COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Petition of Boston Edison Company, pursuant to G.L., c. 164, § 72 for approval of transmission line and eminent domain authority	D.T.E. 99-57

FINAL DECISION

Denise L. Desautels
Hearing Officer
September 9, 1999

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I. INTRODUCTION

On June 11, 1999, Boston Edison Company ("BECo") filed a petition with the Department of Telecommunications and Energy ("Department") requesting the following: (1) approval under G. L. c. 164, § 72 to construct, maintain, and operate a proposed 1.1 mile overhead transmission line ("Interconnection Line") through the towns of Mendon and Blackstone, Massachusetts, which would interconnect ANP Blackstone Energy Company's ("ANP Blackstone") proposed generating facility with BECo's transmission system; and (2) authority to take by eminent domain non-exclusive easement rights[1] in land owned by ANP Blackstone and against ANP Blackstone Energy Company and all prior owners or predecessors in title and any other party claiming an adverse interest along the route of the Interconnection Line in the towns of Mendon and Blackstone. Both the ANP Blackstone generating facility and the Interconnection Line were approved by the Energy Facility Siting Board ("Siting Board") in ANP Blackstone, EFSB 97-2/98-2 (1997) ("ANP Blackstone Decision").[2]

BECo, an electric company within the meaning of G.L. c. 164, § 72, petitioned pursuant to that statute which enables the Department to authorize electric companies:

> "to take by eminent domain under [c. 79] such lands, or such rights of way . . . or other easements therein necessary for the construction and use or continued use as constructed or with altered construction of such line along the route prescribed in the order of the [D]epartment."

As required by G. L. c. 164, § 72, BECo filed with its petition a general description of the Interconnection Line and a plan showing the towns through which the Interconnection Line will

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1 The easement rights to be taken are through land located in Blackstone and Mendon to which ANP Blackstone holds title (Exh. BECo-1, at 6). BECo states that ANP Blackstone acquired title to one parcel by foreclosing upon a tax title assignment and acquired title to other land by deeds (Exh. EFSB-01-01). BECo states the property boundaries and exact location of some parcels cannot be established with certainty (id.).

2 In the ANP Blackstone Decision, the Siting Board approved ANP Blackstone's petition to construct a 580 megawatt generating facility in Blackstone, Massachusetts, and a 345 ("kV") 1.1 mile loop interconnect and associated substation connecting the generating facility with BECo's existing 345 kV transmission line in Mendon (Exh. BECo-1, at 2). BECo states in its petition that no alterations to the approved Interconnection Line are proposed (id.).

pass and the public ways, railroads, railways, navigable streams, and tide waters which it will cross, as well as an estimate of the cost of the Interconnection Line.

II. PROCEDURAL HISTORY

On June 11, 1999, BECo filed with the Department its petition seeking § 72 approval and eminent domain authority. The Department docketed this petition as DTE 99-57. By order of July 7, 1999, and pursuant to G. L. c. 25, § 4 and G. L. c. 164, § 69(H)2, the Chair of the Department referred this matter to the Siting Board for review.

On August 3, 1999, the Siting Board conducted a public hearing in Blackstone. In accordance with the direction of the Hearing Officer, BECo provided notice of public hearing. No member of the public requested to speak at the public hearing.

One timely petition to intervene in the proceeding was filed by ANP Blackstone, the owner of the property in question, in support of BECo's petition. BECo did not oppose ANP Blackstone's petition to intervene. The Hearing Officer allowed ANP Blackstone's petition to intervene as to any and all matters associated with this proceeding (See Hearing Officer Ruling, BECo, D.T.E. 99-57, August 11, 1999, at 3).

BECo moved to incorporate into this case both the supporting record in the ANP Blackstone Decision and the ANP Blackstone Decision. Further, in the absence of opposing intervention, BECo requested that the Siting Board resolve this case through summary judgment. On August 13, 1999, ANP Blackstone filed an assent to BECo's motion for summary judgment and motion for incorporation of the record in ANP Blackstone, EFSB 97-2/98-2 (1997) and the ANP Blackstone Decision into the instant docket. During a conference call on August 18, 1999, BECo and ANP Blackstone waived their right to issue discovery and participate in evidentiary hearings.

Because of the lack of opposing intervenors and no statutorily required evidentiary hearings, we determine this matter may be disposed of summarily. Further, the Siting Board hereby grants BECo's motion seeking to incorporate the ANP Blackstone Decision and supporting record into this proceeding.

