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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 Standard Conditions Straw Proposal by Staff

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 Agencies¹ 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 Standard Conditions Straw Proposal by Staff (the “Straw Proposal”) is a good starting point for a dialogue on appropriate standard conditions for various purposes under the Climate Act. SEIA, ACT, and CCSA look forward to continuing to participate in this dialogue. This letter provides some general comments on the Straw Proposal and a few comments on specific conditions provided in the Straw Proposal.

General Comments on the Straw Proposal

SEIA, ACT, and CCSA generally support the concept of developing three categories of standard conditions: (1) universal conditions; (2) additional conditions applicable to

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”).

constructive approvals; and (3) additional conditions applicable to projects deploying a particular technology. If well-implemented, this approach can reduce the burden of adjudicating routine issues in every case and can provide the development community with certainty regarding applicable conditions.

However, it is important to recognize that the EFSB will be reviewing projects that are diverse and, in many cases, smaller in scope and less impactful than projects it has previously reviewed. Standard conditions, especially universal conditions, should only be used where they are truly universal in application. Otherwise, such conditions may inadvertently create additional burden for all involved by necessitating requests for exemptions.

SEIA, ACT, and CCSA agree that standard conditions should be refined over time. No standard conditions should be implemented without a meaningful opportunity for comment by stakeholders. The Implementing Agencies should also carefully consider the balance between describing conditions in regulations as opposed to in guidance, given the advantages and disadvantages of each approach. Describing conditions in regulations will advance certainty but will make adjusting those conditions more difficult in the future. Conversely, describing conditions in guidance affords more flexibility, but may provide less certainty, especially if guidance is frequently updated.

It is also important that the EFSB be able to exempt projects from otherwise standard conditions and revise standard conditions for specific projects when warranted. Regulations should not be drafted to constrain the ability to amend standard conditions when doing so is appropriate for a specific project.

Comments on Specific Example Conditions

1. Universal Standard Conditions: Project Changes

The Straw Proposal includes “project change” requirements as a universal standard condition. (See Straw Proposal at 4-5.) A “project change” process has been used routinely in past EFSB approvals. SEIA, ACT, and CCSA recognize that a clear process for changes to approved projects is beneficial. The preexisting practice is a good place to start in crafting a standard condition for use under the Climate Act. Under the Climate Act, however, the EFSB may review far more projects than it has in the past, and many of those projects may be smaller in scope with less associated impacts than projects that have historically required EFSB approval.

As a result, SEIA, ACT, and CCSA are concerned that the current standard of “minor variations,” without additional guidance, could result in a burdensome number of notices being filed out of an abundance of caution in situations where changes to a project are minor and do not result in changes to relevant project impacts. For instance, many solar and storage projects make “like-for-like” changes to proposed electrical equipment during

development, which may have no meaningful impact on the project's environmental impact. However, it is not totally clear whether changing the brand or model of electrical equipment such as inverters, solar panels, or racking would be a "minor variation" within the meaning of the proposed language. The regulations or accompanying guidance could provide that certain categories of change are presumed to be minor variations (for instance, changes to the model or manufacturer of equipment that do not result in increased environmental impacts or change the output or capacity of a project by more than a set percentage). Guidance of this type, whether in the regulations or separate, could enhance certainty around the need to file project change notices and avoid undue burdens to developers and the EFSB.

2. Universal Standard Conditions: Cost Filings

The Straw Proposal includes a condition to submit cost estimates prior to the start of construction and to notify the EFSB of significant cost increases. (See Straw Proposal at 5.) This condition is not appropriate for all projects. While this may be a reasonable standard for projects developed by electric distribution companies, it is not necessary for generation and storage projects being developed by private entities. Under prior law, the EFSB was prohibited from investigating the cost of generating facilities, in contrast to certain other types of facilities. See G.L. c. 164, §§ 69H, 69J1/4. The Climate Act retains this distinction and does not provide for the review of the costs to construct generating facilities, clean energy generation facilities, or storage facilities. See St. 2024, c. 239, § 60 (amending G.L. c. 164, § 69H and maintaining a bifurcation of the types of projects for which a review of costs is conducted). SEIA, ACT, and CCSA recommend that this condition not be adopted as a universal standard condition or be considered as a specialized condition, applicable only for those projects that require review of overall project costs.

3. Universal Standard Conditions: Conversion to Electric Vehicles

SEIA, ACT, and CCSA support consideration of the use of electric vehicles and equipment for construction where feasible and cost effective. However, submitting three separate "report[s]" on the inclusion of such vehicles for each project approved by the EFSB is unnecessary and potentially burdensome. If the EFSB adopts such a condition, SEIA, ACT, and CCSA recommend that the condition require a "compliance filing" rather than a "report" to make clear that a simple letter may suffice, provided it includes the requested information. Moreover, it would be sufficient to require such a filing prior to construction and after the completion of construction. A third filing is unnecessary.

4. Universal Standard Conditions: Community Outreach Plan

SEIA, ACT, and CCSA support robust and effective community engagement and outreach. SEIA, ACT, and CCSA note that some aspects of the proposed language for this

condition are vague. (See Straw Proposal at 5.) For instance, the condition states that the Company “shall make the plan available to the community” without specifying what the relevant community is to satisfy this requirement. SEIA, ACT, and CCSA recommend that the condition be amended to specify that the outreach plan for construction should be made publicly available (for example, by posting on a project website) and/or provided to specified municipal officials or intervenors in the proceeding to remove ambiguity about compliance with this requirement.

In addition, SEIA, ACT, and CCSA recommend that the period for filing be revised from “no later than 90 days prior” to “no later than 30 days prior.” Information relevant to this plan may change prior to construction as a project proponent works with permitting officials and stakeholders, including about traffic and safety management. Providing information too early and then amending it can lead to confusion for stakeholders and affected communities. Providing current information 30 days in advance of construction reduces that risk while also providing sufficient notice.

5. Constructive Approval Conditions: Lighting Mitigation

SEIA, ACT, and CCSA support a lighting mitigation condition, but urge the Implementing Agencies to consider modifying the condition to require use of *commercially reasonable* lighting mitigation measures *consistent with safety and other regulatory requirements*. (See Straw Proposal at 6.) It should be clear, for instance, that this condition does not conflict with otherwise applicable safety codes or regulatory requirements.

6. Constructive Approval Conditions: Flood Mitigation and Sea Level Rise

Ensuring long-term resilience of energy facilities is important. A condition on this point should balance the importance of this issue with the potential benefits and burden of compliance, particularly for projects where the risk falls on private entities (*i.e.*, on private developers rather than regulated distribution companies) or projects that are not meaningfully impacted by relevant projections. SEIA, ACT, and CCSA recommend providing an opportunity for further stakeholder input on this condition. A “report,” particularly one that involves consultation with multiple agencies and officials, can be a significant burden. Such a report should not be required where relevant projections have not meaningfully changed expectations for the facility at issue from those that existed at the time of approval. For instance, a facility for which there are no relevant projections showing increased flood risks should not be required to perform consultations, file a report, or propose additional mitigation.

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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