

**October 20, 2021**

Ms. Tori Kim, Director  
MEPA Office  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: Comments on Draft MEPA Regulations (301 CMR 11.00)

Dear Ms. Tori Kim:

Eversource Energy Service Company ("Eversource") appreciates the opportunity to submit this comment letter in response to the draft changes to the MEPA regulations (301 CMR 11.00) that incorporate enhancements to various environmental justice principles.

Eversource operates New England's largest utility system, serving more than 4 million electric, natural gas and water customers in Connecticut, Massachusetts, and New Hampshire. Eversource is committed to recognizing and understanding historical inequities and ongoing disparities of environmental justice populations, and the fair treatment and meaningful engagement of all people regardless of race, color, national origin, or income, with respect to our business and the energy systems we operate.

Reliable energy service is vital to public safety, community health, and the economic welfare of the Commonwealth's citizens. Our attention to reliability of the energy system often results in enhancements and repairs in environmental justice communities, where our intended purpose is to bolster reliability, enable growth and provide access to clean energy for our customers in these areas. Eversource interacts directly with communities and customers to explain the nature of our work and to understand and address any issues or concerns to the best of our ability.

We take seriously our responsibility to be a strong partner in promoting the health of the natural environment equitably and to be a responsible steward in the communities we serve on behalf of our customers. Eversource ensures that all required activities are carried out in accordance with numerous federal, state, and local environmental regulations, including MEPA.

Eversource understands that per the 2021 Climate Act (c.8 of the Acts of 2021, §57-60) MEPA must revise its regulations to incorporate environmental justice considerations during the MEPA review process. To help further understand, interpret, and clarify the proposed MEPA regulations, Eversource respectfully submits the following comments:

**301 CMR 11.02(2):**

*"Environmental Burden. Any destruction, damage or impairment (not including insignificant destruction, damage or impairment) of any of the natural resources of the Commonwealth, resulting from intentional or reasonably foreseeable causes, including, but not limited to, climate change, air pollution, water pollution, improper sewage disposal, dumping of solid wastes and other noxious substances, excessive noise, activities that limit access to natural resources and constructed outdoor*

*recreational facilities and venues, inadequate remediation of pollution, reduction of ground water levels, impairment of water quality, increased flooding or storm water flows, and damage to inland waterways and waterbodies, wetlands, marine shores and waters, forests, open spaces, and playgrounds from private industrial, commercial or government operations or other activity that contaminates or alters the quality of the environment and poses a risk to public health.”*

We understand that the definition for Environmental Burden is consistent with the new Climate Act. However, the draft regulations provide an opportunity to define terms for greater clarity that are otherwise subjective and broad, such as ““insignificant” relative to destruction, damage, or impairment, “excessive” relative to noise, and “inadequate” relative to remediation of pollution. We would also request that the concept of temporary impacts be added to the exclusionary parenthetical.

**301 CMR 11.05 (4)(d):**

*“The ENF shall also provide a narrative describing whether the Project is reasonably likely to negatively affect Environmental Justice Populations within 1 mile of the Project site...”*

Please clarify the term “reasonably likely to negatively affect” in the preceding sentence, and is this term tied to any MEPA thresholds (i.e., air quality) or other suitably analogous standards published elsewhere. We also suggest the narrative should include mitigation for such impacts, including community benefits or other similar types of agreements arranged directly with affected EJ populations.

*“If the Project is determined to be reasonably likely to have negative effects within a 1-mile or 5-mile radius of the Project site, the Proponent must provide meaningful opportunities for public involvement by Environmental Justice Populations within such geographical areas.”*

To provide certainty for the applicant to provide the required public involvement by EJ Populations if “the project is determined to be reasonably likely to have negative affects”, please clarify when during the MEPA process this determination will occur, i.e. does this happen within the Certificate issued for the ENF? Also, if MEPA determines that the project is not “reasonably likely to have negative affects”, does this obviate the requirement for filing an EIR for a project within 1-mile/5-mile of an EJ Population?

*“In complying with this 301 CMR 11.05(4)(d), the Proponent shall consult the MEPA Protocol for Public Involvement for Environmental Justice Populations...”*

We infer that the proposed requirement to refer to the MEPA Protocol (or guidance), in lieu of transferring the relevant MEPA Protocol concepts into the regulation itself, is likely due to the limited time that the Climate Act provided for issuance of regulations. Given that the proposed regulations will be promulgated on December 16, 2021 and the Protocol will not be finalized until well after the revised regulations are issued, there are concerns on which aspects of the Protocol would be interpreted and implemented by MEPA. Specifically, is it the intent of MEPA to incorporate by reference the Protocol for Public Involvement for Environmental Justice Populations? It is preferable to make the regulations complete on a stand-alone basis without requiring an applicant to refer to other incorporated materials not included in the regulations, nor even in final form, themselves. Moreover, without knowing what standards the Protocol will contain, it is unclear which aspects of it, if any, will be mandatory and which will be advisory, instructive, or voluntary.

Substantive compliance with the proposed enhanced public involvement requirements should be stated within the regulations themselves. Such clarity will result in clearer instructions for compliance.

301 CMR 11.07(6)(h):

*“Assessment of Impacts. A detailed description and assessment of the negative and positive potential environmental and public health impacts of the Project and its alternatives. The EIR shall assess (in quantitative terms, to the maximum extent practicable) the direct and indirect environmental and public health impacts from all aspects of the Project that are within the Scope, and shall contain **reasonable** studies to evaluate said impacts. The assessment shall include both short-term and long-term impacts for all phases of the Project (e.g., acquisition, development, alteration, and operation), any adverse short-term and long-term environmental and public health consequences that cannot be avoided should the project be undertaken, and cumulative impacts of the Project, any other Projects, and other work or activity in the immediate surroundings and region.*

Please clarify whether this requires applicants, and to what extent, to propose studies to measure impacts, or reference studies that have been previously completed that evaluated impacts from similar proposed actions. Moreover, we suggest that this provision include the word “reasonable”, as indicated in **bold** above, prior to the word “studies,” so that an applicant can comply by providing reasonable quality and quantity of such studies. We also note that lack of public sources of quantitative data regarding historic environmental burdens carried by specific EJ populations in Massachusetts, against which an applicant could measure the incremental impacts of their own project. The proposed Assessments of Impacts language would put the onus on applicants to individually determine evaluation methodologies, which may substantially differ from applicant to applicant. It would be helpful for MEPA, at a minimum, to specify the quantitative measures that applicants are intended to use to assess environmental and public health impacts, and, to the extent that applicants file such assessments, to make them available in a publicly-accessible database to better reduce duplicative and possibly conflicting analyses that measure impacts against different baselines. Additionally, the requirement in the last sentence will be difficult to be in compliance with, first because no applicant will have full knowledge of “other Projects and other work or activity”, and second because the text as written is unclear as to what the “immediate surroundings” or “region” are intended to apply to, whether the same as or different from the 1-, and 5-mile radius areas referenced in the other parts of the proposed regulations. We suggest that is clarified.

In closing, we appreciate your consideration of our comments on the revised MEPA regulations.

Sincerely,



Denise M. Bartone  
Manager, Licensing & Permitting