

980 CMR: ENERGY FACILITIES SITING BOARD

980 CMR 14.00: DE NOVO ADJUDICATIONS OF CONSOLIDATED LOCAL PERMIT APPLICATION

Section

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14.01: Scope and Construction of Rules

(1) Scope. 980 CMR 14.00 shall govern the conduct of de novo adjudications of Consolidated Local Permit Applications before the Energy Facilities Siting Board. The de novo adjudication applies to consolidated local permit applications for small clean energy infrastructure facilities and shall be conducted by the Director of the Board.

(2) Application of 980 CMR 14.00. 980 CMR 1.00, the Energy Facilities Siting Board Rules for Conduct of Adjudicatory Proceedings, shall apply to de novo adjudications conducted pursuant to 980 CMR 14.00, except where 980 CMR 14.00 notes otherwise.

(3) Effective date. 980 CMR 14.00 shall take effect on March 1, 2026, and shall apply to requests for de novo adjudications after July 1, 2026.

(4) Delegation. The Director may delegate the authority to conduct the de novo adjudication, with the exception of the final decision, to a Siting Division staff member.

(5) Definitions. The definitions in 980 CMR 1.00 apply to 980 CMR 14.00.

De Novo Adjudication means an adjudicatory proceeding where the Director will consider an application for a consolidated local permit based on evidence submitted in the proceeding that may include but is not limited to the information submitted to the local government as part of the application for a proposed small clean energy infrastructure facility.

DOER Opinion means an opinion from the Department of Energy Resources regarding the local government compliance with 225 CMR 29.00 in its review of the application for consolidated local permit.

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Final Decision of Local Government means a Consolidated Local Permit issued by a Local Government or a constructive approval of a Consolidated Local Permit application, pursuant to 225 CMR 29.00.

Local Government means municipality or regional agency, including, but not limited to, the Cape Cod Commission, established by chapter 716 of the acts of 1989, and the Martha's Vineyard Commission, established by chapter 831 of the acts of 1977, that has permitting authority over small clean energy infrastructure facilities.

Local Request for Review based on Lack of Resources means a notification filed by the local government 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.

14.02 : Initiation of a De Novo Adjudication.

(1) Entities that May Initiate a De Novo Adjudication. The Director will proceed with a de novo adjudication upon petition of one or more of the following entities:

- (a) An owner or proponent of a small clean energy infrastructure facility that has received a final decision on, or a constructive approval of, a consolidated local permit application from a local government where the facility at issue plans to be sited;
- (b) Parties substantially and specifically affected by the decision of the local government on the consolidated local permit application; or
- (c) A 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.

The Director shall determine that at least one party seeking a de novo adjudication is substantially and specifically affected for the de novo adjudication to proceed. The Director will determine whether the local government has made the requisite showing that it lacks the resources, capacity, or staffing to complete its review of a small clean energy infrastructure facility's permit application within the required maximum 12-month timeframe for local government review.

No work shall be undertaken by the Applicant until the Director has issued a final decision on the de novo adjudication request.

(2) Timing to Request a De Novo Adjudication.

- (a) Petition by an entity that is substantially and specifically affected by a final decision of a local government. A request for a de novo adjudication by an owner or proponent of a small clean energy infrastructure facility or other

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party substantially and specifically affected by a final decision of a local government shall be filed within 30 days of such decision.

(b) Request by a local government. A request for a de novo adjudication of an application for a consolidated local permit shall be filed by a local government no later than 60 days after receipt of such application or any time thereafter with the consent of the Applicant.

(3) Form of Request for a De Novo Adjudication. A request for a de novo adjudication shall be made by petition to the Director.

(a) For petitions from an entity that may be substantially and specifically affected by a final decision of a local government, the petition shall include:

1. the petitioner's name and address;
2. identification of the subject small clean energy infrastructure facility project;
3. copy of the Application for a Consolidated Local Permit;
4. a copy of any action taken by the local government on the application for consolidated local permit;
5. a clear description of the basis of any objections to the local government action, including how the local government action was inconsistent with 225 CMR 29.00; and
6. relief sought, including any recommended conditions.

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 applicant Applicant (if different than the petitioner).

(b) For ~~requests~~ petitions for adjudication from a local government, the local government shall provide a copy of the request for adjudication to the Applicant for a consolidated local permit. ~~Before the Siting Board, the Applicant is the petitioner.~~ The local government Applicant shall provide to the Siting Board (either directly or through the Applicant):

1. identification of the location of the subject small clean energy infrastructure project;
2. a copy of the Application for a Consolidated Local Permit;
3. any documents received by the local government to date concerning the Application for a Consolidated Local Permit;
4. any comments on the project or recommended permit conditions; and
5. a statement explaining why the local government lacks the resources, capacity, or staffing to review the small clean energy infrastructure facility permit application within twelve months.