Discovery was issued by the Siting Board to BECo and designated as Exhs. EFSB 01-01

through EFSB 01-05. In addition, BECo's June 11, 1999 petition has been designated as Exh. BECo-1. These exhibits are also hereby moved into evidence in this proceeding.

III. SECTION 72

A. Standard of Review

G. L. c. 164, § 72, requires, in relevant part, that an electric company seeking approval to construct a transmission line must file with the Department a petition for:

> authority to construct and use . . . a line for the transmission of electricity for distribution in some definite area or for supplying electricity to itself or to another electric company or to a municipal lighting plant for distribution and sale . . . and shall represent that such line will or does serve the public convenience and is consistent with the public interest.
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> . . . .
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> The [D]epartment, after notice and a public hearing in one or more of the towns affected, may determine that said line is necessary for the purpose alleged, and will serve the public convenience and is consistent with the public interest.

The Department, in making a determination under c. 164, § 72, is to consider all aspects of the public interest. Boston Edison Company v. Town of Sudbury, 356 Mass. 406, 419 (1969). Section 72, for example, permits the Department to prescribe reasonable conditions for the protection of the public safety. Id. at 419-420. All factors affecting any phase of the public interest and public convenience must be weighed fairly by the Department in a determination under G. L. c. 164, § 72. Town of Sudbury v. Department of Public Utilities, 343 Mass. 428, 430 (1962).

As the Department has noted in previous cases, the public interest analysis required by G.L. c. 164, § 72 is analogous to the Department's analysis of the "reasonably necessary for the convenience or welfare of the public" standard under G. L. c. 40A, § 3. See New England Power Company, D.P.U. 89-163, at 6 (1993); New England Power Company, D.P.U. 91-117/118, at 4 (1991); Massachusetts Electric Company, D.P.U. 89-135/136/137, at 8 (1990). Accordingly, in evaluating petitions filed under G. L. c. 164, § 72, the Department relies on that standard of review and examines: (1) the need for, or public benefits of, the present or proposed use (see Massachusetts Electric Company, D.P.U. 93-29/30, at 10-14, 22-23 (1995) (New England Power,

D.P.U. 92-278/279/280, at 19-22 (1994) ("NEPCo, D.P.U. 92-278/279/280"); Tennessee Gas Pipeline Company, D.P.U. 85-207, at 6-9 (1986) ("Tennessee")); (2) the environmental impacts or any other impacts of the present or proposed use (see NEPCo., D.P.U. 92-278/279/280, supra, at 20-23; NEPCo, D.P.U. 92-270, supra, at 17-20; Tennessee, supra, at 20-25); and (3) the present or proposed use and any alternatives identified (see NEPCo, D.P.U. 92-278/279/280, supra at 19; NEPCo, D.P.U. 92-270, supra, at 17; Tennessee, supra, at 18-20). The Department then balances the interests of the general public against the local interests and determines whether the line is necessary for the purpose alleged and will serve the public convenience and is consistent with the public interest.

B. Analysis and Findings

BECo is an electric company as defined by G. L. c. 164, § 1, authorized to generate, distribute, and sell electricity. Boston Edison Company, D.P.U. 87-74 (1987). Accordingly, BECo is authorized to petition the Department for the determination sought under G. L. c. 164, § 72 in this proceeding.

The record further indicates the Siting Board has conducted an extensive review of the need for, alternatives to, and environmental impacts of the ANP Blackstone generating facility and the proposed Interconnection Line in the ANP Blackstone Decision, which, with its supporting record, is incorporated into this case. Here, the Siting Board reviews the findings made in the ANP Blackstone Decision that are relevant to the present case.

1. Need for the Proposed Project

In the ANP Blackstone Decision, the Siting Board found a need for additional energy resources to interconnect ANP Blackstone's proposed generating facility in Blackstone with the regional transmission system. ANP Blackstone Decision, EFSB 97-2/98-2 (1997), at 189. This finding was based on a showing by BECo and ANP Blackstone that an electric interconnection was required for the proposed ANP Blackstone generating facility to supply power to Massachusetts and New England. Id. at 188. The Siting Board found that the proposed generating facility could not supply energy to the region in the absence of an adequate and

reliable energy facility to interconnect the generating facility to the transmission system and that ANP Blackstone and BECo had established that the existing transmission system was inadequate to support the proposed generating facility. Id. The Siting Board affirms its prior analysis of need in this case.

2. The Proposed Project and Alternatives

In the ANP Blackstone Decision, the Siting Board conducted a detailed analysis of the reliability, cost, and environmental impacts of two alternative means of interconnecting ANP Blackstone's proposed generating facility with BECo's transmission system: a double radial alternative, and a loop configuration. ANP Blackstone Decision, EFSB 97-2/98-2 (1997), at 190.[3] The Siting Board determined that both alternatives could meet the identified need, and that the loop configuration was preferable with respect to cost. Id. at 198.

