

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

May 2, 2011

D.P.U. 10-165

Petition of Western Massachusetts Electric Company Pursuant to G.L. c. 164, §§ 69R, 72 for authority to take by eminent domain easement rights over property at 151 Labelle Street, West Springfield, MA

D.P.U. 10-166

Petition of Western Massachusetts Electric Company Pursuant to G.L. c. 164, §§ 69R, 72 for authority to take by eminent domain easement rights over property at 175 Labelle Street, West Springfield, MA

D.P.U. 10-167

Petition of Western Massachusetts Electric Company Pursuant to G.L. c. 164, §§ 69R, 72 for authority to take by eminent domain easement rights over property at 650B Memorial Drive, Chicopee, MA

D.P.U. 10-171

Petition of Western Massachusetts Electric Company Pursuant to G.L. c. 164, §§ 69R, 72 for authority to take by eminent domain easement rights over property at 545 Memorial Drive, Chicopee, MA

Appearances: Catherine Keuthen, Esq.
Keegan Werlin LLP
265 Franklin Street
Boston, MA 02110
FOR: Western Massachusetts Electric Company
Petitioner

I. INTRODUCTION

On November 23, 2010, Western Massachusetts Electric Company (“WMECo” or “Company”) filed three petitions with the Department of Public Utilities (“Department”) pursuant to G.L. c. 164 §§ 69R, 72, for eminent domain for easements at: (i) 151 Labelle Street, West Springfield, MA (D.P.U. 10-165); (ii) 175 Labelle Street, West Springfield, MA (D.P.U. 10-166); and (iii) 650B Memorial Drive, Chicopee, MA (D.P.U. 10-167). Acting on its own motion, the Department consolidated these three proceedings into a single docket. (Ruling on Consolidation, December 6, 2010). On December 21, 2010, the Company filed a fourth petition for eminent domain associated with property located at 545 Memorial Drive, Chicopee, MA, which was docketed as D.P.U. 10-171. D.P.U. 10-171 was subsequently consolidated with the other proceedings in a Ruling on Consolidation dated January 11, 2011.

On January 5, 2011, the Company filed a Notice of Withdrawal in D.P.U. 10-166, pursuant to 220 C.M.R. § 1.04(4)(a). On February 8, 2011 and March 2, 2011, WMECo filed a Notice of Withdrawal in D.P.U. 10-171 and D.P.U. 10-165, respectively, pursuant to 220 C.M.R. § 1.04(4)(a). Accordingly, the one remaining petition for eminent domain with respect to the property at 650B Memorial Drive in Chicopee (“Chicopee property”) is the subject of this Order.

The Chicopee property is located along existing rights-of-way associated with the recently approved Greater Springfield Reliability Project (“GSRP”). Western Massachusetts Electric Company, EFSB 08-2/D.P.U. 08-105/08-106 (2010). The Company currently has easement rights along the entire route of the GSRP that authorize the placement and use of the

existing poles and electrical equipment in the rights-of-way. In the case of the Chicopee property, the Company maintains that its existing transmission easement is 100 feet wide at this location and includes approximately 33 square feet of the property in the southern corner of the property (Exh. WMECo-1 at 3). WMECo states that it must expand the area of its current easement for the transmission lines by a maximum of 25 feet to the north (further into the property) because the existing easement is not wide enough to provide safety-code required clearances for the necessary relocation of the existing lines, which are currently located adjacent to the property at 650B Memorial Drive (id.).

II. PROCEDURAL HISTORY

On January 20, 2011, the Department held a public comment hearing concerning the consolidated proceedings in West Springfield. No member of the public requested to speak at the public hearing. The Department did not receive any petitions to intervene.

The Department conducted an evidentiary hearing at its offices in Boston on April 1, 2011. The Company sponsored the following witnesses in the proceeding: (1) John C. Case, project manager for Northeast Utilities Service Company (“NUSCo”); (2) Donald D. Cooper, Esq., partner in the law firm of Nixon Peabody; and (3) Jeffrey M. Towle, project manager for NUSCo.

