



Conservation
Law Foundation



April 24, 2025

BY ELECTRONIC MAIL ONLY

sitingboard.filing@mass.gov

Secretary Rebecca L. Tepper, Chair
Massachusetts Energy Facilities Siting Board
One South Station
Boston, MA 02110
sitingboard.filing@mass.gov

**Subject: EFSB 2024 Climate Act Stakeholder Sessions: Procedural Regulations
Staff Straw Proposal**
Joint Stakeholder Comments

Dear Secretary Tepper:

The ten undersigned community and environmental organizations respectfully submit these comments regarding the Energy Facilities Siting Board's ("Siting Board") Procedural Regulations Staff Straw Proposal ("Straw Proposal").¹ We welcome and appreciate the opportunity to aid the Siting Board in its effort to make its public notice processes more equitable and accessible.

The Straw Proposal notes that there are at least four sets of regulations and guidance required to implement the 2024 Climate Law, making it even more important that Executive Office of Energy and Environmental Affairs ("EEA"), the Siting Board, the Department of Public Utilities ("DPU"), and other agencies ensure robust public engagement. Rather than expecting impacted residents to duplicate efforts from similar matters, we urge you to incorporate relevant feedback regarding including pre-filing engagement, the DPU intervenor fund, cumulative impacts assessments, community benefit plans, and more to ensure consistency and minimize burden on public commenters.² For example, several of the undersigned organizations participated in or provided extensive feedback to the Attorney General's Stakeholder Working Group that published "Overly Impacted and Rarely Heard: Community

¹ See *Procedural Regulations, Staff Straw Proposal*, Energy Facilities Siting Board, <https://www.mass.gov/doc/gea-procedural-regs-english/download>.

² For example, see e.g. comments of CLF and joint comments of environmental advocates in DPU 21-50: Notice of Inquiry by the D.P.U. on its own Motion into Procedures for Enhancing Public Awareness of and Participation in its Proceedings. One of several submissions includes: *Post-Technical Conference Comments of Conservation Law Foundation and Environmental Defense Fund* (Aug. 15, 2023), file:///C:/Users/amile/Downloads/dpu2150posttechconfcommentscf.pdf (*Note*, the principles and concerns outlined in these comments overlap significantly with what the Siting Board should incorporate).

Voices into the Massachusetts Energy Regulatory Processes,” a report that identified long-standing barriers to public process at the DPU and the Siting Board and made recommendations to address them.³ Wherever possible, we urge the Siting Board to incorporate recommendations from that report into regulations, guidelines, or other materials created to implement the 2024 Climate Act.

Adequate, frequent, and understandable notice is crucial for ensuring meaningful public engagement. Public hearings, meetings, site visits, and comment periods allow the community not only to learn more about a project proposal but also to express their concerns and questions to decision-makers and project proponents regarding the impacts and benefits of the proposed project. Sufficient notice must be far reaching, easily understood, and published far enough in advance to be useful for community members and detailed enough for us to know when, where, and what these meetings will involve. It must also be provided in languages that residents speak and use words that people who are not technical experts or lawyers can understand. Although Massachusetts’ Open Meeting Law and regulations and policy regarding government transparency attempt to reach this issue, a significant amount of reform regarding procedural notices and stakeholder engagement is needed to ensure meaningful public participation that goes beyond checking an administrative box.

Responses to two of the questions posed in the Straw Proposal are shared below.

1. Existing Siting Board regulations require newspaper notice of public comment hearings. Should the Siting Board eliminate the requirement for newspaper notice of public comment hearings? What type of notice would be more effective for these hearings?

Require publication of procedural notices via popular social media platforms, websites, postings in high traffic gathering places, and in non-English language news and radio media.

We recommend that notices account for community differences, but the basic notice requirement should be modernized to reach people on platforms they currently interact with, including social media, television, and radio.⁴ The Siting Board should establish X, Bluesky, and Facebook accounts, at a minimum, so that it can post public notices to these social media platforms. To enhance public awareness, these platforms also allow the Siting Board to “tag” or share its posts with other stakeholders such as municipal bodies, elected officials, community-based organizations, and others.

