

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

Petition of Harbor Electric Energy Company for a)
Determination of Jurisdiction Pursuant to) EFSB 17-03
980 CMR 2.09)

TENTATIVE DECISION

Robert Shea
Presiding Officer
September 8, 2017

On the Decision:

John Young

APPEARANCES:

David S. Rosenzweig, Esq.
Michael J. Koehler, Esq.
Keegan Werlin, LLP
265 Franklin Street
Boston, Massachusetts 02110
FOR: Harbor Electric Energy Company
Petitioner

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Pursuant to 980 CMR 2.09, the Energy Facilities Siting Board (“Siting Board”) determines that it [DOES NOT HAVE] jurisdiction over a proposal by Harbor Electric Energy Company (“HEEC” or the “Company”) to construct a 115 kilovolt submarine cable and related facilities (“Project”) that would provide service from the NSTAR Electric Company’s K Street Substation in South Boston to the Massachusetts Water Resources Authority’s wastewater treatment facility on Deer Island, Massachusetts.

I. INTRODUCTION

A. Petition for Determination of Jurisdiction

On June 9, 2017, the Company filed a petition pursuant to 980 CMR 2.09 (“Petition”) seeking a determination as to whether the Project is subject to Siting Board jurisdiction and would therefore require Siting Board approval. The Company also filed: (1) a supporting Memorandum of Law (“Memorandum”); (2) an affidavit of the Company’s project manager attesting to the facts asserted in the Petition and the Memorandum; (3) a Stipulation and Order entered in a related civil proceeding pending in the United States District Court for the District of Massachusetts (“Stipulation and Order”); and (4) a draft legal notice for publication.

In the Petition and Memorandum, HEEC maintains that the Project is not a jurisdictional facility as defined by G.L. c. 164, § 69G because the proposed 115 kilovolt (“kV”) submarine cable electric line (“Proposed Line”) is not a transmission line (Petition at 2; Memorandum at 2). Instead, the Company argues that the Proposed Line should be characterized as a distribution line that is not subject to Siting Board approval pursuant to G.L. c. 164, § 69J (Petition at 2, 5; Memorandum at 12). In arguing that the Proposed Line is a distribution line and not a transmission line, the Company invokes a seven-factor test established by the Federal Energy Regulatory Commission (“FERC”) (“FERC test”) (Memorandum at 13-16). The Company asserts that, although the Proposed Line would be operated at what is typically considered transmission voltage, 115 kV, all other operating characteristics of the Proposed Line support its classification as a distribution facility pursuant to the FERC test (Memorandum at 16). Therefore, the Company concludes, the Proposed Line should not be subject to the Siting Board’s jurisdiction over transmission lines under Section 69J (Memorandum at 17-18).

B. Procedural History

The Presiding Officer directed HEEC to publish a Notice of Petition for Determination of Siting Board Jurisdiction (“Notice”) in the Boston Herald, South Boston Today, and the Winthrop Transcript. In addition, the Company was required to post the Notice in the City Clerk’s Office of the City of Boston and the Town of Winthrop Clerk’s Office, and to provide copies to the Massachusetts Water Resources Authority (“MWRA”), the Massachusetts Port Authority (“Massport”), the Massachusetts Department of Environmental Protection (“MassDEP”), the Massachusetts Marine Fisheries Division, the National Marine Fisheries Service, the U.S. Army Corps of Engineers (“USACE”), and the Federal Aviation Administration. Finally, the Presiding Officer required that a copy of the Notice be posted at the Central Library of the Boston Public Library System in Copley Square, the South Boston Branch of the Boston Public Library System, and the Winthrop Public Library.

