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VIA ELECTRONIC FILING

Francis V. Kenneally, Clerk
Supreme Judicial Court
for the Commonwealth
One Pemberton Square, Suite 1400
Boston, MA 02108-1724

**Re: *Town of Sudbury, et al. v. Energy Facilities Siting Board,*
Supreme Judicial Court for the Commonwealth No. SJC-12997**

Dear Mr. Kenneally:

I represent the respondent-appellee Energy Facilities Siting Board in the above-referenced and am writing to correct a technical inaccuracy on page 52 of the Board's brief that came to my attention during preparation for the upcoming March 1, 2021 oral argument.

Page 52 refers to the "annual lease payments that" the intervenor-appellee NSTAR Electric Company d/b/a Eversource Energy ("Eversource") "would have to make to the MBTA over the life of the *20-year easement* [emphasis added]" that it has the option to "acquire from the MBTA if the project proceeds." The ensuing footnote 34 on page 52 then distinguishes "[I]and acquisition costs that are capitalized and paid 'up front' . . . for a *permanent easement* or an actual purchase of property [emphasis added]."

In reality, while Eversource would in fact be making regular annual payments to the MBTA for 20 years rather than up front, the utility easement that it would be acquiring for the 22-foot MBTA right of way would be a "permanent, nonexclusive" one. *See* Board Decision p. 87 (Board Addendum p. 159). What the 20-year provisions relate to is a further right that Eversource would acquire to keep its underground transmission line *in the exact same location within the broader 22-foot right of way* for 20 years. *See id.* pp. 87, 180 (Board Addendum pp. 159, 252). After 20 years, the MBTA would have the right to require Eversource to move its line to another location within the 22-foot right of way, but the MBTA would have to give Eversource "no less than five years notice" to do so. *See id.* pp. 179, 180 & n. 163 (Board Addendum pp. 251-52). This right of undisturbed utility use in the exact same location within

the broader right of way for at least 20 years, in exchange for 20 years of annual payments, is what the Board has referred to as a “lease” arrangement. *See id.* pp. 177, 180 & n.163 (Board Addendum pp. 249, 252).

This clarification does not affect the Board’s actual argument on page 52 of its brief, which focuses not on the technical classification of the right that Eversource would be acquiring under the common law of property, but instead on the fact that Eversource’s payment for that right would be recurring and annualized (rather than a single lump sum up front). The Board nevertheless wishes to clarify its description of what Eversource would be acquiring, and it apologizes for any confusion created by the prior statements in its brief.

Thank you for your cooperation in this matter.

Very truly yours,

/s/ Pierce O. Cray
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Encls.
POC/pb

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