COMMISSION ON ENERGY INFRASTRUCTURE SITING AND PERMITTING QUESTIONS FOR STAKEHOLDER INPUT

Massachusetts has passed several laws requiring the Commonwealth to decrease emissions of greenhouse gases in the coming decades to limit the worst effects of climate change, including reducing greenhouse gas emissions by 50% relative to 1990 levels by 2030 and reaching net zero emissions by 2050. As required by those laws, the Executive Office of Energy and Environmental Affairs has published comprehensive Clean Energy and Climate Plans[1] outlining necessary actions and strategies to achieve the Commonwealth's emissions reduction requirements. To meet the emissions limits outlined in those plans and required by law, Massachusetts will need to build a significant amount of new energy infrastructure, including thousands of megawatts of new solar and wind generation, storage capacity, and the transmission and distribution infrastructure necessary to interconnect these resources and deliver electricity to customers.

In September 2023, Governor Maura Healey established the Commission on Energy Infrastructure Siting and Permitting (Commission) to bring together stakeholders from different backgrounds and with different areas of expertise to identify and recommend solutions that will swiftly remove barriers to responsible clean energy development. Specifically, the Governor tasked the Commission with recommending solutions that (1) reduce permitting timelines, (2) ensure communities have input in the siting and permitting of clean energy infrastructure, and (3) ensure that the benefits of the clean energy transition are shared equitably.

The Commission has been meeting regularly since October 2023 and continues to work to identify solutions that achieve and balance those three goals.

The Commission now seeks public comment regarding ways to balance the need for accelerating the responsible deployment of clean energy, meaningful community engagement, and an equitable clean energy transition. The Commission welcomes responses to the following general questions:

1. How should Massachusetts balance the need to accelerate deployment of clean energy, ensure communities have input into the siting and permitting process, and ensure the benefits of the clean energy transition are shared equitably?

2. How should we accomplish the above while also protecting health, safety, and community livability, particularly for vulnerable or under-resourced populations?

3. How should we accomplish the above while also protecting the natural environment?

4. Who should have a seat at the table when decisions are made about where to put clean energy infrastructure and what restrictions apply?

Siting and permitting clean energy infrastructure in a responsible way requires balancing numerous factors and considerations. Given those complexities, the Commission has been considering a number of specific ideas and proposals. **The remainder of this document provides more information about the Commission's work to date and explains the key specific proposals under consideration. For each of the specific topic areas below, the Commission has included questions on which it seeks public input. Please feel free to respond to any or all of the questions you wish to address.**

[1] The 2025/2030 plan can be found at: https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2025-and-2030. The 2050 plan can be found at: https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2050.

SUMMARY OF COMMISSION'S WORK TO DATE

The Commission's work to date has included summarizing the permitting roles and procedures followed by various state and local entities, identifying the perspectives and issues of different stakeholders represented on the Commission, and identifying challenges that currently exist with respect to siting and permitting clean energy infrastructure.

With these challenges, complexities, and different perspectives in mind, the Commission is considering multiple proposals that aim to meet the goals of Executive Order 620. The Commission has not yet coalesced around any concrete proposed reforms. The purpose of this document is to summarize the key issues that have been discussed to date and seek stakeholder feedback on specific questions that are of interest to the Commission.

TOPIC AREAS FOR STAKEHOLDER INPUT

The Commission seeks stakeholder input on the following **specific** topics under consideration:

1. Definition of clean energy infrastructure

One foundational question that the Commission has been faced with is how to define clean energy infrastructure. While the Commission has not settled on a recommendation, discussion has coalesced around the following potential definition:

- Renewable Portfolio Standard Class I generation facilities (as defined in M.G.L. c. 25A § 11F(c) and 225 CMR 14.05(1))
    - Note that the types of RPS Class I generation facilities that have been built in Massachusetts to date include solar, wind, small hydroelectric (generally permitted at the federal level), landfill gas, and anaerobic digestion facilities.
- Energy storage facilities (as defined in M.G.L. c. 164 § 1);
    - Defined in M.G.L. c. 164 § 1 as "energy storage system," a commercially available technology that is capable of absorbing energy, storing it for a period of time and thereafter dispatching the energy and which may be owned by an electric distribution company; provided, however, that an energy storage system shall: (i) reduce the emission of greenhouse gases; (ii) reduce demand for peak electrical generation; (iii) defer or substitute for an investment in generation, transmission or distribution assets; or (iv) improve the reliable operation of the electrical transmission or distribution grid; and provided further, that an energy storage system shall: (1) use mechanical, chemical or thermal processes to store energy that was generated for use at a later time; (2) store thermal energy for direct heating or cooling use at a later time in a manner that avoids the need to use electricity at that later time; (3) use mechanical, chemical or thermal processes to store energy generated from renewable resources for use at a later time; or (4) use mechanical, chemical or thermal processes to capture or harness waste electricity and to store the waste electricity generated from mechanical processes for delivery at a later time.
- Certain utility transmission and distribution infrastructure (e.g., transmission lines and substations)

Questions for stakeholders:

1. Are these three categories appropriate?
    a. Should the categories be modified?
    b. Should other technologies be included or specified?
2. Should other types of facilities be considered for inclusion (e.g., clean energy infrastructure supply chain manufacturing facilities)?

2. State-level permitting reforms

The Commission has not yet settled on a recommended overarching framework for how state permitting processes should be reformed to achieve the objectives Governor Healey outlined in E.O. 620; however, the Commission's discussions have, to date, centered primarily around the establishment of a single consolidated permit. Under this process, all local and state permits would be considered in a single proceeding conducted by a single consolidated state permitting agency.[2]

This proposal draws on examples from New York and Rhode Island and is similar to the issuance of a Certificate of Environmental Impact and Public Interest (Certificate) by the Energy Facilities Siting Board (EFSB) in Massachusetts today. The primary difference is instead of occurring several years after the beginning of the permitting process as the EFSB Certificate process does today (i.e., after EFSB issues an approval to construct, significant work on state and local permits, etc.), this proposal would consolidate all state and local permits into one proceeding to help expedite the review of permit applications while ensuring meaningful opportunities for public engagement.

If implemented, this process would likely result in a reformed version of the EFSB (or possibly a new agency altogether) that serves as the single permitting entity for certain types of clean and fossil-fuel energy infrastructure (e.g., fossil fuel generation facilities, intrastate gas pipelines, and liquefied natural gas storage facilities currently reviewed by the EFSB). Under the proposals discussed by the Commission to date, projects that were subject to this process would apply to the state permitting agency, with the clock on a strictly time-limited proceeding starting upon determination that the application is complete. However, in all of the proposals discussed by the Commission to date, fossil-fuel energy infrastructure (including all fossil-fueled generation, storage, and transportation facilities) would have a longer timeline for review and would not be able to receive constructive approval if the permitting agency did not act within the defined timeline.

State and local authorities that would otherwise have jurisdiction over the project today would participate in the consolidated proceeding after having conducted their own fact-finding processes with the applicant and the public. The agencies would have discretion to investigate relevant issues on both an informal (through informal calls or meetings) and formal basis (which could include issuing discovery questions to the project proponent). These state and local authorities would each file advisory opinion(s) with the new consolidated state permitting agency, which would rely heavily on such entities' particular expertise. Once advisory opinions have been filed, the state permitting agency would identify the areas of dispute or concern, evidentiary hearings would be scheduled as needed, intervening parties would be able to file briefs, a site visit could be held, and the new state permitting agency would adjudicate all matters in dispute or concern in rendering its final decision. Similar to the role of the EFSB today, the state permitting agency would ultimately be required to balance such entities' resource protection goals with the Commonwealth's need to meet its statutory carbon reduction goals.

