COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

JOINT COMMENTS OF NSTAR ELECTRIC COMPANY D/B/A EVERSOURCE ENERGY AND NEW ENGLAND POWER COMPANY, MASSACHUSETTS ELECTRIC COMPANY AND NANTUCKET ELECTRIC COMPANY, EACH D/B/A NATIONAL GRID ON DRAFT GUIDANCE AND REGULATIONS TO IMPLEMENT THE 2024 CLIMATE ACT

I. INTRODUCTION

On November 21, 2024, An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers (the "2024 Climate Act") was signed into law by Governor Maura Healey. The 2024 Climate Act requires several agencies, including the Executive Office of Energy and Environmental Affairs ("EEA") and the Energy Facilities Siting Board (the "Siting Board"), to propose regulations for comment to implement the new streamlined siting and permitting pathways for clean energy facilities in the Commonwealth. As part of this process, various straw proposals, guidance documents, and stakeholder sessions have identified many important areas and topics for input and consideration, ultimately leading to the development of proposed rules. To date, preliminary draft regulations amending existing 980 C.M.R. 1.00 (Conduct of Adjudicatory Proceedings) and 2.00 (General Information), as well as new draft regulations creating 980 C.M.R. 13.00 (Consolidated Permit Applications), 14.00 (De Novo Adjudication), and 17.00 (Constructive Approval), have been issued and posted publicly for review and comment.[1] It is expected that additional draft regulations and guidance on the topics of, among other things, cumulative impact analyses ("CIAs"), site suitability criteria ("SSC"), and community benefit plans/agreements ("CBPs/CBAs") will also be issued.

[1] Draft regulations and related guidance regarding prefiling engagement were issued by the Siting Board on Friday, July 25th. Written comments on these materials have been requested by Friday, August 1st. The Companies anticipate filing written comments on prefiling engagement in accordance with that schedule.

The Siting Board held a public meeting on July 21, 2025 to discuss the preliminary draft rules and other associated topics as described above.[2] Written comments were requested from stakeholders on these topics by July 28, 2025. NSTAR Electric Company d/b/a Eversource Energy ("Eversource") and New England Power Company, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid ("National Grid"; together, the "Companies") hereby submit these written comments in response to the Siting Board's request.

II. BACKGROUND

The Companies strongly support the 2024 Climate Act and its overarching purpose to: (a) accelerate the responsible deployment of clean energy infrastructure through siting and permitting reform in a manner consistent with applicable legal requirements and the Clean Energy and Climate Plan; (b) facilitate community input into the siting and permitting of clean energy infrastructure; and (c) ensure that the benefits of the clean energy transition are shared equitably among all residents of the Commonwealth. Governor Healey Executive Order No. 620: Establishing the Commission on Energy Infrastructure Siting and Permitting (September 26, 2023). At the same time, the Companies recognize that the 2024 Climate Act created an enormous task for EEA, the Siting Board, and EEA's other agencies; namely, developing a functional, efficient, and fully integrated state and local review process for multiple types of clean energy projects, to be implemented on or before July 1, 2026. The stakeholder process and draft regulations developed to date have reflected significant, thoughtful work by EEA and the Siting

[2] The Companies note that EEA and the Department of Energy Resources are also in the process of developing complementary criteria, guidance, and regulations pursuant to the 2024 Climate Act on the topics of the local consolidated review process pursuant to G.L. c. 25A, § 21. The Companies look forward to these additional rulemaking processes and intend to participate fully. To the extent that the proposed Siting Board regulations rely upon and incorporate these future processes, the Companies will supplement these comments to address those considerations. The Companies also wish to emphasize their support for additional stakeholder sessions and public meetings, such as the July 21 public meeting of the Siting Board, as extremely helpful opportunities to facilitate the constructive exchange of ideas.

Board staff and substantial progress in creating an effective, comprehensive framework. The Companies applaud the efforts of EEA and the Siting Board and stand ready to continue to assist EEA and the Siting Board throughout the process.

While the Companies are most appreciative of the important progress that has been achieved through the draft rules and guidance documents, and are grateful for the responsiveness shown to date by EEA and the Siting Board, they continue to have significant concerns regarding several material topics, a few of which have not been explained through draft guidance or regulations. For example, the Companies feel strongly that the CIA framework presented at the Siting Board's public meeting on July 21, 2025, requires considerable further discussion. Although the Siting Board's proposed approach to CIA is not yet set forth in draft rules, it clearly goes well beyond what was specifically authorized in the 2024 Climate Act. The Companies are concerned that the Siting Board's proposed CIA methodology, which appears to involve coupling CIA with route selection in a complex modelling exercise, will be extremely time-consuming and costly to develop, will complicate rather than simplify the Siting Board's review process, and will not further the objectives of the 2024 Climate Act, particularly as it relates to the siting of clean transmission and distribution infrastructure facilities.

Further, leaving local zoning outside the scope of the consolidated permit does not conform with the clear statutory terms adopted by the Legislature under G.L. c. 164, §§ 69T and 69U to ensure a comprehensive permit that encompasses all local, regional, and state approvals and authorizations. Such proposed treatment will inevitably lead to significant inefficiencies and delays in permitting needed energy infrastructure, along with the prospect of legal appeals and related uncertainty. In addition, the Companies continue to have deep interest in the proposed prefiling engagement requirements, the CBP and CBA materials presented, the implementation of

the Intervenor Support Grant Fund (the "Fund"), the development of SSC, and the practice of noticing alternative routes and sites in future proceedings. The Companies address these issues in Section III, below, and will provide input and comments on those topics when draft regulations and written guidance are issued by the Siting Board.

As part of these written comments, the Companies have performed a detailed review of the draft regulations proposed by the Siting Board staff for 980 C.M.R. 1.00, 2.00, 13.00, 14.00, and 17.00 and provide specific suggestions and modifications in Section IV, below. In addition to the discussion provided in Section IV, the Companies attach proposed redlined revisions to the draft regulations.[3]

[3] The Companies intend to provide additional comments once the preliminary draft regulations at 980 C.M.R. 15.00 and any additional guidance documents are issued. As previously stated, the Companies acknowledge that the Siting Board issued preliminary draft regulations and related guidance for 980 C.M.R. 16.00 on Friday, July 25, 2025, and requested comments thereon by August 1, 2025.

