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September 16, 2022

Laurie Ellen Weisman, Senior Counsel, Department
Scott Seigal, Hearing Officer, Department
Donna C. Sharkey, Presiding Officer, Energy Facilities Siting Board
Department of Public Utilities, Energy Facilities Siting Board
One South Station
Boston, MA 02110

Re: *Public Awareness and Participation Procedures*, D.P.U. 21-50
Enhancing Public Awareness of and Participation, E.F.S.B. 21-01

Dear Ms. Weisman, Mr. Seigal, and Ms. Sharkey:

The Office of the Attorney General (“AGO”) submits these comments in response to the Request for Comments issued by the Department of Public Utilities (the “Department”) and the Energy Facilities Siting Board (“Board”) on August 26, 2022, in D.P.U. 21-50 and EFSB 21-01.

The AGO appreciates the concerted efforts of the Department and the Board to make participation in its proceedings more accessible. In particular, the AGO recognizes that the Department and Board have already made changes to improve the accessibility of their website and public notices to make these resources more user-friendly. The AGO also recognizes that the Department and Board are offering more interpretation and translation services, and especially appreciates the agencies’ responsiveness to community requests.¹ These changes, together with the Roundtable, opportunities to provide comments in these proceedings, as well as future plans related to environmental justice and language access, are important initial steps.

As demonstrated by the several thoughtful and well-reasoned recommendations shared by both presenters and commenters during the Roundtable, participation and access to proceedings is a significant issue for many members of the public, community organizations, and municipalities. The expertise and experience of those participating in these proceedings is impressive. The AGO encourages the Department and Board to make the most of the opportunity provided through these proceedings, offer additional forums for dialogue and interaction between agency staff and the public, and provide more opportunities for stakeholders to provide input. The AGO also recommends that the Department and Board expand the scope

¹ The Department and Board have provided Notices in Haitian Creole after they received a request to do so.

of these proceedings to consider a broader range of barriers to participation, and that the Department and Board conduct additional outreach efforts to individuals and communities that, as yet, are not represented in this proceeding.

While the AGO certainly views the Roundtable as an important initial step, the format of the Roundtable and the way the Roundtable was publicized exemplifies some of the key barriers to participation in Department and Board proceedings. For instance, participation required a significant commitment of time. For presenters, that meant preparing presentations and providing slides to the agencies several days in advance. For people who listened or watched the Roundtable, the Roundtable was conducted over several hours, on a weekday. While the AGO acknowledges that it is not aware of all the ways that the Department and Board may have publicized the Roundtable, the AGO notes that emailing a distribution list will likely, and did indeed, result in participation from repeat-players who are likely to have the resources (and dedicated staff members) to enable their participation, which other interested and valuable stakeholders may lack. Indeed, the stakeholders that already have significant experience with Department and Board proceedings were well represented at the Roundtable, while grassroots organizations, community organizations, and communities of color were less visible. While three municipalities gave presentations, only one community group presented. This puts a heavy burden on that one group. To overcome barriers to participation within this proceeding, the Department and Board may need to work creatively with community groups and other stakeholders to ensure that the proceeding is inclusive of unrepresented communities. The AGO reiterates its statements and recommendations included in the AGO's prior comment letters in D.P.U. 21-50 and EFSB 21-01:²

the process the [Department/Board] utilizes *in this docket* to determine how best to achieve these stated goals should exemplify the [Department's/Board's] commitment to inclusivity and accessibility in its decision-making. Recognizing that our current energy system imposes disproportionate economic, environmental, and health-related burdens on communities of color, low-income communities, and immigrants, the AGO urges the [Department/Board] to consider conducting active, on-the-ground outreach in communities that have historically been under-represented in government decision-making. Such targeted outreach may assist the [Department/Board] to better understand how to best solicit meaningful input from under-represented and disproportionately burdened communities, beyond the traditional publication of public notices in newspapers.³

The AGO hopes that these proceedings will result in real change, thereby removing some of the existing barriers to meaningful participation, but acknowledges that the issues addressed during the Roundtable⁴ do not have easy answers and may not be resolved through a single

² The AGO filed almost identical comment letters in D.P.U. 21-50 on June 14, 2021, and in EFSB 21-01 on September 10, 2021.

³ D.P.U. 21-50, AGO June 14, 2021 Comments, at 3; EFSB 21-01, AGO September 10, 2021 Comments, at 2.

⁴ The Roundtable addressed the following three topics: (1) Improved communication with

change or a single proceeding. To ensure that the Department and Board have the benefit of continuing and ongoing input from stakeholders, the AGO recommends that the agencies form an advisory council or a working group. Additionally, the AGO recommends that the agencies hire staff dedicated to working with the public, through a community liaison, community outreach, or public participation division.⁵

While the AGO plans to share more comprehensive recommendations at a later date, the AGO recommends that the agencies prioritize several changes in the short term as initial steps to removing barriers to public participation and improving communication with customers, community-based organizations, and local government officials (topic 1). These recommendations are briefly discussed below.⁶ Several of these recommendations were discussed during the Roundtable.

