

D.T.E. 01-77

Petition of Massachusetts Electric Company for an exemption by the Department of Telecommunications and Energy from the operation of the Zoning Bylaw of the Town of Westford, Massachusetts with respect to the construction and use of substation facilities, pursuant to G.L. c. 40A, § 3.

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## TABLE OF CONTENTS

I.	<u>INTRODUCTION</u> .....	Page 1
	A. <u>Description of the Proposed Project</u> .....	Page 1
	B. <u>Procedural History</u> .....	Page 2
II.	<u>STANDARD OF REVIEW</u> .....	Page 3
	A. <u>Public Service Corporation</u> .....	Page 4
	B. <u>Exemptions Required</u> .....	Page 4
	C. <u>Public Convenience or Welfare</u> .....	Page 5
III.	<u>ANALYSIS AND FINDINGS</u> .....	Page 7
	A. <u>Public Service Corporation Status</u> .....	Page 7
	B. <u>Need for the Requested Exemptions</u> .....	Page 7
	1. <u>Section 173-13F(11): Table of Use Regulations</u> .....	Page 7
	2. <u>Sections 173-18F: Height Exceptions to Dimensional Regulations</u> .....	Page 8
	3. <u>Section 173-22A(1): Site Plan Review</u> .....	Page 9
	4. <u>Section 173-41B: Water Resource Protection District</u> .....	Page 10
	C. <u>Public Convenience and Welfare</u> .....	Page 11
	1. <u>Need or Public Benefit of Use</u> .....	Page 11
	2. <u>Alternatives Explored</u> .....	Page 14
	3. <u>Impacts of the Proposed Use</u> .....	Page 17
	a. <u>Land Use</u> .....	Page 17
	b. <u>Visual Impacts</u> .....	Page 19
	c. <u>Wetlands and Wildlife</u> .....	Page 20
	d. <u>Water Resources</u> .....	Page 22
	e. <u>Noise</u> .....	Page 24
	f. <u>EMF</u> .....	Page 25
	4. <u>Analysis</u> .....	Page 26
IV.	<u>CONCLUSION</u> .....	Page 30
V.	<u>ORDER</u> .....	Page 32

## I. INTRODUCTION

### A. Description of the Proposed Project

On September 27, 2001, pursuant to G.L. c. 40A, § 3, Massachusetts Electric Company (“MECO” or “Company”) filed a petition with the Department of Telecommunications and Energy (“Department”) seeking an exemption from the operation of the Town of Westford Zoning Bylaw (“Zoning Bylaw”) with respect to the construction and use of an electric substation and related facilities on its property on Concord Road in Westford. MECO stated that the purpose of the proposed substation is to maintain reliable electric service to the Westford area by providing additional 13.2 kV feeder capacity to serve existing and projected load (Exh. PET-1, at 1).

In its petition, MECO stated that the proposed substation (“Westford 57”) would be constructed on a 6.5-acre parcel of land that is crossed by a New England Power Company transmission line corridor containing three 115 kV transmission lines, one 345 kV transmission line, and two 23 kV transmission lines (*id.*). MECO proposes to tap two of the existing 115 kV transmission lines, transform the voltage to 13.2 kV, and interconnect with MECO’s distribution system along Concord Road via a duct to be constructed within a 500-foot paved access driveway (Exh. MECO-AJM, at 3-4). The Company stated that it would remove an existing 23 kV switchyard from the site (Exhs. PET-1, at 1; MECO-AJM, at 4). The Company stated that the Westford 57 substation to be built on a level yard of approximately 135 feet by 200 feet and ultimately would contain a 22-foot by 24-foot control house, two transformers and six distribution circuits.<sup>1</sup> The Company stated that two

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<sup>1</sup> The Company stated that construction of the proposed facilities would be performed in phases, (continued...)

35-foot wood pole structures would be installed within the transmission line right-of-way to tap two of the existing 115 kV transmission lines, and two 65-foot wood structures would be installed in the Pratts Junction-to-Tewksbury right-of-way to raise the 115 kV lines to maintain adequate clearance for the taps underneath (Exhs. MECO-AJM at 2; DTE E-5, at 1).

The record shows that the proposed site is located within a Residence A district as defined in the Zoning Bylaw (Exh. MECO-AJM-12) and that Sec. 173-13 of the Bylaw prohibits “public utility” uses in such districts (Exh. MECO-AJM-14, at 26). The Company asserted that other provisions of the Zoning Bylaw also may prohibit certain uses associated with the substation facilities, require site plan review, or require a special permit for the substation (Exhs. PET-1, at 2; MECO-AJM, at 2). The Company is requesting, pursuant to G.L. c. 40A, § 3, to be exempted from operation of the Zoning Bylaw in connection with the construction, use, operation and maintenance of the proposed substation and related facilities on the proposed site, to the extent that the Bylaw may be applicable (Exh. PET-1, at 3).

B. Procedural History

On September 27, 2001, MECO filed a zoning exemption petition with the Department. The Department docketed the petition as D.T.E. 01-77. Pursuant to notice duly issued, the Department held a public hearing on the Company’s petition on November 20, 2001 in Westford. The Town of

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<sup>1</sup> (...continued)  
as required by load growth in the service area; while the yard would be large enough to accommodate the final layout of the substation and would contain the foundations necessary for all the equipment, the Company would initially install only one transformer and three sets of electrical distribution equipment (Exh. MECO-AJM at 3).

Westford (“Town”) filed a timely petition to intervene; the Hearing Officer granted the Town’s petition on December 10, 2001 (Hearing Officer Ruling, 12/10/2001).

The Department conducted an evidentiary hearing on February 25, 2002. The Company presented the testimony of three witnesses: Jeffrey E. Faber, the supervisor for project engineering in the Field Operations Department - Merrimack Valley District for the Company; Andres J. Molina, a lead senior engineer with National Grid USA Service Company, Inc., who also provides engineering services to the Company; and F. Paul Richards, principal engineer with National Grid USA Service Company, Inc., who provides environmental services to the Company.

On March 11, 2002, the Company filed a brief.<sup>2</sup>

## II. STANDARD OF REVIEW

G.L. c. 40A, § 3 provides, in relevant part, that

Land or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or bylaw if, upon petition of the corporation, the [Department] shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public . . . .

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<sup>2</sup> Pursuant to 220 CMR 1.11(6), briefs not filed and served in the prescribed time periods shall not be accepted. In this case, briefs were due by March 11, 2002 and reply briefs were due by March 18, 2002 (Tr. at 182). On March 20, 2002, the Town submitted a brief requesting additional landscaping along the western side of the site. On March 25, 2002, the Company submitted a reply letter generally agreeing to the Town’s requests. Neither party requested an extension of time in which to file its brief (See 220 CMR 1.11(6)) or gave any explanation as to why it submitted a late filing. The Department finds that neither party has shown good cause that would allow a waiver of the filing deadlines established by the Presiding Officer (See 220 CMR 1.01(4)) and therefore does not accept either the Town’s late-filed brief or the Company’s March 25<sup>th</sup> letter.

