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

Re: Comments on Draft MEPA Protocols

Dear Ms. Tori Kim:

Eversource Energy Service Company (“Eversource”) appreciates the opportunity to submit this comment letter in response to the two draft MEPA Protocols for 1) Analysis of Project Impacts on EJ Populations and 2) Public Involvement Protocol for EJ Populations (the “Protocol(s”).

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. We take to heart the importance of fair treatment and meaningful engagement of all people regardless of race, color, national origin, English language proficiency 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. 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. Where a project impacts an EJ Community (as defined under the Climate Act), Eversource is committed to providing opportunities for meaningful participation by such community members in the consideration of our project.

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

Eversource respectfully submits the following comments and requests for clarifications on certain points to ensure its ability to comply with both protocols.

***Clarifications and comments pertaining to the MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations:***

In general, there are several sections of the Protocol that contain indicators of when additional outreach and/or analysis is required. For one example, see Section III Part B of the Protocol. The language of these indicators is very passive and highly subjective and uses terms such as “could be,” “potentially bearing,”

“may,” “may be,” “appear to indicate,” “unfair” and/or “inequitable”. MEPA should provide more specific examples and more concrete language to fully define these subjective criteria and direct applicants with certainty as to how they should be interpreted. Please find specific suggestions below:

## Section II: Assessment of Existing Unfair or Inequitable Environmental Burden

As it is written, the applicant maybe asked to address or refute uncorrelated or unfounded anecdotal hearsay, for which substantiating evidence does not exist. In cases of unfounded concerns, project opponents would have an undeserved ability to assert that insufficient analysis was completed by the applicant, thus unfairly delaying or preventing projects. We also note that the standard of “disproportionate” adverse effect is not equivalent to the type of criteria generally imposed by regulatory agencies. Suggested language is provided below, in **bold**, to refine the Protocol to require that applicants consider only specific concerns or feedback relevant to the proposed project that show an actual link to an existing unfair or inequitable environmental burden and related public health consequences.

*Finally, any specific concerns raised or feedback, received during pre-filing consultations conducted by the Proponent with community-based organizations (CBOs), tribes, or other residents or individuals pursuant to the MEPA Public Involvement Protocol for Environmental Justice Populations, **that are reasonably related to additions to existing unfair or inequitable environmental burden(s) and related public health consequences**, should be reviewed to determine whether such feedback should be ~~viewed as considered credible and therefore considered as part of the cumulative impact analysis of~~ existing environmental burdens or related public health consequences. As stated in the MEPA Public Involvement Protocol, the quality of public involvement efforts shall be considered when determining whether to approve a request for expedited review procedures under 301 CMR 11.05(7), together with the analysis provided under this MEPA Protocol for Analysis of EJ Impacts.*

## Section III: Analysis of Project Impacts to Determine Disproportionate Adverse Impact

Eversource believes that language contained Section III related to the qualitative assessment that must be performed by an applicant, requires clarification. The current draft language requires the applicant to perform its qualitative assessment based on the tools and information referenced by MEPA under Part II and can only, pursuant to MEPA’s own language, “*appear to indicate that the identified EJ populations currently bear an existing ‘unfair or inequitable’ environmental burden*” [emphasis added]. Consequently, Eversource believes that any such qualitative assessment performed by an applicant using these tools could similarly only “appear to indicate” an absence of any unfair or inequitable environmental burden or related public health consequence borne by an identified EJ population. Therefore, the standard “definitively shows” in the following paragraph is misplaced, as it requires the applicant to prove a conclusive, absolute showing that is above and beyond the limitations of the qualitative assessment tool. As such, the applicant may not be able to meet a “definitively shows” standard. To address this, please see our suggested revision provided below, in **bold**:

*Unless the assessment in Part II ~~definitively shows~~ **indicates** the absence of any “unfair or inequitable” environmental burden or related public health consequence borne by the identified EJ population as compared to the general population, the Proponent must further analyze whether the environmental and public health impacts from the project will likely result in a disproportionate adverse effect on such*

**population.** *If the only applicable screening criterion relates to climate change risks identified through the RMAT tool, refer to Part IV below.*

### Section III Part A: Nature and Severity of Project Impact

The example provided below is too vague, as it does not specify particular “elevated health conditions,” however it then ties it into air quality. MEPA should provide additional concrete examples in this Protocol for each media potentially affected. Also, the introduction of a new term “elevated health conditions” is undefined. We believe this terminology should be eliminated and, in its place use the term “vulnerable health criteria” used by the Massachusetts DPH EJ Tool which then gets overlain on the EJ Population Tool. Finally, we believe the final sentence goes too far and could be viewed as declaring any project that must use diesel- or gas-field construction equipment as having a “disproportionate” impact. Suggested changes in bold.

