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March 20, 2018

Andrew Greene, Director  
Joan Foster Evans, General Counsel  
Energy Facilities Siting Board  
One South Station, 5<sup>th</sup> Floor  
Boston, MA 02110

Re: EFSB 15-04/D.P.U. 15-140/D.P.U. 15-141

Dear Mr. Greene and Ms. Evans:

Enclosed please find an original and five (5) copies of the Petition for Appeal of the Town of Stoneham in the above proceeding.

Very truly yours,

Robert L. Dewees, Jr.

Enclosures

cc: Robert J. Shea, Presiding Officer  
Mark Marini, Secretary, Department of Public Utilities  
Service List

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, SS.**

**SUPREME JUDICIAL COURT**

No. \_\_\_\_\_

TOWN OF STONEHAM, MASSACHUSETTS,  
Appellant,

**V.**

ENERGY FACILITIES SITING BOARD,  
Appellee.

# PETITION FOR APPEAL

1. On February 28, 2018, the Energy Facilities Siting Board (the “Siting Board”) issued a Final Decision (“Final Decision”) in the proceeding docketed as EFSB 15-04, D.P.U. 15-140 and D.P.U. 15-141 in response to the petition of NSTAR Electric Company, d/b/a Eversource Energy (“Eversource”) and New England Power Company d/b/a National Grid (“National Grid”), (together the “Companies”) filed on September 25, 2015 for approval of the construction of a new approximately 8.5-mile-long 345-kilovolt underground transmission line in Woburn, Winchester, Stoneham and Wakefield, Massachusetts (the “New Line”).

2. In the Final Decision, the Siting Board approved, with conditions, the Companies' proposal. In approving the New Line, the Siting Board approved the use of a cable technology for the line that was proposed by the Companies known as cross-linked polyethylene ("XLPE"). The alternate cable technology considered by the Companies was the high pressure fluid-filled pipe type ("PTC") cable technology. Final Decision at 20, 33.

3. In addition, the Siting Board approved the Companies' proposed route for the New Line that included construction along the full length of Elm Street in Stoneham, approximately one mile. The Siting Board did not approve an alternate route (identified in the proceeding as the Main Street Hybrid Route) that would have avoided the use of Elm Street. Final Decision at 65.

4. The Town of Stoneham ("Stoneham" or "Town"), an intervenor in EFSB 15-04, D.P.U. 15-140 and D.P.U. 15-141 and a party aggrieved by the Final Decision, hereby appeals the Final Decision and respectfully requests that it be set aside by the Supreme Judicial Court because it is based upon errors of law, is unsupported by substantial evidence of record, and is arbitrary, capricious and an abuse of the Siting Board's discretion in violation of G.L. c. 30A, s. 14(7).

#### **Jurisdiction**

5. The Supreme Judicial Court for Suffolk County has jurisdiction over the subject matter of this action and authority to order the relief requested, pursuant to G.L. c. 25, s. 5 and G.L. c. 164, s. 69P.

#### **Parties**

6. Appellant Stoneham is a municipal corporation duly organized under the laws of the Commonwealth, with its principal offices at 35 Chestnut Street, Stoneham, Massachusetts. Stoneham was granted intervenor status in the proceeding before the Siting Board as a full party and is aggrieved by the Final Decision, because it will suffer magnetic field ("MF") and public safety impacts if the New Line is constructed as proposed and on the route proposed.

7. Appellee Siting Board is an agency of the Commonwealth of Massachusetts, established pursuant to G.L. c. 164, s. 69H, having its offices at One South Station, Boston, Massachusetts.

### **Legal Claims**

8. The Final Decision should be set aside because it is in violation of G.L. c. 30A, s. 14(7) in that it is based on errors of law, is unsupported by substantial evidence, is arbitrary and capricious, is an abuse of discretion, or is otherwise not in accordance with the law.

9. The Final Decision should be set aside because the Siting Board did not comply with G.L. c. 164, ss. 69H and 69J and also G.L. c. 164, s. 72 and thereby did not comply with the standards required of it by the Legislature. The Siting Board erred in concluding that the use of XLPE cable technology for the New Line and the selection of Elm Street in Stoneham as a location for the New Line is consistent with current health, environmental protection, and resource use and development policies of the Commonwealth; that the route of New Line is superior to alternative routes; and that the environmental impacts of the New Line have been minimized. The Siting Board also erred when it concluded that the New Line will serve the public convenience and is consistent with the public interest.

