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The Law Office of
Joshua M. Daniels

January 12, 2021

Kathleen Theoharides
Chair, Energy Facilities Siting Board
Secretary, Executive Office of Energy
and Environment Affairs
100 Cambridge Street
Boston, MA 02114

**Re: *NSTAR Elec. Co. d/b/a Eversource Energy,*
EFSB 14-04A/D.P.U. 14-153A/14-154A**

Dear Secretary Theoharides,

The undersigned write, once again, to bring attention to the ongoing deficiencies in interpretation services and access to public participation at the Energy Facilities Siting Board (the EFSB or the Board).

The Board and its staff have persistently denied Spanish-speaking residents of East Boston and Chelsea access to proceedings regarding the proposal by NSTAR Electric Company d/b/a Eversource Energy (Eversource) to construct and operate two new 115-kilovolt underground electric transmission lines in Everett, Chelsea, and East Boston and an aboveground electric substation in East Boston, collectively entitled the East Eagle Reliability Project (the Project). This problem has been brought to your attention and that of your predecessor repeatedly since November 2017. This issue is also the subject of pending civil rights complaints under consideration at the United States Departments of Transportation and Interior. Moreover, your agency is currently the subject of a civil rights compliance review initiated as a result of civil rights complaints filed by our organizations with the United States Environmental Protection Agency.

Our most recent concerns center around the two-day, eight-hour public hearing on the Project scheduled for Wednesday, December 16, 2020, and Thursday, December 17, 2020, conducted via Zoom and telephone on December 16, with the December 17 portion to be rescheduled. The Board's stated purpose for this two-day hearing was to "listen to comments and vote on whether to approve, approve with conditions or amendments, or reject a Tentative Decision issued by the Siting Board on February 28, 2020 that recommends approval of the Project[.]" bringing to a close a six-year process. Once again, the Board has marginalized residents of East Boston and Chelsea from decisions that will impact these environmental justice communities for generations to come. And residents with Limited English Proficiency have experienced the greatest impacts of an irrevocably flawed process.

As of January 11, 2020, the Board has announced its intent to resume the hearing on the Tentative Decision on February 1, 2021, from 1-8pm. This perpetuates many of the same disparities outlined below and we, once again, call for the Board to postpone its Final Decision till the State of Emergency is lifted for the Commonwealth of Massachusetts, as well as Chelsea and East Boston.

The Remote Public Hearing on December 16th Perpetuated Ongoing Marginalization.

As an initial matter, the Board should not have scheduled these hearings while the Commonwealth remains under a state of emergency due to COVID-19. These meetings were intended to replace an in-person hearing and decision on the Tentative Decision scheduled for March 11, 2020. The Board originally sought to proceed with the March hearing, despite mounting impacts of the pandemic for the



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Commonwealth generally and for East Boston and Chelsea specifically. Initial requests for a postponement were denied as late as March 11, 2020 at 9:06 am, despite a state of emergency issued by Governor Baker the previous day.¹ At 1:03 pm on March 11, the Board announced that the hearing would be “postponed out of an abundance of caution per the public meeting guidance provided by Governor Charlie Baker on March 10, 2020 to prevent and mitigate the spread of COVID-19.”²

The Commonwealth’s state of emergency remains in effect and the conditions that led to the cancellation of the March 11 hearing have only intensified in the intervening nine months. The conditions of the pandemic have severely diminished the capacity of all Commonwealth residents to engage in public processes. This is especially true for East Boston and Chelsea, two communities devastated by the pandemic.

