



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

Petition of Westfield ESS LLC, pursuant to G.L. c. 40A, § 3 for Exemptions from the City of Westfield Zoning Ordinance, and G.L. c. 164, § 72 for Approval to Construct an Energy Storage System and New Electric Transmission Lines in the City of Westfield, Massachusetts)))))
					D.P.U. 24-151
					February 14, 2025

RULING ON PETITIONS TO INTERVENE AND PETITIONS TO PARTICIPATE AS A LIMITED PARTICIPANT

I. INTRODUCTION

On September 25, 2024, Westfield ESS LLC (“Westfield ESS” or the “Company”) filed a petition with the Department of Public Utilities (“Department”) pursuant to G.L. c. 40A, § 3, and G.L. c. 164, § 72. In its petition, Westfield ESS requests: (1) individual and comprehensive zoning exemptions from the City of Westfield Zoning Ordinance to construct a Battery Energy Storage System (“BESS”) and related electrical infrastructure; and (2) approval to construct two underground electric transmission lines that would interconnect to the regional electric transmission system at the Buck Pond Substation, located in Westfield, Massachusetts (together, the “Project”).

The Department conducted a hybrid public comment hearing regarding the Project in Westfield on December 5, 2024, at Westfield State University and remotely on Zoom. As stated in the Notice of Adjudication and Adjudicatory Hearing, the deadline for the filing of petitions to intervene or to participate as a limited participant in the proceeding was December 20, 2024.

The Department received timely petitions to intervene from the City of Westfield (“Westfield”), Westfield Residents Advocating for Themselves Inc. (“WRAFT”),¹ and NSTAR Electric Company d/b/a Eversource Energy (“Eversource”). In addition, the Department received timely petitions for limited participation from two Westfield residents, City Councilor Karen Fanion and Mary Ann Babinski, and Westfield Gas and Electric – Whip City Fiber

¹ WRAFT is a 501(c)(3) charitable organization registered with the Secretary of the Commonwealth of Massachusetts Corporations Division. WRAFT’s website notes that “WRAFT’s mission is to provide education and advocacy for residents affected by the pollution of their natural resources.” See <https://www.wraft.org/about-us/mission>.

(“WG&E”), the municipal electric utility serving Westfield and joint operator of the Buck Pond Substation. On January 11, 2025, Westfield ESS filed responses to those petitions (“Company Response”). The Company did not object to the petitions to intervene or petitions for limited participation filed in this docket.

II. STANDARD OF REVIEW

A. Intervention Under Section 10

The granting of intervenor status in an adjudicatory proceeding before an administrative agency such as the Department or Siting Board is a matter largely within the discretion of the agency. Pursuant to Section 10 of the State Administrative Procedure Act, G.L. c. 30A (“Chapter 30A”), an agency “may . . . allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding”). See, Tofias v. Energy Facilities Siting Board, 435 Mass. 340, 346-347 (2001) (“[b]ased on that permissive ‘may’ this court has repeatedly recognized that agencies have broad discretion to grant or deny intervention”). See also Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45-46 (1978), cert. denied, 439 U.S. 921 (1978); Attorney General v. Department of Public Utilities, 390 Mass. 208, 216217 (1983); City of Newton v. Department of Public Utilities, 339 Mass. 535, 543544 (1959); Robinson v. Department of Public Utilities, 835 F.2d 19, 22 (1st Cir. 1987).

The Department’s Rules for the Conduct of Adjudicatory Proceedings, 220 CMR 1.00 et seq., (“Rules”) mirror the “substantially and specifically affected” standard for intervention set forth in Chapter 30A. 220 CMR 1.03(1)(b) provides that a petitioner wishing to intervene must state the name and address of the petitioner, the manner in which the petitioner is substantially and specifically affected by the proceeding, the representative capacity, if any, in which the petition is brought, and how the petitioner intends to participate in the proceeding. The Rules further provide, at 220 CMR 1.03(1)(e), that any decision permitting intervention, “may be conditioned on such terms as the Commission or [hearing] officer may direct.”

