The Clean Energy Industry Partners include New Leaf Energy and BlueWave Energy, members of the Massachusetts Commission on Energy Infrastructure Siting and Permitting:

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Via E-mail to sitingboard.filing@mass.gov

The Executive Office of Energy and Environmental Affairs;
The Office of Environmental Justice and Equity;
The Energy Facilities Siting Board ("EFSB");
The Department of Public Utilities ("DPU"); and
The Department of Energy Resources ("DOER")

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Re: Comments on the New Application Straw Proposal by Staff

Dear Climate Act Implementing Agencies:

The Clean Energy Industry Partners (the "Industry Partners") thank the Climate Act Implementing Agencies[1] and their staff for their work on the stakeholder sessions to date and the accompanying straw proposals. Solicitation of diverse input is critical for the success of efforts to implement the 2024 Climate Act (An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers, St. 2024, c. 239) (the "Climate Act"). The Application Straw Proposal by Staff (the "Straw Proposal") is a good starting point for a dialogue on how to craft an application process that meets the requirements and intent of the Climate Act. The Industry Partners look forward to continuing to participate in this dialogue.

[1] As used in this letter, the "Climate Act Implementing Agencies" or "Implementing Agencies" refers to: the Executive Office of Energy and Environmental Affairs ("EEA"), the Office of Environmental Justice and Equity ("OEJE"), the Energy Facilities Siting Board ("EFSB"), the Department of Public Utilities ("DPU"), and the Department of Energy Resources ("DOER").

General Comments

The Industry Partners support the goals enumerated at page two of the Straw Proposal: "ensure the EFSB meets its statutory requirement to develop a standard application; ensure the EFSB has enough information to make its completeness determination and meet its statutory deadlines to render a decision; ensure the EFSB has sufficient information to make its statutory findings (in Section 69H); and provide transparency to stakeholders."

A critical additional goal should be facilitating an efficient application process for applicants and the EFSB that avoids redundancies and submission of unnecessary or unhelpful information. Removing redundant and burdensome permitting and approval requirements was one of the core goals of the Climate Act generally and for the development of applications specifically. The application process should not attempt to take the place of the discovery and evidentiary hearings that will occur during the EFSB's review because it is simply not practical for an application to serve that purpose.

Effective applications that set clear and objective baselines for submissions allow for an objective completeness determination and set the stage for efficient proceedings. Because of the foundational nature of applications to an effective process, additional stakeholder input will be critical, and working groups may be beneficial.

Questions Posed in the Straw Proposal

Question 1: *Staff proposes to use the Aggregation Model for applications filed beginning in 2026 and consider whether to move to the Purpose-Built Model. Should the EFSB plan to use the Aggregation Model in the long-term or move to developing the Purpose-Built Model? Why?*

Response: Either the aggregated model or a purpose-built model could work for EFSB applications. The Industry Partners generally support the approach outlined in the Straw Proposal, provided it is implemented in a way that minimizes redundancies and streamlines the application process.

An aggregated model would likely be easier to implement quickly. However, if an aggregated approach is adopted, it will be important to reduce the burden of preparing an application as much as possible and to address otherwise redundant information requirements. This efficiency was a central goal of the Climate Act. Aggregated applications that include a dozen or more separate individual applications, each of which may be lengthy and include overlapping information, would be burdensome for all stakeholders and would increase the chance of inadvertent inconsistencies by the applicant, intervenors, or the EFSB. A better approach would be for applicants to provide most or all relevant information in a single overarching

document, similar to current applications to the EFSB. That overarching document could be supplemented with the otherwise applicable applications, each of which could be completed largely by providing cross-references to the overarching document. In this way, the relevant information is presented only once, minimizing the chance for errors or inconsistencies and facilitating an easier review. But the framework of the existing applications would be retained, allowing agencies familiar with those applications to use them to find the information relevant to them within the larger overarching document.

The Industry Partners agree that, if an aggregated model is adopted initially, stakeholders should continue to evaluate whether a shift to a purpose-built application makes sense as experience with the Climate Act develops. Ultimately, there may be significant benefits associated with moving to a single standardized application that leads to a single standardized approval. The purpose-built application approach could remove redundancy and streamline preparation of applications, review by the EFSB, and drafting of final decisions. Experience implementing the Climate Act will be helpful in determining the best long-term approach.

