May 2023

OVERLY IMPACTED & RARELY HEARD

INCORPORATING COMMUNITY VOICES INTO MASSACHUSETTS ENERGY REGULATORY PROCESSES

National Consumer Law Center

Conservation Law Foundation

Environmental Defense Fund

ACKNOWLEDGMENTS

As the Commonwealth seeks to reach its climate goals, environmental justice populations cannot be left out of the energy transition. This report, which addresses aligning utility regulation and energy facility siting with recent statutory and policy changes in the Commonwealth, would not have been possible without the dedication of the members of the Stakeholder Working Group ("SWG"). The SWG was convened by the Massachusetts Office of the Attorney General ("AGO") in 2021. Over the course of more than a year and a half, the SWG discussed barriers to participation and worked to produce a report that will assist in advancing energy regulatory processes as the Commonwealth decarbonizes its energy system. The AGO expresses its sincere gratitude for the work done by the SWG and applauds them on this successful effort. The SWG participants are:

- Roseann Bongiovanni, GreenRoots
- Charlie Harak, National Consumer Law Center (NCLC)
- Logan Malik, Massachusetts Climate Action Network
- Sofia Owen, Alternatives for Community & Environment
- Nancy L. Seidman, Regulatory Assistance Project
- Caitlin Peale Sloan, Conservation Law Foundation (CLF)
- Elena Weissmann, Vote Solar
- Jolette Westbrook, Environmental Defense Fund (EDF)

Former SWG members:

- Sarah Dooling, formerly of Massachusetts Climate Action Network
- Nathan Phelps, Vote Solar
- María Belén Power, formerly of GreenRoots
- Staci Rubin, formerly of Conservation Law Foundation

The contributions of the AGO staff who worked with the SWG must also be acknowledged. Current and former AGO staff, including Jessica Freedman, Shannon Beale, and Cecilia Milano, helped to bring to fruition what was envisioned when the AGO convened the SWG. Further, the SWG and AGO would like to thank consultants from Strategy Matters, LLC, as well as others who provided support to the SWG, including Jenifer Bosco (NCLC), Michelle Deakin (NCLC), Subin DeVar (Initiative for Energy Justice), Jennifer Freeman (EDF), Priya Gandbhir (CLF), Miles Gresham (Neighbor to Neighbor), Ella Halpine (NCLC), Khadiyjah Jordan (formerly of Strategy Matters), Elvis Méndez (Neighbor to Neighbor), and Josh Moulton (Strategy Matters). Their contributions played an important role in bringing together such a timely and important report. The SWG and AGO also thank the Barr Foundation for funding facilitation and consultant costs.

Finally, the SWG and AGO also acknowledge and thank each person who participated in a survey, interview, or focus group to provide invaluable insight regarding their perspectives on energy regulatory processes. As a result of their participation, the SWG was able to better understand concerns of stakeholders and include in the report concrete recommendations for process changes.

OVERLY IMPACTED & RARELY HEARD

INCORPORATING COMMUNITY VOICES INTO MASSACHUSETTS ENERGY REGULATORY PROCESSES

TABLE OF CONTENTS

This report includes seven sections, each with its own discussion of existing barriers and recommendations for solutions.

EXECUTIVE SUMMARY

The Commonwealth of Massachusetts has committed to important and challenging goals to decarbonize its energy system, including through expansion of clean and renewable energy sources. In the past two years, the Massachusetts Legislature passed the 2022 Driving Clean Energy Act and the 2021 Roadmap Act to set Massachusetts on the road to a carbon-free future. These Acts also codify and emphasize the importance of achieving equity in our energy systems and promoting energy affordability. In the coming years, utilities and other petitioners will be filing a range of proposals with the Department of Public Utilities (DPU) and Energy Facilities Siting Board (EFSB) seeking approvals related to siting and financing utility infrastructure, and implementation of utility energy efficiency programs and clean energy initiatives.

Disproportionately high burdens connected with utility infrastructure and operations fall on environmental justice populations, which are formally defined by Massachusetts law. Yet the status quo provides environmental justice populations and affected communities few or no meaningful opportunities to participate in DPU and EFSB proceedings, where most utility infrastructure and operations decisions are made. Few agency decisions currently reflect input from environmental justice populations. To address and remedy this historic inequity, the DPU and EFSB should make significant changes to their regulatory processes. This report, collaboratively written by a Stakeholder Working Group (SWG) convened by the Massachusetts Office of the Attorney General (AGO), includes recommendations that the DPU and EFSB can implement in the short-term, as well as recommended changes that will take longer to implement. These can help address the existing inequitable decision-making processes.

The AGO convened the SWG in the summer of 2021 and tasked it with identifying barriers to participation in proceedings at the DPU and EFSB and proposing solutions to those barriers. In addition to meeting frequently over the past 18 months, the SWG circulated a survey, to which 600 individuals replied, and conducted interviews and focus groups with an additional 50 individuals. This process provided a more comprehensive picture of existing barriers to meaningful participation in DPU and EFSB proceedings, as perceived by citizens across the Commonwealth. The SWG was deeply struck by the depth of frustration and disenchantment with the DPU and EFSB voiced by so many interview and focus group participants.

The resulting report contains seven sections, each of which discusses barriers to community and stakeholder participation in energy regulatory proceedings and offers solutions to overcome those barriers. Many can be readily implemented by the agencies. The SWG acknowledges that some of the recommendations will require increased staffing and funding, a reallocation of priorities and resources, and regulatory or legislative amendments. A summary of each section's key points follows.[1]

I. Advancing Equity at the DPU & EFSB

The DPU and EFSB should incorporate equity and environmental justice principles into the processes that they use to reach their decisions as well as into their substantive decisions. Changes in agency processes and priorities can lead to decisions that better reflect the interests of environmental justice populations and communities affected by agency actions.

Several barriers must be overcome. First, despite major statutory changes addressing climate change and prioritizing equity and environmental justice, there have not yet been significant changes to energy regulatory processes. Second, participating in agency proceedings in a meaningful way is difficult due to procedural requirements, the technical nature of proceedings, and the high costs to retain attorneys and experts. Third, there are widespread, negative perceptions among stakeholders regarding the DPU and EFSB, including that the agencies are not doing enough to address the impacts of proposals on environmental justice populations and that decision-makers do not seriously consider issues raised by environmental justice populations but instead favor utilities and project proponents.

To address these barriers, the SWG recommends the following:

- Each agency should open a generic policy investigation with the goal of revising the agency's approach to regulation aligned with recent climate legislation
- The agencies should recognize the value of lived experience by considering public comments and non-technical expert testimony in proceedings
- The Executive Office of Energy and Environmental Affairs ("EEA") should establish an Environmental Justice Advocate position to provide support in EFSB proceedings
- Massachusetts General Law chapter 164, section 69, should be amended to include at least one public member with experience in environmental justice issues on the Siting Board

- The DPU should increase transparency and availability of information related to energy affordability, energy burden, and energy reliability
- The DPU should consider and incentivize improvements related to affordability and energy burden.

II. Improving Transparency & Accountability

The SWG identified several barriers related to transparency and accountability at the DPU and EFSB. First, there is no established process or requirement for decision-makers or petitioners to respond to stakeholder input, whether in formal proceedings or less formal discussions. Second, there is a perception among some stakeholders that the agencies elevate the priorities and interests of petitioners above those of other stakeholders. Third, DPU commissioners are not often visible to the public, as they do not deliberate in open meetings, rarely attend public hearings or evidentiary hearings, and rarely issue tentative or proposed decisions. Fourth, Siting Board members do not always appear to have had adequate training or a comprehensive understanding of the proceeding or their role in the proceeding. Fifth, the legitimacy of an agency's decision may be undermined if there is no reexamination of the record given new or more accurate information.

To address these barriers, the SWG recommends the following:

- The DPU and EFSB, as well as petitioners, should be required to respond to stakeholder comments and concerns
- DPU commissioners should increase their visibility by deliberating at open meetings, participating in hearings, and attending stakeholder-focused and public-facing events
- The DPU should consider issuing tentative orders and soliciting comments before issuing final orders
- All Siting Board members should have a comprehensive understanding of board procedure, member roles and responsibilities, and the evidence and issues relevant to particular proceedings
- The Siting Board should establish a mechanism to reassess decisions when evidence presented by the petitioner and relied upon by the Siting Board materially changes.

III. Improving Information & Knowledge Accessibility

The DPU and EFSB conduct proceedings that affect environmental justice communities and millions of ratepayers throughout the Commonwealth. Yet, for interested stakeholders, gaining a working knowledge of a proceeding requires a significant amount of time and resources. Meaningful participation as a stakeholder intervenor can cost tens of thousands of dollars. Even simply gaining access to the full record of a proceeding may be expensive.

To address these barriers, the SWG recommends that the agencies:

- Provide non-technical plain language summaries of long, technical orders and orders on proceedings of particular concern to stakeholders
- Provide more informational and educational resources on agency websites to help decode policies, regulations, and proceedings
- Provide interactive opportunities for stakeholders to engage with decision-makers and staff
- Improve ways for stakeholders to easily obtain information about proceedings through technology and by partnering with community organizations and municipalities to publicize proceedings and solicit input
- Take an active role to ensure that stakeholders and intervenors have appropriate access to data
- Ensure free access to transcripts.

IV. Reforming the DPU's & EFSB's Approach to Public Engagement

Given the passage of recent climate legislation and related public policy changes, the Commonwealth must make further changes to ensure that environmental justice populations and other stakeholders have an opportunity to understand and engage in DPU and EFSB proceedings. The SWG's outreach highlighted that many people view DPU and EFSB proceedings as too opaque, and stakeholders find it difficult to have an impact on or to participate in proceedings.

To address these barriers, the SWG recommends that EEA establish an Office of Public Participation to provide support to interested community members. The SWG also recommends that the agencies:

- Update and modernize their notification procedures
- Require petitioners to conduct pre-filing outreach and workshops to solicit community input in time to incorporate changes prior to filing the petition
- Engage with environmental justice populations and other stakeholders to develop a Public Engagement Framework that can serve as a guide for decision-makers and staff
- Establish mechanisms to solicit input from community members and existing advocacy groups on an ongoing basis through a community advisory group
- Establish clear and inclusive language access protocols.

V. Reforming the DPU's & EFSB's Approach to Intervention

Most community and environmental justice groups find it difficult, if not impossible, to successfully intervene in proceedings before the DPU and EFSB. One of the major barriers is that potential intervenors are required to meet a high burden to demonstrate that they are legally entitled to intervene. Cost is another major barrier, as discussed in Section III above, including the need to hire attorneys and experts.

To address these barriers, the SWG recommends the following:

- The agencies should revise the intervention standard to be more inclusive so that parties who demonstrate that they will be affected by a proposal are allowed to participate as intervenors, even if other parties have similar interests or concerns
- The agencies and EEA should provide more support to prospective intervenors, including by establishing an Office of Public Participation, providing templates for petitions to intervene and pre-filed testimony, and updating software so that agency websites include a searchable database of prior decisions and proceedings
- The Commonwealth should provide funding for an intervenor compensation program so that prospective intervenors materially contributing to a significant issue in the proceeding can pay for attorneys and experts.

VI. Improving Public Hearings, Evidentiary Hearings & Public Meetings

There are several barriers related to public hearings, evidentiary hearings, and EFSB public meetings, including the times, locations, and format of these events. The DPU and EFSB should make changes to ensure that people who may be affected have the opportunity to be heard by decision-makers and that the investment of time required to participate is more predictable.

To address these barriers, the SWG recommends the following:

- The first portion of public hearings should be structured as information sessions in which the petitioner presents to the public and responds to questions; the first portion of EFSB public meetings should include a comment period
- The agencies should provide simultaneous language interpretation
- The agencies should schedule hearings in impacted communities and at accessible locations at a variety of times of day with evening and weekend options
- The agencies should allow (but not require) people wishing to speak at public hearings to sign up for particular time slots
- The agencies should ensure that sworn or unsworn statements from the public are considered in decisions and are part of the official record
- Hearings should be recorded and uploaded to agency websites for later viewing
- At least one DPU commissioner should attend each public hearing when public comments are expected, and at least one DPU commissioner should attend every evidentiary hearing
- A majority of Siting Board members should attend every public comment hearing and evidentiary hearing
- The 48 hours' notice required for EFSB public meetings should be increased to a minimum of 7 days.

VII. Recommendations Related to Adjudications

The DPU and EFSB currently use adjudications for many of their proceedings, including proceedings on rate design, new spending, energy efficiency, adoption of new policies, and the siting of new facilities and transmission lines. While sometimes required or necessary, adjudicatory proceedings are difficult for stakeholders and community members to access, are hard to track and understand, and do not provide adequate opportunities for stakeholders to provide input or to participate meaningfully.

To address these barriers, the SWG recommends that the agencies consider a variety of alternatives that can supplement and—where appropriate—replace adjudications, as well as ways to improve the adjudication process, including:

- Holding regular workshops on matters of interest to stakeholders (including topics requested by stakeholders)
- Providing opportunities for information sharing, dialogue, education, and the exchange of ideas through information sessions, working groups, and technical conferences
- Using non-adjudicatory proceedings to develop model tariffs, to explore policy issues, and to conduct rulemaking
- Expanding opportunities for stakeholders to file comments during adjudications by setting deadlines after discovery and testimony have been filed.

Conclusion

If the recommendations discussed in this report are implemented, the SWG is confident that the decisions by the DPU and EFSB will better reflect the input of communities that have been disproportionately burdened by energy facilities and infrastructure, setting the Commonwealth on a pathway to a more equitable and affordable transition to a cleaner energy future.

INTRODUCTION

As the Commonwealth of Massachusetts decarbonizes its energy system, utility regulation and energy facility siting should be aligned with recent changes to legislation and policy. Given that this transition will include siting new infrastructure projects and other significant investments, decision-makers must consider the disproportionate impacts of energy-related burdens on environmental justice populations[2] and appreciate the importance of providing opportunities for environmental justice populations to be involved in the development, implementation, and enforcement of environmental laws, regulations, and policies. The status quo provides environmental justice populations and impacted communities[3] few or no meaningful opportunities to participate in agency proceedings, and few agency decisions reflect input from these populations. To address and remedy this systemic inequity, the Department of Public Utilities (DPU)[4] and the independent Energy Facilities Siting Board (EFSB) must make significant changes to their regulatory processes. The changes should address how the agencies incorporate input from the public into decisions and how they facilitate, invite, and encourage the participation of environmental justice populations and impacted communities in proceedings. Agency decisions should equitably allocate environmental- and energy-related burdens and benefits and meaningfully integrate environmental justice principles into decision-making.

This report includes recommended changes that the DPU and EFSB can implement in the short-term,[5] as well as recommended changes that will take longer to implement. The Stakeholder Working Group (SWG)[6] recognizes that some of the recommended changes may require increased budgets and staffing, as well as amending regulations and in some cases enacting new legislation. The SWG hopes that those at the state level and within the DPU and EFSB who have the authority to implement changes recognize the barriers identified and seriously consider the recommendations presented in this report. The SWG will endeavor to work collaboratively with the Executive Branch—including the Executive Office of Energy and Environmental Affairs (EEA) and the DPU and EFSB—to achieve more equitable decisions that better incorporate the input and interests of environmental justice populations.

Background & Context

The Massachusetts Legislature has made clear that the DPU and EFSB must address equity, environmental justice, climate issues, energy affordability, and the meaningful involvement of environmental justice populations in new ways. After "An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy," Chapter 8 of the Acts of 2021 (2021 Roadmap Act) was passed, EEA updated its "Environmental Justice Policy" to include foundational definitions related to environmental justice principles and populations, and environmental benefits and burdens. Under EEA's Environmental Justice Policy, environmental justice principles are an integral consideration in the implementation of all EEA programs, including the promulgation, implementation, and enforcement of laws, regulations, and policies.[7] Per EEA's Environmental Justice Policy, the DPU and EFSB must support the "*meaningful involvement* of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies, including climate change policies[.]"[8] The Environmental Justice Policy defines "meaningful involvement" as follows:

> **'Meaningful Involvement'** means that all neighborhoods have the right and opportunity to participate in energy, climate change, and environmental decision-making including needs assessment, planning, implementation, compliance and enforcement, and evaluation, and neighborhoods are enabled and administratively assisted to participate fully through education and training, and are given transparency/accountability by government with regard to community input, and encouraged to develop environmental, energy, and climate change stewardship.[9]

Further, the 2021 Roadmap Act also directs the DPU to prioritize equity and affordability, as well as reductions in greenhouse gas emissions, in its decision-making.[10] While equity is not defined in state law, the SWG adopts the definition provided by the Global Warming Solutions Act Implementation Advisory Committee Climate Justice Working Group. That working group defined equity as follows:

> **Equity** means treating an individual or community according to their needs, thereby ensuring that historically marginalized people and historically disinvested communities, especially people of color, low-income residents, and English isolated residents, gain access to opportunities and resources and discharge the negative consequences of unsustainability. Unless justice, equity, and worker rights are central components of our equitable climate agenda, the inequality of the carbon-based economy will be replicated in the new pollution-free economy.[11]

Since the early years of the 20th century, when utility regulation was first developed, the goals of regulation have shifted significantly. While costs, reliability, and safety remain key objectives, the Commonwealth is now also prioritizing climate mandates, the health benefits of clean energy, and the use of distributed energy resources, time-of-use pricing, and load shifting. Legislation passed over the last 15 years, including "An Act Driving Clean Energy and Offshore Wind," Chapter 179 of the Acts of 2022 (2022 Driving Clean Energy Act), and the 2021 Roadmap Act, commits the Commonwealth to achieving transformative climate goals and emission reduction mandates, promoting and funding the development of renewable energy,[12] and embracing equity and environmental justice as explicit goals of utility regulation and energy facility siting.[13]

There is growing recognition locally as well as nationally that our current energy system places a disproportionate burden on environmental justice populations, that these populations do not receive an equitable share of its benefits, and that environmental justice populations do not have adequate or meaningful opportunities to participate in energy decisions that impact their communities. Infrastructure and facilities that pollute our air, land, and waters are disproportionately sited in communities with environmental justice populations. The disproportionate environmental, health, social, and financial impacts that environmental justice populations experience are significant, even deadly.[14] Beyond the human toll, our energy system's unequal economic burdens have resulted in many Massachusetts families experiencing a disproportionately high energy burden, energy poverty, and the "heat or eat" dilemma.[15]

DPU and EFSB decisions have significant impacts on environmental justice populations, yet energy decision-making processes lack adequate transparency and include only limited stakeholder participation. Beyond fundamental access barriers, such as language, requirements to travel, and the timing of hearings, participation in proceedings requires costly legal representation, technical expertise, and an understanding of stringent procedural requirements.

Framework Needed to Meet Climate, Equity & Justice Laws

In the coming years, as the Commonwealth works to lower greenhouse gas emissions and sites new clean energy technologies, reforms are necessary to ensure that the interests of disproportionately impacted and historically disenfranchised communities are prioritized. Public policies should ensure that environmental justice populations and affected communities share in the economic, health, and environmental benefits of our energy transition; that these communities have a meaningful opportunity to understand and engage in DPU and EFSB proceedings; and that their input is integrated into decisions. Agency decisions must also reflect the environmental justice principles codified in statute and reinforced in EEA's Environmental Justice Policy. Like many other agencies in the Commonwealth, the DPU and EFSB are subject to statutes, regulations, and practices that are outdated. With evolving legislative and policy directives, as well as new opportunities for government participation and access to government resources provided by technology, the DPU's and EFSB's approaches to regulation must also change.[16] To date, these agencies have not taken significant steps to fulfill these new legislative directives or to take full advantage of new opportunities for engagement.[17] Similarly, neither the DPU nor the EFSB has articulated how it integrates considerations of equity, affordability, and environmental justice into its proceedings and decision-making.[18]

As the Commonwealth transitions to a cleaner energy future, it should forge a clear and transparent pathway to ensure equity for communities that currently face disproportionate environmental burdens and ensure that agencies meaningfully integrate environmental justice principles in their decision-making.

The SWG & Its Work

The Massachusetts Office of the Attorney General (AGO) convened the SWG in the summer of 2021 and tasked it with identifying barriers to participation in proceedings at the DPU and EFSB and proposing solutions. To address the barriers to meaningful participation, the SWG initiated community outreach and drafted this report recommending that the DPU and EFSB implement overarching and specific changes to meet the following goals: improving engagement and responsiveness; bringing the work of the agencies into closer alignment with recent climate legislation; ensuring that agency proceedings, deliberations, and decisions properly reflect the voices of the public, especially of environmental justice populations and low-income households; and ensuring that agency decisions and actions are consistent with environmental justice principles and support equity, affordability, and climate goals.

With the assistance of Strategy Matters—a Boston-based consulting firm—as facilitator, the SWG held frequent meetings to discuss the range of issues addressed in the report. The SWG and the AGO worked with Strategy Matters to circulate a survey[19] and conduct focus groups and interviews[20] to get a fuller picture of existing barriers to meaningful participation and potential solutions.

The SWG was deeply struck by the depth of frustration and disenchantment with the DPU and EFSB that the majority of interview and focus group participants voiced. Participants stated that DPU and EFSB processes are too technical—even for those directly affected by proposed energy projects; that because participation requires substantial expense and expertise, it is difficult for voices of the public to be heard at all; that even when individuals and groups are able to participate, agency decisions do not reflect their concerns; and that the agencies do not adequately address issues related to equity in their actions.

