

980 CMR 14.00: ENERGY FACILITIES SITING BOARD

980 CMR 14.00: DE NOVO ADJUDICATIONS OF CONSOLIDATED LOCAL PERMIT APPLICATIONS

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14.01: Scope and Construction of Rules

- (1) Scope. 980 CMR 14.00 shall govern the conduct of De Novo Adjudications of Consolidated Local Permit Applications before the Board. De Novo Adjudications apply to Consolidated Local Permit Applications for SCEIF and shall be conducted by the Director.
- (2) Application of 980 CMR 14.00. 980 CMR 1.00: *Rules for the Conduct of Adjudicatory Proceedings* shall apply to De Novo Adjudications conducted pursuant to 980 CMR 14.00, except where 980 CMR 14.00 provides otherwise.
- (3) Effective date. 980 CMR 14.00 shall take effect on March 1, 2026, and shall apply to requests for De Novo Adjudications filed on or after July 1, 2026.
- (4) Delegation. The Director may delegate the authority to conduct the De Novo Adjudication, with the exception of the final decision, to a Board staff member.
- (5) Definitions. The definitions in 980 CMR 1.00 and 980 CMR 13.00 shall apply to 980 CMR 14.00. The following additional definitions shall also apply unless the context or subject matter requires a different interpretation:

Final Decision of Local Government means a Consolidated Local Permit issued by a Local Government, a denial by a Local Government of an application for a Consolidated Local Permit, or a Constructive Approval of a Consolidated Local Permit Application, pursuant to 225 CMR 29.00.

Local Request for Review Based on Lack of Resources means a notification filed by the Local Government that its resources, capacity, or staffing do not allow for review of a SCEIF's Consolidated Local Permit Application within the required maximum 12-month timeframe for Local Government review.

14.02: Initiation of a De Novo Adjudication.

- (1) Entities that May Petition for a De Novo Adjudication. The following entities may petition the Director for a De Novo Adjudication:

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- (a) An Applicant for a SCEIF that has received a Final Decision on, or a Constructive Approval of, a Consolidated Local Permit Application from a Local Government;
 - (b) Other Person(s) that may be substantially and specifically affected by a Final Decision of a Local Government, as determined by the Director; or
 - (c) A Local Government that files a Local Request for Review Based on Lack of Resources. The Local Request for Review Based on Lack of Resources acts as the petition for a De Novo Adjudication. The Board's De Novo Adjudication is limited to the content of a request submitted by a Local Government.
- (2) Timing of Petition for a De Novo Adjudication.
- (a) A petition of an Applicant or Person pursuant to 980 CMR 14.02(1)(a) or (b) shall be filed within 30 days of the Final Decision of the Local Government.
 - (b) A petition pursuant to 980 CMR 14.02(1)(c) shall be filed by a Local Government no later than 60 days after the Local Government's receipt of a Consolidated Local Permit Application or any later time with the Applicant's consent.
- (3) Form of Petition for a De Novo Adjudication.
- (c) For a petition from the Applicant or from a Person that may be substantially and specifically affected by a Final Decision of a Local Government pursuant to 980 CMR 14.02(1)(a) or (b), the petition shall include:
 - 1. the petitioner's name and address;
 - 2. identification of the proposed SCEIF;
 - 3. a copy of the Consolidated Local Permit Application and a link to the online portal containing that application;
 - 4. a copy of any action taken by the Local Government on the Consolidated Local Permit Application, including the Final Decision of Local Government;
 - 5. a description of any objections to the Final Decision of Local Government and the bases for the objections, including how the Local Government action was inconsistent with 225 CMR 29.00;
 - 6. for Persons other than the Applicant, a description of how the Person may be substantially and specifically affected by the action of the Local Government; and
 - 7. relief sought, including any recommended conditions.
 - (d) For a petition for a De Novo Adjudication from a Local Government, the Local Government shall provide to the Applicant a copy of the Local Request for Review Based on Lack of Resources. Within fourteen days, the Applicant shall provide to the Siting Board:
 - 1. identification of the location of the proposed SCEIF project;
 - 2. a copy of the Consolidated Local Permit Application;
 - 3. any documents received by the Local Government to date concerning the Consolidated Local Permit Application; and

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4. any comments on the proposed SCEIF or recommended permit conditions received by the Local Government.

(4) Filing Procedure for a Petition for a De Novo Adjudication.

(a) Filing. A petition for a De Novo Adjudication shall be filed with the Board.

(b) Copies. The petitioner shall provide a copy of the petition to the Local Government having taken action on the Application, and to the Applicant (if different from the petitioner).

(5) With respect to a petition from a Person submitted pursuant to 980 CMR 14.02(1)(b), the Director shall determine whether at least one such Person is substantially and specifically affected by the Final Decision of the Local Government. The Director may allow comment prior to making their determination.

