

## 220 CMR 34.00: INTERVENOR SUPPORT GRANT PROGRAM

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34.01: Purpose and Scope

- (1) Purpose. Pursuant to M.G.L. c. 25, § 12S and M.G.L. c. 164, § 149, 220 CMR 34.00 establishes the Intervenor Support Grant Program (“Program”) at the Department of Public Utilities (“Department”). The Program provides financial assistance to eligible organizations, entities (including the federally-recognized, state-acknowledged or state-recognized Tribes), and Governmental Bodies that lack resources to intervene and meaningfully participate in Proceedings before the Department and the Energy Facilities Siting Board. 220 CMR 34.00 sets out the procedures and eligibility criteria for the Program. Pursuant to M.G.L. c. 25, § 12T, 220 CMR 34.00 also sets appropriate criteria for the functions of the Department’s Division of Public Participation (“Division”).
- (2) Scope. 220 CMR 34.00 applies to the Division and all Grant Applicants seeking a Grant through the Program for the purpose of participation in any Proceeding before the Department or the Board.
- (3) Role of the Division of Public Participation.
  - (a) The Division will oversee the Program in the following ways:
    1. Manage the Grant Application process;
    2. Allocate funding among Grantees;
    3. Identify opportunities for Grantees to collaborate on procedural, substantive, or other legal issues; and
    4. Conduct Program reporting, education, and outreach.
  - (b) The Division shall not:
    1. Consult with Grant Applicants, while a Grant Application is pending Division review, regarding the likelihood of approval of such Grant Application; and
    2. Provide legal advice.
  - (c) Prohibition on *ex parte* communications:
    1. The Director and other non-adjudicatory Division staff shall not engage in *ex parte* communications, within the meaning of 220 CMR 1.02(9) or 980 CMR 1.03(7), including discussion of the merits of any

petition or the strength of a Party's position after the Grant Applicant receives Intervenor status or after a Grant Application is filed with the Division.

2. The Director and other non-adjudicatory Division staff may communicate with Parties seeking to intervene in a Department or Board Proceeding about substantive matters before a Grant Application is filed with the Division, and such communication shall not be deemed an *ex parte* communication.

### 34.02: Definitions

For the purpose of 220 CMR 34.00, the following definitions shall apply:

Department of Public Utilities (Department). The Massachusetts Department of Public Utilities, established by M.G.L. c. 25.

Director. The Director of the Division of Public Participation of the Department.

Division. The Division of Public Participation of the Department, established by M.G.L. c. 25, § 12T.

Energy Facilities Siting Board (Board). The Energy Facilities Siting Board, established by M.G.L. c. 164, § 69H.

Community Experts. Members of an affected community, including residential ratepayers and residents or community groups, with knowledge or lived experience relevant to the Proceeding, who will serve as subject matter experts on issues specific to their community.

Conditional Grant Award. An approval of a Grant Application and Grant disbursement amount conditioned on the outcome of the Grant Applicant's petition to intervene.

Compensation. Payment for all or part, as determined by the Director, of reasonable legal fees, reasonable Expert Witness Fees (including Community Experts), and other reasonable costs of preparation for and participation in a Proceeding.

Evidentiary Record. The testimony, exhibits, data, and other materials formally entered into the record of a Proceeding that may be relied upon by the Department or Board in its decisions.

Expert Witness Fees. Reasonable, itemized, recorded or billed costs incurred by an Intervenor for the services of an expert witness or a Community Expert, or both an expert witness and Community Expert, participating in a Proceeding.

Governmental Body. A city, town, district, regional school district, county or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county.

Grant. A sum of money disbursed by the Division to a Grantee after its Grant Application is approved and its petition for Intervenor status is granted.

Grant Applicant. An organization, entity, Governmental Body, regional planning agency, federally-recognized Tribe, state-acknowledged Tribe, state-recognized Tribe, unincorporated association of three or more individuals, or other entity that has filed a timely petition to intervene pursuant to 220 CMR 1.03 or 980 CMR 1.05 and has completed a Grant Application through the Program pursuant to 220 CMR 34.00.

