

**NSTAR Electric Company d/b/a Eversource Energy  
Findings of Fact and Reasons for Denial**

Based on the authority granted to the Woburn City Council under M.G.L. Ch.166, §22 and M.G.L. Ch.164, §72(a), the general discretion of the Woburn City Council and the following Findings of Fact and Reasons for Denial, the Woburn City Council hereby denies the petition by NSTAR Electric Company d/b/a Eversource Energy (hereinafter “the petitioner”) for a grant of right in a public way pursuant to Massachusetts General Laws Chapter 166, Section 22 to allow installation of a new subsurface 345 kilovolt transmission conduit duct bank with appurtenant communication/signal wires beneath Lake Avenue (approximately 1485 linear feet), Pickering Street (approximately 475 linear feet), Border Street (approximately 540 linear feet), Cross Street (approximately 365 linear feet), Washington Street (approximately 2,275 linear feet), and Montvale Avenue (approximately 2090 linear feet) (hereinafter “the Project”):

1. The grant of a right of way to construct or alter transmission lines is within the authority of the City Council.
2. The City Council shall not act arbitrarily or capriciously.
3. An important consideration for the City of Woburn in granting a right of way is the impact said right of way would have on the community and whether the grant would incommode the public.
4. The proposed project, as set forth herein, incommodes the public use of public ways and/or interrupts navigation.
5. Pursuant to M.G.L. Ch.166, §22, the City Council has exclusive authority in the City of Woburn to grant a right in a public way for the installation of electric transmission lines.
6. Pursuant to M.G.L. Ch.164, §72(a), unless the City Council grants a right in a way for the installation of an electric transmission line, the petitioner shall not transmit electricity through any transmission line that may be installed.
7. In Boston Edison Company vs. Board of Selectman of Concord, 355 Mass. 79, 242 NE 2nd 868 (1968), the Supreme Judicial Court found in favor of the Board of Selectman of Concord which denied Boston Edison Company permission to cross certain public ways in the respective towns with its high tension wires due to incommoding the public.
8. Pursuant to M.G.L. Ch. 166, §21, the basic standard stated by the Supreme Judicial Court is that the petitioner in installing transmission lines “shall not incommode the public use of public ways or endanger or interrupt navigation”. [See Boston Edison Company vs. Board of Selectman of Concord, 355 Mass. at 87, 242 NE 2nd at 874 (1968)]
9. The Supreme Judicial Court defined incommode as “...to give inconvenience or trouble to; to disturb or molest; to put out...” and “...to subject to inconvenience or discomfort; to

trouble, annoy ...”. Boston Edison Company vs. Board of Selectman of Concord, 355 Mass. at 90, 242 NE 2nd at 876, Footnote 2 (1968).

10. A valid consideration in whether or not to grant a right of way as contemplated by M.G.L. c.166, section 22 is the economy and/or efficiency of granting a right of way to the extent that other wires or cables of other providers may use the same right of way. M.G.L. c.166, section 22 specifically authorizes the City after granting a right of way and after the erection of the same to permit an increase in the number of wires or cables and grant other companies the right to attach its wires. The proposed right of way, due to the nature of the voltage, will impede or prohibit the use by other users and indeed would more than likely prohibit the placement of other utilities in the ground proximate to the proposed line. Granting a public way that primarily benefits one service and excludes other uses is not in the best interests of the City and will potentially cause further disruption and interference with public ways in other locations if other utilities need to stay outside of the same right of way and other rights of way are required.
11. City water mains, water service lines to water users, city sewer mains and service lines are all in the ground in proximity to the proposed transmission line.
12. The City Council is duty bound to protect the integrity of the City infrastructure from damage that may occur during the proposed construction of the transmission line and for the long-term maintenance and repair of City infrastructure which would be significantly hindered and/or problematic if such repairs and maintenance are necessary in the proximity of a subsurface 345 kilovolt transmission conduit.
13. At the request and/or agreement of the Petitioner, this matter was continued to allow Petitioner to answer a myriad of questions that arose as well as to give the Petitioner time to confer with City Department heads, including the Superintendent of DPW.
14. Petitioner was unable to address all of the issues that arose with the Superintendent of DPW because, as acknowledged by the Petitioner, two Nor’easters in March interfered with their ability to conduct survey work along the project route. On or about Tuesday, April 17, 2018, the same date of the last meeting of the City Council, the Petitioner informed the Superintendent of DPW of the following:
  - a. “Lake Ave Routing: Black and Veatch is completing a feasibility study to determine the best way to get the duct bank off of Lake Ave. We had to complete a detailed survey of the city property between Lake Ave and Horn Pond to ensure that all impacts to city property could be identified. The survey work was delayed due to the back to back Nor’easters in March. This survey has now been completed and B&V is working on conceptual design for the area. Once the study has been completed we plan to reach back out to review the options.”
  - b. “Utility relocations due to Manhole on Pickering Street: Black and Veatch is completing a feasibility study to show the anticipated utilities to be relocated as part of the manhole

