

STAFF STRAW PROPOSAL: INTERVENOR SUPPORT GRANT PROGRAM

I. INTRODUCTION

In November 2024, Massachusetts enacted “*An Act Promoting a Clean Energy Grid, Advancing Equity, and Protecting Ratepayers*”¹ (“2024 Climate Act”). The legislation established the Division of Public Participation (“Division” or “DPP”) at the Department of Public Utilities (“DPU”) and charged it with assisting individuals, local governments, community organizations, and other entities participating in DPU and Energy Facilities Siting Board (“EFSB”) proceedings. The 2024 Climate Act also established the DPU and EFSB Intervenor Support Fund (“Fund”). The Fund is designed to provide financial assistance to eligible organizations, community groups, and certain governmental bodies who are unable to participate in proceedings before the DPU and EFSB because of financial hardship or lack of technical expertise. The goal of the Intervenor Support Grant Program (“Program”) is to support meaningful participation in energy-related decision-making and ensure that diverse perspectives are considered as we transition to a more equitable and cleaner energy future.

This straw proposal describes the proposed Program including the application process, eligibility criteria, funding levels, and how and when funding will be disbursed.

II. CONTEXT FOR STRAW PROPOSAL

A. Goal of the Intervenor Support Grant Program

Traditionally, utilities and other stakeholders with sufficient financial resources and/or technical expertise have been able to intervene and participate fully in proceedings by hiring attorneys and consultants to promote their interests. Community groups, unincorporated local groups, and smaller municipalities often lack the resources and procedural knowledge to meaningfully engage in the proceeding. The Program will address this unmet need. The Program will allow grantees to cover fees for attorneys, expert witnesses, consultants, and community experts, and other costs to enable meaningful participation in DPU and EFSB proceedings. Program funding will enable diverse voices and viewpoints to be considered during the DPU and EFSB decision-making process. The outreach component of the Program will support the development of educational resources to inform stakeholders and encourage greater participation in proceedings.

B. Role of the Division of Public Participation

The 2024 Climate Act tasks the Division with assisting the public in participating in DPU or EFSB proceedings. For DPU matters, the Division will provide guidance with navigating filing requirements, identifying opportunities to provide comment and intervene, and facilitating dialogue among parties to proceedings. With respect to siting and permitting matters under the jurisdiction of EFSB, the Division will assist individuals, local governments, community organizations, project applicants, and other entities with navigating pre-filing consultation and

¹ St. 2024, c. 239.

engagement requirements, clarifying filing requirements, identifying opportunities to intervene, facilitating dialogue among stakeholders, and assisting with coordinating with other state, regional, and local officials, including the office of environmental justice and equity (“OEJE”) at the Executive Office of Energy and Environmental Affairs (“EEA”).²

The 2024 Climate Act charges the Director of DPP (“Director”) with deciding intervenor funding support requests and administering all aspects of the Program. The Division will manage grant applications, determine funding allocation, conduct Program outreach, and maintain a webpage with a summary of grant recipients and the award amounts. Section 133 of the 2024 Climate Act requires the DPU and EFSB, in consultation with OEJE and the Office of the Attorney General, to promulgate regulations to implement the Program no later than March 1, 2026.

C. Current Intervention Practices for DPU and EFSB Proceedings

At present, most petitions to intervene in DPU proceedings come from entities with significant vested interests and experience, including the utilities, the Office of the Attorney General, and the Department of Energy Resources. For EFSB proceedings, intervenors include municipalities, community groups, and individual abutters. Participating in these proceedings often requires substantial resources, including costly legal and technical expertise. Where these resource needs impede meaningful participation by smaller stakeholders, the Program aims to enable eligible entities who may be most impacted by decisions to meaningfully engage in the decision-making process.