The Notice invited interested parties to submit comments on the Petition. Massport submitted written comments on July 13, 2017, and MWRA submitted written comments on July 14, 2017. Both comment letters strongly support the Project itself and note the need for the Project to be completed quickly (Massport Comment Letter; MWRA Comment Letter at 1-2). The MWRA supports granting the Petition, and requests that the Siting Board consider that denial of the Petition could adversely affect HEEC’s ability to meet the schedule agreed to in the Stipulation and Order, which requires HEEC to install a new electric cable to replace the existing cable by December 31, 2019 (MWRA Comment Letter at 1-2). The MWRA asserts that the construction schedule would allow uninterrupted power to flow to its wastewater treatment plant, and would also allow federally funded dredging to proceed to enhance deep port facilities in Boston (MWRA Comment Letter at 1). Massport also strongly supports HEEC’s Petition in order to preserve the vital mission of the Port of Boston (Massport Comment Letter).

On July 17, 2017, the Siting Board submitted a set of Information Requests to HEEC. On July 24, 2017, the Company filed its Responses to those Information Requests. The Siting Board staff prepared a Tentative Decision and distributed it on September 8, 2017, to Siting Board members and all entities who had filed comments for review and comment. The Company and other commenters were given until September 15, 2017, to submit comments on the Tentative Decision. On September 20, 2017, the Siting Board met to consider the Tentative

Decision. After deliberation, the Board directed staff to prepare a Final Decision [approving] the Tentative Decision.

C. Standard of Review

General Laws c. 164, § 69J requires the Siting Board to review petitions to construct facilities, including transmission lines. The transmission lines subject to Siting Board review under Section 69J are defined in G.L. c. 164, § 69G, and include transmission lines on new and existing transmission corridors.

Siting Board regulations allow an applicant to request a determination as to whether a proposed facility is not subject to Siting Board jurisdiction. 980 CMR 2.09. The regulations provide that within four months, the Board shall issue a decision on whether a facility is not subject to Board jurisdiction. Id.

II. BACKGROUND

A. Existing Facilities

HEEC is a wholly owned subsidiary of NSTAR Electric Company (“NSTAR Electric”), which is itself a wholly owned subsidiary of Eversource Energy (Memorandum at 1 n.1). HEEC provides service to the MWRA through an existing 4.15-mile, 115 kV submarine cable (“Existing Cable”) (Memorandum at 1). The Existing Cable extends from NSTAR Electric’s K Street Substation in South Boston along the Reserved Channel and across Boston Harbor to the MWRA wastewater treatment facility on Deer Island (Memorandum at 1 and Att. B). HEEC owns and operates the Existing Cable as well as ancillary equipment located at the K Street Substation in South Boston and the Company’s substation on Deer Island (“Existing Facilities”) (Memorandum at 2). The Project includes replacing the Existing Cable with the Proposed Line, and construction of new associated electrical facilities and equipment at the K Street Substation and at the Company’s substation on Deer Island (Petition at 1; Memorandum at 1).

HEEC noted that the Existing Facilities were installed to support new wastewater treatment facilities on Deer Island (“Deer Island WWTF”) as part of the Boston Harbor clean-up ordered by the United States District Court for the District of Massachusetts (Memorandum at 2). In order to provide power to the Deer Island WWTF, MWRA entered into an Interconnection and Facilities Support Agreement in 1990 (“Interconnection Agreement”) with NSTAR

Electric's predecessor (Boston Edison Company) and HEEC (Memorandum at 2).¹ The Department of Public Utilities ("Department") approved the Interconnection Agreement. Harbor Electric Energy Company/Boston Edison Company, D.P.U. 90-288 (1991). In addition, the Siting Board's predecessor agency, the Energy Facilities Siting Council ("EFSC"), approved construction of the Existing Facilities in its Final Decision issued in Boston Edison Company, EFSC 89-12A (1989).

