

**Town of Shutesbury Conservation Commission**

**Form 5 – Order of Conditions**

**Shutesbury General Wetlands Protection Bylaw (SWPB)**

**File # N/A**

**Shutesbury General Wetlands Protection Bylaw Regulations**

**A. Applicant Information**

**From: Shutesbury Conservation Commission**

This issuance is for an:

Order of Conditions

Amended Order of Conditions

1. To Applicant:

Michael Tyrrell

Name

New England Power Company

Organization

170 Data Drive

Mailing Address

Waltham

MA

02541

City / Town

State

Zip Code

Property Owner (if different from applicant):

Name

Mailing Address

City / Town

State

Zip Code

Project Location:

E5/E6 Transmission Lines ROW

42.41861N/-72.45978W

42.42743N/-72.46770

Street Address

Latitude/Longitude

2

T-6

10

N/A

Assessors Map / Plat Number

Parcel / Lot #

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2. Property recorded at the Registry of Deeds for:

Franklin	570	280 & 402
County	Book	Page

Certificate (if registered land)

3. Dates:

4/11/2024	4/25/2024	5/15/2024
Date Notice of Intent Filed	Date Public Hearing Closed	Date of Issuance

4. Final Approved Plans and other Documents (attach plan references as needed):

Title	Date
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5. Final Plans and Other Documents Signed and Stamped by:

Plan Title	Prepared By/Signed and Stamped by	Scale	Final Revision Date
“Notice of Intent, Central to Western MA Energy Improvement Project, E5/F6 Transmission Lines Soil Boring Program”	BSC Group	No scale	April 3, 2024

**B. Findings**

Findings pursuant to the Shutesbury General Wetlands Protection Bylaw & Regulations:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the area in which work is proposed is significant to the following interests of the Wetlands Protection Regulations. Additional Findings may be attached to this Order. Check all that apply:

- Public Water Supply
- Private Water Supply
- Groundwater and Groundwater Quality
- Surface Water & Surface Water Quality
- Flood Control
- Erosion and Sedimentation Control
- Storm Damage Prevention
- Water Pollution
- Fisheries
- Storm Drainage
- Runoff
- Wildlife Habitat

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Recreation

Aesthetics

Historic Values

Agriculture

Aquaculture

Furthermore, this Commission hereby finds the project as proposed, is (check one of the following boxes)

**Approved** subject to: **Shutesbury Wetland Protection Bylaw**

The following conditions, which are necessary, in accordance with the performance standards set forth in the wetland regulations, to protect those interests, checked above. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any Special Conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, and or other proposals submitted with the Notice of Intent, these Conditions shall control.

**Denied** because:

The proposed work cannot be conditioned to meet the performance standards set forth in the Shutesbury Wetland Regulations and to protect those interests checked above. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures, which are adequate to protect these interests, and a final Order of Conditions is issued.

The information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Shutesbury General Wetlands Protection Bylaw / Regulations. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect to protect the Bylaw’s interests, and final Order of Conditions is issued. A description of the specific information which is lacking and why it is necessary is attached to this Order of Conditions.

**Inland Resource Area Impacts:** Check all that apply below. (For Approvals Only)

<b>Resource Area</b>	<b>Proposed Alteration</b>	<b>Permitted Alteration</b>	<b>Proposed Replacement</b>	<b>Permitted Replacement</b>
<b>AURA</b>	6 square feet	6 square feet		

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<b>Bordering Vegetated Wetland</b>	4,831 (temp) square feet	4,831 square feet	square feet	square feet
<b>Isolated Wetland</b>	square feet	square feet	square feet	square feet
<b>Land Under Waterbodies and Waterways</b>	square feet	square feet	square feet	square feet
<b>Bordering Land Subject to Flooding</b>	c/y dredged square feet	c/y dredged square feet	square feet	square feet
<b>    Cubic Feet Flood Storage</b>	cubic feet	cubic feet	cubic feet	cubic feet
<b>Isolated Land Subject to Flooding</b>	square feet	square feet		
<b>    Cubic Feet Flood Storage</b>	cubic feet	cubic feet	cubic feet	cubic feet
<b>Intermittent Stream</b>				
	Linear feet Of Bank.	Linear feet Of Bank		
<b>Riverfront</b>	3	3		
	square feet (total)	square feet (total)		

