of Conditions	Request for SOC 12/04/2020	SOC issued by MassDEP on 10/29/2021; SOC appealed on 11/14/2021, which appeal is currently pending.

¹⁵ On January 26, 2022, the Company followed up its 30-day notice letter with an email letting the PIC know that that Company was interested in continuing the PIC permitting process and responding to any inquiries it might have. See Attachment 37. PIC acknowledged receipt of this email on January 26, 2022. Id.

Local Permits

Regulatory Agency	Program	Application Date	Status
Boston Conservation Commission	Boston Wetlands Ordinance	01/22/2020	<p>OOC issued by the City’s Conservation Commission on 11/19/2020.</p> <p>OOC appealed to Superior Court on 12/18/2020.</p> <p>Superior Court denied appeal on 12/02/2021; awaiting docketing of appeal with the Appeals Court.</p>
Boston Water & Sewer Commission	Site Plan Approval	02/04/2020	Issued on 03/10/2021.
Boston Water & Sewer Commission	Construction Dewatering Permit for Condor Street Substation	02/09/2022	Issued on 02/11/2022.

C. Local Permits Pending Review

In addition to the four permit applications whose processing has been unduly delayed by PIC and the Commission, the Company has filed applications for the following additional permits.

1. City of Boston Foundation Permit

A building permit will be needed from the City’s Inspectional Services Department (“ISD”) to construct the buildings and structures within the Substation. However, for a building permit application to be reviewed and processed by ISD, the applicant must have all other City permits in hand and the plans must show the details of the proposed building façade. As discussed above, there are four City permit applications that have yet to be reviewed and considered by two City

agencies despite that the applications have been pending for more than ten months and indications are that review of the applications is inexplicably stalled within the City of Boston. In addition, the Company is unable to provide the details about the Substation façade because it is still engaged in the façade design review process with neighborhood stakeholders, as required by Condition U of the Siting Board’s Final Decision in Eversource 2021. For these reasons, a building permit application would not be deemed complete by ISD and, therefore, it would be futile to apply for the building permit at this time.

A building permit typically includes the authorization to construct the foundation. However, ISD allows an applicant to apply for a “foundation only permit” if its building permit application is not ready to file with ISD. The outstanding City approvals and the final façade design are not required for the foundation permit. Accordingly, the Company filed an application for a foundation permit on February 9, 2022. See Attachment 38 for confirmation of the filing. The Company intends on expeditiously applying to ISD for the building permit once the community outreach process governed by Condition U from Eversource 2021 has been completed and the four outstanding City approvals have been obtained. At that time, to apply for a building permit, all that will be required is for the Company to amend its foundation permit application and to provide the full set of plans, including the façade design, to ISD.¹⁶

2. City of Chelsea Street Occupancy Permit

On February 9, 2022, the Company filed an application for a street occupancy permit with the City of Chelsea Department of Public Works. See Attachment 39 for confirmation of the filing.

¹⁶ Because it has filed an application for the foundation permit, which needs only to be amended when the façade design is complete to request a building permit, the Company herein seeks the inclusion of the both the foundation and building permits in the composite Certificate.

This permit will allow the Company to restrict vehicular access on a small portion of Willow Street in Chelsea for the time required to splice the existing transmission line (which was approved as part of the Project and currently connects the Mystic and Chelsea Substations) via an existing manhole (also already constructed as part of the Project). The splice will be necessary to loop the existing transmission lines through the Chelsea Creek Crossing to interconnect with the East Eagle Substation.

3. City of Boston Street Occupancy and Street Opening Permits

On February 11, 2022, the Company filed applications for street/manhole occupancy and street excavation permits with the City of Boston DPW. See Attachments 40 and 41 for confirmation of the filings. The street excavation permits will allow the Company to excavate the road right-of-way on Condor Street, East Eagle Street, Glendon Street, Lexington Street, Shelby Street, Saratoga Street and Chelsea Street to install approximately 7,000 feet of distribution duct bank and conduit and approximately 17 manholes and for the connections to the City's water and storm lines. The street and manhole occupancy permits will allow the Company to restrict vehicular access on those streets during manhole and distribution cable installation and splicing work. Both the street/manhole occupancy and street excavation permits are performed per the Company's Temporary Traffic Control Plans and Construction Management Plan. These approvals are ones that the Company would typically apply for just prior to the start of construction, and would request subsequent monthly extensions for, on an as-needed basis during construction.

