

To: Massachusetts Energy Facilities Siting Board  
From: Orsted  
Date: August 1, 2025  
Subject: Comments on Massachusetts 2024 Climate Act Draft Regulations (980 CMR 16)

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## About Orsted

A global clean energy leader, Orsted develops, constructs, and operates offshore and land-based wind projects, solar projects, energy storage facilities, and bioenergy plants. With approximately 11 gigawatts of projects in development, construction and operation, Orsted's portfolio of American energy projects includes: (i) the first utility-scale offshore wind farm in the U.S., South Fork Wind; (ii) one of the country's largest battery storage facilities (located in Arizona); and (iii) many more electric generation projects that are delivering affordable and reliable energy to millions of homes across the country.

Orsted is proud to call Boston home to our US headquarters, and the hundreds of employees and partners in the region who are working every day to make our shared vision of expanding renewable energy a reality. We look forward to continuing to partner with the Commonwealth in its work to achieve its significant renewable energy goals and appreciate the opportunity to provide comments on the draft regulations relating to the implementation of the Massachusetts 2024 Climate Act.

## Comments

### General Comments

Orsted supports meaningful engagement with agencies and stakeholders prior to filing an application with the Siting Board. However, the Company is concerned that the highly prescriptive and rigid nature of 980 CMR 16.00 will not allow sufficient flexibility for projects to engage with communities and stakeholders in ways that are meaningful, effective, and efficient. Orsted remains concerned with the length and rigidity of the timeline associated with the pre-filing engagement requirements outlined in 980 CMR 16.00 and does not believe the duration will align with the intent of the 2024 MA Climate Act to expedite permitting. Orsted therefore recommends that the engagement activities outlined in 980 CMR 16.00 be recommended activities an applicant may undertake to conduct meaningful pre-filing engagement, as opposed to a prescriptive and detailed series of requirements. This would provide applicants, in close coordination with state and local officials, agencies, and community groups, the flexibility to engage with communities and key stakeholders in a variety of ways tailored to the specific project and the community needs. It should then be the job of the Siting Board to determine whether the Applicant's pre-filing engagement described in the Pre-Filing Notice has been sufficient to demonstrate good-faith and meaningful effort to engage community members and key stakeholders prior to filing and application.

Orsted is concerned that the prescriptive requirements described in this draft 980 CMR 16.00 also create unnecessary opportunities for intentional delay, appeal, and litigation by project opponents. Such activity presents a great deal of risk even to a well-intentioned developer that goes through every step as described. While Orsted certainly appreciates the ability for all stakeholders to have a meaningful opportunity to be heard in the process, under the proposed

rules, we believe that the sufficiency and timing of each of the required filings has the potential to be challenged by any person or group seeking to disrupt the process. We believe that any such opportunity to disrupt this process could lead to unnecessary delay and expense, and would not be consistent with the 2024 Climate Act's intent to expedite and streamline permitting of clean energy infrastructure.

Furthermore, to mitigate potential delays, Orsted recommends ensuring the Siting Board may deem pre-filing engagement requirements complete if the project proponent can provide documentation of good-faith efforts to engage key stakeholder groups; in other words, stakeholders that choose not to engage during the pre-filing engagement period should not be able to delay the project after the engagement period has passed.

Orsted appreciates that the Siting Board Staff is working diligently to produce drafts of new regulation in time to meet the March 1, 2026, deadline and has reviewed the drafts of 980 CMR 16.00 Regulation and 980 CMR 16.00 Guidance and provided comments available below. However, it is difficult to provide clear and comprehensive feedback on drafts containing references to regulation and guidance not yet released (e.g. 980 CMR 15.00). Orsted urges the Siting Board to provide adequate time for the public to review and prepare comments on all draft rules comprehensively when complete.

## **980 CMR 16.00 – Pre-Filing Consultation and Engagement Requirements**

First, while Orsted appreciates the Siting Board's recognition of the need to balance early project design and development with early public involvement and engagement, several points throughout the regulation ask the applicant to document how "comments received...influenced project design." Initial project design and siting decisions weigh a great deal of competing constraints. For large clean energy infrastructure facilities (LCEIFs) like offshore wind projects, these must occur very early in the development process to align with federal permitting timelines and requirements. Projects need to retain the flexibility to conduct early design and siting activities based on technical feasibility, publicly available data sources relating to all applicable constraints, and industry best practices. Stakeholder engagement is critical throughout project development, but stakeholders' ability to influence routing, siting, and design decisions in a way that remains technically and economically feasible may be somewhat limited due to significant constraints such as transmission capacity/availability.

