



*The Commonwealth of Massachusetts*  
*Executive Office of Energy and Environmental Affairs*  
*100 Cambridge Street, Suite 900*  
*Boston, MA 02114*

Deval L. Patrick  
GOVERNOR

Timothy P. Murray  
LIEUTENANT  
GOVERNOR

Ian A. Bowles  
SECRETARY

Tel: (617) 626-1000  
Fax: (617) 626-1181  
<http://www.mass.gov/envir>

May 16, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : K163 Groveland to West Newbury 115kV Line  
PROJECT MUNICIPALITY : Groveland, Merrimac, West Newbury, and Amesbury  
PROJECT WATERSHED : Merrimack and Parker  
EOEA NUMBER : 14186R  
PROJECT PROPONENT : New England Power Company  
DATE NOTICED IN MONITOR : April 9, 2008

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (EENF) for this project and hereby determine that it **requires** the preparation of a Single Environmental Impact Report (EIR).

Project Description

As described in the EENF, the proponent proposes to install a new 115kV transmission line to be called the K-163 line (K-163), in an existing Right of Way (ROW) from the King Street Substation on King Street in Groveland to the West Amesbury Substation on Middle Road in Amesbury, through the towns of Amesbury, Merrimac, West Newbury, and Groveland (refer to Figure 1). The K-163 will replace one of the existing 23kV lines located in the middle of the ROW known as the 2377 line. The K-163 will be a back-up source to the West Amesbury Substation in the event of an extended outage of the 345kV/115 kV source at the West Amesbury Substation.

The project involves the erection of approximately 72 new steel electrical structures within the middle portion of the existing transmission line ROW. The new 115kV steel structures will replace the existing 23kV line containing approximately 173 wood structures along the same linear section of the ROW (within the middle portion of ROW). Approximately

173 23kV wood structures will be removed and approximately 72 115kV steel structures will be constructed within the ROW. In addition, approximately nine new 23kV wood structures will also be constructed as part of this project. This project will require the removal of approximately 61 existing 23 kV structures currently located in wetland and the placement of approximately 13 new steel 115kV structures and four new wood 23kV structures in wetland. Limitations on electrical conductor span length preclude removing all structures from wetlands.

The ROW intersects two portions of a Natural Heritage and Endangered Species Program (NHESP) mapped habitat for rare species. The first area, located within the southern portion of the ROW, is in the vicinity of the Crane Pond Wildlife Management Area in Groveland and West Newbury. The other mapped habitat area is located within the northern portion of the ROW associated with the Merrimack River and three of its tributaries.

There are four (4) recorded prehistoric archeological sites located within the ROW. Two sites are located within the northern portion of West Newbury near the Merrimack River whereas the other two areas are located in Merrimac, also near the Merrimack River.

### State Permits and Jurisdiction

The project is undergoing MEPA review and subject to preparation of mandatory Environmental Impact Report (EIR) pursuant to Section 11.03(3)(a)(1)(a) because it involves alteration of one or more acres of BVW and requires a state permit. The project will require a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP); a Massachusetts Endangered Species Act Compliance from the Natural Heritage & Endangered Species Program (NHESP) of the MA Division of Fisheries & Wildlife; Orders of Conditions from the communities along the Line routes (and hence Superseding Order(s) from MassDEP if any local Orders were appealed).

The project requires approval from the Department of Public Utilities under M.G.L. Chapter 164, Section 72. The project also requires a Section 404 Permit from the United States (U.S.) Army Corps of Engineers. It also requires a Nonpoint Discharge Elimination System (NPDES) General Permit for Stormwater from the U.S. Environmental Protection Agency.

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required state permits with the potential to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to wetlands and water quality, energy, land and stormwater.

### Waiver Request

As noted above, this project exceeds a threshold for filing a mandatory EIR. The proponent has submitted an EENF with a request that I grant a Waiver of the requirement to prepare an EIR. The EENF has been subject to an extended comment period consistent with Section 11.05 (7) of the MEPA regulations. The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by

MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and
- (b) not serve to avoid or minimize Damage to the Environment.