III. COMMENTS ON KEY TOPICS

As indicated above, the Companies have significant concerns about important aspects of the 2024 Climate Act for which limited amounts of information have been provided thus far. Critically, the Siting Board has not released draft regulations or guidance on: (1) the definition, scope, and application of CIAs to small and large transmission and distribution infrastructure facilities; (2) CBPs and CBAs; (3) the Fund; and (4) SSC. In addition, as identified above, the Companies believe that further discussion and consideration is necessary to properly address the treatment of zoning relief in the context of consolidated permits authorized by the 2024 Climate Act. In an effort to constructively inform the development of new and revised regulations and guidance, the Companies offer the following comments on each of these subjects below.

A. Cumulative Impact Analysis

As a governing principle, the 2024 Climate Act requires EEA and the Siting Board to develop a workable structure for the permitting of clean energy facilities that can be implemented by the statutory deadline of March 1, 2026. At this point, the Companies do not believe the CIA proposal is advanced to a level of detail, understanding, and clarity that it can be implemented by the statutory deadline. Moreover, the Companies believe that the Siting Board's proposal to go beyond the CIA framework in the Act by folding in a wide array of CIA criteria into the traditional route/site selection process is inadvisable. The Siting Board should not reform its tried-and-true route/site selection approach by attaching an untested CIA component to it; instead, the Siting Board should focus its CIA methodology on producing an informative baseline analysis of impacts and burdens experienced by affected communities and, where inequitable impacts and burdens are present, mitigating any contributing impacts and burdens from proposed projects to the extent practicable.

Such an approach is precisely what is called for in the 2024 Climate Act. Section 53 is straightforward and defines a "cumulative impact analysis" as follows:[4]

> a written report produced by the applicant assessing impacts and burdens, including but not limited to any existing environmental burden and public health consequences impacting a **specific geographical area** in which a [facility] is proposed from any prior or current private, industrial, commercial, state or municipal operation or project; provided, that if the analysis indicates that such a geographical area is subject to an existing **unfair or inequitable environmental burden** or related health consequence, the analysis shall identify any: (i) environmental and public health impact from the proposed project that would likely result in a disproportionate adverse effect on such geographical area; (ii) potential impact or consequence from the proposed project that would increase or reduce the effects of climate change on such geographical area; and (iii) proposed potential remedial actions to address any disproportionate adverse impacts to the environment, public health and climate resilience of such geographical area that may be **attributable to the proposed project**.

(Emphasis added.) The plain language of the statute is explicit and unambiguous that the focus of the CIA is on the impacts "from the proposed project" in a "specific geographical area" ("SGA") and that any remedial actions are to be directed to addressing impacts "attributable to the proposed project." These terms are subject to interpretation and definition by the agency through either a rulemaking or adjudicatory process. See Borden, Inc. v. Commissioner of Public Health, 388 Mass. 707, 716 (1983) ("[T]he choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency"), quoting Arthurs v. Board of Registration in Medicine, 383 Mass. 299 (1981). From the current status of the CIA materials, it is unclear what the definitions of key terms are (e.g., "specific

[4] This analysis "shall be developed in accordance with guidance established by" OEJE and regulations established by the Siting Board. St. 2024, c. 239, § 53. The statutory language in the 2024 Climate Act is substantially similar to comparable language from Section 58 of Chapter 8 of the Acts of 2021, *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* ("2021 Climate Act"), which modified the Massachusetts Environmental Policy Act ("MEPA") requirements in G.L. c. 30, § 62B regarding the scope and content of environmental impact reports, and we recommend that the Siting Board take a similar approach to MEPA and its protocols in implementing the CIA requirement.

geographical area," "unfair or inequitable environmental burden," and "disproportionate adverse impact"),[5] how those definitions will be applied and therefore, to date, the Companies and other stakeholders have had limited opportunities for discussion and consideration of alternative approaches to these critical issues.[6]

At the Siting Board's July 21, 2025 public meeting, staff also explained that the first step in developing a practical and workable CIA was the development of *MassEnviroScreen* tool, similar to California's *CalEnviroScreen*, which is described as a "standardized resource to identify baseline conditions, highlight disadvantaged communities, and support consistent evaluation across projects and geographies." EFSB Meeting Presentation, Slide 26. As the Companies have previously noted, the most recent updates to the *CalEnviroScreen* were adopted after a multi-month public process that included a webinar and six public workshops on the draft revisions during which stakeholders could provide input.[7] The Companies request additional information on the *MassEnviroScreen* and a webinar to educate stakeholders on its use prior to further development and implementation. Stakeholders should have an opportunity to review it in detail and to assess underlying data sources, proposed weightings, and other key analytical inputs before the tool is adopted for use in the Siting Board's adjudicatory proceedings.

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5 However, based on discussion at the July 21 meeting, the Companies are concerned that the definition of SGA and "unfairly burdened area" could be so broad as to include every part of every community where utility infrastructure may be located. Specifically, the presentation indicated that a CIA could be triggered if a "proposed project or activity will occur **in or near** a[n unfairly burdened area]." EFSB Meeting Presentation, Slide 27 (emphasis added). Because utility infrastructure is necessarily located throughout all communities in the Commonwealth, it is critical that overbroad terminology such as "in or near" does not serve to impede the development of necessary clean transmission and distribution infrastructure.

6 The Companies interpret the 2024 Climate Act to establish the CIA as an impact assessment only and *not* a route/site selection tool. However, the CIA presentation at the July 21 meeting suggests that the CIA is intended to be developed as a process to evaluate a wide array of potential routes and sites. The Companies do not support this approach because it would be extremely costly and complex to implement and it goes well beyond the legislative directives in the 2024 Climate Act. To avoid undue complexity in Siting Board applications and potential appeals, the Companies urge the regulations to reflect the specific statutory authority as granted by the Legislature.