In East Boston, the neighborhood infection rate is currently 7.4%—the second highest of all Boston neighborhoods—and more than 14% of its tested residents have tested positive for the virus over the course of the pandemic.³ In Chelsea, the infection rate is nearly as high as in East Boston, at 7.22%.⁴ For comparison, Boston’s infection rate is 3.9% overall and the wealthier areas have an infection rate of 1.6%.⁵ Those suffering the most devastating impacts of this pandemic are the same families who have faced prolonged exposure to air pollution in these already overburdened communities.⁶ Moreover, in East Boston and Chelsea, a much higher share of residents work in service occupations leading to both increased exposure and employment instability. In East Boston, at least 64% of workers are employed in jobs that do not allow them to work from home; in Chelsea, the share is at least 61%.⁷ The pandemic has further exacerbated disparities in access to health care,⁸ childcare,⁹ housing,¹⁰ and food¹¹ for East Boston and Chelsea residents. The compounded risk of infection due to eviction has been well documented.¹²

All these conditions, plus the digital divide, make connecting to a two-day eight-hour remote hearing difficult for many and impossible for some. Tens of thousands of East Boston residents lack access to broadband internet¹³ and speeds are comparatively slower versus those in wealthier parts of the city, which already has speeds below the state’s average range.¹⁴ Even without these connectivity problems,

¹ Email from Andrew Greene to Service List (Mar. 11, 2020, 9:06 AM).

² Email from M. Kathryn Sedor to Service List (Mar. 11, 2020, 1:03 PM).

³ Boston Public Health Commission. Neighborhood Testing Data. Week of 11/20/20-11/26/20. Accessed 2 December 2020 at <https://www.bphc.org/whatwedo/infectious-diseases/Infectious-Diseases-A-to-Z/covid-19/Pages/default.aspx>.

⁴ *Id.*

⁵ Commonwealth of Massachusetts. Weekly COVID-19 Public Health Report 11/27/20. Accessed 2 December 2020 at <https://www.mass.gov/doc/weekly-covid-19-public-health-report-november-27-2020/download>.

⁶ Lisa Friedman, *New Research Links Air Pollution to Higher Coronavirus Death Rates*, New York Times (Apr. 7, 2020) <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

⁷ CLF analysis of American Community Survey Data (2018- 5-Year Estimates).

⁸ For example, Mass General Brigham has reported that only 10 percent of patients in Chelsea are able to use video for teleconsultations, as opposed to 50 percent in other Boston area cities. Shivani A. Shah et al., *Supporting Health Care Delivery In Low-Income Areas During COVID-19*, Health Affairs (July, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200715.332672/full/>.

⁹ Boston Globe (11/17/20). *COVID-19 Pandemic Has Further Cut Into Boston’s Childcare Shortage*. Accessed 3 December 2020 at <https://www.bostonglobe.com/2020/11/17/metro/covid-19-pandemic-has-further-cut-into-bostons-childcare-shortage/>.

¹⁰ Boston Globe (10/13/20). *Debt Crisis Among Renters Mounts in Massachusetts*. Accessed 3 December 2020 at <https://www.bostonglobe.com/2020/10/13/metro/debt-crisis-among-renters-mounts-massachusetts>.

¹¹ Trevor Mattos et al., *Food Insecurity Has Doubled During the Pandemic: Data, Insights and Policy Solutions* (Oct. 6, 2020) https://www.bostonindicators.org/reports/report-website-pages/covid_indicators-x2/2020/october/food-insecurity.

¹² Boston Globe (11/19/20). *Infections and Evictions are Intertwined in Chelsea*. Accessed 3 December 2020 at <https://www.bostonglobe.com/2020/11/18/business/infections-evictions-are-intertwined-chelsea/>.

¹³ CLF analysis of American Community Survey (2018 5-year Estimates). *See also* supra n. 8 regarding Chelsea’s lack of access to telehealth.

¹⁴ CLF analysis of Federal Communications Commission data--Federal Communications Commission Fixed Broadband Deployment Data from FCC Form 477 – Data current from June 2019; Metropolitan Area Planning Council (2020). “The Need for Speed.” Accessed



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expecting residents to block off eight hours over two days—since residents wishing to speak otherwise have no way of knowing when their turn to do so will come—would be asking far too much of them. Given the daily risks and disruptions caused by current public health and economic conditions experienced by East Boston and Chelsea residents, it is appalling to imagine that they must also engage in public hearings on a project that stands to affect their lives and neighborhoods for years to come.