HEEC states that the Project is required in order to facilitate dredging proposed for Boston Harbor (Memorandum at 2). By placing transmission facilities further below the bottom of Boston Harbor, the USACE and Massport would be able to complete the Boston Harbor Deep Draft Navigation Improvement Project ("Deep Draft Project") which would deepen portions of Boston Harbor, including the Reserved Channel and the Main Ship Channel, in order to accommodate larger container ships (Memorandum at 3, 4). The Deep Draft Project is expected to cost \$310 million (Memorandum at 4). The USACE has stated that the Deep Draft Project cannot proceed given the risk of damage to the Existing Cable and risk of injury to dredging vessels and the persons aboard those vessels, due to inadequate burial depth of the submarine portion of the line (Memorandum at 3, 4 n.2).² HEEC states further that any damage to the Existing Cable would likely cause a service outage to the MWRA and asserts that the Project is needed immediately to maintain electricity service to the MWRA (Memorandum at 1, 4 n.2).

B. Project Description

The Proposed Line would be approximately 4.1 miles long (Exh. EFSB-31). The Proposed Line would consist of two underground segments and an underwater segment, as

¹ In 2006, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company merged into NSTAR Electric Company. NSTAR Electric Company Merger, D.T.E. 06-40 (2006). On February 2, 2015, NSTAR Electric began operations under the name Eversource Energy. Harbor Electric Energy Company, D.P.U. 15-157, at 3 n.6 (2016) (memorialized in text as the "HEEC Order").

² On July 15, 2016, the United States of America, on behalf of the USACE, filed a complaint in the United States District Court for the District of Massachusetts alleging that the Existing Cable was installed and located at shallower depths than required by the permit issued by the USACE in 1989 (Petition at 3). This complaint was resolved by a Stipulation and Order approved by the Court on July 12, 2017, in C.A. No. 16-11470-RGS (Exh. EFSB-21(1)).

follows: (1) underground from K Street Substation to Conley Terminal in South Boston (“Segment One”); (2) underground across Massport’s Conley Terminal property (“Segment Two”); and (3) submarine from Conley Terminal to the landfall at Deer Island (“Segment Three”) (Memorandum at 4-5). Part of the Project involves work on the K Street Substation which is located across Boston Harbor, approximately four miles from the Deer Island WWTF (Memorandum, Att. B; Exh. EFSB-31).

The Company has identified three options for the route of Segment One (Memorandum at 5). The first of these would leave K Street Substation, head south on K Street, then turn east onto Power House Street (Memorandum at 5). At the corner of Power House Street and Summer Street, the route would then turn north and meet up with the new Massport Haul Road on the Conley Terminal property (Memorandum at 5). A second option would be for the Proposed Line to exit the K Street Substation, traverse the adjacent property owned by FedEx, and enter Summer Street (Memorandum at 5). The route would then turn south on Summer Street until it intersects with the Massport Haul Road on the Conley Terminal property (Memorandum at 5). The third option would be for the Proposed Line to leave K Street Substation, head south on K Street and then turn east onto Elkins Street (Memorandum at 5). At the corner of Elkins Street and Summer Street, the route would turn north meeting up with the new Massport Haul Road on the Conley Terminal property (Memorandum at 5). HEEC stated that the final alignment of Segment One would be determined based on whether: (1) there is room in the street to accommodate the Proposed Line; (2) the alignment minimizes the length of cable in high-traffic areas such as Summer Street; and (3) the Company is able to secure the property rights required to locate the cable in particular areas (Memorandum at 5).

The Company also has identified three potential routing options for Segment Three from Conley Terminal to Deer Island (Memorandum at 5).³ As shown in Attachment B to the Memorandum, there is a northern alternative, which would be located approximately 300 feet north of the Existing Cable; a middle alternative, which would be located approximately 300 feet south of the Existing Cable; and a southern alternative that would lie to the south of the middle alternative (Memorandum at 5, 6, and Att. B). The submarine routing determination would be

³ HEEC stated that the specific route for Segment Two, across the Conley Terminal, will be identified in consultation with Massport; no route alternatives are currently proposed (Memorandum at 5).

made in consultation with agencies such as MassDEP, USACE, the National Marine Fisheries Service, and the Federal Aviation Administration (Memorandum at 6).