III. STANDARD OF REVIEW

The Department, after notice and a public hearing in one or more of the towns affected by the proposed taking of land for transmission lines “may determine that said line is necessary

for the purpose alleged, and will serve the public convenience and is consistent with the public interest.” G.L. c. 164, § 72. Having done so, the Department may:

Authorize the company to take by eminent domain under [c. 79] such lands, or such rights of way or widening thereof, or other easements therein necessary for the construction and use or continued use as constructed . . . of the route prescribed in the order.

Id. Pursuant to G.L. c. 164, § 69R, an electric company may petition the Department for the right to exercise the power of eminent domain with respect to proposed facilities in a petition filed with the Energy Facilities Siting Board pursuant to G.L. c. 164, § 69J if such company is unable to reach agreement with the owners of land for the acquisition of any necessary estate or interest in land. According to Section 69R, the Department may thereafter authorize the company “to take by eminent domain under c. 79 such lands necessary for the construction of the facility as are required in the public interest, convenience and necessity.”

IV. DESCRIPTION

The GSRP in Massachusetts will consist of new 345-kV and upgraded 115 kV lines, which will be co-located in a 23-mile existing right-of-way (Exh. WMECO-1, at 2). Along the route WMECo requires a limited number of easements that involve physical expansion of the right-of-way, as well as a significant number of easements that expand the underlying easement rights to construct, operate, and maintain the GSRP (id. at 3). To date, the Company has acquired over 180 easements through voluntary purchase agreements (id.; Tr. at 21). Here, the Company maintains that it is requesting a standard current transmission line easement, and that the same or similar easements have been granted to WMECo by most landowners along the GSRP route (Exh. WMECo- J at 4 and 5).

The Company requires an easement that includes both a physical expansion of the corridor and an expansion of its underlying rights (Exh. WMECo-1 at 3; Tr. at 14 and 15). Specifically, in order to satisfy electrical safety code requirements, WMECo stated that the easement on the Chicopee property needs to be upgraded and the easement width needs to be expanded by a maximum of 25 feet (Exh. WMECO-I at 5). WMECo explained that it reviewed alternatives to expanding the width of the easement in this area but that the options had greater costs and increased reliability risks (Tr. at 12). In addition, the location of the project in the vicinity of the highway interchange necessitated keeping the facilities a safe distance from traffic (id.).

Currently, the 1.3 acre Chicopee property does not contain any transmission line towers or support structures, nor are any planned to be located as a result of the construction of the GSRP (Exh. WMECo-1 at 4). The current easement area is located between the edge of the parking lot on the Chicopee property and a ramp to the Mass Turnpike (id.). The easement expansion will be located approximately 2,500 square feet into the existing parking lot; the Company asserts the current use of the parking lot will be unaffected (id.). According to WMECo, based on the GSRP construction schedule, access to the property for construction will be required in the first quarter of 2011 (id. at 3).

The Company stated that it has engaged in good faith negotiations with the owner of the Chicopee property (Exhs. WMECo-1, at 4; WMECo- K at 10). Specifically, an offer was

made to the owner¹; and then provided to the tenant (Big Y Supermarket) (Exh. WMECo- K at 7-8). While the owner and tenant are receptive to WMECo's offer, under the owner's mortgage agreement, lender approval is required for any grant of easement rights on the Chicopee property (id. at 8; Tr. at 8, 9 and 10).² The Company indicated that it had made numerous contacts to the owner's representative regarding the easement, but the owner's representative stated that the lender (Wells Fargo) did not respond to the owner's request to grant approval of the easement agreement (Exh. WMECo-K at 9). Further, the owner's representative does not want WMECo to contact the lender directly, which it claims may interfere with the contractual arrangement between the owner and the lender (Tr. at 10).

