

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 36623

**RAIL LINE ABUTTING LANDOWNERS. -
PETITION FOR DECLARATORY ORDER**

WILLIAM SCHINELLER - NEW INFORMATION CONCERNING THE MBTA

As a resident of Sudbury, Massachusetts, a municipality classified as an ‘MBTA Community’ by the Commonwealth of Massachusetts per M.G.L. c. 161A, sec. 1, I respectfully submit new information concerning the Massachusetts Bay Transportation Authority (“MBTA”) as context for the Surface Transportation Board (“STB” or “Board”) in the above-captioned proceeding that may bear upon the merits of the pending petition for declaratory order.

FEDERAL TRANSIT ADMINISTRATION REPORT

On August 31, 2022, the Federal Transit Administration (FTA) released a scathing report¹ on the FTA’s Safety Management Inspection (SMI) focused on MBTA’s processes, procedures, and resources for safety decision-making and the role of the Massachusetts Department of Public Utilities (DPU) in overseeing MBTA’s safety performance. (The Massachusetts DPU is the state agency responsible for oversight of the MBTA’s rail transit operations and compliance with federal safety rules.) Among the FTA’s twenty four findings: “Finding 7: MBTA Executive Management does not consistently ensure its decisions related to safety risks are based on safety data analysis or documented facts.”, “Finding 9: MBTA’s safety risk assessment guidance as part of its Safety Risk Management is ambiguous and has led to confusion among stakeholders

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https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-08/FTA-Safety-Management-Inspection-Report-for-MBTA-and-DPU_0.pdf

regarding their responsibilities and authorities, which has created delays in carrying out safety risk assessments activities”, “Finding 22: DPU must examine and ensure its organizational and legal independence from the MBTA.”

**MBTA DECISION TO WAIVE CONSTRUCTION STANDARDS NOT BASED ON
SAFETY DATA ANALYSIS OR DOCUMENTED FACTS**

As relates to the Board’s above-captioned proceeding, in 2017 the MBTA entered into an option agreement with Eversource Energy for a subsurface transmission line easement on the Central Massachusetts Branch line in Hudson, Stow, Marlborough, and Sudbury, MA. Per the option agreement, the MBTA waived several standards included in its own Massachusetts Bay Transportation Authority Directorate dated August 2014 as follows: I. Guidelines and Procedures for Construction on MBTA Railroad Property Section 9.01 C2, II. Maintenance and Protection of Railroad Traffic, Sections 2.10 and 2.11, IV. Pipeline Occupancy Specifications, and V. Specifications for Wire Conduit and Cable Occupations, Sections 3.02 E1, 4.01 B, and 5.01 including plates II, III, IV, and VI.

As reported by the MetroWest Daily News² the MBTA hid the existence of the construction waivers when it first provided the contract, and only released the full agreement after the Daily News won an appeal to the Massachusetts Secretary of State’s office, which reviews disputes over public records. The rules which the MBTA waived would have required Eversource to place its line as close to the edge of the property as possible, and a certain distance away from the tracks. The company would have needed to seek certain permissions from railroad companies.

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<https://www.telegram.com/story/news/local/east-valley/2017/07/08/mbta-hides-parts-of-hudson-to-sudbury-power-line-deal/20284363007/>

Examination of public records reveals how MBTA Executive Management made the decision to waive its safety standards. Regarding Section 5.01 ‘Wires and cables running longitudinally along the railroad right-of-way’. A memo from Eversource Energy to MBTA’s real estate arm, Greystone Management Solutions, asserts *“There was an agreement between Eversource Energy and MBTA General Manager that would allow a waiver from the MBTA’s Directorate which would allow Eversource Energy to build as close to the centerline of the Railroad as possible.”*³ On May 2, 2016 Eversource Vice President Jim Hunt supplied the MBTA with proposed justifications for waiving the standards⁴, including the vague *“Eversource believes that both its overhead/underground lines can be co-located within the planned rail trails and if need be, can be constructed to accommodate a future MBTA operating rail line in the unlikely event the MBTA’s Commuter Railroad Operations are restored.”* On May 10, 2016, Mark Boyle of MBTA Real Estate communicated to Adam Hurtubise (MassDOT) *“If Eversource is successful in being awarded the new powerline by DPU, that Option would be converted to a permanent easement (for \$8M!). So we strongly support the project.”*, *“Given our Railroad Operations requirements, the overhead poles need to be far enough away from the possible future tracks (doubtful if we’d ever introduce rail service, but you never know).”*, *“Last week the GM got a call from Jim Hunt from Eversource. Frank agreed to waive our the track-pole spacing requirements, so that could be a big solution. We’re now talking to Eversource about putting the powerline underground (for local political reasons) since we don’t need the powerline so far from the tracks.”*⁵ On May 25, 2016 Mark Boyle informed Railroad Operations *“Please be advised the GM met with Eversource and agreed to waive these*