*For example, a project that **permanently adds creates additional vehicular** traffic ~~directly to within~~ an EJ population identified as having elevated public health conditions could be viewed as having a disproportionate adverse effect on such population. This is especially so, if any identified environmental or public health indicators related to air quality (such as PM 2.5/ozone exposure or asthma rates) are elevated in the EJ population. The Proponent should conduct analysis or modeling sufficient to demonstrate the magnitude of any relevant project impacts, and, at a minimum, should conduct air quality analysis of **permanent increases in** traffic consistent with the MassDEP Guidelines for Performing Mesoscale Analysis of Indirect Sources (1991). ~~It is important to note that, where the level of existing burden is high, even a small addition of project impacts may create disproportionate adverse effects. For instance, if the DPH vulnerable health criteria or other indicator demonstrates public health or environmental indicators that are well above statewide rates, even a small addition of impacts should be viewed as potentially creating a disproportionate adverse effect.~~*

### Section III Part C: Project Benefits

We suggest the removal of the parenthetical below, as terminology contained within the parenthetical, i.e. “unspecified impacts,” “unknown potential,” confuse(s) the intent of this example. We also suggest providing additional project examples. We further note that the language suggesting that loss of open space “far removed” from EJ communities essentially invites disapproval of projects that could be located at the other end of the state from the local EJ community, which seems an inappropriate sphere of impact for consideration.

*For instance, a project that alters wetland resource areas in a manner that requires a water quality certification ~~(with unspecified impacts to surrounding waterbodies and unknown potential for indirect impacts to EJ populations)~~ could compare such impacts with project benefits that specifically benefit EJ populations, such as improved resiliency of public infrastructure or increased open space/recreational opportunities. Similarly, the loss of open space or recreational opportunities ~~at a location that is far removed~~ from EJ populations **within the one-mile radius of the project** may present an indirect impact to such populations.*

### Section IV. Analysis of Project Impacts to Determine Climate Change Effects

Suggested revision provided below, in bold, for consistency with suggested revision above for Section III. Additionally, whether there are environmental impacts or public health consequences of projects is an entirely separate question of whether a project has an impact on the effects of climate change in an EJ population.

*Unless the assessment in Part II **definitively shows indicates** the absence of any “unfair or inequitable” environmental burden or related public health consequence borne by the identified EJ population as compared to the general population, the Proponent must further analyze, in addition to the analysis in Part III, whether the **environmental impact or public health consequence from the** proposed project will increase or reduce the effects of climate change on the EJ population.*

Furthermore, we suggest the removal of the second bullet, shown below in bold, as there is currently no requirement for quantification of GHG emissions from a project, and this new guidance and GHG threshold would effectively mandate that quantification. It is also unclear if the GHG threshold would apply to temporary emissions during construction or only to permanent emissions resulting from project operations. Additionally, what is the basis for MEPA to specify 2,500 tons per year for GHG emissions as being “significant?” The term “significant” as it relates to GHG emissions is not defined within either the MEPA regulations at 301 CMR 11.00 or the Revised MEPA Greenhouse Gas Emissions Policy and Protocol (Effective Date: May 5, 2010). In addition, it is not clear what amount of GHG emissions “are likely to affect EJ populations” as GHG emissions represent a regional/global issue and not a specific targeted/local EJ issue. We do understand the overall goal to drive down GHG emissions but need to ensure arbitrary emission caps are not established (particularly ones that could relate almost entirely to construction period impacts).

*In conducting this assessment, the Proponent should consider the following:*

- *Whether the climate change risks identified through the RMAT Tool are likely to affect the applicable EJ population(s); and*
- ~~*Whether the greenhouse gas (GHG) emissions associated with the project are significant (2,500 tons per year (tpy) or more) and are likely to affect EJ populations that use or occupy the project*~~

### **Clarifications and comments as it pertains to the MEPA Public Involvement Protocol for Environmental Justice Populations:**

#### **Authority and Background**

We suggest keeping the prior version of this sentence, reflected in the additional language added below in bold. This clarifies that this protocol applies only to projects that are subject to MEPA.

