Comments on Community Benefits Plans

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[redacted]

COMMENTS ON SLIDE CONTENT

Definitions on Slide 3

Meaningful Engagement. While I greatly appreciate the definition of meaningful engagement, I think that the EFSB and OEJE need to do more thinking about what is possible regarding enabling continuous community engagement. There are three stages to these clean energy projects - pre-filing and permitting, construction, and operation. Meaningful engagement needs to be part of all three. Usually the focus of these policies is on the front end - the planning and filing phase. Usually the construction and operational phases may have practical conditions imposed but often these are about the deployment of the technology on site; they rarely mention process, procedures or outcomes regarding community engagement. This is an area that should be explored more, hopefully with requirements imposed by EFSB that can require ongoing engagement.

Frontline Communities. While I am 1000% in support of the idea of centering frontline communities, and I certainly believe this is important given historical wrongs, I believe that in mentioning frontline communities under the Just Transition bullet, this slide focuses on the more traditional definition that includes Black, Indigenous, People of Color and individuals with lower incomes. While the exploitation of these people is real and has been since industrialization began, EFSB and OEJE need to recognize the particular dynamics of industrial scale clean energy development in Massachusetts. Rural communities, often white, sometimes lower income but not necessarily, are often on the frontline of the Commonwealth's push for clean energy development. This reality needs to be incorporated into the understanding of frontline communities and who is vulnerable to the deployment of large scale solar and battery storage. The recent history is well documented.

Why CBPs Matter - slide 6.

I would like to call out point #2 - reduce harm and displacement to expand what might be the usual interpretation. While residents of urban areas, especially among EJ populations, have historically faced environmental and personal harms (increased incidence of asthma or diesel fumes, for example) the issues of most concern to communities in western, central and SE Mass. are environmental harms that can impact communities. Specifically the risk of fires in our forests resulting from placement of lithium ion batteries that cannot be extinguished can easily cause fires and house/community devastation; the resulting contamination of water and soil from these fires can destroy private and public drinking sources; and the erosion due to extensive earthmoving or the placement of installations on steep inclines can threaten water

through siltation or create severe downhill affects. So my point - please think about harm beyond the individual and include harms to the larger environment which, in turn, can threaten a community.

Community Engagement Process - Slide 7
Begin Early: I massively agree that community engagement should start early. To connect the dots with a prior set of comments, that is why for the Public Engagement straw poll I suggested a 4 Phase Model rather than the 2 Phase that the EFSB proposed. The underlying value for why I suggest this model is that community/public engagement should be seen as a funnel - start with the widest set of interactions to get the greatest input; narrowing can occur later with refinement of that input.

Respect Cultural Relevance. - Indigenous sacred spaces will be found on large rural tracts where industrial scale clean energy projects want to be sited. This is because Indigenous people lived everywhere in Massachusetts. There is a federally and Indigenously recognized process that involves a Triable Historic Protection Officer (THPO) making assessments of the land of what is sacred or culturally important and that should be protected. Every tribe has a THPO. The expertise and role of a THPO, who brings indigenous, rather than western perspectives, must be respected and integrated into the permitting and siting process. See the Shutesbury Solar Bylaw for reference. Also do not differentiate between state recognized and federally recognized tribes - they all matter.

Ongoing engagement - I love the statement that engagement is not a checkbox - unfortunately for developers it is a checkbox, often a necessary evil or impediment. So OEJE and EFSB need to understand this reality as they develop regulations and force the “continuous, iterative and two-way dialogue” that is intended. This should be more deeply explored with guardrails put in place.

Step by Step - Slide 8
Step 3: This slide makes it appear like the applicant is doing the stakeholder mapping, which it is ill-prepared for. I would suggest that Step 3 - Community Outreach must be the first step in this process. That informs everything else including stakeholder mapping.

Step 6: accountability needs to be outlined and agreed to before the CBP is written; this needs to be an integrated and documented part of any plan or agreement. If it is after the fact, it already has lost its power.