location on Pickering Street. Once the study has been completed we plan to reach back out to review the drawings.”

- c. “Geotechnical and Test Pit Data: My apologies for not sending this information sooner. I mistakenly thought that this had been provided. I have attached the geotechnical report for your review.”
  - d. “Test Pit Data: My apologies for not sending this information sooner. I mistakenly thought that this had been provided. I have attached the test pit Information for your review.”
15. The Superintendent of DPW met with the Petitioners Team and new plans were submitted to the Superintendent of DPW on April 25, 2018. The Superintendent requested that additional details be provided which clearly demonstrate that the proposed transmission line can be properly positioned to allow clear access and provide reasonable clearances away from City infrastructure. The Petitioner requested additional time be granted to them to provide these details.
  16. The City of Woburn already contributes to the power grid and there are already approximately twelve miles of transmission lines currently in the city.
  17. A portion of the Project will be constructed under the Horn Pond Brook at the Scalley Dam.
  18. The dam is critical to the security and integrity of Horn Pond and the aquifer below it that provides a significant portion of the City water.
  19. The roadway at the Scalley Dam has been subject to settling during washouts.
  20. The Scalley Dam has been reconstructed a number of times over the years to ensure the integrity of the dam to protect the safety and welfare of the residents and property owners downstream from the dam.
  21. Past breaches of the Scalley Dam have caused millions of dollars of property damage in Woburn and Winchester over the years.
  22. The most recent reconstruction of the Scalley Dam was completed in 2017 at a cost of approximately \$1,000,000.00.
  23. The 2017 reconstruction of the Scalley Dam was performed to address known risks to future deterioration of the dam based on existing conditions at the time of construction.
  24. Even during the 2017 reconstruction of the Scalley Dam a breach occurred that indicates the uncertainty of the stability of controlling the flow of water from Horn Pond to the Horn Pond Brook downstream.

25. Plans provided by Eversource do not include construction details including the impact of the 345 kV transmission line on the Scalley Dam or other infrastructure.
26. Possible breach of the Scalley Dam could cause millions of dollars of property damage in both Woburn and Winchester.
27. Further breach of the Scalley Dam caused by construction of or the impact from the operation of the 345 kV transmission line over time may result in additional property damage as well as potential personal injury.
28. Also, a breach of the Scalley Dam in the future would undermine Lake Avenue and any infrastructure under the roadway including the 345 kV transmission line.
29. The Scalley Dam is also located on Lake Avenue. The area of the Project on Lake Avenue is a heavily used passive recreation area with hundreds of pedestrians walking along the street sidewalks on any given day.
30. A municipal parking lot is located on Lake Avenue that is used for public access to the Horn Pond recreation area along the route of the Project.
31. Further, Lake Avenue is a heavily traveled roadway connecting Woburn with Winchester and Arlington.
32. Many passenger vehicles and commercial vehicles, including tractor-trailer trucks, pass along Lake Avenue each day.
33. The extended period of construction and future maintenance work on the Project will cause disruption in the flow of traffic, impact residents and pedestrians, and be a continuing source of such disruption as the ground is dug up to make repairs as needed, on Lake Avenue as well as other streets along the route of the Project.
34. Pickering Street, which is also along the route of the Project, is a narrow street with smaller house lots that have numerous homes constructed with little or no setback from the street. The closest house from the vault on Pickering Street is a distance of eighteen feet according to the design on record as confirmed by the City Engineer.
35. The construction and future maintenance of the Project will cause severe disruption and annoyance for the residents and property owners along Pickering Street and will prohibit the flow of vehicles along the inferior roadway and access to the homes.
36. A ten foot by thirty foot vault is proposed to be constructed on Pickering Street.
37. The construction of the vault on Pickering Street will prohibit vehicular and pedestrian traffic on the street and access by residents to their homes, including deliveries, visiting nurses and other necessary travel.

