Comments on EFSB Regulations

Submitted by Michael DeChiara, July 2025

SECTION 1: ADJUDICATORY PROCEEDINGS

1.01 (4)
Facility – I see that the definition states that a clean energy facility is not a facility as defined in the referenced MGL but this seems very confusing. At the very least, I would add a definition placeholder for Clean Energy Facility that identifies both Small and Large, which due to alphabetical order appear later in the list.

Limited Participant – while I assume "any person" really means "a natural person, partnership, etc". While redundant it might be helpful to spell this out rather than having the reader look for the definition of person.

1.02 (2- a2). This indicates a document is timely if submitted before 5pm and one submitted after 5pm is deemed to be submitted the following day. Does not account for a document submitted at 5:00pm – which while unlikely probably could occur.

1.04 3b. Notice of Adjudication. While the initial sentence states there should be a summary statement, none of the bullet points include a description of the proposed project. This is crucial since the intent of a notice is to alert interested parties. This should include the location of the proposed project.

1.04 3c. While requiring notice in two newspapers is well intended given the state of local journalism, in rural parts of the state, this is hard to achieve. One newspaper and one other more vehicle is more practical and more likely to be seen. People do not read or subscribe to newspapers but there are online ways to get peoples attention. This may include a town website, a town email list, a social media platform like NextDoor. I would suggest that EFSB require two methods, approved by the Presiding Officer, hopefully in consultation with local officials.

> It seems for first class mail and hand delivery, some further guidance might be helpful. Are those required to be provided to municipalities, permitting authorities, etc. I see that abutters are addressed subsequently.

1.03 3d. 14 days to respond with a petition to intervene or be a limited participant seems short, especially given Open Meeting Law constraints. I would suggest 21 days to be more cognizant of local processes.

1.04 (4). I like the requirement of a Repository for Documents. I would clarify in the examples that this can be an online repository. While not everyone has internet access, ultimately an online repository will provide the greatest public access, so it should be more explicitly mentioned, if you are considering this.

I also like that the Presiding Officer may require documents to be posted on the project website. My reading of this is that the applicant will maintain a project website rather than EFSB. While less preferrable in my opinion, it is more than usually required so this is good. A forward looking suggestion would be to require documents to be posted on a project website hosted by the applicant or EFSB, at the discretion of the Presiding Officer.

1.04 (5) Public Hearing. I like this; thank you.

1.05 – Intervention
While I totally support the reason for intervening to be damage to the environment, might it be more appropriate to also allow for risk/damage to public health, safety and welfare which would include the well-being of residents and communities?

1.06.
(6e) Public access to evidentiary hearings. While implied, it should be required that the virtual meeting access information is posted on both the project website and the EFSB website at least 7 days prior to the hearing.

(6h) Transcript – I like that EFSB will post the transcript on its website. Thank you

1.09 (10) Site Visits. This is good. I would add information on who can request to join a site visit and what the process for doing so is.

SECTION 13. CONSOLIDATED PERMIT

13.02 (4) Board decision. The Board may establish shorter deadlines that indicated in statute. It seems like there should be some guidance or criteria for this in advance of this occurrence, so that such a decision is seen to be objective and fair.

13.03 (6b) It seems unnecessary to allow for a waiver for Pre-filing Consultation and Engagement. This seems like creating an opening that will either be exploited by developers or seen as an “end run” by the community. I cannot think of any situation where Pre-filing Consultation and Engagement would not be beneficial for a large, complex project. I would delete this section if it were up to me.

13.03 (7) I believe in statute the requirement is not just to demonstrate the need but to explain “why here” and “why in this manner”. This forces the applicant to explain why they are locating a project in a certain place and why the technology and design is being used, which is more specific. Just requiring the Applicant to demonstrate the need is relatively easy given the need to decarbonize and increasing electrical demand. There is no site-related accountability as written.

13.03 (8). Requiring benefits to be described is good but the devil is in the details whether the Board requires specifics or this ends up being fluff. For example, most projects will provide

PILOT payments which while financially helpful, since universal and limited by DOR rules, are limited.

13.03 (10) This has the potential to be very powerful in regards to siting depending on the Guidance. As I mentioned in my comments, EFSB should not allow potential costs to be used as a reason not to avoid or minimize, otherwise most projects will proceed stating certain activities or designs are too costly and therefore offer to write a check for mitigation rather than do more protective, appropriate design/siting.