In considering whether a petitioner has shown that they may be substantially and specifically affected by a proceeding, the Department may consider, among other factors, the scope of the proceeding, the nature of the petitioner’s interests, whether the petitioner’s interests are unique and cannot be raised by any other petitioner, and the potential effect of the petitioner’s intervention, including whether participation by the petitioner is likely to help elucidate the issues in the proceeding. See e.g., Vineyard Wind LLC, EFSB 17-05/D.P.U. 18-18/18-19, Ruling on Motions to Intervene and Motions to Participate as a Limited Participant (May 23, 2018); NSTAR Electric Company d/b/a Eversource Energy, EFSB 16-02/D.P.U. 16-77, Ruling on Motions to Intervene and Motions to Participate as Limited Participants (December 8, 2016); NSTAR Electric Company, D.P.U. 20-67, Ruling on Motion of Devine and Ruxton to Intervene (November 25, 2020). The Department and Siting Board exercise discretion in ruling on petitions to intervene so that it may conduct a proceeding with the goal of issuing a reasoned, fair, and impartial decision that achieves its statutory mandate. Vineyard Wind LLC, EFSB 17-05/D.P.U. 18-18/18-19, Ruling on Motions to Intervene and Motions to Participate as a Limited Participant (May 23, 2018); Exelon West Medway, LLC, EFSB 15-1/D.P.U. 15-25, at 3,

Ruling on Late-Filed Petition to Intervene (April 26, 2016); U.S. Generating Company, EFSB 96-4, at 4, Procedural Order (November 26, 1996).

B. Intervention under Section 10A

General Laws c. 30A, § 10A permits ten or more persons to intervene in an adjudicatory proceeding in which damage to the environment, as defined in G.L. c. 214, §7A, is or might be at issue. G.L. c. 214, § 7A defines “damage to the environment” to mean “any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth, whether caused by the defendant alone or by the defendant and others acting jointly or severally. Damage to the environment shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic districts or sites.” Intervention under G.L. c. 30A, § 10A is limited to the issue of damage to the environment, and the elimination or reduction thereof. See 980 CMR 1.05(1)(c).

General Laws c. 30A, § 10A explicitly provides for intervention by ten or more persons, alleging damage to the environment as defined in G.L. c. 214, § 7A that is or might be at issue in a proceeding. G.L. c. 30A, § 10A also provides certain requirements for this type of intervention petition. Any intervention pursuant to G.L. c. 30A, § 10A is limited to the issue of damage to the environment and the elimination or reduction of such damage. The Final Decision issued by the Department will address the disposition of such issue.

C. Limited Participants

The granting of a petition for limited participant status in an adjudicatory proceeding is also a matter within the discretion of the agency before which the proceeding is pending. In addition to allowing certain persons to intervene, an agency also “may allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose.” G.L. c. 30A, § 10. See G.L. c. 30A, § 10(4); see also Boston Edison Co. v. Department of Public Utilities, 375 Mass. 1, 375 N.E.2d 305 (1978); Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 322 N.E.2d 742 (1975).

As with a petition to intervene, the Hearing Officer may grant a petition to participate as a limited participant, and “may condition any grant on such reasonable terms as [he or she] may set.” 220 CMR 1.03(1)(e). Unless otherwise provided by the Presiding Officer, a limited participant’s participation in a Department proceeding is limited to the receipt of filings in the proceeding and the ability to file briefs. Id.

III. ANALYSIS AND CONCLUSIONS

A. Westfield’s Petition to Intervene Pursuant to G.L. c. 30A, § 10

The City of Westfield is a Massachusetts municipal corporation, and the host community for the Project. In its December 13, 2024, Petition to Intervene, Westfield identifies its concerns

as the zoning exemptions sought by the Company and Westfield's concerns to protect the interests of its residents consistent with the balance of individual interests and community development addressed in its zoning ordinances (Westfield Petition at 1-2).

Westfield ESS does not object to Westfield's Petition to Intervene (Company Response at 2). In the Company Response, Westfield ESS notes that the construction and operation of the Project would occur within Westfield including work within public streets in Westfield, and concludes that Westfield has demonstrated that Westfield is substantially and specifically affected consistent with the requirements of G.L. c. 30A, § 10 (Company Response at 4).

