

November 24, 2021

VIA ELECTRONIC MAIL

Ms. Tori Kim, MEPA Director
Executive Office of Energy and Environmental Affairs
Commonwealth of Massachusetts
MEPA-regs@mass.gov

Re: Draft MEPA Public Involvement Protocol for Environmental Justice Populations and Draft MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations

Dear Ms. Kim:

On behalf of New England Power Company, Massachusetts Electric Company, Nantucket Electric Company and Boston Gas Company (collectively referred to as “National Grid”), thank you and your staff for the enormous time and effort, including extensive and thoughtful stakeholder engagement, that you have put into developing protocols to implement Sections 58 and 60 of Chapter 8 of the Acts of 2021 (the “Act”). We are particularly grateful for your responsiveness to our comments on the initial protocols.

The current Draft MEPA Public Involvement Protocol for Environmental Justice Populations (“Public Involvement Protocol”) and the Draft MEPA Protocol for Analysis of Project Impacts on Environmental Justice Populations (the “Impacts Analysis Protocol” and, together with the Public Involvement Protocol, the “EJ Protocols”) provide a strong and reasonable starting point to meet the requirements of the Act. The EJ Protocols are particularly impressive given the short amount of time that you had to create an entirely new and complex process. The goals of the EJ Protocols align with National Grid’s goals to address systemic racism and bias in its many forms, including the disproportionate impacts shouldered by environmental justice populations and National Grid continues to support the EJ Protocols.

In the spirit of continued collaboration, we offer these comments. As detailed below, we believe that certain aspects of the EJ Protocols could benefit from additional clarity before they are finalized. We also propose that you put a stakeholder process in place to continue to discuss and, where warranted, implement technical refinements to the EJ Protocols, particularly the Impact Analysis Protocol, after they go into effect on January 1, 2022.

Comments on the Public Involvement Protocol

Requirements for Interpreters at Meetings

We very much appreciate your consideration of the issues that National Grid raised in its August 9, 2021 comment letter. The revised Public Improvement Protocol addresses most of those issues,

including the use of a single, simple advance notification form, providing proponents with a list of CBOs (including, we understand, a specific point of contact), clarifying the measurement of the geographic area for linear projects and providing an objective standard for determining air quality impacts from diesel trucks and equipment. These changes, along with several other changes that you made, have significantly improved the protocol.

We continue to have questions and concerns about when a Proponent must provide an interpreter for a meeting. The final paragraph of the Community Outreach and Engagement section (II.B) states:

To the extent written materials are provided, or in-person or remote meetings held, the Proponent must provide written and oral language interpretation in all the languages identified in Part I above, and should make best efforts to provide translation/ interpretation in any other languages requested by members of the public to the extent necessary to ensure meaningful engagement by such individuals. The Proponent may require that requests for oral interpretation be made in advance with sufficient time to allow for cancellation of the service by the Proponent without incurring a cancellation fee.

It appears that this would require the Proponent, if they elect to hold public meetings, to have interpreters present for all languages identified in Part I of the protocol, regardless of whether interpreters are actually requested. This will result in interpreters being hired for meetings where they will not be needed. This issue will be compounded if multiple languages are identified pursuant to Part I. We believe that this can be equitably solved by revising the paragraph as follows:

To the extent written materials or meeting notices are provided, the Proponent must provide translation in all the languages identified in Part I above. To the extent in-person or remote meetings are held, the Proponent must provide at least 21 days advance notice of the meeting to all contacts in the EJ Reference List. The notice shall provide an opportunity to request an interpreter. Any requests for an interpreter must be received within 14 days of the meeting. Proponents should make best efforts to provide translation/interpretation in any other languages requested by members of the public to the extent necessary to ensure meaningful engagement by such individuals.

We also suggest that the first paragraph of Section III be modified to clarify that the notice for the MEPA Site Visit must be translated (modification underlined):

The Proponent shall use the distribution list to circulate notices of the MEPA Site Visit, summaries of supplemental information submitted to the MEPA office, and any other relevant notices or materials generated during the course of MEPA review. The notice of the MEPA Site Visit shall be translated into any languages identified in Part I above. For other documents, the Proponent shall make best efforts to translate the document, or a summary thereof, upon request by any member of the public, provided that the Proponent

may require that the request be made with sufficient time to allow for written translation prior to the event or other deadline to which the materials relate.