Existing regulations set forth procedures for individuals or entities to intervene in proceedings before the DPU or EFSB. To intervene, entities must file a petition to intervene by the timeline specified in the notice of the proceeding, establish how they may be substantially and specifically affected by a proceeding, and outline the nature of evidence they intend to present.^{3,4} The decision to grant or deny a petition to intervene in DPU proceedings is made by the Commission or the hearing officer overseeing the proceeding. In proceedings before the EFSB, the presiding officer makes the final determination on intervention.

² The 2024 Climate Act, at Section 10, provides that the Director and staff of the Division shall not participate as adjudicatory staff, nor have any input or communication with adjudicatory or decisional staff, in matters before the Department or in reviewing applications submitted to the EFSB, nor shall they serve as legal counsel to or otherwise represent any party before the Department or EFSB.

³ 220 CMR 1.03

⁴ 980 CMR 1.05

An intervenor⁵ is a formal party to a proceeding with the right to present evidence, cross-examine witnesses, and appeal decisions. An entity may participate in a more informal manner through offering comments at public hearings or technical workshops, and filing briefs; these limited participants may provide input without the same legal standing or recourse as intervenors. The Program only allows certain intervenors to access grant funding; informal limited participants are not eligible for grant funding.

D. Key resources consulted in developing Intervenor Support Grant Program proposal

In addition to the 2024 Climate Act, staff consulted the following sources for this straw proposal:

- Intervenor compensation programs implemented by state utility commissions in New York, Connecticut, Michigan, Oregon, Maine, Wisconsin, Idaho, and California
- The National Association of Regulatory Utility Commissioners' ("NARUC") report, December 2021, on [State Approaches to Intervenor Compensation](#)
- [Overly Impacted & Rarely Heard](#): Incorporating Community Voices into Massachusetts Energy Regulatory Processes, Attorney General's Office Report, May 2023

III. DISCUSSION OF KEY STAFF STRAW PROPOSAL COMPONENTS

The 2024 Climate Act informs many components of this straw proposal, which includes the following sections:

- A. Funding mechanism and assessment authority for the Intervenor Support Fund
- B. Eligibility for grant funding
- C. Timing of grant applications and decisions
- D. Amount of funding provided
- E. Eligible and ineligible uses of grant funds
- F. Grant application form
- G. Grant payment request and compliance requirements
- H. Intervenor Support Grant Program outreach efforts and metrics tracking
- I. Review of the Intervenor Support Grant Program

⁵ An intervenor has broader involvement and may issue information requests and receive responses; present written testimony and witnesses; cross examine witnesses; file a brief; and appeal an order or final decision.

A. Funding mechanism and assessment authority for the Intervenor Support Fund

Section 10 of the 2024 Climate Act establishes the Intervenor Support Fund and allows appropriations⁶ to be credited to the Fund. In addition, Section 10 provides that EFSB application fees will provide resources for the Intervenor Support Fund. Any unused balance in the Fund at the close of a fiscal year remains in the Fund to use in subsequent fiscal years. Section 11 of the 2024 Climate Act authorizes the DPU Commission to make two assessments⁷ on electric and gas companies within the DPU's jurisdiction, and some portion of each is credited to the Fund.

B. Eligibility for grant funding

Section 82 of the 2024 Climate Act authorizes the DPU to make funds available to parties that have been granted intervenor status in a proceeding by the DPU or EFSB.⁸ All DPU and EFSB proceedings are eligible for intervenor compensation. Parties eligible for funding include: (i) organizations and entities that advocate on behalf of a relevant subset of residential customers defined geographically or based on specific shared interests; (ii) organizations and entities that advocate on behalf of low-or moderate-income residential populations, residents of historically marginalized or overburdened and underserved communities; (iii) governmental bodies, including regional planning agencies, federally recognized tribes, state-acknowledged tribes or

⁶ Appropriations credited to the Intervenor Support Fund can include: appropriations or other money authorized or transferred by the general court and specifically designated to be credited to the fund; a portion of the annual assessments collected from electric and gas companies under the DPU's jurisdiction; a portion of the application fees to construct electricity or generation facilities which are determined by the DPU; any non-ratepayer funded sources (gifts, grants, contributions and bequests of funds from divisions of federal, state, or municipal government, or from individuals, foundations, etc.); or income derived from investment of the amounts credited to the fund.