Thus, a petitioner seeking exemption from a local zoning bylaw under G.L. c. 40A, § 3 must meet three criteria. First, the petitioner must qualify as a public service corporation. Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667 (1975) ("Save the Bay"). Second, the petitioner must establish that it requires a zoning exemption(s). Boston Gas Company, D.T.E. 00-24, at 3 (2001) ("Boston Gas"). Finally, the petitioner must demonstrate that its present or proposed use of the land or structure is reasonably necessary for the public convenience or welfare. Tennessee Gas Pipeline Company, D.T.E. 99-50, at 3-4 (2000) ("Tennessee Gas (2000)").

A. Public Service Corporation

In determining whether a petitioner qualifies as a "public service corporation" for the purposes of G.L. c. 40A, § 3, the Supreme Judicial Court has stated:

among the pertinent considerations are whether the corporation is organized pursuant to an appropriate franchise from the State to provide for a necessity or convenience to the general public which could not be furnished through the ordinary channels of private business; whether the corporation is subject to the requisite degree of governmental control and regulation; and the nature of the public benefit to be derived from the service provided.

Save the Bay, 366 Mass. 667, 680. See also, Boston Gas, D.T.E. 00-24, at 3-4; Berkshire Power Development, Inc., D.P.U. 96-104, at 26-36 (1997) ("Berkshire Power").

B. Exemptions Required

In determining whether exemption from a particular provision of a zoning bylaw is "required" for purposes of G.L. c. 40A, § 3, the Department looks to whether the exemption is necessary to allow construction or operation of the petitioner's project as proposed. See, Tennessee Gas (2000), D.T.E. 99-50, at 6-8; Western Massachusetts Electric Company, D.P.U./D.T.E. 99-35, at 4, 6-8 (1999) ("WMECo"); Tennessee Gas Company, D.P.U. 92-261, at 20-21 (1993). It is the petitioner's

burden, not the Department's, to identify the individual zoning provisions applicable to the project and then to establish on the record that exemption from each of those provisions is required:

The Company is both in a better position to identify its needs, and has the responsibility to fully plead its own case . . . The Department fully expects that, henceforth, all public service corporations seeking exemptions under c. 40A, § 3 will identify fully and in a timely manner all exemptions that are necessary for the corporation to proceed with its proposed activities, so that the Department is provided ample opportunity to investigate the need for the requested exemptions.

New York Cellular Geographic Service Area, Inc., D.P.U. 94-44, at 18 (1995).

C. Public Convenience or Welfare

In determining whether a present or proposed use is reasonably necessary for the public convenience or welfare, the Department must balance the interests of the general public against the local interest. Save the Bay, 366 Mass. 667, 680; Town of Truro v. Department of Public Utilities, 365 Mass. 407 (1974). Specifically, the Department is empowered and required to undertake "a broad and balanced consideration of all aspects of the general public interest and welfare and not merely [make an] examination of the local and individual interests which might be affected." New York Central Railroad v. Department of Public Utilities, 347 Mass. 586, 592 (1964) ("New York Central Railroad"). When reviewing a petition for a zoning exemption under G.L. c. 40A, § 3, the Department is empowered and required to consider the public effects of the requested exemption in the state as a whole and upon the territory served by the petitioner. Save the Bay, 366 Mass. 667, 685; New York Central Railroad, 347 Mass. 586, 592.

With respect to the project site chosen by a petitioner, G.L. c. 40A, § 3 does not require a

demonstration that the petitioner's preferred site is the best possible alternative, nor does the statute require the Department to consider and reject every possible alternative site presented. Rather, the availability of alternative sites, the efforts necessary to secure them, and the relative advantages and disadvantages of those sites are matters of fact bearing solely upon the main issue of whether the preferred site is reasonably necessary for the convenience or welfare of the public. Martarano v. Department of Public Utilities, 401 Mass. 257, 265 (1987); New York Central Railroad, 347 Mass. 586, 591.

Therefore, when making a determination as to whether a petitioner's present or proposed use is reasonably necessary for the public convenience or welfare, the Department examines: (1) the present or proposed use and any alternatives or alternative sites identified; (2) the need for, or public benefits of, the present or proposed use; and (3) the environmental impacts or any other impacts of the present or proposed use. The Department then balances the interests of the general public against the local interest, and determines whether the present or proposed use of the land or structures is reasonably necessary for the convenience or welfare of the public. Boston Gas, D.T.E. 00-24, at 4-6; WMECo, D.P.U./D.T.E. 99-35, at 5-6; Tennessee Gas (2000), D.T.E. 99-50, at 5-6; Tennessee Gas Company, D.T.E. 98-33, at 4-5 (1998).<sup>3</sup>

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<sup>3</sup> In addition, the Massachusetts Environmental Policy Act 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." See G.L. c. 30, § 61. Pursuant to 301 C.M.R. § 11.01(3), these findings are necessary when an Environmental Impact Report is submitted by a company to the Executive Office of Environmental Affairs, and should be based on such Environmental Impact Report. The Company stated that it was not required to file an Environmental Impact Report

(continued...)



### III. ANALYSIS AND FINDINGS

#### A. Public Service Corporation Status

Massachusetts Electric Company is an “electric company” as defined by G.L. c. 164 (Exh. PET-1, at 1). See also Massachusetts Electric Company, D.P.U. 93-29/30, at 21 (1995).

Accordingly, MECO qualifies as a public service corporation for the purposes of G.L. c. 40A, §3.

#### B. Need for the Requested Exemptions

In its petition, MECO requested exemption from specific provisions of the Westford Zoning Bylaw and “from operation of the Zoning Bylaw in connection with its use of the lands...and the construction, use, operation and maintenance thereon of the proposed substation and the related facilities . . .” (Exh. PET-1). In its prefiled testimony, the Company identified four specific provisions of the Zoning Bylaw that may apply to the project (“individual exemptions”) (Exh. MECO-AJM at 7-8).<sup>4</sup>

##### 1. Section 173-13F(11): Table of Use Regulations

MECO stated that the proposed project would be located in a “Residence A” district in Westford, and provided information demonstrating that “public utility” uses are prohibited in this district by the Town of Westford Zoning Bylaw, Sec. 173-13F(11) (Exhs. MECO-AJM at 7; MECO-AJM-12; PET-1, at 2; MECO Brief at 4). MECO noted that “essential services” are exempted from use restrictions under Sec. 173-13F(11). However, the Company provided a letter from the Building

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<sup>3</sup> (...continued)  
for the proposed project (Exh. DTE-E-1).

