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To: Massachusetts Energy Facilities Siting Board
From: Orsted
Date: May 27, 2025
Subject: Comments on Massachusetts 2024 Climate Act Staff Straw Proposals 4 through 9

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1. 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 Straw Proposals four through nine relating to the implementation of the Massachusetts 2024 Climate Act.

2. Comments

2.1 Pre-Filing Consultation and Engagement Requirements for Siting and Permitting Straw Proposal

2.1.1 Objectives for Pre-Filing Engagement Requirements

(3) Provide opportunity for key stakeholders to influence project design during critical stages of project development: The Siting Board should clearly define stakeholders with whom projects must engage during the pre-filing period as those who have the potential to be impacted by project activities. For offshore wind projects in particular, it is important to note that, for the purposes of the state permitting process, only activities occurring in Massachusetts state waters and on Massachusetts land should be subject to stakeholder comment and input (federal and other state permitting processes ensure adequate public input on elements of the project beyond Massachusetts land and waters). Furthermore, while stakeholder input and feedback is critical to inform project development, 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.

Recommendation for additional pre-filing engagement objective: Orsted recommends any objectives of pre-filing engagement requirements include EFSB and the project proponent working together to determine and agree to all information needs and requirements necessary for inclusion in the application. The early alignment and agreement on application needs will help avoid confusion and minimize the risk of delays due to applications being deemed incomplete.

2.1.2 Pre-Filing Outreach Requirements

While Orsted supports meaningful engagement with agencies and stakeholders prior to filing an application with the EFSB, the Company has concerns with the lengthy timeline proposed for these pre-filing requirements and does not believe this duration aligns with the spirit of the 2024 MA Climate Act to expedite permitting. Orsted recommends developing a pre-filing engagement timeline for Large Clean Energy Infrastructure Facilities (LCEIF) that can be conducted within 6 months prior to filing a notice of intent to file an application, and that the pre-filing notice of intent be filed 30 to 90 days (as opposed to 90 to 120 days) prior to filing a petition. Furthermore, Orsted recommends against the clearly delineated phases of pre-filing engagement as proposed in this straw proposal, as certain projects may face significant constraints (e.g. interconnection capacity/availability, land availability, etc.) that inherently limit the number of potential alternatives a project can realistically consider. In this case, project proponents should focus on sharing realistic routing, siting, and design options the project is evaluating, providing robust and clear justification for why any other alternatives have been dismissed. They should also work with local officials and stakeholders to identify and assess potential impacts associated with viable options and how to minimize or mitigate those impacts commensurately, where feasible. These adjustments to the proposed structure and timeline allow for meaningful pre-filing engagement, while also enabling expedited and streamlined permitting. Furthermore, to mitigate potential delays, Orsted recommends ensuring pre-filing requirements can be deemed 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.

The Siting Board must also establish clear guidance and/or requirements for the process by which they will determine whether sufficient outreach has been conducted during the pre-filing period. Orsted recommends the checklists referred to in the straw proposal comprise of a list of pre-filing engagement activities from the project proponent with brief descriptions of when each activity occurred, what form the engagement took, and what was discussed and addressed. This would be the appropriate level of information to post online, as suggested in the straw proposal.

Additionally, initial project design and siting decisions weigh a great deal of competing constraints. For 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 industry best practices, technical feasibility, and publicly available data sources relating to all applicable constraints. 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. 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.

2.1.3 Documents to be submitted (filed) along with pre-filing notice

Orsted recommends the Siting Board clarifies the purpose of the documentation to be submitted with the pre-filing notice. For instance, will these documents be reviewed prior to the submittal of a formal petition? If reviewed as part of the petition completeness check, this documentation should be due at the time of submitting the petition. Additionally, these pre-filing requirements should be based upon desktop-level assessments—more detailed or site-specific assessments should not be required during the pre-filing period, but rather as part of the petition process, if necessary. Furthermore, self-certification from affected municipalities should not be a requirement for a pre-filing notice—the project proponent's demonstration of good faith efforts to engage affected municipalities should suffice; otherwise, oppositional municipalities could use this as an opportunity to create risk to project development in the form of schedule delays and/or cost increases.