I find that, as a municipality in which the entire Project will be located, Westfield may be substantially and specifically affected by the Project. Furthermore, Westfield's position is unique, and no other entity can adequately represent Westfield's interests. Therefore, I grant Westfield's petition to intervene.

B. Eversource Petition to Intervene Pursuant to G.L. c. 30A, § 10

On December 19, 2024, Eversource filed a petition to intervene in the proceeding ("Eversource Petition"). In its petition, Eversource notes that the Project plans to interconnect via a proposed underground transmission line with the Buck Pond Substation, operated jointly between Eversource and WG&E, and connected to Eversource's regional transmission system (Eversource Petition at 2). Eversource asserts that as an operator of the Buck Pond Substation and the entity that is expected to install new high-voltage circuit breakers to facilitate Project interconnection, Eversource has a unique, substantial, and specific interest in Westfield ESS's plans for constructing the Project and the interconnection with Eversource's system (Eversource Petition at 3).

The Company does not object to the Eversource Petition and notes that Eversource has demonstrated that it is substantially and specifically affected consistent with the requirements of G.L. c. 30A, § 10 and the Department's regulations (Company Response at 4).

By virtue of Eversource's role as joint operator of the Buck Pond Substation and the Company's proposal to interconnect to the regional transmission system through Eversource's transmission operations at the Substation, I find that Eversource may be substantially and specifically affected by the Company's proposal in this proceeding. Therefore, I grant Eversource's petition to intervene.

C. WRAFT Petition to Intervene Pursuant to G.L. c. 30A, § 10A

On December 20, 2024, WRAFT filed a petition to intervene pursuant to Section 10A on behalf of 15 residents of Westfield ("WRAFT Petition"). In the WRAFT Petition, WRAFT noted that the group planned to present evidence to show how the project, if permitted in this location, would cause damage to the environment; it also would present evidence regarding possible changes to the proposed project to mitigate environmental harm (WRAFT Petition at 3-4). WRAFT also asserted that the identified residents would be substantially and specifically affected as they reside within a vulnerable Environmental Justice community where asthma is

prevalent and where PFAS² has contaminated the public water supply (WRAFT Petition at 3). WRAFT argues that further degradation of air and water quality would exacerbate the environmental health of a community already identified as being at risk (WRAFT Petition at 3).

In its Amended Petition to Intervene,³ WRAFT filed signed copies of affidavits from 27 residents from Westfield who are named members of WRAFT (“WRAFT Affidavits”). Each affidavit is similar except for the name of the resident and the address for that resident. Each affiant authorizes Kristen Mello, Director of WRAFT, or their attorney Dennis Murphy to act as spokesperson for WRAFT. See 980 CMR 1.05(1)(c).

In the Company Response, Westfield ESS does not oppose the WRAFT Amended Petition on environmental issues identified in the WRAFT Amended Petition (Company Response at 5). Specifically, the Company points to the Amended Petition statement that the group intends to address the following environmental issues that are or might be at issue in the proceeding: (1) air pollution; (2) water pollution, including the impairment of water resources; and (3) the removal of forested uplands that could result from the Project (Company Response at 5).

WRAFT has met the requirements set forth in the statute and regulations which provide that the intervention clearly and specifically state the facts and grounds for intervening and the relief sought, and that each intervening person file an affidavit stating the intent to be part of the group and to be represented by its authorized representative. Further, the Amended Petition included the names and addresses of the petitioners, the representative capacity in which the petition is sought, and damage to the environment that is or might be at issue. Therefore, I find that WRAFT met the requirements to participate as a full intervenor in this proceeding, and I grant WRAFTS’s Amended Petition.

The statute expressly limits the scope of intervention under G.L. c. 30A, § 10A to the issue of damage to the environment and the elimination or reduction of such damage with the definition of such damage defined in G.L. c. 214, § 7A. See G.L. c. 30A § 10A. Therefore, WRAFT’s intervention, unlike the other parties in this proceeding, is limited to “damage to the environment” as defined in G.L. c. 214, § 7A. With those limitations, WRAFT is granted intervention in this proceeding subject to G.L. c. 30A § 10A. WRAFT is admitted as an organization; the individual members of WRAFT are not intervenors.

