

Submitted electronically to Jerome.Grafe@mass.gov

May 10, 2020

Daniel Padien, Waterways Program Chief
Department of Environmental Protection
One Winter Street Boston, MA 02108

Subject: 338 East Eagle Street and Condor Street, Waterways Application #W14-4297

Dear Mr. Padien:

We, the undersigned, write to you with continued concerns about the Eversource proposal to construct and maintain an electrical substation on East Eagle Street in East Boston. We do not believe that the proposed project should be designated a water-dependent use nor do we think it should be located within the Chelsea Creek Designated Port Area. We urge the Department to reject the Waterways Application and require the Proponent to evaluate alternative locations for the substation.

Water-dependent use status

As described in the Waterways license application and on its website, Eversource has proposed to construct and maintain a new electrical substation on a 0.38-acre parcel it owns on East Eagle Street in East Boston ("Project"). The new substation would be connected to existing substations in Everett and Chelsea via high-voltage underground electric transmission cables.

Eversource has stated that the proposed Project use is water-dependent as it cannot reasonably be located further inland, and because it supports existing water-dependent uses along Chelsea Creek. However, Eversource has also stated that it had originally intended to construct the substation on a Bremen Street parcel but agreed to change the location when the City indicated a strong desire to obtain the Bremen Street parcel for the new East Boston Public Library. If the Project was originally intended for the Bremen Street parcel as stated by the Proponent, it is clearly not a water-dependent use since the Bremen Street site is not located on the waterfront.

As Eversource well knows, substations are not inherently water-dependent. In fact, Eversource has a number of other substations located inland throughout the Commonwealth including facilities in Dorchester, Walpole, Medway, and Waltham. In accordance with 310 CMR 9.12(2)(c) and (d), the presumption is that a project is not water-dependent unless the presumption is overcome with a "clear showing that the facility cannot reasonably be located or

operated away from tidal or inland waters.” To our knowledge, the Proponent has failed to provide any compelling analyses or evidence to support this claim. We therefore strongly urge the Department to reconsider its determination that the Project is a water-dependent use.

Moreover, it seems that the Department’s determination that this Project is a water-dependent use is inconsistent with its past treatment of similarly situated projects. For example, in a 2018 determination on National Grid’s Waterways License Application No. W16-4967 (170 Medford Street, Malden), the Department determined that the use of filled tidelands for an identical land use in a similar setting was nonwater-dependent. This determination is seemingly in conflict with the determination for the Eversource substation project. We request clarity on why the Eversource project meets the criteria for water-dependent use when the National Grid project did not. It remains unclear what evidence, if any, was provided by Eversource to the Department to support this finding.

Location in the Chelsea Creek Designated Port Area

The proposed substation would be located within a Designated Port Area (DPA), which is expressly designed to prevent water-dependent industrial uses from being encroached upon. The primary regulations addressing DPAs are codified at 301 CMR 25, Waterways regulations (301 CMR 9) and Municipal Harbor Plans regulations (301 CMR 23).

DPAs seek to ensure that water-dependent industrial uses are encouraged in areas that contain three essential components for their success (1) waterways and developed waterfronts (especially those with deep enough channels to support larger vessels); (2) backlands (the land situated behind these waterways and waterfronts) of supporting industrial facilities and operations; and (3) transportation and public utilities appropriate to service industrial operations.

As an increasing percentage of Boston’s waterfront is converted to residential and commercial development, such areas appropriate for water-dependent industrial uses are becoming increasingly rare. Therefore, the “industrialized coast should be preserved to the maximum extent practicable in order to meet the long term, cumulative space needs of the water-dependent industries” (301 CMR 25). As a result, DPAs are currently restricted to those activities defined in 310 CMR 9.12(2)(b-d), including as examples marine terminals, commercial fishing facilities, marine repair and construction facilities, manufacturing facilities that rely primarily on bulk receipt, or facilities accommodating the shipment of goods by water.