⁷ The first assessment is not more than 0.1 percent of intrastate operating revenue derived from sales of electric service as shown in the annual report of each electric company within the DPU's jurisdiction. A portion of this assessment will be credited to the Fund. The second is a proportional assessment against each electric and gas company based on the intrastate operating revenue derived from the sales of electric and gas service as shown in the annual reports of each electric and gas company within the DPU's jurisdiction. The assessment rate should be sufficient to produce an amount not more than \$3,500,000 annually to support the Program. Each company must pay both assessed amounts within 30 days of notice of assessment from the DPU.

⁸ In a separate decision-making process, either the Commission or assigned Hearing Officer for DPU proceedings or the assigned Presiding Officer for EFSB proceedings must grant intervenor status to the prospective grantee. Receiving intervenor status is a prerequisite before the Division can disburse funds to grantees and applicants who have received a conditional award.

state-recognized tribes; or (iv) a group of individuals that may be specifically and substantially affected by a proceeding.⁹ Individuals are not eligible to receive grant funding.

Section 82 of the 2024 Climate Act establishes the following minimum eligibility criteria for an applicant to receive funding: (i) lack of financial resources to enable the applicant to intervene and participate in a proceeding absent a grant award; and (ii) whether the applicant has previously intervened in a proceeding prior to the establishment of the Intervenor Support Grant Program or has more meaningfully participated since the Program was created. Municipalities with a population less than 7,500 applying for a grant for proceedings pertaining to a facility (large clean energy infrastructure facility¹⁰ or small clean energy infrastructure facility¹¹) within its boundaries are exempt from this eligibility criterion. Additional eligibility criteria proposed by staff include: (iii) how the applicant proposes to substantially contribute to the proceeding, including developing the record; (iv) whether the applicant proposes an achievable, reasoned, and clearly stated plan for participating in the proceeding; (v) whether the applicant represents a unique perspective not adequately represented by other parties to the proceeding; and (vi) the amount and reasonableness of funds requested and proposed budget items.

⁹ The definition of eligible parties (i), (ii), and (iii) are from Section 82 of the 2024 Climate Act.

¹⁰ “Large clean energy infrastructure facility” refers to anaerobic digestion, solar, or wind facilities and associated ancillary structures with a nameplate capacity of 25 megawatts or greater; energy storage systems with a rated capacity of 100 megawatt hours or greater; and electric transmission and distribution structures and ancillary infrastructure that involve new electric transmission lines with design ratings of 69 kilovolts or greater that are 1 mile long or longer in a new transmission corridor, new electric transmission lines with a design rating of 115 kilovolts or greater that are 10 miles long or longer in an existing transmission corridor, “any other new electric transmission infrastructure requiring zoning exemptions”, and “facilities needed to interconnect offshore wind to the grid,” Section 57 of the 2024 Climate Act.

¹¹ “Small clean energy infrastructure facility” refers to anaerobic digestion, solar, or wind facilities and associated ancillary structures with a nameplate capacity less than 25 megawatts; energy storage systems with a rated capacity less than 100 megawatt hours; and electric transmission and distribution structures and ancillary infrastructures that involve electric transmission line reconductoring or rebuilding projects, new or substantially altered electric transmission lines in an existing transmission corridor less than 10 miles long, new or substantially altered electric transmission lines in a new transmission corridor less than 1 mile long, other electric transmission infrastructure that does not require zoning exemptions, and other electric distribution-level projects that meet certain thresholds as determined by the Department of Energy Resources, Section 23 of the 2024 Climate Act.

