

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

APPLICATION OF:

MASSACHUSETTS ELECTRIC COMPANY
d/b/a NATIONAL GRID and NEW ENGLAND POWER COMPANY
d/b/a NATIONAL GRID
WATERWAYS LICENSE APPLICATION NO: W16-4697

**CONSERVATION LAW FOUNDATION, MYSTIC RIVER WATERSHED
ASSOCIATION, AND FRIENDS OF THE MALDEN RIVER'S MOTION TO
PARTICIPATE IN THE ADJUDICATORY PROCEEDING**

Conservation Law Foundation (“CLF”), Mystic River Watershed Association (“MyRWA”), and Friends of the Malden River (“FoMR”) hereby request permission to participate in the above-captioned adjudicatory proceeding (hereinafter referred to as the “Adjudicatory Proceeding”). The appeal brought by National Grid challenges a Written Determination issued by the Massachusetts Department of Environmental Protection (“MassDEP”) pursuant to the Public Waterfront Act, M.G.L. c. 91 (“Public Waterfront Act”), §§ 14 & 18, regarding National Grid’s compliance with the Act at its property located at 170 Medford Street in the cities of Everett, Malden, and Medford. For the reasons set forth below, CLF, MyRWA, and FoMR will be affected by the Adjudicatory Proceeding and should be allowed to participate in it.

I. Brief Factual Context

Over seven years ago, in January 2011, National Grid requested approval for a Minor Project Modification pursuant to the Public Waterfront Act and its implementing Waterways Regulations, 310 CMR 9.00 *et seq.*, to make upgrades to its utility infrastructure facilities at 170 Medford Street. MassDEP conditioned its approval of the Minor Project Modification on

subsequent license consolidation and the provision of long-overdue public access to the site, which borders the Malden River.

National Grid submitted the required license consolidation application in February 2016. In its application, National Grid proposed providing public access to the site in the form of a public overlook near Medford Street. Many public commenters on National Grid's application, including CLF, MyRWA, and FoMR, urged MassDEP to require National Grid to build a continuous pedestrian pathway on its property along the Malden River to fulfill its public access requirements.

A pathway on National Grid's property along the Malden River is a key component of the Malden River Greenway, a regional plan to improve public riverfront access along the Malden River that has been missing for decades. Other property owners abutting National Grid's site have either already constructed or agreed to construct portions of the pathway on their respective properties. Without a corresponding pathway across National Grid's property, continuous public access along the Malden River will not be possible, and users of the abutting pathways will be forced to stop and turn around at National Grid's property line. Despite all of this, National Grid objected to building a continuous public pathway across its property in its January 2018 Response to Comments.

On August 10, 2018, MassDEP issued its Written Determination, which included a draft special condition requiring National Grid to construct a public access pathway across its property along the Malden River. On August 31, 2018, National Grid filed a claim for adjudicatory hearing appealing MassDEP's Written Determination. CLF, MyRWA, and FoMR now seek to participate in the Adjudicatory Proceeding.

II. CLF, MyRWA, and FoMR Should be Allowed to Participate in the Adjudicatory Proceeding

CLF, MyRWA, and FoMR are affected by the Adjudicatory Proceeding and should be allowed to participate on that basis. The ways in which CLF, MyRWA, and FoMR are affected by the Adjudicatory Proceeding are set forth in Section V below.

In accordance with applicable regulations, CLF, MyRWA, and FoMR have filed this Motion to Participate prior to the prehearing conference. 310 CMR 1.01(7)(e).

III. The Relief Sought by CLF, MyRWA, and FoMR

CLF, MyRWA, and FoMR seek to participate in order to argue orally at the close of the hearing or in a brief, or both, the reasons that MassDEP's Written Determination should be upheld.

IV. The Law in Support of Participation and the Relief Sought by CLF, MyRWA, and FoMR

Under the Massachusetts Administrative Procedure Act, agencies may allow an "interested person to participate by presentation of argument orally or in writing, or for any other limited purpose, as the agency may order." M.G.L. c. 30A, § 10. Accordingly, MassDEP's adjudicatory proceedings regulations provide that "[a] person affected by an adjudicatory proceeding shall be permitted to participate." 310 CMR 1.01(7)(e). Under the regulations, participants are granted "the right to argue orally at the close of the hearing and the right to file a brief." *Id.*

V. The Effect of the Adjudicatory Proceeding on CLF, MyRWA, and FoMR

Since its founding over fifty years ago, CLF has had a strong focus on representing the interests of its members and the public in tidelands and associated public trust matters in Massachusetts. CLF has made major investments of staff and resources in this area, including participating in every significant MassDEP rulemaking connected with the Public Waterfront Act from the initial set of regulations to the most recent revisions; serving, at MassDEP's request, as special advisors in at least one rulemaking; and participating in numerous legal challenges to the

Public Waterfront Act, both in response to solicitation by the Massachusetts Supreme Judicial Court and on CLF's own initiative. Through this work, CLF has developed a reputation as a strong advocate for the Public Waterfront Act and been the principal voice holding Massachusetts accountable as public trustee of the natural resources guaranteed to CLF's members and the public by Article 97 of the Massachusetts Constitution. For decades, CLF has engaged with regulators responsible for the management and stewardship of tidelands to increase our members' and the public's use and enjoyment of all tidelands, which are held in trust for the public. Another central aspect of CLF's work has been advocacy, policy, and educational activities connected to the Public Waterfront Act to ensure that Massachusetts fulfills its responsibilities to CLF's members and the public in providing access to and use of current or former tidelands to the full extent guaranteed by the law.

