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Veena Dharmaraj, Director of Environmental Justice and Public Participation  
Department of Public Utilities  
Andrew Greene, Director  
Energy Facilities Siting Board  
One South Station, 3<sup>rd</sup> Floor  
Boston, MA 02110

**Re: AGO Comments on 2024 Grid Equity Act Staff Straw Proposals, “Standard Conditions Staff Straw Proposal” & “Staff Straw Proposal: Intervenor Support Grant Program”**

Dear Directors Dharmaraj and Greene,

The Attorney General’s Office (“AGO”) appreciates the robust early engagement opportunities that the Energy Facilities Siting Board (“Siting Board”) and the Department of Public Utilities (“Department”) have provided to stakeholders regarding the above-referenced matters and looks forward to continued engagement. The AGO provides the following comments on the Standard Conditions and Intervenor Support Grant Program straw proposals:

**Standard Conditions Staff Straw Proposal**

The straw proposal includes several Level 1 Universal Standard Conditions that would apply to all permits, including to projects that are constructively approved.<sup>1</sup> With regards to the “Project Commencement Project Change” and “Updated/Certified Cost Estimate” conditions, the AGO recommends that the Siting Board considers additional requirements to provide increased transparency and oversight regarding project cost estimates. The AGO notes that, among other key considerations, considerations of costs are central to the Siting Board’s review of proposed projects.<sup>2</sup>

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<sup>1</sup> *Energy Facilities Siting Board, Standard Conditions Staff Straw Proposal*, at 1, available at <https://www.mass.gov/doc/gea-standard-conditions-proposal/download>.

<sup>2</sup> Pursuant to *An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers* (“2024 Climate Act”), St. 2024, c. 239, § 60, codified at G.L. c. 164, § 69H:

1. Project Commencement Project Change

This proposed draft condition recognizes that changes to projects may occur between when a project is approved and when construction commences. Thus, the condition appropriately requires the project proponent to “notify the Siting Board of any changes other than minor variations to the proposal[.]”<sup>3</sup> and emphasizes that “[a] project proponent has an absolute obligation to construct and operate its facility in conformance with all aspects of its Project as presented to the Siting Board.”<sup>4</sup>

To ensure that the Siting Board issues decisions based on up-to-date and appropriately accurate cost estimates, and to support a complete record, the AGO recommends that the Siting Board: (1) list acceptable cost estimate accuracy ranges for different project planning phases in the Project Commencement Project Change condition or in a stand-alone Level 1 Universal Standard Condition, (2) require project proponents to provide more accurate cost estimates (e.g., a smaller estimate range) as planning progresses; and (3) require project proponents to notify the Siting Board of any change to project cost estimates beyond the cost estimate ranges included in the applicable Siting Board decision and to provide documentation for why the costs deviate from the acceptable cost estimate range.<sup>5</sup>

2. Updated/Certified Cost Estimate

This proposed draft condition requires the project proponent to provide the Siting Board with an updated and certified cost estimate for the project in two instances: (1) “prior to the start of construction,” and (2) if there are “significant Project cost increases beyond the ranges referenced in [the] Decision pursuant to the Company’s obligation to notify the Siting Board of any changes other than minor variations to the proposal.”<sup>6</sup>

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The board shall implement the provisions contained in sections 69H to 69Q, inclusive, and sections 69S to 69W, inclusive, to . . . *ensure large clean energy infrastructure facilities, small clean energy infrastructure facilities, facilities and oil facilities are constructed in a manner that avoids or minimizes costs.*

Emphasis added. Further, the Siting Board is tasked with reviewing costs of jurisdictional facilities well as the costs of alternatives. 2024 Climate Act, §§ 60 (requiring, for example, Siting Board determinations to include findings including but not limited to the fact that “due consideration has been given to advanced conductors, advanced transmission technologies, grid enhancement technologies, non-wires or non-pipeline alternatives, the repair or retirement of pipelines and other alternatives in an effort to avoid or minimize expenditures”), 68, codified at G.L. c. 164, §§ 69H, 69J1/4.