**General Conditions** (only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges, it does not authorize any injury to private property or invasion of private rights.
3. The Agent or members of the Conservation Commission shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the Conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
4. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
5. This Order does not become final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken.
6. The work authorized hereunder shall be completed within three years from the date of this Order of Conditions unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act: or

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- b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
- 7. No work shall be undertaken until the Order has become final and has been recorded in the Registry of Deeds or the Land Court in Franklin County, in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to this Conservation Commission prior to the commencement of work.
- 8. Any change to the final plans as approved shall require the applicant to make a request in writing, submitted to the Conservation Commission, whether the change is significant enough to require the filing of a new Notice of Intent.
- 9. This Order of Conditions shall apply to any successor in interest or successor in control of the property. Subject to this Order and to any contractor or other person performing work conditioned by this Order.
- 10. Prior to the start of work and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
- 11. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the Applicant or their designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed.
- 12. Any excess material (e.g., soil and/or spoil) which is to remain on the Applicant's site, as well as all areas of disturbed soil, shall be stabilized with the appropriate materials (e.g. mulch, grass, and/or plantings) to prevent erosion and sedimentation.
- 13. No hay may be used for erosion controls.
- 14. The Applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary Town of Shutesbury Conservation Commission.
- 15. Any excess material (e.g., soil and/or spoil) which is to be removed from the site is to be removed of in a legal manner.
- 16. Notwithstanding the foregoing conditions, the Applicant is responsible throughout the construction period to take any and all measures necessary to protect the Wetland Resource Area. Should any

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damage occur during the courses of construction, the Applicant, as the responsible party shall bear the full cost of restoring the Wetland to the satisfaction of the commission.

17. Upon completion of the project the Applicant shall submit the following information to the Shutesbury Conservation Commission in order to receive a Certificate of Compliance.
- a. Two request forms for a Certificate of Compliance (WPA Form 8A and SWPB Form 8A);
  - b. A written statement from a registered Professional engineer that the project is in compliance with this document and referenced plans, and if different from the original plan, how and where it differs;
  - c. A signed and stamped as-built plan;
  - d. A written statement from a qualified wetland scientist attesting to compliance with state and local regulations as required for wetland replication and/or restoration areas. The wetland replication areas shall be monitored through two growing seasons to achieve required standards.

**SPECIAL CONDITIONS: See attached Findings and Special Conditions.**

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions #6, from the date of issuance.

**Order issued 5/15/2024**

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Date of Issuance

Order of Conditions Expiration Date: 5/15/2027

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This Order must be signed by a majority of the Conservation Commission. The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy must be mailed to the MA Department of Environmental Protection Regional Office at the same time and the property owner (if different from the applicant).

**See Attached 2020 Certificate of Vote authorizing digital signatures.**

Signatures:

***Beth Willson***

Beth Willson

***Robert Douglas***

Robert Douglas

***Janice Rowan***

Janice Rowan

Scott Kahan

This Order is issued to the applicant as follows:

by hand delivery on:

by certified mail, return receipt requested, on:  
5/15/2024

\_\_\_\_\_ Date

\_\_\_\_\_ Date

Certified Mailing No. \_\_\_\_\_

**Appeals**

Any person aggrieved by a decision of the Commission under the Bylaw may appeal to a court of competent jurisdiction pursuant to MGL Ch. 249, §4.

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**C. Recording Information**

This Order of Conditions must be recorded in the Registry of Deeds or Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry’s Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on page 7 of Form 5 shall be submitted to the Conservation Commission listed below.