2.1.4 Questions for Comment

(1) How many site/route alternatives are typically considered for different project types (e.g., solar, wind, battery storage)? At what stage of the project development cycle are the project site/route options under consideration ready to be shared with stakeholders during Phase 1 outreach?

The number of alternatives for a given project is highly dependent on environmental resources topography, technology, and interconnection needs associated with the project. The siting board should therefore not set specific requirements relating to siting/alternatives, but rather allow the applicant to provide a robust analysis of alternatives evaluated and subsequent justification for the preferred alternative(s). Additionally, as noted in Section 2.1.3 above, it is important to note that the opportunity for stakeholder input to significantly influence siting and routing decisions may be limited by interconnection capacity/availability and other competing constraints. Orsted is committed to engaging with communities early to understand concerns and identify potential solutions to address them, where possible; to ensure projects necessary to meeting the Commonwealth's climate and clean energy goals are constructable, the Siting Board must carefully weigh technical and economic feasibility against stakeholder suggestions and feedback.

(4) At what point should pre-filing engagement change from Phase 1 (targeted outreach to key stakeholders) to Phase 2 (broader information sharing with wider community)? Should it be based on the number of routes/sites under consideration or other parameters?

As noted above, certain projects may face significant constraints (e.g. interconnection capacity/availability, land availability proximity to a point of interconnection, etc.) that inherently limit the number of potential alternatives a project can realistically consider. Orsted does not recommend splitting pre-filing engagement into the two delineated phases outlined in this straw proposal. Rather, pre-filing engagement should prioritize sharing realistic routing, siting, and design options the project is evaluating, providing robust and clear justification for why any other alternatives have been dismissed, and working with local officials and stakeholders to identify and assess potential impacts associated with viable options and, where feasible, how to minimize or

mitigate those impacts commensurately. It is also important to note that the formal petition will include opportunities for public comment and engagement and that additional information identified during the petition process could alter project siting and design decisions during the permitting process.

(7) Should the type or amount of applicant's outreach to the community vary depending on project type, scale, or location?

Given that each project has unique opportunities and constraints (even across the same technologies, project size, etc.), the siting board should retain flexibility to ensure meaningful engagement specific to each project's unique characteristics. Orsted believes the elimination of the clearly defined phases of pre-filing engagement outlined in this straw proposal, along with allowing projects, in consultation with the Siting board and state and local officials, to determine a project-specific engagement plan, will enable this flexibility.

(8) Is there a key stage in the project development cycle when project design is substantive enough for meaningful input, but the route/site option can still be relatively easily modified based on input?

Projects are unique in their needs, opportunities, and constraints, so there is no "key stage" during project development that could be standardized across projects or technologies. Furthermore, the Siting Board must account for projects undergoing federal permitting under the National Environmental Policy Act (NEPA) and ensure projects have the flexibility to align stakeholder engagement requirements at the federal level with those at the state level.

(10) Which outreach channels and engagement practices are most effective and could be used by project proponents to inform the communities impacted by a project?

Maintaining a variety of engagement and communication methods will help project proponents keep affected communities informed. Website updates, email newsletters, newspaper announcements, and in-person or virtual meetings to discuss the project with stakeholders are examples of effective ways to reach community members, and projects should retain the flexibility to employ a wide variety of engagement methods.

(11) Should EFSB require that every project proponent discuss community benefit agreements with municipal representatives?

Orsted recommends community benefit agreements should not be a blanket requirement; rather the recommendation for community benefit agreement discussion should be evaluated on a project-by-project basis and, if deemed necessary, be commensurate with the projected community impacts of a given facility in the short-term (i.e. during construction) and long term (i.e. over the operating lifetime of the project).

(12) Should the pre-filing process timelines be differentiated by technology type? If so, please explain how.

