

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Petition of NSTAR Gas Company d/b/a)	
Eversource Energy to Replace 3.71 miles of)	
Natural Gas Underground Transfer Pipeline)	EFSB 18-02
With a New Steel Gas Pipeline in the Towns of)	
Hopkinton and Ashland, Massachusetts)	
Pursuant to General Laws c. 164, § 69J)	October 25, 2018

RULING ON MOTION TO INTERVENE

I. INTRODUCTION

NSTAR Gas Company d/b/a Eversource Energy (“Eversource” or “Company”) proposes to replace approximately 3.71 miles of existing buried six-inch diameter steel natural gas pipeline twelve-inch diameter steel natural gas pipeline (“Transfer Line Replacement Project”). The Transfer Line Replacement Project is proposed to eliminate an existing pressure drop on the Transfer Line and improve the flexibility and reliability of the Company’s local gas distribution system.

The deadline in the proceeding for the filing petitions to intervene or to participate as a limited participant was October 15, 2018. The Energy Facilities Siting Board (“Siting Board”) received one timely petition to intervene from the Town of Ashland (“Town”).

Eversource did not file opposition to the petition to intervene.

II. STANDARD OF REVIEW

The granting of intervenor status in an adjudicatory proceeding before an administrative agency such as the 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” (emphasis added). *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”).

The Siting Board’s Rules for the Conduct of Adjudicatory Proceedings, 980 CMR 1et seq., (“Rules”) mirror the “substantially and specifically affected” standard for intervention

set forth in Chapter 30A. 980 CMR 1.05(1)(b) provides that a petitioner wishing to intervene pursuant to Chapter 30A, § 10 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 980 CMR 1.05(1)(d), that the Presiding Officer shall rule on the petitions to intervene as a party and “may condition any allowance of a petition on such reasonable terms as [she] may set.”

It has long been the practice of the Siting Board, in ruling on a petition to intervene, “to exercise its discretion so that it may conduct a proceeding with the goal of issuing a reasoned, fair, and impartial decision that achieves its statutory mandate.” U.S. Generating Company, EFSB 96-4, at 4, Procedural Order (November 26, 1996). Thus, in addition to considering whether a petitioner has shown that he may be substantially and specifically affected by a proceeding, the Siting Board 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., Colonial Gas Company, EFSB 18-01/D.P.U. 18-30, Ruling on Motions to Intervene and Motions to Participate as Limited Participants (August 6, 2018); Vineyard Wind LLC, EFSB 17-05/D.P.U. 18-18/19, Ruling on Motions to Intervene and Motions to Participate as a Limited Participant (May 23, 2018); Cape Wind Associates, LLC, EFSB 07-8, Ruling on Intervention and Scope of Proceeding (February 15, 2008), citing Cape Wind Associates, LLC and Commonwealth Electric Company d/b/a NSTAR Electric, EFSB 02-2, Ruling Re: Petitions to Intervene and Petitions to Participate (December 20, 2002); Cambridge Electric Light Company, EFSB 00-3/D.T.E. 00-103/00-104, Hearing Officer Ruling (February 21, 2001).

III. ANALYSIS AND FINDINGS

The Town asserts that it will be substantially and specifically affected by the proceeding because a portion of the Transfer Line Replacement Project is located in Ashland, and the Project will have a number of impacts on the Town (Town Intervention Petition at 2-4). Specifically, the Town notes that the preferred route impacts both public land and public ways within the Town including the Ashland State Forest and the Ashland Reservoir (Town Intervention Petition at 2). The Town states that the preferred route significantly impacts valuable natural resources in Ashland, while the alternative route presented in the Petition avoids such impacts (*id.*). The Town asserts that as the host community for the Project, the Town is substantially and specifically affected by the Transfer Line Replacement Project’s location upon public ways and lands within the Town including unique and valuable natural resources areas including lands and waters within the jurisdiction of the Ashland Conservation Commission (Town Intervention Petition at 3). The Town notes that its participation as a party will not prejudice other parties and

will instead provide an opportunity to address issues based on its unique position to address the likely harms and/or benefits of routes proposed relative to natural resource areas and the public lands and ways within Ashland (id.). The Town states that allowing its intervention will not affect the orderly conduct of the proceeding (Town Intervention Petition at 3).

Based on its status as one of the host communities for the Project, the Town may be substantially and specifically affected by this proceeding. The Town also has cited specific interests that it seeks to represent and protect in the proceeding. As noted above, the Company does not oppose the Town's petition to intervene. Accordingly, the Town of Ashland Intervention Petition is granted.

IV. RULING

The intervention petition filed by the Town of Ashland is granted. The intervenor shall have full party status, including the right to appeal the Final Decision in this matter, as set forth in 980 CMR 1.05(1).

_____/s/_____
Donna C. Sharkey, Esq.
Presiding Officer