

980 CMR: ENERGY FACILITIES SITING BOARD

980 CMR 2.00: GENERAL INFORMATION AND CONDUCT OF BOARD BUSINESS

Section

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2.01: Purpose and Scope

- (1) Purpose. 980 CMR 2.00 describes the Energy Facilities Siting Board and establishes rules for the conduct of Board business.
- (2) Scope. 980 CMR 2.00 is of general applicability and applies, whenever appropriate, to all other sections of 980 CMR.
- (3) Effective Date. 980 CMR 2.00 shall take effect on February 19, 2010, and shall apply to proceedings initiated after that date.

2.02: Purpose and Functions of the Board

- (1) Purpose of the Board. The Board has been established by M.G.L. c. 164, § 69H. The Board is responsible for implementing the energy policies contained in its enabling legislation in order to provide a reliable energy supply for Massachusetts with a minimum impact on the environment at the lowest possible cost. The powers and duties of the Board are enumerated in M.G.L. c. 164, § 69H.
- (2) Primary Functions of the Board. Matters reviewed by the Board include petitions for:
 - (a) electric transmission lines
 - (b) electric generating facilities
 - (c) gas pipelines and storage facilities
 - (d) oil refining, storage, and transportation facilities
 - (e) hydropower generation facilitiesThe Board also has the authority to issue certificates of environmental impact and public interest, to approve the promulgation, amendment or repeal of the Board's regulations at 980 CMR; and to issue civil penalties to any applicant who violates an order of the Board.
- (3) Adjudicatory Proceedings. The Board reviews the following matters which shall be resolved through adjudicatory proceedings in accordance with M.G.L. c. 30A and 980 CMR 1.00: a hearing on a petition to construct a facility held pursuant to M.G.L. c. 164, § 69J or 69J½; a hearing on an initial petition filed pursuant to M.G.L. c. 164, § 69K or M.G.L. c. 164, § 69K½; a hearing on an Application for a Certificate filed pursuant to M.G.L. c. 164, § 69L or M.G.L. c. 164, § 69L½; and a hearing on appeal under M.G.L. c. 164, § 69H½.
- (4) Mailing List. The Board shall maintain a mailing list, shall place upon the list the name and address of any person or group so requesting, and shall give to such persons and groups written notice of activities of the Board for which notice may be appropriate. Failure to give notice to any person or group on the list shall not, in itself, render any act of the Board invalid. The Board may from time to time remove from the list persons or groups no longer expressing interest in receiving notices.

2.03: Board Membership

(1) Description of the Board. Pursuant to M.G.L. c. 164, § 69H, the Board shall be composed of nine members: the Secretary of Energy and Environmental Affairs; the Secretary of Housing and Economic Development; the Commissioner of the Department of Environmental Protection; the Commissioner of the Department of Energy Resources; two Commissioners of the Commonwealth Utilities Commission; or the designees of any of the foregoing; and three public members appointed by the Governor for a term co-terminus with that of the Governor, one of whom shall be experienced in environmental issues, one of whom shall be experienced in labor issues, and one of whom shall be experienced in energy issues.

(2) Chairman. In accordance with M.G.L. c. 164, § 69H, the Secretary of the Executive Office of Energy and Environmental Affairs, or the Secretary's designee, shall serve as Chairman of the Board. In the event of the absence, recusal, or disqualification of the Chairman, the Commissioner of the Department of Energy Resources shall appoint an acting chairman from the remaining members of the Board.

(3) Designees. A Board member other than a public member may nominate a designee to serve in his or her stead. Nomination shall be made by a letter addressed to the Chairman and signed by the nominating official. The nominating letter shall state whether the nomination is general or limited. The nominating official may revoke a nomination at any time by letter to the Chairman.

Once nominated, a general designee shall assume all responsibilities of the nominating official pursuant to M.G.L. c. 164, §§ 69G through 69S and 980 CMR 2.00. The nominating official may temporarily suspend a general nomination by appearing personally at a Board meeting or proceeding and performing the responsibilities of a Board member.

A limited designee shall assume only those responsibilities set forth in the nominating letter. The nominating official may retain and perform or may further name another designee to perform all other responsibilities.