Pre-filing timelines should be standardized across technologies—the specific nature of engagement necessary may differ across projects, but the process and types of activities conducted are generally similar in scope and timing. As stated above, Orsted has concerns with the lengthy timeline proposed for pre-filing requirements and does not believe this duration aligns with the spirit of the 2024 MA Climate Act to expedite permitting. Orsted recommends developing a pre-filing engagement timeline for LCEIFs that can be conducted within 6 months prior to filing a notice of intent to file an application and that the pre-filing notice of intent be filed 30 to 90 days (as opposed to 90 to 120 days) prior to filing a petition.

2.2 Intervenor Support Grant Program Straw Proposal

2.2.1 Questions for Comment

(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?

Orsted supports efforts to provide financial assistance to community groups, organizations, and government bodies that have been granted intervenor status to support their meaningful participation in an EFSB proceeding that is relevant to them. This promotes a diverse, inclusive, and meaningful process. These funds should be reserved for groups who have not had the ability to meaningfully participate in previous proceedings due to limiting factors like cost, lack of subject matter expertise, or other clearly demonstrated impediments. A group's ability to intervene in previous processes should be taken into account, especially if the group was able to hire legal counsel or consultants without funding assistance. It should also be confirmed that applicants for this financial assistance are not receiving private funding from interest groups that have clear public views that could influence their position relating to the proposed project.

2.3 Community Benefits Plan Proposal Straw Proposal

2.3.1 General Comments

Orsted generally supports efforts to encourage project-related impacts to disadvantaged communities be adequately characterized and equitably distributed to the extent feasible. Whether a community benefits agreement is necessary, as well as the specifics of any community benefits agreement, should be assessed on a project-by-project basis and should be commensurate with short-term (construction-related) and long-term (operational) impacts. Short-term (e.g. construction jobs) and long-term (e.g. clean energy generation, tax revenue) benefits associated with a project should also be considered in evaluating the need for or specific agreements within any community benefits agreement.

2.3.2 Questions for Comment

What role should EFSB play in this process?

Orsted recommends the Siting Board serve as a form of mediator between project proponents and local communities during this process, ensuring that, in any community benefits discussions, developers meet a clearly defined set of criteria and that local communities' requests are reasonable, technically and economically feasible, and align with industry standards and best practices. The Siting Board could further provide guidance and suggestions as to any additional communities that should be considered as part of the community benefits plan. Orsted advises the Siting Board should not have a role in evaluating whether a community benefit agreement is necessary or sufficient, or in assigning any specific dollar amounts to those agreements.

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

LCEIFs generally provide substantial revenues to local communities either through straight tax revenues or through a mutually beneficial tax agreement between the project proponent and the town. Furthermore, direct, indirect, and induced economic benefits also exist and are evaluated by the Bureau of Ocean Energy Management (BOEM) through federal NEPA permitting throughout project construction and operations. Additional benefits could take the form of local economic development, education and workforce development, environmental stewardship, infrastructure improvements, environmental justice initiatives, or if appropriate, direct financial compensation. Should they be deemed necessary, they should be commensurate with the potential impact of the project to the surrounding community (including accounting for project benefits) and should be determined in consultation with local officials and stakeholders.

Projects are required to avoid, minimize, and mitigate impacts. CBPs are one tool to illustrate and memorialize those commitments. What are other tools?

Particularly for projects that also undergo extensive federal permitting (e.g. offshore wind projects in federal waters), project proponents must undertake a rigorous constraints analysis to assess, evaluate, and inform decision-making relating to routing, siting, and design of project components. This analysis of all potential alternatives is conducted in consultation with federal and state agencies to ensure the appropriate datasets are utilized to accurately map environmental and other sensitive resources, as well as technical and other constraints. The result of this extensive analysis is an initial set of viable alternatives that avoid and minimize impacts to these numerous resources and constraints to the greatest extent feasible. This exercise forms the basis of the robust analysis of alternatives submitted as part of the NEPA process to BOEM. From here, the project can then, in consultation with local communities, municipalities, and the Siting Board, develop a community benefits plan that assess potential impacts associated with the viable alternative(s) and avoids, minimizes, and mitigates these impacts where feasible.

What are some barriers for clean energy developers to actualizing CBPs/CBAs?