³ See Stakeholder Working Group, *Overly Impacted & Rarely Heard* (May 2023), available at: <https://www.mass.gov/doc/overly-impacted-and-rarely-heard-incorporating-community-voices-into-massachusetts-energy-regulatory-processes-swg-report/download> (hereinafter SWG report).

⁴ See e.g. comments of CLF and joint comments of environmental advocates in DPU 21-50.

Public notice should be forwarded to each impacted municipality so that they can alert residents via municipal website and by whatever their other common method(s). In addition to the Town Clerk, municipal notification should be sent to the department charged with handling consolidated siting permitting. Absent an appropriate local/municipal board, notice should be sent to departments such as the Energy/Sustainability Department, Conservation Commission and the Planning Board. Notices should also be sent to appropriate contacts in tribal government, indigenous organizations, community-based organizations and community groups, as “notices will reach more people if the DPU and EFSB can direct relevant notices to appropriate contacts and work with those contacts to share the notice and information about a proposal with community members.”⁵

The area(s) in which public notice should be published is also dependent on the type and location of a proceeding. For instance, in cases related to siting of clean energy infrastructure, public notice should be posted in community institutions such as libraries, places of worship, schools, and grocery stores located within a 1-mile radius of the proposed project. The Siting Board should also adopt similar regulations for non-clean energy infrastructure using a 5-mile radius. Such notices should be printed using a larger size font compared to other portions of information included in the mailings.

For proceedings or projects that affect all ratepayers, we suggest broader notice be required. We further suggest that in situations where the proceedings are of particular interest to all ratepayers or with a significant impact in specific locations (e.g., siting of a substation), notice should be publicized on an ongoing basis through a variety of regular and predictable modes of communication, such as through a monthly mailing list, press releases, and/or a prominent news page on agency websites.⁶

Publications in a statewide or local newspaper may not be the most effective way to reach people. If agencies decide to post in newspapers, the notice should be published in both neighborhood news outlets and publications geared towards immigrant or racial minority audiences, including non-English newspapers. The notice should also be published in a place and font where most people are most likely to see it comfortably. Notices should not be paywalled if they are published electronically.

Set thresholds at which public comment hearing notices and related materials must be translated.

The Siting Board should require and set thresholds for translation of public notices wherever an impacted community includes an environmental justice population designated as such based on a portion of its members being households with limited English proficiency.

⁵ SWG report, *supra* note 3, at 39.

⁶ *Id.* at 38 (For more recommendations on how to improve the provision of notice).

References to translation in the straw poll should also encompass interpretation at public meetings and site visits.

Although environmental justice populations can sometimes be identified by recognizing that a portion of their members have limited English proficiency, this designation does not specify which language or languages are spoken in the community. Accordingly, we recommend that the Siting Board work with the EEA to convene a meeting of language access and environmental justice advocates, agency representatives, and people with GIS and statistical experience (collectively “language access group”) to work through the details of setting a threshold to trigger language translation and interpretation. The language access group should consider drawing a radius around the proposed facility location, instead of relying on census blocks, to determine the significant portion of the population that would trigger translated materials. For each project, we recommend the language access group draw a radius of 1 or 5 miles around the proposed project that will be seeking a Siting Board review. A minimum radius of 1 mile should be used for clean energy infrastructure projects, and a 5-mile radius should be used in parallel regulations for fossil fuel facility projects with associated air emissions, which may have more geographic reach than other impacts. Language translation services should be provided for any languages that are spoken by more than a certain percentage of the residents within a certain census tract or neighborhood within that radius. We recommend this percentage be at least 15 percent of the population.

Proactively and efficiently identify stakeholders to receive public notice through regular outreach.

The Siting Board should publish notices on agency websites and provide a subscription option on agency websites so that stakeholders can opt in to receive emails regarding new filings and project proposals in their region or communities. The Siting Board should also leverage its existing resources to identify stakeholders and maintain a list of contacts for interested community members, community groups, tribal government leaders and indigenous organizations, elected officials, and municipal leaders and staff to notify them of proceedings. In the report “Overly Impacted & Rarely Heard,” issued by the Stakeholder Working Group convened by the Massachusetts Attorney General’s Office, 61 percent of survey respondents indicated that they would like to receive information about energy through community organization connections.⁷ Beyond electronic communications, the agencies should take a proactive approach and engage stakeholders in proceedings that have significant localized impacts or impacts on environmental justice populations. The DPU and Siting Board should partner with community organizations and municipalities to publicize proceedings and to solicit input.

