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Attachment D-4: Final Determination Chapter 91 RDA

Pictured: Jupiter's Callisto | BESS in Harris County, TX

Prepared For:

Massachusetts Department of Energy Resources

Electric Distribution Companies:

Fitchburg Gas & Electric Light Company d/b/a Unitil

Massachusetts Electric Company and Nantucket Electric Company,
each d/b/a National Grid

NSTAR Electric Company d/b/a Eversource Energy

Applicant Information

Applicant:

Trimount ESS LLC

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Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

100 Cambridge Street 9th Floor Boston, MA 02114 • 617-292-5500

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Rebecca L. Tepper
Secretary

Bonnie Heiple
Commissioner

March 8, 2024

Everett Landco, LLC
c/o Christopher Wagner - Vanasse Hangen Brustlin, Inc. (VHB)
101 Walnut Street
Watertown, Massachusetts 02472

Re: Chapter 91 Jurisdictional Determination - WW04-0000027

Application No. 23-WW04-0014-APP

0 South Farm, Filled Tidelands of the Mystic River, Mystic River Designated Port Area,
Everett, Middlesex County

Dear Mr. Wagner:

Enclosed please find the Jurisdictional Determination for the above referenced Request for Determination of Applicability (RDA) Application issued by the Department of Environmental Protection Waterways Regulation Program pursuant to M.G.L. Chapter 91 and 310 CMR 9.06. This Determination may be recorded at the Southern Middlesex District County Registry of Deeds and a copy will be maintained in the Department files.

Please contact the Waterways Regulation Program at dep.waterways@mass.gov if you have any questions.

Sincerely,

Daniel J. Padien
Program Chief
Waterways Regulation Program

cc: Michael Cantalupa, The Davis Companies
Honorable Carlo DeMaria, Mayor, City of Everett
Everett Conservation Commission
Everett Planning Board



Department of Environmental Protection

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Jurisdictional Determination No.: WW04-0000027 Municipality: Everett, Essex County

Waterways Application No.: 23-WW04-0014-APP

DETERMINATION OF APPLICABILITY- 310 CMR 9.00

Issued to: Everett Landco, LLC
125 High Street, Ste. 2111
Boston, MA

Location: 0 South Farm
Everett, MA 02149
Parcel No.: H0-05-00162A

Pursuant to 310 CMR 9.06, the Department of Environmental Protection, Waterways Regulation Program (“Department”) has considered the Request for a Determination of Applicability (RDA) Application and its supporting documentation to determine if the proposed construction and operation of a Battery Electric Energy Storage System (BESS) at the subject parcel and located within the filled tidelands presented in the RDA may be considered a Water Dependent Industrial Use pursuant to 310 CMR 9.12(2)(b)9 and 10. The Department has made the following determinations:

[X] The Determination is Positive: The above referenced site for which this determination is issued includes filled tidelands, a geographic area subject to the jurisdiction of G.L. Chapter 91 and its regulations at 310 CMR 9.00, pursuant to 310 CMR 9.04(1).

[] The Determination is Negative: The above referenced site for which this determination is issued includes areas landward of the historic high water mark (HHWM) and therefore outside of the geographic not subject to jurisdiction under M.G.L. Chapter 91 and its regulations at 310 CMR 9.00, pursuant to 310 CMR 9.04(1)

Everett Landco, LLC c/o the Davis Companies (the “Applicant”), acting through its consultant, Vanasse Hangen Brustlin, Inc. (VHB) has requested a Determination of Applicability regarding whether the construction and maintenance of a battery energy storage system (BESS) and associated structures is a water-dependent industrial use, pursuant to 310 CMR 9.12(b)9 and/or 10. The proposed facility is to be located at 0 South Farm, in the City of Everett, Middlesex County (the “project site”).