Further, the Industry Partners are not convinced that simply because the EFSB's final approval of a Large Clean Energy Infrastructure Facility ("LCEIF") or Small Clean Energy Infrastructure Facility ("SCEIF") is a "consolidated permit," it necessarily follows that such a consolidated permit must include individual components that "closely resembl[e] the existing permits" of the otherwise issuing agencies. (Straw Proposal at 9.) The Industry Partners believe that the Climate Act confers on the EFSB sufficient discretion to issue an approval that may differ in formatting or structure from the form of approval that the otherwise issuing authority might use. For instance, the EFSB could issue a single set of conditions and requirements that identifies which conditions and requirements are associated with which otherwise applicable approval. There could be substantial efficiency benefits from such an approach, including the elimination of the need to separately draft multiple overlapping approvals for each project and avoidance of substantially similar conditions that may be applicable to numerous approvals. Over time, or if supplemented with guidance or specific regulatory provisions, this approach would also provide the market with certainty regarding the scope of permit conditions and when such conditions will be applicable. For this reason, the Industry Partners believe that, in the long run, a purpose-built model may provide benefits that outweigh the costs.

Question 2: *If the Siting Board were to develop a common application after 2026 by a Purpose-Built Model for various types of facilities, please comment on the usefulness of the Major Transmission Facilities and Renewable Energy Generation Facilities application requirements recently issued in draft regulations by the New York Office of Renewable Energy Siting and Electric Transmission*.

If the EFSB advances a purpose-built model, the New York experience should be used as a reference point for identifying successful and unsuccessful practices. It is unlikely, however, to be a model that could be directly applied in Massachusetts.

The New York model functions within a different legal structure, which may make it difficult to directly import into Massachusetts aspects of the existing or draft regulations from the Office of Renewable Energy Siting and Electric Transmission ("ORES"). The New York process relies heavily on prescriptive application requirements and uniform standards and conditions that are set by ORES based on impacts that have been determined to be typically associated with the construction of large-scale wind and solar facilities in New York.

While ORES is New York's centralized permitting authority with sole jurisdiction for permitting large-scale renewable energy and transmission facilities, ORES has a somewhat different relationship to otherwise applicable state and local approvals than will be the case under the Climate Act. New York State Public Service Law Article VIII preempts all other state and local consents, approvals, permits, licenses, etc. for large-scale renewables and transmission facilities except those expressly authorized in Public Service Law and ORES's regulations. ORES has delegated limited permitting authority to other state agencies, such as the New York State Department of Transportation, to administer highway work permits on the state highway system, and the appropriate state or local agency for certifying compliance with the New York State Fire Prevention and Building Code. As such, while ORES was designed as a "one-stop shop" for siting large-scale renewables and transmission facilities, New York developers must obtain additional permits beyond the Article VIII Siting Permit (and must identify all such additional permits in their application for a Siting Permit).

Despite these differences, the New York model may be helpful in some respects. At its best, the New York approach provides clarity to applicants not only about what is required in an application, but also how the

application requirements align with the applicable uniform standards and conditions and, ultimately, the permit that will be issued (Siting Permit conditions align with the uniform standards and conditions and generally follow the structure of ORES's regulations).

The proposed regulations for Major Renewable Energy Generation Facilities reflect application requirements developed over years of precedent from New York's permitting processes (Executive Law 94-c and previously, Public Service Law Article 10). The proposed regulations for Major Transmission Facilities set forth, for the first time, prescriptive application requirements. While prior regulations included some requirements for major transmission facility permit applications, those requirements were largely developed in the permitting process based on precedent required for similar projects. The proposed regulations may help guide the market by providing the specific application requirements and uniform standards and conditions a project must comply with in order to receive a Siting Permit.

Unfortunately, the New York approach has not clarified all issues and still leaves some gaps and uncertainty with respect to the information needed to support a complete application. Additionally, the proposed regulations include several new application requirements. Until there is precedent or guidance on how to satisfy those new application requirements, developers may be more at risk of their applications being deemed incomplete in the first instance.

Question 3: *Given the potential adjudication of SCEIF by the EFSB under certain regulatory pathways and DOER's development of the siting standards and applications for such facilities, what are the best means of aligning the respective EFSB and DOER roles for these facilities?*

Response: The Industry Partners appreciate that the Implementing Agencies are coordinating on the application requirements for LCEIF and SCEIF. (*See* Straw Proposal at 2 n.5.) Coordination is important not just because projects that apply as SCEIF may end up being reviewed by the EFSB, but also because developers may work on, and other stakeholders may engage on, both LCEIF and SCEIF projects. Consistent applications across project category will advance the interests of efficiency and make it easier for all stakeholders to participate effectively in the relevant processes.

The Industry Partners recommend that the applications for LCEIF and SCEIF be aligned as much as possible so that applications for each are similar in content and format (if not in scope) and have a similar overall structure.

Question 4: *If the EFSB were to develop a new or substantially modified electronic filing system for EFSB 2.0, please describe the features and functionality that are most important.*

Response: The Industry Partners generally support streamlined filing processes whereby filers submit documents directly into the electronic filing system and those documents are simultaneously shared with the appropriate service list, provided there are appropriate mechanisms for handling confidential materials. (*See* Straw Proposal at 14-15.) A system that allows for easy navigation through filings in a selected docket is also important. The ability to search for terms within or across dockets is helpful.

