

KEEGAN WERLIN LLP

ATTORNEYS AT LAW
265 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110-3113
—
(617) 951-1400

TELECOPIERS:
(617) 951-1354
(617) 951-0586

CATHERINE J. KEUTHEN
E-mail: ckeuthen@keeganwerlin.com

June 20, 2017

Stephen H. August, Esq.
Energy Facilities Siting Board
One South Station
Boston, MA 02110

Re: NSTAR Electric Company d/b/a Eversource Energy, EFSB 17-02/ D.P.U. 17-82/17-83

Dear Mr. August:

On behalf of NSTAR Electric Company d/b/a Eversource Energy, enclosed please find for filing in the above-referenced proceeding, an original and four copies of the Response of NSTAR Electric d/b/a Eversource Energy to Petitions to Intervene and for Limited Participation.

Thank you for your attention to this matter.

Very truly yours,



Catherine Keuthen

Enclosures
Certificate of Service

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

NSTAR Electric Company)
d/b/a Eversource Energy)) EFSB 17-02/D.P.U. 17-82/17-83
_____))

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 980 C.M.R. 1.03(4), I have on or before this day served a true copy of the enclosed documents, by electronically, upon the petitioners listed in Attachment A hereto.

Dated at Boston, Massachusetts this 20th day of June, 2017.



Catherine J. Keuthen
Keegan Werlin LLP
265 Franklin Street
Boston, MA 02110
(617) 951-1400

Attachment A to June 20, 2017 Certificate of Service

Limited Participant Petitioners	Email address
Brenda Appleby-Williams 14 Stonebrook Road Sudbury, MA 01776 978-443-5644	Brenda_appleby@yahoo.com
John Bender 63 Jarman Road Sudbury, MA 0176 978.443.3958	Bosjp1bender@gmail.com
Martha T. Billig 79 Robert Best Road Sudbury, MA 01776 978.376.9423	TracyBillig@comcast.net
Richard L. Billig 79 Robert Best Road Sudbury, MA 01776	Rick.billig@comcast.net
Dorothy A. Bisson 290 Dutton Road Sudbury, MA 01776 978.443.5740	dottib@live.com
Paul E. Bisson 290 Dutton Road Sudbury, MA 01776 978.443.5740	pebsr@outlook.com
Thomas E. Brennan, IV 98 Robert Best Road Sudbury, MA 01776 617.974.0740	tbrennan@ctalianrealty.com
Patricia A. Brown 34 Whispering Pine Road Sudbury, MA 01776 978.440.9632	patbrownian@me.com
Nancy Brumback 36 Canterbury Drive Sudbury, MA 01776 978.440.8304	Nancy.brumback@gmail.com
Kevin Carroll 154 Woodside Road Sudbury, MA 01776 978.443.0171	kccarroll@gmail.com
Daniel E. Carty 15 Stonebrook Road Sudbury, MA 01776 978.590.4301	danielcarty@gmail.com

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Limited Participant Petitioners	Email address
Valerie R. Cass 42 Jarman Road Sudbury, MA 01776 978.579.8927	valrc@hotmail.com
Thomas F. Coen, Esq. 63 Austin Road Sudbury, MA 01776 978.397.3913	Tfcoen76@yahoo.com
Linda Croteau 12 Colburn Circle Sudbury, MA 01776 978.387.9233	Linda.croteau@comcast.net
Chris Densel 109 Austin Road Sudbury, MA 01776 978.460.1470	bdensel@msn.com
Roberta Durschlag 40 Tall Pine Drive Unit 13 Sudbury, MA 01776 978.261.5857	r.durschlag@gmail.com
Congregation B'nai Torah 225 Boston Post Road Sudbury, MA 01776 978.443.2082 By Amy and Matt Siegel, co-presidents	president@bnaitorah.com
Senator James B. Eldridge Massachusetts State House, Room 320 Boston, MA 02133 617.722.1120	James.eldridge@masenate.gov Michael.carr@masenate.gov
Representative Carmine Gentile 24 Beacon Street, Room 167 Boston, MA 02133 617.722.2810	Carmine.gentile@mahouse.gov James.blatchford@mahouse.gov
James W. Gish 35 Rolling Lane Sudbury, MA 01776 978.443.5911	jgish@computer.org
Rachel Goodrich 10 Maple Avenue Sudbury, MA 01776 617.947.2226	Rgoodrich1@comcast.net
Stephen E. Grande III 60 Union Ave Sudbury, MA 01776 978.443.7881	segiii@comcast.net

