

305692

LEONARD A. SIMON
40 MEADOWBROOK CIRCLE
SUDBURY, MA 01776

ENTERED
Office of Proceedings
November 29, 2022
Part of
Public Record

November 28, 2022

Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: Rail Line Abutting Landowners – Verified Petition for Declaratory Order, Docket No. 36623

Dear Chairman Oberman and Members of the Surface Transportation Board:

Kindly accept for filing and your consideration a copy of my letter of this date to Senators Elizabeth Warren and Edward Markey. It is submitted in response to their letter to the Surface Transportation Board dated September 2, 2022.

I have sent a copy of my letter to Senators Warren and Markey to all Parties of Record.

Very truly yours,

/s/ Leonard Simon

Leonard Simon

Enclosure

Cc: Parties of record

**LEONARD A. SIMON
40 MEADOWBROOK CIRCLE
SUDBURY, MA 01776**

November 28, 2022

Senator Elizabeth Warren
309 Hart Senate Office Building
Washington, DC 20510

Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510

By email to: [Vinik, Danny \(Markey\)-danny_vinik@markey.senate.gov](mailto:Vinik, Danny (Markey)-danny_vinik@markey.senate.gov) and regular mail

Re: Rail Line Abutting Landowners – Verified Petition for Declaratory Order, Docket No. 36623

Dear Senators Warren and Markey,

I have recently received a copy of your letter to the Surface Transportation Board (STB) dated September 2, 2022.

For the reasons detailed below I respectfully ask you to recall your letter to the STB:

- Your letter contravenes the findings of the Massachusetts Public Utilities Siting Board.
- Your letter contravenes the conclusions and opinions of the Massachusetts Supreme Judicial Court in the cases of Protect Sudbury, inc. vs. Energy Facilities Siting Board **and** Town of Sudbury vs. Energy Facilities Siting Board.
- Your letter does not represent the views of the Towns of Sudbury or Hudson.
- Your letter does not represent the views of most residents of Sudbury and Hudson.
- Your letter does not represent the views of experts.
- Your letter places in jeopardy the developed portions of the Mass Central Rail Trail, constructed at great cost to the towns and Commonwealth of Massachusetts, and the MBTA network of rail trails.

Your letter begins by saying it is brought to highlight concerns of constituents in Hudson and Sudbury. This is not quite accurate for two reasons. First, the Sudbury residents who signed the petition were all abutters to the proposed transmission line, each of whom had a personal and financial interest in seeing the transmission line defeated. Second, the Select Boards in Sudbury and Hudson were made aware of the petition, which originated with Protect Sudbury,

not individual residents, and were invited to sign on. Neither did, and we must assume that the Boards' refusal to do so was in the best interests of a majority of their residents. At least in Sudbury, the town is the largest abutter, and the Select Board still felt it was not in the town's best interest to endorse the petition for a variety of reasons.

In your letter you request the Surface Transportation Board to declare whether the line is classified as abandoned or not. Such a declaration is not warranted because the corridor has long been inactive and has seen no railroad use for more than 25 years. This same railroad corridor has been converted into the Mass Central Rail Trail (MCRT) in towns to the west of Sudbury. The MCRT has been constructed at significant cost to the Commonwealth and the Department of Conservation and Recreation. Your request puts this investment at risk. The MCRT is an enormously popular year-round recreational amenity for walkers, runners and bicyclists. It is also a non-motorized transportation corridor, reducing carbon emissions and taking cars off the road.

As part of Eversource's preferred route for the Hudson to Sudbury transmission line, it partnered with the Department of Conservation and Recreation in the co-development of a segment of the Massachusetts Central Rail Trail, a proposed multiuse rail trail. Eversource agreed to install the underground electric transmission line and build a gravel road. When complete, DCR will pave the gravel road and turn it into a rail trail to become part of the MCRT.

Having been a member of the Sudbury Board of Selectman for six years, and a strong proponent of the Bruce Freeman Rail Trail, I can represent with a high degree of confidence that Sudbury residents would much prefer a beautiful rail trail to the overgrown swath of brush which currently exists on the corridor.

You correctly point out that the corridor is owned by the Massachusetts Bay Transportation Authority. You also note that some municipalities, conservation groups and others "have voiced concerns about the possible environmental, historical, and public health effects of the project." Each of those entities received a lengthy and robust public hearing of their concerns at the Massachusetts Public Utilities Siting Board (Siting Board) beginning in 2017.

The Siting Board, per its statutory mission, conducted an expansive adjudicatory proceeding. It accepted written public comments, and held two public comment hearings. The siting Board 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 twentyeight witnesses. On December 2, 2019, the board issued a tentative decision denying a motion to reopen the record and approved Eversource's petition to construct the project using the preferred route. On December 18, 2019, the Siting board issued its 246-page final decision affirming its tentative decision.

The Hudson- Sudbury transmission line project was one of the most extensive hearings ever conducted by the Siting Board. Ther Siting Board considered: 1) need, 2) alternative routes, 3) cost, and 4) environmental impacts.