In the case of a waiver of a mandatory EIR review threshold, the MEPA regulations at 301 CMR 11.11(3) state that, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) the project is likely to cause no Damage to the Environment; and
- (b) ample and unconstrained infrastructure facilities and services exist to support the project, when subject matter jurisdiction is broad in scope, or those aspects of the project within subject matter jurisdiction, when jurisdiction is limited to the subject matter of state agency permits.

### Single EIR Request

The EENF included a request that I allow the proponent to fulfill its EIR obligations under MEPA with a Single EIR, rather than the usual process of a Draft and Final EIR in the event the waiver is not granted. As noted above, an EENF was submitted in conjunction with these requests and received an extended comment period pursuant to Section 11.05 (7) of the MEPA regulations. Section 11.06(8) of the MEPA regulations indicate that a Single EIR may be allowed provided that the EENF:

- (a) describes and analyzes all aspects of the Project and all feasible alternatives, regardless of any jurisdictional or other limitation that may apply to the Scope;
- (b) provides a detailed baseline in relation to which potential environmental impacts and mitigation measures can be assessed; and
- (c) demonstrates that the planning and design for the Project use all feasible means to avoid potential environmental impacts.

### Review of the EENF

The EENF provides project plans, a detailed project description, describes baseline environmental conditions, identifies the potential environmental impacts of the project and potential measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts.

The EENF presents a summary of an alternative analysis conducted by the proponent. Alternatives evaluated included the No-Build Alternative; several Overhead Line Alternatives which include the Preferred Alternative an Overhead Line on the Existing Right-of-Way, an Overhead Line Alternative within another portion of the Existing Right-of-Way, and a New Right-of-Way Alternative for an Overhead Line; Underground Transmission Alternatives; The

alternatives analysis resulted in the selection of the Preferred Alternative, which incorporates design changes to reduce tree clearing and wetlands impacts. The proponent has committed to a range of measures to avoid, minimize and mitigate adverse environmental impacts.

The proponent appears committed to minimizing its environmental impacts. The EENF meets the standard for granting a Single EIR because it provides adequate description and analysis of the project and its alternatives, provides a detailed baseline of environmental conditions and demonstrates that the project will incorporate all feasible means to avoid potential environmental impacts. The proponent may file a Single EIR to meet its MEPA review requirements. Concerns identified in comment letters are relatively narrow in scope. The granting of a Single EIR with a narrowly tailored Scope will significantly shorten the associated review period compared to a typical project and I expect that the issues identified in the Scope can be addressed within a relatively short timeframe.

The EENF does not meet the higher standards reflected in the criteria for granting a full Waiver of the EIR requirement including a demonstration that the requirement to prepare an EIR would constitute a hardship to the proponent, a demonstration that the requirement to prepare the EIR will not serve to avoid or minimize Damage to the Environment or that the project will cause no Damage to the Environment. Comments from MHC and BLC clearly identify concerns with impacts to

### **SCOPE**

The Single EIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate.

#### Project Description

The Single EIR should include a thorough description of the entire project and all project elements and phases.

#### Project Permitting and Consistency

This section should provide an updated project description and any changes to proposed alternatives. The Single EIR should update the status of each state permit or agency action required, or potentially required, for the project, and describe the project's ability to meet applicable performance standards.

#### Wetland Resources

As described in the EENF, this utility project will require a 401 Water Quality Certification from MassDEP for alteration of an estimated 149,629 sf of boarding vegetated wetlands (BVW) and 1,764 square feet of other wetland resources. The project will involve temporary disturbance and permanent wetland alteration for the removal of approximately 61 existing structures currently located in wetlands and for the placement of approximately 13 new

steel 115kV structures and four new wood 23kV structures in Bordering Vegetated Wetland (BVW). In order to gain access to remove the existing 23kV structures and to install the proposed 115kV structures, wetlands will need to be crossed and accessed by equipment. Temporary swamp/timber mats are proposed to be placed within wetland areas for access and staging areas and removed once the project construction is complete.