³ Page 42 Undated Memo from Eversource Energy <https://bit.ly/mbta-foia>

⁴ Page 51 May 2, 2016 email from James Hunt, Eversource <https://bit.ly/mbta-foia>

⁵ Page 57 May 10, 2016 email from Mark Boyle, MBTA <https://bit.ly/mbta-foia>

provisions, just for these projects.”⁶ MBTA General Manager Frank DePaula’s retirement was made public on May 23, 2016⁷.

Safety issues posed by high voltage electric lines, including underground transmission lines are obvious. On July 21, 2022, an MBTA Orange Line train caught fire, forcing the evacuation of more than 200 passengers, including a woman who jumped into the Mystic River to escape and swim to safety. This made national news and precipitated the complete shutdown of the Orange Line for 30 days. Earlier in July there was an explosion in a manhole in Boston. Two workers with Eversource, New England’s largest energy provider, were transported to Massachusetts General Hospital. Boston police told WCVB that one worker suffered serious injuries. Eversource said its crews didn’t see flames, but the failed equipment caught fire, and the manhole was smoking. The company said the manhole was equipped with a new energy release cover and was not associated with the power outage.⁸ This manhole explosion followed two in the financial district in June that injured a woman walking on the sidewalk.⁹

The MBTA has not offered a shred of evidence to prove that placing an active high voltage transmission line directly under the disputed narrow railbed for 8 miles would not unreasonably interfere with reactivation of rail service. Consider the Federal Transit Administration Report Finding 7: MBTA Executive Management does not consistently ensure its decisions related to safety risks are based on safety data analysis or documented facts. Given the FTA’s concerns it would be prudent for the MBTA to produce evidence that retiring MBTA General Manager Frank DePaula or his successor Brian Shortsleeve ensured their decision to

⁶ Page 65 May 25, 2016 email from Mark Boyle MBTA <https://bit.ly/mbta-foia>

⁷ Battling cancer, MBTA general manager to retire <https://www.bizjournals.com/boston/news/2016/05/23/battling-cancer-mbta-general-manager-to-retire.html>

⁸ Boston train catches fire, passengers jump into river <https://todaynewspak.com/boston-train-catches-fire-passengers-jump-into-river/>

⁹ One Eversource worker badly burned in manhole explosion <https://www.cbsnews.com/boston/news/eversource-worker-burned-manhole-explosion/>

waive standards for Eversource considered data (explosions, EMF) or documented facts (manholes every 1500 feet for servicing high voltage transmission line) concerning the safety of constructing, operating, and maintaining rail service in this particularly narrow right-of-way. A similar safety scenario is now playing out between the MBTA, Eversource, and the DPU along the Grand Junction Railroad for the Greater Cambridge Energy Project. According to Cambridge Day¹⁰ article on August 22, 2022, “Eversource said... that MBTA requirements for construction beside the railroad could cause problems”. Under the spotlight of the FTA findings, presumably current MBTA Executive Management will ensure its decisions related to safety risks are based on safety data analysis or documented facts (not just lease payments).