7 https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40

Similarly, the Siting Board's July 21 presentation also included a case study using the Eversource Sudbury-to-Hudson transmission project previously approved by the Siting Board. EFSB Meeting Presentation, Slide 89. However, without specific information about the methodology and its application, the Companies are unable to determine whether it is possible (and, if so, how) to replicate the presentation's scoring and weighing CIA process for Sudbury-Hudson and then appropriately apply that CIA to pending and future projects.[8] Moreover, it is unclear whether such a comprehensive CIA must be undertaken for every route or site under consideration, or just specifically proposed and noticed alternative routes or sites.

Regarding the SGA to be studied in a CIA, it appears that the Siting Board is proposing a parameter of a one-mile radius from a proposed transmission line or substation. The materials and presentation provided to date on CIAs do not provide a rationale for this distance or include other criteria for establishing the SGA. One mile is too broad and inconsistent with the statutory language. The study area should be commensurate with the scope of potential impacts and burdens that result from the specific type of project. For utility infrastructure, impacts are localized and largely construction-related. The Companies suggest that a good proxy for the SGA would be consistent with the typical notice requirement associated with these types of infrastructure facilities in Siting Board proceedings, i.e., 300 feet for a transmission line and ¼ mile for a substation. Accordingly, more consideration and discussion is needed on the size of the SGA that will apply to different types of projects for CIAs.

[8] It bears noting that, in the Sudbury-Hudson example, the "unfairly burdened area" triggering the mock CIA for the SGA was not located directly within or immediately adjacent to the project itself, thereby demonstrating the necessity of providing definitions for these terms and incorporating stakeholder feedback. Further, the Sudbury-Hudson project was a single transmission line in a rural/suburban location and replicating this in a dense urban environment for a project with new and remote substations and multiple new transmission lines, such as Eversource's Greater Cambridge Energy Program (EFSB 22-03/D.P.U. 22-21), as well as a variety of upcoming project in Greater Boston, may not be easily achievable.

The Companies are developing clean energy infrastructure applications to be submitted during 2026 and 2027 pursuant to the new permitting structure created by the 2024 Climate Act. In the absence of either guidance or draft regulations addressing the CIA, any information as to when a future *MassEnviroScreen* might be available for review and testing, or information on the workings of the Sudbury-Hudson case study, it is unrealistic to expect applicants to provide the type of CIA apparently contemplated by the Siting Board for projects filed in 2026-2027. The Companies recommend that the Siting Board focus on a workable structure consistent with the requirements of the 2024 Climate Act that can be developed for immediate implementation in 2026, perhaps based on standards currently in use by other state agencies (e.g., MEPA) for assessing "unfair or inequitable environmental burden," and "disproportionate adverse impact."

The interim adoption of standards and practices consistent with those of other agencies would be consistent with the 2024 Climate Act and would eliminate a steep learning curve for both applicants and other participants in Siting Board reviews. It would also allow for the future development and refinement of CIA requirements through guidance materials and case precedent (instead of formal rules) with the involvement of all stakeholders (state/regional/municipal agencies, utilities, private developers, non-governmental organizations), subject to well-established administrative law principles. The Siting Board's existing environmental analyses have been developed over several decades and refined to account for new technologies and methodologies over time. These processes have consistently evolved to ensure reasonable application across the Commonwealth, have never been the subject of a prescriptive set of rules, and have been consistently upheld by the Supreme Judicial Court ("SJC") on appeal. See, e.g. Johnson v. Energy Facilities Siting Bd., 495 Mass. 197, 205 (2025); Conservation Law Found. v. Energy Facilities Siting Bd., 494 Mass. 594 (2024); GreenRoots, Inc. v. Energy Facilities Siting

Bd., 490 Mass. 747 (2022); Town of Sudbury v. Energy Facilities Siting Bd., 487 Mass. 737, 754 (2021). The Companies suggest that the development of CIA expectations through guidance materials and real-world adjudicatory processes would be the most effective way of expeditiously implementing and applying a workable and agile system.

While the above descriptions are not a complete list of the Companies' concerns regarding the CIA presentation, based upon the above examples, it appears that the Siting Board's current direction on CIAs is inconsistent in fundamental respects with the purpose of the 2024 Climate Act – to streamline and expedite the permitting of necessary clean energy infrastructure in the Commonwealth to meet climate change goals. The Companies understand and appreciate the objective of developing a full-scale method for attempting to anticipate every scenario and every impact; however, such a CIA process may be impractical to achieve and simply cannot be developed in a manner that streamlines permitting within the schedule set forth by the Legislature. Thus, the Companies recommend implementing a more flexible approach for immediate implementation and, in parallel, developing a more detailed CIA process using *MassEnviroScreen* as part of a subsequent rulemaking process after the 2024 Climate Act's initial implementation in 2026.

B. Prefiling Engagement, Intervenor Support Fund, CBPs/CBAs

On May 8, 2025, the Companies provided extensive comments in response to the Siting Board's straw proposals, guidance, and information provided in connection with the April 24, 2025, stakeholder session on the topic of prefiling engagement, the Fund, and CBPs and CBAs. At the July 21, 2025, Siting Board meeting, staff presented additional information on the concepts and background informing the pending draft regulations. While the Companies are currently reviewing those materials and the draft regulations issued on Friday, July 25th, and will comment

on them in more detail later, the Companies write now to emphasize a few key principles that are imperative to be included in the implementing regulations.

- *Prefiling Engagement*

In their May 8th comments, the Companies emphasized their ongoing commitment to meaningful engagement, informed by the Commonwealth's longstanding environmental justice ("EJ") policies, and noted their belief that the Companies' respective outreach practices already achieve the substantive objectives contained in the 2024 Climate Act. The Companies highlighted three specific concerns with the Siting Board's straw proposal: (1) the Phase 1/Phase 2 construct in the straw proposal, which is unnecessary because engagement is an iterative, two-way, continuous process, and the Companies' existing focus on meaningful engagement ensures that key stakeholders (especially municipal professionals and representatives in affected host communities) have an opportunity to weigh in on project design; (2) the stated timeframes, which should be guidelines and suggestions, not rigid requirements subject to strict enforcement; and (3) the prefiling requirements, which the Companies noted should be limited to actions that are within the Companies' control; namely, municipalities or project opponents should not be able to hold up the filing of a (perhaps controversial) project by refusing to meet or to self-certify to the Companies' engagement efforts, or to have any expectation or requirement of an executed CBP or CBA at the prefiling stage of a project's review.