Questions for stakeholders:

1. Do you support the creation of a consolidated state permitting structure? Please explain.
2. If a consolidated state permit is pursued as a recommendation, what types of facilities should be included in this new process?[3]
    a. All types of clean energy and fossil-fuel energy infrastructure?
    b. A subset of clean energy and fossil-fuel energy infrastructure types? If so, which types?
3. The Commission has also discussed the concept of establishing a deadline for the state permitting agency to act on clean energy infrastructure permit issuance. If the agency were to not render a final decision by that deadline, it would result in the facility receiving constructive approval (i.e., defaulting to the consolidated permit being granted) to proceed to construction with a pre-defined set of permitting conditions.

[2] Note that there has been some discussion that certain state permits may still need to be processed outside of a consolidated proceeding.
[3] For reference, some of the Commission's discussion has focused on what size facilities should be under state jurisdiction vs. under local jurisdiction. For example, today, only generation facilities 100 MW or larger are reviewed by the EFSB and energy storage facilities are not reviewed by the EFSB at all. The Commission seeks recommendations from stakeholders on where these jurisdictional thresholds should be set under a potential consolidated permitting process.

a. Do you support establishing a strict timeline for agency action on a consolidated permit application?
b. If so, what is a reasonable timeline from a determination of that an application is complete for the agency to render a final decision? Should that deadline be different for different types of facilities? If the new state permitting agency does not render a final decision in this time frame, should the consolidated permit be considered "approved" with standard conditions?

4. Are there other topics or proposals the Commission should consider as it formulates its recommendations on reforms to state-level permitting processes?

3. Local-level permitting reforms

The Commission has not yet settled on a recommended overarching framework for how local permitting processes should be reformed to achieve the objectives Governor Healey outlined in E.O. 620; however, the discussion has centered around a few proposed approaches, which include the following:

- Local permitting as structured today retained for smaller RPS Class I resources, smaller energy storage facilities, and distribution infrastructure (e.g., distribution lines).
- Establishment of a consolidated local permit (i.e., combine Zoning Board of Appeals, Conservation Commission, and other local approvals into a single permit issued by a municipality) for smaller RPS Class I resources and smaller energy storage facilities.
- State-level permitting for all projects, with "programmatic general permits" issued to smaller-scale infrastructure (e.g., distributed solar and energy storage) on a relatively expeditious timeline. Local authorities would participate in the proceeding and would issue an advisory opinion (including recommended conditions) to the new state permitting authority. or opinions.

Other reforms related to this topic that the Commission has discussed include the following:

- Development of standardized local permitting guidelines and informational resources by the state permitting authority, including a common local permit application that would be used by clean energy infrastructure projects submitting applications to municipalities.
- Establishment of deadlines for the issuance of local permit decisions by a municipality, which, if not met, would result in constructive approval under a pre-defined standard set of permitting conditions for the type of project in question
- The opportunity for an applicant to opt into a consolidated statewide permitting process.
- The opportunity to override the municipality's decision regarding a local permit or challenge specific permitting conditions established by a municipality or undue delay in issuing a determination to a state-level permitting authority.
- Expedited local permitting of certain types of clean energy infrastructure, similar to expedited permitting of affordable housing projects required in M.G.L. c. 40B.
- State support for communities to help them identify where clean energy infrastructure can be located, up to a certain percentage of available land area to be determined by the state. For example, communities would establish clean energy infrastructure zoning overlay districts that can be developed to incorporate local conditions but would also fast-track a streamlined approval process without additional permits or heightened requirements.

Questions for stakeholders:

1. Which of the overarching frameworks referenced above relative to local-level permitting reforms should the Commission pursue? Please explain your response(s).
   a. Retention of the current local permitting framework with little to no changes?
   b. Establishment of a consolidated local permit for smaller RPS Class I resources and energy storage facilities?
   c. State-level permitting for all facilities with local authorities participating by issuing advisory opinions to the state permitting agency?

    d. Other? Please explain.
2. If a distinction is to be made between what size or types of infrastructure should be subject to state or local jurisdiction, where should the appropriate thresholds be set for each of the following type of infrastructure:[4]
    a. RPS Class I generation?
    b. Energy storage systems?
    c. Transmission infrastructure?
    d. Distribution infrastructure?
    e. Fossil-fuel energy infrastructure?
3. Which, if any, of the other reforms discussed do you support? Please explain.
4. Are there other topics or proposals the Commission should consider as it formulates its recommendations on reforms to local level permitting processes?