On December 7, 2020, sixteen public officials representing East Boston and Chelsea submitted a letter to the Board requesting a postponement, calling attention to the severity with which COVID-19 has attacked East Boston and highlighting its status as an already overburdened environmental justice community. The letter urged “the EFSB to postpone these public hearings until it is safe to hold them in person and the residents of East Boston can meaningfully participate, and that the EFSB implement any language-access measures that the pending Title VI complaints ultimately require.” Both GreenRoots and CLF also requested that the Board postpone the hearings, as did numerous members of the public. Board staff catalogued these requests in amendments to the Tentative Decision submitted to the Board on December 15, 2020 but did not respond.

A predicted snowstorm further aggravated access concerns regarding the remote hearing. On December 15, 2020, Josh Daniels, attorney for GreenRoots, reiterated our request that the hearings be delayed, noting “the Department of Public Utilities—with whom the Board shares numerous staff and resources—postponed a virtual hearing in DPU 19-07 scheduled for the same day due to a predicted snowstorm, delaying it until January 7, 2021.” He further noted that residents of East Boston and Chelsea should be offered the same solicitude, given that many “are struggling to meet basic needs, and who are in general far more likely than most Massachusetts residents to need to travel for work under current conditions.” The Board rebuffed these requests, only to postpone the December 17th portion of the hearing anyway.

The Board Continues to Fail in its Language Access Obligations.

As has been pointed out to the Board on numerous occasions, 69.9% of Chelsea, MA citizens are speakers of a non-English language, which is substantially higher than the national average of 21%. In 2015, the most common non-English language spoken in Chelsea was Spanish. 53.4% of the overall population of Chelsea are native Spanish speakers. Similarly, 53.5% of East Boston households speak Spanish at home—the highest percentage of any of Boston's 18 neighborhoods. 70.6% of those speaking Spanish do not speak English well.

We acknowledge that the Board put certain new interpretation measures in place for the two-day hearing. These were outlined in the December 15th amendments to the Tentative Decision, as follows:

The Siting Board provided an additional opportunity to provide written comments regarding the Project, issued a Notice of Siting Board Meeting and Request for Comments, and redistributed the Tentative Decision in English and Spanish. The Board provided for extensive notice of the meeting, requiring the [Eversource] to (1) translate the Notice into Spanish, Portuguese, and Arabic, (2) publish the Notice in local English and Spanish language newspapers, (3) provide a copy of the Notice in all four language to all persons on the service list, (4) provide a copy of the Notice in all four language to all owners of property and renters within one quarter mile of the New Site, and (5) post a copy of the Notice on the Company's website.

We question why the Board chose not to take these same steps from the outset of this proceeding or throughout the Board's six year consideration of the Project. We must also note that eleventh-hour improvements have not cured the persistent lack of compliance that has permeated these proceedings



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and marginalized the voices of East Boston and Chelsea residents from informing the record—and the Tentative Decision.

Even with the measures adopted by the Board, the hearing was beset by flaws, creating additional disparities in access for Spanish speakers, while limiting public participation overall. Even before the start of the hearing, a public commenter pointed out that the Board's characterization of its own access measures was incorrect, requesting that the Board staff's proposed amendments to the Tentative Decision

be modified to clarify that Spanish language translation is available only to participants using a computer, smartphone or tablet[.] Spanish-language participants joining by phone who do *not* have a computer/smartphone will not have access to translation services, as noted in the second to last paragraph on page 2 of the November 16 meeting notice: "Please note that dial-in participants will only hear live audio of the actual speaker without interpretation."¹⁵

Thus, the procedures for the two-day hearings built in a disparity in which the Board provided interpretation services to those with access to the internet and Zoom, but not to those without—access that almost certainly tracks income, race, and national origin.

The Notice distributed on January 11, 2021, states “that dial-in participants will only hear live audio of the actual speaker without interpretation.” Thus, this same disparity will be in place, again, when the Board reconvenes on February 1, 2021.