Grant Application. A formal written request submitted by a Grant Applicant that complies with the specific eligibility requirements, terms, and conditions set forth by the Division.

Grantee. An organization, entity, Governmental Body, regional planning agency, federally recognized Tribe, state-acknowledged Tribe, state-recognized Tribe, or unincorporated association of three or more individuals that has received a Grant pursuant to M.G.L. c 164, § 149.

Intervenor. A formal Party to a Proceeding with the right to present evidence, cross-examine witnesses, and appeal decisions of the Department or the Board.

Intervenor Support Grant Program (Program). The Intervenor Support Grant Program, as established by M.G.L. c. 164, § 149.

Large Clean Energy Infrastructure Facility. As defined in M.G.L. c. 164, § 69G.

Limited Participant means any person allowed to participate in an adjudicatory Proceeding pursuant to M.G.L. c. 30A, § 10, 220 CMR 1.03(1)(e), and 980 CMR 1.05(2). A Limited Participant is not a Party.

Notification of Intent to File Application (Pre-filing Notice). A document filed by a project applicant to the Board indicating a plan to file an application for Board review.

Party. As defined in 220 CMR 1.01 and 980 CMR 1.01, a Party means:

- (a) the specifically named persons whose legal rights, duties, or privileges are being determined in an adjudicatory Proceeding before the Department or the Board;
- (b) any other person who as a matter of constitutional right or by any provision of the Massachusetts General Laws is entitled to participate fully in such Proceeding and who enters an appearance; or
- (c) any other person allowed by the Department or the Board to intervene as a Party.

Pre-filing Consultation and Engagement. Consultation and engagement activities as defined in 980 CMR 16.00 that the Applicant of a proposed energy infrastructure facility shall comply with prior to filing their application or petition to construct with the Board.

Proceeding. Any adjudicatory matter before the Department or Board as defined in M.G.L. c. 30A, § 1(1).

Significant Financial Hardship. The inability of a Grant Applicant to intervene and participate in a Proceeding absent a Grant award under the Program due to the Grant Applicant's lack of financial resources to cover the reasonable costs associated with intervention and participation, or, in the case of an unincorporated association of three or more individuals, the financial resources available to the individual members of the association are small in comparison to the costs of intervening and meaningfully participating in the Proceeding.

Small Clean Energy Infrastructure Facility. As defined in M.G.L. c. 25A, § 21.

### 34.03: Eligibility

(1) Minimum Criteria.

For the purposes of 220 CMR 34.00, a Grant Applicant must:

- (a) demonstrate Significant Financial Hardship with respect to its ability to intervene and participate in a Proceeding in the absence of a Grant;
- (b) state whether the Grant Applicant has previously intervened in a Proceeding before the Department or the Board prior to the establishment of the Program, or has meaningfully participated since the Program was created;
- (c) describe how the Grant Applicant proposes to substantially participate in the Proceeding, including developing the Evidentiary Record with materials relevant to the scope of the Proceeding;
- (d) state a sound, feasible, and clear plan for participating in the Proceeding;
- (e) identify the Grant Applicant's unique perspective that is not adequately represented by other Parties to the Proceeding;
- (f) state whether the Grant Applicant has retained attorneys, technical experts, expert witnesses or Community Experts or will retain attorneys, technical experts, expert witnesses, or Community Experts conditional on the receipt of a Grant; and
- (g) itemize the amount of the requested Grant and anticipated budget items, including but not limited to budget items for attorneys, technical experts, expert witnesses, and Community Experts, and explain why such budget items are reasonable.

(2) Exemptions.

Municipalities with a population fewer than 7,500 applying for a Grant for a Proceeding pertaining to a Large Clean Energy Infrastructure Facility or Small Clean Energy Infrastructure Facility within their boundaries are exempt from eligibility criteria 220 CMR 34.03(1)(a) and (b).

(3) Intervenors eligible for compensation.