13.03 (11) Route and Site Selection. It would be good in Guidance to require the Applicant to demonstrate that siting alternatives were shared in the Pre-filing Consultation and Engagement phase and what the community feedback was. This will be telling in terms of appropriate siting and meaningfulness of engagement.

(iv) states the proposed Facility will be constructed in a manner that avoids or minimizes costs? If we are talking about environmental or community impact costs this should be more clearly stated. If we are talking financial costs, why? – this would see counter to the intent of appropriate siting and design.

13.03 (12) Similar to above but for facilities - It would be good in Guidance to require the Applicant to demonstrate that siting alternatives were shared in the Pre-filing Consultation and Engagement phase and what the community feedback was. Then the Applicant's site selection process and alternative analysis will demonstrate if it bogus or if it was truly interactive. This will be telling in terms of appropriate siting and meaningfulness of engagement.

Additionally, this section (like 11) states the proposed Facility will be constructed in a manner that avoids or minimizes costs? If we are talking about environmental or community impact costs this should be more clearly stated. If we are talking financial costs, why? – this would see counter to the intent of appropriate siting and design.

13.03 (13). Guidance will be crucial here. As I mentioned in my comments, if the Applicant does its own Cumulative Impact Analysis, it will be a self-interested report and likely not critical or objective. This needs to be done by an uninterested third-party with no long term interests in business with the Applicant.

13.03 (14). This section has potential to be very powerful in impacting design and siting, depending on how the Guidance is written.

13.03 (17). Reliability. I presume this is getting at electricity reliability as opposed to operational reliability. While related, they are not the same. Both are important. Operational reliability would also include analysis of public safety.

13.03 (19). EFSB should require a payment in escrow for decommissioning in case the stated plan is not followed through on.

13.04.

(1) I find this section to be VERY concerning – it basically normalizes the ability to seek exemptions and creates a giant loophole. I do not recall this being in statute so it begs the question why?

(2) This is HUGELY problematic. This seems like a gift on top of a gift. So not only might an Applicant get the project approved as proposed if Constructive Approval occurs but the EFSB will also throw in the ability to get a zoning exemption. This is the type of loophole that makes the community feel like the state regulatory system is pro-development. This should be stricken. If an Applicant wants a zoning exemption, then they need to waive Constructive Approval. Giving both seems dramatically inconsistent with the intent of good siting approach.

13.05 Permits
It seems like this is the section that resolves the question you'all were struggling with - one standard consolidated application or many. It seems like many – correct? From what I am reading in this section, Regional and Loca permits would need to be completed and submitted to EFSB for Large Facilities? If so, does this mean, for example, that 13.05 c3 requires local permit application and documents to be included in a LCEF? Since munis adapting DOER guidelines will be deemed complying with Ch40A Sec 3 para 9, this would mean that existing local applications and documentation requirements would be legal and allowable now?

13.06 (1b). I like the requirement of concurrent filing with local government but is this really a filing? Seems like a notice or FYI with lots of documentation. Local government does not have the right to act on a filing, right?

13.06 (4) I like that local government will have the opportunity to participate in the preliminary procedural conference regardless of intervenor status.

13.06 (5). I like this

13.06 (6) Are local governments participants in the Conditions Conference. It is not clear without referencing other sections but it seems local governments are automatically granted intervenor status?

13.06 (7) Board Decision. There should be language requiring public and timely access to the Board decision regarding an EFSB Consolidated Permit. There is no language to this effect.

13.07 I look forward to seeing these baseline standards

13.08 (4) I appreciate the inclusion of the possibility for Supplemental Conditions

13.09 (3). This is confusing. It seems that an Application can be deemed incomplete twice but can only be "Rejected" once. The way it is written it seems an Application can be Rejected twice. It needs to be clear at what point and what the designation is for Application that cannot be resubmitted to cure a deficiency.

(c3). I appreciate the ability for local government to identify deficiencies in subject matter they have jurisdiction over.

13.11 (1a) I like that local government will have the ability to enforce the permit and conditions for which it has jurisdiction over.

13.11 (2) In the rare instance, a local violation by an Applicant can result in the withdrawal of a permit by a local permitting body. I would think that the EFSB would not allow this. So clarification needs to be put in place in this rare instance.