38. Further, Border Street, also along the route of the Project, is a narrow street with smaller house lots that have numerous homes constructed with little or no setback from the street.
39. The construction plans of petitioner do not address current conditions of the city's existing infrastructure under the roadways.
40. The construction and future maintenance of the Project will cause severe disruption and annoyance for the residents and property owners along Border Street and will prohibit the flow of vehicles along the roadway and access to the homes.
41. Further, the areas of Lake Avenue, Pickering Street and Border Street are among the oldest settled areas in the city and the extensive construction and maintenance of the Project may jeopardize the integrity of the many homes and buildings along the roadways which have inferior rubble stone basements and older/outdated construction methods.
42. In addition, the water service from the pumping station to large areas of the city passes along Lake Avenue, potentially leaving the city's water source susceptible to disruption caused by the Project.
43. The water lines, sewer lines, and other underground infrastructure in the area of Lake Avenue, Pickering Street, and Border Street will be disturbed and may be jeopardized by the extensive construction and future maintenance of the Project.
44. Cross Street is a heavily traveled and thickly settled roadway connecting Woburn, Winchester and Stoneham and used by many commuters to access Interstate Route 93.
45. The construction and future maintenance of the project will cause severe disruption and annoyance for the residents, property owners and the travelling public along the roadway.
46. The Project also runs along Washington Street which is a heavily traveled roadway connecting Woburn and Winchester, with 18,000 cars per day according to information from the MassDOT Traffic Data Collection.
47. Ambulance services constantly use Washington Street for access to Winchester Hospital.
48. The line of the Project on Washington Street will pass an established playground with baseball fields, football fields, a street hockey rink, a seasonal swimming pool, children's playground equipment and is a place of gathering for children and their families year round.
49. The construction and future maintenance of the Project along Washington Street will severely disrupt travel and cause additional inconveniences and annoyances to the residents and traveling public along the roadway.
50. Montvale Avenue, also along the route of the Project, is a heavily traveled roadway that connects Woburn to Interstate Route 93, with 25,000 cars per day according to information from the MassDOT Traffic Data Collection.

51. The intersection of Washington Street and Montvale Avenue is one of the most congested intersections in the city.
52. Washington Street, as well as Montvale Avenue will be part of a street widening project. Upon completion of the widening of Washington Street and Montvale Avenue, the Washington Street roadway will absorb additional heavy traffic volume.
53. In addition, upon completion of the widening of Washington Street and Montvale Avenue, the Montvale Avenue roadway will absorb additional heavy traffic volume.
54. There are at least six (6) bus routes along the proposed route of the underground transmission line with stops along the route. These routes would most certainly be disrupted during construction causing significant inconvenience and disruption.
55. There are at least six (6) bus routes along the proposed route of the underground transmission line with stops along the route where children could be exposed to EMF if the transmission line is in operation.
56. Further, the Project's proposed transmission line will be constructed along Montvale Avenue including the section that passes over the Aberjona River.
57. The proposal to excavate in, around and/or under the Aberjona River would have a negative impact upon the city of Woburn. It is well-established that the sediment in and around the wetlands and riverbed of the Aberjona river is potentially contaminated as a result of the numerous Superfund sites in the area. The disruption and movement of this potentially contaminated settlement prohibits approval of the proposal.
58. The construction and future maintenance of the Project along Montvale Avenue will severely disrupt travel and cause additional inconveniences and annoyances to the residents and traveling public along the roadway.
59. The petitioner argues there is no causal link to negative health effects as a result of continued exposure to EMF. Nevertheless, the Petitioner concedes that it is also true that it has not been established that EMF does not cause negative health effects as a result of continued exposure to EMF.
60. The impact of the electromagnetic field ("EMF") emitted from the Project creates public health concerns, as the majority of the Project will run through single and two family residential neighborhoods.
61. In the final decision of the Energy Facilities Siting Board (the "EFSB"), the EFSB recognized the existing EMF impact from construction and operation of the Project.