The issues with interpretation continued throughout:

- Several stakeholders called attention on social media to a 100 person cap on Zoom participation and their inability to log on. The format of the meeting limited public access and participation overall, with disparate impacts on LEP individuals, because interpretation services were available *only* via Zoom.
- The meeting itself started in English only and so the initial minutes of the meeting were not interpreted into Spanish.
- Directions for attending the Zoom portion of the meeting in a language other than English were provided only once, and only in English, despite the four-hour length of the meeting and two breaks taken throughout.
- The number to call for technical assistance was also only provided once, again only in English, throughout the four-hour hearing. Zoom chat was disabled, eliminating an alternate route for technical assistance.
- The Board declined a request to record the meeting, which could have been accommodated through the Zoom platform and would have provided an alternative avenue to understand the questions at issue, though not actually providing for public participation.

Finally, the issue of poor to unintelligible interpretation that characterized the evidentiary hearings and was documented in our August 8, 2019 letter to you also carried over to the hearing. Once again, one of the two interpreters hired by Eversource lacked the skill level necessary to communicate the information discussed during the hearing.

Despite the Board's Ad Hoc Approach, Best Practices Exist for Language Access.

Through correspondence to your office and through our civil rights complaints, we have called for EEA, DPU, and the Board to formalize its approach, including, but not limited to:

¹⁵ Email from Erik Burkman to Service List (Dec. 15, 2020, 9:09 PM).



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- Conducting an audit of the language access practices and Language Access Plans (LAP), if any, of all departments, offices, and boards under EEA's supervision, authority, or control;
- Implementing anti-bias and cultural competency trainings for all board members and staff of all departments, offices, and boards under EEA's supervision, authority, or control, including and especially hearing officers;
- Requiring that all proponents seeking EFSB review create project-specific outreach and engagement plans based upon EPA recommendations and best practices outlining the proponents' strategies for community engagement and inclusion;
- Hiring a full-time language access consultant and/or auditor with primary responsibility for conducting annual demographic studies to determine language access needs, identifying language needs for each project, and maintaining a roster of interpreters and translators with expertise in energy and infrastructure;
- Creating community workshops, accessible virtually and in English, Spanish, Portuguese, Arabic, Mandarin, Haitian Creole, and any other language identified by the language access consultant and/or auditor, in every environmental justice community in Massachusetts outlining the role of the EFSB in energy facilities siting and the various multilingual opportunities for community feedback and engagement; and
- Instituting detailed training protocols to educate interpreters and translators about the core concepts of energy and infrastructure, as well as educate all EFSB staff about their language access obligations under Title VI.

None of this has occurred to date.

In contrast, other agencies have developed mechanisms to increase access for LEP individuals. As just one example from proceedings related to the Project, the Boston Conservation Commission has adopted and implemented a series of best practices for interpretation. In its November 4, 2020 public hearing on the Project, the Conservation Commission did the following:

- Initiated meetings with a verbal presentation in English of the interpretation procedures including instructions for starting the Zoom interpretation.
- Provided a phone number and Twitter handle to use for contacting technical support if participants encountered problems.
- Provided the above instructions and contact information in multiple languages on the screen at the outset of the hearing.
- Repeated the above script and slide at several junctures during the meeting for the benefit of participants who join later and have missed the initial description.
- Set a measured pace for the proceedings to ensure ideal conditions for interpretation and comprehension of the content.
- Conducted frequent check-ins with the interpreter to ensure that people are not speaking too fast.

Additionally, agencies should strongly consider the following:

- Work with human resources to ensure the hiring of fluent bi- or multilingual staff who are both content experts and skilled interpreters. This would ensure the presence of in-house staff who can serve as interpreters on content with which they are familiar, rather than interpreters who are hampered by a lack of familiarity with the subject matter or terminology.
- Work with an interpretation service to develop a pool of interpreters literate about key concepts and develop a glossary of key technical terms and concepts translated into multiple languages.