Question 5: *Given the expected increase in the number of cases for EFSB 2.0, expanded subject matter content of EFSB cases, more public participation, and the new EFSB de novo adjudication role, what components of a modified e-filing platform are necessary?*

Response: The Industry Partners recommend that the EFSB (perhaps in conjunction with the DPU and other agencies) convene a separate process for assessing improvements to the electronic filing system that includes a working group or technical sessions, perhaps an opportunity for vendors to present services with an opportunity for stakeholder comment. While important, implementing significant technology upgrades could be time and resource intensive and may distract from other critical aspects of implementing the Climate Act.

Question 6: *Should the application specify specific numerical standards and analytical methods for conducting noise analyses, electromagnetic frequency analyses, visual impact analyses, and other required studies?*

Response: Whether EFSB-developed standards of certain types or in certain areas would be helpful or harmful would depend on the nature and implementation of any such standards.

Guidance from the EFSB that describes preferred approaches to presenting information on the identified topics (or other topics) or on preferred analytical methods could help standardize approaches in applications and streamline review. This type of guidance is consistent with the nature of applications: it would advise applicants on how to present substantive

information. The Industry Partners agree that embedding detailed standards into the application process would add complexity. (*See* Straw Proposal at 11.) More stakeholder input would be important to make sure these types of standards effectively serve their intended purpose.

In contrast, establishing new substantive standards that absolutely prevent proceeding with projects that do not meet those standards would essentially create new substantive law restricting development, not merely procedural rules for applications. This would not be helpful, because it would impair the EFSB's flexible mandate to balance the array of statutory considerations it must consider. Flexibility has been critical to the EFSB's work in the past and is likely to remain so as the diversity of projects likely to come before the EFSB increases under the Climate Act. Further, energy projects are already subject to many standards under applicable law, and requiring achievement of additional new standards could conflict with, duplicate, or interfere with existing standards. Moreover, impacts of the types identified in this question (noise, EMF, and visual) are highly specific to certain locations and proposals.

On the other hand, standards could be developed to demarcate levels of impacts that are presumed compliant. Standards of this type could be beneficial. They could ensure that impacts are kept to an acceptable level while significantly streamlining review of applications and providing advance notice to project proponents of what expectations will be applied to review of their proposals. Setting these types of standards would be a significant step. They should be developed through stakeholder processes that allow for ample consideration of potential consequences. Given the pressing burden of developing the procedural framework to implement the Climate Act, it would be reasonable to set up working groups or technical sessions focused on specific substantive areas where standards might be helpful.

One area that could benefit from consideration of a standard of this type is noise. Currently, noise is regulated by DEP under a "Noise Control Policy," a one-page document adopted in 1990, and also under some municipal ordinances or bylaws. The DEP Noise Policy takes an approach that is different than many other commonly used measures of noise impacts and has the consequence of strictly restricting new sources of noise in quiet areas – potentially preventing development of even very quiet clean energy facilities – but allowing much higher levels of noise from a source in areas where ambient noise levels are already high. This result may not be consistent with the factors the EFSB must balance in considering applications and may not be consistent with the Commonwealth's broader

policies regarding siting of energy facilities. The DEP Noise Policy also lacks clarity in key respects, making its application uncertain in some situations. This policy is already negatively affecting development of energy storage resources.

A coordinated effort by DEP, DOER (which must create standards for SCEIF), the EFSB, and any other relevant agencies to revise the Noise Policy and incorporate it into the EFSB's review process and the analogous standards to be applied by municipalities would have significant benefits. First, the Noise Policy could be updated or replaced to provide more clarity and to incorporate the best current information on how to measure noise impacts from clean energy facilities. To the extent different types of facilities should be measured differently, that nuance could be accounted for in a new standard. Second, a coordinated effort would avoid a situation where there are multiple, potentially conflicting approaches in place, making clear to all stakeholders what single approach will be applied. Third, a clear standard could inform developers of what levels they need to achieve in design, before they enter the review process. Fourth, clear standards on this topic could significantly reduce the amount of time and effort required for the topic during EFSB or municipal review. Fifth, a clear standard designed specifically for clean energy facilities could assist municipalities in implementing the Climate Act. The Industry Partners recommend that the relevant agencies convene stakeholders as soon as possible to develop an approach to improving the standards applicable to noise from clean energy facilities and to incorporate those standards efficiently into the EFSB's review process and the review processes that will be implemented by municipalities.