Based on the Companies' review of the July 21st Staff Presentation, staff have heard the Companies' concerns and appear to be contemplating regulations that would be more flexible, workable, and effective. For example, it appears that the Phase 1/Phase 2 paradigm has been eliminated, and the timeframes and other requirements specifically referenced on pages 62-71 of the July 21 Staff Presentation are more effective, and consistent with both the iterative nature of

project development and the 2024 Climate Act. The Companies are grateful for the responsiveness shown in these changes, and support the prefiling consultation and engagement requirements as set forth on pages 62-71 of the July 21 Staff Presentation. See EFSB Meeting Presentation, Slides 62-71.

- *The Fund*

Based on the Companies' reading of the Siting Board's straw proposal for the Fund that was discussed at the April 24th stakeholder session, the Companies noted specific concerns with regard to the following areas: (1) use of funds for qualifying entities; (2) allocation of funding between entities; and (3) ensuring ongoing oversight. The July 21 Staff Presentation does not provide additional insight on how these topics of concern will be addressed in the forthcoming regulations. Accordingly, the Companies anticipate providing additional comments when draft regulations are issued.

- *CBPs/CBAs*

The Companies are committed to incorporating appropriate mitigation measures into their projects to avoid, minimize, and mitigate project-related impacts, consistent with considerations of customer affordability. The Companies maintain that there should be no requirement that a CBP or CBA be required for all projects that come under Siting Board review. Many such projects, including distribution work and transmission upgrades, replacement and rebuild projects, will be limited in scope and impacts, so that they do not warrant a full-scale CPB/CBA. There is no such requirement in the 2024 Climate Act; as a result, there should be no such requirement in the Siting Board's regulations. The Companies believe that the well-understood mitigation hierarchy can address impacts through avoidance, minimization, and mitigation. In addition, the Siting Board should maintain its practice of refraining from inserting itself into any private negotiations that may develop between the parties. When the Siting Board deems it appropriate, it may direct a

project proponent to enter into good-faith negotiations for a CBA (with no directive that an agreement must be consummated), provided that any such CBA should be limited to measures to mitigate project-related impacts and further enhance project-related energy and environmental benefits to the affected community. See NSTAR Electric Company d/b/a Eversource Energy, EFSB 14-04A/D.P.U. 14-153A/14-154A at 99 (Condition AA) (2021). The Companies expect that the forthcoming regulations will reflect this understanding of the 2024 Climate Act and the Siting Board's precedent.

C. Site Suitability Criteria

As stated in the 2024 Climate Act, clean utility transmission and distribution infrastructure is exempted from site suitability analysis, except when it is located in newly established public rights-of-way ("ROWs"). St. 2024, c. 239, §§ 5, 23(b)(iv). The Companies are appreciative that the EEA and Siting Board current proposals recognize this important provision. As such, the Companies understand the SSC guidance and regulations will be applicable only to small and large clean transmission and distribution infrastructure that is being located in newly established public ROWs, which is anticipated to be an infrequent occurrence.[9] However, the Companies remain very interested in how SSC set the stage for and interact with the complex CIA issues discussed above. This is particularly so with regard to establishing scoring and weighting for potential routes and sites. There appears to be the potential for significant overlap between the SSC undertaken at the outset of project development, route and site scoring that occurs to identify and refine ultimate

[9] While the Companies emphasize that for large and small clean transmission and distribution, the applicability of SSC is limited to such facilities in "newly established public rights of way," G.L. c. 21A, § 30 (inserted by Section 5 of the 2024 Climate Act), and the Siting Board's guidance document properly acknowledges this statutory language (see 980 C.M.R. 13.00 Regulatory Guidance, Section X at 21), the preliminary regulations themselves do not consistently acknowledge this clear language. Such discrepancies must be addressed in the issuance of SSC regulations and guidance and should also be reflected in the next draft of Siting Board regulations in 980 C.M.R. 13.00.

project locations, and the CIA that must occur during the development and analysis of potential routes and sites. A clear roadmap demonstrating the anticipated timelines and overlap for each process, beginning with SSC, will be integral to ensuring that proposed projects are developed and then reviewed in a timely and efficient manner.

D. Noticed Alternative Routes and Sites

Further, the Companies recommend eliminating any presumption that utility transmission and distribution infrastructure must notice, and the Siting Board must consider, noticed alternative routes or sites. The longstanding practice of noticing and considering alternative routes or sites is simply not feasible or appropriate in the time-limited, consolidated permitting process established by the 2024 Climate Act.[10] Indeed, as a practical matter, for certain projects, such as lengthy linear transmission line through multiple communities, each alternative is fundamentally an entirely different project, in distinct geographic locations, with unique impacts. As a practical matter, the Siting Board, the Applicant, the reviewing agencies, and the public cannot review and permit multiple, duplicative projects in a single, consolidated review process. Further, noticing alternative locations can mislead the public about the scope of the proceeding and draw attention away from the core proposal and a thorough analysis of impacts and appropriate mitigation.

E. Zoning Considerations

The Companies have significant concerns regarding the Siting Board staff's interpretation of the scope of a "consolidated permit," as that term is defined in the 2024 Climate Act, and submit that, by excluding zoning relief from the Siting Board's consolidated permit, the staff's current

[10] The Siting Board itself has stated that, while it has required past applicants to provide a noticed alternative route for their proposals, the practice of doing so is not mandated by Section 69J and that it has accepted that a noticed alternative route may not be warranted in all cases. Colonial Gas Company d/b/a National Grid, EFSB 18-01/D.P.U. 18-30, at 40-41 (2019); Colonial Gas Company d/b/a National Grid, EFSB 16-01, at 28 (2016).

interpretation is legally incorrect. Section 52 of the 2024 Climate Act, which inserts the new definition in G.L. c. 164, § 69G, defines a "consolidated permit" as a "permit issued by the [Siting Board] to a large clean energy infrastructure facility or small clean energy infrastructure facility that includes ***all*** municipal, regional and state permits that the large or small clean energy infrastructure facility would otherwise need to obtain individually, with the exception of certain federal permits that are delegated to specific state agencies as determined by the [Siting Board]" (emphasis added). Further, as it applies more directly to the Siting Board's new consolidated process developed through the 2024 Climate Act, in G.L. c. 164, § 69T and § 69U (inserted by Section 74 of the 2024 Climate Act), the Legislature made clear that a "consolidated permit, if issued, shall be in the form of a composite of ***all*** individual permits, approvals or authorizations that would otherwise be necessary for the construction and operation of the [clean energy infrastructure facility] . . ." G.L. c. 164, § 69T(i) (large clean energy infrastructure facility) and § 69U(c) (small clean transmission and distribution infrastructure facility) (emphasis added).