4. City of Boston Sidewalk Occupancy Permit

On February 10, 2022, the Company filed an application for a sidewalk occupancy permit with the City of Boston DPW. See Attachment 42 for confirmation of the filing. The permit will allow the Company to restrict vehicular access on Condor Street, as needed, to perform the work

authorized in the Specific Repair Plan. This is an approval that the Company would typically apply for just prior to the start of construction.

5. BWSC Construction Dewatering Discharge Permit

On February 9, 2022, the Company filed an application with BWSC for groundwater discharges to the City's storm drains during installation of the distribution duct banks on City streets. See Attachment 43. This is an approval that the Company's construction contractor would typically apply for just prior to the start of construction.

6. BWSC Construction Stormwater Permit

On February 9, 2022, the Company filed an application with BWSC for discharges to a waterbody (Chelsea Creek) during construction activities on the Substation Site. See Attachment 44. This is an approval that the Company's construction contractor would typically apply for just prior to the start of construction.

7. BWSC General Services Application

On February 9, 2022, the Company filed a General Services Application with BWSC for authorization to connect to the City's water lines and storm drains, and to relocate a fire hydrant on the sidewalk abutting the Substation. See Attachment 45 for confirmation of the filing. The connections to the water line and storm drain, and to relocate the fire hydrant, will require street excavation permits for which the Company has applied on February 14, 2022 (see Attachment 41). These permits (the General Services Application connections and the street excavation permits) are typically applied for by the Company just prior to the start of construction.

There are no outstanding state permits for which applications must be submitted.

V. STANDARD OF REVIEW

The Siting Board has clear statutory authority and well-established procedures for proceedings concerning the granting of the Certificate. By statute and regulation, a two-step process is set forth: (1) the submission and consideration of an Initial Petition, as filed herewith; and (2) the submission and consideration of the Application. G.L. c. 164, §§ 69K-69O; 980 C.M.R. §§ 6.00 *et seq.*; see NSTAR Electric Company d/b/a Eversource Energy, EFSB 18-03 (2019), *aff'd* Town of Winchester v. Energy Facilities Siting Bd., 98 Mass. App. Ct. 1101 (memorandum and order pursuant to Rule 23.0); Colonial Gas Company d/b/a National Grid, EFSB 18-05 (2019).

The Siting Board grants an Initial Petition if: (1) the applicant asserts one or more of the grounds for a petition set forth in the statute; and (2) the Siting Board determines that, on the merits, at least one of the grounds asserted constitutes a valid basis for granting the Initial Petition. See G.L. c. 164, § 69K; see also Alliance to Protect Nantucket Sound, Inc. et al. v Energy Facilities Siting Bd., et al., 457 Mass. 663, 665-666 (2010); City Council of Agawam v. Energy Facilities Siting Bd., 437 Mass. 821, 827-28 (2002); IDC Bellingham LLC, 13 DOMSB, at 6-7; Berkshire Power Development, Inc., EFSB 98-6, at 8.

An applicant must assert and demonstrate one or more of the following grounds in its Initial Petition:

1. The Company is prevented from building a subject facility because the processing or granting by a state or local agency of any approval “has been unduly delayed for any reason” (G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(b));
2. There are “inconsistencies among resource use permits issued by state or local agencies” (G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(c));
3. A “non-regulatory issue or condition has been raised or imposed by a state or local agency” (G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(d));
4. A state or local agency “has imposed a burdensome condition or limitation” 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 C.M.R. § 6.02(2)(e)); and

5. The “subject facility cannot be constructed due to disapproval, condition, or denial by a local government” (G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(f)).

In determining whether undue delay has occurred, the Siting Board may consider the amount of time normally required by the agency or similar agencies to resolve issues of similar complexity and importance, and whether the delay is due to the failure of an applicant to supply information to the agency necessary for processing or granting the permit. 980 C.M.R. § 6.02(2)(b). No petition shall be heard pursuant to 980 C.M.R. § 6.02(2) until at least 30 days after the applicant has notified the agency by certified mail that it intends to submit a petition to the Siting Board. 980 C.M.R. § 6.02(2)(b). Within seven days of the filing of an Initial Petition, the Siting Board or the Chairperson must decide either to hold a hearing on the merits of the grounds asserted in the Initial Petition, or to defer a decision on the merits of the Initial Petition until the submission of, and hearing on, the Application. G.L. c. 164, § 69K; 980 C.M.R. § 6.02(4). See, e.g., NSTAR Electric Company d/b/a Eversource Energy, EFSB 18-03, Determination on Initial Petition for Certificate of Environmental Impact and Public Interest (deferring a decision on the merits of the Initial Petition).