Regarding construction, the first underground segment of the Proposed Line would be installed using the conventional open trench approach, except for the portion of the cable at the western end of Conley Terminal where it would be hung from the new Conley access roadway that connects at its western end to Summer Street (Memorandum at 6). At the eastern end of Conley Terminal, the Proposed Line would leave the terminal and cross under the adjacent federal navigation channel (Memorandum at 6 and Att. B). At this point, the Proposed Line would be laid using horizontal directional drilling (“HDD”) (Memorandum at 6). It would transverse the navigation channel at a depth of 75 feet below the Mean Low Lower Water (“MLLW”), and it would remain at that depth for an additional 500 feet (Memorandum at 6 and Att. B). The Proposed Line then gradually rises upwards and the remainder of the undersea cable would be installed about ten feet below the sea bottom elevation using a hydroplowing technique (Memorandum at 6).

HEEC states that the transition from HDD to hydroplowing would be achieved by divers using hand jetting (Memorandum at 6). The final short section near Deer Island would be installed using HDD to avoid impacts to coastal and wetland resource areas near the shoreline (Memorandum at 6). The length of HDD in this section would be determined based on the results of an underwater survey that was scheduled to be conducted in late June 2017 (Memorandum at 6). The length of the Proposed Line is approximately four miles, of which 2.6 miles are under Boston Harbor (Memorandum at 6).

Modifications at the K Street Substation would be within the existing fenceline of the substation, and would include replacement of 115 kV air-insulated buswork with 115 kV gas-insulated buswork, connecting to an existing spare switching position at the substation (Memorandum at 7). Work at the Deer Island Substation would include installation of two 115 kV circuit breakers and gas-insulated buswork (Memorandum at 7). The Company stated that environmental impacts of the substation work would be minimal and largely limited to construction impacts because new substation facilities would be within the existing substation fencelines (Memorandum at 7). The Company does not expect that zoning relief would be required for the work to at either substation (Memorandum at 7).

The Company indicated that the Project is subject to various environmental and permitting reviews by the Boston Conservation Commission, the Massachusetts Environmental Policy Act office of the Executive Office of Energy and Environmental Affairs, MassDEP, the Massachusetts Coastal Zone Management program, the Massachusetts Board of Underwater Archaeological Resources, USACE, the National Marine Fisheries Services and U.S. Fish and Wildlife Service, and the Massachusetts Historical Commission (Exh. EFSB-10).

To achieve the December 31, 2019 in-service date for the Proposed Line, as required by the Stipulation and Order, the Company plans to commence construction by March 2018 (Memorandum at 7). The Project is estimated to cost \$115 million (+/-10%) (Memorandum at 7). Once the Project is completed and in-service, the Company would decommission the Existing Cable in consultation with the MWRA and relevant permitting authorities such as USACE and MassDEP (Memorandum at 7 n.4). In the HEEC Order, the Department recently reviewed and approved a revised contract between HEEC and MWRA for electric service to the Deer Island facility.

III. DETERMINATION OF JURISDICTION

A. Position of HEEC

HEEC requests a determination by the Siting Board that the Project is not subject to the jurisdiction of the Siting Board under G.L. c. 164, § 69J (Memorandum at 2). Specifically, HEEC submits that the Siting Board lacks jurisdiction over the Project because the Proposed Line would operate as a distribution line rather than a transmission line and, therefore, the Project is not a jurisdictional “facility” pursuant to G.L. c. 164, § 69G (*id.* at 12).

In support of this argument, HEEC refers to a seven-factor test established by FERC for classifying facilities of an electric company as either transmission or distribution (Memorandum at 13). The seven-factor test was established by FERC in an Order entitled: Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Stats. and Regs. ¶ 31,036, at 31,770-31,785 (1996) (“FERC Order 888”) (Memorandum at 13). HEEC notes that the Department adopted and applied the FERC seven-factor test in order to classify the Existing Facility in the HEEC Order in the context of a review of a contract regarding rates for service by HEEC to MWRA (Memorandum at 13-14; HEEC Order at 17-21).