### **XLPE Technology and Magnetic Fields**

10. Stoneham presented substantial evidence in the proceeding demonstrating the benefits of the use of PTC technology over XLPE technology that was proposed by the Companies and approved by the Siting Board for the New Line. Final Decision at 87.

11. The most significant and widespread concern among Stoneham residents with construction of the proposed New Line is the MF levels that may be produced by the line and the uncertainty over public health effects of MF exposure. PTC technology produces significantly lower levels of MF than does XLPE technology. The Companies' MF expert testified that XLPE technology produces between 5 and 10 times higher MF levels than PTC technology. In certain

situations, MF levels from XLPE systems can be up to 50 times more than MF levels from PTC systems.

12. The proposed New Line will occupy the busiest streets in the center of Stoneham, and many residences are located close to the streets where the line is proposed to be constructed. In some cases the nearest residences will be located only 10-20 feet from the proposed line. There is a constant flow of pedestrians and vehicles on all of the streets where the line will be constructed.

13. The Siting Board has emphasized in a number of decisions the importance of practical measures to minimize exposure to magnetic fields from transmission lines. Given the proposed location of the New Line in densely populated Town streets and the high level of public concern over MF levels, the Siting Board failed to minimize sufficiently exposure to magnetic fields over the 40-year life of the New Line when it approved the use of XLPE technology rather than PTC technology.

#### **Construction Impacts of XLPE Technology**

14. In addition to reduced MF levels with PTC technology, Stoneham recommended PTC technology in order to lessen construction impacts on existing utilities that will be caused by the New Line if XLPE technology is used. The presence of XLPE cable duct banks will cause adverse impacts and the loss of space within Town streets for existing and future infrastructure. In contrast, use of PTC technology would reduce the difficulties of installing the proposed line and lessen interference with future Town infrastructure in Town streets.

15. There is more flexibility when installing PTC systems in Town streets, compared with XLPE systems. This is particularly important for streets along the proposed route that have been in existence for many decades where there are existing utility facilities which are old and



congested in the streets such as water, sewer and natural gas facilities. Due to the size and fixed nature of XLPE duct banks, the XLPE duct banks may need to be buried deeper than PTC facilities, below existing utility facilities, making construction more difficult.

16. Fewer cable splice vaults will be required for PTC technology when compared with XLPE technology. PTC cables are smaller and lighter than XLPE cables, and therefore longer lengths of PTC cable can be used, requiring fewer manhole splice vaults along the route than if XLPE cables are used. The typical distance between splice vaults in XLPE systems is 1,500-1,800 feet. PTC splice vaults can be as much as 3,500 feet apart, and PTC manholes are smaller than XLPE manholes. Fewer splice vaults would reduce the amount of construction and resulting traffic congestion that will occur in Town streets.

#### **Further Evidence Required**

17. In light of the concerns expressed, and testimony presented, during the proceeding on the MF levels from the construction of the New Line using XLPE technology, the Final Decision requires the Companies to further evaluate any site-specific additional magnetic field mitigation that can be feasibly engineered into the project design, particularly for close residences 20-30 feet from the New Line. The Companies are required to file that evaluation as soon as practicable but not less than 90 days prior to the commencement of construction in residential areas, identifying additional feasible magnetic field mitigation. Final Decision at 127; Condition P at 157.

18. This filing required by the Siting Board will address one of the central issues in the proceeding, which is the environmental and health impacts of MF levels in residential areas near the New Line and whether those levels can be mitigated. It also may result in changes to the design of the New Line as a result of new mitigation measures proposed by the Companies.

