

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 32.00: FEES FOR APPLICATIONS TO THE ENERGY FACILITIES SITING BOARD

Section

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32.01: Purpose and Scope.

- (1) Purpose. The purpose of 220 CMR 32.00 is to establish the fees applicable to all Energy Facilities Siting Board (“EFSB”) jurisdictional proceedings, as defined by M.G.L. c. 164, §§ 69G to 69W, inclusive.
- (2) Scope. 220 CMR 32.00 sets fees for all EFSB jurisdictional proceedings. Fees for each type of proceeding are set forth in “220 CMR 32.00: Energy Facilities Siting Board Fee Schedules.”
- (3) Effective Date. 220 CMR 32.00 shall take effect upon final publication of the regulations in the Massachusetts Register.
- (4) Definitions. 220 CMR 32.00 shall be subject to the definitions of 980 CMR 1.01(4): Definitions, and 980 CMR 13.01(4): Definitions. Where 220 CMR 32.00 references a facility type, the facility type is identified in 980 CMR 1.01(4): Definitions.

The following additional definition shall apply to 220 CMR 32.00:

Application Fee means a fee to be paid by a Person or entity filing a petition or Application to the EFSB for action by the EFSB on matters within its jurisdiction. An Application Fee shall include a base fee, which may include a zoning exemption request fee adder, if applicable, an Intervenor Support Fund Application fee, and a Permit Enforcement Agency (“PEA”) fee, if applicable.

32.02: Application Fee.

- (1) Components of Application Fee. The Department shall charge Application Fees for the purpose of funding the EFSB’s operations, funding the Intervenor Support Fund, and compensating PEAs for costs incurred to participate in the EFSB’s Consolidated Permit process. The fee structure comprises a maximum of three components:
 - (a) a base fee determined by the type of petition or Application, including a zoning exemption adder, where applicable;
 - (b) a fee based on the type of petition or Application and facility size, that is allocated to the Intervenor Support Fund; and
 - (c) a fee to compensate the PEAs for costs incurred to participate in the Consolidated Permit process, which is applicable in certain proceedings as defined in the 220 CMR 32.02(5).
- (2) Application Fees are set forth in “220 CMR 32.00: Energy Facilities Siting Board Fee Schedules,” Attachments 1, 2, and 3.
- (3) Application Base Fee.
 - (a) The Department shall charge an Application base fee. Application base fees are set forth in “220 CMR 32.00: Energy Facilities Siting Board Fee Schedules,” Attachment 1.
 - (b) The Department shall charge an Application base fee for a Small Clean Energy Infrastructure Facility that is tiered based on the size of the proposed Project. See “220 CMR 32.00: Energy Facilities Siting Board Fee Schedules,” Attachment 1.
 - (c) The Department shall charge an additional fee for Applications or petitions to construct that include a request for zoning exemption. The

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Application fee adder for zoning exemptions is set forth in “220 CMR 32.00: Energy Facilities Siting Board Fee Schedules,” Attachment 2.

(d) None of the Application base fees described in 220 CMR 32.03 shall be required of Applicants that are electric companies subject to the jurisdiction of the Department that are assessed annually for the expenses of the Department pursuant to the fourth paragraph of M.G.L. c. 25, § 18, or electric companies that file an Application for a Large Clean Transmission and Distribution Infrastructure Facility or Small Clean Transmission and Distribution Infrastructure Facility as defined in 980 CMR 1.01. The Department may, however, charge PEA fees in proceedings involving a Consolidated Permit even if those utility companies are assessed annually since such PEA fees shall be provided to other agencies of the Commonwealth participating in the EFSB’s Consolidated Permit process and are not expenses of the Department.

(e) Base fees collected pursuant to 220 CMR 32.00 shall be used to ensure that an appropriate number of staff members and other resources are dedicated to the EFSB’s review of all jurisdictional matters.

(4) Intervenor Support Fund Application Fee.

(a) The Department shall charge an Intervenor Support Fund Application fee. The Intervenor Support Fund Application fee shall fund the Intervenor Support Fund authorized and further defined by M.G.L. c. 25, § 18 and 220 CMR 34.00. The Intervenor Support Fund Application fee shall be based on Facility size and is identified in “220 CMR 32.00: Energy Facilities Siting Board Fee Schedules,” Attachment 3.

