May 19, 2025

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 Procedural Regulations Staff Straw Proposal

Dear Climate Act Implementing Agencies:

The Solar Energy Industries Association ("SEIA"), The Alliance for Climate Transition ("ACT"), and the Coalition for Community Solar Access ("CCSA") 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 Procedural Regulations Straw Proposal by Staff (the "Straw Proposal") is a good starting point for updating and revising procedural regulations to implement the Climate Act. SEIA, ACT, and CCSA appreciate the opportunity to engage at this early stage of development but note that the nature of procedural regulations makes the details critical. As a result, it is difficult to provide substantive comments at this stage. SEIA, ACT, and CCSA look forward to continuing to participate in this important process.

[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").

In this letter, SEIA, ACT, and CCSA provide general comments on the Straw Proposal by responding to the questions posed in the Straw Proposal and providing limited comments on other aspects of the Straw Proposal.

Questions Posed in the Straw Proposal

Question 1: *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?*

Response: SEIA, ACT, and CCSA encourage use of electronic posting for notices, whether on project websites, on an EFSB website, on municipal websites, or a combination thereof. Electronic postings are easily and widely accessible and can be efficiently generated and easily updated or revised as necessary. They are also capable of reaching a broad audience. To the extent that newspaper notices are used, simpler notices directing to electronic postings that provide more detail may be more efficient and effective than long, and sometimes complex, print notices.

Question 2: *Should Siting Board staff site visits to the location of a proposed project be open to the public? How would the Siting Board manage such a process?*

Response: Site visits provide an important opportunity for the EFSB to experience the current conditions at a proposed project location, a function distinct from receiving public input. Including the public at site visits could present significant challenges with respect to access to project sites and the ability of the EFSB to efficiently gather information. There are other opportunities for public participation under current practices and required by the Act that are more conducive to supporting effective public input.

Question 3: *How should the Siting Board reflect decommissioning activities and expectations?*

Response: Decommissioning can be addressed during EFSB proceedings in the same manner as other issues relating to project impacts. Decommissioning is likely to be project-specific and an issue for which a factual record is highly relevant. Substantive decommissioning requirements should not be part of procedural regulations.

Question 4: *When local government, upon a showing that its resources, capacity and staffing do not allow for review of a small clean energy infrastructure facility's permit application within the required maximum 12-month timeframe for local government review, could request a de novo adjudication from the Siting Board Director, should the Siting Board establish a 12-month schedule*

for review, consistent with the 12-month schedule allowed for review at the local level?

Response: Under G.L. c. 25A, § 21(g), when a local government requests a de novo adjudication, that adjudication is "pursuant to section 69W of chapter 164." In turn, Section 69W(c) requires a decision be issued "within 6 months of receipt of the application." The most direct reading of the statute is, therefore, to require a six-month timeline for review in these situations. It is not clear that the EFSB has flexibility to provide for a longer period. If the EFSB were to establish a longer period, that period should certainly not be more than 12 months. Not only would 12 months already be double the period set forth in Section 69W(c), it would also be longer than the period for review that would have been applicable had the local government not referred the project to the EFSB. A project should not face a longer schedule simply because a municipality elects this option.

In general, the EFSB and all Implementing Agencies should aim to reduce permitting time periods where possible and should not assume the maximum allowed period under law is appropriate for all projects. "Small" projects reviewed under this de novo process may have very limited environmental impacts, may not otherwise have required any state permits or approvals, and may have required only limited local approvals. In many instances, it may be possible to conclude review of such projects more quickly than the statutory maximum periods.

Further, under the new G.L. c. 25A, § 21(g), it is possible that a local government could refer an application to the EFSB after significant process has already occurred at the local level, provided the applicant consents. If this occurs, the EFSB should not assume it will require the full six-month period for its review, but should attempt to shorten that period to the maximum extent possible to reflect process that has already occurred.

Question 5: *For de novo adjudications, should the Siting Board regulations provide for the opportunity for a motion for reconsideration by the Director of a de novo adjudication final decision?*

Response: Because of the significance of this decision, there should be a process for review in extraordinary circumstances where a revision to the final decision of the Director is warranted. However, the period for such a motion should be short, the motion should be to the Director, and the standard of review should be highly deferential. The EFSB currently allows reconsideration of rulings made by a Presiding Officer on a motion made within five days. 980 C.M.R. 1.09(8). Final decisions of the Board, however, are generally appealed

to the Supreme Judicial Court. 980 C.M.R. 1.08(4). The Department of Public Utilities allows motions for reconsideration within 20 days following a Department Order. 220 C.M.R. 1.11(10). In that context, the DPU applies a highly deferential standard of review requiring "extraordinary circumstances" or showing of a "mistake or inadvertence." *See, e.g.*, *Massachusetts Electric Co.*, D.P.U. 23-150-D at 3-4 (March 28, 2025). Such a motion should not be allowed simply to reargue issues already considered and decided. *Id*. A similar approach to that applied by the DPU would be appropriate in this context. SEIA recommends a shorter period for filing such a motion than the 20 days allowed by the DPU.