Clarifying Mandatory Versus Discretionary Requirements

There are also a few areas that we believe would benefit from a clearer statement of what is required versus what is optional. The Public Involvement Protocol generally states that “all MEPA projects that are subject to MEPA jurisdiction and meet or exceed any MEPA review threshold in 301 CMR 11.03 must undertake measures to provide public involvement opportunities by EJ populations located within 1 mile of the project site.” This suggests that public involvement opportunities are mandatory. However, the specifics of both the Advance Notification and the Community Outreach and Engagement sections use “should” and other permissive language rather than “shall.” As a result, it is not clear what is required from the Proponent versus what is optional. This will lead to confusion and could result in unnecessary legal challenges. The protocols should definitively state, one way or another, whether an element of the protocol is mandatory or discretionary. Specifically, we suggest that MEPA clarify the following:

- *Likely Effects on EJ Populations.* The protocol at I.C. provides the following:

In describing the project’s likely effects on EJ populations, the ENF/EENF shall not limit the discussion to impacts that meet or exceed MEPA review thresholds, and, instead, shall address all direct and indirect potential environmental impacts of the project, with a focus on whether such impacts and related public health consequences are likely to extend to EJ populations located within the designated geographical area around the project site 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.

Based on this, it is unclear what level of discussion is required at the ENF/EENF stage. Rather than requiring an undefined discussion of likely effects in the ENF/EENF, we recommend that ENF/EENF focus on identifying the types of direct and indirect impacts, the related types of potential public health impacts and any net benefits from the project impacts. The discussion of likely effects can then be thoroughly discussed in the EIR. This will not avoid any review, since any project that is subject to MEPA review and falls within a “designated geographical area” will also be subject to an EIR. This level of detail in the ENF/EENF will provide stakeholders with sufficient information to determine whether they wish to become involved in the MEPA process and to participate in the assessment that will be part of the EIR.

- *Advance Notification.* It is clear that Proponents must circulate the Environmental Justice Screening Form if (1) a mandatory EIR threshold is crossed; (2) the project is designated for “enhanced outreach” or (3) the Proponent is requesting a Single EIR. However, it is

unclear whether Proponents must circulate the Environmental Justice Screening Form if these conditions are not met and, if so, the timing of that requirement.

- *Community Outreach and Engagement.* While Section II.B states that Proponents “shall undertake measures to promote public involvement,” it does not clearly provide minimum criteria to meet this requirement. The list of suggested options does start with “(At a minimum) holding a community meeting upon request by anyone contacted through advance notification provided, or upon further dissemination of a written project summary as referenced below.” Does this mean that holding a community meeting is the minimum requirement and that the remaining measures are optional? If so, that should be clarified in the protocol.

Comments on the Impacts Analysis Protocol

The Impact Analysis Protocol provides guidance to Proponents on how to develop the report required under Section 58 the Act that contains:

. . . statements about the results of an assessment of any existing unfair or inequitable environmental burden and related public health consequences impacting the environmental justice population from any prior or current private, industrial, commercial, state, or municipal operation or project that has damaged the environment If the assessment indicates an environmental justice population is subject to an existing unfair or inequitable environmental burden or related health consequence the report shall identify any: (i) environmental and public health impact from the proposed project that would likely result in a disproportionate adverse effect on such population; and (ii) potential impact or consequence from the proposed project that would increase or reduce the effects of climate change on the environmental justice population.

Because this report provides the analysis necessary to evaluate the impacts on EJ populations it is a critical feature of the new environmental justice requirements. As such, it is essential that the protocol provide clear and definitive guidance to Proponents on what must be included in the report and, to the extent that Proponents must make any determinations in the report, clear criteria for making those determinations.