Shutesbury Conservation Commission, PO Box 276, Shutesbury, MA 01072

**DETACH ON THE LINE, HAVE STAMPED BY THE REGISTRY OF DEEDS AND SUBMIT TO THE CONSERVATION COMMISSION**

**TO:** Shutesbury Conservation Commission

Please be advised that the Order of Conditions for the Project at:

\_\_\_\_\_  
Project Location File Number

Has been recorded at the Registry of Deeds of:

Franklin  
\_\_\_\_\_  
County Book Page

**For:**  
\_\_\_\_\_  
Property Owner

**And has been noted in the chain of title of the affected property in:**

\_\_\_\_\_  
Book Page

**In accordance with the Order of Conditions issued on:**

\_\_\_\_\_  
Date

**If recorded land, the instrument number identifying this transaction is:**

\_\_\_\_\_  
Instrument Number

**If registered land the document number identifying this transaction is:**



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Document Number

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Signature of Applicant

**SHUTESBURY CONSERVATION COMMISSION**  
**SPECIAL CONDITIONS FOR ORDER OF CONDITIONS**  
**NEP E5/E6 TRANSMISSION LINES SOIL BORINGS**

**Date of Issuance: 5/15/2024**

**Applicant: New England Power Company, Michael Tyrrell**

**FINDINGS OF FACTS**

1. The Shutesbury Conservation Commission (hereafter, “the Commission) finds that the proposed project lies within jurisdictional Resource Areas as defined by the Shutesbury General Wetlands Protection Bylaw (hereafter, “the Bylaw”) and Bylaw Regulations. MADEP WERO determined that this project is exempt under the Wetlands Protection Act and its Regulations based on Section 10.02(2)(a)(2). In addition, the applicant is planning to perform this work in accordance with the Massachusetts Endangered Species Act regulations (321 CMR 10.14(11)), which exempts Projects and activities from review that include routine operation and maintenance that are part of an operation and maintenance plan approved by the Division of Fisheries and Wildlife. Work will be performed per the conditions and BMPs of the established Operation and Maintenance Plan which National Grid and NHESP have agreed to.
2. The Commission finds that the following Protected Resource Areas under the Shutesbury General Wetlands Protection Bylaw, exist on this site:
  - a. Bank;
  - b. Land Under Water Bodies & Waterways (LUWW);
  - c. Bordering Vegetated Wetlands (BVW);
  - d. Riverfront;
  - e. the 100-foot Buffer Zone (Adjacent Upland Resource Area or AURA) to Bank/BVW;
  - f. Outstanding Resource Water;
  - g. NHESP mapped areas of Priority and Estimated Habitat.
3. The Applicant proposes to drill two soil borings to collect geotechnical data within transmission line Right of Ways. One boring will be adjacent to Structure #443 off Pratt Corner Road, and one will be adjacent to Structure #436 off of Sand Hill Road. Where access routes to the boring locations cross BVW temporary matting will be used to protect the wetlands.

Temporary resource area impacts include 4,831 square feet to BVW, and 3 square feet to Riverfront from temporary matting and drilling activity. Work within the AURA will include the work at the drill site including temporary storage of cuttings.

4. Work permitting under this Order of Conditions shall conform to the following plans and documents contained in the following documents:
  - a. “Notice of Intent Central to Western MA Energy Improvement Project, E5/E6 Transmission Lines Soil Boring Program,” prepared by BSC Group, dated April 3, 2024;
5. The Commission finds there is no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the Interests identified in the the Shutesbury General Wetlands Protection Bylaw and its Regulations.
6. The Special Conditions issued below, under the Shutesbury General Wetlands Protection Bylaw hereby incorporate the General Conditions #1 - #18 under the Bylaw Order of Conditions.
7. The Commission finds that the Applicants have partially rebutted the presumption of an adverse effect on the Protectable Resource Areas, including alteration of the AURA, contingent upon this Order of Conditions with the Special Conditions below, including all Perpetual Conditions listed herein.