Comments from MassDEP emphasize the need for more detailed information in the Single EIR regarding wetlands resource areas that will be impacted by the project, and explaining the relationship of these alterations to other projects in the vicinity of the alignment and permitting. MassDEP has stated that the EENF has not addressed all the issues MassDEP identified in a comment letter dated March 11, 2008. I advise the proponent to work closely with MassDEP to clearly identify and address these outstanding issues. The Single EIR should include the results of the discussions with MassDEP. In addition, the Single EIR should illustrate the location of resource areas relative to the project site and it should provide details on the mitigation proposed for work within sensitive resource areas. The Single EIR should also provide updates on the status of Notices of Intent filed with the local conservation commissions.

### Historic and Cultural Resources

The Massachusetts Historic Commission (MHC), as further detailed in its comment letter, has determined that there are several recorded archaeological sites (19-ES-547, 767, 768, 769) within the proposed project ROW. The proponent should provide information regarding the location of proposed access roads, vehicle parking and equipment staging areas are not clearly indicated in EENF. The Single EIR should provide this information. In addition, the proponent should work with MHC to provide MHC with the required information in order to avoid, minimize or mitigate any adverse effects to these archaeological sites. The Single EIR should also provide updates of these discussions.

### Article 97

The Single EIR should clearly identify all Article 97 lands adjacent to the project route, and identify whether it will seek the disposition of an easement or other interest in any state or municipal conservation land protected by Article 97 of the Massachusetts Constitution. If the project results in an Article 97 disposition, the proponent must follow guidelines of the EEA land disposition policies which are available at the EEA website. The Single EIR should identify all Article 97 lands impacted by the project, should identify the nature of the lands, and whether Commonwealth funds will be expended for the lands.

Article 97 of the Massachusetts Constitution bespeaks the high value placed upon the preservation of existing open space lands, including lands subject to Conservation Restrictions. To further the Commonwealth's open space goals, EEA's Article 97 Land Disposition Policy requires a demonstration that a proponent has explored all other options to avoid the Article 97 disposition, and that no feasible and substantially equivalent alternatives exist (monetary considerations notwithstanding).

Rare Species and Priority Habitat

The proposed line route crosses through several areas of known rare species habitat. Field surveys have been initiated by the proponent to assess priority habitat throughout the proposed project area. Once the NHESP has received the survey results, habitat assessments, and any other requested information we will determine whether the proposed project will result in a "take" of state-listed species. The Single EIR should include the survey results and results of the discussions with NHESP. The Single EIR should present the results on an appropriately scaled map.

Mitigation

The Single EIR should include a separate chapter on mitigation measures. It should include a Draft Section 61 Finding for all state permits that includes a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation, based on the construction phases of the project, should also be included.

Response to Comments

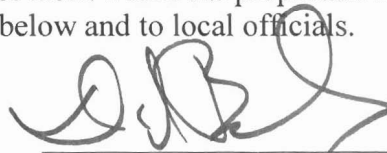
The Single EIR should contain a copy of this Certificate and a copy of each comment received. To ensure that the issues raised by commenters are addressed, the Single EIR should include a response to comments. This directive is not intended to, and shall not be construed to, enlarge the scope of the Single EIR beyond what has been expressly identified in this Certificate. I recommend that the proponent use either an indexed response to comments format, or a direct narrative response.

Circulation

The Single EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to any state agencies from which the proponent will seek permits or approvals, to the list of "comments received" below and to local officials.

May 16, 2008

Date



Ian A. Bowles

## Comments received:

04/15/08	Massachusetts Historical Commission (MHC)
05/02/08	Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program
05/12/08	Department of Environmental Protection/Northeast Regional Office referencing March 11, 2008 letter

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