

# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 24-93/24-94

February 21, 2025

Petition of NSTAR Electric Company d/b/a Eversource Energy for Approval to Construct, Operate and Maintain a New 115-kV Transmission Line on an Existing Right-of-Way in Acushnet and Mattapoisett, Massachusetts, pursuant to G.L. c. 164, § 72, and for Individual and a Comprehensive Zoning Exemption from the Operation of the Zoning Bylaw of the Town of Mattapoisett pursuant to G.L. c. 40A, § 3.

D.P.U. 24-151

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. 24-152

Petition of Trimount ESS LLC, pursuant to G.L. c. 40A, § 3 for Exemptions from the City of Everett Zoning Ordinance, and G.L. c. 164, § 72 for Approval to Construct New Electric Transmission Lines in the City of Everett, Massachusetts.

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## I. INTRODUCTION

On November 20, 2024, Governor Healey signed into law sweeping climate legislation to empower the Commonwealth's fight against climate change and accelerate progress towards the state's goals of net zero greenhouse gas emissions by 2050. St. 2024, c. 239 ("2024 Climate Act" or the "Act"). The 2024 Climate Act incorporated new statutory provisions designed to accelerate clean energy development, improve energy affordability, create an equitable infrastructure siting process, allow for multistate clean energy procurements, promote non-gas heating, expand access to electric vehicles, and create jobs and support workers throughout the energy transition. St. 2024, c. 239.

The Act became effective February 18, 2025,<sup>1</sup> and includes sections relating to the authority to grant zoning exemptions pursuant to G.L. c. 40A, §3.<sup>2</sup> The Department of Public Utilities ("Department") has had authority pursuant to G.L. c. 40A, §3 to grant to public service corporations necessary exemptions from local zoning ordinances for lands and structures if the Department determines the exemptions are required and finds that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. The 2024 Climate Act changes local zoning exemption authority in

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<sup>1</sup> The Act generally became effective February 18, 2025, although some sections of the Act relating to siting and permitting of energy projects will not go into effect until March 1, 2026. See St. 2024, c. 239, §§ 132, 139.

<sup>2</sup> The Department has authority to grant exemptions from the City of Boston Zoning Code pursuant to St. 1956, c. 665, § 6. The 2024 Climate Act moves the authority to grant exemptions from the City of Boston Zoning Code to the Siting Board on March 1, 2026. See St. 2024, c. 239, §§ 91, 139.

two respects: (1) it codifies the definition of “public service corporation,” St. 2024, c. 239, § 36; and (2) it moves the authority to grant zoning exemptions to the Energy Facilities Siting Board (“Siting Board”), St. 2024, c. 239, § 37. As of the effective date of the Act, February 18, 2025, the Department no longer has authority to grant zoning exemptions pursuant to G.L. c. 40A, § 3. By this Order, the Department transfers three petitions for zoning exemptions and related petitions to the Siting Board.

## II. PENDING DEPARTMENT PROCEEDINGS

The three zoning exemption petitions currently pending before the Department are NSTAR Electric Company d/b/a Eversource Energy (“Eversource”) in D.P.U. 24-93/24-94; Westfield ESS LLC in D.P.U. 24-151; and Trimount ESS LLC in D.P.U. 24-152. Each of these zoning exemption proceedings also includes a petition to construct transmission infrastructure pursuant to G.L. c. 164, § 72 (“Section 72”).<sup>3</sup> While the 2024 Climate Act did not specifically address how the Department should treat pending dockets in light of the shift in responsibility for zoning exemptions from the Department to the Siting Board, we find that the most appropriate course is for the Siting Board to conduct all further process to review these projects and to decide these matters. Further, it is fairest to the parties and

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<sup>3</sup> The standard of review applied by the Department and Siting Board for zoning exemptions is substantially similar to the standards applied in Section 72 proceedings. Compare G.L. c. 40A, § 3 (the Department shall determine that the exemptions are required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public), with G.L. c. 164, § 72 (the Department may determine that said line is necessary for the purpose alleged, will serve the public convenience and is consistent with the public interest). See also Medway Grid LLC, D.P.U. 22-18/22-19, at 141 (2023).