The Eagle Street site is located within a concentration of existing marine industrial uses. But the Proponent has provided no analysis demonstrating that this substation, and its location within the Chelsea Creek DPA, would support the operation of existing adjacent maritime uses. Once again, the fact that the substation was initially envisioned to be built at the Bremen Street parcel demonstrates that support for maritime uses was not even

contemplated, let alone was it a main driver of this project.

To our knowledge, Eversource has never indicated that the industrial users along the Creek are an increasing source of demand or a prime factor in driving need for the substation. If Eversource asserts that the East Eagle substation is needed to support the adjacent marine industrial uses, the company should provide estimates of exactly how much of the electrical capacity of the substation would support the marine industrial users of the Creek. This information is needed in order to determine the degree to which the construction of this facility in this location can reasonably be assumed to be driven by marine industrial users' needs.

Finally, the location of the substation at the northwest-most corner of the property cuts off the entire extent of the waterfront along that stretch of the Creek, precluding any continuation of public access to the waterfront from the Condor Street Urban Wild. What is left of the so-called "City Yards" property is an isolated piece of waterfront that has been rendered inaccessible to the public and unusable for any marine industrial use. Allowing this substation to be constructed at this location will effectively isolate a large DPA property rendering it useless due to encroaching, nonwater-dependent uses that are not intended to support maritime economic activity.

While we understand the need to ensure East Boston's electrical supply, we continue to believe that there are other viable solutions and locations to this proposed substation, especially in light of the recently proposed construction of similar infrastructure some 1,800 feet away on Massport property.

Procedural Concerns

The process with which this project has proceeded has been complex and challenging for all involved, especially the directly affected members of this Environmental Justice community. The interplay between the procedures of the Energy Facilities Siting Board (EFSB) and the Waterways licensing process has resulted in a series of starts and stops of the process whereby Eversource has received a determination of water dependency and then stopped the permit application process to return to the EFSB process, leaving advocates and the public confused over where and when comments should be addressed. A separate, but related, Waterways application was filed for this project, concerning the conduit under the Chelsea Creek and surfacing on the property in question, which served to confuse matters more as many community members erroneously thought that the application was for the substation project and therefore the process was done.

Furthermore, even the most recent public announcement of the License Application (dated December 21, 2018) was incorrectly worded in that it specifies "the project site is not located within the Boston Inner Harbor DPA." While true, this is irrelevant and misleading. The relevant

information that should have been divulged in this notice is that the project site is within the Chelsea Creek DPA. 310 CMR 9.13(1)(c)(2) states that notices shall contain, “a description of the location of the project, including whether it is located in an ACEC, DPA, or an Ocean Sanctuary.”

The notice itself was provided to direct abutters and announced in the paper of record, according to your office. However, it is unclear whether the notice was also published in Spanish. In a March 2020 letter to City Councilor Lydia Edwards, the Department indicated that it would work with Eversource to “ensure that the notice is published in appropriate languages and newspapers in the community to address environmental justice concerns.” We request clarification from the Department on whether the notice was published in local Spanish language media. In this same letter, the Department states that due to the changes to the project subsequent to the previous notification, the Boston Planning and Development Agency was notified of the review process and will be given the opportunity for “review and recommendation.” We would like to note for the record that the City of Boston has signed a Purchase and Sales agreement with Eversource that expressly prohibits the City from opposing the project or supporting anyone that opposes it.

Other Considerations and Local Context

There are several other reasons that this project should not move forward. While these considerations are not squarely within the Waterways Regulations, they should be considered by the Department in its review of this application.

First, the proposed substation would be located in a floodplain and is likely to experience an increased amount of flood risk from both sea level rise and an increase in extreme precipitation and associated stormwater over the useful life of the facility. According to the Union of Concerned Scientists, the substation could face flooding of at least one foot of water or more over the next fifty years and by the end of the century will suffer chronic inundation with floods occurring at least twenty-six times per year. Siting a substation in a flood-prone area with little to no consideration for long-term and cumulative climate impacts is not only inconsistent with both City and State policy, but it is highly irresponsible. As previously stated, there is no practicable reason why this substation cannot be sited in an alternative, less risky location.