The Department concluded that the Existing Facility constituted “local distribution facilities” and not transmission facilities. HEEC Order at 21. The Company notes also that the Department has reviewed electric rates of the Existing Facility as a retail distribution line (Memorandum at 15 n.10). The Company argues that the existing line is essentially the same as the Proposed Line and that therefore the Project is also a distribution facility and therefore does not constitute a facility jurisdictional to the Siting Board (Memorandum at 15).

The seven factors used by FERC to evaluate plant for classification are as follows:

1. Local distribution facilities are normally in close proximity to retail customers;
2. Local distribution facilities are primarily radial in character;
3. Power flows into local distribution system; it rarely, if ever, flows out;
4. When power enters a local distribution system, it is not reconsigned or transported to some other market;
5. Power entering a local distribution system is consumed in a comparatively restricted geographic area;
6. Meters are based at the transmission/local distribution interface to measure flows into the local distribution system; and
7. Local distribution systems will be of reduced voltage.

HEEC Order at 18, citing FERC Order 888.

The Company’s assessment of each of the seven factors is as follows:

(1) Proximity: The Company asserts that the Proposed Line and ancillary facilities are all located in close proximity to the single customer, the MWRA (Memorandum at 14). The Proposed Line would run directly from the K Street Substation (id.). The Company asserts, all of the facilities would either be located at, or terminate at, the end-use customer on Deer Island (id.).

(2) Radial Line: The Company states that the Proposed Line is a radial feed to the end-use customer, the MWRA; that there is no service to the MWRA through other lines; and that the only interconnection point from the Proposed Line to the NSTAR Electric system is the K Street Substation (Memorandum at 14; Exh. EFSB-1).

(3) Power Flow: The Company represents that the power flow over the Proposed Line would be in a single direction to the MWRA as the end-use customer, and that the Project would

be used exclusively to provide power to the MWRA (Memorandum at 12, 15). HEEC states that the MWRA's energy sources at Deer Island provide backup supply as needed as well as intermittent sources used solely to reduce load at Deer Island (Exh. EFSB-1).

(4) No Re-Sale: The Company states that the power flow over the Proposed Line would be for use by the end-use customer – i.e., the MWRA – and will not be re-sold, reconsigned or transported to a third party or some other market (Memorandum at 15; Exh. EFSB-33).

(5) Use in a Restricted Area: The Company represents that all of the power flowing through the Proposed Line would be consumed by the MWRA at its facilities on Deer Island (Memorandum at 15; Exh. EFSB-33).⁴

(6) Meters: The list of project components does not include meters at the K Street Substation (Memorandum at 7). The Company states that meters for the Project would be located on Deer Island (Memorandum at 15). However, the Company states that these meters would operate as customer usage meters and asserts that these meters do not represent the location of the transmission/local distribution interface (Memorandum at 15; Exh. EFSB-34).

(7) Voltage: The Proposed Line would operate at 115 kV (Memorandum at 15). HEEC states that delivery of power at 115 kV is consistent with MWRA's operational requirements (Memorandum at 15). The Company acknowledges that 115 kV is typically a transmission voltage (Memorandum at 15).

HEEC argues that line voltage is not the sole factor in determining whether an electric line should be classified as a transmission line subject to Siting Board jurisdiction, asserting instead that there are “many other applicable factors that must be considered” (Petition at 2-3; Memorandum at 17-18). The Company argues that the Proposed Line is a distribution line based on a review of all relevant factors (Petition at 3).

B. Analysis and Findings

General Laws c. 164, § 69J provides that an applicant may not commence construction of a facility unless the Siting Board first approves a petition to construct that facility. G.L. c. 164, § 69G defines the types of facilities subject to this approval. Specifically, Section 69G provides that a new transmission line having a design rating of 69 kV or more and which is one mile or

⁴ Deer Island is just over one mile long in its longest dimension, is about one half mile across, and is almost wholly surrounded by water (Stipulation and Order at 15).

more in length on a new transmission corridor is subject to Siting Board jurisdiction. The Proposed Line has a design rating above 69 kV, is over one mile in length, and may follow a corridor different from the Existing Line. However, HEEC argues that the Proposed Line is not a transmission line but is more appropriately characterized as a distribution line.