Question 7: *With EFSB 2.0's de novo adjudication role under § 69W, how can the Siting Board ensure that the record submitted to the Board (after first being submitted to municipalities for their consolidated local permitting purposes) meets evidentiary and procedural requirements?*

Response: Please see the Industry Partners' response to Question 3. The Industry Partners recommend that the applications for the EFSB and municipal processes be aligned to the extent possible. When the EFSB reviews a project under Section 69W, it will generally be reviewing that project under the standards applicable to municipal reviews. *See* G.L. c. 164, § 69W(c). Applications that are sufficient under the rules applicable to those projects should generally be sufficient to initiate review by the EFSB under § 69W.

Such applications should also provide a substantial contribution to the development of an evidentiary record consistent with EFSB standards.

Apart from applications, municipal reviews themselves may not always adhere to the same standards regarding evidence that the EFSB applies, and the resulting record may not meet EFSB standards in all cases. If that occurs, the EFSB should assess the record created in the municipal process subject to the EFSB's standards for evidence. This is inherent in the concept of a *de novo* review and critical to the implementation of the Climate Act in a uniform and fair manner. Over time, municipalities will be incentivized to develop processes that result in records that support EFSB review. Guidance to municipalities on how to conduct reviews consistent with EFSB requirements may also be helpful.

To the extent additional information is necessary to develop a sufficient record in a particular case under *de novo* review, the EFSB may use its own evidentiary processes to appropriately develop the record. However, evidentiary processes should be as limited and efficient as possible to support the streamlined review process set forth in § 69W, which requires a decision within six months. The Industry Partners recommend that the EFSB set a process that allows for early identification of any need to supplement the record and provides a means to introduce additional evidence. In no situation should applicants be denied timely and effective review by the Director as a result of inadequate municipal processes. This is critical because, otherwise, municipalities could be incentivized to run inadequate processes as a means of preventing or delaying project approvals.

Question 8: *What other concerns or recommendations do you have to guide the development of EFSB applications?*

Response: In order for a system based on application completeness determinations to work effectively, there must be clear and objective standards for determining completeness. Further, any determinations that an application is not complete must explain in detail and with specificity why the application is deemed incomplete. The detail and specificity serve multiple purposes. First, they allow the applicant to revise the application to address the identified deficiencies – a process set out in the Climate Act at G.L. c. 164, § 69T(f); c. 25A, § 21(c). Second, they provide precedent for future applications, leading to more efficient future submissions. The Industry Partners recommend that the definition of completeness (*see* Straw Proposal at 15) state that, if a Presiding Officer determines that an

application is not complete, she will provide a statement of the basis for that determination that identifies with specificity the reasons the application has been deemed incomplete. The Industry Partners strongly agree that "perfection" is not an appropriate standard or expectation, and it should be understood that, in most cases, there will be a need to provide additional information as part of the evidentiary process. (*See id.*)

Applicants should have the option to use a single application to initiate a consolidated zoning exemption proceeding under G.L. c. 40A, § 3 or St. 1956, c. 665, § 6 with a request for approval of a LCEIF. The single application should avoid the need for redundant or duplicative submissions or information. For example, adding a request for zoning exemptions could be a simple addendum or attachment to the otherwise applicable application for approval. (*See* Straw Proposal at 3.)

If the EFSB proceeds with an application that calls for information on "energy benefits," relevant energy benefits should be defined broadly to capture the full set of benefits associated with energy infrastructure. (*See* Straw Proposal at 12.) These benefits can include, but are not limited to, supplying energy; supplying capacity; supplying other ancillary services in energy markets; improving reliability; reducing emissions; contributing to achievement of state, local, or national goals or policies; improving resiliency; offsetting the need for other more costly investments; and enabling benefits to be attained from other energy resources.

The Industry Partners generally support regulations or guidance that provide clarity as to the information sought in different parts of an application as described in Section III.C. of the Straw Proposal. The Industry Partners urge the EFSB not to be overly prescriptive as to specific content, standards, or methods and to retain flexibility that allows its approach to be generally applicable across projects and to accommodate unique projects and situations.

A video overview should be optional, not an application requirement. (*See* Straw Proposal at 13.) Developing a high production-value video is a resource- and time-intensive task. Petitioners to the EFSB will have varying levels of resources available to support preparing permit applications. A requirement to submit a video could significantly increase permitting costs for some projects. Moreover, videos may be useful for providing a general project overview, but are more difficult to use in evidentiary proceedings, where text or images can be easily referred to and referenced, but videos are more cumbersome. Videos also require that the EFSB, and potentially other

stakeholders, have additional technology resources available in order to fully access and use the video, for instance due to large file sizes.

Conclusion

The Industry Partners again thank the Implementing Agencies and their staff for their work on the Straw Proposal and the stakeholder sessions more broadly.

Please do not hesitate to reach out with any questions or to discuss these comments further.

Sincerely,

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