With respect to environmental impacts, the Siting Board found that the magnetic field levels associated with the loop configuration would be higher than those associated with the double radial alternative, both on the right of way ("ROW") and at the western and eastern ROW edges. Id. at 196. However, the record also indicated that the distance from the proposed ROW to the nearest residences likely would preclude magnetic field impacts on populated areas, regardless of the choice of configuration. Id. Consequently, the Siting Board found that the loop configuration would be comparable to the double radial alternative with respect to magnetic field levels. Id. at 196. The Siting Board also found that the loop configuration would be preferable to the double radial alternative with respect to facility construction impacts because the double radial alternative would require the construction of a substation on BECo's ROW, and that such construction would have the effect of prolonging the need for construction vehicle access from Bates Road in Mendon. Id. at 195.

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[3] The Siting Board also briefly considered two single radial alternatives and a low voltage alternative, but determined that such alternatives did not warrant further evaluation based on the poor reliability or environmental disadvantages of the first single radial alternative and low voltage alternative, and the unacceptability of the second radial alternative due both to the vulnerability of the plant output to line failure and maintenance restrictions. ANP Blackstone Decision, EFSB 97-2/98-2 (1997), at 193.

Further, the Siting Board found that the loop configuration would be preferable to the double radial alternative with respect to permanent land use impacts because the loop configuration would have slightly lower tree clearing and visual impacts than the double radial alternative, due to the need of the double radial alternative for a second substation outside the site of the generating facility. Id. at 196. The visual impacts of either interconnect design would, to a large degree, be naturally mitigated by the proposed route which runs through primarily wooded and non-populated land. Id. In summary, the Siting Board found that the loop configuration would be preferable to the double radial alternative with respect to environmental impacts. Id. at 197.

Because the Siting Board found the loop configuration would be preferable to the double radial alternative with respect to environmental impacts and cost, the Siting Board found the loop configuration is preferable to the double radial alternative with respect to providing a necessary energy supply for the Commonwealth, with the least environmental impacts, and at the lowest possible cost. The Siting Board affirms its prior analysis of project alternatives in this case.

3. Impacts of the Proposed Project

In the ANP Blackstone Decision, the Siting Board conducted a detailed analysis of the cost and environmental impacts, including water, land use, visual, and magnetic field impacts, of the Interconnection Line along two routes, overhead and underground. The Siting Board found that the primary route would have no impact upon wetlands and the alternative route would result in impacts to wetlands and a greater potential risk to water resources due to directional drilling required to cross the Mill River and associated wetlands; therefore, the primary route is preferable to the alternative route with respect to impacts to water resources. ANP Blackstone Decision, EFSB 97-2/98-2 (1997), at 231. Similarly, the Siting Board found that construction of the alternative route would generate significantly more land use impacts such as noise and traffic than the primary route. Id. at 233-234. The primary route was also found to be preferable to the alternative route in respect to visual impacts. Id. at 236. Specifically, the record indicates the alternative route would require an additional substation on the ROW and taller overhead steel supports at the plant site which offset the benefit of running a portion of the alternative route

underground. Id. at 236.

The Siting Board also found that the alternative route is preferable to the primary route with respect to land resources because tree clearing, upland vegetation, and potential soil erosion impacts would be minimized. Id. at 233. In addition, the Siting Board found that the magnetic field impacts of the alternative route would be comparable to those of the primary route. Id. at 237.

In summary, the Siting Board concluded that the overall impacts of the proposed facility along the primary route would be preferable with respect to both environmental impacts and cost and would achieve the appropriate balance among environmental impacts and among cost, reliability, and environmental impacts. Id. at 237, 243. The Siting Board also found that the environmental impacts of the proposed facilities along the primary route could be minimized consistent with minimizing cost. Id. at 230.

In the ANP Blackstone Decision, the Siting Board also found that the "proposed facilities along the primary route would be preferable to the proposed facilities along the alternate route with respect to providing a reliable energy supply to the Commonwealth with a minimum impact on the environment at the lowest possible cost." Id. at 238, 243-44. Moreover, the Siting Board found that the Interconnection Line would be generally consistent with the identified requirements of related regulatory and other programs of the Commonwealth, specifically, programs related to wetlands protection, rare and endangered species, and historical preservation. Id. at 244. The Siting Board imposed no conditions on the Interconnection Line. No additional evidence regarding the impacts of the proposed Interconnection Line was submitted in this proceeding. Consequently, the Siting Board adopts the findings in the ANP Blackstone Decision regarding the Interconnection Line.