Attachment A to June 20, 2017 Certificate of Service

Limited Participant Petitioners	Email address
Richard Granfield 20 Read Rd Sudbury MA, 01776 617-230-4949	richgran@yahoo.com
Todd & Samantha Greenfield 46 Robert Best Road Sudbury, MA 01776 646.532.7723	Tgreenfield70@gmail.com
Christopher and Leslie Hamilton 36 Jarman Road Sudbury, MA 0176 781.894.8700	chamilton@hamiltonlawpartners.com lhamilton@hamiltonlawpartners.com
Wayne S. Henderson Mary S. Henderson 47 Maple Avenue, Unit 1103 Sudbury, MA 01776 857.225.2156	Wsh13@comcast.net
Elizabeth S. Hendlar 123 Austin Road Sudbury, MA 01776 508.314.5539	Lizhendlar@comcast.net
Wendy Hewitt 597 Main Street Hudson, MA 01749	wenhewitt@verizon.net
Representative Kate Hogan 24 Beacon Street, Room 130 Boston, MA 02133 617-722-2130	Kate.hogan@mahouse.gov Courtney.rainey@mahouse.gov
Debbie Fairbank-Hurtig 360 Old Lancaster Road Sudbury, MA 01776 978.443.5004	Debbie@hurtigs.org
Clark Johnson 369 Old Lancaster Road Sudbury, MA 01776 978.443.4583	cjohnson@sethjohnson.com
Diane Johnson 369 Old Lancaster Road Sudbury, MA 01776 978.443.4583	dperkinsjohnson@gmail.com
Philip C Katz 35 Maple Avenue Unit 402 Sudbury, MA 01776 978.443.0943	Philk1776@gmail.com

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Limited Participant Petitioners	Email address
Kathy Kommit 45 Whispering Pine Road Sudbury, MA 01776 978.590.3333	klkommit@gmail.com
Henry Leibowitz 50 Maple Ave Sudbury, MA 01776 781.209.8577	hleibowitz@wcxmail.com
Michelle Lombardi 101 Bent Road Sudbury, MA 01776 508.561.5327	mlombardi2@gmail.com
Nick Lombardi 101 Bent Road Sudbury, MA 01776 508.561.3840	nlombs@gmail.com
Suzanne Malone 49 Briant Drive Sudbury, MA 01776 978.443.6903	Smalone456@gmail.com
Arthur Maxwell 96 Peakham Road Sudbury MA 01776 978-815-0561	bosbear@aol.com
Cara Maxwell 96 Peakham Road Sudbury, MA 01776 978-443-3200	Maxcara@aol.com
Lenna Minassian 564 Hudson Road Sudbury, MA 01776	LennaNicole@hotmail.com
Ipsita Mohanty 9 Stonebrook Road Sudbury, MA 0177 585.415.7323	m.ipsita@gmail.com
Felicia K. Murphy 111 Horse Pond Road Sudbury, MA 01776 508.736.8035	feliciakmurphy@gmail.com
Matt Murphy 111 Horse Pond Road Sudbury, MA 01776 508-294-5153	Mattmurphy2727@gmail.com
Christine M. Nelson 31 Paramenter Road	basiconeill@verizon.net

