

Date Filed: November 7, 2024

Question

MG-1

Please provide the latest layout provided to and/or approved in the local permitting process for construction.

- a. Describe the changes in the latest layout with the layout shown in Figure 2 on page 5 of the Department's June 30, 2023, D.P.U. 22-18/22-19 Order ("Order"). In your description, also provide the Company's justification for making those changes, including but not limited to discussions of changes to setbacks from property line, number and layout of Megapacks/transformers, location of the proposed substation, location of the site access way, snow storage areas, parking, and soundwall alignment.
- b. If the revised layout was approved in the local permitting process, state which agency approved the revised design and whether there are any unresolved design details as of now. Describe any known objections to these design details.

Response:

Please see Attachment 1, which is the most recent plan approved by the Medway Conservation Commission on August 22, 2024. For the reasons outlined below, these changes taken individually and collectively, are minor and no further review of this matter by the Department is warranted. The Department required the Company to notify it of major modifications made to the Project Site after the Department's granting the Company (1) an exemption to the Town of Medway's individual zoning bylaws, (2) a comprehensive exemption to the Town of Medway's zoning bylaws and (3) authorization to construct and operate a new transmission line. In determining whether changes to the design plans are "major" (requiring further inquiry of a closed docket) or "minor" (requiring no further inquiry of a closed docket), the Siting Board has historically determined whether certain project changes alter, in any substantive way, either the assumptions or conclusions reached in its analysis of the project's environmental impacts in the underlying proceeding. Berkshire Compliance Decision 7 DOMSB 423, at 437 (1997). see also IDC Bellingham LLC Decision on Compliance, 11 DOMSB 27, at 38-39 (2000). If the changes to the Project do not alter, in any substantive way, either the assumptions or conclusions reached in its analysis of the project's environmental impacts in the underlying proceeding, -- as is the case in the instant matter -- then no further

Department review is warranted.

In this case, the Department has identified modifications that were made after the Department approved the Company's design plan, which at the time, was 30 percent complete, as is customary for permitting stage engineering plans. Despite minor changes to that design plan which are customary as engineering plans advance in detail as a project proceeds to construction, there has been no change in the design that alters substantively any assumption or conclusion made by the Department as part of its June 30, 2023 decision.

First, the Department's findings remain accurate in that (1) Medway Grid is a public service corporation, (2) the proposed use of the Project is reasonably necessary for the public convenience and welfare, and (3) the specifically identified zoning exemptions that are listed in the Order remain necessary to construct the Project. Moreover, the Department granted the Company a comprehensive exemption from the Town of Medway zoning bylaws and, pursuant to G.L. c. 164. §72, authorized the Company to construct and use a new transmission line. Both, the comprehensive exemption and the § 72 authorization remain necessary to construct the Project.

Second, the minor modifications from the 30 percent design plan reviewed by the Department in June 2023 have not altered the Project Site. The layout provided as Figure 2 in the Department's Order shows a 10.6-acre Project Site, of which approximately 5.6 acres would be developed for the BESS and the Project Substation and 0.84 acres for the transmission interconnection. Order at 5. The 30 percent design plan was sufficient for review by the Siting Board and MEPA (as part of the SEIR) as they show the proposed civil engineering work, the limits of work and the project envelope for evaluation of environmental impacts that could result from the project (*see* Tr. 1 at 30).

Third, the Department found that a 22-foot sound attenuation barrier wall was to be constructed to ensure compliance with sound levels mandated by the Massachusetts Department of Environmental Protection (the "MA DEP"). The sound attenuation barrier would need to be located along the north and east sides of the BESS. This has not changed.

Fourth, the Department made findings with respect to environmental concerns including, but not limited to: construction, land use, historical and archaeological matters, wetlands, water and groundwater resources, stormwater, water supply and resources, visual plans, traffic, noise, combustible or chemical processes that emit pollutants, solid waste and hazardous materials, magnetic fields, and public safety. As explained below, none of the modifications, taken individually or collectively alters substantively any assumption or conclusion made by the Department with respect to the environmental issues and thus, further inquiry into this matter is not warranted.