The Legislature could not have been clearer on its intent that a consolidated permit would (with the one exception noted above that is not relevant here) include "***all***" local, regional, and state permits, licenses, approvals, and authorizations otherwise necessary to construct a project.[11] Consistent with SJC precedent, it is fundamental in interpreting statutes that words must be giving their plain and usual meaning. Providence and Worcester Railroad Co. v. Energy Facilities Siting Bd., 453 Mass. 135, 145 (2009) (finding that "new" means "new"). Where, as here, the Legislature has spoken clearly, the words of the statute must be given effect and accorded their normal and ordinary meaning, i.e., "all" means all; it does not mean some.

[11] Zoning relief for energy infrastructure, whether from local zoning boards for variances, special permits, or other types of authorization, or from the Siting Board itself in the form of a zoning exemption, is frequently required for utility T&D facilities. Such zoning relief is undeniably a "permit," "approval," or "authorization" within the broad scope of G.L. c. 164. §§ 69G, 69T, and 69U.

Even if the Legislature's definition of "consolidated permit" or the express terms of Section 69T and Section 69U were somehow ambiguous, which they are not, the Siting Board has ample authority to include any appropriate zoning approvals, including zoning exemptions, in the ambit of a consolidated permit based on the fact that the language of Section 69T and Section 69U is effectively the same as the language found in the Siting Board's existing Certificate statute. See, e.g., Consolidated Cigar Corp. v. Department of Pub. Health, 372 Mass. 844, 855 (1977) (where an agency is "vested with broad authority to effectuate the purposes of [an] act . . . the validity of a regulation promulgated thereunder will be sustained so long as it is reasonably related to the purposes of the enabling legislation") (internal quotations omitted). Indeed, longstanding statutory language dictates that a Certificate, "if issued, shall be in the form of a composite of **all** individual permits, approvals or authorizations which would otherwise be necessary for the construction and operation of the facility…" G.L. c. 164, § 69K (emphasis added).[12] In interpreting that language, the SJC has clearly found, without limitation, that the language of Section 69K is "an express legislative directive to the [Siting Board] to stand in the shoes of **any and all State and local agencies** with permitting authority over a proposed 'facility'[.]" Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Board, 457 Mass. 663, 678 (2010) (ruling Siting Board has authority to issue certificate including a state Chapter 91 license) (emphasis added). Given the clarity of: (a) the Legislature's statutory language; and (b) the SJC's related precedent, there is no room for a contrary interpretation.

The Siting Board itself has interpreted its Certificate authority on multiple occasions to be comprehensive, including most notably the authority to grant local zoning relief when such relief has been requested by a party. See Footprint Power, EFSB 13-1 (2014) (granting local approvals,

[12] Notably, the same all-inclusive language appears in G.L. c. 164, § 69K1/2 as applicable to jurisdictional generating facilities.

including a zoning-related special permit); IDC Bellingham, EFSB 01-1 (2001) (granting five zoning-related special permits). There is no basis for the Siting Board to interpret the same language in the Certificate statute, G.L. c. 164, § 69K, differently from how that language is interpreted in the 2024 Climate Act in G.L. c. 164, §§ 69T, 69U. This is particularly true when the express purpose of the 2024 Climate Act is precisely to develop a consolidated, one-stop shopping process to expedite the permitting of clean energy infrastructure.

The Companies strongly recommend that the Siting Board revisit its legal analysis regarding the scope of a consolidated permit as it relates to zoning considerations.[13] Based on a plain reading of the statute, and consistent with clear precedent of both the SJC and Siting Board caselaw, the Siting Board has plenary authority pursuant to Section 69T and Section 69U to include both zoning relief ***and*** needed zoning exemptions in its consolidated permits to construct jurisdictional clean energy facilities. The Siting Board's current interpretation is inconsistent with the plain language of the statute, its previous interpretations of the same language in the Certificate statute, and the SJC's precedent regarding the scope of the Siting Board's authority in this context. Accordingly, the Companies urge the Siting Board to revise its treatment of zoning authority within the context of the consolidated review process.

[13] Notably, in its April 2025 straw proposal concerning the Application, the EFSB provided a listing of the state, regional, and local permits that would be a part of the consolidated permit. https://www.mass.gov/doc/2024-ca-application-proposal/download. See page 18, Table 1. There it states: "Table 1 does not include an exhaustive list of all possible permits, but rather highlights the state, regional, and local permits which staff anticipate the EFSB may include with its consolidated permits." Then, on page 21, the straw proposal lists site plan reviews, special permits, variances, and zoning board appeals as the types of zoning-related relief that would be eligible for inclusion in its consolidated permit. The Siting Board staff's Table 1 reflects that proper scope of consolidated approvals.

IV. SPECIFIC COMMENTS ON DRAFT REGULATIONS

The Companies appreciate the detailed and comprehensive amendments to existing regulations and proposed draft regulations that were posted to the Siting Board's website for sections 980 C.M.R. 1.00, 2.00, 13.00, 14.00, and 17.00. Specific comments on each of these proposed draft regulations are provided below.