<sup>4</sup> The Department addresses the appropriateness of granting a broader exemption for the project in Section IV, below.

Commissioner, indicating that the Town did not consider the proposed substation to be an “essential service” under Sec. 173-13B(11) of the Bylaw, and that a use variance from the Zoning Board of Appeals therefore would be required to build the substation (Exh. DTE-Z-1, Att.).

The record shows that the proposed project would be located in a Residence A district. The record also shows that the Town considers the Company’s proposed project a public utility use, and that Sec. 173-13F(11) of the Westford Zoning Bylaw prohibits public utility uses within Residence A districts. The Department concludes that the proposed project cannot be built without relief from Sec. 173-13F(11) of the Bylaw. Accordingly, the Department finds that exemption of the proposed project from Section 173-13F(11) of the Westford Zoning Bylaw is required within the meaning of G.L. c. 40A, § 3.

2. Sections 173-18F: Height Exceptions to Dimensional Regulations

The record shows that Article IV of the Town of Westford’s Zoning Bylaw limits the heights of buildings in areas zoned Residence A to 35 feet (Exh. MECO-AJM-14, App. A), with the exception that “chimneys, elevators, poles, spires, tanks, and other projections not used for human occupancy and any equipment or structure for enclosure or use thereof in connection with any permitted business or industry may extend above the height limits herein fixed; provided, however, that such roof top appurtenances shall be screened from public view to the maximum extent feasible” (Exh. MECO-AJM-14, at 38-39). The Company noted that the proposed 115 kV dead-end and tap structures would be 43.5 feet and 65 feet, respectively (Exh. DTE-E-9). The Company stated that it was unclear whether the exceptions to the height limit, found in Sec. 173-18F, apply to all of the proposed equipment and facilities (Exh. MECO-AJM at 8; DTE-RR-6 (Supp); MECO Brief at 5).

The Department finds that, while the applicability of Section 173-18F to this project is not entirely clear, this section could reasonably be construed to restrict the height of project elements to 35 feet. The record indicates that certain project elements, including the dead-end and tap structures, significantly exceed this height. The Department concludes that the Company may not be able to construct the proposed project without relief from Section 173-18F of the Bylaw. Accordingly, the Department finds that exemption of the proposed project from Section 173-18F of the Westford Zoning Bylaw may be required within the meaning of G.L. c. 40A, § 3.

3. Section

173-22A(1): Site Plan Review

The Company also stated that Sec. 173-22A(1) of the Bylaw requires site plan review and approval by the Planning Board for the construction of a nonresidential structure or tower, and that this provision would apply to the proposed substation (Exhs. MECO-AJM at 7; MECO Brief at 4). The Company stated that the site plan review “may prohibit certain uses associated with the substation or require a special permit” (Exh. PET-1, at 2).

After reviewing the Bylaw, the Department agrees that site plan review is required for the proposed project pursuant to Section 173-22A(1). While the proposed project likely could be built without relief from Section 173-22A(1), the site plan review process has an uncertain outcome and could considerably delay construction. Accordingly, the Department finds that exemption of the proposed project from Section 173-22A(1) of the Westford Zoning Bylaw is required within the meaning of G.L. c. 40A, § 3 to the extent that the proposed project is time-sensitive.

4. Section 173-41B: Water Resource Protection District<sup>5</sup>

The Company stated that the project site is located within the Water Resource Protection (“WRP”) District II of the Howard Road Well, as currently described on a map entitled “Water Resource Protection Districts, Town of Westford, October 21, 1996” (Exhs. MECO-AJM at 7; DTE-Z-4, Att.). The record shows that Sec. 173-41 of the Westford Zoning Bylaw requires a special permit for “the aboveground storage of hazardous materials in quantities greater than associated with normal household use” in a WRP District II or District III (Exh. AJM-14, at 112-113). The Company stated that the Town might consider the presence of 4,000 to 5,000 gallons of mineral oil dielectric fluid (“MODF”) in each substation transformer to constitute “storage of hazardous materials in quantities greater than those associated with normal household use” and therefore require a special permit in accordance with Sec. 173-41B of the Bylaw (Exh. MECO-AJM at 7; Tr. at 108-110; MECO Brief at 5).

The Department finds that, while the applicability of Section 173-41B to this project is not entirely clear, this section could reasonably be construed to require a special permit for the project. While the proposed project likely could be build without relief from Section 173-22A(1) by seeking and obtaining a special permit, the process of determining applicability and pursuing a special permit has an uncertain outcome and could considerably delay construction. Accordingly, the Department finds that exemption of the proposed project from Section 173-41B of the Westford Zoning Bylaw is

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<sup>5</sup> The Company initially requested exemption from the provision of Section 173-41B that applies to rendering impervious more than 15% of the lot, or 2,500 square feet, whichever is greater (Exh. MECO-AJM at 7). However, the Company’s brief stated that the Company was no longer requesting exemption from this provision of the Zoning Bylaws (MECO Brief at 6).

required within the meaning of G.L. c. 40A, § 3 to the extent that the proposed project is time-sensitive.

C. Public Convenience and Welfare

1. Need or Public Benefit of Use

MECO asserted that the Chelmsford-Westford area has experienced significant load growth in recent years, coincident with feeder overloads and concerns about the reliability of the distribution system (Exh. MECO-JEF at 2-3). The Company stated that the area's loads grew at a rate of approximately 4.2% per year from 1996 through 1998 (*id.* at 2), with much of the growth in and around the Littleton Road area of Westford (*id.* at 3). MECO projected an average annual growth rate of 2.5% from 1999 through 2004, reflecting projected growth of 1.4% for the Merrimack Valley as a whole, plus adjustments for expected large customer additions in the Chelmsford-Westford area (Exhs. MECO-JEF-1, at 2; DTE-N-3; Tr. at 54, 56, 61).

MECO explained that the Chelmsford-Westford area is supplied by a 23 kV subtransmission system that currently feeds five 23/13.2 kV substations, from which twelve 13.2 kV distribution feeders originate to serve the area's load (Exhs. MECO-JEF at 2-3; DTE-N-13, at 2). The Company stated that the purpose of the proposed substation is to maintain reliable electric service to the Westford region by providing the additional 13.2 kV feeder capacity necessary to serve existing and projected load in the area (Exh. PET-1, at 1).

MECO indicated that the planning and design of upgrades to its distribution system are guided by criteria found in the Company's "Guide for Area Supply and Distribution Planning" ("Guide"), dated September 21, 1998 (Exh. DTE-N-4). One of the criteria set forth in the Guide is that under normal

operating conditions, normal equipment capabilities must not be exceeded (Exh. DTE-N-4(B), at 6).