For a community benefit plan and/or a community benefit agreement to succeed, local officials and stakeholders must be willing to engage in good faith in the process with the project proponent. Additionally, there can be confusion between mitigation-type agreements like a community benefit agreement, and tax agreements like a Payment in Lieu of Taxes (PILOT) agreement. Large dollar figures often get attributed to community benefit agreements in the media when, in fact, they often include a significant mutually beneficial tax restructuring over the lifetime of the project. This can lead to mismatched expectations relating to community benefit agreements. Legal constraints, lack of accountability mechanisms, and trust deficits—both in historically underserved communities and in communities with documented past opposition to offshore wind—further complicate engagement and delivery.

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?

The financial value associated with community benefit agreements can make projects more expensive to ratepayers. Thus, Orsted recommends the Siting Board leaves the determination of need for a community benefit agreement up to the community and developer, and instead serve as a mediator in any discussions relating to a community benefit agreement. The Siting Board could also establish recommended terms and options for community benefit agreements to ensure agreements are fair to both parties and standardized across projects.

2.4 Site Suitability Straw Proposal

2.4.1 Development Potential Criterion

For offshore wind projects, "grid alignment" could be defined as the proximity of the project's proposed onshore substation to the proposed point of interconnection to regional transmission and distribution system. However, for LCEIFs like offshore wind, transmission system capacity is limited to specific substations without substantive, costly, and often prohibitive system and network upgrades. In this case, grid alignment for LCEIFs, particularly those offshore, should be weighted appropriately to ensure large projects that may be constrained by the availability of land proximate to suitable points of interconnection with the grid and/or points of interconnection close to shore may still be permitted given their ability to provide clean generation to meet such a significant portion of the state's electricity demand.

2.4.2 Climate Change Resilience Criterion

Orsted supports efforts to ensure critical energy infrastructure is resilient to climate change risks. However, given their development in the marine environment, offshore wind projects often need to site key infrastructure in coastal environments. Developers should be required to design facilities in a way that mitigates climate-related risks associated with being proximate to the coast and these mitigating design decisions should factor into this scoring criterion even in areas where a project must be sited on or close to the coast.

2.4.3 Biodiversity Criterion

Scoring relating to potential impacts to biodiversity should appropriately reflect the difference in types of impacts (short-term/temporary and long-term/permanent) a project may have on biodiversity.

2.4.4 Social and Environmental Burdens Criterion

The Siting Board must clearly define how "existing burdens" and "vulnerable populations" are defined for the purposes of this scoring criterion.

2.4.5 Social and Environmental Benefits Criterion

Projects can and often do bring both socioeconomic (e.g. jobs, tax revenue, long-term emission-free energy) and environmental (e.g. remediation) benefits to the communities and states in which they locate, and Orsted therefore supports the inclusion of a social and environmental benefits criterion in the scoring methodology. Furthermore, as a global sustainability leader, Orsted's development strategy includes a strong commitment to protecting and promoting biodiversity. To this end, Orsted has established a goal of delivering a net-positive biodiversity impact from all new renewable energy projects commissioned starting in 2030. Any environmental benefit score should account for proactive activities a project undertakes to protect and promote biodiversity or any other social or economic benefit.

2.4.6 Site Suitability Scoring

While helpful in attempting to quantitatively assess project siting, it is important that these scores are evaluated in the context of other options that may be technically and economically viable to the project. There should not be numeric thresholds within the scoring for "good" or "bad" projects. Rather, the score needs to be considered as one part of a full application and in the context of a robust evaluation of potential alternatives and the need for the project. For this reason, Orsted recommends this site suitability scoring be assessed and utilized during the formal petition process to inform the Siting Board's final decision, not as part of the pre-filing requirements. Scoring can help the Siting Board weigh trade-offs on a project-by-project basis, but should not be used to compare projects to each other or to set thresholds for projects to proceed to the formal petition process because each project's requirements and constraints are unique and must be weighted against the value of the project.

