



May 19, 2025

Secretary Rebecca L. Tepper, Chair
Massachusetts Energy Facilities Siting Board
One South Station
Boston, MA 02110

RE: Ceres' Comments on Straw Proposals for Procedural Regulations and Standard Conditions to be developed under the 2024 Climate Act.

Dear Secretary Tepper,

Ceres thanks you for the opportunity to submit these comments in response to the Energy Facility Siting Board's ("EFSB") straw proposals for procedural conditions and standard conditions to be developed in accordance with the 2024 Climate Act (the "Act").

Ceres is a nonprofit advocacy organization working with some of the largest businesses and investors in Massachusetts and across the country to accelerate the transition to a cleaner, more just, and resilient world. Ceres organizes several influential business networks including the Business for Innovative Climate and Energy Policy Network (BICEP) - a coalition of over 80 major businesses - all committed to reducing emissions and building a cleaner economy. Because the development of a resilient, safe and affordable source of clean energy provides a competitive advantage, these businesses are interested in the development of such sources as soon as possible. These companies strive for regulatory certainty which allows for supply chain resiliency and the build-out of accurate business models. They also support the development of regulations that can expedite the construction of necessary energy infrastructure in an efficient manner, with a minimum of delays in the form of legal challenges or opposition.

PROCEDURAL REGULATIONS

Community Outreach /Straw Proposals / Language Access

With this goal, Ceres supports the development of regulations that provide for meaningful community involvement in the permitting and siting process. For project developers and investors, good community engagement is central to risk mitigation and management by reducing the likelihood of later legal challenges by host communities and neighborhood coalitions. Ceres notes that a significant number of previous permitting and siting decisions in Massachusetts were challenged on the grounds of insufficient opportunity for public comment and/or inadequate provisions for multi-lingual access during the government process. Appeals of these decisions led to years of delay – an outcome that is

counter to the primary goal of the 2024 Climate Act. Therefore, Ceres considers the public participation aspects of the new statute as key to the success of the state's efforts in permitting reform.

With regard to the general process by which DPU, EFSB and EEA is promulgating regulations to implement the permitting and siting act, Ceres congratulates the state agencies in developing straw proposals and inviting comment early in the process, such that public input may influence the development of the draft regulations that will be released for subsequent comment later in the year. Ceres commends the state agencies for the extensive efforts made toward language accessibility that are apparent in the straw proposal stakeholder process, including the provision of interpreters at the stakeholder meetings and the translation of the straw proposals into a number of relevant languages.

For EFSB's continued work in the development of regulations and guidance documents under the Act, Ceres refers the EFSB staff to a report issued by the Massachusetts Office of Attorney General, "Overly Impacted and Rarely Heard: Incorporating Community Voices into the Massachusetts Energy Regulatory Processes." This report contains information on improving transparency, accountability, information accessibility, public hearing, evidentiary hearings and public meetings, and suggests techniques for public engagement.

The Straw Proposal asks the following question:

Existing Siting Board regulations require newspaper notice of public comment hearings. Should the Siting Board eliminate the requirement for newspaper notice of public comment hearings? What type of notice would be more effective for these hearings?

Ceres notes that certain neighborhoods, especially those with an elderly population in which a significant number of residents speak a language other than English, may still benefit from a translated newspaper notice. *Sampson* newspaper in Boston's Chinatown is an example of such a publication. Therefore, a provision in the regulation should note certain criteria that would still require newspaper publication in such circumstances. Generally, notification should take advantage of modern methods of communication on social media such as Bluesky, X (formerly Twitter), Facebook, Instagram, and other channels. In non-English speaking neighborhoods, communication via WhatsApp can be highly effective and timely and deserves mention in the regulation. EFSB must strictly adhere to the 5% non-English speaking population threshold requirement referenced in DPU's Language Access Plan (p.7), which requires the language proficiency assessment by U.S. Census block that triggers the requirement for document translation.

EFSB can emulate many outreach techniques adopted and implemented by the Massachusetts Environmental Policy Act (MEPA), such as the maintenance of a state-wide or region-wide list of standard recipients of public notices, the timing and procedure for

site visits (making them accessible to the public), notice requirements and language access requirements for translations and interpreters. This is especially important, given that MEPA review has been eliminated under statute.

Constructive Approvals Should Be Minimized

Under Section 23(d)-(f), the statute provides for (1) the issuance of permit approvals and (2) constructive approval of permits for small clean energy facilities by local authorities, if the decision of the local government does not issue within 12 months of the filing of a completed application.

Ceres recommends enacting regulatory provisions that reduce the use of constructive approvals, including any action that can establish safeguards around their use. Systematically unreviewed approvals that contain mere standard provisions cannot provide conscientious, site-specific tailoring that makes for good siting and permitting decisions. Such decisions may have unreliable and inaccurate elements and increase vulnerability to a do novo appeal to the facilities siting division director by either the facility proponent or by other stakeholders and members of the community. Facility proponents may be left with regulatory uncertainty regarding aspects of their project; community stakeholders may not have been able to voice their concerns and have them addressed by project proponents in an effective way, leaving an appeal as the only recourse. Thus, a provision meant to expedite siting and permitting may actually delay or provide uncertainty in the expedited permitting process.

The statute recognizes this possibility and provides in Section 23(j) that DOER, DPU and the Office of EJ must track the percentage of constructive approvals and make recommendations on how to reduce them. Ceres encourages the agencies to work to de-incentivize the use of constructive approvals by local governments. We note that at the public stakeholder meeting, in response to a question posed by Ceres, agency regulators stated they had a goal of “0” constructive approvals in any given year.

Enforcement Process, Jurisdiction and Obligations Should Be Clarified

The Straw Proposal outlines that “After issuance, each state, regional and local permitting agency will enforce relevant portions (including conditions) of the EFSB consolidated permit that correspond to the permit authority otherwise administered by such agencies.” Capable government enforcement of the siting and permitting conditions will ensure that the public is adequately protected and informed, both during construction and operation of the proposed facilities.

Under the new provisions of the statute, this enforcement mandate may be a difficult one to implement. Permits will now contain provisions that fall under the jurisdiction of an

array of state agencies; in addition, authority for inspections and citation for violations may fall under both local and state jurisdiction, leading to confusion as to which governmental entity and staff will be responsible for enforcement. The ambiguity may lead to difficulty for enforcement agencies in allocating staff and resources, leading to reduced or ineffective enforcement of permit conditions. Marginalized geographic areas may be at higher risk of this potential for reduced vigilance.

As a safeguard against these risks, standard conditions must be written to clearly delineate which agency or authority is responsible for enforcement. This clarity, along with detailed information provided on the statutorily mandated “dashboard,” may ameliorate the risk of haphazard enforcement. Ceres encourages the agencies to consider the ways the dashboard may be used to clarify agency responsibilities regarding enforcement.

Ceres thanks you for this opportunity to submit these comments on the straw proposal and welcomes any means by which we can further support you in the important work ahead. Please contact me at rreddi@ceres.org if I may be of assistance.

Sincerely,

Rishi Reddi

Rishi Reddi
Senior Advisor, State Policy
Ceres