(b) The Department shall charge an Intervenor Support Fund Application fee for a Small Clean Energy Infrastructure Facility that is tiered based on the size of the proposed Project. See “220 CMR 32.00: Energy Facilities Siting Board Fee Schedules,” Attachment 3.

(c) The Department shall not charge an Intervenor Support Fund Application fee to Applicants that are electric companies or gas companies subject to the jurisdiction of the Department that are assessed annually for the Intervenor Support Fund pursuant to the fifth paragraph of M.G.L. c. 25, § 18.

(5) PEA Fee. Applicants shall pay a PEA fee to compensate PEAs for costs incurred to participate in the Consolidated Permit process.

(a) Amount of PEA fee. The PEA fee shall be identified by an Applicant for a Consolidated Permit and confirmed by the PEA. The EFSB Consolidated Permit Application requires the Applicant to identify the state, regional, and local permit review agencies that otherwise would have issued approvals and permits for a Clean Energy Infrastructure Facility and the amounts of such fees that would have been applicable. See 980 CMR 13.05(1)(a)(8). The PEAs shall have an opportunity to verify this cost information during the 30-day period that the EFSB is required to make a Completeness Determination for that Application. The Completeness Determination issued by the Presiding Officer shall confirm the amount of the PEA fee that must be submitted by the Applicant.

(b) Timing of Fee. The PEA fee shall be filed with the Application for a Consolidated Permit. The Department shall transfer 100 percent of the PEA fee to the relevant PEAs upon issuance of the notice of adjudication and public comment hearing, or as soon as practicable thereafter.

32.03: Payment and Deposit of Fees.

(1) Application Fees for petitions to construct pursuant to M.G.L. c. 164, §§ 69J, 69J¼ and Applications for a Consolidated Permit pursuant to M.G.L. c. 164, §§ 69T, 69U, 69V, including the base fee, zoning exemption fee adder, and Intervenor Support Fund Application fee, shall be payable upon issuance of the notice of adjudication and public comment hearing. Application Fees for all other proceedings shall be payable upon submission of an initial filing.

(2) All Application base fees shall be deposited into the EFSB Trust Fund established by M.G.L. c. 25, § 12Q.

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- (3) All Intervenor Support Fund Application fees shall be deposited into the Intervenor Support Fund established by M.G.L. c. 25, § 12S.
- (4) The failure to remit all Application Fees due to the Department within 30 days of the due date shall automatically toll EFSB deadlines to issue permits pursuant to 980 CMR 13.02(4)(a).
- (5) The Department may retain Application Fees for the purpose of reviewing petitions to construct or Applications for a Consolidated Permit for Large Clean Energy Infrastructure Facilities, Small Clean Energy Infrastructure Facilities, or other proceedings subject to this section, and for the purpose of creating a Clean Energy Infrastructure Facility dashboard established pursuant to M.G.L. c. 25, § 12N.
- (6) The Director of the Department's Siting Division may waive an Application Fee for good cause, including financial hardship. Requests for a waiver from 220 CMR 32.00 shall include supporting documentation as to why the Department shall grant the waiver. The Director of the Department's Siting Division shall review a requested waiver and provide a response in writing. The decision of the Director of the Siting Division as to whether to grant a waiver from the Application Fee is final and not subject to appeal.
- (7) Any remaining balance of Application Fees at the end of a fiscal year shall not revert to the General Fund but shall remain available to the Department during the following fiscal year for the purposes of this section, M.G.L. c. 25, § 12Q, or M.G.L. c. 25, § 12S.

32.04: Annual Report.

The Department shall issue an annual report summarizing the data and information required by this section, including, but not limited to: (i) the number of Applications filed for Facilities, Large Clean Energy Infrastructure Facilities and Small Clean Energy Infrastructure Facilities, decided and pending; (ii) the average duration of review; and (iii) the average staffing levels; provided, however, that the annual report shall make use of bar charts, line charts, and other visual representations to facilitate public understanding of events of the immediate preceding year and of long-term and cumulative trends and outcomes.

The EFSB shall file the report with the clerks of the house of representatives and the senate, the house and senate committees on ways and means and the joint committee on telecommunications, utilities and energy, not later than January 31 of each calendar year.

REGULATORY AUTHORITY

220 CMR 32.00: 801 CMR 4; M.G.L. c. 164, § 69J^{1/2}, M.G.L. c. 25, § 12N, M.G.L. c. 25, § 12S, M.G.L. c. 25, § 18.