- Supplemental Summaries of Notices: Official Notices should be supplemented with short, simplified summaries of the proposed action or the petition, with clear explanations of the impact of the proposal on communities.
- Easy-to-Read Summaries of Orders and Petitions: For certain types of proceedings, including proceedings about particular issues of concern to impacted communities, the Department and Board should provide short, succinct, easy to read summaries of decisions, especially long or highly technical ones.⁷ The distribution companies should

customers, community-based organizations, and local government officials to maximize public engagement in our proceedings; (2) Whether all notices for agency proceedings should receive the same level of publication and outreach, or whether there should be some prioritization or variation in approach to avoid overwhelming or desensitizing readers with frequent notices. If there should be variation, discuss the types of proceedings that warrant additional publication and outreach efforts; and (3) The most effective methods that Distribution Companies use currently to reach customers. August 26, 2022 Memorandum.

⁵ The Federal Energy Regulatory Commission (“FERC”), for example, has recently established an Office of Public Participation. *See Office of Public Participation*, FERC, available at <https://www.ferc.gov/OPP>.

⁶ These recommended short-term priorities can be implemented in the near-term, but the Department and Board may also need to codify some of these priorities through regulatory amendments.

⁷ The summaries could be modeled after the Press Releases issued by the Executive Office of Energy and Environmental Affairs about Department orders. *See, e.g., DPU Approves Massachusetts’ Nation-Leading Three-Year Energy Efficiency Plan* (Feb. 2, 2022), Department of Public Utilities, available at <https://www.mass.gov/orgs/departments-of-public-utilities/news>. Other jurisdictions, including Hawaii and California, have included Executive Summaries in their decisions or proposed decisions. *See, e.g., Order Instituting Rulemaking to Continue the Development of Rates and Infrastructure for Vehicle Electrification*, California Public Utilities Commission (“CPUC”) Docket 18-12-006, at 4 (June 30, 2022), available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M496/K405/496405751.PDF>; *Summary of Phase 1 Decision & Order Establishing a PBR Framework*, Hawai’i Public Utilities

also provide similar summaries for certain types of petitions.

- Tentative Decisions or Orders: Consistent with Board practice,⁸ the Department should consider issuing tentative decisions⁹ and allowing an opportunity for comment in certain investigations and non-adjudicatory proceedings that are of particular concern to impacted communities or of particular public interest or importance. For example, the Department and Board should provide stakeholders with the opportunity to comment and provide input on a proposed order in these proceedings.
- Community-Focused and Responsive Language Access: The Department and the Board should provide interpretation and translation services appropriate to the community or communities impacted by a project or proposal,¹⁰ and the Department and Board should be responsive to community requests for improved language access.
- Respond to Comments: The Department and Board should develop a way to respond to comments from stakeholders. As suggested during the Roundtable, there is significant frustration that comments from stakeholders do not have an impact on decisions and that the continued perception that comments are being disregarded then decreases the likelihood that people will actively engage with the Department and Board in the future.
- Develop Educational Materials: The Department should develop additional educational and other materials to make the regulatory process accessible to stakeholders who do not have technical expertise about the utility industry and who do not have access to experts in the energy or utility fields. The Department and Board should consider providing

Commission (“HPUC”) Docket 2018-0088 (May 23, 2019), *available at* <https://puc.hawaii.gov/wp-content/uploads/2019/05/PBR-Phase-1-DO-3-Page-Summary.05-23-2019.Final.pdf>.

⁸ See 980 CMR 1.08(2) (requiring that the Board issue a written tentative in every matter, and that a comment period following issuance of the tentative decision extends at least seven days).

⁹ The AGO notes that the Department’s regulations already provide a mechanism whereby parties may request a tentative or proposed decision. 220 CMR 1.07.

¹⁰ For example, the Department of Environmental Protection’s regulations related to drinking water public notification include a requirement that in communities with 10 percent or greater non-English-speaking residents, or greater than 1000 people (whichever is less) of non-English-speaking residents, part of the notice must be translated into the language of that population. See 310 C.M.R. § 22.16A(8)(a), *available at* <https://www.mass.gov/doc/310-cmr-2200-the-massachusetts-drinking-water-regulations/download>.

educational videos,¹¹ sample motions to intervene,¹² as well as other materials.¹³ While the Board already provides a handbook, the Department should consider developing a similar resource.