The Company asserted that its distribution system in the Chelmsford-Westford area currently violates this guideline, and identified four feeders on which, under normal operating conditions, loads exceeded the feeders' summer normal ratings in both 1999 and 2001 (Exhs. MECO-JEF-1, at 4; DTE-N-6, at 1). The Company identified a fifth feeder on which load exceeded the summer normal rating in 2001 (Exh. DTE-N-6, at 1).<sup>6</sup> Given additional load growth, the Company projected that loads would exceed the normal ratings on a total of six feeders in 2002 and 2003 (Exh. DTE-N-15, at 2).

The Company stated that it has not experienced any equipment failures, outages or maintenance costs directly related to past overloads on area feeders (Exh. DTE-N-6, at 1). However, the Company predicted that over time, the effect of feeder overloads under existing and projected load levels would be the premature failure of equipment (*id.*). The Company further predicted that such failures were likely to result in feeder outages, the need to replace equipment, and losses in service to customers (Exh. DTE-N-6).

To address these loading and reliability concerns, MECO proposes to build a new substation, to be known as Westford 57, with capacity for six 13.2 kV feeder positions (Exhs. MECO-JEF at 3; MECO-AJM at 3). The Company initially plans to install three feeders, with the remainder to be added as load growth warrants (Exh. MECO-AJM at 3; Tr. at 9). The Company asserted that with the installation of the three feeders, no Chelmsford-Westford area feeder would operate at loads

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<sup>6</sup> Two feeders were added recently to the Westford-area distribution system: feeder 58L3 in May, 2000 (Exh. DTE-N-7) and feeder 4L1, prior to the peak summer load for 2001 (MECO Brief at 8). The Company considers feeder 4L1 to be temporary (Exh. DTE-N-1, Att. A at 3).

greater than 95% of its summer normal rating (Exh. DTE-N-13, at 3). The Company anticipated that the area's feeders would not develop load problems again until about 2009 (Exh. DTE-N-1, Att. B at 35; Tr. at 41).

Another of the Guide's planning principles, the "Feeder Design Criteria," states that the distribution system should be designed to limit the interruption in service caused by an outage of a single distribution feeder to 20 MWH<sup>7</sup> under peak load conditions (Exh. DTE N-4(B), at 9). The Company presented the results of an analysis of the extent of outages that would be caused by a variety of feeder contingencies (Exhs. MECO-JEF-1; DTE-N-12; DTE-N-12, Att. A; DTE-N-13; DTE-N-15; DTE-RR-1). The Company stated that for at least four of the 12 existing feeders, a contingency would result in loss of service exceeding 20 MWH (Tr. at 29-32). The Company stated that with the existing feeder configuration, the single worst contingency affecting the area would be the failure of the underground getaway cable on feeder 73L1 (Exh. DTE-N-15, at 3). The Company projected that by 2002, this contingency would leave some customer load unserved for short periods until that load could be temporarily shifted to other feeders, and would leave at least 2.8 MVA of load completely unserved until repairs could be made; the total loss of service could be as much as 61 MWH (*id.*; Tr. at 34). The Company also indicated that the existing and projected violations of the Feeder Design Criteria increased the risk of prolonged losses of service (Exh. DTE-N-6).

MECO provided illustrations of how the availability of three new feeders from the proposed substation would provide the Company with greater ability to transfer loads among area feeders during

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<sup>7</sup> The Company explained that it calculates outages in MWH by multiplying the unserved load in MVA by the number of hours that the load is not served (Tr. at 34-36).

contingencies (Exh. DTE-E-12). MECO stated that the addition of these feeders would eliminate any violations of the Feeder Design Criteria in the Chelmsford-Westford area through 2003 (Exh. DTE-N-13, at 3).<sup>8</sup> In addition, the Company asserted that the added feeder capacity would provide some back-up to the neighboring Tyngsboro area under emergency conditions (Exhs. DTE-N-1, Att. B at 10, 14; DTE-N-13, at 2-3; Tr. at 40, 44).

## 2. Alternatives Explored

MECO stated that it could not address the identified violations of planning criteria either by reconfiguring the existing system with new switches or new ties or by upgrading existing feeder positions (Exh. MECO-JEF-1, at 5). MECO therefore investigated adding capacity via new feeders (id.). The Company sought locations, either at existing substations or at a new substation, where it could add at least two feeders (id.; Exh. MECO-JEF at 3-4).

The Company considered four of the existing substations in the Chelmsford-Westford area as possible locations for new feeders: Boston Road 58, West Chelmsford 73, Concord Road 24, and North Chelmsford 2 (Exhs. MECO-JEF at 3-4; MECO-JEF-1, at 5; DTE-N-1, Att. A at 4; DTE-A-6). The Company noted that it added one feeder at Boston Road 58, a 23/13.2 kV substation in May, 2000 (Exh. DTE-N-7) and stated that this substation can accommodate one more feeder (Exhs. MECO-JEF-1, at 5; DTE-A-8).<sup>9</sup> The Company explained that the site could not accommodate two

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<sup>8</sup> The Company indicated that a fourth feeder at the new substation might be needed within five years of Westford 57 going into service, depending on the rate of load growth in the area (Exh. DTE-N-1, Att. C at 1).

<sup>9</sup> The Company noted that if the last feeder position at Boston Road 58 were used, MECO would either have to remove one of the existing feeders at that substation from service or

(continued...)



or more new feeders for two reasons: (1) the 23 kV system that this substation taps would begin to develop loading and voltage problems if two more new feeders were added (Exh. MECO-JEF-1, at 5); and (2) the addition of more than one feeder position would require a physical expansion that would infringe on the buffer zone of an adjacent wetland (Exh. DTE-A-1; Tr. at 163). Due to the space constraints, the Company stated that the site also is unsuitable for a 115/13.2 kV substation (Tr. at 163).

The Company rejected adding feeder capacity at the 23/13.2 kV Concord Road 24 substation based on a lack of sufficient space for expansion, as well as its distance from Westford's load centers (Exhs. MECO-JEF at 4; DTE-N-2 Att. at Fig. 2). Similarly, the Company rejected the 23/13.2 kV West Chelmsford 73 substation for possible expansion because it is located several miles from the Westford load center and can accommodate only one additional feeder (Exhs. DTE-A-6; DTE-N-2 Att. at Fig. 2). It rejected adding feeder capacity at the 115/23/13.2 kV North Chelmsford 2 substation because that substation is located approximately five miles from the large loads in Westford's Littleton Road area (Exh. MECO-JEF at 4).

Having identified barriers to expansion at existing substations, the Company considered potential sites for a new substation. The Company indicated that it selected the proposed site because of its proximity to the area of load growth along Littleton Road in Westford, the ease of tapping the 115 kV transmission lines in the adjacent right-of-way, and relative cost (Exh. MECO-JEF at 3).

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<sup>9</sup> (...continued)  
construct a new 6,000 foot distribution line to avoid overloading the existing distribution facilities (Exhs. DTE N-1, Att. A at 4; DTE-A-3; DTE A-8).