C. Timing of grant applications and decisions

Grant application request forms could be submitted to the Division once the project proponent files the pre-filing notice¹² and no later than the deadline to intervene in a DPU or EFSB proceeding as specified in the proceeding notice. The Division would then review the grant application for completeness within 14 business days of receipt and notify the applicant via email if there are any deficiencies. Applicant will have until the end of the grant application window or by the date indicated in the email to fix any errors or omissions. Section 82 of the 2024 Climate Act authorizes the Director to make conditional grant awards to grant applicants provided that the grant is not awarded until intervenor status is granted. The Division would issue a written determination of grant approval status and payment decisions to all applicants, including any applicant who received a conditional grant award, within 30 days after the deadline to apply for intervenor funding.

D. Amount of funding provided

Section 82 of the 2024 Climate Act states that grant awards for a single DPU or EFSB proceeding should not exceed \$150,000 for each party, and \$500,000 in aggregate grant funding for the proceeding. The Director has the discretion to increase both the amount awarded to a grantee and the aggregate amount awarded for a single DPU or EFSB proceeding past these maximums if good cause is demonstrated by a grantee or if new, novel, or complex issues¹³ have arisen in a proceeding since the grant application was submitted. Section 82 also authorizes the Director to consider the potential for intervenors receiving funding to share costs through collaboration when their positions align.

E. Eligible and ineligible uses of grant funds

Section 82 of the 2024 Climate Act defines eligible uses of grant awards from the Fund. Funds can be used to retain qualified legal counsel, experts including qualified community experts (e.g., residential ratepayers and residents with lived experience), and consultants to assist

¹² For EFSB proceedings, according to the straw proposal on pre-filing engagement and consultation requirements, for large clean energy infrastructure facilities proponents would be required to submit a pre-filing notice no less than 90 days and no more than 120 days prior to filing application with the EFSB. For small clean energy infrastructure facilities, the proponent would submit the pre-filing notice no less than 90 days prior to filing the application with EFSB.

¹³ Potential circumstances can include multi-year proceedings, proceedings that address multiple issues or have multiple tracks, a substantial change that may require other expert witnesses, or when new issues not described in an initial petition are identified.

with proceeding participation.¹⁴ Up to ten percent¹⁵ of grant funds awarded to the grantee can be used on non-legal, non-expert, and non-consultant administrative costs associated with participation. Ineligible uses of grant funding include the purchase or lease of equipment, political lobbying related to the project, advertising or marketing costs to publicize the applicant's view on the proceeding, and costs to appeal DPU or EFSB final decisions in a proceeding.

F. Grant application form

Section 82 of the 2024 Climate Act requires the applicant to complete a grant application form. The proposed requirements of the grant application form are: (i) a statement outlining the breadth and scope of the applicant's anticipated participation in a proceeding describing how funds will be used and how the applicant anticipates making a substantial contribution to the proceeding; (ii) an itemized estimate of the costs and fees of anticipated attorneys, consultants, and experts (including community experts) and all other costs related to preparation for participation in proceeding; (iii) background information on attorneys, consultants, experts (including community experts) that the applicant plans to retain and the services each will provide; (iv) a statement describing the position and nature of the interests that the applicant represents, and a summary of questions and concerns raised during pre-filing engagement meetings, if applicable; (v) amount of funds sought; (vi) a brief description of the organization seeking the grant, the organization's nature of work, and a narrative to demonstrate that participating in the proceeding will be a significant financial hardship¹⁶; and (vii) the docket number(s) and case caption(s) of previous DPU and EFSB proceedings the applicant has participated in, both prior to and since establishment of the intervenor support fund, along with description of participation in each. An unincorporated group of individuals applying for a grant will also need to submit (viii) a self-attestation that includes the name and address of all individuals in the group requesting funding, number of additional volunteers or supporters if applicable, and narrative to demonstrate the level of financial hardship.