VI. ANALYSIS

Eversource has experienced four separate and distinct statutory triggering events for the Initial Petition to be granted. First, the PIC has expressly refused to place the PIC Petitions on its New Business agenda. Accordingly, no action has been taken by the PIC to review and process the PIC Petitions since the petitions were filed over 10 months ago. The PIC’s inaction has unduly delayed the PIC’s grant of the approvals requested in the PIC Petitions, which has caused a consequent delay in the receipt of several other local approvals needed to construct the Substation, thereby demonstrating why a Certificate is needed. G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(b)

(“the processing or granting by a state or local agency of any approval has been unduly delayed for any reason”) (emphasis added).

The delay is a direct result of the PIC’s requirement that certain City agencies give their prior consent for the Project to be placed on the PIC New Business agenda. Although certain City agencies have provided their consent (BTD, BPRD and BWSC), two City agencies that had initially provided consent then reneged (ONS and BPDA), with the result that, as of today, these two agencies have revoked their consent without providing any basis or explanation for their actions. The condition imposed by the PIC that all City agencies “consent” to the placing of the PIC Petitions on the PIC New Business agenda is not only the cause of undue delay, it is also a burdensome condition per G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(c) (“a state or local agency has imposed a burdensome condition or limitation on any permit which has a substantial impact on the [Siting Board’s] responsibilities as set forth in [G.L. c. 164, § 69H]”).

Likewise, the Commission has taken no action on the Company’s BPRD Application since it was filed over 11 months ago, which is undue delay triggering the need for a Certificate. See G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(b) (“the processing or granting by a state or local agency of any approval has been unduly delayed for any reason”) (emphasis added). The Commission has imposed a condition on the Company that it must obtain all other state and local permits and approvals required for the Substation before the Commission will review and process the BPRD Application. As noted herein, the PIC has yet to act on the PIC Petitions, which together represent three approvals needed to construct the Substation. In addition to the undue delay, the Commission’s requirement that it be the last agency to review and process a required permit or

approval is a burdensome condition that has resulted in a stalemate in obtaining the Commission's approval.¹⁷ See G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(e).

The Company timely filed all necessary plans and documentation for the processing of the four approvals needed from the PIC and the Commission. Yet, both agencies have conditioned their review of the Company's applications pending before them, and both have refused to process the Company's applications. The inaction of the PIC and the Commission has caused, and is continuing to cause, undue delay in obtaining their approvals, as well as other required City agency permits for the Company's much-needed Substation.

A. The City of Boston PIC Has Unduly Delayed the Issuance of Approvals Necessary to Construct the Substation.

The Company is prevented from building the Substation because the PIC is unduly delaying the processing and granting of the PIC Petitions. G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(b). As stated above, the Company filed its PIC Petitions over 10 months ago. The Company circulated the plans to all relevant City agencies and utilities, as required by the PIC. The Company diligently communicated with various City agencies to resolve any issues those agencies had with the Company's plans. The Company also actively pursued these agencies' "consent" for the PIC Petitions to be placed on the PIC New Business agenda, as required by PIC.

For its part, the PIC initially informed the Company it must obtain the consent of only ONS and BTM. Then, after ONS and BTM provided their consent and the PIC placed the PIC Petitions on its New Business agenda, the PIC suddenly and inexplicably changed course. Providing no basis

¹⁷ As stated above, the City of Boston's ISD also has a similar requirement as part of the building permit process that applicants have obtained all other local permits prior to its review. To state the obvious, if all permitting agencies require other permitting authorities to "consent" to a permit application to be reviewed as a prerequisite and to impose a requirement that their permit be the last permit to be issued, it would be a practical impossibility to complete permitting for any facility, particularly for one that involves multiple permit approvals such as the Project.

for its action, the PIC pulled the PIC Petitions from the New Business agenda the day before the PIC meeting and then identified for the first time three additional agencies (BWSC, BPDA and BPRD) that must provide their prior consent for the PIC Petitions to be placed on the PIC New Business agenda.