The Company noted that the Town of Westford identified two alternative sites for a new substation (Exh. DTE-A-4, at 1). The Company asserted that the first, located in an area on Nixon Road zoned for commercial/industrial activity, is too small for a substation (id.). The second site (“I-495 site”) is adjacent to the Company’s existing Boston Road 58 substation near Route I-495 and has access to the 115 kV transmission lines (Exhs. MECO-AJM-16; DTE-A-4, at 2; Tr. at 100). The I-495 site is owned by the Town of Westford and, like the proposed site, is located in a residential zoning district and within a WRP District II (Exh. DTE-A-4; DTE-RR-3). The Company identified the following disadvantages of this site:

- a vote by Town Meeting would be required to transfer the land from the Town to the Company, a process with an uncertain outcome and the potential to add acquisition costs for the Company;
- additional distribution work would be required to connect the feeders to the existing overhead lines, including underground work along Boston Road and through the I-495 interchange to Route 110. This work would cause significant traffic impacts on Boston Road and raise project costs by approximately \$1,000,000;
- four potential<sup>10</sup> vernal pools are located on or adjacent to the site, which, in conjunction with Westford’s wetlands bylaw, might complicate development of the site;
- some upland forest would have to be removed;

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<sup>10</sup> The Company explained that potential vernal pools, as opposed to certified vernal pools, are identified by the Natural Heritage and Endangered Species Program through interpretation of aerial photographs as areas that upon further inspection may be vernal pools (Tr. at 102).

- additional tree-clearing would render the site highly visible to residential abutters; and
- portions of the site are within the 100-year floodplain, and infringing wetlands could constrain construction

(Exh. DTE-A-4).

### 3. Impacts of the Proposed Use

#### a. Land Use

MECO stated that it proposes to construct the 135-foot by 200-foot substation on a Company-owned parcel of approximately 6.5 acres along Concord Road in Westford (Exh. MECO-AJM at 1). The Company stated that the site currently contains a 23 kV switchyard measuring 40 feet by 40 feet and a 180-foot long by 20-foot wide paved access driveway (Exh. MECO-AJM at 2). The Company stated that the switchyard contains an 8-foot by 8-foot storage shed, a 39-foot high transmission structure, switching equipment, and an 8-foot high fence (*id.*; Exh. DTE-E-6). The record shows that the southwest portion of the site is crossed by the New England Power Company's Pratts Junction-to-Tewksbury transmission line right-of-way, which contains one 345 kV line, three 115 kV lines and two 23 kV lines (Exhs. PET-1, at 1; MECO-AJM-2).

The Company indicated that much of the proposed site contains wetlands, although the proposed substation yard would be located in an upland meadow (Exhs. MECO-AJM at 2; MECO-FPR at 2; MECO-AJM-3; Tr. at 170-172). The Company stated that the meadow is covered by grasses, goldenrod, and dense multiflora rose (Exh. DTE-E-8, at 1). The Company stated that no mature trees in the area would be cleared for the substation yard, although a few trees (*e.g.*, red maple of less than 12 inches diameter at breast height (“dbh”)) would be cut down for the substation access

road (id.). In addition, the Company stated that it may remove a grove of poplars between the substation and the right-of-way to provide clearance for the tap lines (Tr. at 133, 139-14).<sup>11</sup> MECO estimated that this grove includes about a dozen trees of six to nine inches dbh and about a dozen trees of nine to 12 inches dbh (id. at 144). In the area where the transmission tap line structures would be erected, the Company stated that there is wetland vegetation consisting of a combination of scrub/shrub and emergent marsh, which would grow back following construction (Exh. DTE E-8).

The Company indicated that the proposed substation site is located in a residential area and is zoned for residential use (Exhs. MECO-AJM at 7; MECO-AJM-12). The Company estimated that the closest abutting residences are approximately 165 feet and 300 feet from the footprint of the proposed substation and that two additional residences are within about 560 feet of the substation footprint (Exhs. MECO-FPR-1, Att. E; DTE-E-3). The Company indicated that other abutting land uses include the electric transmission corridor and undeveloped land (Exh. DTE-E-2 Att.). The Company stated that an elementary school is located about 1200 feet of the site (Tr. at 120). The Company stated that there are no properties listed on National Register of Historic Places within one-half mile of the site (Exh. DTE-E-4).

The Company asserted that construction and operation of the substation would have minimal impact on the neighborhood (Exh. MECO-AJM at 4). The Company stated that it does not expect

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<sup>11</sup> The Company indicated that it has discussed with the Westford Conservation Commission a repositioning of the tap structures to avoid the need to remove this stand of trees. Because this change would represent a modification of the plans approved in the Order of Conditions (see section III.C.3.c, below), the Company has submitted a revised plan to the Conservation Commission. The Company expects the Conservation Commission to approve the revision shortly (DTE-RR-8; DTE-RR-8 Supp.).

construction traffic to significantly affect traffic flows on Concord Road and explained that once construction is complete, the substation will be unstaffed and remotely operated, with personnel onsite only for periodic inspections and emergency work (id.). The Company stated that a chain-link fence will surround the substation; to prevent unauthorized access to the site, all gates will be padlocked at the end of the workday during the construction phase, and at all times after the substation enters service (id. at 5).

b. Visual Impacts

MECO indicated that the structures within the fully built-out substation yard would include the substation control house (a 22-foot by 24-foot beige metal building, 13.5 feet in height), two transformers (30 feet by 15 feet, 18 feet in height), transformer tanks, six 6.5-foot circuit switchers mounted atop 16.75-foot tall steel beams, and two 115kV dead-end structures (43.5-foot tall galvanized steel H-frames) (Exhs. DTE-E-5, at 1; MECO-AJM-8). In addition, the yard would contain six 25-foot tall lighting structures equipped with manually operated 400-Watt high-pressure sodium floodlight clusters (Exhs. DTE-E-7; MECO-AJM at 5). The Company stated that the floodlights would be used during nighttime emergencies only, and that the lights would be pointed downward toward the substation equipment (Exh. DTE-E-7). The Company stated that substation yard would be enclosed by an 7- to 8-foot high chain-link fence clad in green vinyl and topped by three strands of barbed wire (Exhs. MECO-AJM at 3-5; DTE-E-6). Outside the yard, the Company stated that the new 115 kV tap and mid-span structures in the right-of-way would be supported by wooden poles, 35 feet and 65 feet tall respectively (Exh. DTE-E-5, at 1). For comparison purposes, the Company noted that the existing transmission towers in the right-of-way range from 66 feet to 84 feet in

height, and that the existing switchyard structure is 39 feet tall (Exh. DTE-E-6).