Alternatively, if the regulations provided for issuance of a draft decision with a sufficient period for comment prior to issuance of a final decision by the Director, an opportunity to move for reconsideration might not be necessary.

Question 6: *Permitting procedures for energy facilities in other states include steps that limit the scope of subject matter that may be explored during adjudication and decided upon in the final permit. This limitation can increase efficiency for issuing permits. Should the Siting Board adopt such practices? What limiting practices should the Siting Board consider? Describe any legal impediments for the Siting Board to adopt similar practices.*

Response: It is difficult to respond to this question without a more specific proposal. In general, SEIA supports the Siting Board adopting policies that make the process more efficient. Processes that quickly eliminate consideration of issues that are not jurisdictional or that can be resolved early in the proceeding (for instance, issues that are not reasonably in dispute) could be beneficial, as could processes requiring that issues be raised by a certain point or be waived.

Initial Comments on Other Aspects of the Straw Proposal

Recognizing that the Straw Proposal reflects an early stage in the process of revising procedural regulations, SEIA, ACT, and CCSA provide the following additional comments on various aspects of the Straw Proposal:

- SEIA, ACT, and CCSA applaud the Implementing Agencies for advancing proposals to implement electronic filings. (*See* Straw Proposal at 3.) Electronic filing has many benefits over paper filings and is conducive to more efficient proceedings and facilitates participation by stakeholders.

- At page 4, the Straw Proposal is unclear as to whether the EFSB is proposing a significant change to the requirement at 980 C.M.R. 1.05(1)(i), which

currently requires all parties to be represented by counsel unless they are an "individual appearing pro se" or they have obtained a waiver. The Straw Proposal suggests that entities other than corporations may be able to appear without counsel. This is not the current practice, and SEIA, ACT, and CCSA believe the current approach has generally been effective. A change of this magnitude could be disruptive. Allowing entities other than corporations to appear without counsel could be detrimental to the efficient conduct of proceedings and could lead to situations where it is unclear as to the ability, right, or capacity of a specific individual to speak on behalf of others. It may also raise questions as to whether such an individual is engaging in the practice of law by representing the interests of others in an adjudicatory proceeding.

- SEIA, ACT, and CCSA agree that regulations addressing compliance filings and project change filings could be helpful to provide additional certainty around these processes. (*See* Straw Proposal at 4.) SEIA, ACT, and CCSA urge the EFSB to consider specifying exemptions from the need to file project change requests applicable to certain common changes that do not result in meaningful changes to project impacts. A stakeholder process could identify common changes that do not result in changes to project impacts for which exemptions could reduce the burden on the EFSB and parties.

- The Implementing Agencies should be cautious about using regulations, particularly procedural regulations, to address decommissioning and site restoration. (*See* Straw Proposal at 4.) As noted above, these matters are likely to be project- and site-specific, and determining proper approaches for a specific project is likely to benefit from consideration of a factual record. Procedural regulations are unlikely to be a good vehicle for any substantive requirements in this area.

- On page 5 of the Straw Proposal, it is unclear why a "showing of good cause" would be needed to file an application under G.L. c. 164, § 69V ("An owner or proponent of a small clean energy generation facility or a small clean energy storage facility ***may*** submit an application to the board to be granted a consolidated permit[.]") (emphasis added). It appears this may be intended to refer to G.L. c. 164, § 69U.

- SEIA, ACT, and CCSA urge the EFSB to make the factors for determining the completeness of an application as clear and objective as possible to avoid uncertainty and disputes. (*See* Straw Proposal at 5-6.) Uncertainty or

inconsistency around this determination could result in undue delays for clean energy projects. Critically, the Climate Act provides 30 days to cure deficiencies identified by the EFSB in denying completeness of an application. G.L. c. 164, § 69T(f). Therefore, the regulations should provide that a determination that an application is not complete shall identify the deficiencies that led to that conclusion with specificity and must allow for a 30-day cure period. This process could become critical to the effective functioning of the Climate Act. Applicants whose petitions are determined to be deficient should quickly learn the full basis for the deficiency determination and have an opportunity to quickly correct any deficiencies so that they can proceed to substantive review of their proposal without being caught in a loop where the basis for rejection is unclear, making it difficult or impossible to efficiently correct deficiencies and leading to further deficiency determinations. Because of the significance of the completeness determination, SEIA, ACT, and CCSA recommend additional stakeholder process on this issue.

Conclusion

SEIA, ACT, and CCSA 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,

/s/ Valessa Souter-Kline_____

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