Via Electronic Mail

August 1, 2025

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")
The Department of Energy Resources ("DOER")
c/o The Energy Facilities Siting Board
One South Station
Boston, MA 02110
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re: Comments on Draft Regulation on Proposed Pre-Filing Consultations and Engagement Requirements (980 CMR 16:00)

Dear Members of the Climate Act Implementing Team,

On behalf of the Alliance for Climate Transition[1] ("ACT") Advanced Energy United[2] ("United"), Blue Wave Energy[3], the Coalition for Community Solar Access[4] ("CCSA"), and New Leaf[5] thank you for the opportunity to provide comment on the draft regulations outlining the "Pre-Filing Consultation and Engagement Requirements" (the

[1] The Alliance for Climate Transition ("ACT") leads the just, equitable, and rapid transition to a clean energy future and a diverse climate economy. ACT represents the business perspectives of investors and clean energy companies across every stage of development.
[2] Advanced Energy United ("United") is a national association of businesses that works to accelerate the move to 100% clean energy and electrified transportation in the U.S.
[3] BlueWave's mission is to protect our planet by transforming access to renewable energy. BlueWave is a Boston-based community solar and energy storage developer, owner, and operator.
[4] The Coalition for Community Solar Access ("CCSA") represents community solar companies, businesses, and nonprofits working to expand customer choice and access to solar for all American households and businesses through community solar.
[5] New Leaf's mission is to accelerate the transition to a world powered by renewable energy. We are a national developer of distribution- and transmission-scale solar and energy storage, headquartered in Lowell with an additional office in Boston.

"Regulation Draft"). We recognize[6] and appreciate the extraordinary efforts that the teams at the Energy Facilities Siting Board ("the Board") & DPU Division of Public Participation ("DPP") have made to execute an inclusive and thoughtful process in developing and revising regulation concept papers and drafts in advance of the formal rulemaking process. It is clear from our review of 980 CMR 16:00 that the Administration taken constructive feedback and adjusted the direction of the Regulation Draft in meaningful ways.

As noted in United's May 9, 2025 letter to Commissioner Rubin and Undersecretaries Judge and Power:

> *The period prior to filing a project application offers an opportunity for project proponents, community members, relevant state and local agencies, and other key stakeholders to initiate communication and collaboration. Broadly, pre-filing procedures should set an encouraging tone for stakeholders to communicate openly, establish a supportive working environment, and build consensus. The pre-filing documents plays a critical part influencing the roles and attitudes of participants in these early project stages.*

The Regulation Draft reflects a careful balance between the necessary steps that project developers and proponents must take to ensure meaningful stakeholder participation and engagement, and a streamlined path to getting worthy projects built. We appreciate the emphasis in the Regulation Draft on the relevant actions to be taken rather than a specific timeline for doing so. Such flexibility both centers the process on engagement and recognizes the variability of circumstances from individual project to project, and from community to community. Further, we appreciate the focus of the Regulation Draft on Status and Completion Checklists to help guide the pre-filing process rather than rigid Phases that risk artificially lengthening applicant timelines.

As has been noted before, the development of clean energy projects and the necessary grid infrastructure to deliver it has never been more important, nor more challenging. While the 2024 Climate Act made large strides in reducing permitting barriers, those will only be realized if the regulations developed here reflect that spirit of barrier removal. We urge the Board and DPP to consider the totality of regulatory steps that developers will need to take in order to secure a consolidated permit and request that

[6] Representatives from Blue Wave, New Leaf, and United served on the Commission on Energy Infrastructure Siting and Permitting to recommend changes to procedures.

the draft regulations reflect a concerted effort to get new projects built as swiftly and as responsible as possible.

While we appreciate the significant revisions to the pre-filing requirements, there are several further refinements that will serve to create clarity, avoid duplication, and accelerate the path to consistent, well-documented permitting decisions by the EFSB. Below is a list of proposed improvements for consideration:

- As drafted, the term "facility" in 980 CMR 16.01(3) risks creating confusion because the term "Facility" is defined to mean a specific type of facility and "facility" is also used as a general term in these regulations. Revised wording or definitions could make the intent of this provision clearer.