## **SPECIAL CONDITIONS**

1. A member of the Conservation Commission or its agent may enter and inspect the property and the activity that are the subjects of this Order at all reasonable times, with or without probable cause or prior notice, and until a Certificate of Compliance is issued, for the limited purpose of evaluating compliance with this Order.
2. The term “Applicant” as used in this Order of Conditions shall refer to the owner, any successor in interest or successor in control of the property referenced in the Notice of Intent, supporting documents and these Special Conditions/Order of Conditions.
3. This document shall be included by reference in all contracts, plans and specifications dealing with the activity that is the subject of this Order, and that are created or modified after the issuance date of this Order, along with a statement that this Order shall supersede any conflicting contractual arrangements, plans or specifications.
4. The Applicant shall provide a copy of this Order to the person or persons supervising the activity that is the subject of this Order and shall be responsible for ensuring that all persons performing the permitted activity are fully aware of the terms and conditions of this Order.
5. Any person performing work on the activity that is the subject of this Order is individually responsible for understanding and complying with the requirements of this Order, the Shutesbury General Wetlands Protection Bylaw and the Shutesbury General Wetland Bylaw Regulations.
6. This Order authorizes only the activity described on the approved plan(s) and approved documents referenced in this Order. Any other or additional activity in areas within the jurisdiction of the Commission shall require separate review and approval by the Commission.
7. If any change is made in the above-described plan(s) which may or will alter a Resource Area subject to protection under Shutesbury General Wetlands Protection Bylaw, and Bylaw

Regulations, the Applicant shall inquire from this Commission or its agent, prior to implementing the change in the field, whether the change is significant enough to require an Amended Order of Conditions or filing of a new Notice of Intent. Any errors in the plans or information submitted by the Applicants shall be considered changes and the above procedures shall be followed.

8. It is the responsibility of the Applicant to complete any review required by all agencies with jurisdiction over the activity that is the subject of this Order, and to procure all required permits or approvals. These reviews, permits and approvals may include, but are not limited to, the following: U.S. Army Corps of Engineers, MassDEP, Massachusetts Natural Heritage & Endangered Species Program, and any local boards or building inspectors.
9. **Prior to the start of any work, and no later than 30 days from the issuance of this Order, the Commission shall receive in writing a letter with an original signature from the Applicant, stating that they have read the Order of Conditions and understand the Conditions.**
10. **Within 30 days of the issuance of this Order and before any work commences, the Applicants shall provide the Commission with proof of having recorded the Orders of Conditions with the Franklin County Registry of Deeds.**

#### **PRE-CONSTRUCTION PHASE CONDITIONS**

11. **Prior to the commencement of any other activity on this site, the approved matting and erosion control shall be installed as indicated in the approved NOI. Immediately after installation of matting and erosion controls, the Conservation Commission shall be contacted to conduct a Pre-Construction Site visit to inspect and approve the erosion controls. No further work shall commence until the Commission has reviewed and approved the erosion controls.**
12. **The Applicant shall notify the Commission by email 48 hours before the commencement of work.**

#### **CONSTRUCTION-PHASE CONDITIONS**

13. Erosion controls shall be in place prior to the beginning of any phases of construction and shall be maintained during construction and until the site is fully stabilized and revegetated. The erosion control specifications provided in the Notice of Intent and the erosion controls provision in this Order shall be the minimum standards for this project.
14. The approved erosion controls shall serve at the limit of all work. Workers shall be informed that no use of machinery, storage of machinery or materials, stockpiling of soil, or construction activity is to occur beyond this line at any time.
15. Erosion controls shall be inspected by the Applicant daily on workdays and within twenty-four (24) hours of any significant rain events consisting of ½-inch or more of precipitation within a 24-hour period. At a minimum, erosion controls shall be inspected once a week during construction and until the site is fully stabilized and revegetated.
16. Erosion controls shall be replaced/repared as necessary to ensure they are functional for the duration of the project and until the site is fully stabilized. Any material accumulated behind

the silt fence barrier shall be removed promptly. Such material must be deposited in an approved upland location outside of any Resource Area, including the AURA, that is subject to the jurisdiction of the Commission. No work may proceed on the site until damage to the erosion controls has been corrected.