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Limited Participant Petitioners	Email address
Hudson, MA 01749 978.618.2617	
Brian H. O'Neill 31 Paramenter Road Hudson, MA 01749 For: Protect Hudson	basiconeill@verizon.net
Joelle Peppi 50 Maple Ave Sudbury, MA 01776 781.209.8577	jpeppi@peppiworld.com
Raymond Phillips 40 Whispering Pine Road Sudbury, MA 01776 978.443.8598	rayphill@verizon.net
Jan Pitzi 91 Haynes Road Sudbury, MA 01776 508.380.1519	jan@janpitzi.com
Paul Rakowski 51 Crescent Lane Sudbury, MA 01776 978.261.5204	Paul_rakowski@yahoo.com
Bethany Shaw 850 Boston Post Road Sudbury, MA 01776 617.784.6534	Bethany@bethanyschlegel.com
Phoebe Sozanski 82 Ford Road Sudbury, MA 01776 978.443.6222	ppsozan@msn.com
Daniel Tonelli 9 Rolling Lane Sudbury, MA 01776 781.354.5165	tonellidan@gmail.com
Charles Wadsworth 35 Maple Ave, Unit 103 Sudbury, MA 01776 508.942.0099	Kirby56@gmail.com
Diana E. Warren 32 Old Framingham Road #30 Sudbury, MA 01776 978.443.2880	dewwarren@gmail.com
Edward Wynne 123 Austin Road Sudbury, MA 0176	Tedw2@comcast.net

Attachment A to June 20, 2017 Certificate of Service

Limited Participant Petitioners	Email address
508.740.6521	
William Ye 30 Jarman Road Sudbury, MA 01776 978.443.9976	xiuzisw@yahoo.com
Xiuzi Ye 30 Jarman Road Sudbury, MA 0177 978.443.9976	xiuzi@yahoo.com
Ruisheng Yu 30 Jarman Road Sudbury, MA 01776 978.443.9976	xiuzi@yahoo.com
Intervention Petitioners	Email Address
Town of Sudbury George X. Pucci KP Law, P.C. 101 Arch St., 12 th Floor Boston, MA 02110-1109	gpucci@k-plaw.com jbernstein@bcklaw.com aeidelman@bcklaw.com kterrell@bcklaw.com
Jeffrey M. Bernstein Audrey A. Eidelman Kathryn M. Terrell BCK Law, P.C. 271 Waverly Oaks Road, Suite 203 Waltham, MA 02452	
Town of Hudson c/o McGregor and Legere 15 Court Square Boston, MA 02108 Suite 500	llegere@mcgregorlaw.com gimcg@mcgregorlaw.com
Hudson Light and Power Department c/o Rubin and Rudman 50 Rowes Wharf Boston, MA 02110	rshapiro@rubinrudman.com cpollart@rubinrudman.com
Town of Stow c/o Huggins and Witten, LLC 156 Duck Hill Road Duxbury, MA 02332	jon@hugginsandwitten.com Barbara@hugginsandwitten.com
Protect Sudbury c/o Burns and Levinson LLP 125 Summer Street Boston, MA 02110	rkanoff@burnslev.com

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

NSTAR Electric Company d/b/a)	
Eversource Energy)	EFSB 17-02/D.P.U. 17-82/17-83
)	

**RESPONSE OF NSTAR ELECTRIC d/b/a EVERSOURCE ENERGY TO
PETITIONS TO INTERVENE AND FOR LIMITED PARTICIPATION**

I. INTRODUCTION

On April 20, 2017, NSTAR Electric Company d/b/a Eversource Energy (“Eversource” or “the Company”) filed a petition with the Energy Facilities Siting Board (the “Siting Board”) for approval to construct, operate and maintain an approximately 9-mile, 115-kilovolt underground transmission line between Eversource’s Sudbury Substation located in the Town of Sudbury and Hudson Light & Power Department’s Substation in Hudson and to make modifications to the Sudbury Substation (the “Project”). The Company also filed two petitions with the Department of Public Utilities (“Department”) regarding the Project and the three petitions have been consolidated for hearing before the Siting Board.