<sup>3</sup> Standard Conditions Staff Straw Proposal, at 5.

<sup>4</sup> *Id.* at 4–5.

<sup>5</sup> *See id.* at 5.

<sup>6</sup> *Id.*

To increase transparency and ensure that the Siting Board has regular access to updated project costs so it can make further inquiries, if necessary, before the project proponent is ready to begin construction, the AGO recommends that the Siting Board requires project proponents to provide regular updates to previously filed cost estimates, in addition to requiring the submission of an updated cost estimate before construction begins (as already included in the staff proposal).<sup>7</sup> To further support transparency, the AGO recommends that the Level 1 Universal Standard Conditions impose an *ongoing* obligation on project proponents to notify the Siting Board of changes to project cost estimates, which would extend beyond a Siting Board decision or constructive approval.

### **Intervenor Support Grant Program**

The AGO strongly supports the staff proposal and appreciates the commitment of the Division of Public Participation (“DPP”) and the Department in soliciting and integrating input from a variety of stakeholders. The AGO responds to the listed questions below.

**1. What additional eligibility criteria should be considered, if any, to determine allocation of funding to prospective grantees? How should an applicant’s prior history of intervening in proceedings influence eligibility for funding through the Program?**

The AGO supports the eligibility criteria proposed in the staff proposal.<sup>8</sup> In considering “whether the applicant has previously intervened in a proceeding prior to the establishment of the Intervenor Support Grant Program,”<sup>9</sup> the AGO recommends that the DPP evaluate: (1) whether the intervenor productively contributed to the record on issues relevant to the proceeding—if yes, then that would positively influence eligibility for funding; (2) whether the intervenor caused any avoidable delay related to the proceeding—if yes, then that would negatively influence eligibility for funding; and (3) whether financial constraints limited the issues on which the intervenor previously addressed, before funding was available through the Intervenor Support Grant Program—if yes, that would positively influence eligibility for funding.

As for applicants with no prior history of intervening, the AGO recommends that the DPP evaluate whether financial limitations prohibited the applicant from intervening in prior proceedings, absent funds provided through the intervenor support grant program.

**2. What criteria should be applied to determine if intervenors can share costs through collaboration with other parties in a proceeding to encourage cost efficiency and minimize redundancy?**

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<sup>7</sup> *Id.* at 4–5 (Project Commencement Project Change).

<sup>8</sup> *Energy Facilities Siting Board & DPU Division of Public Participation, Staff Straw Proposal: Intervenor Support Grant Program*, at 5, available at <https://www.mass.gov/doc/2024-ca-isgf-proposal/download>.

<sup>9</sup> *Id.*

If two or more prospective grantees intend to address issues that overlap, the DPP should request additional information, if necessary, to determine whether collaboration is appropriate. Based on the alignment among the prospective grantees, the DPP could require varying levels of collaboration; for instance, grantees could be required to coordinate on discovery, but not on testimony or briefing.

**3. When should a fund-supported intervenor be able to obtain funding that exceeds the maximum funding threshold of \$150,000 for a proceeding? What circumstances could qualify as “new, novel or complex issues” that may warrant additional funding?**

The AGO recommends that requests for additional funding beyond the maximum funding threshold of \$150,000 be reviewed on a case-by-case basis. There are several circumstances where it may be reasonable for the DPP to award funding that exceeds the maximum funding threshold to facilitate a grantee’s ongoing meaningful participation, such as the following situations:

- Complex proceeding & multiple issues: when an intervenor is offering testimony and analysis on several issues in a complex proceeding (e.g., a rate case or other case that requires extensive analysis and review of the record by experts), funds beyond \$150,000 may be appropriate.
- Multiple phases or tracks: when the issues in a proceeding are phased or separated out into more than one track, funds beyond \$150,000 may be appropriate.
- Several evidentiary hearing days: when a proceeding has several days of evidentiary hearings (for example, more than seven), funds beyond \$150,000 may be appropriate.
- Expanded or unanticipated scope: when the scope of a proceeding substantially expands beyond what was reasonably anticipated at the time of the original award or is different from the anticipated scope, additional grant funding may be appropriate. This would apply to scenarios where the conceptual scope of the proceeding has not expanded (and the proceeding would need to be Noticed again), but the substantive breadth and depth has grown, with a more complex set of issues and considerations to be addressed than was initially anticipated. Even in instances where intervenors have carefully budgeted their grant award, there may be lengthy and complex proceedings where an intervenor is unable to meaningfully participate on an ongoing basis without additional funding.