To reduce the visibility of the substation to abutters, the Company stated that it would construct a berm 13 feet tall by 140 feet long, immediately to the north of the substation (Exhs. DTE-E-10, at 1; MECO-AJM-6; MECO-AJM-7). The Company indicated that it would plant 8- to 10-foot high white firs and 12- to 14-foot high white pines on the crest and sides of the berm (DTE-RR-9, Att.). The Company asserted that the combination of these new evergreens and the existing deciduous trees would block views of the entire substation from the north during the summer, while all the substation equipment except the tops of the dead-end structures would be blocked from view in the winter (Exh. DTE-E-10, at 1; Tr. at 147). In addition, the Company indicated that it would plant 5- to 6-foot tall evergreens along the western side and portions of the southern side of the substation fence, and in the line of sight between abutting residences and the substation (Exh. DTE-E-10, at 1; DTE-RR-9 Att.; Tr. at 146). The Company provided diagrams showing that until the newly planted trees grow several feet, some of the abutting residences will have views of the substation yard (Exh. MECO-AJM-7). Finally, the Company explained that where site constraints prevent it from planting trees to provide visual screening for a residence that would have views into the substation, the Company is willing to provide plantings on the homeowner's property for that purpose (Tr. at 149-151).

The Company stated that the new structures in the right-of-way would be visible from Concord Road (Exh. DTE-E-5, at 1). Due to the need to maintain clearance from the power lines, the Company explained that vegetation in the right-of-way must be kept low (id.).

c. Wetlands and Wildlife

The Company stated that the proposed site contains an intermittent stream, bordering vegetated

wetlands, and a portion of a certified vernal pool (Exhs. MECO-FPR at 2-3; FPR-1, Att. B at 3). The Company explained that the proposed substation yard would be located entirely within an upland meadow, at least 100 feet from the vernal pool, and at least 50 feet from any other wetlands -- beyond the Town's required 50-foot wetlands setback (Exh. FPR-3, at Condition 21). However, the Company stated that some of the associated construction work would take place within wetlands, including the removal of the existing switching station, construction of the access driveway, and installation of three wood pole structures with associated guys and anchors for the transmission line taps (Exhs. MECO-FPR at 2; MECO-FPR-1, at 1; MECO-AJM-3). The Company calculated the loss of wetlands associated with the placement of the wood pole structures and associated anchors to be 30 square feet, and the loss associated with construction of the access road to be 3500 square feet (Exh. MECO-FPR at 2). The Company stated that it would construct 4800 square feet of replacement wetlands on the southern portion of the proposed site (Exhs. MECO-FPR at 2; MECO-AJM-3). In addition, the Company stated that it would temporarily alter 600 square feet of wetlands during construction, which it would restore in the same location once construction is completed (*id.*).

The Company provided information indicating the presence of three Species of Special Concern on or near the site: blue-spotted salamander (*Ambystoma laterale*), four-toed salamander (*Hemidactylium scutatum*), and Mystic Valley amphipod (*Cratogeomys aberrans*) (Exh. MECO-FPR-2, Att. B at 4).<sup>12</sup> In a letter to the Westford Conservation Commission, the Company proposed a detailed mitigation plan to address conservation of rare species (Exh. MECO-FPR-2, Att. A at 2-4).

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<sup>12</sup> The Company indicated that only one four-toed salamander was observed during a study of rare species and habitats at the site (Exh. MECO-FPR-2, Att. B at 10).

Some of the features of this plan include a program to trap and remove blue-spotted salamanders prior to construction; installation of aluminum flashing as a barrier against salamanders entering the construction area; and extensive erosion and sedimentation controls to prevent sediment discharges or migration and to protect water quality (id.).

On July 11, 2001, the Company received an Order of Conditions (“OOC”) from the Town of Westford’s Conservation Commission for work to be performed on the site and in wetlands (Exh. MECO-FPR-3). The OOC found that with the protective and mitigative measures in MECO’s plan, in conjunction with its own requirements, no short or long term adverse impacts to wetlands wildlife habitat would result from the project (id., at Condition 21). In addition, the Massachusetts Natural Heritage & Endangered Species Program determined that the wetlands impacts associated with the proposed project would “not adversely affect the actual habitat of the state-protected rare wildlife species” on the site (Exh. MECO-FPR-4).

MECO has committed to additional measures to benefit wildlife habitat in the Town of Westford (Exh. MECO-FPR at 4-5). The Company stated it would provide the Westford Conservation Commission with \$20,000 to establish a program within the Town to train individuals in vernal pool identification and to promote further efforts to inventory and protect blue-spotted salamanders or other vernal pool species present in Westford (id. at 4). The Company stated it will provide an additional \$20,000 to either the Westford Conservation Commission or the Massachusetts Natural Heritage and Endangered Species Program to assist in further research on the blue-spotted salamander or other state-protected species within the Town (id.). Finally, the Company stated that it will contribute \$10,000 to the Town toward the purchase, planting, and care of wetland plants that can



grow on the New England Power Company transmission line right-of-way, for the purpose of enhancing wildlife habitat (id. at 5).

d. Water Resources

The Company stated that the proposed substation site lies within the WRP District II of the Town's Howard Road well, as that district is currently delineated (Exh. DTE-Z-4, Att.),<sup>13</sup> and within the WRP District III of the Town's Country Road and Forge Village wells (Exh. DTE-E-16).

To mitigate the potential impacts on water resources from a spill of MODF from the transformers, the Company stated that it would install a sump around each transformer foundation and above groundwater (Exh. DTE-E-20, at 1). The Company described the sump as a semi-permeable system designed to detain any spill until it can be cleaned up by emergency response contractors (id.). The Company stated that the transformers themselves would be provided with devices that detect low MODF levels in the equipment and automatically alert MECO's Westboro Dispatch Center that a "trouble crew" is needed (Exh. DTE-E-20, at 2). In addition, the Company stated that visual and operational inspections of the site would be conducted bi-monthly (id. at 1). The Company explained that if either a trouble or maintenance crew identified a spill, these personnel would contain the spill using absorbent materials stored on-site, repair the leak, and then contact an on-call cleanup contractor

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<sup>13</sup> The Company stated that a Town consultant has completed a hydrogeologic study of the Howard Road well that provides a basis for re-delineating the well's WRP district boundaries (Exh. DTE-E-16). Assuming the boundaries are redrawn based on the study, the proposed site would be within the well's District III WRP, rather than its District II (id.). According to the Company, the Town is awaiting approval by the Massachusetts Department of Environmental Protection for the new delineation of the Howard Road well's WRP districts, at which point the Town will request Town Meeting approval to update its WRP district maps to reflect the new delineation (Exh. DTE-E-17).

to clean the site (id. at 2). Finally, the Company stated that it would prepare a site-specific Spill Prevention, Control and Countermeasure Plan for the site (Exh. DTE-E-19).