The Siting Board issued a Notice of Adjudication and a Notice of Public Hearing (the “Notice”) that established a deadline of June 15, 2017 for filing petitions for leave to intervene or for limited-participant status. The Siting Board received the following five timely-filed petitions to intervene as full parties: (1) Town of Sudbury; (2) Town of Hudson; (3) Town of Stow; (4) Protect Sudbury, Inc.; and (5) Hudson Light & Power

Department. The Siting Board also received requests for limited-participant status on behalf of 60 individuals, listed on Appendix A hereto.¹

Eversource does not oppose the above-named entities' and individuals' intervention or participation in this proceeding. However, the Company requests that the Siting Board limit the scope of the intervention and participation to issues properly before the Siting Board.²

II. STANDARD OF REVIEW

With regard to petitions to intervene, the Siting Board has well-established precedent and standards that petitioners must meet in order to be granted intervenor status. Pursuant to 980 C.M.R. 1.05(1)(b), a petitioner wishing to intervene must:

state the name and address of the petitioner, the manner in which the petitioner is substantially and specifically affected by the proceeding, the representative capacity, if any, in which the petition is brought, and how the petitioner intends to participate in the proceeding.

In conducting adjudicatory proceedings, the Siting Board “may allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose,” as the Siting Board may order. G.L. c. 30A, § 10(4) (emphasis

¹ It appears that Brian H. O'Neill filed a petition for limited-participant status on his own behalf as well as on behalf of Protect Hudson. It is unclear whether the petition for limited-participant status filed by Amy and Matt Siegel was on their own behalf or on behalf of Congregation B'nai Torah.

² Eversource does not oppose the requests of the individuals listed on Appendix A to participate in this proceeding as limited participants, but requests that the Siting Board expressly limit the scope of their participation to receiving copies of any filings electronically, presenting oral arguments, filing briefs and commenting on any Tentative Decision issued in this proceeding. In addition, as discussed herein, potential impacts on property values, as alleged by many of the limited participants, are outside the jurisdiction of the Siting Board in this proceeding.

added); see also 980 C.M.R. 1.00 et seq. The Supreme Judicial Court (“SJC”) has repeatedly recognized that, based on the permissive “may,” agencies such as the Siting Board have broad discretion to grant or deny intervention. Tofias v. Energy Facilities Siting Bd., 435 Mass. 340, 46-47 (2001) (“Tofias 2001”), citing Cablevision Sys. Corp. v. Department of Telecommunications & Energy, 428 Mass. 436, 439 (1998) (agency has “broad discretion” to deny intervention); KES Brockton, Inc. v. Department of Pub. Utils., 416 Mass. 158, 165 (1993) (Department has “wide discretion to grant, limit, or deny a person leave to intervene”); Attorney Gen. v. Department of Pub. Utils., 390 Mass. 208, 216 (1983) (denial of intervention within Department’s “broad discretion”); Boston Edison Co. v. Department of Pub. Utils., 375 Mass. 1, 45 & n.27 (1978) (G.L. c. 30A, § 10, gives Department “broad discretion with regard to interveners”). “The discretion to limit intervention was obviously intended to permit the [Siting Board] to control the extent of participation by persons not sufficiently and specifically interested to warrant full participation, which might interfere with complicated regulatory processes.” Tofias 2001, 435 Mass. at 346-47; Newton v. Department of Pub. Utils., 339 Mass. 535, 543 n.1 (1959).”

In considering whether a petitioner has shown that he or she may be substantially and specifically affected by a proceeding, the Siting Board may consider, among other factors, the scope of the proceeding, the nature of the petitioner’s interests, whether the petitioner’s interests are unique and cannot be raised by any other petitioner, and the potential effect of the petitioner’s intervention, including whether participation by the petitioner is likely to help elucidate the issues in the proceeding. See, e.g., NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-4/ D.P.U. 14-153/154, at 3