However, the requirement for the Companies to submit this information was made in the Final Decision. This gives Stoneham, or any of the other parties, no rights or recourse to review, evaluate through cross-examination or comment on potential design changes to the line to mitigate of MF levels to be submitted by the Companies and the effectiveness of those changes in residential areas that are of vital importance to the Town in this proceeding. The request for this information by the Siting Board is, in essence, an order for production of evidence by the Companies that should have been made during the proceeding so that all parties could review and comment on the information contained in the filing. The record should not have been closed and a decision made until all evidence was received on the MF mitigation issue. Therefore, the Final Decision should be remanded to Siting Board to consider and evaluate the additional evidence on MF mitigation in residential areas that will be submitted by the Companies. G.L. c. 30A, s. 14(6).

19. The approval of the use of XLPE technology rather than the PTC technology proposed by Stoneham was unsupported by substantial evidence, was contrary to prior decisions of the Siting Board and contrary to the laws of the Commonwealth.

#### **Use of Elm Street for the Proposed Route**

20. Elm Street in Stoneham is narrow, approximately only 30 feet wide, with single-family houses constructed many years ago located on both sides of the street and close to the street. The proposed route of the New Line travels the entire length of Elm Street in Stoneham which is close to one mile. Construction of the line on Elm Street could create significant delays for emergency first responders to public safety issues. The Stoneham Police and Fire Chiefs, the Director of Public Works and the Chief Executive Officer of Action Ambulance Service, Inc., an

ambulance company that regularly responds to medical emergencies along or near Elm Street, all testified to the potential public safety problems with construction of the line on Elm Street.

21. The Companies should be directed to address thoroughly the public safety issues raised by Stoneham with construction of the line on Elm Street. Final Decision at 87-88.

22. The approval of the use of Elm Street rather than an alternative route is unsupported by substantial evidence and contrary to the laws of the Commonwealth.

### **Prayer for Relief**

WHEREFORE, Stoneham requests that this Court:

1. Set aside the Final Decision of the Energy Facilities Siting Board;
2. Set aside and reverse the Siting Board's findings and rulings as arbitrary and capricious, unsupported by substantial evidence, an abuse of discretion, lacking adequate subsidiary findings, inconsistent with precedent, rendered on an incomplete record prior to the close of evidence or otherwise not in accordance with law;
3. Reverse the Siting Board's Final Decision and remand this case to the Siting Board for the purpose of considering the additional evidence on MF mitigation to be filed by the Companies and entering a Final Decision in accord with the substantial evidence entered which requires the use of PTC cable technology rather than XLPE technology;
4. Reverse the Siting Board's Final Decision and remand this case to the Siting Board for the purpose of entering a Final Decision in accord with the substantial evidence entered which addresses thoroughly the public safety issues raised by Stoneham with construction of the line on Elm Street.




5. Grant such other relief as the Court deems necessary and proper.

Respectfully submitted,

TOWN OF STONEHAM

By its attorneys,

  
\_\_\_\_\_  
Robert L. Dewees, Jr., BBO # 122760  
Donald D. Cooper, BBO # 098330  
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(617) 345-1000

Dated: March 20, 2018

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, SS.**

**SUPREME JUDICIAL COURT**

**No.** \_\_\_\_\_

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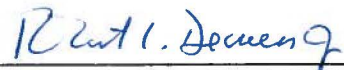
**CERTIFICATE OF APPEAL**

I, Robert L. Dewees, Jr., counsel for Appellant Town of Stoneham, hereby certify that, in my opinion, there is probable grounds for appeal from the Final Decision of the Energy Facilities Siting Board in the proceedings docketed as EFSB 15-04, D.P.U. 15-140 and D.P.U. 15-141, to make it a fit subject for judicial inquiry and that this appeal is not taken for the purpose of delay.

Respectfully submitted,

TOWN OF STONEHAM

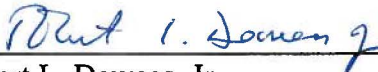
By its attorneys,

  
\_\_\_\_\_  
Robert L. Dewees, Jr., BBO # 122760  
Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110  
(617) 345-1316

Dated: March 20, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing Petition for Appeal and Certificate of Appeal upon the Energy Facilities Siting Board and the Service List in the above proceeding in accordance with the requirements of 980 C.M.R. 1.03 (Siting Board's Rules of Practice and Procedure).

  
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Robert L. Dewees, Jr.

Dated: March 20, 2018