- Offer Multiple Ways to Participate: The Department and Board should continue to provide remote access and phone access to proceedings on an ongoing basis. For hearings on certain types of proceedings, the agencies should offer ways to participate outside of the hours of 9 am to 5 pm on weekdays. Similar to language access, the Department and Board should be responsive to community requests and suggested alternatives.
- Publicize Proceedings of Particular Importance or Interest: The Department and Board should provide regular, easy to understand updates on proceedings of particular public importance. For example, the news and information could be shared on a website, a monthly mailing list, or through social media posts, and include instructions about how stakeholders can get involved.¹⁴ This initiative would be in addition to the press releases currently issued by the Executive Office of Energy and Environmental Affairs.

¹¹ The CPUC offers Informational Webinars on a variety of topics, including “Managing Utility Bills: Reducing Disconnections and Improving Affordability” and “Natural Gas 101 and Policies for a Just Transition.” An upcoming Informational Webinar is titled “Understanding and Interacting with the CPUC” and is scheduled for September 21, 2022. *See Events and Meetings*, CPUC, available at <https://www.cpuc.ca.gov/events-and-meetings>; and *Webinar: Understanding and Interacting with the CPUC*, CPUC, available at <https://www.cpuc.ca.gov/events-and-meetings/webinar-understanding-and-interacting-with-the-cpuc-09-21-2022>.

¹² The Vermont Public Utility Commission (“VPUC”) offers a Motion to Intervene Form. *See Motion to Intervene Form*, VPUC, available at https://puc.vermont.gov/sites/psbnew/files/doc_library/intervention-form.pdf. Some self-help resources include similar types of forms. *See, Court forms by topic*, Massachusetts Court System, available at <https://www.mass.gov/guides/court-forms-by-topic>.

¹³ For example, the VPUC provides four downloadable documents intended to assist members of the public with participating in its proceedings: *A Citizens Guide to the Public Utility Commission*; *Public Participation and Intervention in Proceedings Before the Public Utility Commission*; *A Guide to Evidentiary Hearings*, and *A Guide to Participating in Remote Evidentiary Hearings*, available at <https://puc.vermont.gov/public-participation/introduction-participating-commission-processes>.

¹⁴ The CPUC provides information and updates about a variety of topics. The “Transportation Electrification” page, for example, includes short narratives about the CPUC’s work related to transportation electrification as well as descriptions of relevant state policy, legislation, and regulations, with links to bills, agency rulemaking, utility proposals, as well as CPUC decisions and resolutions. *See Transportation Electrification*, CPUC, available at <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/infrastructure/transportation-electrification>. In addition to a page dedicated to “News Releases & Announcements,” the HPUC’s website also includes a page dedicated to “Trending Dockets,” with links to access filings. *See Trending Dockets*, HPUC, available at <https://puc.hawaii.gov/trending-dockets/>.

- Offer a Way to Subscribe to Dockets: The Department and Board websites should allow stakeholders to subscribe to particular dockets even if they are not on the service list. While this option has been provided informally for certain proceedings, there should be an easy way to do so on the agencies' websites.¹⁵ Similarly, unsubscribing should also be easy.

While these recommended near-term priorities would result in improved access to proceedings, these changes alone will not be sufficient to adequately enhance meaningful involvement of all people and communities in Department and Board proceedings or to adequately ensure that decisions fully consider impacts to communities. Changes to procedures are not enough—participation from diverse communities and a better developed record should lead to better decisions.

While the AGO appreciates this opportunity to provide these comments, the AGO may wish to supplement these comments at a later date. As discussed in the prior comment letters filed in these proceedings, the AGO has convened a Stakeholder Working Group to address barriers to participation. The group is still conducting outreach that will inform its recommendations to the Department and Board. The AGO looks forward to sharing the group's recommendations in the future.

Finally, as stated during the Roundtable, the AGO requests an opportunity for the AGO, as well as other stakeholders, to provide comments on the Department's proposed Environmental Justice Strategy.

The AGO appreciates the opportunity to participate in this important proceeding.

Sincerely,

/s/ Jessica R. Freedman

/s/ Shannon Beale

Jessica R. Freedman

Shannon S. Beale

Assistant Attorneys General

cc: Laurie Ellen Weisman, Hearing Officer
Scott Seigal, Hearing Officer
Donna Sharkey, Hearing Officer
Service List

¹⁵ The HPUC, for example, provides a way to subscribe to the distribution list for a particular docket. See *DMS Email Subscription Services*, HPUC, available at <https://dms.puc.hawaii.gov/dms/Subscribe.jsp>.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

**Notice of Inquiry by the Department of
Public Utilities on its own Motion into
Procedures for Enhancing Public
Awareness of and Participation in its
Proceedings**

D.P.U. 21-50

**Inquiry by the Energy Facilities Siting
Board on its Own Motion into
Procedures for Enhancing Public
Awareness of and Participation in its
Proceedings**

E.F.S.B. 21-01

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 16th day of September, 2022.

/s/ Jessica R. Freedman
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