The Applicant submitted the following documentation in support of this request:

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

- 1) A letter in support of this request, prepared by VHB, Inc., dated September 12, 2023;
- 2) Exhibit 1 - A map titled "*Site Location Map, Potential Battery Energy Storage System, Everett, MA*", prepared by VHB, Inc. dated December 22, 2023;
- 3) Exhibit 2 - A plan set (Sheets 1-3) titled "*Potential Battery Energy Storage System, Conceptual Site Plan*", by VHB, Inc. dated December 22, 2023;
- 4) Exhibit 3 – A map titled "*Mystic River Designated Port Area (DPA)*", obtained from the Massachusetts Office of Coastal Zone Management, dated May 2021;
- 5) Exhibit 4 – A PowerPoint presentation titled "*First Cape Cod Resource Integration Study, Preliminary Results, Planning Advisory Committee*", presented by ISO New England, dated March 17, 2021;
- 6) Exhibit 5 – A PowerPoint presentation titled "*Second Cape Cod Resource Integration Study, Status Update, Planning Advisory Committee*", presented by ISO New England, September 21, 2022;
- 7) Applicant's correspondence to the Department:
 - a. Email from Michael Cantalupa to Daniel Padien providing additional analysis/support for the water-dependent nature of project, based on importance for off-shore wind development, sent on January 23, 2024.
 - b. Email from Michael Cantalupa to Daniel Padien providing additional information related to the Mystic substation importance to the proposed project and future off-shore wind projects and its ability to serve existing off-shore wind projects off Cape Cod and interconnections, dated February 12, 2024.
 - c. Email from Michael Cantalupa to Daniel Padien providing a Waterways License history of the site, dated February 15, 2024.
- 8) Comment letters in support of the proposed project provided by:
 - a. Greenberg Traurig, LLP, on behalf of Distrigas of Massachusetts, LLC, dated January 26, 2024, and
 - b. Northeast Clean Energy Council (NECEC) dated February 2, 2023.
- 9) Massachusetts Department of Energy Resources (MassDOER) memorandum dated March 4, 2024.
- 10) Notification list.

Consideration of Future Off-Shore Power Generation

The proposed project consists of a battery energy storage system (BESS) and Gen-Tie Line to store electric power to be produced by an anticipated offshore wind project to be located off the Massachusetts coast. Electric power is anticipated to be delivered to the substation via two (2) 1,200 MW high voltage direct current (HVDC) undersea transmission cables making landfall in the immediate vicinity of the BESS and in close proximity to the Mystic Substation and Gen-Tie Line interconnection. Based on technical support provided to the Department during its review of this application by the Massachusetts Department of Energy Resources (MassDOER), the Department acknowledges the critical importance of robust battery energy storage in delivering wind -generated power to the regional electric grid. This is due to the inherent variable nature of wind generated power levels caused by reliance on favorable weather conditions.

The Applicant anticipates that the BESS will have a storage capacity of 500 to 1,000 MW. Energy will be discharged from the BESS to the regional grid through a Gen-Tie Line following several routes along the Robin, Dexter, and Alford Streets rights-of-way providing a direct interconnection to the Mystic Substation.

The Applicant seeks a determination by the Department that the proposed future use of the BESS to accept power from a future offshore wind energy project may be considered a water dependent industrial use pursuant to 310 CMR 9.12(2)(b)9 or 10, which include:

9. *Offshore renewable energy infrastructure facilities in the Commonwealth, including ocean wave energy facilities, ocean current energy facilities, tidal energy facilities, any ancillary facility thereto or any similar facility that obtains its energy from the ocean;*
10. *Infrastructure facilities used to deliver electricity, natural gas or telecommunications services to the public from an offshore facility located outside the Commonwealth.*

Based on technical input provided to the Department during its review of the application by MassDOER and as reported in multiple studies cited above, the Department accepts the following assertions by the Applicant:

1. Battery energy storage is a critical operational component to the successful development of offshore wind-generated power.
2. The Mystic Substation is among the most favorable locations for an interconnection of offshore power generation into the Boston load pocket because the Mystic Substation has the required input and output capacity needed to handle the 500 to 1,000 MW anticipated to be delivered from a wind energy project designed to serve the current and modeled generating capacity.
3. The development of a modern, resilient electric grid sufficient to accommodate a significant percentage of its power from renewable sources must – at times – be planned and developed in phases. Based on technical input from MassDOER, the Department concludes that the BESS, if constructed at the proposed site, will provide sufficient incentive to secure a connection to an offshore facility.