Therefore, throughout 980 CMR 16.00, the Siting Board should emphasize that public and stakeholder engagement should focus on assessing potential impacts to communities, evaluating the viability of any potential alternatives, and identifying mitigation activities to commensurately address any project-related impacts that are identified. Orsted suggests the Siting Board incorporate guidelines that allow the Energy Facilities Siting Board (EFSB) to evaluate the thoroughness of any project-driven outreach and the project's adherence to these guidelines (including outreach conducted within Massachusetts for federal or other permitting processes) as part of its review, rather than a highly prescriptive process during a specified Pre-filing Outreach Period. This prescriptive approach has the potential to add cost and delay to clean energy projects critical to meeting the Commonwealth's climate goals while not necessarily resulting in more meaningful or robust engagement.

## 16.02 – Definitions

### Community

Orsted recommends adjusting the definition of "Community" in the draft regulation to more appropriately capture individuals with the potential to be impacted by project activities. The Company recommends "Community" be defined as people residing within a one-mile radius to the proposed LCEIF in the municipality(ies) in which the infrastructure is proposed to be located. This definition would help ensure that project outreach focuses on residents of the host community who may be most impacted by the project.

### Key Stakeholders

Orsted recommends the Siting Board refine the definition of key stakeholders to reflect the same distance limitations as the definition of "Community" for members of the public. Orsted thus recommends "Key Stakeholders" be defined as:

- Members of the public, including local residents, public interest groups, organizations, and businesses, within both a one-mile radius of the proposed project infrastructure and within the municipality(ies) in which the infrastructure is proposed to be located;
- Elected or appointed municipal officials of the town in which the proposed infrastructure is located;
- Regional planning officials; and/or
- Federally-recognized, state-acknowledged, or state-recognized Tribals organizations.

Furthermore, with this revised definition of "Key Stakeholders", Orsted believes it is redundant with the definition of "Community", and therefore the definition of "Community" can be removed if these edits are implemented.

### Pre-filing Outreach Period

After reviewing 980 CMR 16.04, the "start" of pre-filing consultation and engagement activities is unclear. Therefore, the period between the start of activities and submission of the Pre-filing Notice is open to differing interpretations. Orsted recommends the Siting Board clarify that the pre-filing outreach period commences when the project first initiates any engagement with any agencies and/or key stakeholders relating to the development of the project.

## 16.04 – Pre-filing Consultation and Engagement Requirements

Orsted understands the importance of early and ongoing engagement and supports meaningful engagement with agencies and stakeholders prior to filing an application with the EFSB. However, the Company has concerns that the current draft requirements propose a process that does not align with the 2024 Climate Act's goal of establishing a more efficient permitting process for large clean energy infrastructure to support Massachusetts's climate goals.

**Section (1)(a)(4)** requires applicants to maintain meeting notes and to summarize how comments influenced project design. While Orsted does take detailed meeting notes as a standard practice, providing these detailed notes from every stakeholder meeting will require additional resources from project developers to prepare them adequately for submittal and Siting Board staff to review in detail. The objective should be to determine how many meetings a developer has held,

whom they have met with, and what, at a high level, was discussed. Thus, Orsted recommends the Siting Board require higher level summaries of meetings, which include who participated in the meeting, when it occurred, and key discussion points and takeaways. This presents a more realistic and efficient method of documenting meetings and effectively demonstrating how a project is engaging meaningfully with members of the community.

**Section (1)(c)** instructs applicants to add key stakeholders to an email distribution list, send quarterly updates with any project change, and include contact information of the Applicant's representative(s). Orsted suggests changing the requirement from "quarterly" emails to "periodic" emails. In a lengthy permitting, siting, design, and development process, there may not be substantial project updates to send on a quarterly basis. Additionally, requiring developers to send email notifications of any change in the project design could cause confusion for the recipients. Rather, any changes that may impact stakeholders could be communicated in periodic email updates. The requirement also does not allow stakeholders to opt in or out of this method of communication. Key stakeholders should only be added to the project email list if they choose to opt in at any point in the engagement process (i.e. project proponents should not be required to add key stakeholders to email lists unless they have chosen to opt in) and key stakeholders should have the option to opt out at any time should they choose to no longer receive updates. Lastly, Orsted supports clear and accessible methods for stakeholders to directly reach out to project representatives but suggests allowing projects to use a designated comment email and phone number as opposed to providing contact information for a specific project representative. This allows submitted comments to be monitored by a larger group within the project to enable timelier follow-up and also protects any individual from receiving personal or targeted messages from someone who may oppose the project.