(Presiding Officer Ruling, September 1, 2015) (“NSTAR Ruling 2015”); Exelon West Medway, LLC, EFSB 15-1/D.P.U. 15-225, at 2 (Procedural Order, July 22, 2105) (“Exelon 2015”); Brockton Power, LLC, EFSB 99-1, at 2 (Procedural Order, April 8, 1999) (“Brockton Power”). In this manner, the Siting Board may deny a request to intervene where a petitioner raises issues that are not relevant to the outcome of the proceeding; where a petitioner’s claims are generalized and remote, and not unique, direct or peculiar; and where a petitioner’s interests are already adequately represented in the proceeding and would not contribute to the orderly conduct of the case. See Brockton Power, at 2; Infrastructure Development Corporation, EFSB 97-5, at 2; ANP Bellingham Energy Company, EFSB 97-1, at 2-3 (Procedural Order, Sept. 24, 1997). The multiplicity of parties and the increased participation by persons whose rights are at best obscure will, in the absence of exact adherence to requirements as to standing, seriously erode the efficacy of the administrative process.” Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667 at 672 (1975).

The Siting Board’s regulations further provide, at 980 C.M.R. 1.05(1)(f), that the Presiding Officer “may condition any allowance of a petition on such reasonable terms as he or she may set.” See, e.g., Cape Wind Assocs., LLC and Commonwealth Elec. Co. d/b/a NSTAR Elec., EFSB 02-2/D.T.E. 02-53, at 3 (Procedural Order, Dec. 20, 2002) (limiting scope of intervention to certain issues raised in intervenor’s petitions); Exelon 2015, at 2. The SJC has determined that it is clearly within an agency’s broad discretion to limit the scope of an intervenor’s participation in a proceeding. Tofias 2001, 435 Mass. at 346-47.

Similarly, participation as an interested person in an adjudicatory proceeding is

also a matter within the discretion of the agency before which the proceeding is pending. G.L. c. 30A, § 10; NSTAR Ruling 2015, at 3. As with a petition to intervene, the Presiding Officer, “may grant leave to a person to participate as a limited participant and may condition any grant on such reasonable terms as he or she may set.” 980 C.M.R. 1.05(2)(b) (emphasis added). See, e.g., NSTAR Ruling 2015, at 3.

III. CLAIMS OF DIMINUTION IN PROPERTY VALUE ARE NOT WITHIN THE SCOPE OF INTERESTS OF G.L. c. 164, § 69J AND, ACCORDINGLY, SUCH CLAIMS CANNOT BE ADJUDICATED IN THIS PROCEEDING

Protect Sudbury and many of the individuals seeking limited-participant status have alleged diminution of property value as a result of the Project. See, e.g., Protect Sudbury Petition at 2 (“Project would needlessly … shrink property values”), at 3 (“Project will have … impacts… on… property values”), at 4 (“Project would have major adverse impacts on… property values”), at 6 (“the value of homes and properties of these Protect Sudbury’s members would be adversely impacted by the Project”), at 7 (“Protect Sudbury seeks intervention in this proceeding on behalf of its members in order in order to preserve and protect … property values”). See also numerous requests for limited-participant status, including those from Suzanne Malone, Kevin Carroll, Raymond Phillips, James W. Gish, and Christopher and Leslie Hamilton (“If the Project is approved, my property will be directly affected by … the impact on property values”) and letter from Diana E. Warren (“the proceeding … will … impact the value and sale ability of my property”).

Referencing, but grossly mispresenting, the NSTAR Ruling 2015, Protect Sudbury pointedly raises the issue of property values as follows: “It is axiomatic that the value of

homes and properties of these Protect Sudbury's members would be adversely impacted by the Project. The potential Project impacts to these homeowners and business owners are the type of concerns which support the finding that Protect Sudbury's members may be substantially and specifically affected by this proceeding.” Protect Sudbury Petition at 6. Protect Sudbury's reliance on the NSTAR Ruling 2015 is completely misplaced; that ruling, in fact, actually supports the opposite conclusion, *i.e.*, that only issues within the Siting Board's jurisdiction can be raised by intervenors. As expressly stated there, “nothing precludes [the intervenors] from raising issues in the course of this proceeding that go beyond the issues raised in their intervention petitions, assuming that such issues are within the scope of the Board's jurisdiction in this case; are relevant to the Board's review of Eversource's proposed Project....” NSTAR Ruling 2015 at 5 (emphasis added).