(4) Replacement of Public Members. In the event of the resignation of a public member, the Board Chairman shall notify the Governor in writing within 15 days and shall request the appointment of a new public member.

(5) Compensation. Any public member appointed by the Governor shall receive compensation for his or her services in the amount allowable by law, and shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance of his or her official duties.

(6) Effect of Board Actions. No action taken by the Board pursuant to 980 CMR 2.00 shall bind any member of the Board or any designee for the purposes of any responsibilities of such member or designee not solely related to the operation of the Board.

2.04: Meetings; Voting

(1) Public Meetings. All meetings of the Board shall be open to the public to the extent required by M.G.L. c. 30A, §§ 11A and 11A½. All meetings of the Board shall be open to the press to the extent required by law. The Board may establish specific policies regarding the use of video cameras and other recording devices as necessary.

(2) Notice of Public Meetings. Except in an emergency as provided by 980 CMR 2.04(3), a notice of each meeting of the Board shall be filed with the Secretary of State, and a copy thereof posted in the public office of the Executive Office for Administration and Finance, at least 24 hours, not including Saturdays, Sundays, or legal holidays, prior to the time of such meeting or session.

(3) Emergencies. The Board may conduct a public meeting or executive session without giving notice as required by 980 CMR 2.04(2), if it determines that an emergency exists and that immediate, undelayed action by the Board is imperative.

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(4) Executive Sessions. The Board may in the course of a public meeting vote to go into executive session. An executive session may be held only as authorized by M.G.L. c. 30A, §§ 11A and 11A½.

(5) Records of Meetings. The Board shall maintain accurate records of its meetings, setting forth the action taken at each meeting, including executive sessions. Either a full transcript of the meeting or a summary of all matters voted shall be made available with reasonable promptness after each meeting; provided, however, that votes taken in executive session may be withheld from public disclosure for so long as their publication would defeat the lawful purposes of the executive session, but no longer.

(6) Quorum; Voting.

(a) A quorum consisting of four Board members shall be required to conduct any meeting of the Board held for the purpose of considering and voting upon an adjudicatory decision, or a proposal to adopt, amend or rescind regulations, or any other matter requiring a vote of the Board. A majority of members in attendance at a meeting shall be sufficient to dispose of any question properly before the Board during the meeting at which the question is taken up.

(b) Each Board member or designee in attendance at a meeting shall be entitled to vote on any matter which is properly before the Siting Board at that meeting.

2.05: Delegation of Duties; Board Staff

(1) Delegation of Duties. The Board may delegate Board-specific responsibilities other than responsibility for the final decision in any matter to the Board Chairman or to the Board staff. The staff of the Siting Division of the Department of Public Utilities shall serve as Board staff.

(2) Director. The Director of the Board shall be appointed by the Chairman of the Department of Public Utilities pursuant to M.G.L. c. 25, § 12N to direct the work of the Board staff and to conduct the day-to-day business of the Board. The Board, the Chairman, or the Chairman of the Department of Public Utilities may delegate to the Director Board-specific responsibilities other than the responsibility for the final decision in any matter.

(3) Board Staff. The Chairman of the Department of Public Utilities may appoint Board staff to assist the Board in performing its functions. Staff functions shall include, among others: conducting adjudicatory, rulemaking, or public comment hearings; rendering tentative decisions; and intervening in the proceedings of other agencies. The Chairman of the Department of Public Utilities may authorize the Director to appoint a Presiding Officer for an adjudicatory or other proceeding conducted under 980 CMR.

2.06: Board Decisions

(1) Issuance by the Board of a final decision in an adjudicatory proceeding shall be governed by 980 CMR 1.08.

(2) Every final decision shall be in writing, and shall contain a statement of the reasons therefore, including a determination of the facts or law necessary to the decision. A signature page shall be attached to each final decision. The signature page shall be signed by the Board Chairman and shall indicate the vote of each Board member.

2.07: Action by Consent

(1) Scope. Any decision of the Board, except the final decision in any adjudicatory proceeding, may be made by action by consent pursuant to the procedures of 980 CMR 2.07. These procedures shall be used only when the Board, in its discretion, determines that expeditious action is necessary.