This report reflects the collective work of the SWG and, we hope, fairly incorporates the input received from survey respondents and interview and focus group participants. This report is meant to inform regulators and staff at the DPU and EFSB, legislators and members of the Executive Branch, and regulators throughout the country, and aims to improve how agencies interact with the public and advance equity in reaching their decisions. The SWG recognizes the effort required to implement changes at the DPU and EFSB and is committed to collaborating with the agencies in this important work. As part of this ongoing commitment, the SWG is willing to work with the agencies to draft proposed changes to the appropriate Code of Massachusetts Regulations (C.M.R.) at a later date.

I. ADVANCING EQUITY AT THE DPU & EFSB

In order to advance equity in energy decision-making, we believe that the DPU and EFSB should fully incorporate equity and environmental justice principles into the processes that they use to reach their decisions and into the substantive decisions themselves. Changes in agency processes, considerations, and priorities can lead to decisions that better reflect the interests and viewpoints of environmental justice populations.

Existing Barriers Related to Advancing Equity

There are currently several key barriers to advancing and centering equity in DPU and EFSB proceedings.

First, as discussed above, statutory and policy changes adopted since 2021 have not yet resulted in significant changes. Where changes have occurred, including improved language access (i.e., interpretation and translation), such changes have not necessarily been made in transparent ways or with adequate or robust stakeholder input. As an example, without a detailed and updated language access plan[21] or criteria about when the agencies provide translation or interpretation, communities experience a lack of transparency and predictability.

Second, the SWG's outreach uncovered several negative perceptions among stakeholders regarding the DPU and EFSB, including perceptions that:

- The DPU and EFSB are not doing enough to address the impacts of proposals on environmental justice populations
- Decision-makers do not seriously consider issues raised by environmental justice populations
- The DPU and EFSB favor the utilities and project proponents and their experts, and disfavor other stakeholders and their experts
- The lived experience of people who will likely be affected by proposals is not well incorporated into or reflected in decisions,[22] and the viewpoints of non-technical experts do not appear to be highly valued and are typically not addressed in decisions
- Decision-makers and staff do not reflect the racial diversity of the Commonwealth.

Third, it is difficult for members of the public to participate in proceedings in a meaningful way due to procedural requirements and the technical nature of proceedings.[23] There are few supportive resources available and few opportunities for environmental justice populations and communities affected by proposals to build internal capacity that may be required to participate meaningfully in proceedings.

Finally, important issues related to the effect of DPU and EFSB decisions on environmental justice, equity, and affordability are not publicly tracked; thus, it is difficult to measure progress.

Advancing Equity: High-Level Recommendations

Equity and environmental justice should not be afterthoughts, but rather should be central to each agency's approach to regulation and decision-making. This will require the DPU and EFSB to invite input from stakeholders as they establish new standards of review and develop explicit statements on how they will integrate equity and environmental justice principles in all proceedings going forward. Agency decisions should reflect input from environmental justice populations, including on the impacts of proposals on equity, affordability, pollution, public health, and climate change. The agencies should adopt a renewed focus on impacts to ratepayers, particularly for low-income ratepayers, and on impacts related to the location and use of energy infrastructure. Moreover, decision-makers should reflect the diversity of the state's population and interests.

The DPU and EFSB should ensure that environmental justice populations and low-income individuals receive equitable access to the benefits of the clean energy transition, and that they are able to play a central role in energy decisions that affect their lives.

These recommendations and those discussed in subsequent sections of this report, if adopted, will provide communities that experience disproportionate impacts of environmental and energy burdens with more meaningful opportunities to be involved, which will help the Commonwealth meet its climate goals in a more equitable and inclusive manner. In addition to encouraging meaningful involvement in proceedings, the DPU and EFSB should ensure that environmental justice populations and low-income individuals receive equitable access to the benefits of the clean energy transition, and that they are able to play a central role in energy decisions that affect their lives.

Advancing Equity: Specific Recommendations

1. Each agency should open a generic policy investigation with the goal of revising its approach to regulation based on recent climate legislation.

Currently, it is unclear to stakeholders how the DPU views its current role and the extent to which it has changed its approach to regulation to align its work with the recent legislative changes discussed above. Similarly, it is unclear how the EFSB has changed its approach considering recent mandates to integrate environmental justice principles and to meaningfully involve environmental justice populations in decisions. Although the agencies have taken some steps in the right direction, including by opening public participation proceedings (D.P.U. 21-50 and EFSB 21-01), making their websites more user-friendly, and expanding translation and interpretation services,[24] these steps are incremental, do not adequately address recent legislative and policy directives, and seldom, if ever, appear to affect decision-making.

The SWG recommends that the DPU and EFSB open generic policy investigations to examine their altered roles under recent legislation and EEA's Environmental Justice Policy. These investigations would determine how the DPU and EFSB will prioritize equity and affordability (for the DPU specifically) and incorporate environmental justice principles into procedures and decisions. These investigations should meaningfully involve all interested stakeholders, and should address: revised standards of review (including for when a rate change is in the public interest and when rates are reasonable (for the DPU)); how the agencies can advance equity in their work; and how environmental justice principles will factor into decision-making. The agencies should also address how impacts on public health, climate change, equity, and environmental benefits and burdens will be considered. This type of investigation could be initiated in the short-term. Regulatory amendments may be appropriate or necessary depending on the outcome. Public utility commissions in other states have initiated similar efforts, as discussed in Appendix A.

2. Agencies should recognize the value of lived experience by considering input from non-technical experts.

Testimony is typically provided by experts in a variety of technical fields, including finance, ratemaking, engineering, renewable energy, and less frequently in the areas of public health, climate change, and pollution. The agencies' consideration of equity, affordability, climate change, public health impacts, and environmental justice should be informed by people with lived experience relevant to these issues. Accordingly, the DPU and EFSB should consider amending their regulations so that decision-makers can consider public comments

(in addition to testimony of petitioner witnesses and experts), and so that an affidavit or sworn testimony is not required.[25] The Environmental Justice Advocate, discussed in the subsection immediately below, should advise members of the public on the difference between sworn and unsworn statements or comments, and the benefits of offering sworn statements. The Office of Public Participation, recommended in the section, "Reforming the DPU's & EFSB's Approach to Public Engagement," can provide a similar support function. In the short-term, the agencies should demonstrate that public comments are considered and recognized in their decision-making.

3. EEA should establish an Environmental Justice Advocate position to provide support in EFSB proceedings.

The SWG's recommended Environmental Justice Advocate would be responsible for outreach, education, and support for environmental justice populations in EFSB proceedings, especially if they wish to intervene. The Environmental Justice Advocate would provide information about procedures as well as substance and ensure that the EFSB provides meaningful engagement opportunities (including interpretation, translation, and convenient locations and times for public hearings). To ensure the independence of the Environmental Justice Advocate and to reduce perceived conflicts of interest, the position should not be housed within the EFSB, and instead could be housed elsewhere within EEA (under EEA's Undersecretary on Environmental Justice and Equity or within an Office of Public Participation, discussed below in the section "Reforming the DPU's & EFSB's Approach to Public Engagement").[26]

Although the DPU is taking a positive step by hiring a Public Access Coordinator, an Environmental Justice Advocate would fill a different need by maintaining a singular focus on environmental justice. The Environmental Justice Advocate would support environmental justice populations in their advocacy efforts at the EFSB and ensure all procedural and substantive matters concerning environmental justice are addressed by the EFSB. The Environmental Justice Advocate would also be available to explain the content of the decision if there are questions following a decision.

4. Massachusetts General Law chapter 164, section 69H, should be amended to include at least one public member with environmental justice experience on the Siting Board.

Under M.G.L. chapter 164, section 69H, the Siting Board members include:

(1) the secretary of energy and environmental affairs

(2) the secretary of housing and economic development

(3) the commissioner of the department of environmental protection

(4) the commissioner of the division of energy resources

(5) two commissioners of the commonwealth utilities commission (or the designees of (1) – (5))

(6) three public members to be appointed by the governor for a term coterminous with that of the governor, one of whom shall be experienced in environmental issues, one of whom shall be experienced in labor issues, and one of whom shall be experienced in energy issues.[27]

Environmental justice populations experience disproportionate environmental burdens from utility and energy infrastructure, including higher rates of pollution and negative health impacts, as well as more impacts of climate change.

While the public members on the Siting Board include an individual experienced with environmental issues and an individual experienced in energy issues, no member is required to have experience in environmental justice issues. By adding a member (or members) with experience in environmental justice issues, the Siting Board would be constituted in a way that is more reflective of the EFSB's mandate to consider environmental justice principles and environmental justice populations in its work.[28] As discussed in the Introduction, environmental justice populations experience disproportionate environmental burdens from utility and energy infrastructure, including higher rates of pollution and negative health impacts, as well as more impacts of climate change. A public member with a background in environmental justice would represent interests distinct from other Siting Board members.

5. The DPU should increase transparency and availability of information related to energy affordability, energy burden, and energy reliability.

Some reporting requirements are already in place at the DPU related to service quality (frequency and duration of outages, service reliability, emergency response times, and restoration of service),[29] disconnections, and arrearages.[30] However, zip code level data and more granular census track or block data is not available, and there is currently no way to track energy burden,[31] energy insecurity,[32] and energy poverty[33] of ratepayers.[34] Without regular, reliable, and transparent metrics, it is impossible to ensure that our energy systems serve all customers and communities equitably.[35]

The DPU should increase transparency and availability of information by utility and by location (including by census block group, where possible) so that stakeholders can track and compare the data. While providing data related to energy burden in a user-friendly way may pose a challenge, the SWG urges the DPU to work with the utilities and stakeholders to determine how this data can be compiled, organized, and accessed. This data can then enable the DPU to establish new standards to incentivize improvements. The DPU should begin examining these issues in the short-term, but the SWG acknowledges that developing appropriate metrics may take staff time and collaboration with stakeholders, including the regulated utilities.

6. The DPU should ensure appropriate consideration of affordability and energy burden in rate cases and incentivize improvements.

To advance equity and to ensure that low-income and environmental justice populations have access to affordable energy, the DPU should ensure that it considers affordability, energy burden, energy insecurity, and energy poverty when assessing proposed rates.[36] In addition, the DPU should consider how to effectively motivate utilities to reduce energy burden, energy insecurity, and energy poverty of their customers. The DPU can address this in the short-term by ensuring that the docket record (discovery and testimony) is developed on these issues and that these issues are explicitly addressed in DPU orders, as warranted.

II. IMPROVING TRANSPARENCY & ACCOUNTABILITY

These recommendations, if adopted, would help ensure that there is clarity and transparency regarding the reasons why a decision was made, thereby promoting accountability of decision-makers. Greater transparency and accountability will likely improve public confidence in the agencies.

Existing Barriers Related to Transparency & Accountability

There are several barriers to improving transparency, accountability, and legitimacy related to the work and decision-making of the DPU and EFSB.

There is no established process or requirement for decision-makers or petitioners to respond to stakeholder input.

Stakeholders can provide written and oral comments during proceedings. Yet, in most cases, neither decision-makers nor petitioners actually respond to these comments (either at the hearing or afterwards) or explain how stakeholder input factored or did not factor into decisions. During the SWG's outreach, several stakeholders expressed frustration that decision-makers did not seriously consider their viewpoints, although they raised important issues relevant to the decision. Stakeholders are often left with the impression that their input was not considered and did not have an effect, which does not build trust or encourage future participation.

Some stakeholders have the impression that utilities and petitioners have an "in" with decision-makers.

There is a perception among some stakeholders that the DPU and EFSB elevate the priorities and interests of petitioners above those of other stakeholders, from requests for changes to procedural schedules to final decisions. Compared with many other stakeholders, petitioners are repeat players and are therefore familiar with DPU and EFSB processes and practices, have experience communicating with commissioners or staff, and have a good understanding of how to navigate complicated procedures. The perception that petitioners have an advantage over other stakeholders may be strengthened when staff or decision-makers become or have been employed by development or energy companies, utilities, or firms that regularly appear before the agencies.[37] Based on the SWG's work, some stakeholders have the perception that petitioners have an advantage over other stakeholders; this likely contributes to feelings of mistrust, or may cause some members of the public to question the independence of decision-makers.[38] The SWG recommends that this dynamic is considered when new Siting Board members are appointed.

DPU commissioners do not deliberate in open meetings, are not often visible to the public, and rarely issue tentative or proposed decisions.

While Siting Board members deliberate in open meetings, DPU commissioners employ an exemption and do not.[39] Thus, absent a dissent, viewpoints of an individual commissioner cannot be discerned because only collective reasoning will be included in the decision. With limited exceptions, such as rate case public hearings in recent years, commissioners rarely attend, participate in, or preside over public hearings or evidentiary hearings.[40] Rather, commissioners typically delegate these functions to the assigned hearing officer.[41] This is not the case in other jurisdictions, including other New England jurisdictions.[42] Without open meetings to deliberate on decisions, and without regular attendance and participation from commissioners at public hearings or evidentiary hearings, the Commission is essentially invisible to the public for long periods of time.

DPU regulations provide for tentative or proposed decisions in limited circumstances;[43] however, this process is rarely used (contrasted with the EFSB, which frequently issues tentative decisions). After a tentative decisions is issued, there is a comment period, providing an opportunity for input late in the proceeding when the record is well developed. In a proceeding that does not involve a tentative decision, the comment deadline falls early in a proceeding before most of the evidence is filed. Thus, the final decision does not include any stakeholder input after that early deadline.

Siting Board members do not always appear to have had adequate training or a comprehensive understanding of board procedure, roles and responsibilities, potential conflicts, or the evidence and issues relevant to particular proceedings.

Siting Board members have varying professional backgrounds and experiences. Board members include the DPU, Department of Energy Resources (DOER), and Department of Environmental Protection (DEP) commissioners, the secretaries of EEA and Housing and Economic Development or their designees, as well as three public members (one experienced in environmental issues; one experienced in labor issues;[44] and one experienced in energy issues).[45] Board members serve for varying lengths of time. Some are full-time state employees, while others are public members who serve on a part-time basis and receive a per diem stipend.[46] It is not clear if all Board members receive consistent and adequate training enabling them to comprehensively understand procedures, their roles and responsibilities, or potential conflicts of interests.

Furthermore, the issues and decisions before the Siting Board typically involve technical terms related to energy infrastructure, which may not be the area of expertise for all members. While staff can provide some information and guidance, it undermines the legitimacy of the Siting Board when members are overly (or entirely) reliant on staff during public meetings and throughout the decision-making process. Siting Board members were appointed to be the decisions-makers, and the perceived lack of expertise fosters a perception that the Board is overly reliant on staff and overly deferential to petitioners. Similarly, the legitimacy of the Board's decision is undermined when Board members do not appear to have a good understanding of the evidence and issues or simply do not actively participate in hearings or deliberations. While the EFSB frequently issues tentative decisions, as required by regulation unless a quorum of the Board has heard the matter or has read the evidence,[47] if Siting Board members do not appear to have a good understanding of the proceeding, it again strengthens the perception that the decision-makers are overly reliant on EFSB staff and petitioners' technical experts for their decisions.

The legitimacy of decisions is undermined when based on outdated or inaccurate evidence.

When the DPU or EFSB approves a project based on either outdated data or information that is no longer accurate—and there is no reexamination of the record in light of new and more accurate information—it undermines the legitimacy of the agency's decision. This may occur when proceedings continue for years before a final decision is issued, and in instances where newer and more reliable information is available after a final decision is issued but before a project is constructed.[48]

Transparency & Accountability: High-Level Recommendations

During the SWG's work, the SWG often heard feedback that the agencies lack transparency; that the DPU and EFSB do not appear to be accountable to the public; and that in certain instances, final decisions and the processes used to come to final decisions are not viewed as legitimate (e.g., due to the frequent use of tentative decisions, lack of reexamination of information that is no longer accurate, and the perception that the DPU and EFSB elevate petitioner positions and priorities). The DPU and EFSB should take steps to improve transparency and accountability to the public, which will likely lead to an improvement in the public's perception. As discussed in greater detail below, the SWG recommends that both agencies demonstrate that stakeholder input is valued and considered by responding to stakeholder comments.[49] With regards to the DPU, the SWG recommends that DPU commissioners increase their visibility in a variety of ways and that the DPU consider issuing tentative orders in some proceedings. With regards to the EFSB, the SWG recommends

that Siting Board members be provided with training and resources so that all members have a shared baseline of understanding of procedure, their roles and responsibilities, and the evidence and issues in proceedings. The SWG also recommends that the Siting Board develop a mechanism to reassess decisions when evidence materially changes after an order has been issued.

Transparency & Accountability: Specific Recommendations

1. Require the DPU and EFSB, as well as petitioners, to respond to stakeholder comments and concerns.

The SWG recommends that the DPU and EFSB take the following three short-term steps to better demonstrate that stakeholder input is valued and is considered by petitioners and decision-makers:

- When stakeholders comment at a hearing, the DPU and EFSB should require the petitioner to file an amended petition within a specified time addressing the comments; this will provide greater clarity early in the process about the issues important to stakeholders, additional time for record development on these issues, and an opportunity for petitioners to make changes to the petition
- When comments are received later in a proceeding, after the public hearing and initial comment deadline,[50] the DPU and EFSB should require the petitioner to respond to stakeholder comments and concerns in their initial brief or in an appendix to an initial brief
- The agencies should include a dedicated section or appendix in decisions that summarize stakeholder comments, describe the record on these issues, explain if and how the petitioner amended its filing to address any concerns, and explain how stakeholder concerns were considered by the agency in the context of the overall decision.[51]

These recommendations are not exhaustive. The DPU and EFSB should consider additional ways to demonstrate that input from stakeholders is valued, viewed as important to the meaningful involvement of all people and communities, and essential to building a complete record.

2. Increase the visibility of DPU commissioners by requiring commissioners to deliberate at open meetings, to participate in hearings, and to attend other stakeholder-focused and public-facing events.

As described above, the DPU is not as transparent as analogous agencies in other jurisdictions. As a short-term remedy, the DPU Chair could ensure that Commissioner(s) attend or preside over public hearings and evidentiary hearings in certain types of proceedings, or DPU regulations could be amended to require them to do so.[52] By being present and actively involved in meetings and hearings, decision-makers will better understand stakeholder comments and concerns. Increased interaction between decision-makers and stakeholders during proceeding will likely improve public perceptions of transparency and accountability. As a longer-term measure, the Legislature should amend the Open Meeting Law (M.G.L. c. 30A, §§ 18-25) to require that decision-makers in quasi-judicial agencies like the DPU and EFSB deliberate on adjudicatory proceedings in open meetings.

The DPU should also consider a range of stakeholder-focused events designed to facilitate more interaction between stakeholders and commissioners, such as listening sessions and educational sessions where commissioners participate.[53]

3. The DPU should consider issuing tentative orders and soliciting comments even when that procedure is not required.

Although the DPU is not required to issue a tentative decision unless a majority of the Commission have neither heard nor read the evidence and the decision is adverse to any party other than the DPU,[54] the DPU should consider doing so in some circumstances. For contentious cases, cases that are of interest to many stakeholders, and cases that have significant localized impacts, the DPU should consider issuing a tentative or proposed decision and soliciting comments before issuing a final order. By doing so, the DPU can provide parties and stakeholders with additional opportunities to comment during a proceeding, after all evidence is in the record. This recommendation can be implemented in the short-term.

4. Siting Board members should have a comprehensive understanding of board procedure, Board member roles and responsibilities, and the evidence and issues relevant to particular proceedings.

While diversity of experience is positive, all Siting Board members should share a baseline understanding of energy equity,[55] environmental justice principles, board procedure, the role and responsibilities of Siting Board members, and potential conflicts of interest. While EFSB staff may serve as a resource for Board members, without this shared baseline understanding, stakeholders may be left with the impression that Board members are not adequately prepared for their important roles, and that Board members are overly reliant on EFSB staff. Siting Board members, in turn, may be able to be more engaged in meetings and with the issues at hand with a shared baseline of knowledge. The EFSB, Secretary of EEA, or the Legislature could require that Board members participate in a training in person or online.[56] Training manuals and material should also be publicly available to promote transparency. This recommendation can be implemented in the short-term and subsequently memorialized in regulations.

As mentioned above, the EFSB frequently issues tentative decisions. Although the opportunity to comment on a tentative decision provides an additional way for stakeholders to provide input during proceedings, the practice of issuing tentative decisions becomes problematic and erodes perceptions of legitimacy if it displaces Board members' responsibility to understand and be familiar with the record. The Board is required to issue a tentative decision unless a quorum of the Board has heard the matter or has read the evidence.[57] Some proceedings before the EFSB can go on for several years and the record in proceedings can be extremely lengthy. That said, the frequent use of tentative decisions creates a concern that some Board members may not be reading the evidence in a given proceeding. This concern is exacerbated when, during open deliberations, Siting Board members do not appear to understand procedures, question key aspects of the case, or simply do not have subject matter expertise to participate in the deliberations. These public observations again reinforce the public perception that Siting Board members (i.e., the decision-makers) overly rely on EFSB staff, do not understand how to advance substantive motions, or are there just to rubberstamp staff recommendations. Tentative decisions should be used as opportunities to improve the decision and ensure that it reflects party and stakeholder input. Improving a tentative decision requires that Board members actively participate, understand the record, and make appropriate changes and improvements. This recommendation can be implemented in the short-term and will require collaboration of staff and Board members.