62. In the final decision of the EFSB, the EFSB ordered Eversource to continue to evaluate the mitigation of the EMF indicating that the mitigation proposed to date is not sufficient to alleviate public health concerns.
63. The Project may diminish the property value of homes along the route of the Project because of the close proximity and location of the Project.
64. The petitioner was unable, after repeated requests, to provide evidence of the location of a comparable installation of a 345kV transmission line using the cross-linked polyethylene (XLPE) cable system method of installation for such a distance or in such a thickly settled residential area on a substandard road.
65. During the multiple Public Hearings, the petitioner touted their public relations capabilities in notifying the public and frequently stated that residents were consistently notified, including mailings and visits to residents' homes referred to by the petitioner as "door knocking". Many residents that live directly on the route of the transmission line stated that they had not received one mailing or notification from the petitioner about the project or about the public hearings that were taking place.
66. After the first Public Hearing held on February 20, 2018, the petitioner's representatives stated that they would send out notifications of any future Public Hearings that were to follow to the residents. The petitioner presented no evidence of the notification being sent to the residents.
67. At the Public Hearing on April 17, 2018, the City Council asked for the list of residents that have been notified about this project. The petitioner agreed to provide the list of residents. As of May 1, 2018, the City Council has not received any such list from the petitioner.
68. At the Public Hearing on April 17, 2018, the petitioner offered to send to the City Council, in care of the office of the City Clerk, a PDF file of the construction plans of the project to post on the City of Woburn's website to give residents more information on the project. As of May 1, 2018, the City Clerk has not received said construction plans of the project from the petitioner.
69. The vaults along Lake Avenue, Pickering Street, Washington Street and Montvale Avenue will have high levels of EMF exceeding those determined to have effect on human health by the World Health Organization, a specialized agency of the United Nations that is concerned with international public health.
70. The 90° turn at the intersection of Lake Avenue and Pickering Street will have higher levels of EMF exceeding those determined to have effect on human health by the World Health Organization.
71. The 90° turn at the intersection of Pickering Street and Border Street will have higher levels of EMF exceeding those determined to have effect on human health by the World Health Organization.

72. The 90° turn at the intersection of Washington Street and Montvale Avenue will have higher levels of EMF exceeding those determined to have effect on human health by the World Health Organization.
73. Although health effects of the EMF may be outside the scope of the term incommoding, the City Council is cognizant of the history of the industrial uses in the city which caused or contributed to childhood leukemia from land designated by the Federal Government as a Superfund Site. [See Anderson vs. W.R. Grace & Co., 628 F. Supp. 1219 (D. Mass. 1986); Anderson vs. Cryovac, Inc., 862 F.2d 910 (1988)].
74. The evidence presented including plans, documents, and testimony at the public hearing shows a significant incommoding of the public during construction and future operation of the 345 kV transmission line and therefore the petition for a grant of right in a way must be denied.
75. Although the review of the petition for a grant of right in a way by the City Council is limited to the incommoding of the public and that the plans, documents and testimony provided as evidence clearly demonstrates a significant incommoding of the public during construction and future operation of the 345 kV transmission line, the City Council noted during testimony by the petitioner that a route along an existing utility easement controlled by the petitioner exists which would relieve that public of the significant incommoding presented in the proposed petition for a grant of right in a way.