A. 980 C.M.R. 1.00, Conduct of Adjudicatory Proceedings

The Companies have reviewed and support the draft amendments to 980 C.M.R. 1.00 and have attached limited redlined edits (in green) in Attachment A, provided herewith. These regulations provide a necessary description of the requirements and processes to be applied by the Siting Board through its adjudicatory processes. To help refine and clarify specific provisions, the Companies suggest:

- The definition of "Facility" in 980 C.M.R. 1.01(4), subpart (e) should include "such units below a minimum threshold size as established by regulation" to include a reference to the current regulation.
- In 980 C.M.R. 1.02(3) regarding "Segmentation," the word "project" should not be capitalized because (unlike in MEPA's regulations) project is not a defined term and doing so may cause confusion. Recognizing that the draft regulation describes a five-year window for purposes of determining whether there is segmentation, further guidance on how that five-year period will be determined would be appropriate (e.g., construction start date vs. anticipated in-service date vs. need date).
- With regard to the "Notice of Adjudication" requirements at 980 C.M.R. 1.04(3)(f), the Companies applaud the standardization of notice and publication requirements, noting that it will provide consistency and predictability for Applicants and stakeholders. The Companies also note that the language that "Renters shall be determined by using publicly available data sources (such as MassGIS)…" should be broadened to indicate that "Landowners and renters shall be determined by using publicly available data sources (such as MassGIS)…."
- 980 C.M.R. 1.06(h) creates a continuing obligation to supplement answers during the Siting Board proceeding until the issuance of the Final Decision. The language of this requirement, however, is very broad and could create burdensome and unnecessary updating of the record for reporting requirements that may have no material impact on the record of the proceeding. Accordingly, the Companies recommend including language

that would require such information to be "new" and "material" and suggest that such obligation should exist only through the submission of all briefs in the case.[14]

- The proposed regulatory amendments to 980 C.M.R. 1.09 regarding supplemental procedures include processes for compliance filings and project changes at subparts (12) and (13), respectively. The Companies suggest adding language regarding the expected timeline for a Presiding Officer ruling on these matters, as indicated in Attachment A – i.e., "within ten business days of the last applicable filing by the parties."
- Lastly, 980 C.M.R. 1.10 requires Applicants to include a "Decommissioning and Site Restoration Plan" in their submissions to the Siting Board. The Companies respectfully request this requirement be applied to large and small clean transmission and distribution facilities only on a case-by-case basis. The reasons for this are simple – in most instances, the Companies do not "decommission" their transmission and distribution infrastructure but, instead, maintain, upgrade, and replace such equipment, pursuant to applicable permitting requirements. Further, in many instances, the cost and impacts of removing existing facilities (such as underground transmission lines) may be more substantial than the arguable and, oftentimes, limited benefit of such removal. Requiring an extensive plan for something not undertaken by utility companies in all cases is unnecessary.

B. 980 C.M.R. 2.00, General Information and Conduct

The Companies have reviewed and support the draft amendments to 980 C.M.R. 2.00 and have attached limited redlined edits (in green) in Attachment B, provided herewith. These regulations provide a clear and appropriate delineation of the Siting Board's authority and standards, as expanded by the 2024 Climate Act. To help refine and clarify specific provisions, the Companies suggest:

- 980 C.M.R. 2.02(3), regarding the scope of the Siting Board's review states: "The Board shall also consider the Applicant's reasonable efforts to engage in discussions with municipal representatives or affected stakeholders hosting such infrastructure regarding a community benefit plan or community benefit agreement." The Companies are concerned about limiting this required review to CBPs and CBAs, particularly when the draft regulations and potential regulatory guidance on CBPs and CBAs have not been publicly released. Thus, the Companies suggest broadening this language as follows: "The Board shall also consider the Applicant's reasonable efforts to engage in discussions with municipal representatives or affected stakeholders hosting such infrastructure regarding

[14] This approach will allow parties to brief the matter based on a complete evidentiary record and avoid new evidence coming into the proceeding on an ad hoc basis after briefing, which could prompt requests to protract the proceeding and compromise the established timelines for final decisions as dictated by the Legislature. If parties wish to reopen the record for new evidence, the Siting Board already has an existing regulation at 980 C.M.R. 1.09(1) pursuant to which such requests can be processed.

avoidance, minimization, and mitigation of impacts, which may include a community benefit plan or community benefit agreement."

- 980 C.M.R. 2.02(6), with respect to the Siting Board's MEPA exemption, states the following: "This section shall apply to any state agency issuing, in relation to an application or petition under said M.G.L. c. 164, §§ 69T to 69V inclusive, a federal permit that is delegated to that agency and determined by the Board to be excluded from the definition of consolidated permit in M.G.L. c. 164, § 69G." The Companies are unclear on the meaning of this provision and whether it means that a state agency issuance of a federally-delegated permit would or would not constitute a separate state action that would trigger MEPA jurisdiction over certain Siting Board jurisdictional projects. The Companies request clarity on this language and encourage the Siting Board to remain consistent with the language of the 2024 Climate Act.
- The Siting Board's requirements for "public meetings" are set forth in 980 C.M.R. 2.04(1) and the Companies suggest adding the following sentence to that section: "Each calendar year, the Board shall schedule a standing monthly meeting or meetings to ensure timely consideration of Applications." Having regularly scheduled meetings in a predictable manner will help streamline the process of coordinating the schedule of 11 Siting Board members to ensure that a necessary quorum can be achieved and that the applications pending before the Siting Board do not become constructively approved because of a foreseeable and preventable scheduling issue. In addition, this predictability may increase the ability of stakeholders to participate in the process.
- 980 C.M.R. 2.06(3) sets forth the Siting Board's required findings and subsection (d) governs large and small clean transmission and distribution infrastructure, requiring that such facilities "increase the capacity of the system." As the Siting Board is aware, the term "capacity" has several distinct meanings in the energy industry. To avoid confusion, the Companies suggest adding additional language to this terminology, as follows, to allow the Siting Board broad authority to consider various need and electric system considerations articulated in the 2024 Climate Act: "in the case of large clean transmission and distribution infrastructure facilities and small clean transmission and distribution infrastructure facilities, the infrastructure or project will increase the capacity of the system, recognizing considerations of reliability, resilience, stability, asset condition, and flexibility to interconnect large electricity customers, electric vehicle supply equipment, clean energy generation, clean energy storage, or other clean energy generation sources…."