**4. Are there other ineligible uses of funding that should be considered?**

The AGO agrees with the list of ineligible uses of funding proposed in the staff proposal.<sup>10</sup>

**5. What documentation should DPP require applicants to submit to demonstrate financial hardship?**

The AGO looks forward to reviewing the comments from other stakeholders prior to making any recommendation here. The AGO notes that several jurisdictions require organizational applicants to provide the organization’s annual budget, along with additional

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<sup>10</sup> See *id.* at 7.

materials to demonstrate financial hardship.<sup>11</sup> For example, the Wisconsin Public Service Commission's ("PSC") Intervenor Compensation program requires the following information from organizational applicants:

- "A detailed statement of revenues and expenses by program activity including fund-raising, education, research, and lobbying for the previous and current fiscal years.
- A detailed list of current assets and liabilities (balance sheet) including all uncommitted funds.
- The organization's official budget for the current fiscal year. Identify the parts of the budget that will be used to contribute to the intervention (as detailed above in item number five).
- For organizations with gross annual revenues in excess of \$30,000, a description of job duties of paid and unpaid staff."<sup>12</sup>

## **6. What is the best way to publicize that intervenor funding will be available?**

The AGO recommends that the DPP utilize social media and relevant contact list(s) maintained by the Executive Office of Energy & Environmental Affairs' Office of Environmental Justice & Equity, the Department's website, and the utilities' websites. The AGO further recommends that the DPP partner with community organizations and elected officials to announce that intervenor funding will be available. Information on the program, how to apply, and when to apply should be announced at public hearings and included in Department Notices. In addition, the AGO recommends that staff from the DPP attend public hearings for Tier 1 proceedings as

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<sup>11</sup> E.g., Illinois Commerce Commission, Consumer Intervenor Compensation Fund Program Guide, at 14 (listing supporting documentation requirements, which 'may include, but [are] not limited to, a budget summary containing information concerning the Consumer Interest Representative's financial capabilities and resources, including, but not limited to, annual budget, cash on hand, and expense and revenue information supporting the representative's claim of financial hardship), available at <https://www.icc.illinois.gov/informal-processes/Consumer-Intervenor-Compensation-Fund>; Wisconsin PSC, Intervenor Compensation "Application Form", question 6, available at <https://psc.wi.gov/Pages/CommissionActions/IntervenorComp.aspx>.

Connecticut requires the following from applicants seeking advance payment of a compensation award: "[a]n annual budget of revenue and expenses for the preceding and current year for the stakeholder group[, p]ercentage of annual budget that the costs of the planned participation represent[, and a]n explanation of why stakeholder group funds cannot be used to fund the planned participation[.]" Connecticut PURA, Application for Stakeholder Group Compensation, at 6 (formatting altered), available at <https://portal.ct.gov/-/media/pura/1---website-media/23-09-34-application-for-stakeholder-group-compensation.pdf?rev=2f353d46e21a4a1ab991d8e5ab8986a5&hash=9CBFED1FCAB3480A57558FCF5D828803>.

<sup>12</sup> Wisconsin PSC, Intervenor Compensation Application Form, question 6, available at <https://psc.wi.gov/Pages/CommissionActions/IntervenorComp.aspx>. Formatting altered.

well as the first several public hearings for Tier 1 and Tier 2 proceedings<sup>13</sup> after the program is available, to announce the program, provide informational materials, and answer questions.