MECO stated that the design of the containment system is a relatively standard one for the Company, and that when spills have occurred at similar facilities, no contamination of either groundwater or surface water has resulted (Tr. at 121).

e. Noise

The Company stated that the construction and testing of the proposed facilities would last approximately twelve months (Exh. DTE-E-12). In general, the Company stated that construction hours would be from 7 am to 5 pm, Monday through Friday (id.). The Company stated that the noisiest construction activities, including site preparation and the installation of foundations, would take place during the first six months of construction and involve the use of earth-moving equipment and dump trucks (id.). The Company stated that the second phase -- the installation of structures and equipment -- would take approximately three months, and would involve the occasional use of cranes to unload and install structural elements and equipment (id.). The Company anticipated that certain second phase activities, including the installation of the two 65-foot H-frame structures, connection of the two taps, and connection of the three distribution feeders to distribution along Concord Road, would take place outside the normal work hours because they require taking critical transmission or distribution equipment out of service; therefore, these activities would be scheduled for off-peak electrical demand hours (Exh. DTE-E-26). Finally, the Company stated that the testing phase would last approximately three months, during which noise and project vehicular traffic would be at a minimum (Exh. DTE-E-12).

MECO asserted that operation of the transformers would not increase daytime or nighttime ambient noise levels (Exh. DTE-E-27). In support, the Company stated that it would install transformers that emit noise at 62 decibels (“dBA”) each (Exhs. DTE-E-13, Att. at 1; DTE-E-14; MECO-AJM at 5).<sup>14</sup> The Company provided measurements of current ambient noise at residential receptor locations, indicating that the lowest noise levels under existing conditions are from 48 to 50 dBA during the day and from 46 to 48 dBA at night (Exhs. MECO-AJM at 5; DTE-E-27, at 2).<sup>15</sup> The Company predicted that, at the site’s property line directly across from any abutting residences, noise levels from the transformers would be at least 9 dBA below the quietest measured ambient levels, and that therefore the total noise levels with the project would not be significantly higher than the existing ambient levels at these locations (Exhs. MECO-AJM at 5; DTE-E-27, at 1). In addition, the Company stated that the berm between the substation and the houses on the northern side of the property would reduce noise from the substation to below the predicted levels (Exh. DTE-E-14).

f. EMF

The Company asserted that the new substation would have a minor impact on electric and magnetic field levels along the boundaries of the site and the adjacent right-of-way (Exh. MECO-AJM at 6). In support, the Company provided results of simulations it prepared, which projected maximum magnetic and electric field levels at the northern and southern edges of the ROW, at the northern property line of the site, at the residence closest to the proposed substation, and at the residence closest

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<sup>14</sup> The Company noted that the proposed transformers would be 10 decibels quieter than the National Electrical Manufacturers Association standard (Exh. DTE-E-14).

<sup>15</sup> The Company stated that these values were the lowest recorded values for a 10-minute period (Exh. DTE-E-27, at 1).

to the southern edge of the ROW (Exhs. DTE-E-21; DTE-E-30; DTE-RR-10 Corrected). The results indicate that with full build-out of the substation, maximum magnetic field levels at the southern edge of the ROW would increase from existing levels of 68 milligauss (“mG”) to 72 mG (Exh. DTE-E-30). The Company reported that existing and projected magnetic field levels at the other locations were considerably lower, with the maximum level at an abutting residence projected to be 15 mG under existing conditions and 16 mG with the project (id.). The Company projected no change in electric field levels at any of the locations in the simulation (DTE-RR-10 Corrected).

#### 4. Analysis

MECO has presented documentation showing that the distribution system in the Westford area currently does not meet the Company’s standards for feeder loadings or for reliability during contingencies, and that the reliability of the existing system would decline further with projected increases in load. MECO also has presented documentation showing that the construction of a new substation at its Concord Road site would bring the distribution system in the Westford area up to its operation and reliability standards. Consequently, the Department finds that construction of the proposed project would be in the public interest because it would improve system operability and reliability.

The record shows that MECO considered alternative methods of addressing the identified problems, as well as alternative sites for system improvements. The Company selected a site it owns for a new substation based primarily on its location with respect to the load to be served, feasibility of construction on the site, and contribution to system reliability. The Company considered a site proposed by the Town of Westford, but determined that site was inferior with respect to ownership,

ease of construction, cost, reliability, and potential environmental impacts.

The record shows that the proposed substation would be located on a property which is owned by MECO and zoned as residential. The property is located within and to the north of New England Power's Pratts Junction-to-Tewksbury transmission line right-of-way, east of Concord Road. A number of residences surround the site on three sides, either abutting the site's northern and western boundaries, or occupying locations along the opposite (*i.e.*, south) side of the right-of-way. The record indicates that construction of the proposed substation at this location would result in visual, noise, wetland, wildlife and EMF impacts, and in the potential for water resource impacts, as discussed below.

With respect to visual impacts, the proposed project would be sited adjacent to an existing transmission line right-of-way occupied by several high-voltage and low-voltage power lines, near a small electrical switchyard that would be removed. The project site is visible from portions of Concord Road and from residences on the opposite side of the right-of-way, and is also visible through the trees from residences abutting the project site. The Company proposes substantial mitigation for visual impacts, including the construction of a berm between the project and the nearest residences to the north, and the planting of trees along the berm as well as along the western side and portions of the southern side of the substation, the access road, and the opposite side of the right-of-way. The record shows that, while the proposed mitigation would provide significant screening from several directions, it would not screen views of the substation yard from all vantage points. Moreover, the tops of certain structures, such as the 65-foot taps and 43.5-foot dead-end structures, would be visible even where plantings are provided.

The Department notes that the Company's landscape plan provides for the planting of 8- to 10-foot tall white firs and 12- to 14-foot tall white pines on the north side of the substation, but that plantings of white cedars only 5 to 6 feet tall are planned for the areas to the west and south of the yard. Given that there would be views of the substation from Concord Road and from some residences to the west and south, the Department finds that added mitigation would be provided by including taller evergreen plantings along the western side of the substation and in the vicinity of the access road entrance to the yard. The Department directs the Company to include, as part of its landscape plantings in these areas, some evergreen trees that are 8 to 10 feet or more in height in these areas, so as to better screen the substation, and to cooperate with the Westford Planning Board in refining the landscape plan to incorporate these changes.<sup>16</sup> Further, the Department directs the Company: (1) to maintain and/or replace trees on its property that serve to screen views of the substation and associated equipment; and (2) at the property owner's request, to replace any trees it planted on others' properties to provide visual screening that fail to become established within two years.

With respect to wetlands, the record shows that the construction project would include the filling of wetlands and would require construction in the vicinity of a vernal pool. Consistent with an Order of Conditions issued by the Westford Conservation Commission, the Company would restore some of the affected wetlands *in situ* and replicate other wetlands elsewhere on the site. In addition, the Company would implement a program to protect blue-spotted salamanders and other Species of Special Concern found on the site.