**Section (1)(d)** requires an applicant to submit a Pre-filing Engagement Status Checklist and supporting documentation midway through the Pre-filing Outreach Period. Given the ambiguity of establishing the start of the Pre-filing Outreach Period, as well as the fact that Pre-Filing Outreach Periods could be different durations for different projects, the timing of needing to submit this part of the way through the process is ambiguous. Additionally, there does not appear to be any responsibility on the part of the Division of Public Participation (DPP) or the Siting Board to provide a response to this filing. Orsted recommends against requiring a "midpoint" submittal. EFSB should provide sufficiently clear regulation and guidance for an applicant to complete the pre-filing outreach and engagement process appropriately with the submission of required documentation alongside the Pre-filing Notice. Any interim updates can be provided to the Siting Board, DPP, and other state agencies through pre-filing engagement meetings.

Furthermore, Orsted notes that **Section (1)(d)(2)** requires applicants to summarize how the site suitability criteria, cumulative impact analysis requirements, and cumulative impact analysis tool informed project design and planning. Projects that have advanced design decisions to meet federal and other permitting requirements (e.g. submittal of a Construction and Operations Plan to the Bureau of Ocean Energy Management) prior to the implementation of these rules will not be able to demonstrate that the site suitability criteria, cumulative impact analysis assessments under the new regulations were used to inform the siting and design process. Orsted urges the Siting Board to include provisions in the regulation that allow any engagement and project planning conducted prior to March 1, 2026, to satisfy the new regulations. More broadly, Orsted continues to strongly recommend the Siting Board establishes a clear transitional process for projects that commenced development activities prior to passage of the 2024 MA Climate Act and the implementation of the new rule and process targeted for March 1, 2026. To achieve

internal development and operational target dates and commence other permitting processes, projects that may not yet have submitted a petition to the Siting Board may have advanced permitting and engagement activities while this new permitting process has been under development. These project schedules should not be delayed due to the implementation of this new process—instead, projects that have commenced development, permitting, and engagement activities should be able to work with the Siting Board to demonstrate any engagement activities they have conducted meet the intent of the new process prior to its implementation to avoid delays and/or duplication.

**Section (1)(d)(3)** also asks applicants to submit a table summarizing comments received and project modifications in response to the comments. As stated in comments on **Section (1)(a)(4)**, this level of documentation does not adequately recognize project siting and design limitations due to significant constraints such as transmission capacity and availability. Response to engagement should therefore focus on assessing potential impacts to communities, evaluating the viability of any potential alternatives, and identifying mitigation activities to commensurately address any project-related impacts that are identified. The technical and economic feasibility of a design and/or siting decision, as well as the commensurate impact associated with that design/siting decision, should be considered objectively in any final determination relating to the overall project design and siting as it relates to stakeholder feedback.

Orsted supports consultation meetings with the MEPA Office and other agencies required in **Sections (1)(e) and (1)(f)**. The Company further suggests these consultations include an agreement between the Applicant and state entities stating the applicant has identified all required permits and information for submittal. Once this agreement is reached during the pre-filing period, the state should not be able to identify additional permits or new information requirements during the completeness review. This pre-filing engagement will facilitate an inclusive process by which all entities identify and agree upon the necessary elements of an application, while not penalizing the Applicant for failing to include a permit or other piece of information that was not surfaced during the pre-application consultation process. If this is not implemented, the Applicant is bearing significant risk due to the lack of a purpose-built application model and ambiguity around specific filing requirements. It will also support a more efficient permitting timeline after submission as it should establish what is required to deem an application complete.