4. Siting and environmental impact

While the Commission has not yet established concrete recommendations with respect to siting and environmental impact standards and criteria, one idea that has been discussed has been the establishment of site suitability zones, which can be established using one or more pre-screening tool(s) to identify the environmental impacts that a project may have in a certain area and inform siting decisions as well local and state permitting processes.

For example, a site suitability model could evaluate specific criteria and variables, which include environmental, resilience, and environmental justice considerations that have been developed through policy and spatial mapping tools, such as the Massachusetts' Department of Energy Resources' Technical Potential of Solar Study, environmental justice community maps, and resilience guidelines. The environmental variables include natural and working lands, carbon sequestration and storage removal, biodiversity and climate resilience, loss of forest/tree canopy cover, and prime agricultural lands.

Such a model could establish zones that steer development away from less suitable areas and promote it in others. For example, "green," "yellow," and "red" zones could identify different levels of impact minimization and mitigation necessary. These criteria would not necessarily preclude development in certain zones altogether but would be used to steer development into priority zones and inform permitting agencies as they conduct their review of permit applications.

Questions for stakeholders:

1. Do you support this proposal to establish site suitability zones?
2. If the commission were to move forward with a recommendation to create such a framework, which agencies should be tasked, together with municipal stakeholders, with establishing such zoning criteria? EEA? Specific EEA agencies working together? Other?
3. Are there other topics or proposals the Commission should consider as it formulates its recommendations on this topic?

5. Community engagement

While no concrete recommendations have yet been made with respect to community engagement, the Commission has discussed a number of proposals. Discussions have included the following:

- Mandatory and clearly defined minimum requirements and timelines for meaningful pre-filing engagement. For example, requiring petitioners to conduct pre-filing outreach and workshops for certain projects to provide detailed information on proposals and to hear community concerns in time to incorporate changes prior to the filing of a permit application.

[4] For example, the current threshold for generation facilities to be EFSB jurisdictional is 100 MW and above and the threshold for transmission facilities is 69 kV lines that are one mile or longer in a new transmission right of way, and 115kv lines that are 10 miles or longer in an existing right of way. The Commission seeks input on where these and other relevant thresholds should be set.

- Establishment of an Office of the Ombudsperson at the new state permitting agency, which would be responsible for helping projects navigate the pre-filing requirements for state jurisdictional projects, including, but not limited to, ensuring that there is adequate engagement in the pre-filing process. The Ombudsperson would not be part of the agency's adjudicatory staff that is advising decision makers on final permitting decisions by the agency.
- Financial support to be provided to intervening parties that can demonstrate they require assistance to engage in complex adjudicatory proceedings through the collection of fees from projects and/or other sources.
- Revision of the way affected communities and environmental justice populations are made aware of proceedings.
- Creation of clear and inclusive language protocols to increase the public's ability to participate.

Questions for stakeholders:

1. Do you support establishing mandatory minimum requirements for meaningful pre-filing engagement? Please provide details of what this might include.
2. Do you support the establishment of an Office of the Ombudsperson at the new state permitting agency? What responsibilities would the Office of the Ombudsperson include?
3. Do you have a different idea about how the State can support municipal and other stakeholder engagement in the siting and permitting process and, if so, please describe it.
4. Do you support funding for intervening parties that can demonstrate a need?
    a. How should parties demonstrate the need for financial support?
    b. Who makes the determination that a party should be provided financial support?
    c. What level of financial support should be provided to such parties?
    d. Should the total level of support available be proportionate to the facility size?
5. Should there be any restrictions on what such support can be spent on and, if so, what restrictions would be reasonable? Do you have specific recommendations for how affected communities and environmental justice populations should be made aware of proceedings and how language access protocols can be incorporated?
6. How do these engagement processes differ for permitting occurring at the local level versus the state level?
7. What requirements (if any) should be established to engage with labor organizations?
8. Are there other topics or proposals the Commission should consider as it formulates its recommendations on this topic?