⁷ *Id.*

Facilitate public engagement by providing clear, easily accessible information in public notices.

Public notices should include a link that directs viewers to virtual access and pre-registration information; information about accessibility and translation services; phone numbers for the Siting Board's contact person and the liaison for the project; and citations to applicable Siting Board regulations and other laws. Such notices should also include a plain-language statement indicating how proceedings are expected to impact affected residents. The notices must highlight the process the agency will take to reach a decision and the decision-making authority of local boards, if any. This will provide readers with easy-to-understand information that will inform them of their decision of whether to participate in a proceeding.

Public notices should be published well before the meeting and hearings.

Notice before Siting Board public meetings should be published at least seven days beforehand. If notices are published in newspapers, then the Siting Board must consider when the newspaper is available to the public. For example, a notice cannot be published in the Sunday news for a Monday or Tuesday meeting.

2. Should Siting Board staff site visits to the location of a proposed project be open to the public? How would the Siting Board manage such a process?

Siting Board staff site visits should follow the model set by MEPA staff to include daytime in-person visits to the location of a proposed project that is open to the public followed by an evening virtual meeting open to the public. We have heard concerns from stakeholders that carefully crafted applications and reports do not match the conditions at the project site. We recommend that the Siting Board allow public access to site visits to ensure that the community has accurate site characteristics and project information to use in their comments. An RSVP requirement for in-person site visits will help staff plan and know who to wait for to begin. Simply providing adequate public notice of the site visit details should suffice for process management, as the number of attendees will be naturally limited by schedule availability and capacity of community members.

Additional Comments and Questions

Regarding de novo adjudication, we suggest that the regulations should not rely only on a written comment period and the discretion of the Director to conduct a public hearing. Instead, we recommend that a public hearing be required when there is public involvement in the local process and where a certain number (to be determined) of residents in the proposed host community request one.

We request that future iterations of the straw proposal and presentations to stakeholders include the following:

- ***Clear and easy to understand explanations of jargon, technical terms, and descriptions of agency practices.*** This includes but is not limited to the following example: “The Siting Board Staff proposes to continue its existing practices for conducting public Board meetings, and to have the regulations incorporate updated references to the Massachusetts Open Meeting Law.”⁸ Not all stakeholders are well versed in current agency practices. Additional clarity on whether these practices include the recommendations made by the AGO stakeholder working group to make meetings more accessible, transparent, and understandable to the public will be useful. The Siting Board should provide an explanation of existing practices for conducting public board meetings.
- ***Clarify when/how hybrid or virtual meetings will be offered.*** This includes but is not limited to the following two examples: (1) “Board members may attend a hybrid Board meeting virtually, and the Board would provide adequate, alternative access for the public to Siting Board meetings by conducting hybrid Board meetings,”⁹ and (2) “The regulations will require the Siting Board to continue to conduct its public comment hearings in hybrid form, as long as it remains practicable.”¹⁰ Additional information is needed on whether the virtual option would be available only for Board members. If members of the public attend virtually, the Siting Board should clarify if they have the same ability to participate as those who attend in person. Additionally, the Siting Board should clarify how whether it “remains practicable” to hold hybrid meetings will be assessed. What would the alternative be? In-Person only?

Conclusion

The undersigned wish to emphasize the importance of accessibility, inclusion and understanding in public notice policies. We appreciate the opportunity to provide comments and hope that the Siting Board will incorporate these recommendations. Please do not hesitate to follow up with us if we can provide further information.

Very truly yours,

- 350 Mass
- Alternatives for Community & Environment
- Conservation Law Foundation
- GreenRoots
- Pipe Line Awareness Network for the Northeast, Inc.
- Sierra Club Massachusetts
- Slingshot
- Union of Concerned Scientists

⁸ Straw Proposal, *supra* note 1, at 4-5.

⁹ *Id.* at 5.

¹⁰ *Id.* at 4.

- Unitarian Universalist Mass Action
- Vote Solar