Orsted recommends the Siting Board modifies and simplifies the requirements relating to public meetings outlined in **Section (1)(g)**. Orsted strongly supports and is committed to early engagement with communities in which project infrastructure is planned to be sited. During the pre-filing period, the Applicant should be encouraged to hold public information sessions in the format that is best-suited to the project and the community (e.g., in-person and/or virtual open houses, workshops, other types of meetings) and at intervals that are likely to be the most informative. During these information sessions, the Applicant may share project information and updates and solicit feedback from participants. If a project is required (as is the case in **980 CMR 16.04(1)(c)** and **980 CMR 16.09(1)(a)(11)** of the draft regulations) to have contact information on the project website where the public can provide feedback and comments at any point during the pre-filing period, a separate comment period of an unspecified time associated with formal public meetings should not be required. Furthermore, more formal public meetings with formal comment periods should be the responsibility of the Siting Board during the application review process; the purpose of the pre-filing engagement should be for the community to have opportunities to learn more about the project, engage directly with the developer, and provide early comments and feedback. Thus, these regulations should require only that public

information sessions be held during the pre-filing period and provide flexibility for the format, agenda, timing/frequency, and any other elements of these informational sessions to ensure they are tailored to meet the specific needs of the community and the project. Any further recommendations or best practices for these types of information sessions could be provided in accompanying guidance.

Finally, in **Section (1)(i)(6)**, the draft regulations require an Applicant to submit an “update on any ongoing discussions regarding Community Benefits Plans and Community Benefits Agreements.” Discussions on Community Benefits Plans or Community Benefits Agreements should only be held if the developer and host community mutually agree that participating in these conversations would be beneficial, and therefore, this should not be a requirement of a pre-filing engagement checklist.

## **16.06 – Pre-filing Requirements for Consultation with MEPA Office and Agency Consultation**

**Section (1)(12)** requires an Applicant to discuss decommissioning and site restoration plans with the MEPA Office and other relevant agencies. Orsted continues to recommend that, during the permitting process, the Siting Board requires the Applicant commits to decommissioning the project according to local, state, and federal requirements at the time of decommissioning. The Siting Board can further require a more detailed decommissioning plan be submitted prior to commencement of decommissioning activities. Large energy infrastructure projects have operational timelines of multiple decades, and as such, the specific requirements of decommissioning should be defined closer to when decommissioning activities are realized to ensure they align with federal, state, and local requirements at that time. A phased approach to decommissioning requirements will ensure developers effectively decommission their projects and restore sites according to all requirements and best practices at the time of decommissioning, while allowing for sufficient flexibility closer to the time of decommissioning. Please note, this comment also pertains to discussing decommissioning plans and activities with key stakeholder and in public meetings as described in **980 CMR 16.07(1)(a)(5)**.

## **16.07 – Pre-filing engagement requirements for meetings with key stakeholders and public meetings with the community**

This regulation outlines highly prescriptive requirements for the content and form of one-on-one, joint, stakeholder, and public meetings. One-on-one stakeholder meetings represent one way for a developer to build trust through dialogue with individuals in a community. Overly prescribing the meeting agenda and conduct in regulation is antithetical to continuous, open, and meaningful dialogue; the required information in **980 CMR 16.07** may not be necessary in every meeting. It also opens opportunity for delays if meetings are deemed insufficient based on technicalities in the regulation. As further articulated above relating to **980 CMR 16.04 (1)(g)**, the Siting Board should provide goals for various meetings and engagements along with recommendations in guidance for types of engagement activities and information that may be included in meetings, while giving the project and the community the flexibility to engage as is most meaningful. The Siting Board should then be responsible for reviewing summaries of these meetings provided with the application to determine if they meet the goals they have established for these pre-filing meetings.



## 16.08 – Pre-filing Outreach requirements for Public Meetings with the Community

Orsted supports early engagement, including public information sessions with opportunities to provide information and update regarding the project and solicit comments and feedback. However, as further articulated above relating to **980 CMR 16.04 (1)(g)**, Orsted believes the Siting Board should outline types of engagement that may take place and goals of that engagement, while leaving more specific recommendation on agenda items, location/timing, format, etc. to recommendations in guidance.

Additionally, in **Section (1)(b)** that includes guidelines for public meetings, Orsted suggests only requiring meetings and materials to be translated according to the EFSB Language Access Plan if specifically requested by someone in the community. This would still ensure appropriate and inclusive access to public meetings while effectively and efficiently using resources.

Furthermore, Orsted believes it should be the responsibility of the Siting Board to make potential intervenors aware of the availability of intervenor funding to eligible entities through the Board's Intervenor Support Grant Program. The Siting Board may recommend project proponents provide this information as well in outreach materials and/or on the project website, but it should not be required as currently drafted in **Section (1)(a)(2)**. Please note, this comment also applies to **980 CMR 16.09(1)(a)(16)**.