C. 980 C.M.R. 13.00, Consolidated Permit Applications

The Companies have reviewed the Siting Board's new draft regulations at 980 C.M.R. 13.00 implementing its new consolidated permit authority. The Companies appreciate the thoughtfulness and thorough consideration that went into defining the application and issuance process, as well as anticipating topics that might cause confusion and potential complications for applicants and other participants. For example, the Companies applaud the inclusion of a

"Conditions Conference" (see 980 C.M.R. 13.06(3)(j), 13.06(6)) prior to hearings, which will greatly narrow the nature and scope of the agency's review and focus the parties' attention on resolving outstanding issues. However, the Companies are concerned that having such defined and prescribed roles and requirements are unnecessary at this time and may complicate and unnecessarily lengthen proceedings. For example, the Companies are unsure of the benefit of defining and distinguishing between a "Permit Enforcement Agency" and a "Permit Advisory Agency" at this point in time and granting them prescribed roles, responsibility or status (see 980 C.M.R. 13.01(4), 13.06(2)). Thus, the Companies suggest the regulations generally outline the process, avoid unnecessary specificity, and allow the process to develop organically based upon how stakeholders, such as state, regional, and municipal agencies, engage in the process. The Companies have attached redlined edits (in green) in Attachment C.

The Companies make the following comments and suggested modifications as described below:

- First and foremost, the Companies recommend striking 980 C.M.R. 13.04 and 980 C.M.R. 13.10(2) on the topic of zoning. As discussed above, this is a critical legal issue that merits revisiting and its inclusion in the regulations at the present time requires substantial revisions.
- Also, there are several references in these regulations to SSC and the Companies request that regulatory language be added to recognize that in many instances SSC may not be applicable (i.e., for large or small clean transmission and distribution infrastructure not located in a newly-established public right of way). See 980 C.M.R. 13.03(11) and (12).
- As a general matter, there are various instances where the terminology is not used consistently (e.g., "Local Consolidated Permit" v. "Consolidated Local Permit"; also "EFSB Consolidated Permit" v. "Consolidated Permit"). For clarity, the Companies suggest confirming the particular terms being used in a consistent manner.
- The regulatory definition of "Construction" in 980 C.M.R. 13.01(4) is inappropriately vague and would include any and all activities at any time in the vicinity of any potential routes or sites. As written, the language could include standard permitting activities and information gathering including, inter alia, wetland delineations, surveys, soil boring and geotechnical analysis, and ambient noise analyses. Such activities are taken in furtherance of the permitting process itself and cannot be considered "construction" necessitating the permit for which they are being undertaken. Accordingly, the Companies suggest

modifying the language as follows: "Construction means work on the proposed project performed by the Applicant or on behalf of the Applicant on the project site or along the project route, but shall not include contractual obligations to purchase such facilities or equipment or preliminary work associated with, and in furtherance of, project permitting (e.g., soil boring, surveys)."

- The Companies recommend removing "EFSB Construction Permit" as a defined term. Importantly, the 2024 Climate Act authorizes the Siting Board to issue a "consolidated" permit and it appears that the term "construction permit" in the statute refers to the other state, regional, and local permits that would otherwise be necessary. To create the term "EFSB Construction Permit" by regulation will lead to confusion and is unnecessary (because this term is used again only in 980 C.M.R. 13.10).
- 980 C.M.R. 13.03(7) sets forth various considerations for establishing the need for a proposed project. The Companies suggest adding "Federal policy" to that list. Indeed, the Companies are subject to various Federal requirements and standards, including the obligation to provide transmission interconnections, which are often implicated in, or establish the need for, a particular project.
- Because 980 C.M.R. 13.03(14) and (19) reference decommissioning and site restoration requirements, the Companies request that the phrase "if applicable" or "as applicable" be included to these sections, consistent with the Companies' above suggestion to make such requirements applicable on a case-by-case basis for utility infrastructure (see 980 C.M.R. 1.10).
- 980 C.M.R. 13.03(15) requires an assessment of Climate Change Impacts that appears to be duplicative of the requirements in the previous section (Environmental Impacts, 13.03(14)) and contains a list of requirements that include impacts caused by the project, impacts on the project, and non-climate impacts. The Companies recommend simplifying this by removing the climate impact requirements from (14), clarifying the general intent of (15), and leaving the details to the guidance.
- 980 C.M.R. 13.05(2)(b) addresses the necessary information Applicants must provide relative to required state agency permits. The Companies suggest making the following edit to the language for consistency and clarity: "The Applicant shall expressly identify duplicative information or conflicting requirements across Permits included in the Application. The Applicant shall provide a proposed resolution of such conflicting and/or duplicative requirements, with an explanation."
- 980 C.M.R. 13.08(1)(b) sets forth conditions for inclusion in a Consolidated Permit, including standard conditions and "threshold-specific" conditions. The Companies suggest broadening the language for threshold-specific conditions to allow for consideration of specific issues other than "technology," as follows: "The Board may apply each Threshold-specific condition based upon use of technology of a project or on another relevant threshold."
- The draft rules at 980 C.M.R. 13.03(14) call for an application to meet the specifications in a separate guidance document. However, the current draft of that guidance document calls for extremely detailed analysis of a wide range of issues, many of which will not be relevant to a given project. The Companies remain concerned that the completeness

determination aspect of the Siting Board's process could become inappropriately extended, encompassing some of what should properly occur during the evidentiary portion of the proceeding. Thus, the final regulations and guidance document should clearly state that an application will be deemed complete if it addresses all material aspects of the project and its permitting, recognizing that the Siting Board's adjudicatory process itself will develop a comprehensive record on the most important project issues to help determine whether a given application satisfies the Siting Board's standards for approval.

- 980 C.M.R. 13.09(1)(d) sets forth that the Presiding Officer may ask for supplemental information in order to inform the Completeness Determination. The Companies recommend adding the following statement to clarify the burden of production on an Application at the Completeness Determination stage of a proceeding: The burden of production at this stage of the proceeding is administrative only and focused solely on whether the information exists and has been provided to the Presiding Officer. The Completeness Determination shall not be an evaluation of the substantive merits by the Presiding Officer regarding any information provided by the Applicant to facilitate the Completeness Determination.
- The Companies suggest editing the language of 980 C.M.R. 13.10(3) to include the specific language of the 2024 Climate Act and remove refence to an "EFSB Construction Permit," as discussed above. The language would then read as follows: "The Board's issuance of an EFSB Consolidated Permit shall be a composite of all individual ~~P~~permits, approvals or authorizations that would otherwise be necessary for the construction and operation of an LCEIF or SCEIF~~, including the EFSB Construction Permit~~."

