

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 16-11470-RGS

UNITED STATES OF AMERICA

v.

NSTAR ELECTRIC CO., et al.

MEMORANDUM AND ORDER  
ON THE JOINT MOTION OF DEFENDANTS  
NSTAR ELECTRIC CO. AND HARBOR ELECTRIC ENERGY CO.  
TO DELAY SCHEDULED BLASTING

January 15, 2018

STEARNS, D.J.

As part of its Boston Harbor Deep Draft Navigation Project (the Deep Draft Project), the U.S. Army Corps of Engineers (ACOE) has scheduled a blasting project (Blasting Project) to begin tomorrow, Wednesday, January 16, 2019, in the Boston Harbor. The Blasting Project is to take place near a trench being excavated by the Eversource defendants (NSTAR Electric Energy Company, d/b/a Eversource Energy (NSTAR) and Harbor Electric Energy Company (HEEC)) to house a new transmission cable (New Cable) to provide electrical power to the Deer Island sewage treatment plant. The Eversource defendants have been ordered by this court to complete

installation of the New Cable no later than December 31, 2019. *See* Stipulation and Order dated July 12, 2017 (Dkt # 125).

The Eversource defendants seek an emergency order enjoining the Blasting Project from proceeding until installation of the conduit for the New Cable is finished, which is scheduled for March 31, 2019. The Eversource defendants maintain that the Blasting Project poses a substantial risk of collapsing the trench or creating fractures in the basement rock that will make compliance with the court's scheduling order impossible. They also assert that the Blasting Project's disruption of their present work schedule will result in project delay/stand down costs in excess of \$50 million. The ACOE, for its part, argues that the geological risks to the New Cable trench are minimal, and in a Declaration submitted today by Matthew Tessier, the Chief of the Navigation Branch, the ACOE states that it will incur similar stand-down costs if the Blasting Project is delayed. Both sides complain of a lack of communication over coordination of the competing projects.

At the hearing held today, January 15, 2019, the court noted that the dispute unfortunately places two worthwhile and critical public interest projects at odds with one another. Maintenance of the health of Boston Harbor is dependent on the ongoing operations of the Deer Island treatment plant, any disruption of which the installation of the New Cable is meant to

prevent. The Deep Draft Project, for its part, is intended to facilitate the access of larger, more modern ships to the Harbor, and as such, is important to Boston's continued economic development. These interests converge in the long run, as the New Cable project not only insures uninterrupted electric service to Deer Island, but also sinks the existing transmission line to a depth that will allow the Deep Draft Project to proceed.

As became clear at the hearing, the court does not have enough information (nor do the parties) to make a final decision that will best serve the mutual interests of all involved. In this regard, the court appreciates the suggestion by the Eversource defendants of a plan that may achieve a workable solution acceptable to both parties. Consistent with this suggestion, the court orders as follows: the ACOE will postpone the Blasting Project for nine (9) days from today's date, that is, through January 24, 2019. The court further orders the parties to meet during the interim to discuss their respective project concerns and schedules, the costs and benefits to the public and the parties of delaying the New Cable project and/or the Blasting Project, the mitigation measures that each side can undertake, and the substance of a mutually agreeable plan to achieve the parties' respective goals at the least onerous private and public cost. The court will continue today's hearing to 11:30 a.m., Thursday, January 24, 2019, to hear the report

of the parties and, if necessary, to make itself available to the extent it can assist the resolution of any remaining differences.

SO ORDERED.

/s/ Richard G. Stearns  
UNITED STATES DISTRICT JUDGE