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(2) Procedure. The Chairman shall prepare a document entitled "Action by Consent" which sets forth the decision proposed to be taken by the Board. The document or copies thereof shall be presented to each member of the Board for review. A member may indicate consent by affixing his signature to the document or copy. The proposed action by consent shall be deemed to have been taken when the document and copies bearing the signatures of all Board members are returned to the Chairman. A proposed action by consent shall become void if it does not receive all required signatures before the beginning of any meeting of the Board held pursuant to 980 CMR 2.04.

(3) Notice.

(a) Except in an emergency, a notice of each proposed "Action by Consent" shall be filed with the Secretary of State, and a copy thereof posted in the public office of the Executive Office for Administration and Finance at least 24 hours, not including Saturdays, Sundays and legal holidays, prior to the circulation of such proposed decision to Board members for signature.

(b) The notice shall state:

1. that the notice is for an action proposed to be taken by unanimous written consent of the Board rather than by meeting;
2. that the proposed action by consent shall become void if not signed by all Board members prior to the next meeting of the Board; and
3. the full and complete text of the proposed action by consent, or, if the proposed action by consent consists of more than 200 words, a summary of its terms and a statement that the full text may be obtained at the offices of the Board.

(c) For the purpose of 980 CMR 2.06, "emergency" shall mean a situation in which immediate action without delay is deemed by the Board to be imperative.

(4) Records of Actions by Consent. The Board shall maintain accurate records of all proposed actions by consent. A record of the Board's action on a proposed action by consent shall be made available with reasonable promptness after its approval by all Board members or after it becomes void.

2.08: Advisory Rulings

In accordance with M.G.L. c. 30A, § 8, any person may at any time request, *via* written petition, an advisory ruling with respect to the applicability of any statute or regulation enforced or administered by the Board to any person, property or factual situation. A petition shall be signed by the applicant, contain the applicant's address, state clearly and concisely the substance or nature of the request, and contain an affidavit or attestation that all of the facts presented are true to the best of the applicant's knowledge. The petition shall be accompanied by any supporting data, views or arguments. Upon receipt of the petition, the Board shall consider it and shall, within 60 days after the receipt of the request, notify the applicant either that the request is denied or that the Board will render an advisory ruling. In order to assist the Board in considering the request, the Director may require additional information as he or she deems appropriate. At any time before issuance of an advisory ruling, the Board may rescind a decision to render an advisory ruling. If the advisory ruling is rendered, a copy of the ruling shall be sent to the applicant. A complete record of every advisory ruling shall be maintained by the Board. No advisory ruling shall bind or otherwise estop the Board in any pending or future matter. There shall be no obligation to render an advisory ruling.

2.09: Determination of Board Jurisdiction

(1) An applicant may at any time petition the Board for a determination of whether construction, expansion, or other modification of a proposed electric generating unit, electric transmission line, ancillary structure, natural gas pipeline, natural gas storage facility, oil pipeline, oil refinery, oil storage facility, oil transshipment facility, or other facility is subject to Board jurisdiction, is not subject to Board jurisdiction, or may qualify for a Certificate pursuant to 980 CMR 6.00.

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(2) The petition shall state the name of the applicant and describe the nature of the facility for which a determination is being sought. The petition shall be accompanied by a draft legal notice for publication and such written legal argument or other information as the applicant may consider appropriate. The Board may require that the applicant provide additional information after the petition is filed.

(3) The applicant shall give notice of the petition by publishing the legal notice approved by the Presiding Officer in at least one newspaper of general circulation and as otherwise ordered by the Presiding Officer. The notice shall specify that any person may submit written legal argument or other information regarding the petition. The notice shall specify the deadline for such submissions, which shall be not less than 14 days after the initial date of publication.

(4) Within four months of the petition filing date, the Board shall issue a final decision on jurisdiction. The final decision shall address only those issues necessary to decide the extent to which a proposed facility is within Board jurisdiction, is not subject to Board jurisdiction, or may qualify for a Certificate pursuant to 980 CMR 6.00. The Board's decision shall be final.

REGULATORY AUTHORITY

980 CMR 2.00: M.G.L. c. 30A and c. 164, §§ 69H.