We understand that the development of the Impacts Analysis Protocol is an enormous and difficult undertaking and that, due to statutory deadlines, the time to develop the protocol has been limited. We also understand that, as a result, project Proponents and the MEPA office will need to work cooperatively to make this process work effectively and fairly starting on January 1, 2022. To that end, we have three broad, high-level suggestions to address issues in both the short term and the long term.

- *MEPA Should Use the ENF/EENF Certificate to Scope the Impact Analysis Report.* We are generally concerned that, while the draft Impact Analysis Protocol provides a strong, basic

outline of the elements of the report, the guidance is too high-level and places too great a burden on Proponents to make project-specific determinations. To address this, we suggest that the protocol be revised to state that the Secretary's Certificate on the ENF/EENF will be used to provide more particularized guidance to Proponents by scoping what must be included in the report, including:

- The data sources that must be consulted;
 - The types of environmental impacts and related public health consequences that must be evaluated;
 - The criteria for determining whether there is an existing "unfair or inequitable" environmental burden or public health consequence for the identified impacts;
 - The types of direct and indirect impacts that must be analyzed in determining whether project impacts will "likely result in a disproportionate adverse effect" on the EJ population and the criteria that must be used in making that determination.
- *Ongoing Technical Review and Refinement of the Protocol.* The Act requires the report to assess a number of technically complicated issues. While the draft protocol identifies these issues and provides some guidance, more guidance is necessary to reduce uncertainty and achieve more uniform, fair and defensible results. We understand that the impact protocols must be in place by January 1, 2022. Because of this, delaying the issuance of the protocols is not a viable option. However, we suggest that MEPA send a clear signal that the work on the Impact Analysis Protocol will be ongoing by first labeling the protocol as "Interim" and then forming a technical review committee that will analyze and provide recommendations on the following issues:
- Which data sources must be utilized in the assessment (versus what is optional);
 - Clear and objective criteria for determining whether (1) there is an existing "unfair or inequitable" environmental burden or public health consequence and (2) whether project impacts will "likely result in a disproportionate adverse effect";
 - Detailed guidance on how to evaluate comparative impacts on EJ and non-EJ populations; and
 - Detailed guidance on what types of indirect impacts should be included in the assessment and how the impacts should be assessed.
- *De Minimis Exemptions and Use of the MEPA Thresholds in the Interim.* The draft protocol states:

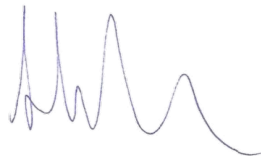
In addition, while MEPA review thresholds at 301 CMR 11.03 provide a guide for a discussion of impacts, the Proponent shall not limit the discussion to impacts that meet or exceed MEPA review thresholds, and, instead, shall address all short-term and long-term impacts associated with the project, including construction period activities. For instance, an estimate of construction vehicle traffic and routes of

travel may be warranted if construction activities will be occurring in close proximity to already-burdened EJ populations.

We are concerned about the lack of any *de minimis* exemptions for the impacts assessment. The Act does not require it. Instead, the Act requires the identification of any “environmental and public health impact from the proposed project that would likely result in a disproportionate adverse effect on such population.” (Emphasis added). Moreover, Section 58 of the Act expressly incorporates the existing statutory language that the EIR is only required for a “project that is likely to cause damage to the environment” – the same language that forms the basis for the current MEPA thresholds. Based on this, we believe that it would be reasonable for Proponents to use the existing MEPA thresholds to determine which environmental impacts (and their related public health burdens) must be analyzed in the report. At a minimum, the protocol should allow Proponents to use the existing MEPA thresholds until alternative *de minimis* thresholds can be evaluated and recommended by the technical review committee suggested above.

Thank you again for the opportunity to provide these comments and we look forward to working with you as you continue the process of refining the EJ Protocols. If you have any questions, please do not hesitate to call me (978-732-3051) or Wendy Levine (617-594-5210).

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Andrea D. Agostino'. The signature is fluid and cursive, with several peaks and valleys.

Andrea D. Agostino
Manager – New England Environmental Permitting

CC: Wendy B. Levine, Esq., National Grid
Lauren Peloquin Shea, Esq., National Grid
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