- We recommend that explicit provisions be added to these regulations that address projects that begin pre-filing engagement before these regulations are finalized but file a petition after July 1, 2026 (*see* 980 CMR 16.01(5)). Because prefiling engagement processes may take several months, some projects may be well into engagement efforts before the final engagement requirements will be known with certainty. Such projects could be significantly delayed if they are required to reinitiate outreach efforts to comply with the new requirements. A broad delay of all facilities requiring Board approval would affect important and time-sensitive energy investments in the Commonwealth.

- The language in 980 CMR 16.04(1)(a)(1) should be amended to state that an applicant shall "Review and implement *applicable* site suitability criteria . . . ." as not all Applicants will be subject to all listed requirements. In addition, the words "alternatives analysis" should be removed from this section because, while all Applicants will engage in "the selection of [a] preferred site/route" not all Applicants will conduct an "alternatives analysis."

- Similarly, 980 CMR 16.04(1)(a)(2) should be amended by striking "alternatives analysis" for the same reason (not all Applicants will conduct such an analysis).

- In 980 CMR 16.04(1)(a)(3), "all" should be removed. Applicants will be incentivized to document their engagement efforts; it is not reasonable or necessary to require documentation of every single activity that might constitute such engagement.

- In 980 CMR 16.04(1)(c), is the intent that an Applicant would add a Key Stakeholder to an email distribution list upon request from the Key Stakeholder, or that the Applicant would add Key Stakeholders to an email distribution list based on its own judgment and publicly available contact information? We recommend

that participation in such an email distribution list be voluntary on the part of the Key Stakeholder (*i.e.*, that the obligation to send emails only attach to Key Stakeholders who request such emails and provide their contact information) to avoid potentially unwanted communications. Further, the requirement that updates be sent to a distribution list "quarterly" should be removed. It may be helpful to provide updates more or less frequently depending on whether and when significant developments occur.

- The reference to a pre-filing comment period in 980 CMR 16.04(1)(g)(4) is not clear because that period is not defined or explained. If an Applicant is required to provide a comment period that meets specific requirements, those requirements should be specifically stated, but the eliminating or reducing specific "periods" and focusing rather on specific actions Applicants are to take is a preferred path to accelerate the process while ensuring robust community engagement.

- 980 CMR 16.04(h) would benefit from greater precision. It appears that the second sentence would be better structured to state that an Applicant "may" resubmit a Pre-filing Notice since the prior sentence already requires that such a notice be timely. Further, the DPP process for review is not clear from this subsection. Is there a required DPP consultation? What will the DPP review to make this determination? Must the Applicant make some sort of request or filing with the DPP to enable this review?

- In 980 CMR 16.05, it would be helpful to provide additional context regarding the relevant meeting. Specifically, it appears that the requirement to share information may be intended to apply to a "first" or "initial" meeting, and, if so specifying that intent would aid clarity.

- 980 CMR 16.06(1)(a)(2) should be re-worded, since most Applicants will not need to "obtain" local, state or regional permits by virtue of the consolidated permit process.

- In 980 CMR 16.06(1)(a)(6), the "and the alternatives analysis" should be deleted because such facilities may not conduct such an analysis.

- In 980 CMR 16.07(1)(a)(1), "its need" should be removed or qualified, because not all projects will require a showing of need.

- In 980 CMR 16.07(1)(a)(4), "the alternative locations considered" should be deleted because such projects are not all required to consider alternative locations; "the alternatives analysis used in selecting the preferred option" should be deleted because not all such facilities will use an alternatives analysis; and "preferred

alternative" should be replaced with "proposed facility" or something similar because not all applications will present alternative projects or locations.