5. There should be a mechanism for the Siting Board to reassess decisions when the evidence presented by the petitioner and relied on by the decision-maker materially changes.

When EFSB decisions are based on old data even after newer, more reliable data is available, it affects the perceived legitimacy of the decision. While petitioners need some finality, there are some instances, such as *significant* increases to projected costs[58] and changes to demand or supply forecasts that warrant hearings to be reopened, even after the Board renders a final decision. Accordingly, the EFSB should amend 980 C.M.R. § 1.09(1)[59] to extend the good cause standard for reopening hearings to include the period after a final order has been issued, until the point when construction commences. A *significant* change in this context may be an increase in assumed project cost greater than thirty percent. The EFSB's regulations should also be amended to establish a presumption that "good cause" under C.M.R. § 1.09(1) (as amended consistent with these recommendations) is satisfied when the evidence offered indicates that the change is greater than thirty percent.

There are some instances, such as significant increases to projected costs and changes to demand or supply forecasts that warrant hearings to be reopened, even after the Board renders a final decision.

III. IMPROVING INFORMATION & KNOWLEDGE ACCESSIBILITY

Considering the significant barriers that stakeholders experience related to accessing information and knowledge of DPU and EFSB proceedings, the SWG recommends several ways that the DPU and EFSB can make it easier for stakeholders to access information about proceedings. The SWG also recommends ways that the agencies can provide opportunities and resources for stakeholders to increase their knowledge about agency procedures.

Existing Barriers Related to Information & Knowledge Accessibility

Proceedings before the DPU and EFSB address issues that are often highly technical. Understanding the issues involved in a given proceeding may require legal, economic, engineering, financial, and scientific expertise. Without specialized knowledge, or access to technical experts, it may be difficult for stakeholders to assess how a particular proposal will affect them or their community or how a project compares to other alternatives. Additionally, proceedings at the DPU and EFSB may be one of many related to a particular project. The relationship between different agency approvals is not often clear to the public or explained within proceedings at individual agencies.

Combining the technical nature of the issues with strict and complex procedures, stakeholders may not be able to easily determine procedural steps or navigate how to provide input. While some procedures are dictated by statute, regulation, or order, others are based on agency practice. Without legal advice or representation by an attorney with experience appearing before the DPU or EFSB, it may be difficult for stakeholders to determine a deadline, to anticipate the course a particular proceeding will take, or to draft and file comments or a motion.

Gaining a working knowledge of any proceeding requires a significant amount of time and resources, reviewing filings (which can amount to hundreds and thousands of pages) and researching relevant issues. While community groups and local leaders may prepare succinct and easy to understand summaries for their members or constituents, similar resources are not typically provided by the DPU or EFSB, or by parties to proceedings.[60]

Community groups and other stakeholders often lack the financial resources to participate in proceedings; yet ratepayers fund the utilities' costs of participation at the DPU and the Attorney General's costs for experts,[61] and developers consider legal and consultant costs for EFSB proceedings as a cost of doing business. Meaningful participation as a stakeholder intervenor can cost tens of thousands to hundreds of thousands of dollars in attorney fees and technical consultant time. For groups that do not have national or regional presence, costs of this magnitude may amount to more than a non-profit's yearly operating budget.[62]

In addition to the costs related to legal and technical services, gaining access to the full record of a proceeding may be expensive when those proceedings include public hearings and evidentiary hearings. Transcripts from a day of hearings can cost several hundreds of dollars, while transcripts for long or multi-day hearings can cost thousands of dollars. Petitioners, utilities, and the Attorney General have funds to cover these costs, while other parties and stakeholders may not. Transcripts are helpful, and at times essential, for drafting comments or briefs, as well as for filing appeals. While the SWG is aware that some community-based groups and non-profit organizations have received transcripts for DPU and EFSB proceedings at no cost, the policy is not clear, and it is not clear whether transcripts are provided to all interested stakeholders. In addition, DPU and EFSB contracts with the court reporter may prohibit the agencies from posting the transcripts online, which makes it difficult for interested stakeholders to obtain documentation of evidentiary hearings.

Access to utility data is also a significant barrier for stakeholders and intervenors. In many cases, the utility may be the only entity that has specific information about locations of infrastructure, historical and forecasted load, reliability, and other data that is essential to inform and support the positions of stakeholders and intervenors.

Accessing Information & Knowledge: High-Level Recommendations

Provide non-technical summaries.

Interested stakeholders should not have to devote several hours or hire someone with specific expertise to understand the issues in a proceeding. Rather, the agencies should offer a variety of opportunities (i.e., recorded, remote, in-person[63]) and materials (plain language summaries of petitions and orders and descriptions of anticipated impacts) to educate stakeholders about the issues that may be relevant to them and their community.[64] Petitioners and parties should similarly develop summaries of their proposals and positions.

Decode DPU and EFSB policies, regulations, and proceedings.

The DPU and EFSB should provide a range of educational and informational resources on their websites as well as interactive opportunities for stakeholders to engage with staff and decision-makers.[65] In addition to generalized information on energy issues and agency procedures, the agencies should offer proceeding-specific resources in cases with significant localized impacts and impacts on environmental justice populations. The agencies should pursue strategies that make it easier for stakeholders to obtain information on the issues and proceedings that are relevant to them and should collaborate with trusted community partners and municipalities to get information to stakeholders.

Ensure free access to transcripts.

The DPU and EFSB should ensure that stakeholders can access transcripts for public and evidentiary hearings for free, online,[66] and in a timely manner. For record evidence that needs to be prepared by an outside party, including hearing transcripts, the agencies should amend their contracts and payment practices as needed. Additionally, videos of evidentiary and public hearings should be made available on agency websites.

Accessing Information & Knowledge: Specific Recommendations

1. The DPU and EFSB should provide public-facing plain language summaries to the public.[67]

The DPU and EFSB should provide public-facing plain language executive summaries for long orders, highly technical orders, and orders on proceedings of particular concern to stakeholders.[68] These summaries should be short and easy to understand and should describe the effect of the order. These executive summaries should be written so that persons without technical experience or knowledge are able to understand the implications of approval. These summaries would not replace Press Releases from EEA but could be modeled after these Press Releases. This recommendation can be implemented in the short-term.

In addition, the DPU and EFSB should require petitioners to include public-facing plain language summaries of petitions and briefs. These summaries should be short and easy to understand narratives, perhaps with maps or tables, of the proposed project or position, as well as the anticipated impact if the project or position is approved. These summaries should be written so that persons without technical experience or knowledge are able to understand the implications of approval. This recommendation can also be implemented in the short-term; the agencies could direct petitioners to provide narrative summaries in procedural orders.

2. The DPU and EFSB should provide more educational resources on DPU and EFSB websites in a variety of formats and on a variety of issues to help decode DPU and EFSB policies, regulations, and proceedings.

Educational resources and information about proceedings and procedures should be free, easy to understand, provided in different languages spoken in the Commonwealth,[69] and offered in a variety of formats. In addition, agency websites should be easy to navigate, and knowing a docket number should not be required to find information about a particular proceeding. The SWG recommends that the DPU and EFSB provide the following general educational resources on their websites:

- A calendar of events (e.g., public hearings, educational webinars, evidentiary hearings, comment deadlines)
- A list of commonly used acronyms
- A map listing new filings by city/town and the affected communities, with basic information (using plain language) summarizing the proceeding (including the applicant and impact on affected communities), the date of the public and evidentiary hearings, as well as a link to the public notice and docket webpage
- Answers to Frequently Asked Questions and other background information, using non-technical terms so that persons without technical experience or knowledge and who are unfamiliar with the agency's work can understand
- Educational videos about rates, energy siting, energy issues, procedures, and programs[70]
- Explanations about the various types of state and federal approvals that different types of projects may need (especially for EFSB decisions)

- Information about accommodations for Limited English Proficient (LEP) speakers and persons with disabilities
- Easy to understand explanations of proceedings with broad impacts in the Commonwealth, including rate cases, energy efficiency programs, new rates, etc.[71]
- Self-help resources (i.e., sample filings such as motions to intervene[72] and public comments, and form-fillable Intervention and Comment Forms similar to the materials provided at self-help offices in courts[73] and by some public utility commissions)
- Resources that explain the agencies' work and procedures, including a practical guide for the DPU (similar to the EFSB's "The Energy Facilities Siting Handbook").

Many of these recommendations can be implemented in the short-term. For those that may require more time, such as a mapping tool and videos, plans on how to provide these resources should be initiated in the short-term. Beyond offering educational resources on agency websites, the DPU and EFSB should provide opportunities for stakeholders to interact with staff and to ask questions about proceedings, hearings, and procedures outside of an adjudicatory format.[74] This recommendation can also be implemented in the short-term.

3. The DPU and EFSB should offer more proceeding-specific educational resources to help decode specific proceedings.

The EFSB should provide proceeding-specific resources in all proceedings and the DPU should provide these resources for proceedings with significant localized impacts and impacts on environmental justice populations. These resources should include:

- A webpage for each proposed project with an easy to understand summary of the project and its impacts[75] as well as any other state or federal agency approvals that may be required
- A social media toolkit that provides a brief overview of the proceeding (in plain language) and sample language that could be included in social media posts or a newsletter.[76]

These recommendations can be implemented in the short-term, and the SWG notes that the agencies have already taken important steps to make their websites more user-friendly.

4. The DPU and EFSB should improve ways for stakeholders to easily obtain information, and the agencies should conduct outreach in a variety of ways.

There are several ways that the DPU and EFSB can use their websites and social media accounts, as well as email, to make it easier for stakeholders to get and find information. The agencies should:

- Publicize and provide a subscription option on agency websites so that stakeholders can opt-in to receive emails and notices of new filings for their selected issues and proceedings[77]
- Publicize select issues and proceedings on agency websites, via social media posts, newsletters, and/or periodic emails (e.g., every other week or monthly) that provide substantive information as well as how to get involved.[78]

Most of these recommended actions can be implemented in the short-term, although adding a way to subscribe to proceedings may take additional time and funds. Beyond electronic communications, the agencies should take a proactive approach to engaging stakeholders in proceedings that have significant localized impacts or impacts on environmental justice populations. The DPU and EFSB should partner with community organizations as well as municipalities to publicize proceedings and to solicit input.[79] These recommended actions can also be initiated in the short-term, though this is a long-term project and additional staff time will be necessary to build relationships.

5. The DPU and EFSB should ensure that stakeholders and intervenors have appropriate access to data.

Access to data is essential to stakeholders and intervenors as they develop positions in proceedings and seek to support their positions. The EFSB and DPU should take an active role in ensuring that data requested by intervenors is provided by the utilities. As appropriate, the data can be provided pursuant to a confidentiality agreement.

6. The DPU and EFSB should ensure that transcripts are free and easy to access.

The EFSB and DPU should amend their contracts with court reporters and implement payment practices that allow transcripts to be posted online.[80] The DPU and EFSB should make the following specific changes:

- Eliminate charges for timely access to transcripts for intervenors by wrapping the cost of external transcription into other docket costs or filing fees paid by petitioners
- Ensure that contracts between the DPU, EFSB, and the court reporter allow transcripts to be available to stakeholders for free (this may require amending existing contracts)
- Ensure that transcripts are available on agency websites within a reasonable time period
- Record hearings and upload video content to a YouTube channel that is available within 48 hours of the hearing (the EFSB should continue to make videos of evidentiary and public hearings available and the DPU should follow suit).

Recommendations that require a contract amendment related to transcripts may take time to implement, but recommendations that hearings be recorded and uploaded should be implemented in the short-term.

IV. REFORMING THE DPU'S & EFSB'S APPROACH TO PUBLIC ENGAGEMENT

Public engagement is essential to the DPU's and EFSB's regulatory work. Several of the SWG's recommendations related to public engagement apply broadly, beyond specific proceedings, and focus on how the DPU and EFSB interact with the public and the resources that the agencies provide to stakeholders.

Given the legislative and policy changes discussed in the Introduction, the Commonwealth must make statutory and regulatory changes to ensure that environmental justice populations have an opportunity to understand and engage in DPU and EFSB proceedings. The SWG's outreach highlighted that many people view DPU and EFSB proceedings as too opaque and difficult to have an impact on or to participate in. Because decisions from these agencies can lead to long-term impacts that affect community members, such as the siting and construction of energy infrastructure and utility rate increases, meaningful public engagement is essential. Achieving meaningful public engagement will require a fundamental shift from what has been the norm, to a level of inclusiveness that will facilitate more transparency, a better understanding of regulatory proceedings by stakeholders, and increased integration of equity and environmental justice principles in decisions by regulators.

Existing Barriers Related to Public Engagement

The format of proceedings effectively prevents community members from participating in a meaningful way, a complaint frequently voiced by residents around the state in response to the SWG's outreach. In broad terms, existing barriers to meaningful public engagement include issues such as timing (e.g., when communities are informed of proposed projects and when hearings and meetings are held); information sharing and communication methods (e.g., what and how information is shared); actual and perceived influence of stakeholder input (e.g., how information received from a community is considered by decision-makers and whether it affects decisions); and logistical hurdles (e.g., the complexity of participating in a quasi-judicial proceeding). On a more granular level, barriers exist when robust interpretation and translation services are not provided in languages spoken in the affected community, the proposed project is not explained in a way that can be easily understood by non-experts, dissemination strategies fail to reach those most impacted, meetings are held during inconvenient times, and the time commitment and financial costs that enable participation are prohibitive.

An example of the problems that exist with respect to the wide-spread dissemination of information is highlighted by the type of notice that the agencies provide. DPU regulations clearly contemplate notice by newspaper publication.[81] A similar provision in the EFSB regulations allows for notice to be given by publication in at least two newspapers available in the vicinity of the proposed facility and as *otherwise ordered by the presiding officer*.[82] Today, however, publication in a statewide or local newspaper may not be the most effective way to reach people who would be affected by a proposal.[83]

Other barriers to public engagement are due to the one-way communication construct between commissioners/staff and the public, as well as between project proponents and the public. Although providing an opportunity to be heard at a public hearing is vital, it represents one-way communication and occurs before the record is fully developed. There is limited opportunity for dialogue, conversation, or information-sharing, and there is no vehicle for the agencies or for petitioners to respond to input from community members.

While the technical nature of specific proceedings may pose barriers to participation, barriers also exist because community members may not understand the components of their utility bill; what the DPU and EFSB do; or the relationship between their utility, the DPU and EFSB, and other state and municipal agencies.[84]

Public Engagement: High-Level Recommendations

Aligning the agencies' work with EEA's Environmental Justice Policy and recent legislation can only happen if the DPU and EFSB are willing to seek additional information from, and collaborate with, the people in the best position to provide input: low-income ratepayers and environmental justice populations themselves. The recommendations identified below are designed to assist the DPU and EFSB in developing a more robust and meaningful approach to public engagement,[85] so that the agencies can more effectively engage with the public and solicit input in specific proceedings as well as on an ongoing basis. This will require that the agencies move beyond the one-way communication construct and provide a variety of opportunities for more robust interactions. The goal of a new public engagement framework should be to ensure fair and equitable outcomes and maximize participation. To that end, the SWG recommends that the DPU and EFSB immediately take steps to enhance their public engagement practices, including by revisiting their procedural regulations as well as their informal practices.

As the DPU and EFSB consider their public engagement efforts, the SWG recommends that they review the approach by other state regulatory bodies.[86] In 2021, the National Association of Regulatory Commissioners (NARUC) released a report discussing stakeholder engagement in decision-making.[87] The report discusses emerging practices, including engaging stakeholders early and often throughout the process, and offering stakeholder education tools early in order to establish general knowledge.[88] Providing information and engaging stakeholders early is essential to effective public engagement.

We identify six major areas of needed reform:

1. Revise how affected communities and environmental justice populations are made aware of proceedings.
2. Require petitioners to conduct pre-filing outreach and workshops in certain proceedings to provide detailed information on proposals and to hear community concerns in time to incorporate changes prior to the filing of the petition.
3. Develop a public engagement framework that allows for differences among communities.
4. Provide support for community members to provide input to the DPU and EFSB.
5. Establish mechanisms whereby the DPU and EFSB can solicit ongoing input from community members.
6. Establish clear and inclusive language access protocols.

Public Engagement: Specific Recommendations

The recommendations below are not intended to be a comprehensive list; as stated above, an effective public engagement framework requires collaboration with environmental justice populations and other affected communities. Recognizing that effective engagement and collaboration take time, the recommendations below, where possible, should be implemented in the short-term as the DPU and EFSB work with communities to develop a more robust plan.

1. Revise how communities are made aware of proceedings (notice requirements).

Today, there are a variety of ways to publicize information to reach far more people than public notice in newspapers. Several modes of communication—including social media posts; direct emails to ratepayers and to residents of municipalities; utility, agency, and municipality websites and listservs; and radio and public access television[89]—can all be effective. Through the SWG's outreach, sixty-one percent of survey respondents indicated they would like to receive information about energy through their connection with a community-based organization, and many stakeholders recommended posting flyers in locations where community members commonly gather, such as at libraries, community centers, parks, and public transit stations.

To overcome barriers related to the widespread dissemination of information, the DPU and EFSB should initiate discussions with the people in the best position to provide input, community members themselves, to develop more effective notice protocols. Although there should be flexibility to account for community differences, the basic notice requirement should be designed in a way that is likely to reach more people and that takes into account the digital platforms that people currently use. Similar to the SWG's recommendations related to requiring that the DPU, EFSB, and petitioners provide public-facing plain language summaries of petitions and orders, the content of notices should be in plain language and highlight the impact of the proposal on environmental justice populations. The agencies should make changes to notice requirements in the short-term.[90] After determining effective ways to provide notice for different types of proceedings, the DPU and EFSB should then consider amending their regulations to memorialize robust publication of notice as essential to normal agency operations.[91]

Recommendations Related to How Notice is Publicized.

Notice should be publicized in a variety of formats intended to reach community members (especially environmental justice populations) as well as the appropriate contacts in community-based organizations and municipalities where the proposal is likely to have an impact. The DPU and EFSB should create and maintain a list of email addresses (or mailing addresses when mail is the preferred mode of communication) of interested community members, community groups, elected officials, and municipal leaders and staff, and update the list regularly (i.e., annually), or use the existing list managed by EEA's Director of Environmental Justice. The agencies should ensure that they contact the appropriate person. Sending notice to a municipality or town clerk is not adequate, and municipalities may receive dozens of similar notices monthly. The list of email addresses should minimally include stakeholders that have participated in proceedings during the last four years. For

proceedings that affect all ratepayers, notices could be sent to all email addresses. For proceedings with an impact in specific locations, notices should be sent to appropriate contacts in legislative offices, municipalities, and community groups[92] active in those locations, rather than to the entire email list. The notices will reach more people if the DPU and EFSB can direct relevant notices to appropriate contacts and work with those contacts to share the notice and information about a proposal with community members.

Notice should be publicized in several formats, including:

- Web-based media through DPU and EFSB websites, as well as on Facebook, Twitter, and Instagram accounts where notices can be shared or tagged among contacts and communities (e.g., by municipalities, elected officials, community-based organizations, and others); the agencies should continue to monitor new social media sites to determine which platforms are likely to provide access to potentially affected communities
- Television (including public access) and radio.

For location-specific proposals:

- Notice should be posted in high traffic gathering places (houses of worship, community centers, grocery stores, schools, laundromats, post offices, on public buses and trains, bus and train stations, and large residential buildings)
- The DPU and EFSB should conduct outreach to planning boards and community groups requesting that the groups publicize the notice with their contacts; the agencies should work with trusted community members and partners to get the word out
- Targeted, direct mailings should be sent at least 30 days prior to a rate hearing, by separate mailings or bill inserts, whichever is more commonly read, and by email[93]
- When notices are published in newspapers, the agencies should ensure that they consider the audiences of particular newspapers (including non-English newspapers) and should ensure that the notice is:
    - Published in the main section of the newspaper where people are likely to see it
    - In a large enough font so that people can easily read it
    - Published in print and electronic versions; in the case of electronic versions, there should not be a paywall to view notices.

Proceedings of particular interest to all ratepayers (e.g., rate cases or energy efficiency plans) or with a significant impact in specific locations (e.g., siting of a substation, gas pipeline expansion, or fossil fuel generation facility) should be publicized on an ongoing basis through a variety of regular and predictable modes of communication, such as through a monthly mailing list, press releases, and/or a prominent news page on agency websites.[94]

Agencies and utilities should be responsive to changes to basic notice publicization procedures based on input from the community. Because every community is different, there should be flexibility to meet the communication needs and requests of a given community. To ensure that utilities are responsive to input from communities, before filing and posting notice, the DPU and EFSB should require the petitioner to reach out to the relevant community to discuss additional effective posting and publication measures. The petitioner should then be required to document any misalignment between what the community requested and what was done.[95]

Recommendations Related to the Content of Notices.

Notice of proposed action should be clear, succinct, and easy to read, with headings that provide meaningful information relating to the impact of the proceeding. The DPU and EFSB should consider a bullet type format at the beginning of the notice to make key points easier to find. For proposed facilities or location-specific proposals, the notice should include a map of the proposed facility; an explanation about why the facility is needed and why the specific site was selected; a list of the alternative locations and technologies considered; a list of communities that may be affected and how (with clear explanations); as well as information on the size of the facility, who will fund the facility, how long construction will last, and any other approvals required by other agencies. This information should be provided in languages that are spoken by the community, consistent with the agencies' language access protocols, and in ways that are accessible to people who are not experts.

