

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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Petition of New England Power Company)	
d/b/a National Grid for Approval to)	
Construct, Operate and Maintain a New 115 kV)	D.P.U. 22-95
Transmission Line on an Existing Right-of-Way)	
in Somerset and Fall River, Massachusetts)	
Pursuant to G.L. c. 164, § 72)	
_____)	

**MOTION OF NEW ENGLAND POWER COMPANY d/b/a NATIONAL GRID FOR
PROTECTIVE TREATMENT OF CRITICAL ENERGY INFRASTRUCTURE
INFORMATION**

I. INTRODUCTION

New England Power Company d/b/a National Grid (“NEP” or the “Company”) hereby requests, pursuant to G.L. c. 25, § 5D and 220 C.M.R. § 1.04(5)(e), that the Department of Public Utilities (“Department”) recognize and confirm the application of the exemption from public disclosure for certain critical energy infrastructure information (“CEII”) included within appendices to an application prepared on behalf of NEP and entitled *N12/M13 Double Circuit Tower Separation Project: Application to Support the Petition Before the Department of Public Utilities* (the “Application”). On this date, NEP has submitted a request, pursuant to the provisions of G.L. c. 164, § 72, that the Department approve NEP’s petition to separate a 1.85-mile segment of its existing N12 and M13 115 kilovolt (“kV”) overhead transmission lines, currently installed on double circuit steel lattice towers, onto two distinct sets of structures within an existing electric transmission line right-of-way (“ROW”) that extends from NEP’s Pottersville Switching Station in Somerset, Massachusetts, crosses the Taunton River into Fall River, and continues easterly within the ROW to Sykes Road Substation in Fall River (the “Project”). The Application was

provided as Attachment A of NEP's Section 72 Petition. By this Motion, NEP requests that the Department protect the following documents from public disclosure:

- Appendix 2-1 of the Application, which is a document, entitled Southeastern Massachusetts and Rhode Island Area 2026 Solutions Study, dated March 2017;
- Appendix 2-2 of the Application, which is a document, entitled Southeastern Massachusetts and Rhode Island Area 2029 Needs Assessment Update, dated November 2020; and
- Appendix 2-3 of the Application, which is a document, entitled Southeastern Massachusetts and Rhode Island Area 2026 Needs Assessment, dated May 2016.

These documents are referred to herein as the "Confidential CEII." The Confidential CEII contained in Appendices 2-1, 2-2, and 2-3 includes highly sensitive information about the Southeastern Massachusetts/Rhode Island ("SEMA-RI") transmission system, the public disclosure of which may represent a threat to safety and service reliability to the extent that the recipient of the documents can determine potential vulnerabilities on the NEP and SEMA-RI transmission systems. The redacted information qualifies as CEII under the Federal Energy Regulatory Commission's ("FERC") definition of CEII as set forth in 18 C.F.R. § 388.113(c). NEP treats this information as highly confidential. Such information requires confidential, protected treatment in the interest of public safety.

A proposed Nondisclosure Agreement for CEII with NEP is provided as Attachment A hereto. NEP would require the execution of this Nondisclosure Agreement for CEII prior to providing any party with Confidential CEII as defined herein. The Confidential CEII is being provided to the Department under seal and subject to this Motion.

II. STANDARD OF REVIEW

FERC's regulations, 18 C.F.R. § 388.113(c)(2), define CEII as follows:

Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and
- (iv) Does not simply give the general location of the critical infrastructure.

Consistent with the FERC rules, the Massachusetts Public Records Law is set forth at G.L. c. 66, § 10 and provides the parameters for public access to documents in the possession of state and local government agencies. G.L. c. 66, § 10. G.L. c. 4, § 7 sets forth definitions of statutory terms used in the General Laws, and clause 26 of that section contains the definition of the term “public records.” The Massachusetts General Court has provided specific protection for certain kinds of utility infrastructure information by excluding such documents from the definition of a “public record.” Specifically, “public records” are defined by statute as:

all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

G.L. c. 4, § 7, clause 26 (emphasis added). Among the various exceptions to a “public record” are:

(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures,

facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

G.L. c. 4, § 7, clause 26(n) (emphasis added). See 980 C.M.R. § 4.03(2) (“[r]ecords shall not be made available to the public if they are within any of the enumerated exemptions in the 26th clause of M.G.L. c. 4, § 7”). The Department, as well as the Energy Facilities Siting Board, have both historically treated the Confidential CEII Information as information to be protected from public disclosure. See NSTAR Electric Company d/b/a Eversource Energy and New England Power Company d/b/a National Grid, EFSB 15-04/D.P.U. 15-140/15-141, Presiding Officer Ruling at 4 (January 27, 2016) (treating the information as provided in the Confidential CEII as CEII and protecting such information from public disclosure); New England Power Company d/b/a National Grid, D.P.U. 15-44/15-45, Hearing Officer Ruling at 3 (May 13, 2015) (same); NSTAR Electric Company, EFSB 10-2/D.P.U. 10-131/10-132, Presiding Officer Ruling at 3 (March 1, 2011) (treating load flow and schematic diagrams, transmission studies and updates, and presentations to PAC comparing project alternatives as CEII and protecting such information from public disclosure).

III. ARGUMENT

NEP seeks protection from public disclosure of the Confidential CEII described above. The Confidential CEII contained in Appendices 2-1, 2-2, and 2-3 is exempt from the definition of a “public record” and, therefore, should be protected from public disclosure because this information provides specific details concerning critical energy infrastructure of the Company. The Company does not disclose this information to the public in the normal course of conducting business and takes steps to protect this information from unauthorized or accidental disclosure.

Public disclosure of this information would be contrary to the public interest and represents an undue risk to public safety in that this information could be used by terrorists to plan and carry out a targeted attack on specific utility infrastructure serving the Company's most critical customers.

The Confidential CEII meets FERC's definition of CEII set forth at 18 C.F.R. § 388.113(c) and contains highly sensitive information, the public disclosure of which may present a threat to public safety and service reliability. Specifically, this information: (1) depicts detailed engineering information about the design of bulk electric facilities that could be useful to a person planning an attack on critical infrastructure; and (2) provides power flow cause-and-effect information that would be useful in identifying critical energy infrastructure targets. Accordingly, in view of the statutory determination under G.L. c. 4, § 7, clause 26(n), that such important energy infrastructure information is not to be publicly disclosed, the Department should determine that the Confidential CEII is exempt from public disclosure because it is not a "public record."

In certain instances, the Department has granted motions for protective treatment on the condition that protective treatment will lapse after a period of time. In such cases, the protected information is often of a financial nature or involves competitive bids. The competitive value of that type of information (and the harm caused by disclosure) generally erodes over time, and a reasonable sunset provision can be appropriate. However, the need for protection of Confidential CEII from public disclosure should not lapse because the information about utility infrastructure will not change for decades. There is no basis for assuming that the threat to public safety that may result from disclosure of Confidential CEII will abate after a set period of time. Furthermore, where such critical infrastructure information clearly falls within the exemption from the definition of a public record set forth in G.L. c. 4, § 7, clause 26(n), there is no legal basis for the Department to apply a "sunset" provision, for the reason that if such information is not a public record, there

can be no requirement that it be made public. Accordingly, NEP respectfully requests that the Department take such actions as may be necessary or appropriate to accord permanent protection to the Confidential CEII. See NSTAR Electric Company d/b/a Eversource Energy and New England Power Company d/b/a National Grid, EFSB 15-04/D.P.U. 15-140/15-141, Presiding Officer Ruling at 4 (January 27, 2016); New England Power Company d/b/a National Grid, D.P.U. 15-44/15-45, Hearing Officer Ruling at 3 (May 13, 2015); New England Power Company d/b/a National Grid, EFSB 13-2/D.P.U. 13-151/13-152 (Sept. 30, 2013); NSTAR Electric Company, D.P.U. 13-64, Hearing Officer Ruling, at 3 (July 8, 2013); New England Power Company d/b/a National Grid, EFSB 12-1/D.P.U. 12-46/12-47, Hearing Officer Ruling on Motion for Confidential Treatment, at 3 (June 27, 2012); NSTAR Electric Company, D.P.U. 07-61, Hearing Officer Ruling on NSTAR Electric Motion for Confidential Treatment, at 3 (February 26, 2008).

IV. CONCLUSION

For all of the foregoing reasons, NEP requests that the Department rule that good cause exists to protect from disclosure the Confidential CEII described herein indefinitely because it meets all applicable standards and definitions for such protection.

Respectfully Submitted,

**NEW ENGLAND POWER COMPANY d/b/a
NATIONAL GRID**

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