In addition to this increased flood risk, the proposed substation would be located in a densely populated neighborhood that has historically been subjected to environmental injustices. The East Boston community, home to more than 40,000 people, has more than its fair share of these types of facilities. The population is predominantly Latinx and low-income with 17 percent of residents living below the poverty line. For over a hundred years, industrial uses have left a burden of contamination in the soil, the water, and the air. The ongoing COVID-19 crisis has highlighted the ramifications of these generational inequities. Communities like East Boston are experiencing higher rates of infection and deaths from COVID-19 and studies suggest that air pollution, as well as

related underlying respiratory conditions like asthma, play a role in the severity of illness and risk of death.

Finally, the permitting and review processes for this project, which have been ongoing for over five years, have failed to incorporate adequate public engagement and participation. Residents with limited English abilities have been repeatedly left out of permitting and review processes, including the EFSB review process. In fact, the EFSB failed to fulfill its legal obligation for language access by consistently failing to provide adequate interpretation services. Spanish-speaking residents have thus been systematically left out of the process, rendering impossible meaningful public engagement. Language justice is essential to health equity, environmental, and climate justice. For communities like East Boston and Chelsea, where the land and communities bear both pollution burdens and climate risks, the need is especially vital.

The EFSB review process, which has been riddled with public participation inadequacies, is still ongoing. Although a tentative decision was issued in February 2020, the process cannot conclude until the final public hearing and comment period are held and the EFSB issues a final decision. A public hearing was scheduled for March 11 but had to be postponed due to the ongoing COVID-19 crisis. It is unclear when the hearing will be rescheduled or when the review process will resume. We strongly urge you to delay consideration of this Waterways Application until the EFSB process has concluded. It would be premature for this process to move forward before the EFSB has issued its final decision on the siting of the substation at this location.

Separately, a Boston City Council hearing concerning the project was called for by Ward 1 Councilor Lydia Edwards and has been rescheduled for May 22, 2020. The Boston Conservation Commission at their May 6, 2020 meeting ruled that they will not issue an Order of Conditions on this project until after that hearing, and that they fully expect that Eversource will participate in good faith. Given that this is yet another permitting process for the project that has been delayed, it is even more appropriate for the Department to delay review of this Waterways Application.

Thank you for your consideration of these comments. We respectfully request that you reject this Waterways Application, reconsider the water-dependent status of the project, and encourage Eversource to evaluate alternative locations for the facility.

Sincerely

,

Deanna Moran Director,
Environmental Planning
Conservation Law Foundation

Roseanne Bongiovanni

Executive Director
GreenRoots

Aaron Toffler
Director of Policy
Boston Harbor Now

Magdalena Ayed
Executive Director
**The
Harborkeepers**

Patrick Herron Executive Director
Mystic River Watershed Association

Dwain Tyndal Executive Director **Alternatives for
Community & Environment (ACE)**

Cindy Luppi New England Director **Clean
Water Action and Clean Water Fund**

Andrea Nyamekye Campaign and
Policy Director **Neighbor to Neighbor
Massachusetts**

Paula García Bilingual Energy
Analyst **Union of Concerned
Scientists**

Lee Matsueda Executive
Director **Community
Labor United**

Jen Stevenson Zepeda
Deputy Director
Climable.org

Deb Pasternak Massachusetts
Chapter Director **Sierra Club**

Claire Müller Lead
Community Organizer
Toxics Action Center

Laura Wagner Executive Director
Unitarian Universalist Mass Action

Sonja Tengblad **Mothers Out**
Front - East Boston

Heather O'Brien **Boston Harbor Storm Surge**
Working Group

Mary Mitchell President **The**
Friends of Belle Isle Marsh

Lara Caralis Chair **Beautification Committee of the Eagle Hill**
Civic Association