In addition to information about the specific proposal and how approval would affect communities and community members, notices of proposed action should:

- Include information about the process the agency will take to reach a decision
- Identify when and how community members can provide input or otherwise participate
- Provide a way for community members to request ongoing updates or additional information about the proceeding (i.e., a simple way to subscribe to the docket).

2. Require project proponents to do pre-filing outreach and hold workshops to solicit community input in certain types of proceedings.

Pre-filing outreach[96] and workshops led by petitioners can provide information to stakeholders and provide petitioners with an early opportunity to solicit community input so that the petitioner can make changes before it files a petition.[97] For certain types of proceedings, including siting of energy infrastructure and projects that will significantly affect nearby environmental justice populations, the SWG recommends that the DPU and EFSB require that petitioners complete pre-filing outreach and workshops at least 60 days prior to filing the petition. The outreach and workshops should be monitored and overseen by EEA's Director of Environmental Justice. The SWG acknowledges that the DPU has proposed and sought comment on a pre-filing requirement in the public participation proceeding.

Recommendations Related to Non Site-Specific Proposals.[98]

For proposals that are not site-specific but will likely impact environmental justice populations or impact locations within one mile of an environmental justice population, or within five miles for proposals with air quality impacts,[99] the petitioner outreach and workshops should include explanations on key aspects of the proposed project and answer questions from the community to foster transparency and accountability. The petitioner would then be required to include in the petition a list of the concerns raised during the outreach and explanations about how the petitioner intends to address the concerns. This filing would be part of the record, and parties as well as the DPU or EFSB could issue discovery to obtain additional information.

Pre-hearing outreach and workshops should be scheduled early enough so that petitioners can integrate community feedback into their petitions and completed at least 60 days before filing the petition. Benefits of this approach include:

- Allowing for the exchange of information outside of a formal proceeding and before a formal proceeding begins, giving stakeholders and petitioners the opportunity to discuss solutions to community concerns that can then be incorporated into petitions
- Creating an opportunity for communities to ask questions, receive answers, and voice any concerns
- Educating stakeholders about the processes outside of an adjudicatory proceeding that would allow organizations without an attorney to participate.

Recommendations Related to Location-Specific Proposals.

For proposals that are location-specific, especially siting of facilities before the EFSB, or utility programs that are place-based and not offered throughout an entire service territory, the EFSB and DPU should additionally require the project proponent to:

- Develop a preliminary project statement about the facility that includes detailed information about the need, public health, environmental, and climate risks, as well as environmental, energy, economic, and health benefits for communities within five miles. As part of this statement, the applicant must identify the location of all environmental justice populations within five miles of the facility. The project statement should include a statement of reasonable alternatives, such as different designs and locations to avoid and minimize damage to the environment and public health
- Consult with the Siting Board Environmental Justice Coordinator, as well as EEA's Undersecretary of Environmental Justice and Equity or Director of Environmental Justice, to discuss an outreach strategy at least 120 days before filing a petition in order to develop an outreach strategy
- Implement the outreach strategy at least 90 days prior to filing a petition and before a project is so far along that changes are difficult. The preliminary project statement should be shared with community-based organizations, elected officials, and civil organizations who are potentially impacted by the project within a five-mile radius
- Within 30 days of submitting the preliminary project statement, the project proponent shall invite community-based organizations, local elected officials, EEA's Director of Environmental Justice, and the EFSB Director to a meeting to review the proposed project. The petitioner should amend the project to address concerns of environmental justice populations related to safety, public health, location, or mitigation, or abandon plans to file its petition with the DPU or EFSB.[100]

3. Develop a Public Engagement Framework.

The DPU and EFSB should engage with environmental justice populations and other stakeholders, including municipalities, elected officials, and community leaders to develop a Public Engagement Framework. Such a framework could serve as a guide for staff and decision-makers and would increase the transparency of the DPU's and EFSB's efforts to engage with environmental justice populations and other stakeholders. Initial short-term steps could include asking stakeholders to work together to develop suggested frameworks that could serve as the initial basis for a discussion with the DPU and EFSB. Development of an effective framework is not solely a paper exercise. There should be free-flowing discussion, a willingness to listen, and a willingness to collaborate.

No two communities are the same and therefore, the framework should be flexible enough to address community differences. Further, because developing a Community Engagement Framework is a new undertaking, the DPU and EFSB should recognize that it may have to further adjust the framework if, in practice, there are deficiencies that remain. In developing a framework, several of the issues addressed through these recommendations, including notice, pre-filing outreach, and a pathway to enable affected communities to know how their input is considered, should be further developed as the DPU and EFSB integrate input from environmental justice populations and more effectively engage the public.

4. EEA should establish an Office of Public Participation to provide support for community members to provide input.

Due to the highly technical and complex nature of DPU and EFSB proceedings and the complicated hearing processes, many community members find it difficult to understand proceedings or to provide input. These barriers could be mitigated if community members are supported as they learn more about utility regulation and specific proceedings.

The SWG recommends that EEA establish an Office of Public Participation[101] that can support the public to meaningfully engage in proceedings.[102] Dedicated staff would focus on explaining proceedings and procedures, including the value of offering sworn comments or testimony at a public hearing.[103] While staff at the Office of Public Participation would provide support for specific proceedings, these staff members should be insulated from agency staff and decision-makers to reduce the perception of conflict and to enable Office of Public Participation staff to engage with stakeholders on substantive issues. Accordingly, the Office of Public Participation should not be housed within the DPU or EFSB but could be housed within EEA. The SWG recognizes that creation of an Office of Public Participation is not a short-term change, but encourages EEA to take steps to implement this recommendation as soon as possible.

5. Establish mechanisms to solicit ongoing input from community members and from existing advocacy groups.

The SWG recommends that the agencies establish a mechanism for ongoing discussions to facilitate input from community groups and their members. The DPU and EFSB could establish a community advisory group that focuses on public engagement and agency procedures and provides advice to the DPU and EFSB on an ongoing basis. The DPU and EFSB should also seek guidance from existing groups such as the Environmental Justice Council.[104] The SWG recommends that the creation of a community advisory group be a short-term priority for the agencies, and that the agencies seek guidance from existing groups in the short-term as well.

6. Establish clear and inclusive language access protocols.

Massachusetts residents who speak languages other than English experience barriers to participating in agency proceedings. LEP individuals, who pay taxes and utility bills just like fluent English speakers, should have the same opportunities as fluent English speakers to participate in proceedings. There are approximately 170,000 limited English households in the Commonwealth, which is 6.1 percent of total households.[105] The number of total LEP households is much greater in several locations, including Boston, Lowell, Worcester, and Springfield.[106] In a recent study, researchers found that census blocks within Boston had a range of English-limited households from 0 to 73 percent, and that in Boston, "[m]ost communities with greater than 20 percent limited-English speaking households are located in Roxbury, Dorchester, Mission Hill, Longwood, and South End[.]"[107] To encourage improved participation of LEP speakers in DPU and EFSB proceedings, the SWG endorses the detailed recommendations in Conservation Law Foundation's comments in EFSB 21-01, dated September 10, 2021, and in D.P.U. 21-50, dated November 9, 2021.[108]

V. REFORMING THE DPU'S & EFSB'S APPROACH TO INTERVENTION

As part of their work to implement the changes to legislation and policy discussed in the Introduction, the DPU and EFSB should expand the scope of Intervenor Status. Reforming existing mechanisms that constrain meaningful public involvement is urgently needed to ensure that the communities that have been most marginalized and burdened by the siting and financing of polluting energy infrastructure can have a voice in the agencies' decision-making processes. In the absence of significant reform, including reforming the intervention standard, the Commonwealth will perpetuate a process that ultimately undermines an equitable transition to clean energy in Massachusetts by excluding the concerns of environmental justice populations and frontline communities.

Existing Barriers Related to Intervention

The agencies' intervention standards are not aligned with recent climate legislation and EEA's Environmental Justice Policy, which call for a new, more inclusive approach.

The DPU and EFSB make decisions that have significant impacts on household finances and well-being across the Commonwealth. Those decisions often determine where facilities are sited and how the Commonwealth will meet its climate mandates. Stakeholders directly affected by DPU and EFSB decisions often find it difficult or impossible to participate in proceedings due to the cost of legal representation, arcane and inaccessible procedures and filing requirements, and an intervention standard that regularly results in the denial of Intervenor Status. The agencies' intervention standards are not aligned with recent climate legislation and EEA's Environmental Justice Policy, which call for a new, more inclusive approach. As defined in EEA's Environmental Justice Policy, "[e]nvironmental justice is the equal protection and meaningful involvement of all people and communities with respect to the development, implementation, and enforcement of energy, climate change, and environmental laws, regulations, and policies and the equitable distribution of energy and environmental benefits and burdens."[109]

Broad agency discretion on intervention.

The statute governing intervention allows intervention at the agency's discretion to individuals or groups when the DPU and EFSB determines the petitioner is "substantially and specifically affected."[110] The DPU exercises its discretion in a way that frequently results in denial of Intervenor Status to affected individuals, groups, and non-profit organizations.

DPU denials of petitions to intervene have generally been due to the following reasons: (1) the petitioner is not represented by an attorney; (2) the agency determines that the individual or group would duplicate arguments or positions of another party; (3) the individual or group does not provide sufficiently detailed reasons for how it is being affected; (4) the addition of the individual or group would slow the proceeding; and (5) the petitioner raises issues that are beyond the scope of the proceeding. While the EFSB has similarly exercised its discretion to exclude prospective intervenors, in recent years it has been granting intervention requests more frequently. Regardless, better clarity is needed to help ensure that the standards for intervention facilitate inclusive participation.

Parties denied full Intervenor Status are sometimes offered Limited Participant Status, which allows them to receive notice of filings and file a brief but does not allow them to cross examine another party's witnesses, present their own witnesses, conduct discovery, or otherwise introduce evidence into the record.[111] Other stakeholders, often deterred from seeking Intervenor Status by barriers such as cost, are limited to offering comments at a public hearing.

Cost barriers and uncertainty over intervention and ability to appear without an attorney.

Attorneys fees are a significant barrier to participation. Although an individual intervenor may appear *pro se* (representing themself without an attorney) in adjudicatory proceedings, the agencies require non-individuals (community groups, non-profits, corporations) to be represented by an attorney.[112] EFSB regulations allow for *pro se* representation for non-individuals only when the presiding officer grants a waiver.[113] Over the past year or two, groups seeking to intervene in EFSB proceedings without an attorney representative have been granted Intervenor Status. For example, in EFSB 22-01, the EFSB allowed the Boston Residents Group to be represented by two individuals who are not attorneys.[114] While *pro se* representation has been permitted in the past, EFSB procedures do not clearly articulate how interested and affected parties can do so. In state counsel requirements may be an additional barrier, limiting the pool of attorneys available to represent intervenors.[115] An attorney representing a party at the EFSB must be licensed in Massachusetts ("in good standing"), unless the presiding officer grants a waiver of the requirement for good cause shown.[116]

Without prior experience and knowledge of how the EFSB and DPU rule on petitions to intervene, it is nearly impossible for individuals or groups to understand when full intervention status will be granted, or exactly why it has been denied.

Barriers to information.[117]

The DPU and EFSB's File Room, which is the agencies' website that makes public filings available online, is difficult to navigate even for experienced attorneys, let alone members of the public or community group volunteers. EFSB docket numbers are not uniform, meaning that sometimes one has to enter "EFSB" immediately followed by a docket number without a space and sometimes with a space or with a zero. In addition, the File Room lacks a search engine. Without a way to search for specific terms, relevant precedent is extremely difficult to find and is often buried within orders, requiring someone to know and search for the specific docket number. This difficult information technology alienates people who are affected by decisions and prevents a reasonable level of transparency into the agencies' procedures and precedents.

Approach to Intervention: High-Level Recommendations

As the Commonwealth undergoes an energy transition, petitions for additional infrastructure will increase. Because utility and developer proposals may include siting of polluting energy infrastructure in environmental justice populations and proposals with other significant impacts on communities, the DPU and EFSB should err on the side of including, rather than excluding these voices. For agencies charged with evaluating which projects protect and serve the public interest, key stakeholders should be substantively involved in decisions, and the record in proceedings should reflect broad debate and input from environmental justice populations.

The SWG recommends the following changes to support these goals:

1. Revising the intervention standard and simultaneously ensuring that the agencies can effectively and efficiently manage intervention by multiple parties.
2. Providing more materials and educational resources[118] to prospective intervenors so they can build capacity to participate in a meaningful way.
3. Providing financial support for intervenors who contribute to the record in a proceeding.

Approach to Intervention: Specific Recommendations

1. Revise the applicable standard of review to be more inclusive, and ensure that hearing officers effectively manage intervention by multiple parties.

The DPU and EFSB Should Develop a More Inclusive Standard of Review.

As stated above, the DPU and EFSB require prospective intervenors to state how they are "substantially and specifically" affected by the proceeding, and the agencies have wide discretion about whether petitioners meet the standard. There will continue to be high barriers to intervention unless the standard of review is changed to promote inclusivity. The agencies should develop a more explicit intervention standard that, in general, grants intervention to parties who demonstrate that they will be impacted by the proposal, even if other parties may have similar interests or concerns. If a revised standard is implemented to expand participation there will be greater clarity for those seeking to intervene as well as increased transparency and predictability.

Developing a standard that reduces barriers to intervention will likely bring relevant issues to the forefront of proceedings that may otherwise go unaddressed if the prospective intervenors who can raise these issues are barred from full participation.[119] Thus, a change to the intervention standard will assist the agencies in ensuring that decisions are based on a comprehensive and complete evidentiary record.

New York and California offer examples of more inclusive standards. The standard to intervene in proceedings at the New York PSC is whether participation is likely to contribute to the development of a complete record or is otherwise fair and in the public interest.[120] In California, a person seeking Party Status must fully disclose their interest in the proceeding, state the factual and legal contentions they intend to make, and show that the contentions will be reasonably pertinent to the issues presented.[121] Petitions to intervene in California are rarely denied. Although formal amendments to the agencies' regulations are needed, in the short-term, the DPU and EFSB can simply exercise their existing discretion to take a more inclusive approach to intervention.

Hearing Officers Should Effectively Manage Intervention by Multiple Parties.

Hearing and presiding officers can manage multiple intervening parties in a way that ensures efficiency and reduces redundancy while allowing a greater variety of intervenors to address relevant issues. Hearing and presiding officers may require parties with similar issues to work together to streamline the evidence that is presented or to collaborate on discovery requests to reduce duplication. This type of docket management can be implemented in the short-term and addressed through procedural memoranda.

2. Provide more materials, educational resources, and support to prospective intervenors for capacity building.

The agencies should provide more materials and educational resources to inform and support stakeholders in engaging in the proceeding and petitioning for Intervenor Status.[122] As part of this effort, EEA, the DPU, and the EFSB should consider the following steps:

- Establish an Office of Public Participation, similar to those in California[123] and Texas,[124] as well as at FERC.[125] Among other things, the Office of Public Participation would be responsible for conducting outreach to inform communities about potential impacts of the proposal (beyond the information and outreach related to a public notice), updating guides and resources on public engagement using best practices, liaising with environmental justice populations and affected parties, coordinating with the Interagency Environmental Justice Task Force, and supporting parties in petitioning for and navigating Intervenor Status[126]
- Create a handbook outlining how to petition for Intervenor Status (including the standard for intervention), how to participate as an intervenor, and the role of an intervenor.[127] This handbook should also include information on how to participate in an intervenor compensation program if such a program is created. This handbook should be:
    - Designed in a way that ensures that all necessary information for participants is easily accessible and in one place
    - Written in plain language and intelligible to the general public
    - Updated at least annually to reflect any changes to the process as well as feedback or suggestions that the agency receives from stakeholders
    - Translated into languages spoken in the communities where a facility has been proposed

- Include templates and samples for key documents on agency websites, including for motions to intervene, discovery requests, testimony, comment letters, briefs, and a certificate of service[128]
- Provide resources to support intervenors and prospective intervenors, including:
    - A list of previous intervenors representing interests other than those of utilities and developers
    - A list of attorneys appearing before the DPU and EFSB who have represented parties other than utilities and developers
    - A list of expert witnesses who have testified on behalf of parties other than utilities and developers
    - Update software so that the File Room includes a searchable database of prior decisions and proceedings.[129]

The SWG acknowledges that creating an Office of Public Participation is not a recommendation that can be implemented in the short-term, but encourages EEA to implement this recommendation as soon as possible. Other recommendations, including developing a handbook, sample motions, and updated software, should be pursued in the short-term.

3. Provide financial resources so that prospective intervenors materially contributing to a significant issue in the record can pay for attorneys and experts.

Intervening meaningfully in a proceeding requires the commitment of substantial resources. Without legal representation and without presenting expert witnesses (or retaining experts for advice on discovery and cross-examination of witnesses), it is often hard for an intervenor to gain serious attention to its concerns from decision-makers.

Utilities recover their costs for lawyers and experts through rates paid by customers, and those costs can easily amount to hundreds of thousands of dollars for a single proceeding. Yet those same companies are often proposing rate increases or siting of facilities opposed by many of the ratepayers and community groups affected by the proposal. Not only are ratepayers and community groups substantially disadvantaged by this unequal playing field, the agencies are deprived of important input and differing perspectives about potential adverse impacts that, if considered, could facilitate more equitable decisions that are aligned with state energy legislation and policy.

One solution to this resource imbalance is to create an intervenor compensation program that would allow prospective intervenors to retain the lawyers and experts they need to present their views and concerns. According to a 2021 report by the National Association of Regulatory Utility Commissioners, "State Approaches to Intervenor Compensation," a total of sixteen states had authorized intervenor compensation, financing, or funding programs in legislative rules and statutes,[130] although only some states, including California,[131] Idaho,[132] Michigan,[133] Minnesota,[134] Oregon,[135] Washington,[136] and Wisconsin,[137] had active programs.[138]

The DPU and EFSB could support legislation and open a notice of inquiry to establish guidelines for intervenor compensation programs that include the following requirements and features, which are common to several active intervenor compensation programs:

- The intervenor must show it would incur a significant financial hardship if it intervened without receiving any compensation (the "financial hardship" requirement)
- The intervenor must be found by the decision-maker to have materially contributed to a significant issue in the proceeding, but need not show that it was the only party to have contributed to the issue
- If the intervenor meets the applicable requirements, it should be compensated for reasonable costs of lawyers, experts (including community experts), non-profit organization staff time,[139] and any necessary out-of-pocket costs (e.g., required travel, filing fees, transcript fees, copying fees)
- The agency should establish a process to inform an intervenor as early in the proceeding as possible that it is potentially eligible for compensation (e.g., that it meets or does not meet the "financial hardship" requirement)
- The intervenor should be eligible for partial up-front compensation if it has been found to meet the "financial hardship" requirement and makes a prima facie showing that its proposed evidence is relevant to the proceeding and likely to contribute materially to a significant issue.[140]

An intervenor compensation program at the DPU could be funded by the regulated gas and electric utilities, consistent with how intervenor compensation programs are funded in many jurisdictions.[141] While petitioners before the EFSB are not necessarily regulated utilities and may only appear in one or a few proceedings, funding for an intervenor compensation program at the EFSB could be provided by the Legislature and/or through filing fees. For developers, filing fees and permit fees are part of the cost of doing business.

VI. IMPROVING PUBLIC HEARINGS, EVIDENTIARY HEARINGS & PUBLIC MEETINGS

Existing Barriers Related to Hearings & Meetings

Public hearings (DPU) and public comment hearings (EFSB).[142]

There are several barriers to meaningful participation related to the format of DPU public hearings and EFSB public comment hearings. For example, hearings often are not scheduled at convenient times, require a time commitment of several hours, and may occur at locations inaccessible to public transportation. When meetings are held in Boston, travel time to and from meetings (which is in addition to the time allotted for meetings themselves) can be significant for people who live outside of the Greater Boston area. Individuals with children often have competing childcare responsibilities that can make attending these hearings difficult. When hearings are scheduled in the evenings or on weekends, people often wait hours to speak, at which point they are permitted only two or three minutes to provide their comments.[143]

In addition to these types of barriers, decision-makers typically do not attend public hearings and public comment hearings, making it less likely that people feel motivated to attend, and less likely that decision-makers will gain a robust or complete understanding of stakeholder views.[144]

Evidentiary hearings (DPU and EFSB).[145]

Evidentiary hearings typically take place during the day and may last several hours or several days.[146] This requires a stakeholder to devote significant amounts of time during traditional business hours when they may need to be at work or caring for family members. Recordings and transcripts of evidentiary hearings are not consistently available to people unable to attend. The DPU does not typically record evidentiary hearings, while the EFSB has been recording and posting recent evidentiary hearings to the EFSB's website. While transcripts of evidentiary hearings are part of the record in the proceeding, they are not necessarily available to everyone and can be costly.[147] Additionally, transcripts can be hundreds or thousands of pages, and there is no user-friendly way to identify when or where in the proceeding certain topics were discussed, making it difficult for a stakeholder to find information on specific topics or issues.[148]

With regards to attendance by decision-makers, Siting Board members rarely attend evidentiary hearings, while DPU commissioners infrequently attend but may not ask the parties questions, examine witnesses, or actively participate.

Siting Board public meetings.