D. 980 C.M.R. 14.00, De Novo Adjudication

The Companies appreciate and support the draft regulations issued in 980 C.M.R. 14.00 on the topic of de novo adjudications of consolidated local permit applications. The Companies suggest a few revisions, provided in redlined edits (in green) in Attachment D, which are intended to provide clarity and to ensure that the regulations do not improperly conflict with the 2024 Climate Act.

- 980 C.M.R. 14.02(3)(b) establishes the form of request for a de novo adjudication where the request is made by a local government. The Companies have proposed revisions to maintain the distinction between the "petitioner" and the "Applicant." An *Applicant* (as

defined in 980 C.M.R. 1.01(4))[15] is the project proponent who submits an application or petition to the Siting Board or the local government. See also 980 C.M.R. 14.02(1) ("No work shall be undertaken by the Applicant until the Director has issued a final decision on the de novo adjudication request"). A "petitioner" is the entity that that petitions for de novo adjudication, and could be either the Applicant or the local government (or perhaps a third party). See 980 C.M.R. 14.02(3)(a) ("The petitioner shall provide a copy of the petition for a de novo adjudication to the local government having taken action on the application, and to the [A]pplicant (if different than the petitioner)"). This distinction gets confused by the statement in 980 C.M.R. 14.02(3)(b) that, "Before the Siting Board, the Applicant is the petitioner." The Companies submit that if it is the local government that is seeking a de novo review by the Director, the local government should bear the responsibility in the first instance to provide the relevant information to the Director. Indeed, 980 C.M.R. 14.04(1) requires that "The local government shall file the documents produced for the consolidated local permit process with the Siting Board." This makes particular sense in circumstances where the local government must include "a statement explaining why [it] lacks the resources, capacity, or staffing to review the small clean energy infrastructure permit application within twelve months." 980 C.M.R. 14.02(3)(b)(5). When the Companies are themselves the relevant petitioner, they would be more than willing to help facilitate the filing of the necessary information by the local government. The proposed revisions to 980 C.M.R. 14.02(3)(b) are intended to make clear that the local government (either directly or through the Applicant) is responsible for providing the needed information.

- 980 C.M.R. 14.03(3) sets forth how the Director will make completeness determinations in the situation where a local government has requested a de novo adjudication pursuant to 980 C.M.R. 14.02(1)(c). The Companies have made several suggested edits to this section to achieve consistency with the Companies' proposed revisions to 980 C.M.R. 14.02(3)(b) to reflect that the local government (either directly or through the Applicant) should be the entity responsible for providing the information required by the Director.

- 980 C.M.R. 14.05(1)(b) relates to the timing of decisions by the Director on requests for de novo adjudications. 980 C.M.R. 14.05(1)(b)(1) states that the "Director shall issue a decision on the request within 6 months of receipt of the application and such decision shall be final." This provision is consistent with the express language of the 2024 Climate Act and the Companies support it. See 2024 Climate Act, Section 74, inserting G.L. c. 164, § 69W(c). The next provision, 980 C.M.R. 14.05(1)(b)(2), however, states that the Director "shall issue a decision on a request from a local government for a de novo adjudication by the Director . . . within 12 months of a determination that the consolidated local permit application is complete, and such decision shall be final." There is no basis in

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[15] Under the current proposed version of 980 CMR 1.01(4) (preliminary draft), "Applicant" is defined as:

> "a person or group of persons who submits to the Board a petition to construct a facility, an application for a consolidated permit for a large clean energy infrastructure facility or small clean energy infrastructure facility, an application for a consolidated state permit for a small clean energy infrastructure facility, or a petition for a certificate of environmental impact and public need. An Applicant also means a person or group of persons who submits an application for a consolidated local permit with a municipality pursuant to 225 CMR 29.00."

the 2024 Climate Act for anything other than a six-month review by the Director of a request for a de novo adjudication pursuant to G.L. c. 164, § 69W. Accordingly, the Companies propose that 980 C.M.R. 14.05(1)(b)(2) be stricken from the regulations in its entirety.

E. 980 C.M.R. 17.00, Constructive Approval

The Companies appreciate and support the draft regulations issued in 980 C.M.R. 17.00 on the topic of constructive approvals as providing a detailed and thorough process for issuance of such approvals under the 2024 Climate Act. However, there are two provisions of the draft regulations on Constructive Approvals that include unnecessary language referencing zoning and that further complicate the legal zoning issues identified in 980 C.M.R. 13.04, as discussed above. Accordingly, the Companies suggest the following revisions, as also provided in redlined edits (in green) in Attachment E:

- 980 C.M.R. 17.01(4) provides a definition of a "Constructive Approval Permit" that includes unnecessary verbiage for purposes of providing a regulatory definition. Accordingly, the Companies suggest the following edits to that definition: "Constructive Approval Permit. A Consolidated Permit or Consolidated State Permit that the Board issues in the event of a Constructive Approval, ~~Unlike a Consolidated Permit or Consolidated State Permit issues through the regular process of 980 CMR 13.00, a~~ A Constructive Approval Permit may include both zoning relief and necessary zoning exemptions."
- 980 C.M.R. 17.03(1)(b).3 requires a "Zoning Statement," which the Companies propose simplifying as follows: "A statement of the zoning relief that the Applicant requires ~~and that the Presiding Officer has combined with the application for a Consolidated Permit or Consolidated State Permit pursuant to 980 CMR 1.09(2)~~."

V. CONCLUSION

The Companies greatly appreciate the opportunity to participate in this important proceeding and submit these comments on the Siting Board's proposed draft regulations and guidance materials. The Companies look forward to reviewing the comments of other interested stakeholders and continued participation in the remaining phases of the Siting Board's rulemaking process, including any working group or technical sessions, to better formulate a fair and reasonable set of rules, guidelines, and standards to implement the requirements of the 2024 Climate Act.

Respectfully Submitted,

NSTAR ELECTRIC COMPANY d/b/a EVERSOURCE ENERGY AND NEW ENGLAND POWER COMPANY, MASSACHUSETTS ELECTRIC COMPANY AND NANTUCKET ELECTRIC COMPANY EACH d/b/a NATIONAL GRID

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