The Company worked in earnest to obtain formal consent from these agencies. BWSC consented and the Company addressed the concerns of BPDA (by advancing review of Substation façade design with a neighborhood focus group) and BPRD (by adding one tree and making tree substitutions to the landscape plan). After four months, BPDA provided its consent and BPRD confirmed that the Company had addressed its concerns with the landscape plan. When the Company requested that PIC place the PIC Petitions on its New Business agenda on January 7th, the PIC refused to do so because ONS and BPDA inexplicably revoked their prior consents by informing the PIC that the Company's plans were now "not ready" for PIC review. ONS and BPDA have provided no rationale for this reversal of course. The PIC requested the Company circulate its "up-to-date" plans with ONS and BPDA (and Councilor Edwards' office) for their review, which the Company did immediately on January 12th, noting importantly that there had been no substantive changes in the plans since the plans were last provided.

The collective actions of the PIC and various other City agencies (in particular, BPDA and ONS), without any reasonable or identified basis, has unduly delayed the processing of the PIC Petitions. Although the Substation has been controversial, the three Petitions before PIC should not be. The Company is requesting a pedestrian easement for public access on the sidewalk; approval of specific repairs to the sidewalk (including the proposed installation of street trees, the relocation of a streetlight and fire hydrant, and a curb cut for access to the Substation Site); and GOLs to place conduits and manholes in a public way. These approvals are straightforward matters,

narrow in scope, and regularly sought by applicants in the City of Boston and many other municipalities. Ten months is more than ample time for the relevant City agencies to review the plans and for the PIC to process the PIC Petitions. Yet, the PIC has not even placed the PIC Petitions on the New Business agenda for initial review and consideration by the PIC, nor is it apparent when that might occur.

Notably, neither the PIC nor the other City agencies have conveyed to the Company any specific concerns with the PIC Petitions. Thus, at this juncture, the Company is in the dark about what steps it can take to satisfy the various City agencies, secure their consents, and bring about the formal initiation or completion of the PIC process on the PIC Petitions. For these reasons, not only have Eversource's PIC Petitions been unduly delayed (and with that the consequent delay in obtaining other City permits), but also an indefinitely, continuing delay is manifest, with no prospect of timely completion. Because of the imminent need for the Substation in East Boston, this ongoing undue delay seriously jeopardizes the delivery of reliable electric service in East Boston and the surrounding area, which is inconsistent with the Siting Board's prior decisions on the Project and its overarching statutory mandate as stated in G.L. c. 164, § 69H.

B. The City of Boston Parks and Recreation Commission Has Unduly Delayed the Issuance of an Approval Necessary to Construct the Substation.

The Company is prevented from building the Substation because the Commission is unduly delaying the processing and granting of the BPRD Application. G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(b). Regarding the Company's pending BPRD Application before the Commission, the Commission has simply stated that it will not consider the BPRD Application until the Company has received all other state and local permits needed to construct the Substation. This position is untenable. The Company is entitled to have its applications for various permits and approvals be considered expeditiously by the jurisdictional local agencies. Moreover, none of the other

approvals being sought is applicable to the Commission's review. This approval is independent of all other permits applicable to the Project. The Commission should be required to review the Company's BPRD Application in a timely manner regardless of the status of other permits.

Individually and taken together, the actions of the PIC and the Commission, as well as the various agencies identified by the PIC as needing to provide "consent" have resulted in a protracted, unnecessary and undue delay in the processing of approvals that are needed to construct the Substation. The explicit and unambiguous provisions of the Siting Board's Certificate authority in G.L. c. 164, § 69K, as conferred by the Legislature, provide the Siting Board with the authority to approve the Company's Initial Petition based on the undue delay in processing the PIC Petitions and BPRD Application by the PIC and the Commission. The Legislature specifically contemplated the exact circumstance faced by the Company by specifying undue delay as a trigger for seeking a Certificate. The Legislature has conferred broad powers to the Siting Board to directly counteract such an outcome. For the greater public good of ensuring a reliable energy supply, the Siting Board must exercise its override authority here.

C. Both the PIC and the Commission Have Inappropriately Conditioned Processing of the PIC Petitions and the BPRD Application.