- For 980 CMR 16.06, 16.07, and 16.08, the regulations should be clear that these are requirements for meetings to count towards the minimum number of such meetings under 980 CMR 16.04(1)(e-g) but are not required of *all* such meetings. Currently, project proponents frequently engage in abundant and varied outreach, some of which may be narrowly tailored or may not have a predetermined agenda. Project proponents might, for instance, have "open houses" where the public can come and ask questions about the project. All of the specific requirements listed in 980 CMR 16.07 and 16.08 may not be addressed in such meetings. In fact, requiring all those requirements to be met would make it impossible to hold such open houses or conduct similarly informal outreach. Similarly, a project proponent might hold a meeting for the public or for certain stakeholders that focuses only on specific issues only (*e.g.*, a single type of potential impact). This type of meeting might also be impossible if all the requirements identified in these sections were required to be addressed at every such meeting. Another common example would be a project proponent wants to schedule a call or meeting with an agency to address a narrow specific issue of interest to that agency. Requiring that all the elements of Section 16.06 to apply to such a call or meeting would make it infeasible to engage in such outreach, which is unlikely to be the intent of these provisions.

- 980 CMR 16.09(1)(a)(4) should read "A summary of the how site suitability criteria and**/or** cumulative impacts analysis requirements have been incorporated into the selection of the preferred project site/route and project design" to recognize that projects may not need to perform both analyses.

- In 980 CMR 16.09(1)(a)(5), "and the alternatives analysis used in selecting the preferred option" should be deleted because not all such projects will require an alternatives analysis.

- The items referenced in 980 CMR 16.09(1)(a)(7-8) should be qualified to be "Relevant materials . . . of general interest." Without more clarity, these provisions could be read to require posting of any materials shared in any meeting with any individual, which would be neither feasible nor appropriate.

- In 980 CMR 16.09(1)(a)(10), the requirement that email updates be provided quarterly is unnecessary and should be removed.

- In 980 CMR 16.10(1), we recommend requiring email of the Pre-filing Notice to individuals who have requested to be on the project's email distribution list. The

current wording implies an obligation to email the Pre-filing Notice to anyone the Applicant "met during pre-filing consultation and engagement," which would be an impossible standard to achieve (among other reasons because not everyone the Applicant meets will provide email contact information) and would likely require unwanted distribution. Further, some of the required recipients listed are otherwise vague and subject to misinterpretation/unnecessary dispute. For instance, it is not clear what it means to email "host communities."

- In the "Prefiling Engagement Status Checklist," second check box, the "alternatives analysis" should be removed and this item should refer to informing site selection because not all projects will conduct an alternatives analysis.

- The third checkbox for the "Prefiling Engagement Status Checklist," should be deleted. This is subjective and will not provide useful information. The checklist should avoid subjective statements.

- The sixth checkbox for the "Prefiling Engagement Status Checklist," need not include "quarterly."

- Part 2 of the "Prefiling Engagement Completion Checklist, second box, should not include "the alternatives analysis in" because this language will not be applicable to all projects using this form.

- Part 2 of the "Prefiling Engagement Completion Checklist," third box: this item should be deleted because it is subjective and will not provide helpful information. The checklist should be limited stick to objective items, such as whether required meetings occurred and required information was conveyed.

- Part 3 of the "Prefiling Engagement Completion Checklist, third box: "detailed" should be deleted because it is subjective and potentially burdensome.

- In the "Prefiling Engagement Completion Checklist," it is not necessary or appropriate to require an individual to make a sworn statement of the type included in this draft. This would require an individual to swear as to personal conduct when efforts are almost certain to have been carried out by a team. Moreover, the content is subjective. Such a sworn statement would not be useful. Nor is it appropriate to require an individual to agree to provide "additional information or documentation"; there will be discovery processes in the Board's proceeding, and such an "agreement" is not needed. To the extent any sworn statement is required, it should be that the submitted information is complete and accurate to the best of the individual's knowledge.

Thank you for the opportunity to provide these comments and for the considerable effort your team has undertaken to put forth ideas, respond to feedback, and advance the Regulation Draft. We look forward to working with you and other stakeholders on to ensure that, collectively, we seize the opportunities set out in the 2024 Climate Bill by delivering clear regulations that drive community engagement on the road to much-needed clean energy projects.

Sincerely,

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