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September 19, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street SW, Room 1034
Washington, DC 20024

Re: FD 36623
Rail Line Abutting Landowners – Verified Petition for Declaratory Order

Motion to strike, in part, the Rail Line Abutting Landowners' Motion to Join New Parties

Dear Ms. Brown,

On August 30, 2022, counsel for the Rail Line Abutting Landowners (the "Landowners") filed in the above-captioned proceeding what was styled as a "Motion to Join New Parties" (the "Motion").[1] Massachusetts Bay Transportation Authority ("MBTA") does not object to the Landowners adding to the list of persons that constitute the petitioners in this case. But MBTA objects to the majority of the Motion, which has nothing to do with its stated purpose. The majority of the Motion egregiously and without leave revisits (for the second time) the merits of Landowners' petition for declaratory order (the "Petition"). The Motion also inappropriately introduces new case law that the Landowners mistakenly claim supports favorable Board action on the Petition. Accordingly, the Surface Transportation Board (the "Board") must strike all of the text in the Motion from the beginning of the third paragraph on numbered page three to the signature line on numbered page five.

The Landowners filed their Petition on June 22, 2022, and MBTA promptly replied on July 12, 2022. The Landowners sought leave to file (and filed) a rebuttal to MBTA's

[1] It appears that the Landowners' counsel may have forgotten to sign the Motion.

reply on July 26, 2022. On August 15, 2022, MBTA registered its objection to the Landowners' request for leave to file a rebuttal as a prohibited filing. That should have marked the end of discussion over the Petition's ripeness and merit (if not an earlier juncture).

Evidently intent on having the last word, the Landowners have committed 32 of the Motion's 60 lines of text to *re-re*-litigating the Petition's merits and ripeness. In the process, the Landowners unfurl a self-serving, false narrative alleging MBTA callousness toward the Landowners and their interests, a tactic clearly intended to distract from the Petition's patent prematurity. MBTA will not dignify the Landowner's procedural abuse by tendering another discussion of why favorable Board action on the Petition would be premature absent any discernible Landowners' property interests in the MBTA-owned corridor. The longer, latter half of the Motion flouts 49 C.F.R. § 1104.13(c) under the guise of seeking permission to add parties when it does nothing of the sort. More egregious still, the Landowners, without any effort to seek leave to do so, introduce new case law into the discussion – *Stover v. Mass Dep't of Conservation and Recreation*, 2017 WL 2960298 (Mass Land. Ct., July 11, 2017), aff'd, Mass. Ap. Ct. 1114 (2018) – which does nothing to support the Landowners' appeal to the Board.

Surprisingly the Landowners characterize themselves as victims under a false narrative intended to depict MBTA as allegedly insensitive and ruthless. Such a narrative could not be farther from the truth. For example, the subject Eversource transmission line project is anything but "sudden" (Motion, 4). In fact, the dispute over the project began over five years ago, in 2017, with Eversource's petitions to the Massachusetts Energy Facilities Siting Board ("Siting Board") and the Massachusetts Department of Public Utilities ("DPU") pursuant to G. L. c.164, § 69J.[2] In response, the Siting Board:

> accepted written public comments, and held two public comment hearings. It then conducted *a thirty-two month* adjudicatory proceeding, including sixteen days of evidentiary hearings, amassing a substantial evidentiary record consisting of over 1,840 exhibits and 2,800 transcript pages, extensive discovery responses, and written and oral testimony from twenty-eight witnesses.[3]

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[2] In fact, well before filing its petitions, "Eversource met with Federal, State, and municipal officials; petitioner Protect Sudbury; residents; business owners; and other stakeholders to discuss route options and to obtain input." *Town of Sudbury v. Energy Facilities Siting Board*, 487 Mass. 737, 742 (2021).

[3] *Town of Sudbury v. Energy Facilities Siting Board*, 487 Mass. at 743-744 (emphasis added).

The Massachusetts Supreme Judicial Court upheld the Siting Board's approval of the Eversource petition, finding "no legal basis for disturbing the board's careful and reasoned decision."[4] MBTA, also, has advanced this project over several years in compliance with all applicable state laws and regulations – including approvals and permitting before the Siting Board, the DPU, the Massachusetts Executive Office of Energy & Environmental Affairs, the Sudbury Conservation Commission, the Massachusetts Environmental Protection Agency, and under the Wetlands Protection Act – ensuring at each turn that the Landowners' have had a full and fair opportunity to be heard.

And MBTA has *hardly* "steamrolled" (Motion, 4) this project through Sudbury. To be sure, MBTA has successfully defended itself against numerous legal and regulatory challenges presented by Sudbury and its residents.[5] In fact, it appears that the Landowners have exhausted every state law option they can conceive of to block this project, which probably explains the present Petition and the one before that advanced by Protect Sudbury, Inc. (The Landowners lack of success in various state proceedings to block the Eversource project is not evidence of "steamrolling," as they would have it. Rather, it is evidence that the Landowners' opposition consistently has been without merit.) And the Landowner's disingenuous assertion that they are only seeking to have the Board clarify their rights regarding their homes and businesses (Rebuttal, 1 n. 1) purposely ignores the fact that such asserted "rights" (if any) with respect to the MBTA corridor are a matter of state law. In that regard, the Landowners' narrative twisting intentionally conflates MBTA's "belittling" (Motion, 3) of their meritless Petition (which MBTA *has* done)[6] with dismissing the individual Landowners and their concerns over MBTA's planned use of the corridor (which MBTA *has not* done, but has instead responded to at every turn).

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[4] *Id*. at 738. As required by law and confirmed by the SJC, the Siting Board's careful and reasoned decision was based on, among other factors, "that environmental impacts of the project are minimized and the project achieves an appropriate balance among conflicting environmental concerns as well as among environmental impacts," and that "plans for construction of the proposed facilities are consistent with the current health, environmental protection, and resource use and development policies of the Commonwealth." Id., at 739-740.

[5] None of those prior proceedings, incidentally, support the proposition that the Landowners have any property interest in the subject MBTA corridor.

[6] For example, MBTA has criticized the Landowners' undisciplined, never-take-no-for-an-answer procedural tactics, comparing the Landowners to their municipal precursor-in-spirit before this agency, the Village of Barrington, Illinois. See MBTA Reply, 5.

For the foregoing reasons, the Board must strike the portion of the Landowners' Motion from the beginning of the third paragraph on numbered page three to the signature line on numbered page five.

Respectfully submitted,

By: /s/ R. A. Wimbish

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cc: All parties of record