(6) With respect to a petition initiated by a Local Request for Review Based on Lack of Resources, the Director will accept the petition from a Local Government where its resources, capacity, or staffing do not allow for review of an SCEIF's Consolidated Local Permit Application within the required maximum 12-month timeframe for Local Government review.

14.03: Notice; Parties; Completeness; Procedural Conference.

(1) Notice. The Director shall send a Notice of the De Novo Adjudication to relevant recipients as determined by the Director. The Director shall allow for written comments on the Consolidated Local Permit Application. For De Novo Adjudications initiated pursuant to 980 CMR 14.02(1) (a) or (b), the Director may, in their discretion, provide for a public comment hearing on the Consolidated Local Permit Application, and such hearing may be conducted virtually. For De Novo Adjudications initiated pursuant to 980 CMR 14.02(1) (c), the Director shall provide for a public comment hearing on the Consolidated Local Permit Application, and such hearing may be conducted virtually. The Director may, in their discretion, schedule a site visit.

(2) Parties. The Applicant and the Local Government shall automatically be Parties to the De Novo Adjudication. The Director shall provide for an opportunity to request intervention pursuant to 980 CMR 1.05. The Director shall make a determination to identify other Persons who may be substantially and specifically affected by the De Novo Adjudication.

(3) Completeness Determination. Within 30 days of the Applicant filing the documents required by 980 CMR 14.02(3)(b), the Director shall determine whether the Consolidated Local Permit Application is complete, pursuant to 225 CMR 29.00. If the Director determines that the Consolidated Local Permit Application is not complete, the Director shall identify the additional required information or documents, and the Applicant shall have 30 days to complete the application. If the

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Applicant does not complete the application in 30 days, the application shall be rejected, without prejudice.

(4) Procedural Conference. The Director may schedule a procedural conference to inform the scope of the proceeding, or other procedural matters governing the De Novo Adjudication.

(5) Procedural Order. The Director shall issue a procedural order: (i) identifying additional Parties to the adjudication, (ii) establishing the scope of the adjudication, (iii) establishing a procedural schedule, and (iv) addressing any other procedural matters governing the De Novo Adjudication.

14.04: Adjudicatory Procedure.

(1) Evidence. The Local Government and the Applicant for a Consolidated Local Permit shall file all documents produced for the Consolidated Local Permit process with the Board. Board staff may request additional information. Parties may introduce additional evidence for consideration by the Director. All evidence introduced in the De Novo Adjudication shall be accompanied by an affidavit. Such an affidavit must comply with the requirements of 980 CMR 1.03(4), including a signature by an authorized representative attesting that the representative has read and reviewed the document and that all statements contained therein are true.

(2) Evidentiary Hearing. The Director may schedule an evidentiary hearing. The evidentiary hearing may be conducted virtually.

(3) Consultation. The Director may consult with DOER as part of their assessment of whether the Local Government's review is in compliance with 225 CMR 29.00. The Director may consult with any PEA whose Permit is the subject of the De Novo Adjudication, or other state or local agency which may be concerned with the matter under review in the De Novo Adjudication. See M.G.L. c. 164, § 69H.

(4) Briefs. The Director may allow for oral argument at the hearing or the filing of written briefs after hearings by Parties.

14.05: Decision.

(1) Decision by Director.

(a) Standard for Decision. For petitions submitted pursuant to 980 CMR 14.02(1)(a) or (b), the Director shall review the Final Decision of the Local Government for:

1. consistency with 225 CMR 29.00, established pursuant to M.G.L. c. 25A, § 21; and
2. consistency with M.G.L. c. 164, § 69H.

(b) Timing of Decision.

1. For petitions submitted pursuant to 980 CMR 14.02(1)(a) or (b), the Director shall issue a decision on the De Novo Adjudication within six

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months of receipt of the petition for De Novo Adjudication, and such decision shall be final.

2. For petitions from a Local Government pursuant to 980 CMR 14.02(1)(c), the Director shall issue a decision on the De Novo Adjudication pursuant to M.G.L. c. 25A, § 21(g), within twelve months of a determination that the Consolidated Local Permit Application is complete, and such decision shall be final.

(2) If the Director finds that the Local Government's decision is inconsistent with (a) the regulations established by the DOER at 225 CMR 29.00; or (b) M.G.L. c. 164, § 69H, the Director shall issue a final decision that shall supersede the Local Government's prior decision and that may impose new permit conditions that are consistent with the laws of the Commonwealth.

(3) No work shall be undertaken by the Applicant until the Director has issued a final decision on the Consolidated Local Permit Application as part of the De Novo Adjudication.

14.06: Appeal of Director's Decision.

(1) The decision of the Director on a De Novo Adjudication of a Consolidated Local Permit Application may be appealed within 20 days of the Director's decision to the Supreme Judicial Court. Such appeal shall be governed by M.G.L. c. 164, § 69P.

REGULATORY AUTHORITY

980 CMR 14.00: M.G.L. c. 30A and c. 164, §§ 69H, 69W.