In addition to the continuing undue delay before the PIC and the Commission, the Company is prevented from building the Substation because both the PIC and the Commission have imposed burdensome conditions on the PIC Petitions and BPRD Application processes. G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(e) ("a state or local agency has imposed a burdensome condition or limitation on any permit"); see also 980 C.M.R. § 6.02(2)(f) (the "subject facility cannot be constructed due to disapproval, condition, or denial by a local government") (emphasis added). The PIC and the Commission have imposed an insuperable condition as a prerequisite to their formal permit reviews, i.e., they will not proceed with the Company's applications until certain local agencies grant their

prior consent to that review. Given that those participating agencies have not consented and have given no indication of whether, when or how that consent will be obtained, the PIC and Commission approval processes are experiencing a continuing and indefinite delay based on a condition of their review, with no prospect of timely resolution. The delays caused by these conditions place the Company in the untenable position of not being able to move forward with its remaining local permits to enable the timely construction of the Substation, thereby jeopardizing reliable electric service to East Boston, Chelsea and the surrounding area.

With respect to the PIC, it has inappropriately conditioned the processing of the PIC Petitions by requiring that certain City agencies “consent” to placing the PIC Petitions on the PIC New Business agenda. As stated above, PIC’s first condition, imposed on May 26, 2021, was that the Company obtain the consent of BTM and ONS. On September 22, 2021, after both BTM and ONS gave their consent, and the PIC Petitions were ostensibly ready to be placed on the New Business agenda, the PIC then added a new requirement that three additional City agencies (BWSC, BPRD and BPDA) must also consent. After obtaining the consent of BWSC and BPDA (and, only recently, the BPRD), the PIC sent an email to certain City agencies on January 5, 2022, stating that PIC “has not yet determined whether the project has completed all steps necessary to be eligible for a PIC agenda. Please let me know ASAP if your office has a strong opinion as to whether this project should or should not be permitted to proceed at this time.” See Attachment 20.

This solicitation for a second round of consents by City agencies resulted in the action by ONS and BPDA to revoke their earlier consent, and the letter from Councilor Edward’s office. Attachment 20. Thus, the PIC has added new requirements for agency consents and, even when it obtains those consents, continues to solicit “opinions” from City agencies about the Project’s “eligibility” to be placed on PIC’s own agenda, inexorably leading to denying the Company the

opportunity to have its permits processed in a timely manner. At this late stage, the PIC Petitions continue in limbo and the Company has received no indication what action it may take for the Project to be “eligible” for PIC review. The Commission, likewise, has imposed an unachievable condition under these circumstances – that it be the last agency to review the Project.¹⁸

The actions of the PIC and the Commission in imposing burdensome conditions that block the review of the PIC Petitions and the BPRD Application have caused unnecessary and undue delay in the processing of approvals that are required to construct the Substation.

D. Upon Approval of the Initial Petition and Application, a Composite Certificate Should Be Issued by the Siting Board.

In enacting, Section 69K, the Legislature could not have been clearer. Where state or local boards and commissions’ actions or inactions are thwarting the construction of a needed energy facility, as is the case here, the Siting Board has broad authority to act. See Cape Wind Associates, LLC, EFSB 07-8, at 3; Exelon West Medway, LLC and Exelon West Medway II, LLC, EFSB 17-01, at 4 (2017); NSTAR Electric Company d/b/a Eversource Energy, EFSB 18-03, at 3 (2019); Colonial Gas Company d/b/a National Grid, EFSB 18-05, at 3-4 (2019).

When granted, a Certificate represents a composite of all remaining state and local permits required for the construction of needed energy infrastructure. Id. (“A [C]ertificate, if issued, shall be in the form of a composite of all individual permits, approvals, or authorizations which would otherwise be necessary for the construction and operation of the facility”).¹⁹ G.L. c. 164, § 69K (emphasis added); see also 980 C.M.R. 6.05(3). In addition, the Legislature was explicit that, upon the granting of the Certificate, “no state agency or local government shall impose or enforce any

¹⁸ The condition imposed by the Commission to obtain all other permits is unachievable because the Company cannot satisfy that condition given the inaction and undue delay caused through the PIC permitting process.

¹⁹ Significantly, the Legislature began the section regarding the Siting Board’s grant of a comprehensive certificate with the proviso “Notwithstanding the provisions of any other law to the contrary.” Given the clarity throughout Section 69K, there can be no doubt about the legislative mandate contained therein.

law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action which would delay or prevent the construction, operation or maintenance of such facility.” G.L. c. 164, § 69K (emphasis added); see also 980 C.M.R. 6.05(3).