² Per- and polyfluoroalkyl substances (“PFAS”) are a group of synthetic chemicals that are resistant to heat, water, and oil. WRAFT has been active in participating in activities related to PFAS exposure from the drinking water contaminated from fire training activities and other discharges at a local National Guard facility.

³ On January 3, 2025, WRAFT filed an amended Petition to Intervene, updating its list of members and attaching affidavits from those residents indicating each member’s intention to be part of the group and to be represented by an authorized representative (“Amended Petition”).

D. Petitions for Limited Participation

On December 19, 2024, Mary Ann Babinski filed a petition for limited participation (“Babinski Petition”). In her petition, Mary Ann Babinski notes she resides in the Ward where the proposed BESS facility is to be sited (Babinski Petition at 1). She also states that as a former Ward 1 City Councilor who served as chair of the Natural Resource Committee; the liaison to the Barnes Aquifer Protection Advisory Committee (“BAPAC”); and current member of the Restoration Advisory Board participating in discussions related to the environmental cleanup of the Barnes Aquifer contamination, she is very familiar with city zoning and the water protection issues (Babinski Petition at 1).

On December 19, 2024, Karen Fanion filed a request to participate as a limited participant (“Fanion Petition”). Karen Fanion states that she is a current Westfield City Councilor, representing Ward 1 in Westfield. The Ward 1 area includes the proposed Project site (Tr. A, at 30).

On December 3, 2024, WG&E, the local municipal utility, filed a request to participate as a limited participant (“WG&E Petition”). In support of its request, WG&E states that WG&E is the municipal utility charged under G.L. c. 164 with the distribution of electric power to the 18,600 customers in the City of Westfield, the owner of the property where Buck Pond Substation is located, and the owner, operator, and maintainer of the infrastructure that is the distribution side of the Buck Pond Substation (WG&E Petition at 1).

The Company does not oppose the requests of WG&E, Karen Fanion or Mary Ann Babinski for limited participant status (Company Response at 3). Westfield ESS notes that WG&E, Fanion, and Babinski have shown sufficient facts to demonstrate that they are interested persons and merit limited participant status (Company Response at 3).

The three petitions for limited participant status indicate the manner in which each is interested in this proceeding. I find that WG&E, Mary Ann Babinski⁴ and City Councilor Karen Fanion’s participation as limited participants could provide valuable information regarding the Project. Therefore, I grant their Petitions. Consistent with the Department’s procedural rules, a Hearing Officer may grant a petition for limited participant status and condition any grant on such reasonable terms as he or she determines. 220 CMR 1.03(e). In granting these petitions, the participation of each limited participant is limited to the receipt of filings and filing of briefs as allowed under the procedural schedule in this proceeding.

⁴ Mary Ann Babinski has been identified as a member of WRAFT and provided a signed affidavit authorizing WRAFT to speak on her behalf in this proceeding. See WRAFT Amended Petition.

IV. RULING

For the foregoing reasons, the petitions to intervene filed by the City of Westfield and Eversource are hereby granted, and shall have full party status, including the right to file an appeal of the Final Order issued by the Department in this proceeding.

The petition to intervene of WRAFT is hereby granted. Consistent with G.L. c. 30A § 10A, the scope of issues that may be addressed by WRAFT is limited to the issue of damage to the environment and the elimination or reduction of such damage as defined in G.L. c. 214, § 7A.

The petitions to participate as a limited participant filed by WG&E, Mary Ann Babinski, and City Councilor Karen Fanion are granted. The rights of limited participants include the right to receive electronic copies of all filing in this proceeding, to receive all orders, rulings, discovery or other documents issued by the Department or other parties to this proceeding, consistent with the procedural schedule set by the Hearing Officer, and to file briefs in this proceeding.

All intervenors and limited participants shall comply with all requirements in the Department's regulations and with all directives of the Hearing Officer, including the procedural schedule and ground rules established in this proceeding. Under the provisions of 220 CMR 1.06(5)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within fourteen (14) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within fourteen (14) days of the appeal. The Ruling remains in full force and effect unless and until set aside or modified by the Commission. 220 CMR 1.06(5)(d)(2).

s/Donna Sharkey
Donna Sharkey
Hearing Officer