“Transmission” is not defined in Section 69G, but it is defined in G.L. c. 164, § 1 as: “the delivery of power over lines that operate at a voltage level *typically* equal to or greater than 69,000 volts from generating facilities ...” (emphasis added). The Proposed Line would operate at greater than 69kV which is consistent with the statutory definition of a “transmission” facility; however the statute uses “typically” in reference to voltage, indicating that voltage alone is not the determining factor.

Relatedly, G.L. c. 164, § 1, defines “distribution” as: “the delivery of electricity over lines which operate at a voltage level *typically* equal to or greater than 110 volts and less than 69,000 volts *to an end-use customer within the commonwealth*” (emphasis added). Again, the use of “typically” indicates that voltage alone is not the determining factor. Furthermore, in the present case, the Proposed Line would deliver electricity to “an end-user within the commonwealth”— the MWRA facility. In this way, the Proposed Line is consistent with the statutory definition of a “distribution” facility.

Application of the statutory definitions of “transmission” and “distribution” shows that the Proposed Line does not fit neatly into either category. Therefore, in light of this ambiguity, we turn to other law, which is both relevant and applicable as a guide to our determination.

When the functionally equivalent Existing Facility was designed, the Company applied for and received an approval to construct from the Siting Board. EFSC 89-12A. In that proceeding, the Existing Line was presented in the Petition and considered by the Siting Board in the Decision as a transmission line under G.L. c. 164, § 69G. EFSC 89-12A at 5. As noted by the Company, the distinction between a transmission and distribution facility was not an element in controversy in the Siting Board case and there was no analysis of the question of jurisdiction in the Siting Board Final Decision (Memorandum at 13 n.8).

Subsequent to the Siting Board's approval of the Existing Line, FERC established the seven-factor test for use in classifying plant as either transmission or distribution.⁵ Since its inception, the FERC seven-factor test to distinguish transmission from distribution facilities has been applied in a variety of contexts and upheld by the courts in reviews of different decisions by the FERC. For example, in New York v. FERC, 535 U.S. 1 (2002) 122 S.Ct. 1012, 152 L.Ed 2d 47 (2002), the Supreme Court applied the FERC seven-factor test in the context of open access requirements. In subsequent decisions in other federal courts, the FERC methodology has been adopted in a broad range of cases related to FERC jurisdiction over transmission facilities.⁶

Applying the FERC seven-factor test, the Department recently determined that the Existing Line is a distribution facility. HEEC Order at 19-21. The Siting Board concurs with the Department that the FERC seven-factor test is relevant and appropriate as a means to distinguish transmission plant from distribution plant. Therefore, we examine the Company's arguments regarding each element of the FERC seven-factor plant classification methodology as it pertains to the Siting Board's statutory jurisdiction.

(1) Proximity: The Project including the New Line and its interconnection equipment terminates on Deer Island, which is the location of the retail customer. The first FERC factor indicates that the Proposed Line should be classified as distribution.

(2) Radial Line: The substation at Deer Island would continue to be connected through only one, radial, supply line. This is consistent with the HEEC Order, in which the Department found that the Existing Cable is "a radial line." HEEC Order at 19. The second FERC factor indicates that the Proposed Line should be classified as distribution.

(3) Power Flow: The record shows that electrical power would flow only from the K Street Substation to Deer Island, and it would not flow out; therefore, the third FERC factor

⁵ The Siting Board approved the Existing Line in 1989. Boston Edison Company, EFSC 89-12A (1989). FERC issued the seven-part test in 1996 (Memorandum at 13, citing FERC Order 888).