As discussed above, the Company has applied for four local approvals for which the processing and review has been unduly delayed by City agencies.²⁰ For each of these four approvals, the Company has diligently and in good faith complied with requests for additional information and responded to inquiries regarding the Company’s various applications. See G.L. c. 164, § 69L(4). Yet, as of the date of this Initial Petition, both the PIC and the Commission have yet to take any formal action to process the PIC Petitions and BPRD Application and the timeline for completion of these protracted reviews is both unclear and uncertain. Therefore, to properly implement the Siting Board’s statutory mandate to ensure a reliable electricity supply, as established by the Legislature in G.L. c. 164, §§ 69H-69O, to promote administrative efficiency and to ensure consistency with the Siting Board’s decisions in Eversource 2017 and Eversource 2021, Eversource seeks the granting of its Initial Petition, the acceptance of the Application filed herewith and, thereafter, the issuance of a Certificate representing a composite Certificate of all permits and approvals needed to build the Substation and deliver the new source of supply to customers in East Boston. See Cape Wind Associates, LLC, EFSB 07-8, at 30-35.

Accordingly, the Company has demonstrated that, pursuant to G.L. c. 164, § 69K; 980 C.M.R. § 6.02(2)(b), (e) and (f), it is prevented from building the Substation because the PIC and the Commission have unreasonably and inappropriately conditioned their review of the PIC

²⁰ As noted above, the Company must obtain a building permit from the City’s ISD. Applying for the building permit would currently be futile because other City permits have not yet been obtained. The Company recently filed its application for a foundation permit and does not contend at this stage that there has been undue delay in the processing and review of the foundation permit application. Nonetheless, as a permit that the Company must obtain prior to commencing construction, the Company seeks to include it as part of the composite Certificate the Siting Board issues through this proceeding.

Petitions and the BPRD Application, respectively, resulting in undue delay in the processing and granting of those approvals, as well as causing a consequent delay in the receipt of other local approvals.

The table below contains the complete list of state and local permits that are required to construct the Substation and operate the Project, and which the Company requests be included in a composite Certificate:

State and Local Permits/Approvals Requested in the Certificate

Agency/Regulatory Authority	Permit	Application Date	Status
MassDEP	G.L. c. 91 Waterways License	11/19/2014	Draft Waterways License issued by MassDEP on 01/03/22. Two appeals pending at MassDEP
MassDEP	G.L. c. 131, § 40 Final Order of Conditions	01/22/2020	SOC issued by MassDEP on 10/29/2021; SOC appealed on 11/14/2021, which appeal is currently pending
Boston Conservation Commission	Order of Conditions Boston Wetlands Ordinance	01/22/2020	OOC issued by the City's Conservation Commission on 11/19/2020; OOC appealed to Superior Court on 12/18/2020; Superior Court denied appeal on 12/02/2021; awaiting docketing of appeal with the Appeals Court
Boston Public Improvement Commission	(1) Condor Street pedestrian easement (2) GOLs for new conduit and manholes (3) Approval of a Specific Repair Plan for the sidewalk along Condor Street, including the License Maintenance Agreement and approval for the street trees, hydrant and streetlight relocation, curb cut and sidewalk repairs.	04/01/2021	Pending before the PIC with no action taken since 04/01/2021
Boston Parks and Recreation Commission	Permit for all buildings and structures that are constructed or altered within 100 feet of a park or parkway pursuant to Boston Municipal Code Section 7-4.11	03/05/2021	Pending before the Commission with no action taken since 03/05/2021

Agency/Regulatory Authority	Permit	Application Date	Status
Boston Inspectional Services Department	Foundation/Building Permits pursuant to 780 CMR 104.2	02/09/2022	Application for foundation permit pending before Boston ISD; application for building permit not made due to futility
Chelsea Department of Public Works	Street Occupancy Permit for manhole access	02/09/2022	Pending review by Chelsea DPW
Boston Department of Public Works	(1) Street Excavation Permits and Street/Manhole Occupancy Permits for duct bank installation. (2) Street Excavation Permit for General Services Application connections. (3) Sidewalk Occupancy Permit in connection with Specific Repair Plan.	02/11/2022 02/14/2022 02/10/2022	Pending review by Boston DPW Pending review by Boston DPW Pending review by Boston DPW
Boston Water & Sewer Commission	(1) Construction Dewatering Discharge Permit (streets) (2) Construction Stormwater Permit (3) General Services Application	02/09/2022 02/09/2022 02/09/2022	Pending review by Boston Water & Sewer Commission

VIII. CONCLUSION

For all the foregoing reasons, Eversource respectfully requests that the Siting Board approve this Initial Petition for a Certificate pursuant to G.L. c. 164, § 69K and accept Eversource's contemporaneous filing of the Application in furtherance thereof.