## 16.09 – Pre-filing Requirements for Project Webpage(s)

In general, the requirements listed for project webpages are detailed and prescriptive for a process that applies to a wide range of project types and clean energy technologies. Orsted suggests reframing the current draft as recommendation within guidance. The Siting Board can identify the minimum amount of information required to post on a project webpage with additional recommendations in guidance for things they believe may support a robust project website. For example, **Section (1)(a)(12)** requires a comment submission form on the project website. If a project's website has a contact email and phone number (as also required under the regulations) and states that comments on the project are welcome through those means of communication, a separate form should not be specifically required. This is an illustrative example of how the Siting Board should establish some clear goals of pre-filing engagement in the regulations (in this case, an opportunity for the public to submit comments and feedback to the project) but not prescribe the specific methods by which this is achieved. Additionally, federal or other permitting requirements or conditions may also require the creation and maintenance of a project website. Overly prescribing the required contents may lead to complicated webpages that are ineffective at communicating project details simply because they must meet multiple, possibly conflicting, requirements. Orsted also recommends that a project should be able to provide a project email and phone number monitored by several project representatives, rather than contact information for a specific individual for the reasons previously discussed for **Section (1)(c)** under **16.04 Pre-filing Consultation and Engagement Requirements**.

Furthermore, while transparency is integral to building trust between project developers and host communities, Orsted also recognizes the need to build trust on an individual level. Careful consideration of transparency requirements in the regulation must balance the need to publish project information publicly without compromising the trust of individual stakeholders who meet with a developer. For example, **Section (1)(a)(13)** requires the project webpage to include a "list of meetings with relevant Key Stakeholders regarding the proposed project, including the names of organization, or community-based organizations and date of the meeting." Requiring an Applicant

to publicly post information on stakeholder meetings may serve to dissuade community members who wish to keep their meeting with a developer private. As it is, Applicants should not be required to publish lists of meetings held with stakeholders or meeting summaries and feedback received. Publishing this list could deter stakeholders from meeting with developers if they do not wish their engagement to be made public. Rather, Orsted suggests developers should only be required to publish summaries of public meetings and feedback sessions. If developers demonstrate directly to the Siting Board in their application that they have met with a sufficient array of key stakeholders by providing summaries of meetings in permit filings, the public should feel confident if EFSB determines sufficient key stakeholder meetings were conducted.

## 16.10 – Pre-filing Notice (Notification of Intent to File Application) Requirements

In **Section (1)**, applicants are required to email the Pre-filing Notice to all person(s) met with during the pre-filing engagement period in addition to its submission to the Siting Board and DPP. At this point in the process, the Applicant will have met with key stakeholders, received comments and feedback, and posted the Pre-Filing Notice publicly to the Project Webpage per the current draft of 980 CMR 16.10. Orsted recommends removing the requirement to email the Pre-Filing Notice to all person(s) met with during the pre-filing engagement period, as the notice serves to alert the Siting Board and DPP of the Applicants intent to submit a consolidated permit application and can be accessed online.

## 980 CMR 16.00 Guidance

### Part 3 – Supporting Documentation

The checklist requires “detailed notes from meetings with Key Stakeholders, Agency Consultation, and Community meetings.” As stated previously under **16.04 Pre-filing Consultation and Engagement Requirements**, requiring detailed meeting information introduces extensive documentation efforts and increases the quantity of material for the Siting Board to review. Short summaries of meetings and their outcomes can serve the same purpose of providing the Siting Board material to review outreach efforts while saving time and resources for agency staff and developers.

As stated above in **16.04 Pre-filing Consultation and Engagement Requirements**, Orsted recommends that discussions of Community Benefits Plans or Community Benefits Agreements should be held if the developer and host community mutually agree that participating in these conversations would be beneficial, rather than requiring these discussions as part of a pre-filing engagement checklist.

Finally, as the pre-filing engagement for an LCEIF will require the participation of numerous individuals of the Applicant, Orsted believes that it is more appropriate for the individual signing the declaration to make inquiry of such personnel to gain the requisite knowledge and therefore the certification should be made to the best knowledge of the individual signing.

## Conclusion

Orsted recognizes the significant task the EFSB is undertaking to create a streamlined, efficient permitting process for new clean energy infrastructure projects in the Commonwealth. The Company also appreciates the Board’s commitment to gathering and incorporating feedback during this process from those who will directly interact with the new system. Orsted looks



forward to reviewing and commenting on the draft regulations and guidance in their entirety upon release.