- (a) Organizations and entities that advocate on behalf of a relevant subset of residential customers defined geographically or based on specific shared interests;
  - (b) Organizations and entities that advocate on behalf of low- or moderate-income residential populations, or residents of historically marginalized or overburdened and underserved communities, or residents of a burdened area, as defined in 980 CMR 15.02;
  - (c) Governmental Bodies, regional planning agencies, and federally-recognized Tribes, state-acknowledged Tribes or state-recognized Tribes; or
  - (d) An unincorporated association of three or more individuals that may be specifically and substantially affected by a Proceeding.
- (4) Ineligibility.
- (a) Individuals and Limited Participants are ineligible for Grants;
  - (b) Applicants whose petitions to intervene in the Proceeding are denied are ineligible for Grants for use in such Proceeding.

#### 34.04: Grant Application

- (1) The Grant Application shall include:
  - (a) A statement outlining the breadth and scope of the Grant Applicant's anticipated participation in a Proceeding, including a description of how the Grant will be used and how the Grant Applicant anticipates participating in the Proceeding;
  - (b) An itemized estimate of the costs and fees for attorneys, technical experts, expert witnesses or Community Experts, and for all other costs related to the Grant Applicant's preparation for or participation in the Proceeding;
  - (c) Specific information about relevant qualifications for attorneys, technical experts, expert witnesses or Community Experts anticipated to be retained by the Grant Applicant and the services each will provide;
  - (d) A statement describing the position and nature of the interests that the Grant Applicant represents and a summary of questions and concerns that the Grant Applicant raised during Pre-filing Consultation and Engagement, if applicable;
  - (e) The total Grant amount the Grant Applicant seeks to obtain through the Program;
  - (f) A brief description of the Grant Applicant's position in the Proceeding and an explanation of how participation in the Proceeding would result in Significant Financial Hardship;
  - (g) The docket number(s) and case caption(s) of previous Department and Board Proceedings in which the Grant Applicant has participated and been granted intervenor status, both prior to and since the establishment of the Program, including a description of participation in each Proceeding;
  - (h) In the case of an unincorporated association of individuals (*i.e.*, three or more individuals who are not affiliated with an organization that possesses a tax identification number or who are not otherwise incorporated), a self-

attestation that includes the names and addresses of all persons in the group, the number of additional volunteers or supporters, if applicable, a narrative explaining the association's collective mission and activities, and a narrative explanation demonstrating Significant Financial Hardship. An unincorporated association of individuals shall designate a point of contact for purpose of communication with the Division; and

- (i) Any additional information reasonably requested by the Division.

#### 34.05: Grant Application Process

- (1) In a Board Proceeding, a Grant Applicant may submit a Grant Application upon the filing of the Notification of Intent to File Application (Pre-filing Notice) or a petition to construct by the project proponent. In a Department Proceeding, a Grant Applicant may submit a Grant Application upon the filing of a petition for review or a Department order opening a Proceeding. In both Department and Board Proceedings, a Grant Applicant must submit a Grant Application no later than the deadline to file a petition to intervene as specified in the Proceeding notice.
- (2) The Division shall review the Grant Application for completeness within ten business days of receipt and shall notify the Grant Applicant by email of any deficiencies, which must be addressed by such Grant Applicant by the end of the Grant Application window or by the date indicated by the Director.
- (3) The Division shall issue a written determination of Grant approval status and disbursement decisions to all Grant Applicants, including any Grant Applicant who received a Conditional Grant Award, within 30 calendar days after the Grant Application deadline.
- (4) The Director may make a Conditional Grant Award to a Grant Applicant provided that the Grant is not disbursed until a Petition to Intervene is allowed by the Department or Board.

#### 34.06: Allocation and Payment of Funds

- (1) Grants shall not exceed \$150,000 for each Party and \$500,000 in aggregate per Proceeding. Notwithstanding the foregoing, the Director may increase the amount awarded to a Grantee and the aggregate amount for a single Proceeding or provide a Grant in addition to the amount initially awarded to the Grantee if the Director determines good cause exists. In determining whether good cause exists, the Director may consider:
  - (a) The novelty and complexity of issues in the Proceeding, including but not limited to whether the Grant Applicant is offering testimony and analysis on one or more issues; whether the Proceeding is conducted in multiple phases; the number of evidentiary hearing days; and whether the scope of a Proceeding substantially expanded beyond what was reasonably anticipated at the time of the original Grant Award;