Components of CBP - slide 10
Project description: I do not think this component is needed in the CBP. A project description is redundant and will be woefully incomplete. The entire EFSB application should be accompanying any CBP so this is unnecessary. Perhaps more important is a description of the community, its stakeholders and why this particular CBP is needed.

SIgnatories: In order to be authentic and not just be applicant spin, any CBP needs to be signed off by the relevant parties as an acknowledgement that it reflects the needs and interests of the community. Signatories should include representatives from the municipality and any key community groups/stakeholders. With signatories, the EFSB will have confidence that this was a mutually agreed upon document otherwise it may not be real. It is also worth noting that co-creation of this document would ensure it is more aligned with the stated needs of the community.

Oversight and Accountability - Slide 14
I would add to the first statement that a CBP is only as strong as its systems to monitor and evaluate AND ENFORCE it. It is insufficient to know that something isn't being done as agreed to; the real question is what will happen because the commitments are not being met. Without enforcement or consequences, there is no accountability. This is why the EFSB should require a Community Benefit Agreement in order to receive a permit and why this CBA should have enforceable actions included.

RESPONSES TO QUESTIONS

1. What role should the EFSB play in this process?
Most important, this is the opportunity for the EFSB to require that a Community Benefit Agreement is part of a clean energy project that receives a permit. As noted on slide 5, a Community Benefit Agreement is binding and therefore superior to a plan, which is more easily reneged on. EFSB should step into its role as the permitting authority and require all projects to have a CBA.

I would refer to slide 8 regarding Community Benefit Plans to respond to this. As noted above, Step 1 is to undertake "Stakeholder Mapping and Community Identification". In my reading of this slide, it seems that applicants would be required to do the stakeholder mapping. defacto, an applicant will not know the community where they are seeking to site a project. And even if they reach out to municipal leaders, relevant stakeholders might be missed. Therefore, Step 1 regarding Stakeholder Mapping must be premised on community engagement. Only with adequate community engagement will the meaningful stakeholders be identified. I would therefore suggest that an essential role for EFSB is to require, through regulation and required documentation, that all steps, including mapping, are co-created by the community/municipality and the applicant. not just Step 4 regarding commitments.

The development of a Community Engagement Plan should be informed by the stakeholders who were identified by the community and the municipality but the key to the substance of the plan is "who decides what the plan says? If the community is asking for input and suggesting an Engagement Plan but it is up to the applicant to approve it, is that meaningful engagement? I would suggest not. So the EFSB should likely require some kind of sign off by various parties so that the resulting Community Engagement Plan is a negotiated settlement.

Finally, I believe that in order to hold applicants accountable, especially since ownership and/or operation of many of these projects can turn over , there is a need for a Community Benefit Agreement that is legally binding and therefore applicable to successive owners/operators. (the Shutesbury solar project built in 2017 has had three owner/operators so far, the first one flipping immediately after the permit was approved) EFSB should write requirements for engagement with this expectation; that there will not be continuity of owners/operators. EFSB should require this as part of the application process or definitely prior to a permit being provided.

2. What are other categories or specific examples of community benefits that clean energy developers and utilities can offer?

While I completely support the concept and the importance of assisting traditional EJ communities, reading the slides seems to demonstrate that EFSB/OEJE presumptions are that this will urban oriented. This makes sense since traditionally, many disadvantaged, overburdened and underserved people live in urban areas. However, in Massachusetts, many/most, industrial scale clean energy projects are being sited in rural areas where there is adequate land. My sense is that OEJE and EFSB need to widen their perspective of "*equal protection and meaningful involvement of all people and communities with respect to the development, implementation,and enforcement of energy, climate change, and environmental laws, regulations, and policies*" and "*the equitable distribution of energy and environmental benefits and burdens*" to include small rural communities. Using the OEJE definition of a disadvantaged community - many rural communities in Western and Central Mass (as well as less rural in Southeast Mass) are definitely experiencing or at risk of "*disproportionate environmental, climate, public health*" burdens".