Jurisdictional Assessment

The BESS project site consists of approximately ± 11.05 -acres of previously developed land within a ± 15.76 -acre parcel located entirely within the Mystic River Designated Port Area (DPA). Approximately 23,000 SF ($0.53\pm$) of the project site is located seaward of the *historic high water mark* (HHWM¹) as defined at 310 CMR 9.02 and is therefore located within *filled tidelands*, a geographic area subject to M.G.L. c. 91 pursuant to 310 CMR 9.04(2).

Department licensing records indicate that the subject property has been largely used for energy production since it was filled following the issuance of Board of Harbor and Land Commissioners' License 2162 to the New England Gas and Coke Company in 1898. The most recent such use of the project site was by the prior owner, Exxon Mobil Corporation, for storage of petroleum and accessory uses thereto. The Department understands that the soon to be decommissioned petroleum storage facilities on the project site supported the operation of the adjacent marine terminal for the transfer of materials between ship and shore and bulk storage of materials, which are water dependent industrial uses pursuant to 310 CMR 9.12(2)(b)1.

Findings

Based on the Department's review of the project site, and the materials listed herein, and in consideration of its jurisdiction pursuant to M.G.L. Chapter 91, 310 CMR 9.00 and the procedures set forth therein, the Department hereby finds that:

- 1) The applicant has met the requirements of 310 CMR 9.06(1)(a) - (c) by submitting the applicable information stipulated therein on the forms required by the Department.
- 2) The applicant has demonstrated compliance with the requirements of 310 CMR 9.06(2) by attestation on the application form, and by submitting USPS return receipts confirming delivery to the persons identified at 310 CMR 9.13(1)(a).
- 3) Pursuant to the discretionary authority at 310 CMR 9.06(3), the Department required the applicant to publish a public notice of the filing of the Request for Determination of Applicability announcing that the Department would accept public comments on the matter for 21 days, through February 6, 2024. This notice was published in The Boston Herald on January 16, 2024. The Department received two (2) public comments during the public comment period, both expressing support of the proposed project. The Department did not require a public hearing of this matter. Based on the foregoing, the Department finds that the proponent has complied with the requirements of 310 CMR 9.06(3) and (4).
- 4) Pursuant to the provisions of 310 CMR 9.06(5), this Determination of Applicability (a.k.a. Jurisdictional Determination) is issued within 60 days of the close of the public comment period, which ended on February 6, 2024.
- 5) Pursuant to the provisions of 310 CMR 9.06(6), this Determination of Applicability/Jurisdictional Determination is issued subject to the appeal provisions set forth at 310 CMR 9.17.
- 6) The project site is located within the Mystic River Designated Port Area (DPA) as defined at 310 CMR 9.02.

- 7) The historic high water line at the project site derives from a chart titled “*North Shore of Boston Bay Massachusetts Topography*”, Register 2,190, Scale 1:10,000, 1894 developed during the by the EEA Massachusetts Office of Coastal Zone Management Chapter 91 Historic Mapping Project.
- 8) The filled tidelands on the project site are separated from the high water mark of the Mystic River by one or more interconnected public ways that were in existence on January 1, 1984. However, the statutory and regulatory definitions of *landlocked tidelands* stipulate that all filled tidelands within a DPA remain subject to the licensing standards of Chapter 91. Therefore, the Department hereby finds that the entirety of the filled tidelands on the project site constitute a geographic area subject to 310 CMR 9.00.
- 9) The proposed use of the BESS facility as described – to receive and store electric power generated by offshore wind – and the Gen-Tie Line and substation connection is consistent with the provisions of 310 CMR 9.12(2)(b) 9 and 10.