In contrast to hearings, Siting Board members typically attend public meetings.[149] While these meetings are typically held for a specific purpose, such as a making a decision on a tentative decision or a motion, members of the public and parties are often afforded brief opportunities to provide comments. Although the EFSB has started recording hearings and making them available on their website, this does not appear to occur in a timely fashion in every case.[150]

Improving Hearings & Meetings: High-Level Recommendations

The DPU and EFSB should update their regulations and practices relating to hearings and Siting Board public meetings to allow persons who will be directly affected by the agencies' decisions to meaningfully participate in proceedings, and to better facilitate public participation more generally. The SWG's recommended changes would better ensure that (1) potentially impacted residents know about and are afforded the opportunity to be heard by decision-makers, (2) hearings are physically accessible for stakeholders while also providing hybrid participation options, and (3) the investment of time needed to participate in a hearing or meeting is more predictable.

Improving Hearings & Meetings: Specific Recommendations

1. Public hearing and public comment hearing recommendations.

The DPU and EFSB should make the following structural improvements to public hearings and public comment hearings:

- The first portion of public hearings/public comment hearings could be structured as information sessions[151] in which the petitioner presents to the public and responds to questions. Agency representatives should also be present to respond to questions. For questions that the petitioner or agency cannot respond to (i.e., the information is not readily available), the petitioner or agency should follow up in writing, which then becomes part of the record in the proceeding

- Agency representatives should be trained in best practices related to interacting with stakeholders, should be respectful, and should engage in conversation in a way that will help attendees better understand the process
- A majority of Siting Board members should attend public comment hearings
- At least one DPU commissioner should attend each public hearing when public comments are expected.

The agencies can implement some of these changes in the short-term. Specifically, the agencies can add information sessions (implemented through agency directives or procedural orders), the DPU and the Siting Board Chair can direct staff to participate in trainings, and commissioners and Siting Board members can choose to attend hearings. The agencies can memorialize these changes through amended regulations.

The DPU and EFSB should implement improvements to the format of hearings to encourage participation and access by the general public in the following ways:

- Provide simultaneous language interpretation[152]
- Provide a hybrid setup that allows for in-person and virtual options
- All virtual options, including non-English interpretation, should be available via a cell phone[153] and should not require computer access or an internet connection
- Offer hearings for individual proceedings at a variety of times of day to accommodate different work schedules, and include options for evening and weekend hearings
- Hold hearings in impacted communities
- Provide childcare
- For lengthy hearings, provide food and refreshments
- In-person hearings should be accessible via public transportation, when possible
- In-person hearings should be held in ADA accessible locations
- Avoid holding hearings in locations that may cause concern for some residents (e.g., a police station, a federal government building, etc.)
- Notify the public that they may, but are not required, to pre-register to comment at a specific time so that people do not have to wait hours to provide comments

- Amend regulations so that unsworn statements from members of the public who are not parties or formal witnesses can be considered in decisions[154]
- Record hearings and make them available online in a timely fashion to enable people who could not attend, including decision-makers, to view the hearing at their convenience
- The DPU/EFSB should indicate during a hearing[155] when a commissioner or Siting Board member has to recuse themself.

The SWG acknowledges that the agencies have made some of these improvements already. For changes that have not yet been implemented, the recommendations can be implemented in the short-term, and it may be appropriate to memorialize them through amendments to regulations.

2. Evidentiary hearing recommendations.

The SWG recommends that the DPU and EFSB improve evidentiary hearings in several ways:

- Record hearings and upload them to agency websites for later viewing within one week of the hearing date, even if the recording does not constitute the official transcript
- Provide simultaneous language interpretation for a language spoken by a significant number of residents potentially impacted, or if a language is requested by attendees
- Record the language channels of the evidentiary hearings and upload the recordings for all offered languages
- The hearing officer/presiding officer should explain the content that will be covered on a particular hearing day so public viewers can follow the discussion per the schedule
- At least one DPU Commissioner, and a majority of Siting Board members, should attend every evidentiary hearing
- The decision-makers should watch recordings of evidentiary hearings they do not attend.

As discussed above, the SWG acknowledges that the agencies have already made some of these changes. For changes that have not yet been implemented, many can be implemented in the short-term through directives by the DPU or Siting Board Chair, and subsequently addressed through regulatory amendments.

3. Siting Board meeting recommendations.

The SWG recommends several improvements to Siting Board meetings:

- The 48 hours' notice that is required for EFSB open meetings pursuant to the Commonwealth's Open Meeting Law should be increased to a minimum of seven days for every proceeding[156]
- Siting Board members should be trained on the process that will be used during deliberations[157]
- Siting Board meetings should open with a public comment period
- Before EFSB staff drafts a tentative decision for deliberation by the Siting Board and after the evidentiary hearing and briefing has been completed, the Siting Board should have an additional meeting to carefully consider the petition and the record in the proceeding. By the end of the meeting, the Siting Board would direct EFSB staff to draft a tentative decision consistent with the Siting Board's preliminary determinations on the petition (i.e., denial, approval, approval with conditions and the specific conditions)
- If Siting Board members propose revised language (or direct staff to work on new language) to a tentative decision, the Siting Board should hold a subsequent meeting to discuss those changes and review the revisions
- To the extent it is not currently being done, Siting Board staff should direct Siting Board members to evidence in the record to assist them in their deliberation.

The EFSB could adopt these recommendations in the short-term, but they may require collaboration between EFSB staff and commissioners.

VII. RECOMMENDATIONS RELATED TO ADJUDICATIONS: WHERE TO PURSUE ALTERNATIVES & HOW TO PROVIDE MORE MEANINGFUL OPPORTUNITIES FOR STAKEHOLDERS TO PROVIDE INPUT

This section provides a short description of adjudicatory proceedings and recommends that in some instances, the DPU and EFSB should use alternative processes. Alternatives to adjudications include workshops, information sessions, working groups, technical conferences, proceedings to determine model tariffs, generic policy proceedings, and rulemaking proceedings. These alternatives, if used before, during, or in lieu of adjudications, would be more accessible to stakeholders (compared to adjudicatory proceedings) and can provide meaningful opportunities for participation, thereby more effectively enabling communities and stakeholders to provide input to decision-makers. This section also recommends ways to improve adjudications by providing more meaningful opportunities for stakeholders to provide input.

Existing Barriers Related to Adjudicatory Proceedings

The DPU and EFSB currently use adjudications for many of their proceedings, which include base rate proceedings (e.g., to increase distribution rates), as well as proposed new rates and rate design changes, new utility spending, energy efficiency plans, policy proceedings, and the siting of new facilities and transmission lines, to name a few. As the DPU describes in its 2021 Annual Report, "[a]djudications are the formal determination of parties' rights through a quasi-judicial process. All parties—the party filing the action and any intervenors—are entitled to due process safeguards, meaning that the parties are entitled to adequate notice and the opportunity to be heard. Parties to the action have the right to present evidence, cross-examine witnesses, and receive a written decision from the Department."[158]

Adjudicatory proceedings are intended to provide all parties an opportunity for a full and fair hearing; they also provide parties with the right to appeal.[159] Formal adjudications consist of several procedural steps and deadlines and typically include a public hearing (where oral comments can be offered); a short written comment period; an evidentiary hearing; discovery; direct, rebuttal, and surrebuttal testimony; and briefing.[160] The petition, discovery responses, testimony, and transcripts from public and evidentiary hearings make up the record. In addition to these filings, the agencies can also utilize their experience, technical competence, and specialized knowledge to evaluate the evidence in a given case.[161]

Adjudicatory proceedings are difficult for stakeholders and community members to access, are hard to track and understand, and do not provide adequate opportunities for stakeholders to provide input or to participate meaningfully.

Adjudicatory proceedings are required in certain instances, either by statute or based on the due process rights involved.[162] That said, given their formal nature, adjudicatory proceedings are difficult for stakeholders and community members to access, are hard to track and understand, and do not provide adequate opportunities for stakeholders to provide input or to participate meaningfully. Putting aside the barriers related to intervention,[163] other barriers include the prescriptive procedures, highly technical content, and the limited ways that stakeholders can be involved, effectively barring meaningful engagement by anyone without specialized education or knowledge of utility regulation, financing, and siting of energy facilities.

Procedural requirements for the DPU are found in several different places, including 220 C.M.R. § 1.00 (Procedural Rules) and the DPU's Standard Ground Rules (contained in D.P.U. 15-184-A). For the EFSB, 980 C.M.R. § 1.00 (Rules for the Conduct of Adjudicatory Proceedings) govern the EFSB's practice and procedure for adjudicatory proceedings. In addition, the DPU and EFSB typically set out additional procedures and ground rules within individual dockets that apply to that docket specifically, which may subsequently be amended. These procedures and rules may at times supplant the Procedural Rules pursuant to 220 C.M.R. § 1.00 and 980 C.M.R. § 1.00.[164] Accordingly, in order for a stakeholder to determine filing deadlines and how to properly format and file documents, that stakeholder must consult several different resources.

Turning to the highly technical content of proceedings, there are few opportunities and few resources available to stakeholders to obtain information, aside from the petitioners' filings. The content of these filings may not be easily accessible due to their technical nature.

With regards to the limited ways that stakeholders can be involved, the periods when the public can offer oral or written comments or engage with EFSB or DPU staff are almost always limited to the early stages of a proceeding, when the record is limited to a petitioner's initial filing. For example, although the DPU and EFSB provide people with the opportunity to give oral comments (typically for 2-3 minutes) at public hearings, public hearings almost always take place before any discovery has been filed, well before testimony is filed, and well before an evidentiary hearing is held. Written comments are typically due on the same day as the public hearing, so commenters do not have the benefit of a developed record. While stakeholders may track proceedings after the public hearing and comment period, there are typically no other opportunities for stakeholders to obtain more information, to provide input and highlight their specific concerns (which may not be addressed in the docket record), or to engage with decision-makers or staff.[165]

Adjudications: High-Level Recommendations

The SWG recommends that the DPU and EFSB consider a variety of alternatives that can supplement and—where appropriate—replace adjudications, as well as ways to improve the adjudication process. By removing or mitigating some of the barriers related to the procedural and technical nature of adjudicatory proceedings, the alternatives discussed below can provide more accessible opportunities for environmental justice populations, community groups, and other stakeholders to understand the work of the DPU and EFSB, learn about proposals, provide input, and interact with decision-makers and staff. In addition, a more open and inclusive process that invites two-way communication opportunities should result in the agencies gaining a better understanding of what is at stake for communities.

Alternatives to adjudications include workshops, information sessions, working groups, technical conferences, proceedings to determine model tariffs, generic policy proceedings, and rulemaking proceedings.[166] Where adjudicatory proceedings are required, they can be improved to include extended comment opportunities, with deadlines later in proceedings.

Depending on the case and relevant issues, alternatives to adjudications can be scheduled ahead of, during, or instead of adjudicatory proceedings. For some issues and proposals, a combination may be appropriate. For example, if the EFSB is considering a new transmission line or renewable energy facility, workshops and information sessions could be held before an adjudicatory proceeding is initiated. These workshops and information sessions could include presentations from interested parties, opportunities for stakeholders to ask questions and for the EFSB or DPU to respond, and informal discussions. In this case, the petitioner (rather than the agencies) would need to address project specific questions. Through this process, questions and concerns about the scope and impacts of the proposal can be addressed before (as well as during) the formal adjudicatory proceeding. Later, after a petition is filed, technical sessions could be held and working groups formed to facilitate a more in depth examination of relevant issues.

As discussed in the Introduction, the SWG acknowledges that these changes may require dedicated staff, increases to agency budgets, as well as regulatory and legislative amendments. Some of the SWG's recommendations discussed in this section, such as the recommendation that the agencies give serious consideration to whether a certain issue can be addressed through a non-adjudicatory proceeding, can begin in the short-term, while other recommendations may require increased staffing and funding and a reallocation of priorities and resources.

Adjudications: Specific Recommendations

The SWG recommends that the agencies:

- Hold regular and frequent agency-led workshops on a variety of matters of interest to stakeholders (including topics requested by them) to build capacity of stakeholders and to encourage information-sharing
- Provide a variety of opportunities for information sharing, dialogue, education, and the exchange of ideas through information sessions, working groups, and technical conferences[167] ahead of or during specific adjudications to support stakeholders' understanding and involvement early in a proceeding, as well as throughout a proceeding, and to facilitate a robust and fully developed record

- Use non-adjudicatory proceedings to
  - Propose and develop model tariffs, rather than developing these tariffs in adjudicatory proceedings
  - Explore policy issues that cut across utilities and service territories and have wide applicability[168]
  - Conduct rulemaking, as appropriate,[169] in lieu of an adjudicatory process
- Expand opportunities for stakeholders to file comments during adjudications by setting deadlines after discovery and testimony has been filed in proceedings.

1. Agency-led workshops.

The SWG recommends that the agencies regularly schedule workshops on several topics, including agency procedures, new legislation or programs, upcoming adjudicatory proceedings, and topics requested by stakeholders:

- EFSB/DPU procedures, such as an "adjudicatory proceeding 101" workshop, could focus on rules and procedures, including who can participate and when, the sequence of events, what is not allowed, etc.[170]
- New legislation or new programs could be discussed in workshops scheduled after the Legislature authorizes investments in new technology or new programs, such as for offshore wind or utility ownership of solar plus storage;[171] or when the DPU approves a new energy efficiency plan or electric vehicle program. These workshops could educate stakeholders on new state, utility, or agency programs and invite feedback before the agency implements the new program
- Upcoming adjudicatory proceedings, such as base rate cases, energy efficiency plan cycles, or renewable energy investments, could be explained in workshops scheduled prior to anticipated filings. Accordingly, when an adjudicatory proceeding begins, it is more accessible to people without specialized education or knowledge, and the scope of the proceeding is more likely to include issues of community concern. For example, the DPU could educate stakeholders about how rates are set before a base rate case is filed. Turning to the example of offshore wind, the EFSB and DPU could hold workshops (perhaps jointly) to address questions about the amount of generation authorized by statute, how transmission line costs are allocated, the procurement process, and the various approvals required by state and federal agencies

- Stakeholder-requested topics would provide stakeholders with the opportunity to learn about topics of interest; the agencies can invite input on what stakeholders want to know more about, and can then determine future workshop topics based on that feedback.

Workshops should be held regularly (e.g., a least four times a year, with multiple sessions on select topics) at multiple times of day (e.g., outside the hours of 9am-5pm) and should be recorded so that stakeholders who were unable to attend can access them online.

2. Opportunities for information sharing, dialogue, and education through information sessions, working groups, and technical conferences.

Information sessions differ from a workshop (discussed above) based on the level of specificity about a particular project, proposal, or rate change; information sessions would provide detailed information on filings or projects. In addition to involving DPU and EFSB staff, staff from other state agencies, utilities, or other entities could participate.[172] Presenters could explain technical information in a way that stakeholders outside the energy field can understand, and answer questions in a nonconfrontational way. There should also be an opportunity for stakeholders to provide input after information is presented and questions are answered.[173]

For information sessions that relate to ongoing proceedings with significant impacts, multiple sessions should be held well before the comment period ends; in that way, stakeholders can integrate any new information into their comments. To extend the transmission example above, an information session could focus specifically on impacts to a specific part of the Commonwealth, e.g., the South Coast of Massachusetts, near Fall River and New Bedford, instead of a general discussion about why the Commonwealth is planning to add over 1,000 megawatts of offshore wind.

Working groups and technical conferences[174] bring stakeholders together and provide an organized venue for stakeholders, petitioners, decision-makers, and agency staff to interact and exchange information. In some cases, the goal may be alignment or agreement among stakeholders on certain issues. In other cases, the goal may be to build capacity and share information before comments, preliminary positions, briefs, or straw proposals are filed, or before rulemaking is initiated. Recommendations from working groups and transcripts from technical conferences can be entered into the record in subsequent proceedings to inform future proposed model tariffs or rulemaking proceedings.

3. Non-adjudicatory proceedings for model tariffs, policy issues, and rulemaking.

Model tariff proceedings are non-adjudicatory proceedings where the DPU, after gathering information from stakeholders, proposes a model tariff, requests proposed tariffs or tariff provisions, or forms working groups to develop model tariffs. These steps would result in a more transparent and open process compared to adjudicatory proceedings. Such a proceeding may effectively reduce the number of contested issues to be addressed through an adjudicatory proceeding or through a proceeding where each utility submits a utility-specific tariff. For example, the DPU opened D.P.U. 07-50 on its own motion and presented a straw proposal for a base revenue adjustment mechanism to sever or decouple revenue levels from changes in sales for all gas and electric utilities. The DPU explained that the purpose of including a straw proposal was "to provide initial guidance, to foster consideration of appropriate mechanisms, and to help focus the scope of the proceeding and the comments of interested persons."[175]

Generic policy proceedings could address policy issues with widespread applicability and with effects across multiple utilities. The DPU and EFSB are using this type of proceeding in D.P.U. 20-51 and EFSB 21-01, the public participation proceedings.[176] In these proceedings, there have been multiple opportunities for stakeholders to provide input (through two rounds of comments), as well as an opportunity for stakeholders to directly engage in conversation with agency staff (the August 2022 Roundtable) and, in the case of the DPU, to comment on a proposed draft policy. Similar types of proceedings are appropriate for a variety of issues, such as new programs and new legislative initiatives, as well as for issues that will need to be addressed through rulemaking. By soliciting stakeholder input in advance, the agency may be able to identify areas of agreement and better understand relevant issues before proposing a policy or initiating formal rulemaking.

Rulemaking proceedings[177] are generally used to implement legislation and establish regulations with broad applicability. The DPU has used rulemaking proceedings to govern net metering,[178] while the EFSB has used rulemaking to establish minimum threshold sizes of facilities subject to EFSB jurisdiction.[179] Going forward, rulemaking proceedings could establish how the DPU and EFSB will implement the 2021 Roadmap Act (e.g., how environmental justice principles will be considered as part of the EFSB's work and how equity and affordability will be considered in the DPU's work).[180]

While rulemaking must include formal public comment periods, the agencies should also provide early opportunities for broad stakeholder participation before the agency issues a draft rule, such as through workshops or technical conferences. The agency should then draft the proposed rule and release the draft for a formal public comment period with public hearings. The documentation in support of the draft rule should include a background document in plain language but with sufficient explanation to allow someone unfamiliar with the topic to understand the proposal. A similar document should be developed to support the final rule. In addition, when the final rule is promulgated, the agency should explain how it responded to comments (i.e., how specific stakeholder feedback was incorporated into the final rule or why it was not incorporated).[181]

4. Expanded comment opportunities in proceedings.

The agencies should provide a longer timeframe for stakeholders to file comments in every proceeding. If the agencies expand the comment period beyond the date of the public hearing and set the deadline after the record is developed, stakeholders will be able to incorporate information from discovery responses and testimony in their comments. Thus, expanding the comment period will result in a record that is better developed, and decision-makers will have more information on which to base their decisions.

APPENDICES

APPENDIX A: EQUITY INITIATIVES IN OTHER STATES

Several state public utility commissions, including those in California, Colorado, Hawaii, Oregon, and Washington, have taken clear steps to advance equity initiatives in their jurisdictions to achieve greater access to benefits for disproportionately impacted communities, including low-income individuals.

The DPU has the unique opportunity to learn from other state commissions' ideas and experiences while also taking a distinct and proactive approach and supporting the development of a more reliable, clean, and affordable electricity grid that benefits all Massachusetts citizens. Examples of how public utility commissions in other jurisdictions are taking steps to support equity are outlined below.

California

In 2000, California enacted broad legislation requiring the state's Environmental Protection Agency to incorporate environmental justice into its mission.[182] Since then, the Legislature adopted several statutes that specifically direct the California PUC to incorporate environmental and social justice objectives into various types of decision-making, including prioritizing disadvantaged communities in Integrated Resource Planning processes[183] and new approaches designed to reach communities affected by commission decisions.[184] The California PUC itself then adopted an Environmental and Social Justice Action Plan (the Plan) to guide its decisions.[185] The Plan identifies ways the California PUC can use its authority to rectify environmental injustice, introduces plans for community engagement, and demonstrates how equity considerations should influence California PUC decision-making. The Plan reflects input from the public as well as California's broader climate goals. The California PUC also created an Equity Resiliency Eligibility Matrix designed to clarify the process for how individuals qualify to receive additional support under a Residential Equity Resiliency program.[186] Finally, the California PUC developed a tool to track progress on equity metrics, which were determined in part based on the convening of a working group on equity metrics.[187] The California PUC specifically made the tool public and accessible as part of its equity initiatives.