Claims regarding the alleged impact of the Project on property values are pecuniary in nature and outside of the Siting Board's mandate. Tofias 2001, 435 Mass. at 349. In order for an issue to be relevant for inquiry, the alleged injury must fall “within the area of concern of the statute or regulatory scheme under which the injurious action has occurred.” Ginther v. Commissioner of Insurance, 427 Mass. 319, 323 (1998); see also Massachusetts Elec. Co. v. Department of Pub. Utils., 419 Mass. 239, 247 (1994). The Siting Board has consistently recognized that economic impacts such as those alleged by Protect Sudbury and others in this proceeding are beyond its scope under the siting statute. IDC Bellingham, LLC, EFSB 97-5 at 13 (Procedural Order, May 1, 1998) (finding intervernior's claims regarding property values to be outside the Siting Board's jurisdiction and not an appropriate part of the Siting Board proceedings); Berkshire Power Development, Inc., EFSB 95-1, at 6 (Procedural Order, October 11, 1995) (finding that

the siting statute “was not designed to protect the financial interests of petitioners as a result of impacts outside the scope of the mandate of that statute”); see also Cabot Power Corporation, EFSB 91-101A at 78 (1998) (“The Siting Board recognizes that environmental impacts may well have economic consequences; however the Siting Board’s mandate is to minimize the impacts, not quantify the consequences to each affected individual and company and determine whether any is impermissible”). There is nothing in the Siting Board’s statutory mandate that authorizes it to consider property value claims or to provide reparations regarding such economic claims.

Similarly, the SJC has upheld the Siting Board’s interpretation of its scope of authority under the siting statute with respect to property value concerns. In a case involving the siting of a generation facility under G.L. c. 164, § 69J $\frac{1}{4}$,³ the Siting Board denied an intervention petition that was based solely on protecting the alleged value of its real estate, finding that such a claim “is not addressed by the pertinent provisions of G.L. c. 164, § 69J $\frac{1}{4}$ and taken alone is not a justifiable issue on which to base a claim of substantial and specific impact.” Brockton Power, at 6. On direct appellate review, the SJC affirmed the Siting Board’s denial of intervention based on property value claims because such interests are “beyond the board’s statutory mandate.” Tofias 2001, 435 Mass. at 349 (2001). Accordingly, because property value assertions are outside of the Siting Board’s purview, they cannot represent a relevant issue for inquiry or dispute within a Siting Board proceeding.

³ With respect to the topic of property values, there is no difference in the Siting Board’s statutory mandate under Section 69J $\frac{1}{4}$ and Section 69J.

WHEREFORE, for the reasons stated above, Eversource Energy respectfully requests that the Siting Board grant the above-described petitions to intervene and for limited-participant status, consistent with the limitations and restrictions requested herein.

Respectfully Submitted,

**NSTAR ELECTRIC COMPANY d/b/a
EVERSOURCE ENERGY**

By its attorneys,



Catherine J. Keuthen
Cheryl A. Blaine
Keegan Werlin LLP
265 Franklin Street
Boston, MA 02110
(617) 951-1400

Date: June 20, 2017

**Appendix A to Response of NSTAR Electric d/b/a Eversource Energy to Petitions to
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Limited Participant Petitioners
Brenda Appleby-Williams 14 Stonebrook Road Sudbury, MA 01776
John Bender 63 Jarman Road Sudbury, MA 01776
Martha T. Billig 79 Robert Best Road Sudbury, MA 01776
Richard L. Billig 79 Robert Best Road Sudbury, MA 01776
Dorothy A. Bisson 290 Dutton Road Sudbury, MA 01776
Paul E. Bisson 290 Dutton Road Sudbury, MA 01776
Thomas E. Brennan, IV 98 Robert Best Road Sudbury, MA 01776
Patricia A. Brown 34 Whispering Pine Road Sudbury, MA 01776
Nancy Brumback 36 Canterbury Drive Sudbury, MA 01776
Kevin Carroll 154 Woodside Road Sudbury, MA 01776
Daniel E. Carty 15 Stonebrook Road Sudbury, MA 01776