17. An adequate stockpile of erosion control materials shall be on site at all times for emergency or routine repairs.
18. At any time before, during or after construction, and until the issuance of a Certificate of Compliance, the Commission or its agent may require the Applicants to modify, augment, restore or maintain erosion control measures associated with the activity that is the subject of this Order.
19. Unconsolidated materials and debris piles shall remain under double-tarps (top and bottom) and shall be surrounded by a double-staked row of straw bales or straw wattles to prevent contact with rainwater. Any opening to the pile area shall be on the opposite side, away from the wetlands.
20. All debris, either pre-existing or due to construction, shall be removed from the site by the time the construction is completed.
21. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders or any other components shall be fixed immediately. Equipment must be maintained to prevent leakage or discharge of such pollutants. Equipment for fuel storage and refueling operations shall be located outside all areas within the jurisdiction of the Commission. Servicing and overnight storage of equipment (refueling, changing, adding, or applying lubricants or hydraulic fluids) must be done outside of the 100-foot AURA.
22. Used petroleum products, resulting from the maintenance of construction equipment, and construction debris, shall be collected and properly disposed of off-site. No on-site disposal of those items is allowed.
23. All equipment shall be operated, parked, and maintained so as to limit alterations of Resource Areas, including the AURA, to those areas clearly identified on the plans and demarcated in the field by the flagging and erosion controls. No equipment is to enter or cross wetland Resource Areas at any time unless the location of disturbance is marked on the plans referenced in this Order and flagged in the field.
24. Construction material and equipment shall be stored in a manner and location that will minimize the compaction of soils and the concentration of runoff and/or siltation.
25. No material of any kind may be buried, placed, or dispersed in Resource Areas, including the AURA, within the jurisdiction of the Commission by activities that are the subject of this Order, except as are expressly permitted by this Order or the plans approved herein.
26. Any material placed in protected Resource Areas by the Applicant without express authorization under this Order shall be removed by the applicant upon demand by the Conservation Commission or its agent.
27. The Commission reserves the right to impose additional conditions on portions of this project to mitigate any impacts which could result from site erosion, or any noticeable degradation of surface water quality discharging from the site.

28. Site grading and construction shall be scheduled to avoid periods of high surface water. Once begun, grading and construction shall continue in an expeditious manner to minimize the opportunity for erosion.
29. All slopes shall be stabilized immediately with permanent or temporary stabilization methods if heavy rain (at least ½-inch within a 24-hour period) is predicted.
30. All exposed soil finish grade surfaces, disturbed areas, slopes, and proposed landscape areas shall be landscaped and stabilized, or loamed, seeded, and mulched with a 1-inch (1”) layer of mulch straw or through the use of other approved means. Such stabilization work must be completed within five (5) days of the completion of construction. Outside of the growing season, exposed soil finish grade surfaces shall be stabilized with a three inch (3”) layer of mulch until climate conditions allow for seeding. During construction, any area of exposed soils that will be left idle for more than fourteen (14) days shall be stabilized with a layer of mulch or other means approved by the Commission. Temporary stabilization methods may include, but not be limited to, straw mats, jute netting, or erosion blankets. Continued maintenance of this area, in a manner which assures permanent stabilization and precludes any soil erosion, shall be the responsibility of the Applicant.

#### **POST-CONSTRUCTION**

31. Upon completion of construction and final soil stabilization, the Applicant shall submit the following to the Commission to request a Certificate of Compliance (COC):
  - (1) A Completed Request for a Certificate of Compliance form (WPA Form 8A or other form if required by the Conservation Commission at the time of request).
  - (2) Post-construction photographs demonstrating compliance with this Order, including established vegetation where required.
32. Pesticides, herbicides, and fungicides shall not be used within 100 feet of the wetlands, unless approved by the Conservation Commission in an Invasive Species Management Plan. Organic pesticides, herbicides, or fungicides may be used subject to the review and approval of the Conservation Commission. This Condition shall survive the expiration of this Order and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
33. Only slow-release organic granular type fertilizers shall be used within 100 feet of the wetlands (includes stream bank). This Condition shall survive the expiration of this Order and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
34. **Erosion control devices shall remain in place and properly functioning until all exposed soils have been stabilized with final vegetative cover and the Conservation Commission has authorized their removal. Once removal is authorized, erosion control shall be removed within two (2) weeks.**