- a. As explained below, as a result of a rigorous permitting process and input from local and state agencies, minor modifications of the Project Site were required to be made subsequent to the Department's initial review of the Company's 30 percent design plan over 17 months ago. None of these changes alters substantively any assumptions or conclusions made by the Department in its Order.

Stormwater Management System: There were minor modifications to the stormwater management system made as a result of the MEPA process and at the direction of the Medway Conservation Commission. Specifically, as noted in Attachment 1, the stormwater management basin increased in area and volume in response to EENF comments received from the Massachusetts Executive Office of Energy and Environmental Affairs during the MEPA review process. During that proceeding, MEPA classified the Project as Tier 3, which required the Company to use the 2050 Planning Horizon Design Storm Depths for the stormwater systems. Additional changes were required to the stormwater system after findings from test pits performed by the Company's consultant through the peer review process that required the replacement of dry wells for deep sump catch basins and the removal of perforated pipes. The minor modification to the stormwater system has not altered substantively any assumption or conclusion made by the Department in its June 30, 2023 Order. Specifically, the Order intended that the stormwater system include deep sump catch basins that will collect stormwater for pretreatment and an infiltration basin to collect stormwater runoff from the site. *See* Order at 55. The size of the stormwater system has been changed, which does not alter substantively any of the findings made by the Department with respect to this issue.

Orientation of Megapacks: To accommodate the drainage swale as part of the stormwater system, a minor modification was made to the orientation of the megapacks. In particular, the drainage swale needed the capacity to handle a 100-year storm event for the safe conveyance of stormwater runoff per standard engineering design as well as a requirement by the Medway Conservation Commission peer review process. To integrate the megapacks and the stormwater system, it was necessary for the Company to adjust the location of nine batteries. Neither the number of batteries nor the parameters of the Project Site have been changed since the Department issued its decision. Thus, the adjustment of nine batteries would not alter substantively any assumption or conclusion made by the Department in its June 30, 2023 Order. As explained below, to alleviate any concerns about noise levels changing as a result of the positioning of the nine batteries, the Company (at the direction of the Department in its Order and per the terms of the HCA) will conduct an actual post-construction sound study to ensure that the noise levels from the minor modification remain at or below the sound level parameters mandated by the MA DEP. As all batteries remain within the Project Site, there is no impact to other environmental issues

related to construction, land use, historical and archaeological matters, wetlands, water and groundwater resources, stormwater, water supply and resources, visual plans, traffic, combustible or chemical processes that emit pollutants, solid waste and hazardous materials, magnetic fields, and/or public safety that would warrant further inquiry into this matter.

Setbacks reduced: A minor reduction in the setbacks were made to accommodate the stormwater system. The reduced setbacks did not alter substantively any assumption or conclusion made by the Department in its June 30, 2023 Order related to environmental matters, such as construction, land use, historical and archaeological matters, wetlands, water and groundwater resources, stormwater, water supply and resources, visual plans (*see* explanation below and plans in Attachment 2), traffic, combustible or chemical processes that emit pollutants, solid waste and hazardous materials, magnetic fields, and/or public safety that would warrant further inquiry into this matter.

Access to Site: Access to the site was adjusted based on the megapack layout and site grading. A gravel access road connection to the existing Eversource easement on Milford Street was added per Eversource requirements. The access road was reviewed and incorporated in the plans approved by the Medway Conservation Commission on November 14, 2023. This minor modification did not alter substantively any assumption or conclusion made by the Department in its June 30, 2023 Order related to environmental matters, such as construction, land use, historical and archaeological matters, wetlands, water and groundwater resources, stormwater, water supply and resources, visual plans (*see* explanation below and plans at Attachment 2), traffic, combustible or chemical processes that emit pollutants, solid waste and hazardous materials, magnetic fields, and/or public safety that would warrant further inquiry into this matter.