Colorado

In 2021, the Colorado General Assembly (CGA) passed several bills designed to implement equity initiatives. First, the CGA passed a bill creating an Environmental Justice Action Task Force facilitated by the Environmental Justice Unit of the Colorado Department of Public Health and Environment.[188] The CGA also passed a bill giving the consumer advocate the authority to intervene on matters of environmental justice, decarbonization, and just transition issues.[189] Finally, the CGA passed a bill directing the Colorado PUC to maintain a site to track its equity initiatives.[190] In response, the Colorado PUC opened a proceeding to engage stakeholders and investigate potential rules and processes to ensure that equity is a consideration in all PUC proceedings.[191]

Hawaii

In 2022, the Hawaii Legislature adopted three resolutions requesting that the Hawaii PUC consider how to mitigate high energy burdens and investigate how to integrate considerations of energy equity and justice in the commission's work.[192] The Hawaii PUC opened an investigatory proceeding on December 13, 2022, stating that, through the proceeding, it "intends to further the State's policy goals, to improve energy affordability and reduction of energy burdens for vulnerable customers, to ensure the burdens and benefits of energy infrastructure and the renewable energy transition are equitably distributed, including increasing accessibility of proceedings among vulnerable or underrepresented customers."[193] The Hawaii PUC held opening conferences during the beginning of March 2023, inviting the public to share their thoughts on what energy equity means and other issues.[194]

Oregon

In 2021, the Oregon Legislature passed several bills which included directives to the Oregon PUC related to equity, environmental justice, and impacted communities.[195] One of these bills gives the Oregon PUC the ability to consider the differential energy burdens on low-income customers as well as other factors that affect affordability for different classes of customers in setting utility rates.[196] Additionally, the Legislature expanded funding opportunities for participation in Oregon PUC proceedings.[197] In response, the Oregon PUC opened a proceeding (UM 2211[198]) and worked with stakeholders to develop interim differential rates to provide near-term relief to low-income customers. As part of UM 2211, the Oregon PUC is continuing to work with stakeholders and utilities to develop long-term rates designed to address differential energy burdens that affect certain classes of customers.

Washington

In 2019, the Washington Legislature passed a number of bills collectively referred to as the Clean Energy Transformation Act, under which the Washington Utilities and Transportation Commission (UTC) is responsible for ensuring the utilities' compliance. As part of this oversight, the UTC is establishing equity-focused community stakeholder groups to drive Integrated Resource Planning. The UTC has also developed rules for low-income customer support, the reduction of energy burden for vulnerable populations, and other ways to equitably distribute clean energy benefits to utility customers. Finally, the UTC requires each electric utility to form an "equity advisory group" to participate in the Clean Energy Implementation Plan process. The UTC further requires utilities to submit updated "public participation plans" every other year.[199]

APPENDIX B: SHORT-TERM & LONG-TERM RECOMMENDATIONS

This Appendix includes the following sections: Short-term recommendations that apply to both the DPU and EFSB (collectively, the "agencies"); short-term recommendations that apply to the DPU specifically; short-term recommendations that apply to the EFSB specifically; and long-term recommendations.

Short-Term Recommendations – DPU & EFSB

1. The DPU and EFSB should each open a generic policy investigation to examine their altered roles under recent legislation and EEA's Environmental Justice Policy. (p. 17)

2. The agencies should recognize the value of lived experience by considering public comments and non-technical expert testimony in proceedings. (p. 17-18)

3. The agencies should take the following steps to better demonstrate that stakeholder input is valued and is considered by petitioners and decision-makers:

    - When stakeholders comment at a hearing, the DPU and EFSB should require the petitioner to file an amended petition within a specified time to address the comments

    - For comments received later in a proceeding, after the public hearing and initial comment deadline, the DPU and EFSB should require the petitioner to respond to stakeholder comments and concerns in their initial brief or in an appendix to an initial brief. (p. 24)

4. The agencies should include a dedicated section or appendix in their decisions summarizing stakeholder comments, describing the record on these issues, explaining if and how the petitioner amended its filing to address concerns, and explaining how stakeholder concerns were considered by the agency in the context of the overall decision. (p. 24)

5. The agencies should provide a range of educational and informational resources on their websites as well as interactive opportunities for stakeholders to engage with staff and decision-makers. In addition to generalized information on energy issues and agency procedures, the agencies should offer proceeding-specific resources for proceedings with significant localized impacts and impacts on environmental justice populations. (p. 31-32)

6. The agencies should provide public-facing non-technical plain language executive summaries for long, technical orders and orders on proceedings of particular concern to stakeholders. (p. 30)

7. The agencies should require petitioners to include public-facing plain language summaries of petitions and briefs. (p. 31)

8. Videos of evidentiary and public hearings should be made available on agency websites. (p. 34)

9. The agencies should provide the following educational resources on agency websites:

    - A calendar of events (e.g., public hearings, educational webinars, evidentiary hearings, comment deadlines)
    - A list of commonly used acronyms
    - Answers to Frequently Asked Questions and other background information, using non-technical terms so that persons without technical experience or knowledge, and who are unfamiliar with the agency's work, can understand
    - Explanations about the various types of state and federal approvals that different types of projects may need (especially for EFSB decisions)
    - Information about accommodations for Limited English Proficient (LEP) speakers and persons with disabilities
    - Easy to understand explanations of proceedings with broad impacts in the Commonwealth, including rate cases, energy efficiency programs, new rates, etc.
    - Self-help resources (i.e., sample filings such as motions to intervene and public comments, and form-fillable Intervention and Comment Forms, similar to the materials provided at self-help offices in courts and by some public utility commissions
    - Resources that explain the agencies' work and procedures, including a practical guide for the DPU (similar to the EFSB's "The Energy Facilities Siting Handbook"). (p. 31-32)

10. The agencies should provide opportunities for stakeholders to interact with decision-makers and staff and to ask questions about particular issues, proceedings, hearings, and procedures outside of an adjudicatory format. (p. 32)

11. The EFSB should provide proceeding-specific resources in all proceedings, and the DPU should provide these resources for proceedings with significant localized impacts and impacts on environmental justice populations. These resources should include:

    - A webpage for each proposed project with an easy to understand summary of the project and its impacts as well as any other state or federal agency approvals that may be required
    - A social media toolkit that provides a brief overview of the proceeding (in plain language) and sample language that could be included in social media posts or a newsletter. (p. 32)

12. The agencies can use their websites and social media accounts, as well as email, to make it easier for stakeholders to obtain information on proceedings or issues that are relevant to them, including through the following:

    - Publicize and provide a subscription option on agency websites so that stakeholders can opt-in to receive emails and notices of new filings for their selected issues and proceedings
    - Publicize select issues and proceedings on agency websites, via social media posts, newsletters, and/or periodic emails (e.g., every other week or monthly) that provide substantive information as well as how to get involved. (p. 33)

13. The agencies should partner with community organizations as well as municipalities to publicize proceedings and to solicit input. (p. 33)

14. The agencies should ensure that stakeholders and intervenors have appropriate access to data. (p. 33)

15. The agencies should record hearings and upload video content to a YouTube channel that is available within 48 hours of the hearing (the EFSB should continue to make videos of evidentiary and public hearings available, and the DPU should follow suit). (p. 34)

16. To overcome barriers to the widespread dissemination of information, the DPU and EFSB should initiate discussions with the people in the best position to provide input, community members themselves, to develop more effective notice protocols. (p. 38)

17. The content of notices should be in plain language and highlight the impact of the proposal on environmental justice populations. (p. 38)

18. Notice procedures should be updated and modernized; notice should be publicized in several formats intended to reach community members, including through:

    - Web-based media through DPU and EFSB websites, as well as on Facebook, Twitter, and Instagram accounts where notices can be shared or tagged among contacts and communities (e.g., by municipalities, elected officials, community-based organizations, and others); the agencies should continue to monitor new social media sites to determine which platforms are likely to provide access to potentially affected communities
    - Television (including public access) and radio
    - For location-specific proposals:
        - Notice should be posted in high traffic gathering places (houses of worship, community centers, grocery stores, schools, laundromats, post offices, on public buses and trains, bus and train stations, and large residential buildings)
        - The DPU and EFSB should conduct outreach to planning boards and community groups requesting that the groups publicize the notice with their contacts; the agencies should work with trusted community members and partners to get the word out
    - Targeted, direct mailings should be sent at least 30 days prior to a rate hearing, by separate mailings or bill inserts, whichever is more commonly read, and by email
    - When notices are published in newspapers, the agencies should ensure that they consider the audiences of particular newspapers (including non-English newspapers), and should ensure that the notice is:
        - Published in the main section where people are likely to see it
        - In a large enough font so that people can easily read it
        - Published in print and electronic versions; in the case of electronic versions, there should not be a paywall to view notices. (p. 38-39)

19. Notice of proposed action should be clear, succinct, and easy to read, with headings that provide meaningful information relating to the impact of the proceeding. The agencies should consider a bullet type format at the beginning of the notice to make key points easier to find. (p. 40)

20. For proposed facilities or location-specific proposals, the notice should include:

    - A map of the proposed facility
    - An explanation about why the facility is needed and why the specific site was selected
    - A list of the alternative locations and technologies considered
    - A list of communities that may be affected and how
    - Information on:
        - The size of the facility
        - Who will fund the facility
        - How long construction will last
        - Any other approvals required by other agencies. (p. 40)

21. Notices of proposed action should:

    - Include information about the process the agency will take to reach a decision
    - Identify when and how community members can provide input or otherwise participate
    - Provide a way for community members to request ongoing updates or additional information about the proceeding (i.e., a simple way to subscribe to the docket). (p. 40)

22. For certain types of proceedings, including siting of energy infrastructure and projects that will significantly affect nearby environmental justice populations, the agencies should require the petitioner to complete pre-filing outreach and workshops to solicit community input in time to incorporate changes prior to filing the petition; this should be completed at least 60 days prior to filing. (p. 41)

23. For proposals that are location-specific, especially siting of facilities before the EFSB, in addition to outreach and workshop requirements, the agencies should also require the project proponent to:

    - Develop a preliminary project statement

- Consult with the Siting Board Environmental Justice Coordinator and EEA's Undersecretary of Environmental Justice and Equity or Director of Environmental Justice to discuss an outreach strategy (120 days before filing)
- Implement the outreach strategy (90 days before filing)
- Invite community-based organizations, local elected officials, EEA's Director of Environmental Justice, and the EFSB Director to a meeting to review the proposed project (within 30 days of submitting the preliminary project statement); in addition, the project proponent shall adjust the project to address concerns of environmental justice populations related to public safety, public health, location, or mitigation. (p. 42)

24. The agencies should engage with environmental justice populations and other stakeholders, including municipalities, elected officials, and community leaders, to develop a Public Engagement Framework. Initial short-term steps could include asking stakeholders to work together to develop suggested frameworks that could serve as the initial basis for a discussion with the DPU and EFSB. (p. 43)

25. The DPU and EFSB should establish mechanisms to solicit input from community members and existing advocacy groups on an ongoing basis through a community advisory group. (p. 44)

26. The agencies should establish clear and inclusive language access protocols. To encourage improved participation of LEP speakers, the SWG endorses the detailed recommendations in Conservation Law Foundation's comments in EFSB 21-01, dated September 10, 2021, and in D.P.U. 21-50, dated November 9, 2021. (p. 44)

27. The agencies should revise the intervention standard of review to be more inclusive so that parties who demonstrate they will be affected are allowed to participate as intervenors. (p. 48)

28. The agencies should ensure that hearing officers effectively manage intervention by multiple parties. (p. 49)

29. The agencies and EEA should provide more resources and support to prospective intervenors by:

    - Creating a handbook outlining how to petition for Intervenor Status (including the standard for intervention), how to participate as an intervenor, and the role of an intervenor. This handbook should also include information on how to participate in an intervenor compensation program if such a program is created. The handbook should be:
        - Designed in a way that ensures that all necessary information for participants is easily accessible and in one place
        - Written in plain language and intelligible to the general public
        - Updated at least annually to reflect any changes to the process as well as feedback or suggestions that the agency receives from stakeholders
        - Translated into languages spoken in the communities where a facility has been proposed
    - Providing templates and samples of key documents on agency websites, such as petitions to intervene, testimony, discovery requests, briefs, and a certificate of service
    - Provide resources to support intervenors and prospective intervenors, including:
        - A list of previous intervenors representing interests other than those of utilities and developers
        - A list of attorneys appearing before the DPU and EFSB who have represented parties other than utilities and developers
        - A list of expert witnesses who have testified on behalf of parties other than utilities and developers
    - Update software so that the File Room includes a searchable database of prior decisions and proceedings. (p. 49-50)

30. The agencies should make the following structural improvements to the public hearing (DPU) and public comment hearing (EFSB) processes:

    - The first portion of public hearings/public comment hearings could be structured as information sessions in which the petitioner presents to the public and responds to questions. Agency representatives should also be present to respond to questions.

For questions that the petitioner or agency cannot respond to (i.e., the information is not readily available), the petitioner or agency should follow up in writing, which then becomes part of record in the proceeding

- Agency representatives should be trained in best practices related to interacting with stakeholders, should be respectful, and should engage in conversation in a way that will help attendees better understand the process
- A majority of Siting Board members should attend public comment hearings
- At least one DPU commissioner should attend each public hearing when public comments are expected. (p. 53-54)

31. The agencies should implement the following to encourage participation and access by the general public at public hearings (DPU) and public comment hearings (EFSB):

    - Provide simultaneous language interpretation
    - Provide a hybrid setup that allows for in-person and virtual options
    - All virtual options, including non-English interpretation, should be available via a cell phone and should not require computer access or an internet connection
    - Offer hearings for individual proceedings at a variety of times of day to accommodate different work schedules and include options for evening and weekend hearings
    - Hold hearings in affected communities
    - Provide childcare
    - For lengthy hearings, provide food and refreshments
    - In-person hearings should be accessible via public transportation, when possible
    - In-person hearings should be held in ADA accessible locations
    - Avoid holding hearings in locations that may cause concern for some residents (e.g., a police station, a federal government building, etc.)
    - Notify the public that they may, but are not required to, pre-register to comment at a specific time so that people do not have to wait hours to provide comments
    - Amend regulations so unsworn statements from members of the public who are not parties or formal witnesses can be considered in decisions

- Record hearings and make them available online in a timely fashion to enable people who could not attend, including decision-makers, to view them later
- The DPU/EFSB should indicate during a hearing when a commissioner or Siting Board member has to recuse themself. (p. 54-55)

32. To improve evidentiary hearings the agencies should take the following steps:

- Record hearings and upload them for later viewing within one week of the hearing date, even if the recording does not constitute the official transcript
- Provide simultaneous language interpretation for a language spoken by a significant number of residents potentially affected or if a language is requested by attendees
- Record the language channels of the evidentiary hearings and upload recordings for all offered languages
- The hearing officer/presiding officer should explain the content that will be covered on a particular hearing day so public viewers can follow the discussion
- At least one DPU commissioner and a majority of Siting Board members should attend every evidentiary hearing
- Decision-makers should watch recordings of evidentiary hearings they do not attend. (p. 55)

33. Alternative processes that can supplement and —where appropriate— replace adjudications, as well as ways to improve the adjudication process include:

- Holding regular and frequent agency-led workshops on a variety of matters of interest to stakeholders (including topics requested by them)
- Providing a variety of opportunities for information-sharing, dialogue, education, and the exchange of ideas through information sessions, working groups, and technical conferences ahead of or during adjudications so that stakeholders are involved early in a proceeding, as well as throughout a proceeding
- Using non-adjudicatory proceedings to:
    - Propose and develop model tariffs
    - Explore policy issues that cut across utilities and/or service territories and have wide applicability
    - Conduct rulemaking, as appropriate

- Expanding opportunities for stakeholders to file comments during adjudications by setting deadlines after discovery and testimony have been filed. (p. 61-64)

DPU Specific Short-Term Recommendations

34. The DPU should increase transparency and availability of information related to energy affordability, energy burden, and energy reliability by utility and by location (including by census block group, where possible) so that stakeholders can track and compare the data. (p. 20)

35. The DPU should ensure appropriate consideration of affordability and energy burden in rate cases (through development of the record) and incentivize improvements. (p. 20)

36. To increase the visibility of DPU commissioners, the DPU Chair could ensure that the commissioner(s) attend or preside over public hearings and evidentiary hearings in certain types of proceedings, or DPU regulations could be amended to require them to do so. (p. 25)

37. The DPU should consider a range of stakeholder-focused and public-facing events designed to facilitate more interaction between stakeholders and commissioners, such as listening sessions and educational sessions where commissioners participate. (p. 25)

38. For contentious cases, cases that are of interest to many stakeholders, and cases that have significant localized impacts, the DPU should consider issuing a tentative or proposed decision and solicit comments before issuing a final order. (p. 25)

EFSB Specific Short-Term Recommendations

39. The EFSB, Secretary of EEA, or the Legislature could require that Board members participate in a training in person or online, and provide resources to Board members to ensure a shared baseline understanding of energy equity, environmental justice principles, board procedure, Board member roles and responsibilities, and potential conflicts of interest. (p. 26)

40. Tentative decisions should be used as opportunities to improve the decision and ensure that it reflects party and stakeholder input. Improving a tentative decision requires that Board members actively participate, understand the record, and make appropriate changes and improvements. (p. 26)

41. The following improvements should be made to Siting Board meetings:

- The 48 hours' notice that is required for EFSB open meetings pursuant to the Commonwealth's Open Meeting Law should be increased to a minimum of seven days for every proceeding
- Siting Board members should be trained on the process that will be used during deliberations
- Siting Board meetings should open with a public comment period
- Before EFSB staff drafts a tentative decision for deliberation by the Siting Board and after the evidentiary hearing and briefing has been completed, the Siting Board should have an additional meeting to carefully consider the petition and the record in the proceeding. By the end of the meeting, the Siting Board would direct EFSB staff to draft a tentative decision consistent with the Siting Board's preliminary determinations (i.e., denial, approval, approval with conditions and the specific conditions)
- If Siting Board members propose revised language (or direct staff to work on new language) for a tentative decision, the Siting Board should hold a subsequent meeting to discuss those changes and review the revisions
- To the extent it is not currently being done, Siting Board staff should direct Siting Board members to evidence in the record to assist them in their deliberation. (p. 56)

Long-Term Recommendations

42. The DPU and EFSB should consider amending their regulations so that decision-makers can consider public comments (in addition to considering testimony of petitioner witnesses and experts), and so an affidavit or sworn testimony is not required for the decision-makers to address the public comments. (p. 17-18)

43. EEA should establish an Environmental Justice Advocate position to provide support in EFSB proceedings. (p. 18)

44. Massachusetts General Law chapter 164, section 69H, should be amended to include at least one public member with experience in environmental justice issues on the Siting Board. (p. 19)

45. The Legislature should amend the Open Meeting Law (M.G.L. c. 30A, §§ 18-25) to require that decision-makers in quasi-judicial agencies like the DPU and EFSB deliberate on adjudicatory proceedings in open meetings. (p. 25)

46. The EFSB should establish a mechanism to reassess decisions when evidence presented by the petitioner and relied upon by the Siting Board materially changes; accordingly, the EFSB should amend 980 C.M.R. § 1.09(1) to extend the good cause standard for reopening hearings to include the period after a final order has been issued, until the point when construction commences. The EFSB's regulations should also be amended to establish a presumption that "good cause" under C.M.R. § 1.09(1) (as amended consistent with these recommendations) is satisfied when the evidence offered indicates that the change is greater than thirty percent. (p. 27)

47. The agencies should provide the following additional general educational resources on their websites:

    - A map listing new filings by city/town and the affected communities, with basic information (using plain language) summarizing the proceeding (including the applicant and impact on affected communities), the date of the public and evidentiary hearings, as well as a link to the public notice and docket webpage
    - Educational videos about rates, energy siting, energy issues, procedures, and programs. (p. 31)

48. The agencies should make the following specific changes to ensure that transcripts are accessible to stakeholders:

    - Eliminate charges for timely access to transcripts for intervenors by wrapping the cost of external transcription into other docket costs or filing fees paid by petitioners
    - Ensure that contracts between the DPU, EFSB, and the court reporter allow transcripts to be available to stakeholders for free (this may require amending existing contracts)
    - Ensure that transcripts are available on agency websites within a reasonable time period. (p. 34)

49. After determining effective ways to provide notice for different types of proceedings, the DPU and EFSB should then consider amending their regulations to memorialize robust publication of notice as essential to normal agency operations. (p. 38)

50. As part of the effort to provide support for community members who seek to intervene in proceedings, EEA should establish an Office of Public Participation. (p. 18, 43, 49)

51. The Commonwealth should provide funding for an intervenor compensation program so that prospective intervenors materially contributing to a significant issue in a proceeding can pay for attorneys and experts. (p. 50-51)

52. Regulations should be amended so that unsworn statements from members of the public who are not parties or formal witnesses can be considered in decisions. (p. 55)

ENDNOTES

1. Detailed recommendations are included in the full report. Appendix B contains a list of short-term and long-term recommendations.

2. M.G.L. c. 30, § 62 defines "environmental justice population" as "a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income" and provides the Secretary of EEA with discretion to make additional designations.

3. While the term "environmental justice populations" is used throughout this report, the SWG intends to include low-income ratepayers and low-income households in the Commonwealth, some of whom reside in environmental justice populations pursuant to the definition in M.G.L. c. 30, § 62, but many of whom reside outside of those defined communities.

4. As stated in its mission statement, the DPU "is responsible for oversight of investor-owned electric power, natural gas, and water utilities in the Commonwealth." The DPU is "charged with developing alternatives to traditional regulation, monitoring service quality, regulating safety in the transportation and gas pipeline areas, and the siting of energy facilities." DPU, *About the DPU*. The Siting Board has authority to review proposed large energy facilities including power plants, electric transmission lines, and intra-state fossil fuel pipelines. M.G.L. c. 164, § 69H.

5. Recommended changes that can be implemented in the short-term are set out in Appendix B.

6. The SWG is made up of representatives from community-based organizations with expertise in environmental justice, climate change, and consumer advocacy, including individuals with extensive experience in proceedings at the DPU and EFSB. The SWG also includes former energy agency staff and regulators. The organizations represented on the SWG include: Alternatives for Community & Environment, Conservation Law Foundation, Environmental Defense Fund, GreenRoots, Massachusetts Climate Action Network, National Consumer Law Center, Regulatory Assistance Project, and Vote Solar.