most efficient administratively for the Siting Board to recognize the existing records and parties in its proceedings. Nothing in the 2024 Climate Act suggests that the Siting Board review should start anew. Indeed, one of the main goals of the Act is to streamline and accelerate administrative review of energy projects. See Executive Order 620 (establishing the Commission on Energy Infrastructure Siting and Permitting); Recommendation to Governor Maura Healey on Clean Energy Infrastructure Siting and Permitting Reform, March 29, 2024. Therefore, the Department hereby transfers the existing zoning exemption proceedings, along with all filings to date, to the Siting Board. In addition, the Department hereby transfers the related Section 72 petitions to the Siting Board so that the Siting Board can review each project in an efficient and consolidated manner.<sup>4</sup>

This approach is consistent with and supported by the Department's and Siting Board's authority over procedural matters within their jurisdiction where the action to be taken effectuates the purpose of the statute. See Armstrong v. Secy of EEA, 490 Mass. 243, 247 (2022) (within the scope of its enabling legislation, the department [of environmental protection] has a wide range of discretion in establishing the parameters of its authority); Levy v. Board of Registration & Discipline in Med., 378 Mass. 519, 525 (1979) ("when the Legislature delegates to an administrative agency a broad grant of authority to implement a

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<sup>4</sup> The Department notes that the 2024 Climate Act provides that the requirement to obtain a Section 72 approval to construct a transmission line will expire on March 1, 2026, evincing a legislative intent to replace that review with the new consolidated permit system. As of March 1, 2026, a project proponent will not be required to obtain Section 72 permission from either the Department or the Siting Board to provide "transmission services." St. 2024, c. 239, § 75.

program of reform or social welfare, the administrative agency generally has a wide range of discretion in establishing the parameters of its authority pursuant to the enabling legislation; the administrator [should] construe the statute broadly to further the purposes of such reform”). See also Brockton Power Company LLC v. Energy Facilities Siting Board, 469 Mass. 215, 219 (2014), citing Zachs v. Department of Pub. Utils., 406 Mass. 217, 227 (1989) (administrative agencies have broad discretion over procedural matters before them).

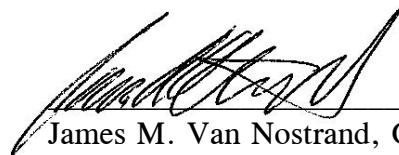
Accordingly, to effectuate the intent of the new provisions of the 2024 Climate Act, the Department will transfer the records for the three pending Department zoning and Section 72 proceedings to the Siting Board for further review and adjudication. The Siting Board Presiding Officer for each of those dockets will then issue a Procedural Order for each docket outlining the procedural process required for the further adjudication of each project. The Siting Board has established docket numbers for each proceeding to be transferred to it: EFSB 25-03 for NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 24-93/24-94; EFSB 25-04 for Westfield ESS LLC, D.P.U. 24-151; and EFSB 25-05 for Trimount ESS LLC, D.P.U. 24-152. Once the Department dockets are transferred to the Siting Board, the Board may then consolidate the docket numbers in each proceeding. See 980 CMR 1.09(2) (consolidation authority).

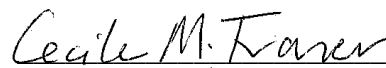
### III. ORDER

Accordingly, the Department hereby transfers the above-captioned Department matters, NSTAR Electric Company d/b/a Eversource Energy in D.P.U. 24-93/24-94, Westfield ESS LLC in D.P.U. 24-151, and Trimount ESS LLC in D.P.U. 24-152, to the

Siting Board for further review and decision. Evidence necessary to adjudicate these Department dockets shall be submitted and reviewed in the related Siting Board proceeding. The Siting Board shall make a determination of each issue of fact or law necessary to a final decision under each of the relevant statutes in each transferred proceeding. G.L. c. 30A, § 11.

By Order of the Department:

  
James M. Van Nostrand, Chair

  
Cecile Fraser, Commissioner

  
Staci Rubin, Commissioner