This is important in the context of Community Benefit Plans since for these small communities, the primary issue is not economic and therefore the focus on job creation as a community benefit is less important. What is important are protections of the environment, of local agriculture, of drinking water protections. These must be important allowable and enforceable elements of a community benefit plan or agreement to address the protections needed by these rural communities.

Additionally, I think it is very important that Community Benefit Plans options encourage and/or allow efforts that advance decarbonization and energy efficiency at the local level. These could be achieved as separate initiatives or by the funding a Clean Energy Fund that is controlled by the host community - either the municipality or a key community group (for larger communities). As mentioned in the slides already, these projects could include the installation of solar or wind to be used by the community or municipality, the support for converting heating/cooling systems for municipal or community buildings to either ground source or air source heat pumps, the installation of EV charging infrastructure or the procurement of EV vehicles. It seems EFSB should prioritize these types of decarbonization efforts since it leverages the application application process to create even more clean energy projects in the state to be used at the local level. As an aside - community owned microgrid would be amazing but based on my research and limitations that utilize impose, I don't think they are currently allowed.

Finally, communities everywhere are/will be facing the effects of climate change. This will result in a range of negative impacts that municipalities cannot afford to mitigate or adapt to. A Community Benefit Plan could pay for a Climate Mitigation Fund or for projects that help with flooding such as culvert replacement (upsizing), road modifications for increased runoff, or rain gardens. Similarly, it could assist with the effects and mitigation of increased heat and drought by supporting cooling centers, water collection systems, etc.

3. Projects are required to avoid, minimize, and mitigate impacts. CBPs are one tool to illustrate and memorialize those commitments. What are other tools?
This is a siting and permitting question - much to respond to on this issue but not in regards to CBP.

I will use this opportunity to highlight a previous point. As noted earlier, it is also often overlooked that in rural parts of the state, Indigenous sacred and cultural important spaces remain. Most discussions of clean energy siting do not recognize this and current systems of assessment are inadequate since what is spiritually or cultural relevant to an Indigenous population is not understood or acknowledged by western “experts’. Protection of these sacred places and burial spaces needs to be codified , perhaps as part of a

4. What are some barriers for clean energy developers to actualizing CBPs/CBAs?
While I support the ideas put forth on slide 14 regarding Oversight and Accountability, I think the EFSB and OEJE are not acknowledging the reality of developers and their motivations. This is not about doing the right thing - these are businesses looking to create projects that generate revenue and maximize profit. So anything that gets in the way of this a hurdle to be overcome or a requirement to check off. In sum, meaningful community engagement is only important to developers to reduce opposition.

The key to making CBPs and CBAs work is enforcement. Right now if a developer didn’t follow through on its commitments and a community objected, the likely response would be “sue us”. Neither municipalities nor community groups can take that legal route. What enforcement looks like can differ. It could be a Community Benefit Bond that is provided to the municipality in the situation where a developer does not meet the commitments made. It could be through an Community Benefit Agreement which requires that a non responsive developer is legally in default. The most powerful form of enforcement is the threat of losing its EFSB permit due to non compliance; in this case the CBA being considered part of the overall package approved by the EFSB and to which the applicant must comply.

5. In most cases, CBAs will add to the overall cost of the project, which is then passed on to ratepayers. Given this factor, is there concern about the impact CBAs could have on communities?
I do not understand the mechanisms to do this but I think the EFSB must be able to see the business plans for any development to determine if it is viable. Whether or not the EFSB can access this information, it should be able to. Given the significant amount of anticipated revenue

and profit these projects will generate (if they didn't generate profits they wouldn't be getting built), the EFSB should establish some percentage of a project's revenue or profit that should be directed towards community benefit. This percentage would then be built into the rates that the DPU regulates.

I am sure any large developer will still want to pass along costs to ratepayers and perhaps this cannot be avoided given smart corporate lawyers, but in the end, if we want Massachusetts clean energy to be non-extractive and exploitative of communities, insisting on a CBP/CBA is essential.