7. *See* *Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs* (updated June 24, 2021), at 3.

8. *EEA Environmental Justice Policy*, at 4. Emphasis added.

9. *EEA Environmental Justice Policy*, at 4. Emphasis added.

10. M.G.L. c. 25, § 1A, added by the 2021 Roadmap Act, § 15. "In discharging its responsibilities under this chapter and chapter 164, the department shall, with respect to itself and the entities it regulates, prioritize safety, security, reliability of service, affordability, equity and reductions in greenhouse gas emissions to meet statewide greenhouse gas emission limits and sublimits established pursuant to chapter 21N." According to a brief by the Rocky Mountain Institute (RMI), as of July 2022, ten states (including Massachusetts) have mandated that public utility commissions consider equity in decision-making. RMI, J. Becker, J. Ciulla, C. Felder, R. Gold, *Regulatory Process Design for Decarbonization, Equity, and Innovation (Regulatory Process Design), PUC Modernization Issue Brief Series: Purpose, People, and Process* (July 2022), at 8.

11. Climate Justice Working Group, *Global Warming Solutions Act Implementation Advisory Committee Climate Justice Working Group Preliminary Recommendations* (Sept. 28, 2020).

12. *See*, e.g., 2022 Driving Clean Energy Act; 2021 Roadmap Act.

13. *See*, e.g., 2021 Roadmap Act, §§ 15, 56; 2022 Driving Clean Energy Act, §§ 27, 29. The 2022 Driving Clean Energy Act also mandates new considerations related to the development of energy resources and their impacts and benefits for environmental justice populations and low-income ratepayers. See, e.g., 2022 Driving Clean Energy Act, §§ 7 (relating to a clean energy equity workforce and market development program), 28 (formalizing net climate and environmental and equity impacts as priorities in energy efficiency planning), 62(e)(1) (relating to offshore wind energy generation resources), and 77 (authorizing gas and electric utilities to own and develop solar facility projects on utility owned land, paired, where feasible, with batteries).

14. For example, the AGO's Environmental Justice Brief, *COVID-19's Unequal Effects in Massachusetts*, details the disproportionate impacts of air pollution on Black and Latinx communities in Massachusetts and references a Harvard T. H. Chan School of Public Health study linking long-term exposure to fine particulate matter to a higher COVID-19 death rate. Office of Massachusetts Attorney General Maura Healey, COVID-19's *Unequal Effects in Massachusetts* (2020).

15. *See* D. Frank, et al., *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, Journal of the American Academy of Pediatrics (Nov. 1 2006); A. Kowanko & C. Harak, National Consumer Law Center (NCLC), *More Can and Must Be Done to Prevent Utility Consumers from Losing Service Due to Mounting COVID-Driven Arrearages in Massachusetts and Other States* (Nov. 2021), at 8, Chart 7, showing the "Average Dollar Amount of Arrears Owed by Discount Rate Customers More than 90 Days Behind on Their Bills, March 2020-June 2021."

16. The importance of efforts to improve public participation and to make public participation meaningful has been discussed in several publications in recent years. This report focuses on eliminating barriers to access and participation in energy regulatory proceedings in Massachusetts, and includes specific recommendations, some of which can be implemented immediately. *See*, e.g., I. Cecala & B. Endres, *Damnesia: An Examination of Public Participation and Evolving Approaches to Hydropower Development in the United States and Brazil*, 55 Idaho L. Rev. 115 (2019); National Association of Regulatory Commissioners (NARUC), J. McAdams, *Public Utility Commission Stakeholder Engagement: A Decision-Making Framework (PUC Stakeholder Engagement)* (Jan. 2021); RAP, Synapse Energy Economics & Community Action Partnership, *Energy Infrastructure: Sources of Inequities and Policy Solutions for Improving Community Health and Wellbeing* (April 29, 2020); RMI, Regulatory Process Design; A. Sinclair & M. Doelle, *Using Law as a Tool to Ensure Meaningful Public Participation in Environmental Assessment*, 12 J. Env. L. & Prac. 27 (2003). The SWG also notes that public utility commissions in other states, including California, Colorado, Hawaii, Oregon, and Washington are actively discussing issues related to equity in utility regulation. *See* Appendix A.

17. While the SWG recognizes the ongoing public participation proceedings at the DPU and EFSB, we do not view the scope of these proceedings as sufficient to address the range of issues and changes that are necessary. *See* 21-50, *Notice of Inquiry by the DPU on its own Motion into Procedures for Enhancing Public Awareness of and Participation in its Proceedings*; EFSB 21-01, *Notice of Inquiry by the EFSB on its own Motion into Procedures for Enhancing Public Awareness of and Participation in its Proceedings*.

18. The SWG's recommendations on how the DPU and EFSB can work to advance equity in proceedings are discussed in the section, "Advancing Equity at the DPU & EFSB."

19. The specific goal of the survey was to obtain data and information about how people get and prefer to get information, what measures would make engagement at the DPU and EFSB easier, and energy and siting-related topics that individuals are interested in. Over 600 individuals from around the state responded to the survey.

20. The specific goal of the focus groups and interviews was to gain information about how barriers to participation can be eliminated or reduced, and how the DPU and EFSB should engage with the public. Fifty individuals participated in the interviews and focus groups, including representatives of the Environmental Justice Table, state legislators and legislative staff, municipal leaders and municipal staff, members of community-based, environmental, and climate advocacy organizations, and technical experts who have participated in proceedings. Many of the focus group and interview participants had experience with controversial proposals in their communities.

21. The DPU's Language Access Plan is dated 2018 and the EFSB does not currently have a Language Access Plan.

22. See the section, "Reforming the DPU's & EFSB's Approach to Intervention."

23. This is further discussed in the sections, "Reforming the DPU's & EFSB's Approach to Public Engagement" and "Improving Information & Knowledge Accessibility."

24. The SWG also notes that EEA has developed and solicited comments on its Draft Environmental Justice Strategy (October 2022).

25. 980 C.M.R. § 1.04(5) states that "[c]omments made at a public comment hearing are not deemed to be evidence." 220 C.M.R. § 1.10(4) requires all written testimony to be authenticated by an affidavit of the witness. These regulations should be revised to allow the EFSB and DPU to rely on statements raised during a public hearing as evidence.

26. Other agencies within EEA may also benefit from a dedicated Environmental Justice Advocate.

27. The composition of the Siting Board is also set forth in 980 C.M.R. § 2.03(1).

28. This recommendation is aligned with proposed legislation that, among other things, would add two additional Siting Board members "experienced in community issues associated with the siting of energy facilities with at least of one [sic] these members who resides in an environmental justice population and has experience with environmental justice principles and at least one of these members who is a tribal representative or representative of an Indigenous organization." S.2113, § 3; H.3187, § 3.

29. *See* Service Quality dockets, D.P.U. 23-SQ-01 to -13; D.P.U. 12-120-D (2015), *Investigation by the DPU into Eversource Gas Company of Massachusetts d/b/a Eversource Energy's 2021 Service Quality Report filed pursuant to Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies*. With regards to service quality, the SWG notes that although utility service territories as well as circuit-level data may in some cases overlap across municipalities, having this data publicly available would be an improvement, even if it is an estimate or imperfect. Existing reporting requirements are discussed in the DPU's annual reports. While the service quality of the utilities as a whole is discussed, the underlying data is difficult for stakeholders to access and understand, and there are no publicly available summaries on the performance of specific utilities. There is also no simple way to compare the experiences of ratepayers or the quality of service in different locations throughout the Commonwealth.

30. Arrearage amounts and disconnections for nonpayment are reported monthly in D.P.U. 20-58, *Inquiry of the DPU into Establishing Policies and Practices for Electric and Gas Companies Regarding Customer Assistance and Ratemaking Measures in Connection to the State of Emergency Regarding the Novel Coronavirus (COVID-19)*.

31. Energy burden is "the share of a household's income that is spent on energy utilities." M. A. Brown, et al., *High Energy Burden and Low-Income Energy Affordability: Conclusions from a Literature Review* (2020), at 3, 4.

32. A high energy burden, typically characterized as when a household spends more than 6 percent of total household income on energy costs, contributes to energy insecurity. Energy security "refers to the uncertainty that a household might face in being able to make utility bill payments, which can ultimately result in being disconnected from energy services." *Id.*, at 4. Researchers have pointed to a hidden aspect of energy poverty and insecurity – households that limit energy consumption to reduce the cost of utility bills. *See* S. Cong, D. Nock, et al., *Unveiling Hidden Energy Poverty Using the Energy Equity Gap*, Nature Communications (2022).

33. "[T]he term energy poverty generally refers to living in a home that does not have access to enough energy to meet their essential needs." *Id.*

34. In Illinois, all public utilities are statutorily required to report monthly, by zip code, the number of: disconnections for nonpayment, reconnections, new deferred payment arrangements, completed deferred payment arrangements, failed payment agreements, and total past due amounts (arrearages). 220 ILCS 5/8-201.10(b). All public utilities are also required to report annually, by zip code, the number of disconnections for nonpayment, and reconnections. 220 ILCS 5/8-201.10(a). This monthly and annual reporting must be publicly available in an electronic spreadsheet format.

35. Data from 2017 indicated that in the Boston metropolitan area, 32 percent of Black households had a high energy burden, while 30 percent of Hispanic households had a high energy burden (compared with 24 percent of total households). A. Drehobl, L. Ross, & R. Ayala, *How High Are Household Energy Burdens?: An Assessment of National and Metropolitan Energy Burdens across the US* (2020), at 56, 58, 59. On a national level, there are disparities among minority and non-minority groups, with higher median energy burdens for Hispanic and Black households compared with non-Hispanic white households. *See id.*, at iii, 11. Similarly, there are also disparities related to energy insecurity, with households of color disproportionately experiencing terminations and shut-offs or threats of terminations and shut-offs, even when adjusted for income. NCLC, *Massachusetts Residential Utility Customers Still Owe Nearly $100M More in Arrears Than at the Start of the Pandemic* (Feb. 2022), at 1. NCLC has noted that because zip code or census tract data is not available, it is difficult to assess whether similar disparities exist in Massachusetts. *Id.*

36. The energy burden for many low-income households in Massachusetts may be significant. According to the Metropolitan Area Planning Council, using U.S. Department of Energy Low-Income Energy Affordability Data, the average energy burden per household in Massachusetts is 3 percent, but for low-income populations, it rises to approximately 10 percent. “In certain neighborhoods, energy burden is as high as 31 percent.” Metropolitan Area Planning Council, *Reducing Energy Burden: Resources for Low-Income Residents*. The SWG acknowledges that in the most recent electric base rate distribution case, D.P.U. 22-22, *NSTAR Electric Company*, the DPU imposed an energy burden reporting requirement and signaled that it would in the future expect the utility to develop strategies to enhance customer support. D.P.U. 22-22, at 472–73. The DPU stated: “The Department expects that the Company will provide a detailed household economic burden index analysis evaluating residential energy electric utility customer bills as percentages of household income by county and to provide the summary results of a detailed household burden index analysis by, at least census, block group.” *Id.*, at 472. The DPU also indicated that it would also require the same type of reporting for the other electric distribution companies operating in the Commonwealth (National Grid and Unitil).

37. This perception, that petitioners have an advantage over other stakeholders, may also be strengthened when close family members of decision-makers appear to have close relationships (including through employment, board membership, charitable contributions, and political support) with companies that frequently appear before the EFSB or DPU or with firms that work closely with companies that frequently appear before the agencies.

38. M.G.L. c. 25, § 3 bars commissioners from owning, being employed by, or owning stock in any regulated industry company. State conflict of interest laws include a one-year “cooling off period” for former commissioners when they leave state employment, barring commissioners from appearing before the DPU/EFSB, or another agency in connection with matters under their authority in the 2 years prior to leaving state employment; as well as a “forever ban” on receiving compensation related to particular matters in which they participated. *See* M.G.L. c. 268, § 5. The SWG is not aware of any violations of this law.

39. *See* M.G.L. c. 30A, §§ 18, 20; 980 C.M.R. § 2.04. The definition for “meeting” in M.G.L. 30A, § 18 states that “meeting” shall not include: “a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it[.]”

40. While commissioners may infrequently attend evidentiary hearings, it is rare that they ask questions during evidentiary hearings, instead often relying on staff to do so. *See* M.G.L. c. 25, § 4.

41. M.G.L. c. 25, § 4 ("The chairman [ ] shall preside at all hearings at which he is present, and shall designate a commissioner to act as chairman in his absence. [ ] any such matter may be heard, examined and investigated by an employee of the department designated and assigned thereto by the chairman with the concurrence of one other commissioner. [ ] For the purposes of hearing, examining and investigating any such matter such employee shall have all the powers conferred upon a commissioner by section five A [of M.G.L. c. 25][.]").

42. For example, according to a guide to public hearings for Connecticut's Public Utilities Regulatory Authority, commissioners discuss the issues raised during hearings/proceedings in meetings that are open to the public. Public Utilities Regulatory Authority, *Guide to Public Hearings* (May 2022); *see also* Delaware Public Service Commission (PSC), *About the Public Service Commission*, stating that the Commission makes decisions at formal meetings that are open to the public. In Maine, one or more members of the PUC usually attend public hearings. *See* Maine Office of the Public Advocate, *Participating in a Public Hearing*. In California, for example, the California PUC invites comments on topics over which the Commission has jurisdiction at their regularly scheduled voting meetings. California PUC, *Participating in a Voting Meeting: The Public's Voice Matters*.

43. *See* 220 C.M.R. § 1.07(2) ("In the event that a majority of the Commission have neither heard nor read the evidence and their decision is adverse to any party other than the Department, then if any party in advance of hearing so requests in writing, such decision shall be made only after a tentative or proposed decision is delivered or mailed to each party.").

44. M.G.L. c. 164, § 69H requires one public member to be experienced in labor issues. Labor issues are clearly relevant for infrastructure and facility development, however, the SWG notes that having a public member with experience in a range of labor-related issues, including workforce development as well as diversity in the energy development industry, would be a beneficial addition to the Siting Board. It is important that all Siting Board members fairly consider all of the benefits and burdens of a proposed project.

45. M.G.L. c. 164, § 69H.

46. Under M.G.L. c. 164, § 69H: "The public members shall serve on a part-time basis, receive $100 per diem of board service, and shall be reimbursed by the commonwealth for all reasonable expenses actually and necessarily incurred in the performance of official board duties."

47. 980 C.M.R. § 1.08(2).

48. As discussed in more detail below, the EFSB should amend its regulations to specify when project changes must be submitted for Siting Board review and approval.

49. For example, those who take the time to offer comments in a proceeding, whether in person, virtually, or by submitting written comments, should know that they have been heard and that their input has been considered by decision-makers and by petitioners. In its outreach efforts, the SWG received feedback that community members may become frustrated and less likely to participate in the future because they do not believe their input has an impact on decisions, and that many believe that their input is disregarded. Similar sentiments were voiced during the Roundtable. *See*, e.g., D.P.U. 21-50, PLAN Comments, at 2; Conservation Law Foundation Comments, 1, 2; GreenRoots Presentation, at 5.

50. See the discussion related to extending comment deadlines in the sections, "Improving Public Hearings, Evidentiary Hearings & Public Meetings" and "Recommendations Related to Adjudications."

51. MassDEP's process to develop a response to comments document provides a good example for the DPU and EFSB to emulate. That process involves (1) collecting and compiling all comments in one document and posting all comments on DEP's website; (2) compiling a list of all commenters by name and organization (individuals may comment without affiliation) and providing a way to distinguish them (e.g., using an organization's acronym or if there are many hundreds of comments, using a number or alphabetical identification); (3) grouping comments by theme, topic, or issue, and separating those that support an idea or policy from those that do not, and noting whether revisions or suggestions are included in the comment; and (4) responding to each unique comment or identical types of comments and noting at the end which party/parties submitted the comment (e.g., "the following groups support DEP's regulation."). The final response to comment document may also include a summary of the agency's action and a summary of the public comment process, and the full response to comments document will be posted on the DEP website when the final policy or regulation is posted. An example of a response to comment document can be found at: Response to Comment on Amendments to 310 C.M.R. § 7.75 Clean Energy Standard (July 2020).

52. 220 C.M.R. § 1.06(5)(a) ("The hearing shall be conducted by a presiding officer who shall be the Commission Chairman, a Commissioner designated by the Chairman, or a hearing officer designated by the Commission."); 980 C.M.R. § 2.05(3) ("The Chairman of the [DPU] may appoint Board staff to assist the Board in performing its functions" including "conducting adjudicatory, rulemaking, or public comment hearings; and rendering tentative decisions[.]").

53. *See* other sections, including the section, "Reforming the DPU's & EFSB's Approach to Public Engagement."

54. 220 C.M.R. § 1.07(2).

55. The Partnership for Southern Equity defines energy equity as "the fair distribution of the benefits and burdens of energy production and consumption." Lawrence Berkeley National Laboratory (C. Farley, J. Howat, J. Bosco, et al.), *Advancing Equity in Utility Regulation*, Future Electric Utility Regulation, Report No. 12 (Nov. 2021). In its Energy Justice Workbook, the founders of the Initiative for Energy Justice (IEJ) state: "Energy justice refers to the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on those historically harmed by the energy system ('frontline communities')." IEJ, *The Energy Justice Workbook* at 9. IEJ was founded by Shalanda H. Baker, Subin DeVar, and Shiva Prakash.

56. With regards to training and resource material on energy justice, IEJ's Energy Justice Workbook provides an overview of energy justice and discusses the connection with environmental justice, procedural justice, and distributive justice. The workbook additionally provides an energy justice scorecard and examples of how the scorecard can be used to evaluate energy policies. The Energy Equity Project, housed at the University of Michigan, published a report in 2022 that discusses metrics and measurements of energy equity, compiles best practices, and offers resources that can be used to implement best practices. *See generally*, Energy Equity Project, *Energy Equity Framework: Combining Data and Qualitative Approaches to Ensure Equity in the Energy Transition*, University of Michigan – School for Environment and Sustainability (2022).

57. 980 C.M.R. § 1.08(2).

58. Although ultimate decisions on cost recovery for utility spending will be decided by the DPU, the Siting Board is required to implement applicable provisions of the law "so as to provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost." M.G.L. c. 164, § 69H. Further, the Board "shall review the need for, cost of, and environmental impacts of" facilities under its jurisdiction. *Id.*

59. 980 C.M.R. § 1.09(1) states: "A party may, at any time before the Board renders a final decision, move that the hearing be reopened for the purpose of receiving new evidence. The motion should clearly show good cause for re-opening the hearing, state the nature and relevance of the evidence to be offered and explain why the evidence was unavailable at the time of the hearing."

60. Opportunities for the DPU and EFSB to provide support for community members who want to gain knowledge or advocate for themselves are discussed in the section, "Reforming the DPU's & EFSB's Approach to Public Engagement," and include the recommendation that the agencies establish an Office of Public Participation.

61. One recent proceeding, NSTAR Electric Company's base rate case, D.P.U. 22-22, effectively demonstrates the magnitude of costs involved in hiring attorneys and experts. In D.P.U. 22-22, the DPU accepted a final rate case expense of $3,108,191 for costs related to legal expenses, rate case support, and expert consulting services. D.P.U. 22-22, at 242, 250 (Nov. 30, 2022). This amount will be recovered from rate payers over a five-year period, with recovery of $621,638 per year over five years. *Id.* Pursuant to M.G.L. c. 12, §11E(b), the Attorney General is authorized to spend up to $150,000 per proceeding, which is paid for by the party to the proceeding but is then passed on to ratepayers. The DPU may also approve costs higher than $150,000 based on exigent circumstances. The DPU has approved amounts higher than $150,000 in rate case proceedings as well as in other instances. For example, in D.P.U. 22-22, the DPU approved the Attorney General to expend $550,000, and in D.P.U. 20-80, up to $350,000. D.P.U. 22-22, *Order on Attorney General's Revised Notice of Retention of Experts and Consultants*, at 6 (Feb. 17, 2022); D.P.U. 20-80, *Investigation by the DPU on its own Motion into the role of gas local distribution companies as the Commonwealth achieves its target 2050 climate goals*, *Order on Attorney General's Revised Notice of Retention of Experts and Consultants*, at 9 (June 29, 2021).

62. Recommendations on intervenor funding are addressed in the section, "Reforming the DPU's & EFSB's Approach to Intervention."

63. Depending on the type of proceeding, these opportunities may include workshops, technical information sessions, Question & Answer sessions, and working groups. Some of these opportunities are discussed in the section, "Recommendations Related to Adjudications."

64. The SWG acknowledges that the DPU has stated that it modified its notice procedures to include a high-level plain language summary of technical information as well as bill impacts. D.P.U. 21-50, *Interlocutory Order and Draft Policy on Enhancing Public Awareness and Participation ("Interlocutory Order")* at 7 (Dec. 28, 2022).

65. See the section, "Reforming the DPU's & EFSB's Approach to Public Engagement," for additional discussion.

66. Properly designated confidential materials would be excluded from public availability but should be made available under non-disclosure and other confidentiality agreements to intervenors.

67. Recommendations related to public notice are addressed in the section, "Improving Public Hearings, Evidentiary Hearings & Public Meetings."