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- For hearings or public meetings where there are pre-scripted, formal portions of the proceedings, interpreters should be provided this text beforehand so that they can be better prepared for the interpretation. At a minimum, interpreters should be provided the glossary beforehand.
- In Zoom meetings, interpretation must be available in as many languages as necessary—both through the computer-based channel, as well as for those that participate via a call-in phone number.
- Slides or other presentation materials must be translated into all relevant languages and if not on the same slide as the English should be given an equal amount of screen time to be seen.
- Meetings that have public comment opportunities or question and answer sessions will need to be slowed down and be more tightly managed as interpretation can be very difficult when back and forth conversation moves quickly.
- Interpreters need to be evaluated by a native speaker of the language they are interpreting to ensure that they are accurately and completely interpreting the proceedings.
- Agencies should consider holding separate non-English public meeting or outreach sessions in communities that are predominantly populated by people with Limited English Proficiency, if significant dialogue between residents and public officials is to be expected or where agencies are gathering public input. However, public hearings at which decisions are to be made should be inclusive, open, and accessible to all.

Neither the Board nor its staff have ever reached out to our organizations or community leadership in East Boston or Chelsea to ask for guidance about how the Board could ensure meaningful access and involvement for LEP individuals. In fact, Board staff stated that during the December 16th hearing that they have been “responsive to requests” for interpretation and translation—in this *and* the underlying proceeding—a stunning rewrite of history.

The Board is proceeding with the hearing and final vote on the Project as if it were business as usual, treating the decision as indifferent to the pandemic. Chelsea and East Boston residents are acutely aware that business as usual is no longer an option. GreenRoots, CLF, and Lawyers for Civil Rights reiterate our requests that the Board postpone the hearing until the state of emergency has been lifted. In the meantime, we ask that the Board make a commitment, once and for all, to rectify past harms and ensure meaningful and equitable access to its proceedings for years to come.

Sincerely,

/s/ Roseann Bongiovanni

Roseann Bongiovanni
Executive Director
GreenRoots

/s/ Amy Laura Cahn

Amy Laura Cahn
Senior Attorney & Interim Director
Environmental Justice
Conservation Law Foundation

/s/ Lauren Sampson

Lauren Sampson
Staff Attorney
Lawyers for Civil Rights

/s/ Joshua M. Daniels

Joshua M. Daniels
The Law Office of Joshua M. Daniels



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Cc via email:

The Honorable Edward J. Markey, United States Senate
The Honorable Elizabeth Warren, United States Senate
The Honorable Ayanna Pressley, United States House of Representatives
The Honorable Katherine Clark, United States House of Representatives
The Honorable Jake Auchincloss, United States House of Representatives
The Honorable Sal N. DiDomenico, Massachusetts Senate
The Honorable Jamie B. Eldridge, Massachusetts Senate
The Honorable Joseph Boncore, Massachusetts Senate
The Honorable Adrian Madaro, Massachusetts House of Representatives
The Honorable Liz Miranda, Massachusetts House of Representatives
The Honorable Daniel J. Ryan, Massachusetts House of Representatives
The Honorable Michelle DuBois, Massachusetts House of Representatives
The Honorable Martin J. Walsh, Mayor of Boston
The Honorable Kim Janey, Boston City Council
The Honorable Lydia Edwards, Boston City Council
The Honorable Julia Mejia, Boston City Council
The Honorable Michelle Wu, Boston City Council
The Honorable Annissa Essaibi-George, Boston City Council

Yvette Rivera, U.S. Department of Transportation
Erica White-Dunston, U.S. Department of Interior
Lilian Sotolongo Dorka, U.S. Environmental Protection Agency
Brittany Robinson, U.S. Environmental Protection Agency
Erin Flannery-Keith, U.S. EPA Region 1
Sharon Wells, U.S. EPA Region 1

Andrew Greene, Department of Public Utilities
Joan Foster Evans, Department of Public Utilities
Rishi Reddi, Executive Office of Energy and Environmental Affairs

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Commissioner Martin Suuberg, Department of Environmental Protection
Secretary Mike Kennealy, Executive Office of Housing and Economic Development
Joseph C. Bonfiglio
Brian Casey
Professor Shalanda Baker

Catherine Keuthen, Esq., Keegan Werlin LLP, for NSTAR Electric Company d/b/a
Eversource Energy
Cheryl Blaine, Esq., Keegan Werlin LLP, for NSTAR Electric Company d/b/a
Eversource Energy