The Siting Board has found that an Interconnection Line is needed to connect the proposed ANP Blackstone power plant to the regional electric transmission system. The Siting Board also has found that the proposed Interconnection Line would serve this purpose and would be preferable to the alternative designs and routes with respect to providing a necessary energy supply to the Commonwealth with a minimum impact on the environment at the lowest possible cost. Therefore, the Siting Board finds that the general public interest in the construction,

operation, and maintenance of the Interconnection Line outweighs the minimal impacts of BECo's proposed project on the local community. Accordingly, based on the record in this proceeding and the above analyses, the Siting Board finds, pursuant to G. L. C. 164, § 72, that the Interconnection Line is necessary for the purpose alleged, will serve the public convenience, and is consistent with the public interest. Thus, the Siting Board approves BECo's petition to construct a 1.1 mile long, overhead 345 kV loop Interconnection Line in the towns of Mendon and Blackstone, Massachusetts using BECo's primary route.

The Siting Board notes that the findings in this decision are based on the record in this case. A project proponent has an absolute obligation to construct and operate its Interconnection Line in conformance with all aspects of its proposal as presented to the Siting Board. Therefore, the Siting Board requires that BECo notify the Siting Board of any changes other than minor variations to the proposal so that the Siting Board may decide whether to inquire further into a particular issue. BECo is obligated to provide the Siting Board with sufficient information on changes to the proposed project to enable the Siting Board to make these determinations.

C. Section 61 Findings

The Massachusetts Environmental Policy Act ("MEPA") provides that "[a]ny determination made by an agency of the Commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact." G. L. c. 30, § 61. Pursuant to 301 CMR, § 11.01(3), these findings are necessary when an Environmental Impact Report ("EIR") is submitted by a petitioner to the Secretary of Environmental Affairs, and should be based on such EIR. Where an EIR is not required, G. L. c. 30, § 61 findings are not necessary. 301 CMR, § 11.01 (3). The record indicates that an EIR was required for ANP Blackstone's proposed generating facility and ancillary facilities in Blackstone, including the Interconnection Line and, therefore, a finding under G. L. c. 30, § 61 is necessary in this case.

As discussed above, the Siting Board undertook a comprehensive investigation and

analysis of the environmental impacts of the Interconnection Line[4] in its review and approval of the Interconnection Line in the ANP Blackstone Decision. The Siting Board, in issuing the ANP Blackstone Decision, found that the environmental impacts of the Interconnection Line along the primary route would be minimized consistent with minimizing cost and would achieve an appropriate balance among conflicting environmental concerns as well as among environmental impacts, reliability, and cost. ANP Blackstone Decision, EFSB 97-2/98/2 (1997), at 230. The Siting Board determines that in making a § 61 finding in this case, it would examine the same environmental issues that were comprehensively examined in the ANP Blackstone Decision. Since the ANP Blackstone Decision and record of the ANP Blackstone Decision have been incorporated into the record of this case, the Siting Board determines that the analysis of environmental impacts in the ANP Blackstone Decision stands as the § 61 review in this case.[5] Accordingly, the Siting Board finds that all feasible measures have been taken to avoid or minimize the environmental impacts of the Interconnection Line.

IV. EMINENT DOMAIN

A. 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." Having done so, it may, by order,

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

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4 The Siting Board notes that ANP Blackstone Decision record includes the Draft EIR and Final EIR.

5 The Siting Board did not make a § 61 finding in the ANP Blackstone Decision because the Siting Board is explicitly exempted from making such a finding when issuing a decision under G. L. c. 164, §§ 69I - J 1/4. This petition, however, was filed under G. L. c. 164, § 72, so that exemption does not extend to this decision.

B. Analysis and Findings

BECo seeks to acquire the right of entry and a perpetual non-exclusive easement in gross through land identified as parcels M-1 and B-1 on Exhibit B and described in Exhibit C to the petition (Exh. BECo-1). The proposed easement is approximately 1.1 miles in length and would run from a point in Mendon southeasterly and then southwesterly through Blackstone, ranging in width from 250 feet to 300 feet. BECo states in its petition that ANP Blackstone has acquired the best possible title to the property identified as parcels M-1 and B-1 on Exhibit B and described in Exhibit C to the petition (see n.1, above).[6]

Upon receipt of BECo's responses to staff discovery requests, the evidentiary record was complete and the matter ready for disposition. Because no person at the August 3, 1999 public hearing or intervenor has raised any concern or question and the Siting Board has found the Interconnection Line will serve the public convenience and is consistent with the public interest, this matter may be disposed of summarily.