UNREASONABLE INTERFERENCE TO RESTORATION OF RAIL SERVICE

The permanent easement lease arrangement between the MBTA and Eversource precludes rail reactivation for a minimum of 25 years. The operating life of the high voltage transmission line Eversource plans to place within the railbed is 40 years or more. The MBTA simply argues that the lease would require Eversource to relocate the transmission line at Eversource’s expense upon request of the MBTA after 20 years, with 5 years notice. When asked at a recorded meeting with the Town of Sudbury, Eversource Project Manager Mike Hager did not have a cost estimate for relocating the line, but acknowledged the cost would likely be comparable to a new transmission line (well over hundred million for this line). Eversource would no doubt argue that any cost be borne again by ratepayers, not the Company itself. An active transmission line could not be taken out of service (even temporarily) without evaluation of the impact on reliability by the ISO-New England Reliability Committee (independent

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<https://www.cambridgeday.com/2022/08/22/eversource-has-8-miles-of-power-cable-to-install-under-city-streets-but-not-all-are-in-on-the-plans/> Per the author, according to Eversource's response to the EFSB's request to consider an alternate route to Somerville, the MBTA would need to approve construction of the underground line beside or across the railroad and it would need to meet construction requirements intended to protect the tracks and the trains.

transmission system operator responsible for the New England grid). Siting of a relocated transmission line in the future would require regulatory processes including the Massachusetts Energy Facilities Siting Board, Department of Public Utilities, and other permitting authorities. These realities clearly pose unreasonable interference with the reactivation of rail service.

Weigh the unreasonable interference to restoration of rail service imposed by the MBTA-Eversource lease: 20 years plus 5 years notice, plus the cost and regulatory hurdles of relocating 8 miles of active high voltage subsurface transmission line. Contrast with the terms of the MBTA License Agreement - Lexington Branch - Town of Arlington for the Minuteman Bikeway¹¹, by which the MBTA can terminate the license with 60 days notice on the grounds that the line is required by the MBTA for mass transit extension. By comparison, the token clause in the MBTA-Eversource lease agreement requiring Eversource to relocate the line at their own expense after 20 years with 5 years notice represents “form-over-substance”.

REQUIREMENTS FOR FREIGHT AND PASSENGER RAIL SERVICE

The requirement for restoration of freight rail service along this line is not a far-fetched notion. This summer Atlanta-based firm, Portman Industrial, announced its intention to purchase the 146-acre Intel site at 75 Reed Road in Hudson, MA (adjacent to the MBTA right-of-way) and redevelop the property into a 1.2 million-square-foot warehouse and distribution center (rumored to be for Amazon or Walmart). This Intel Redevelopment project would generate significant freight traffic, and is currently under review by the Hudson Planning Board.¹²

¹¹ MBTA License Agreement - Lexington Branch - Town of Arlington for the Minuteman Bikeway <https://bit.ly/MBTA-Arlington-Bikeway-License> The Lexington Branch was acquired by the MBTA from the Boston & Maine railroad in the same transaction as the Central Massachusetts Branch.

¹² <https://www.townofhudson.org/planning-board> materials under Intel Redevelopment Project Information in left-hand menu

The requirement for reactivating passenger rail service is also real and increasing. Sudbury, Hudson, Wayland, Marlborough MA and points west no longer have passenger rail service, making these growing populations completely car-dependent for long commutes and trips to neighboring states, via the congested, single-lane Boston Post Road (Route 20) artery which generally parallels the dormant MBTA rail right-of-way. Massachusetts is in a housing crisis, compounding the need for MBTA commuter rail access. The Commonwealth's new "Multi-Family Zoning Requirement for MBTA Communities"¹³ aims to create new housing in walkable neighborhoods closer to transit. Sudbury, Wayland, and Marlborough are included as an MBTA Community (interestingly Hudson, MA is not) despite not having current rail service. Over the past several years (decades since the 1996 MBTA Central Mass Commuter Rail Feasibility Study¹⁴), Sudbury and neighboring towns including Wayland have added a significant number of multi-family housing units along Route 20, walking distance from the dormant MBTA line. The new law (reflecting "not just good housing policy, it is good climate and transportation policy, too") is designed to further increase housing within 0.5 miles of a commuter rail station. Codified by Section 3A of MGL c. 40A, an MBTA community that fails to comply with this section shall not be eligible for funds from several state sources.