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<sup>16</sup> The Department notes that, in an exchange outside this proceeding, the Company generally has agreed to the planting of taller trees along the western side of the site. See Footnote 2.

The record shows that the proposed project would be located within the Water Resource Protection District II of a public well. As mitigation for potential impacts to water resources, MECO would construct a spill containment system for each of the transformers and would develop, in consultation with Town officials, a spill prevention, control and countermeasure plan to protect water resources from contamination by any spills on the site.

The record shows that noise from operation of the substation at abutting residences would be significantly less than existing ambient daytime or nighttime noise; thus, the project would not result in any discernible increase in noise levels at residences. The record shows that during the construction period, site preparation and the installation of foundations would constitute the noisiest activities, but that these activities would be accomplished between the hours of 7 am and 5 pm. The record shows that some of the other construction work, including the installation of structures to raise the 115 kV transmission lines and the connection of certain electrical equipment, needs to be performed when critical equipment can be taken out of service; these activities would be scheduled intermittently for nights or weekends over a period of up to three months.

The record shows that the proposed project on the proposed site is not expected to cause any changes in electric fields, but is projected to cause some increases in magnetic field levels. However, the magnitude of these changes would be no greater than 1 mG at any residence and 4mG at the edge of the right-of-way.<sup>17</sup>

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<sup>17</sup> In a previous review of proposed transmission line facilities, the Energy Facilities Siting Board accepted an edge-of-right-of-way level of 85 mG. Massachusetts Electric Company et al., 13 DOMSC 119, at 228-242 (1985). See also, Brockton Power, LLC, 10 DOMSB 157, 236-

With the implementation of the proposed mitigation and the inclusion of taller trees as part of the landscape plan, as set forth above, the Department finds that MECO has taken reasonable steps to avoid or minimize the environmental impacts of the project. The Department finds that with the proposed and required mitigation, the environmental impacts of the proposed project on the local community, consisting primarily of partial views of transmission line taps and substation structures and temporary and permanent alteration of wetlands, would be minimal. Based on the foregoing, the Department finds that the public interest in the construction of the proposed project on the proposed site would outweigh the environmental impacts of the project. Consequently, the Department finds that the proposed project is reasonably necessary for the convenience and welfare of the public.

#### IV. CONCLUSION

In Section III.A, above, the Department found that MECO is a public service corporation. In Section III.C, above, the Department found that the proposed project is reasonably necessary for the convenience and welfare of the public.

In Section III.B, above, the Department found that MECO requires an exemption from Section 173-13F(11) of the Westford Zoning Bylaw, that it may require an exemption from Section 173-18F depending on the interpretation of that section, and that it requires exemptions from Sections 173-22A(1) and 173-41B to the extent that the project is time sensitive. MECO also has requested a

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<sup>17</sup> (...continued)  
247; 258-261 (2000); Sithe Edgar Development, LLC, 10 DOMSB 1, 114-117; 137-139 (2000). With the increases predicted for the Westford project, the edge of right-of-way and substation property line magnetic field levels would be within the levels previously accepted for electric facilities by the Siting Board.



comprehensive exemption “from operation of the Zoning Bylaw in connection with its use of the lands...and the construction, use, operation and maintenance thereon of the proposed substation and the related facilities...” (Exh. PET-1). As the Department recently has noted, petitions for comprehensive relief are infrequently granted but may be appropriate in certain circumstances. For example, the Department will consider the issuance of comprehensive zoning relief where numerous individual exemptions are required or where the issuance of a comprehensive exemption could avoid substantial public harm by serving to prevent delay in the construction and operation of the proposed use. Tennessee Gas Pipeline Company, D.T.E. 01-57, at 11 (2002).

Here, the Company has demonstrated a time-sensitive need for the proposed project in order to prevent possible electrical outages, particularly during the period of peak summer demand for electricity. The record shows that the existing Westford-area distribution system already is in violation of the Company’s supply and distribution planning guidelines, and that any of several system contingencies could result in extended outages in the Westford area. The Company has taken temporary measures to address existing system overloads; however, these measures have not reduced the extent of possible outages to acceptable levels. The record shows that construction and testing of the proposed substation, which would address the existing problems with the Westford-area distribution system, would take at least twelve months. If the commencement of construction is delayed for even a few months beyond the effective date of this order, the substation may not be available to meet local electric demands during the summer of 2003. It is therefore critical to the public interest that construction of the proposed substation begin without needless delay.

The Department notes that this decision addresses substantive issues associated with Sections

173-41B (Water Resource Protection District) and 173-22A(1) (Site Plan Review) of the Westford Zoning Bylaw. In addition, MECO has received an Order of Conditions for the proposed project from the Westford Conservation Commission, and has committed to mitigation of wetlands impacts, including the replication of wetlands on another portion of the site and protective measures for three Species of Special Concern. The Department finds that the public interest in the immediate construction of the proposed substation outweighs any benefit that could be obtained from further local review. Consequently, in light of the substantial public interest in the immediate construction of the substation, the Department finds that exemption from Sections 173-22A(1), 173-41B, and 173-18F of the Westford Zoning Bylaw are required within the meaning of G.L. c. 40A, §3. In addition, the Department finds that it is appropriate in this case to grant MECO's request for a comprehensive exemption "from operation of the Zoning Bylaw in connection with its use of the lands...and the construction, use, operation and maintenance thereon of the proposed substation and the related facilities a comprehensive zoning exemption."

V. ORDER

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

ORDERED: That MECO's petition for an exemption from Sections 173-13F(11), 173-22A(1), 173-41B, and 173-18F of the Westford Zoning Bylaw is allowed; and it is

FURTHER ORDERED: That MECO's petition for a comprehensive zoning exemption from the Westford Bylaws is allowed; and it is

FURTHER ORDERED: That MECO include evergreen trees that are at least 8 to 10 feet in height along the western side of the substation yard and near the access road entrance to the yard, and

to maintain and replace trees that function as visual screens, as described in section III.C.4; and it is

FURTHER ORDERED: That MECO notify the Department of any significant changes in the planned timing, design or environmental impacts of the proposed project; and it is

FURTHER ORDERED: That the Secretary of the Department shall transmit a certified copy of this Order to the Clerk of the Town of Westford, and that MECO shall serve a copy of this Order on the Westford Town Council, Westford Planning Board, and Westford Zoning Board of Appeals within five business days of its issuance and shall certify to the Secretary of the Department within ten business days of its issuance that such service has been accomplished.

By order of the Department,

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James Connelly, Chairman

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Deirdre K. Manning, Commissioner

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W. Robert Keating, Commissioner

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Eugene Sullivan, Commissioner

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Paul B. Vasington, Commissioner



Appeal as to matters of the 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 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. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).