G. Grant payment request and compliance requirements

Section 82 of the 2024 Climate Act requires that all payments to grantees be made from the Fund on submission of a grant payment request by the grantee. Grantees can submit a grant payment request upfront before costs are incurred upon showing of financial hardship or request reimbursements of costs multiple times during a proceeding as costs are incurred.

¹⁴ The grantee's participation must be within the scope of the specific proceeding.

¹⁵ The Director can also decide to increase the amount of the grant award allocated to administrative costs above ten percent.

¹⁶ The narrative should include, if applicable, the number of staff, the current fiscal year total budget, the number of months of operating reserve available, unallocated funds or grants that may be available for intervention, and Form 990 in case of a non-profit organization with federal tax-exempt status.

The grant payment request will include basic information about the grantee (e.g., name, address, contact details), the proceeding docket number and case caption, and the grant amount awarded, and grant funds received to date. For reimbursements, payment requests will also include itemized details of monies spent and activities conducted with funds, receipts, and an attestation of the veracity of information submitted. Advance payment requests will include itemized details of planned expenses with a brief description and invoices. Grant payments will be initiated within 30 days of receipt of grant payment requests to the grantee or an entity designated by the grantee.

Section 82 of the 2024 Climate Act requires that within 30 days of the relevant proceeding's completion, each grantee must submit a report detailing the use of funds during the proceeding, the grantee's substantial contribution to the proceeding, and a demonstration that their participation and use of funding did not delay the proceeding.

H. Intervenor Support Grant Program outreach efforts and metrics tracking

Section 82 of the 2024 Climate Act requires the Director to develop and conduct robust virtual and in-person outreach about the Intervenor Support Grant Program to educate prospective grantees and the public about funding opportunities, and to develop accessible, multi-lingual, and plain language web-based educational materials about the Program, including forms and templates. Section 82 also stipulates that the DPU annual report describe all activities of the Fund e.g., money awarded, number of applicants, and intervenors' impact and contributions to DPU and EFSB proceedings.¹⁷ Once the Program is active, the Division will maintain a webpage with a summary of number of grant applications received, the related proceeding, names of the grant recipients, and the award amount.

I. Review of the Intervenor Support Fund

Section 136 of the 2024 Climate Act requires the Director to review the Program no later than June 1, 2029, and provide public comment opportunity to determine whether the Program and corresponding regulations should be amended.

¹⁷ Metrics to be tracked and reported by the Director include: "(i) amounts credited to the fund, amounts expended from the fund and any unexpended balance; (ii) a summary of the intervenor support grant fund application process; (iii) the number of grant applications received, the number and amount of awards granted, and the number of grant applications rejected; (iv) the number of intervenors who participated in proceedings with and without support from the fund; (v) an itemization of costs incurred by and payments made to grantees; (vi) an evaluation of the impact and contribution of grantees in department and board proceedings; (vii) a summary of education and outreach activities conducted by the division of public participation related to the intervenor support grant program; and (viii) any recommended changes to the program".

IV. REQUEST FOR STAKEHOLDER COMMENTS

1. What additional eligibility criteria should be considered, if any, to determine allocation of funding to prospective grantees? How should an applicant's prior history of intervening in proceedings influence eligibility for funding through the Program?
2. What criteria should be applied to determine if intervenors can share costs through collaboration with other parties in a proceeding to encourage cost efficiency and minimize redundancy?
3. When should a fund-supported intervenor be able to obtain funding that exceeds the maximum funding threshold of \$150,000 for a proceeding? What circumstances could qualify as "new, novel or complex issues" that may warrant additional funding?
4. Are there other ineligible uses of funding that should be considered?
5. What documentation should DPP require applicants to submit to demonstrate financial hardship?
6. What is the best way to publicize that intervenor funding will be available?
7. What informational resources should be available on the Division website for those applying for intervenor funding?
8. Should there be a maximum amount of the grant award (e.g., 75%) that can be provided upfront for those with financial hardship, or should this be determined on a case-by-case basis?