Restoration and expansion of rail service can and does happen in this day and age. On July 29, 2022 Vermonters celebrated the return of passenger rail service to Burlington.¹⁵ On October 3, 2022, the Long Island Rail Road's 10-mile Third Track from Floral Park to Hicksville was completed.¹⁶ Closer to home, the opening of the MBTA's Green Line Extension is a work in

¹³ <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>

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<http://www.mapc.org/wp-content/uploads/2017/11/Central-Mass-Commuter-Rail-Feasibility-Study-1996.pdf>

¹⁵

<https://vtdigger.org/2022/07/29/back-on-track-vermonters-celebrate-the-return-of-passenger-rail-service-to-burlington/>

¹⁶ <https://libn.com/2022/10/03/lirrs-third-track-is-completed/>

progress.¹⁷ And on June 23, 2022, the The Massachusetts House took a major step toward injecting billions of dollars into work on the state’s transportation and environmental infrastructure — including \$250 million toward the long-sought east-west rail extension.¹⁸

CONCLUSION

The pending petition for a declaratory order is clearly not premature. New information provided in this filing not previously available may bear upon the merits of the pending petition and the Board’s anticipated decision. The FTA’s recent troubling findings concerning the MBTA’s safety decision-making, risk assessment responsibilities, and independent oversight of the MBTA’s safety performance may give the Board pause before granting deference to the MBTA’s judgment and assertions. The Board may well wish to review evidence of safety and fact-based analysis of whether construction, operation, and maintenance of Eversource’s high voltage transmission line directly under this disputed narrow railbed for 8 miles and over 20 years would unreasonably interfere and pose risks to the safe restoration of rail service¹⁹. The Board may well wish to require an updated, fact-based study of the need for mass transit for freight and passengers on the Central Mass Branch, in light of dramatic changes since 1996 in traffic and commuting patterns arising from new warehouse locations and new zoning laws to promote transit-oriented-development for addressing the Massachusetts housing crisis and climate policy. Removing the Property from the Board’s jurisdiction and forsaking the

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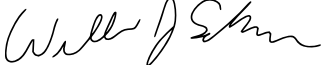
<https://www.nbcboston.com/news/local/mbta-to-shut-down-new-green-line-extension-for-4-weeks-opening-date-for-medford-branch-delayed/2800556/>

¹⁸

https://www.berkshireeagle.com/statehouse/massachusetts-house-passes-11-billion-infrastructure-bill-250-million-east-west-rail-extension-western-massachusetts/article_0e113e08-f34a-11ec-943e-e73a25b7371e.html

¹⁹ Eversource’s engineering plans show 8 miles of subsurface high voltage duct banks with splice vaults accessible by manholes every 1500 feet within this narrow railbed with steep embankments and wetlands on either side. Accommodating safe clearance between the centerline of the existing single railroad track and the planned high voltage transmission line is a serious concern, adding a second railroad track would be impossible. Eversource’s exploding manholes, even with the new ‘energy release’ covers, have caused serious injury to maintenance workers.

reasonable possibility of restoring rail service in the future would be a waste of this irreplaceable mass transit corridor resource. Absent non-existent evidence that the line was previously declared Abandoned by the ICC or STB, it would be most appropriate that the Board assert its jurisdiction over this line and preserve the reasonable possibility of restoring rail service. The Board can issue a Decision making such a Declaratory Order, a new transmission line can be installed along another feasible route under Sudbury roadways²⁰, the MBTA right-of-way can be used for a rail trail created in the near-term, and preserved for future restoration of rail service. On balance, such an outcome would be best for the region.


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CC: Parties of Record

²⁰ The Board's decision on Finance Docket 36493 incorrectly stated "PSI acknowledges that its goal is to prevent the installation of power lines in the rail corridor and in the Town of Sudbury *generally*, even though such installation has been permitted by the Massachusetts Department of Public Utilities." The Protect Sudbury website <http://www.protectsudbury.org/our-mission/> states their "primary objective is to prevent all high voltage transmission lines along the MBTA ROW and to prevent **above-ground** transmission lines anywhere in Sudbury." As required by the DPU/Energy Facilities Siting Board, Eversource developed a geographically diverse option, also subsurface (not above-ground) under Sudbury streets.