Snow Storage/Parking: Per the Department's Order at 55 and 104, the Company was to develop a snow storage and snow removal plan for the Town's approval as required by the HCA. The Conservation Commission requested the Company to document the areas for snow storage as part of the plan. Delineating room for snow storage and labeling the snow storage area on the plan did not alter substantively any assumption or conclusion made by the Department in its June 30, 2023 Order. Parking spaces have not changed.

Substation Orientation: Orientation of the switchgear portion of the project substation was rotated 90 degrees based on final electrical engineering design related to the location of cabling connections between the Main Power Transformer and Switchgear equipment. This is typical of immaterial design updates that are incorporated during the construction engineering process and has no impact on the environmental assumptions and

conclusions made by the Department in its Order.

- b.** Below is the timeline of permitting approvals after the Department's issuance of the Order in June 2023.

November 14, 2023: Conservation Commission determined that the Project, with the expanded stormwater system met the requirements of the Massachusetts Wetland Protection Act (the Massachusetts Stormwater Standards), the Medway Wetlands Bylaw, and the Medway Stormwater Protection Bylaw.

November 28, 2023: Dr. Yorkis appealed the Conservation Commission's decision pertaining to the Massachusetts Wetland Protection Act to the MA DEP.

January 25, 2024: MA DEP upheld the Conservation Commission Order and in a Superseding Order of Conditions found that the Project, as proposed with the expanded stormwater system, met the requirements of the Massachusetts Wetland Protection Act.

February 5, 2024: Dr. Yorkis appealed the Superseding Order of Conditions to the MA DEP Office of Appeals and Dispute Resolution.

February 26, 2024: Dr. Yorkis agreed to a settlement with the Company and MA DEP. As part of that settlement, a remote-control valve/gate closure system was added to the stormwater system.

March 1, 2024: MA DEP issued the Final Order of Conditions requiring the installation of a remote-controlled valve/gate closure system.

August 22, 2024: Conservation Commission approved the modified stormwater system to include the remote-controlled valve/gate closure system. Included in the packet presented to the Conservation Commission was the Company's proposed layout of the Project Site and its landscaping plan.

The August 22, 2024 filing was submitted to the Conservation Commission to demonstrate compliance with Final Project Plans including minor revisions to meet the requirements of the Superseding Order of Conditions (the "SOC") issued by the MassDEP Office of Appeals and Dispute Resolution, as well as updates to the landscaping plan that were coordinated with Medway's Design Review Committee ("DRC") (*see* Attachment 3). The updates were reviewed by Conservation Commission Staff, the Town of Medway's third-party engineer (Tetra Tech), and unanimously approved as a minor amendment by the

Commission.

The only known objections to the minor modifications were those expressed in writing to the Department by Dr. Yorkis (on behalf of MEP) and Mr. Myers (on behalf of himself). Since August 2023, Dr. Yorkis and Mr. Myers have argued repeatedly that the minor modifications described above and outlined in response to MG-2, below, were ‘major’ and, as a result would impact noise, the ability to landscape around the sound wall, etc. The Company has consistently stated that modifications made to the Project between the 30 percent design plan and the final engineering issued for construction were minor, customary of the engineering process for a project, and did not meet the standard for the Siting Board (or arguably, the Department) to inquire further about the Project’s parameters. Other than those letters, the Company is not aware of other objections to its design plan.

The Medway Select Board requested that the Company reassure the Medway community that the Company will (1) conduct an actual post-construction sound study and ensure that the sound levels are within the parameters allowed by the Commonwealth and (2) adhere to all of the recommendations provided by the DRC (*see* Letter from Medway Grid counsel to the Select Board dated October 31, 2024, at Attachment 4). At the November 4, 2024 Select Board meeting, the Company understands that a statement was made affirming that the Town continues to be supportive of this Project.