*On March 26, 2021, Governor Baker signed into law the Climate Roadmap Act, which included a new definition of “Environmental Justice [EJ] Population” for purposes of enhancing public involvement and other aspects of the MEPA review process. The new statutory definition of “EJ population” includes four categories of neighborhoods (defined as census block groups) with certain demographic characteristics based on median income level, percentage of residents who are people of color (i.e., minority) status, and percentage of residents who lack English language proficiency (LEP). In turn, Section 60 of the Act provides that, “[t]o enable the public to assess the impact of proposed projects that affect their*

*environment, health and safety through the [MEPA] project review process . . . , the secretary [of EEA] shall provide opportunities for meaningful public involvement” by EJ populations. The Act also gives the Secretary discretion to require additional measures as appropriate for projects that do not require the filing of an ENF, **which include projects that are required to submit a Notice of Project Change or other MEPA filings.***

## **Section I. Identifying Characteristics of and Likely Effects on EJ Populations**

### **Part A. Project Location**

We propose the changes below, in bold, to provide clarity as the term(s) “outer boundaries of the project site” are not otherwise defined in the MEPA regulations at 301 CMR 11.00.

*Effective [], 2021, all ENF/EENFs filed with the MEPA Office will be required to identify the location of the project relative to “Environmental Justice Populations” (“EJ Populations”) as depicted on the EEA Environmental Justice Maps Viewer (the “EJ Maps Viewer”),<sup>5</sup> and include a printout of the project location shown on the EJ Maps Viewer as an attachment to the ENF (or EENF) submittal. The printout shall identify all EJ Populations within 1- mile and 5-miles of the project, and shall measure the distance from the outer boundaries of the project **limits of disturbance site**.<sup>6</sup> For linear projects along a right of way (ROW) (such as utility and roadway projects), the distance shall be measured from the edge of the **limits of disturbance within** the ROW in all directions along the entire length of the project.*

### **Section I. Part C. Likely Effects on EJ Populations**

Please provide more examples on what MEPA considers a “reasonable level of specificity.”

*... The discussion of likely effects included at the ENF/EENF stage may take the form of a narrative and need not be exhaustive; however, it must contain a reasonable level of specificity and more than a conclusory statement that the project will have a “net benefit” for the EJ population.*

## **Section II. Measures to Enhance Public Involvement Prior to Filing ENF/EENF**

Suggested clarifying language added below in bold, to provide relief for certain communities where there may not be any public transportation services available.

*Section 60 of the Climate Roadmap Act, now codified as M.G.L. c. 30, § 62], requires that, “[i]f a proposed project affects an environmental justice population,” the Secretary of EEA shall require additional measures to improve public participation by the EJ population. Such measures shall include, as appropriate: “(i) making public notices, environmental notification forms, environmental impact reports, and other key documents related to the secretary’s review and decisions of a project review available in English and any other language spoken by a significant number of the affected environmental justice population; (ii) providing translation services at public meetings for a significant portion of an affected environmental justice population that lacks English proficiency in the project’s designated geographic area; (iii) requiring public meetings be held in accessible locations that are near public transportation **(to the extent that suitable public meeting locations and public transportation services exist in proximity to the project or affected EJ population)**; (iv) providing*

*appropriate information about the project review procedure for the proposed project; and (v) where feasible, establishing a local repository for project review documents, notices and decisions.”*

## Section II. Part A. Advance Notification

The term “enhanced outreach” is introduced without definition. Rather than introducing a new term, we recommend the below changes, in bold, that are consistent with the proposed regulations.

*While no set time period is prescribed for all projects, advance notification between 45 and 90 days prior to filing the ENF/EENF with the MEPA Office is strongly recommended. For any project that: (i) meets or exceeds mandatory EIR thresholds (ii) **is subject to “enhanced outreach” requirements under the 2021-EJ Policy, meets or exceeds ENF Thresholds and Environmental Justice Populations are within 1 mile of the Project site, and within 5 miles if the Project impacts air quality** or (iii) will seek to avail itself of expedited review procedures under 301 CMR 11.05(7), advance notification between 45 and 90 days is mandatory, and failure to comply may result in rejection of the ENF/EENF as incomplete under 301 CMR 11.05(1)*

## Section III. Public Involvement Requirements After Filing ENF/EENF

We believe that the draft language to require a Proponent to “generally” continue with the same level of outreach and community engagement prior to filing, is unclear and might not be appropriate, depending on the specifics of the project proposed and its potential impacts. We recommend the below suggested changes, in bold, to reflect that the Proponent be required to continued outreach at a qualitative and quantitative level commensurate with key project milestones.

*In addition to maintaining a distribution list, the Proponent should **generally submit with their filing a plan to maintain the same level of** outreach and community engagement **conducted prior to filing,** throughout the MEPA review process. As an example, if certain non-English language media were identified as an effective way to communicate with the applicable EJ population, the Proponent should continue to use the same means to convey information about the project during the course of MEPA review. The Proponent should also consider holding additional community meetings as needed or upon request at key milestones in the project review, such as when the Proponent is preparing the filing of a final EIR. Specific strategies for outreach and community engagement may be included in the Secretary’s Scope for an EIR.*

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

Sincerely,



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