14.03 : Notice and Parties.

(1) Notice. The Director shall determine recipients for the Notice. The Director shall allow for written comments on the adjudication. The Director may, in their discretion, provide for a public comment hearing on the adjudication, and such

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hearing may be conducted virtually. The Director may, in their discretion, schedule a site visit.

(2) Parties. The Applicant, and the local government shall automatically be parties to the de novo adjudication. Other entities seeking intervention shall file a request for intervention consistent with 980 CMR 1.05, demonstrating how they may be substantially and specifically affected in the consolidated local permit application de novo adjudication. Such petition must be filed consistent with the Notice issued by the Director. The entity petitioning for a de novo adjudication may file a response to requests for intervention in seven days from the filing of the request.

(3) Completeness Determination. Completeness determinations will be done in accordance with 980 CMR 13.09. For requests for a de novo adjudication filed by a local government pursuant to 14.02(1)(c), the local government (either directly or through the Applicant) shall provide the documents in 14.02(3)(b) to the Board within 14 days of the Director's determination that the local government has made the requisite showing that it lacks the resources, capacity, or staffing to complete its review of a small clean energy infrastructure facility's permit application within the required maximum 12-month timeframe for local government review. Within 30 days of the Applicant filing of the documents in 14.02(3)(b), the Director shall determine whether the application is complete, pursuant to 225 CMR 29.00. If the Director determines that the application is not complete, the Director shall identify the additional required information or documents, and the applicant-local government shall have 30 days to complete the application. If the applicant-local government does not complete the application in 30 days, the application shall be rejected, without prejudice.

(4) Procedural Conference. The Director may schedule a procedural conference to inform the scope of the proceeding, or other procedural matters governing the de novo adjudication.

(5) Procedural Order. The Director shall issue a procedural order (i) identifying additional parties to the adjudication, (ii) establishing the scope of the adjudication, (iii) establishing a procedural schedule, and (iv) addressing any other procedural matters governing the de novo adjudication.

14.04 : Procedure.

(1) Evidence. The local government shall file the documents produced for the consolidated local permit process with the Siting Board. Siting Board staff may request additional information. Parties may introduce additional evidence for consideration by the Director. All evidence introduced in the de novo adjudication shall be accompanied by an affidavit. Such an affidavit must comply with the 980 CMR 1.05 requirement including a signature by authorized representative attesting that the representative has read and reviewed the document and all statements contained therein are true.

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- (2) Evidentiary Hearing. The Director may schedule an evidentiary hearing. The evidentiary hearing may be conducted virtually.
- (3) DOER Opinion. The Director may request an opinion from the Department of Energy Resources whether the local government complied with 225 CMR 29.00 in its review of the application for consolidated local permit.
- (4) Briefs. The Director may provide for oral argument at the hearing or the filing of written briefs by parties.

14.05 : Decision.

- (1) Decision by Director.
 - (a) Standard for Decision. The Director shall review the request and the local government's final decision for:
 - 1. consistency with the regulations at 225 CMR 29.00 adopting statewide permitting standards for such facilities established by the Department of Energy Resources pursuant to M.G.L. c. 25A, § 21; and
 - 2. consistency with M.G.L. c. 164, § 69H.
 - (b) Timing of Decision.
 - 1. The Director shall issue a decision on the request within 6 months of receipt of the application and such decision shall be final.
 - 2. ~~The Director shall issue a decision on a request from a local government for a de novo adjudication by the Director pursuant to M.G.L. c. 25A, § 21(g), within 12 months of a determination that the consolidated local permit application is complete, and such decision shall be final.~~
- (2) If the Director finds that the local government's decision is inconsistent with (a) the regulatory standards established by the Department of Energy Resources at 225 CMR 29.00, or (b) M.G.L. c. 164, § 69H, the Director may issue a final decision that supersedes the local government's prior decision and impose new permit conditions that are consistent with the laws of the Commonwealth.

14.06 : Appeal of Director's Decision.

- (1) The decision of the Director on a request for a de novo adjudication of a consolidated local permit application may be appealed within 20 days of the Director's decision to the Supreme Judicial Court. Such appeal shall be governed by M.G.L. c. 164, § 69P.

REGULATORY AUTHORITY

980 CMR 14.00: M.G.L. c. 30A and c. 164, §§ 69H, 69W.