**7. What informational resources should be available on the Division website for those applying for intervenor funding?**

In addition to the petition summaries included in Department’s docket Notices and the resources available on the Department’s website, the AGO recommends that the Department:

- develop an easy-to-understand handbook, similar to the Siting Board’s handbook,<sup>14</sup> explaining Department procedure, how to intervene and the role of an intervenor in proceedings, how to apply for intervenor support, details on grantee requirements, and how to submit a request for reimbursement;<sup>15</sup>
- provide an on-demand video<sup>16</sup> of the information described in the previous bullet point; and
- provide sample motions to intervene, direct testimony, and information requests, as well as form-fillable motions for intervention and grant application forms.<sup>17</sup>

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<sup>13</sup> Tier 1 proceedings “involve significant policy changes or fundamental changes to process” and include, for example, base distribution cases, significant notices of inquiry, and mergers. *Notice of Inquiry by the Department on its own Motion into procedures for enhancing public awareness of and participation in its proceedings*, D.P.U. 21-50-A, Order Establishing Tiering and Outreach Policy, Appendix A: Tiering and Outreach Policy, at 2 (Feb. 23, 2024). Tier 2 proceedings “generally require public hearings” and include, for example, rulemakings, energy efficiency plans and term reports, municipal aggregations, and electric vehicle plans. *Id.* at 4–5.

<sup>14</sup> <https://www.mass.gov/doc/energy-facilities-siting-handbook-revised-january-2019/download>.

<sup>15</sup> *Overly Impacted & Rarely Heard: Incorporating Community Voices Into Massachusetts Energy Regulatory Processes* (May 2023), at 75, available at <https://www.mass.gov/doc/overly-impacted-and-rarely-heard-incorporating-community-voices-into-massachusetts-energy-regulatory-processes-swg-report/download>.

<sup>16</sup> The California Public Utilities Commission offers Informational Webinars on a variety of topics, including “Webinar: Understanding and Interacting with the CPUC,” available at <https://www.cpuc.ca.gov/informational-webinars>.

<sup>17</sup> *Overly Impacted and Rarely Heard*, at 70. Several jurisdiction offer similar resources: (1) the Wisconsin PSC website provides a link to a Word document Application Form (Wisconsin PSC, Intervenor Compensation Application Form, available at <https://psc.wi.gov/Pages/CommissionActions/IntervenorComp.aspx>); (2) Connecticut’s Public Utility Regulatory Agency (“PURA”) website provides links to a variety of forms required of applicants to its Stakeholder Group Compensation Program (Connecticut PURA, Stakeholder Group Compensation Program, available at <https://portal.ct.gov/pura/public-participation/stakeholder-group-compensation-program>); and (3) the Vermont Public Utility Commission (“VPUC”) offers a form-fillable Motion to Intervene Form. *See* Motion to Intervene

The AGO also recommends that contact information (e.g., email, phone number) be provided so that grantees and prospective grantees can reach a DPP staff member if they have questions.

**8. Should there be a maximum amount of the grant award (e.g., 75%) that can be provided upfront for those with financial hardship, or should this be determined on a case-by-case basis?**

The AGO recommends that the amount awarded upfront for grantees with financial hardship be determined on a case-by-case basis, based on the anticipated timeframe for when the grantee will incur expenses. For example, if a grantee provides documentation that it will need to pay attorneys and consultants an amount equal to 30 percent of the total grant award in the near term (e.g., the next 45 or 60 days), but that it will incur additional costs later (e.g., later than 60 days), the Director could then determine that it was appropriate to award 30 percent of the grant award up front, rather than after expenses are incurred.

Thank you for this opportunity to provide comments on the Standard Conditions and Intervenor Support Grant Program straw proposals.

Respectfully submitted,

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Form, VPUC, available at [https://puc.vermont.gov/sites/psbnew/files/doc\\_library/intervention-form.pdf](https://puc.vermont.gov/sites/psbnew/files/doc_library/intervention-form.pdf). See also, Court forms by topic, Massachusetts Court System, available at <https://www.mass.gov/guides/court-forms-by-topic>.