⁶ The FERC seven-factor test has been applied in a variety of contexts. See e.g. In National Association of Regulatory Utility Commissioners v. FERC, 475 F.3d 1277 (D.C. Cir. 2007) (interconnection agreements); DTE Energy Company v. FERC, 394 F.3d 954, 957 (2005) (federal jurisdiction).

indicates that the Proposed Line should be classified as distribution.

(4) No Re-Sale: The record shows that all of the electrical power supplied through the Proposed Line would be consumed by the MWRA as the end-use customer; therefore, the fourth FERC factor indicates that the Proposed Line should be classified as distribution.

(5) Use in a Restricted Area: Deer Island is relatively small and nearly surrounded by water, and so is a comparatively restricted geographic area. The record shows that all of the power delivered to Deer Island via the Proposed Line would be consumed on the island, thus satisfying the fifth FERC factor.

(6) Meters: The record shows that meters to measure customer usage would be located at Deer Island, and that the Company would not install meters at what it would characterize as the transmission/local distribution interface meters at the K Street Substation. The absence of metering at the K Street Substation transmission/local distribution interface does not support a conclusion that the Proposed Line is distribution.⁷

(7) Voltage: The Proposed Line would operate at 115 kV, which is typically transmission voltage. Thus, the seventh factor indicates that the Proposed Line should be classified as transmission.

The Proposed Line is a radial line serving a restricted area, with power flowing one way to serve a single customer, with no re-sale to other entities, located proximate to the retail customer, all of which are characteristics of distribution according to the FERC test. In contrast, the apparent absence of metering by NSTAR Electric or HEEC at the interface between the Project and the rest of the grid (at the K Street Substation) and operating voltage at 115 kV are characteristic of a line that is part of the transmission system, rather than distribution.

The Siting Board understands the FERC seven-factor test as a test in which no single factor is determinative. In this case, there are five factors pointing toward classification as distribution and two factors pointing toward classification as transmission. The Siting Board finds that the Project operates essentially as a distribution facility, based on the function of the

⁷ The Department determined that the metering factor was “not applicable” to the Department’s determination of whether the Existing Line is a distribution line (Exh. EFSB-34, citing HEEC Order at 20).

Proposed Line, consistent with the earlier determination of the Department that the Existing Line is a distribution facility using the same seven-factor test. The Siting Board finds that Proposed Line is appropriately classified as distribution despite operating at 115 kV voltage. Therefore, the Project is not a facility as defined in Section 69G and not subject to the Section 69J jurisdiction of the Siting Board.⁸

The Siting Board notes that the Company has maintained in its Memorandum that the Project also is not subject to the requirements of G.L. c. 164, § 72 governing transmission facilities (Memorandum at 16 n.11). The Siting Board agrees that, as a distribution facility with the characteristics described in the Filing, the Project does not require that the Company file for authority to construct or use the Facility as a “line for the transmission of electricity for distribution,” as set forth in G.L. c. 164, § 72 . As the Department has previously noted, Section 72 approval is required prior to construction or use of any new or substantially changed *transmission* line (emphasis added). See Boston Edison Company v. Town of Sudbury, 356 Mass. 406, 416 (1969).

⁸ The Siting Board notes that although the Project is not subject to review by the Siting Board, it will receive extensive review from other local, state and federal agencies. See Section II.B.

IV. DECISION

For the reasons set forth above, the Siting Board concludes that the proposed facilities described by HEEC to provide service to the MWRA [do not] constitute transmission facilities as defined by G.L. c. 164, § 69G, and therefore [are not] facilities subject to the review and approval of the Siting Board under G.L. c. 164, § 69J.

Robert J. Shea
Presiding Officer

Dated this ____ day of _____, 2017

[APPROVED] by the Energy Facilities Siting Board at its meeting of _____, 2017, by the members and designees present and voting. **Voting for** approval of the Tentative Decision (as amended):

[If appropriate: Voting against approval of the Tentative Decision (as amended)]

Matthew A. Beaton, Chairman
Energy Facilities Siting Board

Dated this _____, 2017