As part of its ongoing efforts to protect and enhance public access to tidelands along the Malden River, CLF submitted both oral and written comments on National Grid's license consolidation application urging MassDEP to require National Grid to meet its public access obligations by constructing a continuous public pathway along the Malden River. The public access required in MassDEP's Written Determination is consistent with what CLF advocated for in its public comments. If National Grid is successful in its appeal and is allowed to provide only limited public access on its site, or is not required to provide any public access at all, the foundational principles of the Public Waterfront Act, which CLF has long fought to defend, will be undermined.

Moreover, CLF's members and the public have been deprived of their rights to use and access the Malden River waterfront for decades. The local communities, including Everett and Malden, are some of the most diverse in Massachusetts, with many residents who are low-income

and people of color. Extensive efforts have been undertaken by the Mystic River Watershed Association, Friends of the Malden River, the Mayor of Everett, CLF, and other local officials and stakeholders to correct this longstanding environmental injustice and create a vision for greater public access along the Malden River waterfront. Significant resources have been dedicated to developing and supporting the Malden River Greenway, which cannot be completed without continuous public access across the National Grid site. What National Grid has proposed as public access is not only isolated and uninviting, it does not provide the public with full access to the river. If National Grid's appeal is successful, meaningful public access at this site will not be achieved, to the detriment of CLF's members and the public, and the strategic vision for public access along the Malden River.

MyRWA is a non-profit organization dedicated to the preservation and enhancement of the Mystic River, its tributaries, and watershed lands for the benefit of present and future generations. The organization represents the interests of more than 500,000 residents in 22 towns and cities within the watershed. MyRWA's interests are impacted by the proper application of the Waterways Regulations, as its mission is to provide, protect, and promote public access to waterways for the express purposes of providing opportunities for safe recreating, whether fishing, walking, biking, using a wheelchair to view the water, fishing, bird watching, or other activity. MyRWA has invested significant financial and organizational resources in activities and programs that provide, protect, and promote public access to the waterfront.

One of the most, if not the most, important projects MyRWA is working on is the Mystic Greenways Initiative, with the goal of restoring, revitalizing, and connecting waterfront parklands and creating a distinctive open space network consisting of robust recreational amenities and an active transportation system that improves community cohesion, public health, environmental

sustainability, and climate resilience across the watershed. Restoring public access along the Malden River, which has been walled off from the public by commercial and industrial users for years, represents the best opportunity for green space for the residents of Malden and Everett. Currently, more than two-thirds of the waterfront path along the Malden River is complete or in progress. These are critical investments to provide the community with high quality green spaces – spaces that have been proven to increase physical health and psychological well-being.

As part of its ongoing efforts to protect and enhance public access along the waterways in the Mystic River watershed, MyRWA submitted both oral and written comments on National Grid's license consolidation application urging MassDEP to require National Grid to meet its public access obligations by constructing a continuous public pathway along the Malden River. The public access required in MassDEP's Written Determination is consistent with what MyRWA advocated for in its public comments. If National Grid's plans are approved in the current form, the resulting break in continuity of the waterfront path would be detrimental to the water-related interests of the public, including MyRWA and its members, and their right to public access.

FoMR is comprised of the three communities that border the Malden River – Everett, Malden, and Medford – and seeks to promote an awareness of and interest in the Malden River, improve its water quality, and increase access for public enjoyment. FoMR works to change public perception of the Malden River from a place to be avoided to a place to be enjoyed for its natural beauty and recreational opportunities. A few notable examples of FoMR's work along the Malden River include: hosting numerous Malden River Festivals and cleanup events to raise awareness about the Malden River; filing a Public Involvement Plan for the remediation and maintenance of the 378 Commercial Street property (formerly owned by Honeywell, Inc., now owned by Combined Properties); completion of a Public Health Risk Assessment for boating and boat launch

sites on the Malden River in collaboration with MyRWA, MIT Center for Environmental Health Sciences, and Gradient Corporation; and ongoing efforts to build connections with other local community groups.

The City of Malden is one of the most densely populated cities in Massachusetts. Of the city's total acreage, only about 12% is open space and less than 5% is permanently protected, according to at least one report. The results of a 2017 Open Space and Recreation Survey indicated that residents overwhelmingly view the Malden River as a high priority for open space, and see it as a viable and important investment for the City of Malden. Over 80% of respondents indicated that they would like to have a continuous path along the Malden River.

FoMR is an integral part of the Malden River Greenway initiative, working side-by-side with MyRWA in strategic meetings, public outreach, and event planning. FoMR and its members submitted both oral and written comments during the public comment process on National Grid's application, advocating for public access consistent with what MassDEP has required in its Written Determination. A continuous pathway along the Malden River is critical piece of the open space plan for FoMR members' and local residents' health and well-being, and if National Grid's plans are approved in the current form, it would be detrimental to the interests of FoMR and its members.

CLF, MyRWA, and FoMR seek to participate in this Adjudicatory Proceeding in order to defend MassDEP's Written Determination and ensure that each organization's members, local residents, and all citizens of the Commonwealth finally obtain the full and meaningful access to the Malden River waterfront that they are legally entitled to.

WHEREFORE, CLF, MyRWA, and FoMR request that their Motion to Participate in the Adjudicatory Proceeding be GRANTED.

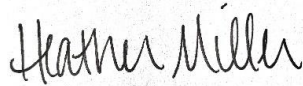
Respectfully submitted this 1st day of October, 2018,

Conservation Law Foundation

Mystic River Watershed Association

Friends of the Malden River

By their attorney,



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