Respectfully Submitted,

**NSTAR ELECTRIC COMPANY d/b/a
EVERSOURCE ENERGY**

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Dated: February 16, 2022

List of Attachments

- Attachment 1: 30-day Notice Letter to Commissioner Ryan Woods, Parks and Recreation Commission, dated January 14, 2022
- Attachment 2: 30-day Notice Letter to Jascha Franklin-Hodge, Chair, Public Improvement Commission, dated January 14, 2022
- Attachment 3: Notice of Intent
- Attachment 4: Request for Superseding Order of Conditions
- Attachment 5: Superseding Order of Conditions
- Attachment 6: Notice of Claim for Adjudicatory Hearing (SOC appeal)
- Attachment 7: MassDEP Scheduling Order for SOC Appeal
- Attachment 8: Complaint for Judgment on the Pleadings
- Attachment 9: Judgment on the Pleadings
- Attachment 10: Notice of Intent to Appeal Judgment on the Pleadings
- Attachment 11: Draft Waterways License
- Attachment 12: Miller Notice of Claim for Adjudicatory Hearing (Chapter 91)
- Attachment 13: Conservation Law Foundation Notice of Claim for Adjudicatory Hearing (Chapter 91)
- Attachment 14: Email correspondence with Parks and Rec Commission (Carrie Marsh)
- Attachment 15: BPRD Application
- Attachment 16: October 8, 2021 email from Parks and Rec Commission (Carrie Marsh) regarding last permit requirement
- Attachment 17: January 26, 2022 and January 27, 2022 correspondence to and from Commissioner Woods regarding follow up
- Attachment 18: PIC Checklists for Grant of Location, Easement and Specific Repairs
- Attachment 19: April 1, 2021 email to the PIC (Todd Liming) initiating the PIC process

- Attachment 20: May 26, 2021 email to the PIC (Todd Liming) providing submittal and requesting petition proceed to agenda
- Attachment 21: May 26, 2021 email from PIC (Todd Liming) notifying that the PIC Petitions would not be placed on agenda
- Attachment 22: August 17, 2021 email providing ONS consent
- Attachment 23: August 26, 2021 email providing BTB consent
- Attachment 24: September 20, 2021 and September 22, 2020 emails from the PIC (Todd Liming) that: i) the PIC Petitions will be placed on the PIC's September 23, 2021 agenda; and ii) the PIC Petitions were pulled from agenda
- Attachment 25: PIC September 23, 2021 Meeting Agenda
- Attachment 26: September 23, 2021 email providing BWSC consent
- Attachment 27: October 24, 2021, December 15, 2021, and January 5, 2022 emails to and from BPRD (Liza Meyer) regarding requests for change to landscape plan
- Attachment 28: January 12, 2022 email circulating updated plans
- Attachment 29: Various email correspondence with BPDA (Jill Zick)
- Attachment 30: October 25, 2021 email reminding BPDA (Jill Zick) of first Focus Group meeting
- Attachment 31: October 26, 2021 email providing BPDA (Jill Zick) an update of first Focus Group meeting
- Attachment 32: Attendance Sheet and Update of November 15, 2021 focus group meeting
- Attachment 33: Attendance Sheet and Update of December 13, 2021 focus group meeting
- Attachment 34: January 7, 2022 email from BPDA informing the PIC that it needs more time to review the PIC Petitions
- Attachment 35: January 10, 2022 email from the PIC (Todd Liming)
- Attachment 36: PIC Public Agency Contact Information
- Attachment 37: January 26, 2022 and January 27, 2022 to and from the PIC regarding follow up
- Attachment 38: Foundation Permit Application, confirmation of filing

- Attachment 39: Chelsea Street Opening Permit Application, confirmation of filing
- Attachment 40: DPW Street Manhole Occupancy Permit Applications, confirmation of filings
- Attachment 41: DPW Street Excavation Permit Applications, confirmation of filings
- Attachment 42: DPW Sidewalk Occupancy Permit Application, confirmation of filing
- Attachment 43: BWSC Construction Dewatering Discharge Permit Application (streets)
- Attachment 44: BWSC Construction Stormwater Discharge Permit Application
- Attachment 45: BWSC General Services Application, confirmation of filing