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Valerie R. Cass 42 Jarman Road Sudbury, MA 01776
Thomas F. Coen, Esq. 63 Austin Road Sudbury, MA 01776
Linda Croteau 12 Colburn Circle Sudbury, MA 01776
Chris Densel 109 Austin Road Sudbury, MA 01776
Roberta Durschlag 40 Tall Pine Drive Unit 13 Sudbury, MA 01776
Congregation B'nai Torah 225 Boston Post Road Sudbury, MA 01776 By Amy and Matt Siegel, co-presidents
Senator James B. Eldridge Massachusetts State House, Room 320 Boston, MA 02133
Representative Carmine Gentile 24 Beacon Street, Room 167 Boston, MA 02133
James W. Gish 35 Rolling Lane Sudbury, MA 01776
Rachel Goodrich 10 Maple Avenue Sudbury, MA 01776
Stephen E. Grande III 60 Union Ave Sudbury, MA 01776

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Limited Participant Petitioners
Richard Granfield 20 Read Rd Sudbury MA, 01776
Todd & Samantha Greenfield 46 Robert Best Road Sudbury, MA 01776
Christopher and Leslie Hamilton 36 Jarman Road Sudbury, MA 0176
Wayne S. Henderson Mary S. Henderson 47 Maple Avenue, Unit 1103 Sudbury, MA 01776
Elizabeth S. Hendlar 123 Austin Road Sudbury, MA 01776
Wendy Hewitt 597 Main Street Hudson, MA 01749
Representative Kate Hogan 24 Beacon Street, Room 130 Boston, MA 02133
Debbie Fairbank-Hurtig 360 Old Lancaster Road Sudbury, MA 01776
Clark Johnson 369 Old Lancaster Road Sudbury, MA 01776
Diane Johnson 369 Old Lancaster Road Sudbury, MA 01776
Philip C Katz 35 Maple Avenue Unit 402 Sudbury, MA 01776

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Henry Leibowitz 50 Maple Ave Sudbury, MA 01776
Michelle Lombardi 101 Bent Road Sudbury, MA 01776
Nick Lombardi 101 Bent Road Sudbury, MA 01776
Suzanne Malone 49 Briant Drive Sudbury, MA 01776
Arthur Maxwell 96 Peakham Road Sudbury MA 01776
Cara Maxwell 96 Peakham Road Sudbury, MA 01776
Lenna Minassian 564 Hudson Road Sudbury, MA 01776
Ipsita Mohanty 9 Stonebrook Road Sudbury, MA 0177
Felicia K. Murphy 111 Horse Pond Road Sudbury, MA 01776

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Limited Participant Petitioners
Matt Murphy 111 Horse Pond Road Sudbury, MA 01776
Christine M. Nelson 31 Paramenter Road Hudson, MA 01749
Brian H. O'Neill 31 Paramenter Road Hudson, MA 01749 For: Protect Hudson
Joelle Peppi 50 Maple Ave Sudbury, MA 01776
Raymond Phillips 40 Whispering Pine Road Sudbury, MA 01776
Jan Pitzi 91 Haynes Road Sudbury, MA 01776
Paul Rakowski 51 Crescent Lane Sudbury, MA 01776
Bethany Shaw 850 Boston Post Road Sudbury, MA 01776
Phoebe Sozanski 82 Ford Road Sudbury, MA 01776
Daniel Tonelli 9 Rolling Lane Sudbury, MA 01776
Charles Wadsworth 35 Maple Ave, Unit 103 Sudbury, MA 01776

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Limited Participant Petitioners
Diana E. Warren 32 Old Framingham Road #30 Sudbury, MA 01776
Edward Wynne 123 Austin Road Sudbury, MA 01776
William Ye 30 Jarman Road Sudbury, MA 01776
Xiuzi Ye 30 Jarman Road Sudbury, MA 0177
Ruisheng Yu 30 Jarman Road Sudbury, MA 01776