Sudbury and others then appealed the Siting Board’s findings and conclusions to the Massachusetts Supreme Judicial Court (SJC). On June 25, 2021, the SJC, after a meticulous review of each issue, *unanimously* upheld the Siting Board’s conclusions in a thirty-seven page opinion, writing:

We therefore reject the town's argument that the board erred in concluding that the project is consistent with the policies of the Commonwealth, as they are required to be considered by the board.

Conclusion. For the foregoing reasons, we affirm the order of the board.

In summary, the regulatory process to promote the policies of the Commonwealth performed exactly as intended. The decision was affirmed through the SJC, Massachusetts’ highest court.

In the third paragraph of your letter reference is made to potential release of hazardous materials. You write, “because of the rail line’s age and inactivity the proposed construction efforts have the potential to release mercury, lead, coal, ash, arsenic, or other hazardous substances into the surrounding soil and groundwater.” These concerns were appropriately raised by Eversource, who had responsibility to build the transmission line , at the Siting Board proceedings. Eversource detailed the measures it would take to minimize and mitigate risk. The Siting Board agreed with Eversource and the SJC affirmed. In addition, the Sudbury Conservation Commission issued its most detailed and comprehensive Order of Conditions to minimize the potential for release of toxic waste. In fact, the safest way to contain the toxic substances is to follow best practices and leave them in place and cap them, as proposed by Eversource and the Department of Conservation and Recreation. Uncapped, or just left alone, the materials have a greater chance of leaching into surrounding land or water supplies and causing contamination outside their present location.

May I point out that the need for the Hudson to Sudbury underground transmission line has roots at the federal level, initially at the Federal Energy Regulatory Commission. Then, the regional independent systems operators, (ISOs) carry out federal policy. In this case ISO-NE determined the need for the Hudson to Sudbury transmission line. The need and consideration of all other relevant factors, including environmental concerns went to the Siting Board. The Siting Board's mandate under G. L. c. 164, § 69H, when considering a project such as the Hudson to Sudbury transmission line, is to "provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost." That has been done.

In the context of this transmission line, it is reasonable to conclude that the need and benefits of this project vastly outweigh the issues of whether or not the line has formally been

abandoned. Finally, even if it was not deemed to be formally abandoned, the MBTA as the owner of the land and corridor in fee simple would simply petition the STB to determine it abandoned. This scenario has actually been conceded by Protect Sudbury, the entity which is the guiding hand behind the petition. Protect Sudbury's first petition to the Surface Transportation Board was rejected. Then it lost at the state regulatory level, i.e., the Siting Board, and it lost again on appeal to the courts. The petition, signed by abutters at Protect Sudbury's behest, is a distraction from the more important issues which have already been decided.

As with all governmental decisions, there must be finality once the issues have been thoroughly and openly presented and decided, as they have in this matter. Due process has been afforded to all parties and affected residents. Not unexpectedly, some residents don't agree with the outcome, but there is no overarching public policy that would now justify further review. The SJC wrote: "We conclude that there was no error in the board's assessment and approval of the project."

If *abutters* felt they had property rights, an action to preserve those rights should have been pursued many years ago in Superior Court or Land Court when the MBTA purchased the rail corridor and acquired title. That was not done*. Even now, no factual basis supporting a 'possible' claim of property rights has been shown. Any such rights were extinguished long ago when the MBTA acquired the corridor and by the Statute of Limitations.

*Even as this letter is being written, Ray Phillips, president of Protect Sudbury, has filed a claim in Land Court challenging the Eversource's Hudson to Sudbury transmission line. (Filed in Land Court on November 1, 2022) Although belated, this is the route abutters should have taken if they wished to challenge land ownership rights. This latest court filing is an acknowledgement of the scattershot approach taken by Protect Sudbury and some abutters – just keep filing petitions and unfounded claims – even if they have been considered and rejected previously. The issue you have asked the STB to take, i.e., abandonment, will be rendered moot by the decision of the Land Court. In fact, it is a condition precedent to consideration of the petition. Although it is unlikely the pro se plaintiffs will succeed, letting the Land Court case run its course is the way to go. **As such, the action you have asked the STB to take on the petition is unwarranted, and there is now a new reason it should be withdrawn.**

Finally, Sudbury has a reliable energy source and redundancy. Hudson does not. This is the foundation of ISO-NE's determination of the need for the Hudson to Sudbury underground transmission line. Do you feel residents of Hudson should not have the same electric reliability and redundancy now enjoyed by the residents of Sudbury, and most other communities? Should Hudson residents have lesser rights to electric power grid security than residents of other towns?

I respectfully ask you to reconsider your request to the Surface Transportation Board and withdraw your request.

Thank you for your consideration.

Very truly yours,

/s/ Leonard Simon

Leonard Simon

Cc: All Parties of Record
Surface Transportation Board
State Senator Jamie Eldridge
Paul Jahnige, DCR