- (b) The nature and extent of a Grantee's use of any initial Grants in a Proceeding; and
  - (c) A complete accounting of the use of any initial Grant funds.
- (2) All Grantees must have a tax identification number and be registered with the Commonwealth of Massachusetts Comptroller's Office to receive funding disbursements.
  - (3) All Grantees shall promptly request payments using the Grant Payment Request Form provided by the Division. Payment shall be made in one of the following ways:
    - (a) Grantees may receive disbursements in advance of incurred costs upon showing of good cause and Significant Financial Hardship. At the Director's discretion, the Director may award up to twenty percent of the total Grant before the Grant Applicant incurs costs upon submission of required documentation; or
    - (b) Grantees may receive payment for reimbursements after costs are incurred upon submission of required documentation.
  - (4) The Director may authorize payments throughout the Proceeding.
  - (5) The Division shall pay approved advance payments or reimburse approved incurred expenses within 30 calendar days of the submittal of a Grant Payment Request.
  - (6) The Director shall consider where funds may be shared among Grantees representing similar positions and may suggest collaborative efforts to avoid duplicative use of funding.

#### 34.07: Use of Intervenor Support Grant Funding

- (1) Up to ten percent of a Grant, or a greater percentage as determined by the Director at the Director's sole discretion, may be used on non-legal and non-expert, administrative costs associated with participation in a Proceeding. Administrative costs may include but not be limited to costs associated with drafting the Grant Application, where a third party was hired for the purpose of contributing to the Grant Application. Reasonable community engagement costs that support meaningful participation, such as hosting community meetings regarding the Proceeding, are a permissible administrative cost.
- (2) Ineligible uses of funds include, but are not limited to:
  - (a) The purchase or lease of equipment;
  - (b) Political lobbying;
  - (c) Advertising or marketing costs to publicize the Grantee's view on a Proceeding;
  - (d) Costs associated with seeking judicial review of the final decision of the Department or the Board in a Proceeding; and

- (e) Any other unlawful, unethical, or improper use, as determined by the Director.
- (3) A Grant may only be used for participation in the specific Proceeding or joint Proceedings identified in the Grant Application and Grant disbursement. An Intervenor seeking to participate in multiple Proceedings must submit separate Grant Applications for each Proceeding. Grantees may not, unless expressly permitted by the Director in writing, use Grants from one Proceeding to participate or intervene in any other Proceeding.
- (4) Any unused funds shall be remitted to the Department no later than 30 calendar days after the deadline for appeal or by Order of the Director. Costs associated with any ineligible uses of funds, as determined pursuant to 220 CMR 34.07(2), above, shall be refunded to the Department no later than 30 days after notification to the Grantee by the Director.

#### 34.08: Denial of Grant Application

- (1) The Director shall have full and complete discretion to determine whether to approve or deny a Grant Application. Grant Applicants shall have no legal right, privilege, or appellate recourse to any decision made by the Director.
- (2) A Grant Applicant shall not be eligible for a Grant where there is a history of bad faith as reasonably determined by the Director, including but not limited to: misusing Program resources or funds; inadequate accounting; or exhibiting a pattern of repeatedly delaying or obstructing or attempting to delay or obstruct Proceedings.
- (3) The Director may terminate any Grant, in whole or in part, if a Grantee has committed fraud, misrepresentation, or misappropriation during the Proceedings or has otherwise misused funds.

#### 34.09: Reporting Requirements

Within 30 calendar days of the completion of any Proceeding in which a Grantee has received a disbursement, the Grantee shall submit a written report that identifies:

- (1) the specific and itemized use of the Grant during the Proceeding;
- (2) the significant contribution provided to the Proceeding by the Grantee's participation therein; and
- (3) a demonstration that the Grantee's participation in the Proceeding and the use of funding did not cause an undue delay.

If a Grantee appeals a Board or Department final decision, the Grantee shall have an additional 30 calendar days from the deadline for appeal to submit the report. Grant funds shall not be used to pursue an appeal of a Board or Department final decision.

REGULATORY AUTHORITY

M.G.L. c. 25, § 12S; M.G.L. c. 25, § 12T; M.G.L. c. 164, § 149.