Upon consideration of the record in this proceeding, the Siting Board finds that the interests of the public require that BECo be granted the authority to acquire the necessary easements in the tract of land identified as parcels M-1 and B-1 on Exhibit B and described in Exhibit C to the petition (Exh. BECo-1). By transmitting electricity for distribution, the Interconnection Line is necessary for the purpose alleged and will serve the public convenience by providing a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. Therefore, BECo has demonstrated the necessity required for a taking under the eminent domain statute, G. L. c. 164, § 72.

Accordingly, after notice, hearing, and due consideration, the Siting Board GRANTS BECo's petition seeking authority to take easements rights by eminent domain in land owned by

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6 Existing easements include two easements held by Tennessee Gas Pipeline Company, two easements held by American Telephone and Telegraph Company, and easements retained by the individuals who have conveyed the land to ANP Blackstone.

ANP Blackstone and identified as parcels M-1 and B-1 in Exhibit B and described in Exhibit C to the petition (Exh. BECo-1).

ANP Blackstone does not seek damages in compensation for the taking of non-exclusive easements rights by BECo. Assessment of damages incident to an eminent domain taking is a judicial function under G. L. c. 79 and expressly not a function of the Department under the terms of G. L. c. 164, § 72.[7] Consequently, the Siting Board makes no finding regarding appropriate damages.

V. ORDER

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

ORDERED: That the petition of Boston Edison Company for § 72 approval of its Interconnection Line is granted, and it is

FURTHER ORDERED: That the petition of Boston Edison Company for the right to exercise eminent domain power under G. L. c. 79 and c. 164 to enter upon and to take a perpetual non-exclusive easement in land owned by ANP Blackstone Energy Company and against ANP Blackstone Energy Company and all prior owners or predecessors in title and any other party claiming an adverse interest in the towns of Mendon and Blackstone identified as parcels M-1 and B-1 on Exhibit B and described in Exhibit C to the petition filed with the Department of Telecommunications and Energy for the construction, maintenance, and operation of the Interconnection Line is granted; and Boston Edison Company shall, as described in Section III C above, to the maximum extent practicable, avoid the adverse environmental effects of construction on the perpetual non-exclusive easement whose taking is authorized by this Order, and it is

FURTHER ORDERED: That the rights of Boston Edison Company granted herein are

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[7] If the negotiations fail, this decision is not intended to preclude parties from relying on their rights under G. L. c. 79 to litigate economic damages incident to a taking.

expressly subject to the following conditions:

(1) if requested by ANP Blackstone Energy Company, the property taken shall be restored to as near as reasonably practical to its original condition. This should include but not be limited to replacing all existing fences and rock or stone walls, and seeding or sodding of lawn areas;

(2) Boston Edison Company will not unreasonably interfere with existing easement rights held by others, and

(3) Boston Edison Company shall obtain all other governmental approvals necessary for this project before its construction commences, and

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

FURTHER ORDERED: That the secretary of the Department of Telecommunications and Energy shall transmit a certified copy of this Decision to Boston Edison Company, each intervenor, and the clerks of the towns of Mendon and Blackstone; and that Boston Edison Company shall serve a copy of this Order upon each of the record owners of land and his or her

mortgagees (either upon the attorney or at the last known address of each) within five (5) business days of its issuance and shall certify to the secretary of the Department of Telecommunications and Energy within ten (10) business days of its issuance that such service has been accomplished.

Denise L. Desautels
Hearing Officer

Dated this 9th day of September 1999.

APPROVED by the Energy Facilities Siting Board at its meeting of September 9, 1999, by the members and designees present and voting: Sonia Hamel (for Robert Durand, Secretary of Environmental Affairs); James Connelly (Commissioner, DTE); W. Robert Keating (Commissioner, DTE); John Malena (for Carolyn Boviard, Director of Economic Development); Louis Mandarini (Public Member); and Janet Gail Besser (Chair, EFSB/DTE)

Janet Gail Besser, Chair
Energy Facilities Siting Board

Dated this 9th day of September, 1999

Appeal as to matters of law from any final decision, order or ruling of the Siting Board 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 Siting Board be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Siting Board within twenty days after the date of service of the decision, order or ruling of the Siting Board, or within such further time as the Siting Board 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. (Massachusetts General Laws, Chapter 25, Sec. 5; Chapter 164, Sec. 69P).