V. ANALYSIS AND FINDINGS

As noted above, the Energy Facilities Siting Board approved the GSRP in September 2010. Western Massachusetts Electric Company, EFSB 08-2/D.P.U. 08-105/08-106 (2010). In that case, the Siting Board approved the Company's petition for approval of the project pursuant to G.L. c. 164, § 69J. Specifically, the Siting Board found that: (1) additional energy resources are needed under certain contingencies to reliably serve Greater Springfield; (2) the GSRP is, on balance, superior to alternative project approaches in terms of reliability, cost,

¹ By Memorial Drive, LLC, which is owned by Kamin Realty, LLC, holds title to 650B Memorial Drive (Exh. WMECo-K at 7).

² The mortgage documents specifically prohibit the conveyance of any encumbrances on the Karmin Realty properties without the lender's prior approval (Exh. WMECo-K). According to WMECo, it is common with properties that have large mortgages to have subordination clauses that state the lender has the right of approval or refusal if there are changes to be made to the title to the property (Tr. at 9).

environmental impact, and in its ability to meet the identified need; (3) the Company has developed and applied a reasonable set of criteria for identifying and evaluating alternatives to the proposed project in a manner that ensures that it has not overlooked or eliminated any routes which are clearly superior to the GSRP; (4) WMECo has demonstrated that it examined a reasonable range of practical siting alternatives; (5) the Northern Alternative is preferable to the Southern Alternative with respect to providing a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost; (6) with the implementation of the specified mitigation and conditions, and compliance with all local, state and federal requirements, the environmental impacts of the GSRP would be minimized; and, (7) the proposed GSRP along the Northern Alternative would be generally consistent with the Commonwealth's health policies, environmental protection policies, and resource use and development policies.

Further, the Siting Board approved the Company's petition for approval of the GSRP pursuant to G.L. c. 164, § 72. The Siting Board found that the proposed facilities are necessary for the purpose alleged, will serve the public convenience, and are consistent with the public interest. *Id.* at 139.

Here, the Company has negotiated in good faith with the owner and tenant of the Chicopee property, agreeing in principle to WMECo's offer. However, a signed agreement for the purchase of any encumbrance on the property cannot legally take place without the approval of the lender, as specifically detailed in the mortgage and loan agreement between

Kamin Realty and its lender. The GSRP cannot be constructed in the area of Memorial Drive in Chicopee without the requested easement.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is hereby:

ORDERED: That the petition of WMECo for the right to exercise eminent domain power under G.L. c. 79 and c. 164 to enter upon and to take a perpetual nonexclusive easement in land owned by By Memorial Drive, and any other party claiming an adverse interest in property located at 650B Memorial Drive, Chicopee, identified as Tract 5179.01 at Exh. WMECo-B at Exh. A, and described in Exh. WMECo-B at Exh. A-1 filed with the Department for the construction, operation and maintenance of the GSRP transmission lines is granted; and WMECo shall, as described in Western Massachusetts Electric Company, EFSB 08-2/D.P.U. 08-105/08-106 (2010), to the maximum extent practicable, avoid the adverse environmental effects of construction on the easement whose taking is authorized by this Order, and it is

FURTHER ORDERED: That the rights of WMECo granted herein are expressly subject to the following conditions:

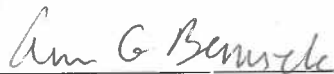
(1) To the extent practical, WMECo shall restore the property to its original condition upon completion of construction;

(2) WMECo will not unreasonably interfere with existing easement rights held by others; and

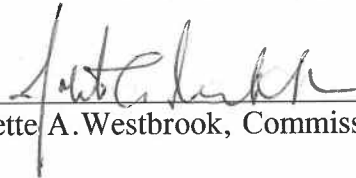
(3) the Order of Taking recorded pursuant to G. L. c. 79 shall comply with this Order, and it is

FURTHER ORDERED: That the Secretary of the Department of Public Utilities shall transmit a certified copy of this Order to WMECo and the Chicopee City Clerk; and that WMECo shall serve a copy of this Order upon By Memorial Drive, LLC (either upon the attorney or at the last known address of each) within five business days of its issuance and shall certify to the Secretary of the Department of Public Utilities within ten business days of its issuance that such service has been accomplished.

By Order of the Department:



Ann G. Berwick, Chairman



Jolette A. Westbrook, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.