Additionally, Orsted recommends the scoring methodology accounts for and appropriately weighs any mitigative actions (e.g. vegetative screening for potential visual impacts or noise barriers for potential noise impacts). Furthermore, projects should be able to reassess and update their score throughout the formal petition process as project designs and development decisions advance.

2.4.7 Ineligible Areas

Orsted does not believe that a blanket designation of areas as ineligible is necessary or warranted. Instead, project sites should be evaluated on a case-by-case basis and projects should be required

to present justification for specific locations considering all potential trade-offs associated with a given site. As described further above, Orsted aims to develop projects in a manner that avoids, minimizes, and mitigates potential impacts to the extent feasible. If specific ineligible areas are identified, there should be a waiver process for any projects that can demonstrate no other suitable route or location exists and/or the selected location is the most viable/best option when all trade-offs are considered.

2.4.8 Mitigation Fees and EEA Trust Fund

Any mitigation fees must be clearly established up front and the process by which the Siting Board assesses the need for and level of any fees should be provided for public review and comment prior to implementation. Furthermore, any mitigation fees imposed on a project should consider other consultations and potential mitigation fees associated with other (e.g. federal) permitting processes.

2.4.9 Questions for Comment

(8) How should this framework consider the suitability of where undersea transmission cables are sited? Note that this framework applies only to projects under state jurisdiction, which includes the portions of undersea transmission cables in state waters (i.e., 3 nautical miles or less from the shoreline).

Any assessment of potential impacts associated with subsea cables should be evaluated under the "Social and Environmental Burdens" and "Social and Environmental Benefits" criteria. Datasets (state, federal, local, etc.) characterizing key marine environmental and socioeconomic resources (e.g. submerged aquatic vegetation, fishing activity, etc.) can be utilized to characterize potential impacts and/or benefits associated with cable installation activities. It is important to note that, for the purposes of the Siting Board's permitting process, any assessment would only address cable installation activities in Massachusetts state waters, as cable laying in other states or federal waters are addressed in separate permitting processes.

(10) What weights should be assigned to each criteria for the purposes of scoring?

Orsted recommends that the weight of scores for any identified burdens and any associated mitigations should be commensurate. For instance, if a project were projected to generate noise above levels authorized under a local zoning ordinance and the project commits to mitigate that noise below the authorized level, the impact and the mitigation should cancel each other out, reflecting neutral score impact.

2.5 Cumulative Impact Analysis Guidance and Proposal Straw Proposal

In the event the Siting Board chooses to incorporate the site suitability scoring into the formal petition process, as opposed to as part of the pre-filing requirements (see Section 2.4.6 above), Orsted recommends the Siting Board incorporates the cumulative impact analysis as part of the siting criteria detailed in Site Suitability Straw Proposal. This would ensure cumulative impacts are characterized and assessed in accordance with clear guidelines and standards, and then part of the

weighted scoring of site suitability criteria. Any analysis of cumulative impacts must allow for the consideration of trade-offs in deciding where and how to site a project. Thus, incorporating the cumulative impact analysis as one of several key criteria in evaluating the suitability of a site ensures all potential trade-offs and constraints can be weighed and evaluated together. However, if the site suitability scoring process remains a pre-filing requirement, projects are likely not in the position to perform a full assessment of cumulative impacts prior to filing an application, so this should not be a pre-filing requirement. Furthermore, the process for cumulative impact analyses, including any evaluation of communities and associated impacts and any scoring process associated with cumulative impacts, must be clear and standardized across projects.

2.6 Clean Energy Infrastructure Dashboard Straw Proposal

Orsted supports the development of a single, concise, and well-designed dashboard the public can consult for all projects undergoing review at the Siting Board. This type of dashboard could help foster transparency and public trust during the permitting process.

2.7 General Comments

2.7.1 Transition process

Orsted strongly recommends 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 Q1 or Q2 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 they have met the intent of the new process prior to its implementation to avoid delays and/or duplication.

3. Conclusion

Thank you for conducting this stakeholder process and considering Orsted's comments. We look forward to continuing this important dialogue as a partner to Massachusetts in ensuring the state fully uses offshore wind to meet its ambitious clean energy targets.