Conclusion

Based on the foregoing, the Department has determined that:

- 1) The HHWM, derived from the 1894 US Coast & Geodetic Survey Plan, is the most reliable, landward shoreline which can be ascertained with reference to topographic and hydrologic survey, prior to human alteration and is the landward extend of Chapter 91 jurisdiction traversing the project site. Accordingly, those lands lying landward of the high water mark and seaward of the HHWM are defined as Filled Tidelands pursuant to 310 CMR 9.02, and are subject to jurisdiction pursuant to M.G.L Chapter 91 and the regulations at 310 CMR 9.00;
- 2) The HVDC cables connecting the offshore wind project with the Mystic Substation meet the definition of infrastructure facility set forth at 310 CMR 9.02 independently of the BESS.
- 3) The proposed BESS project and Gen-Tie Line and substation connection and associated future structures that would be operationally related to the offshore wind project and HVDC cables will support the development of offshore wind and offshore wind interconnection at the Everett location as: the site’s proximity to the coast allows offshore wind to interconnect without siting significant new on-land upgrades; the site’s proximity to existing energy infrastructure potentially allows for interconnection of offshore wind without significant costly upgrades; and the site’s proximity to the Boston load zone balances new generation with existing and growing electric load.
- 4) The proposed use of the BESS facility as described and the Gen-Tie Line and substation connection – to receive and store electric power generated by offshore wind – is consistent with the provisions of 310 CMR 9.12(2)(b) 9 and 10.

- 5) The proposed BESS project requires a Waterways License pursuant to 310 CMR 9.05(1)(a) within geographic areas subject to jurisdiction.

Please be advised that construction and maintenance of the BESS and associated structures, any change in use, construction, or activities listed in 310 CMR 9.05(1) onsite located in/on/over/under any Filled or Flowed Tidelands on the project site are subject to licensing under, and compliance with, M.G.L. Chapter 91 and the regulations at 310 CMR 9.00, including but not limited to the provisions of 310 CMR 9.11, 9.12, 9.13 and 9.14. This Determination does not relieve the Applicant from complying with all other applicable Federal, State, or local statutes, ordinances, by-laws, or regulations.

Issued by the Department of Environmental Protection Waterways Regulation Program.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set his hands this 8th day of March in the year 2024.



Daniel J. Padien
Program Chief
Waterways Regulation Program

Encl: Notice of Appeal Rights

NOTICE OF APPEAL RIGHTS

Who has the right to appeal?

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit, in accordance with 310 CMR 9.17(1): (a) an Applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth who, pursuant to M.G.L. Chapter 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the license or permitted activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; and (e) MassCZM, for any project identified in 310 CMR 9.13(2)(a) for MassCZM participation or, in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

How can I request an adjudicatory hearing?

A person requesting an adjudicatory hearing must submit a "Notice of Claim" to the Department, with a copy of the MassDEP Adjudicatory Hearing Fee Transmittal Form and include the details specified below, within twenty-one (21) days of the date of issuance of this decision. The MassDEP Transmittal Form is available at the following website:

<https://www.mass.gov/doc/adjudicatory-hearing-fee-transmittal-form>. The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

MassDEP
Office of Appeals and Dispute Resolution
Case Administrator
100 Cambridge Street, Suite 900
Boston, MA 02114

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the Applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP
Waterways Regulation Program
100 Cambridge Street, Suite 900
Boston, MA 02114

The MassDEP Adjudicatory Hearing Fee Transmittal Form and a valid check payable to “The Commonwealth of Massachusetts” in the amount of one hundred dollars (\$100) must be mailed to:

MassDEP
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

What information must be included in the hearing request?

Pursuant to 310 CMR 9.17(3), any Notice of Claim requesting an adjudicatory hearing must include the following:

- (a) the MassDEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the Applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of “aggrieved person” found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP’s written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the Applicant and the municipal official of the city or town where the project is located.

Dismissal of request

The request for appeal will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver.

Exemptions

The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

Waiver

The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.