6. Community Benefits Agreements and Host Community Agreements

The Commission has discussed the need for improvements in how community benefit agreements (CBAs) and host community agreements (HCAs) are formulated, executed, and enforced, as they are currently unevenly established and applied across the Commonwealth. For example, CBAs could be established through some form of statewide formula, as is currently done in New York. CBA-related funds could be specifically applied to mitigate certain impacts or could be used for specified other purposes.

Questions for stakeholders:

1. Are there models for how CBAs and HCAs should be established that the Commission should consider?
2. What types of projects (if any) should be required to enter into CBAs with host communities?
3. When should CBAs and HCAs be executed?
4. How should the parties to the CBA be identified?
5. How can communities be assured that CBAs and HCAs will be enforced?
6. What benefits, if any, should the Commonwealth provide to communities that agree to host new solar, energy storage, distribution, or transmission facilities?
7. What requirements (if any) should be established to engage with labor organizations?
8. Are there other topics or proposals the Commission should consider as it formulates its recommendations on this topic?

7. Role of Massachusetts Environmental Policy Act (MEPA) Office

One topic that has generated discussion amongst the Commission is what role (if any) MEPA should play in a reformed permitting process. Today, MEPA review is required for many energy-related projects, particularly larger ones that require an EFSB permit. While MEPA's process is distinct from EFSB's and is less formal, there are many elements that could be considered duplicative. The Commission has been grappling with whether and how to integrate MEPA into the permitting process going forward.

Questions for stakeholders:

1. What should MEPA's role be in the siting and permitting process of clean energy infrastructure, so as to eliminate the duplicative aspects of the current process?
2. Are there ways that existing MEPA processes can be integrated into and consolidated with a reformed permitting regime?
3. Should MEPA play a role in the pre-filing process and determination of completeness?
4. Would it be possible or desirable to create a new category of MEPA review specific to clean energy infrastructure that could be integrated into a new permitting structure proposed by the Commission?

8. State Permitting Authority composition and staffing

There have been no recommendations agreed to with respect to the size and composition of the board responsible for state-level permitting decisions; however, there is consensus that it should be a board of individuals with expertise in specific areas relating to siting and permitting (as opposed to a single decision maker).

One proposal would reduce the size of the board to improve efficiency from the nine-member EFSB today to a three-person board, similar to that in Rhode Island. Another proposal makes no specific recommendations to the size of the board but recommends that the board include members who have experience in one or more of the following areas: public health, environmental justice, Indigenous rights, renewable energy, climate science, labor, environmental impacts, and municipal matters.

There is also a recognition that significant new resources will be required at the state level to implement the recommendations of the Commission and process the large number of applications expected in coming years. These resources would include new staff and information technology resources. Potential funding options include assessing larger fees on all projects (including utility projects that pay utility assessment fees but do not pay project-specific filing fees today), expanding the utility fee assessment authority at the DPU, and/or seeking legislative appropriations from the state's General Fund.

Questions for stakeholders:

1. What should the composition of the board of a reformed EFSB or new permitting agency be?

a. Do you have a recommendation on how the Commission and/or EEA should determine how many additional staff would be reasonably necessary to process all of the solar, energy storage, distribution and transmission facility applications that will be necessary to meet the Commonwealth's 2030 and 2040 carbon reduction goals?

2. Do you have specific recommendations on how to fund the EFSB or new state permitting agency to carry out its potentially expanded role? If possible, explain the impact to ratepayers of this funding mechanism.

9. Timing and transition

While the Commission has not yet focused on the timing of when permitting procedure reforms would take effect or what the transition period between the current and a new framework would look like, the Commission is interested in stakeholder perspectives regarding this topic.

What might a transition process look like and how quickly should new processes be established?

1. What type of general information or training, if any, should be provided in the new process to improve permitting timelines and meaningful outreach during the transition period?

10. Other considerations

Are there other topics or issues that the Commission should consider that are not covered in this document?