68. For example, the California and Hawaii PUCs provide Executive Summaries for certain orders. *See*, e.g., California PUC, *Order Instituting Rulemaking to Continue the Development of Rates and Infrastructure for Vehicle Electrification*, Docket 18-12-006, at 4 (June 30, 2022); Hawaii PUC, *Summary of Phase 1 Decision & Order Establishing a PBR Framework*, Docket 2018-0088 (May 23, 2019).

69. Recommendations related to language access are included in the section, "Reforming the DPU's & EFSB's Approach to Public Engagement."

70. For example, the California PUC offers Informational Webinars on a variety of topics, including *Managing Utility Bills: Reducing Disconnections and Improving Affordability, Natural Gas 101 and Policies for a Just Transition, and Understanding and Interacting with the CPUC*. *See* California PUC, *Events and Meetings*. The SWG recognizes that the EFSB has provided "The Energy Facilities Siting Handbook."

71. For example, the website of the Hawaii PUC includes pages titled *News Releases & Announcements*, with summaries as well as links to access filings. *See* Hawaii PUC, *News Releases and Announcements*.

72. The Vermont PUC, for example, offers a Motion to Intervene Form. *See* Vermont PUC, *Motion to Intervene Form*.

73. *See* Massachusetts Court System, *Court forms by topic*.

74. Recommendations related to opportunities for stakeholders to interact with agency staff and decision-makers are further discussed in the section, “Reforming the DPU’s & EFSB’s Approach to Public Engagement.”

75. The SWG’s outreach indicated that the impact of agency decisions on the daily lives of stakeholders is not always readily apparent.

76. The SWG’s survey results indicate that 61% of respondents would like to receive information about energy through a connection with a community-based organization. The City of Boston recommends that the EFSB provide a toolkit as a resource for community-based organizations in its Comments filed on September 10, 2021, in EFSB 21-01: “The toolkit would serve two purposes: (1) introducing community-based organizations to the proceeding and (2) lowering the barrier for them to propagate the message about why it is important, and what the timeline is for intervening. Targeted outreach, combined with additional resources that lower the barrier to engagement, would help the Siting Board reach new audiences.”

77. For example, the Hawaii PUC allows people to subscribe to dockets so they will receive all filings. The SWG notes that the DPU has allowed non-parties to request being added to the service list. This should be an option for all proceedings and should not require stakeholders to email the hearing officer, but should be an opt-in option on the website. The SWG also notes that, in its September 10, 2021 Comments, the City of Boston recommended that the EFSB allows constituents to sign up for information by utility, topic, docket number, search results, or other criteria, and suggested that it would be helpful if people could create a user profile to save and manage their preferences. City of Boston Comments, at 5.

78. These notifications could be similar to the bi-weekly Environmental Monitor, but filtered to discuss proceedings with localized impacts or with broad applicability state-wide.

79. The SWG recognizes that these issues are being discussed in D.P.U. 21-50 and EFSB 21-01.

80. Properly designated confidential materials would be excluded from public availability but should be made available under non-disclosure and other confidentiality agreements to intervenors.

81. 220 C.M.R. §§ 1.04(1)(b)9, 1.06(4)(a).

82. 980 C.M.R. § 1.04(3)(c). Emphasis added.

83. 61% of respondents to the SWG’s survey indicated that they wanted to receive information about energy issues through their connection with a community-based organization; 48% said through a newspaper; 31% said through television; 27% said through radio; 26% said through Facebook; 14% said through bulletin boards at neighborhood parks, playgrounds, sporting events, etc.; and 12% said through a community center.

84. Related barriers and solutions are also discussed in the section, “Improving Information & Knowledge Accessibility.”

85. *See* *Damnesia*, at 122 (“[P]romoting public engagement fosters transparency and accountability in government, whereby a wider base of knowledge and opinions can interact to make informed and inclusive decisions. This participation assists decision-makers in understanding the nature of public opinion and improves decisions by providing relevant and accurate information as well as evidence related to a proposed action.”).

86. The SWG notes that the DPU has stated that it conducted a survey of how other state public utility commissions are addressing public access issues. D.P.U. 21-50, *Interlocutory Order*, at 6.

87. NARUC, Jasmine McAdams, *Public Utility Commission Stakeholder Engagement* (Jan. 2021). The SWG also notes that other entities have also published guides to public participation. *See* U.S. Environmental Protection Agency, *Public Participation Guide*.

88. *Id.*, at 4.

89. Several stakeholders referenced radio and public access television as effective ways to reach people.

90. The SWG recognizes that the DPU is making incremental progress to improve notice requirements and hopes that both agencies can improve the process and establish new protocols in the short-term. On December 28, 2022, the DPU issued its Interlocutory Order in D.P.U. 21-50 noting that public notices in various dockets are now being translated into various languages (*Interlocutory Order*, at 5); notices now often contain a "high-level, plain-language summary of the technical information" (*id.*, at 6); and more expansive outreach tools will be utilized in many dockets (*id.*, at 8). These are important steps for better engaging the public, and more needs to be done.

91. *See* 220 C.M.R. § 1.04 (1)(c); 980 C.M.R. § 1.04 (3)(c).

92. As the City of Boston recognized in their Comments in EFSB 21-01, at 3, filed on September 10, 2021, "[m]any residents receive news and updates through trusted community-based organizations."

93. The SWG acknowledges that the efficacy of different communication methods is being addressed through D.P.U. 21-50, and encourages the DPU to thoroughly consider the effectiveness of different communication methods and to balance these considerations with the costs of the delivery method, which will ultimately be paid by ratepayers (assuming such costs are prudently incurred).

94. For example, the California PUC sends out a monthly newsletter, and the Hawaii PUC's homepage has a "Spotlight" section with short descriptions of select proceedings with links to additional resources. California PUC, Monthly CPUC Newsletter; Hawaii PUC, Homepage "Spotlight" tab. Additional recommendations are discussed in the section, "Improving Information & Knowledge Accessibility."

95. The SWG acknowledges that, in its Interlocutory Order in D.P.U. 21-50, the DPU proposes that petitioners be required to "include with the filing a community outreach plan relevant to the subject matter and geographic scope of the filing and consistent with the level of scrutiny required" by the nature of the filing. *Interlocutory Order*, at 9.

96. The DPU has proposed a Petitioner Outreach Plan in D.P.U. 21-50. D.P.U. 21-50, *Interlocutory Order*, at 9.

97. *See* *Damnesia*, at 122 ("Timing [ ] is critical when examining the ability for the public to engage, as the participation mechanism must be able to affect the process and in turn, the outcome, in order to deliver meaningful social benefits.").

98. Examples include rate changes, energy efficiency plans, grid modernization plans, and electric vehicle programs proposed by utilities.

99. The SWG notes that these proximity thresholds are consistent with protocols for environmental justice populations under Massachusetts Environmental Policy Act Office (MEPA).

100. This recommendation is generally aligned with proposed legislation that, among other things, would require a petitioner to "develop a preliminary project statement about a proposed facility that includes detailed information about the need, public health, environmental, and climate risks and burdens, environmental, energy, economic, and health benefits for communities within five miles of the facility[,]" share the preliminary project statement with key stakeholders, and make adjustments that address environmental justice concerns. S.2113, § 1; H.3187, § 1.

101. The Federal Energy Regulatory Commission (FERC) has an Office of Public Participation that focuses on assisting the public navigate proceedings. *See* FERC, *About OPP*.

102. The SWG notes that municipalities may not have dedicated staff to work on energy and siting related issues and may require assistance to get up to speed or to navigate programs (such as MassSave and Municipal Aggregation).

103. Related recommendations are discussed in the section, "Improving Information & Knowledge Accessibility."

104. The Environmental Justice Council was created pursuant to the 2021 Roadmap Act to advise and provide recommendations to the Secretary of EEA on relevant policies and standards to achieve environmental justice principles.

105. U.S. Census, *2021 ACS 1-Year Estimates Subject Table S1602* (2021). The U.S. Census defines a "limited English speaking household" as follows: "one in which no member 14 years old and over (1) speaks only English or (2) speaks a non-English language and speaks English 'very well.' In other words, all members 14 years old and over have at least some difficulty with English. By definition, English-only households cannot belong to this group."

106. In a February 2019 report that utilized data from the U.S. Census Bureau 2012-2016 American Community Survey 5-year Estimates, the Boston Planning & Development Agency found that: "The largest [limited-English speaking] populations are found in the major urban centers of the Commonwealth—including Boston, Lawrence, Worcester, Lowell, and Springfield. Boston alone is home to 100,000 limited-English speaking adults – 11 percent of all adults in Boston. A high share of the adult population in some Massachusetts cities and towns are limited English speakers. The cities and towns with the highest shares of adults speaking limited English are Chelsea (33 percent), Lawrence (31 percent), Lynn (16 percent) and Everett (16 percent)." The Boston Planning and Development Agency, *Demographic Profile of Adult Limited English Speakers in Massachusetts*, at 3 (Feb. 2019).

107. The report looked at census block groups based on data from the U.S. Census 2020 American Community Survey 5-Year Estimates. *See* Applied Economic Clinic, *Boston Tree Equity Analysis, Prepared on behalf of GreenRoots and Speak for the Trees* (Oct. 2022), at 11.

108. EFSB 21-01, *Comments of Conservation Law Foundation* (Sept. 10, 2021); D.P.U. 21-50, *Comments of Conservation Law Foundation* (Nov. 9, 2021); EFSB 21-01/D.P.U. 21-50, *Post-Roundtable Comments of Conservation Law Foundation* (Sept. 16, 2022).

109. *EEA Environmental Justice Policy*, at 3.

110. *See* M.G.L. 30A, § 10; 220 C.M.R. § 1.03(1); 980 C.M.R. § 1.05. There are several Supreme Judicial Court cases addressing EFSB and DPU decisions on intervention.

111. The DPU and EFSB typically set out the specific scope of a limited participant's status and indicate which filings a limited participant is permitted to make in the order granting Limited Participant Status. These types of decisions are similarly subject to the agency's discretion.

112. *See* D.P.U. 23-08, *Joint Petition of Aquarion Water Company of Massachusetts and Pinehills Water Company, Hearing Officer Ruling on Petition for Limited Participant Status*, (March 2, 2023), at 2 (citing Varney Enterprises, Inc. v. WMF, Inc., 402 Mass. 79 (1988) and D.T.E. 01-36/02-20, *Western Massachusetts Electric Company, Interlocutory Order on Appeal of Hearing Officer Ruling Denying Petition to Intervene*, at 8-10 (2003)).

113. *See* 980 C.M.R. § 1.05(1)(i). The SWG notes that while limited participants do not need to be represented by an attorney, the rights of limited participants are not the same as the rights of full parties to a proceeding.

114. In this case, the EFSB determined that the Boston Residents Group satisfied the requirements of M.G.L. c. 30A, § 10 and 980 C.M.R. § 1.05(c), (d). *NSTAR Electric Company*, EFSB 22-01, *Ruling on Motions to Intervene and Motion to Participate as a Limited Participant* (May 6, 2022), at 8. Pursuant to M.G.L. c. 30A, § 10A, ten or more individuals may intervene in adjudicatory proceedings in which there is damage to the environment, provided the intervention is limited to the issue of damage to the environment and the elimination or reduction of that damage.

115. Environmental Defense Fund (EDF) has identified in state counsel requirements as one of the many barriers to participation for stakeholders who have not historically been represented at commission proceedings. EDF, *Aligning Gas Regulation and Climate Goals: A Road Map for State Regulators* (Jan. 2021), at 14.

116. 980 C.M.R. § 1.05(1).

117. Additional barriers are discussed in the section, "Improving Information & Knowledge Accessibility."

118. Key educational resources would include: lists of previous intervenors, attorneys appearing before the DPU and EFSB, list of expert witnesses, and website links to sample materials such as a petition to intervene, pre-filed direct testimony, comment letter, and brief.

119. Regarding aligning gas regulation with emission reduction goals, an EDF report states that "[i]t is imperative to invite, encourage and enable participation in the regulatory process from disproportionately impacted communities," recognizing that these communities "face greater energy burdens (spending a higher proportion of their income on energy bills) environmental burdens (experiencing greater exposure to pollution from energy infrastructure) and infrastructure burdens (living in areas with older housing stock)." EDF, *Aligning Gas Regulation and Climate Goals: A Road Map for State Regulators* (Jan. 2021), at 14.

120. New York PSC, *Information for Those Interested in Participating in or Monitoring PSC Proceedings*.

121. California PUC-Rules of Practice and Procedure, Article 1.4.

122. Additional recommendations relating to education and capacity building are discussed in the sections, "Improving Information & Knowledge Accessibility" and "Reforming the DPU's & EFSB's Approach to Public Engagement."

123. California PUC, *Public Advisor's Office*.

124. PUC of Texas, *Office of Public Engagement*.

125. FERC, *Office of Public Participation (OPP)*.

126. This recommendation, as well as the recommendation that the EFSB establish an Environmental Justice Advocate position, is also discussed in the section, "Reforming the DPU's & EFSB's Approach to Public Engagement."

127. With regards to the EFSB, this may require updating the Handbook that is already available.

128. For example, the Vermont PUC provides on its website a fillable "Motion to Intervene Form" which is preceded by a brief explanation about what the form is, who can use it, when it should be filed, where it should be sent when completed, what happens after the form is filed, as well as the text of the Commission's intervention rule. *See* Vermont PUC, *Information about this Motion to Intervene Form*.

129. Additional recommendations are discussed in the sections, "Improving Information & Knowledge Accessibility" and "Reforming the DPU's & EFSB's Approach to Public Engagement."

130. NARUC, *State Approaches to Intervenor Compensation* (Dec. 2021). The states listed are Alaska, California, Colorado, Hawaii, Idaho, Illinois, Kansas, Maine, Michigan, Minnesota, New Hampshire, Oregon, Tennessee, Washington, West Virginia, and Wisconsin.

131. California PUC, *Intervenor Compensation Program*.

132. Idaho PUC, *Rules of Procedure of the Idaho Public Utilities Commission*, Rule 161, at 31.

133. Michigan Compiled Laws § 460.6m, Utility Consumer Representation Fund.

134. Minnesota PUC, *How to Intervene*.

135. Oregon PUC, *Intervenor Funding, Low Income and Environmental Justice Community Intervenor Funding*; *see also* Oregon PUC, Letter in Docket No. UM 2276 (Feb. 15, 2023).

136. Washington Utilities and Transportation Commission (UTC), *Participatory Funding Program Guidelines*.

137. PSC of Wisconsin, *Intervenor Compensation*.

138. *See* NARUC, *State Approaches to Intervenor Compensation*, at 4.

139. The SWG notes that utility staff time spent on proceedings is paid for by ratepayers.

140. For many organizations, the timing of when compensation is provided may affect whether or not it can participate as an intervenor.

141. "All of the state programs are funded by utilities, either through a general assessment of the state's utilities or by the specific utility involved in the proceeding in which the intervenor compensation is being sought." NARUC, State Approaches to Intervenor Compensation, at 13.

142. Public hearings at the DPU and public comment hearings at the EFSB take place early in proceedings, often shortly after the petitioner has filed the initial petition and before any discovery has been issued in the proceeding. EFSB regulations state that public comment hearings are "conducted to afford members of the general public an opportunity to comment on that matter. A public comment hearing shall be held as soon as practicable after the commencement of a proceeding." 980 C.M.R. § 1.04(5).

143. *See* *Three Minutes at the Microphone: How Outdated Citizen Participation Laws are Corroding American Democracy*, in *Making Public Participation Legal*, Compiled by the Working Group on Legal Frameworks for Public Participation (October 2013). The first article in this compilation argues that the three-minute opportunity for citizens to ask questions or make comments at typical public meetings is an outdated format that fails to take advantage of participatory meeting formats and dynamic online tools, and recommends that public participation laws should "support newer, more meaningful forms of citizen engagement." *Id.*, at 5.

144. While transcripts of public hearings are typically provided on the webpage for each docket, and a transcript will capture the words but not the tone or feelings communicated, it is also not clear to stakeholders whether decision-makers review transcripts of public hearings.

145. EFSB regulations state that "[e]videntiary hearings will be held when required by law or at the discretion of the presiding officer in order to allow Board staff and parties to examine witnesses with respect to the content of their pre-filed testimony and any responses to relevant information requests." 980 C.M.R. § 1.06(6).

146. For example: the recent Eversource rate case, D.P.U. 22-22, included 14 days of hearings; the three electric vehicle proceedings for the three electric distribution companies in the Commonwealth (Eversource, National Grid, and Unitil), D.P.U. 21-90, 21-91, and 21-92 included a total of eight days of hearings; and the East Eagle Certificate Petition, EFSB 22-01, included eight days of hearings.

147. The SWG notes that transcripts are posted on docket webpages for certain proceedings, but not for other proceedings, and it is unclear what criteria is used to make this determination.

148. Transcript indexes are useful when someone is familiar enough with the issues to know which specific search terms to use.

149. These meetings are subject to the Commonwealth's Open Meeting Law, M.G.L. c. 30A, §§ 18-25.

150. For example, although the EFSB webpage for 22-01 states that recordings of Siting Board meetings will be posted on the agency's YouTube channel after the meeting, as of January 13, 2023, the recordings of the November 29, 2022, and January 3, 2023 Board meetings did not appear to be available.

151. The agencies may want to consider having a third-party from EEA's Director of Environmental Justice's Office or a professional facilitator facilitate this portion of the meeting for some types of projects.

152. Additional recommendations related to language access are discussed in the section, "Reforming the DPU's & EFSB's Approach to Public Engagement."

153. The SWG notes that at least one of the public hearings on EEA's Draft Environmental Justice Strategy required computer access for language interpretation services. Language interpretation should be available by phone and should not require a computer or access to the internet.

154. *See* 220 C.M.R. § 1.10(1), stating: "All unsworn statements appearing in the record shall not be considered as evidence on which a decision may be based." *See also* 980 C.M.R. § 1.04(5) (stating, "Comments made at a public comment hearing are not deemed to be evidence.").

155. This recommendation applies to all public and evidentiary hearings.

156. This recommendation is specific to the Siting Board.

157. Additional recommendations related to training for Board members are discussed in the section, "Improving Transparency & Accountability."

158. DPU – 2021 Annual Report, at 27. Pursuant to M.G.L. c. 30A, § 1(1), "adjudicatory proceeding" means "a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing." M.G.L. c. 30A, §§ 10, 10a, and 11 further define and describe adjudicatory proceedings.

159. M.G.L. c. 25, § 5; M.G.L. c. 30A, §§ 10, 14; *see* Save the Bay v. Dept. of Publ. Util., 366 Mass. 667, 673 (1975) ("for purposes of establishing standing to seek review under M.G.L. c. 25, § 5, a petition must allege either that the Department did in fact exercise its discretion pursuant to M.G.L. c. 30A, § 10, to admit the petitioner as an intervener; that as matter of law the petitioner was entitled to intervene before the Department and was improperly denied that right, or that the petitioner is a person who as matter of constitutional or statutory law was entitled to participate fully in the proceedings and who on proper notice did make an appearance in said proceedings.").

160. M.G.L. c. 30A, § 11. Some adjudications may not include all of these elements, as parties may waive the right to an evidentiary hearing, or may decide not to file discovery or testimony.

161. M.G.L. c. 30A, § 11.

162. *See*, e.g., M.G.L. c. 30A, § 10; M.G.L. c. 164, §§ 69I, 69J, 69J ¼, 69M, 94.

163. These barriers are discussed in the section, "Reforming the DPU's & EFSB's Approach to Intervention," and include barriers associated with securing full Party Status, hiring and paying for an attorney and expert/s, as well as strict procedural requirements.

164. For example, in D.P.U. 21-90, the DPU distinguished between official and unofficial service lists, and as a courtesy to interested individuals, distributed filings to people on the unofficial service list if they were not the counsel of record in the proceeding. While this made the proceeding more easily accessible, people would have to know about the specific memorandum where that process was set out. *Electric Vehicle Infrastructure Program and Electric Vehicle Demand Charge Alternative Proposal*, Jan. 20, 2022 Memorandum.

165. In the case of D.P.U. 20-145, *Joint Petition of NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil, for Approval of Revised Model Solar Massachusetts Renewable Target Program Tariff*, when the DPU reviewed a petition for approval of a revised model Solar Massachusetts Renewable Target Tariff, the DPU received several comments after the applicable public comment deadlines. These were considered improper *ex parte* communications and were not considered as part of the record.

166. All of the recommendations in this section assume that other recommendations discussed in this report about procedural changes (e.g., language access, times for meetings, etc.) are in place.

167. On October 31, 2022, the Hawaii PUC issued an order in Docket No. 2019-0323 that used some of the techniques we discuss here. *See* Docket No. 2019-0323, *Instituting a Proceeding to Investigate Distributed Energy Resource Policies Pertaining to The Hawaiian Electric Companies*, Decision & Order No. 38680.

168. As the DPU explained in D.P.U. 07-50-B, "[t]here are fundamental distinctions between an adjudication and a generic proceeding. [ ] [I]n generic proceedings, the Department proposes policies, invites participation and input from interested persons, and adopts final policies that will be generally applied in future adjudications." D.P.U. 07-50-B, at 21. The New York PSC has recently utilized generic policy proceedings to address issues such as affordability. Case 14-M-0565/Case 20-M-0266, *Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low-Income Utility Customers/Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service*. The North Dakota PSC has instituted a proceeding on the electrification of transportation. Case No. PU-22-147, *PSC Electrification of Transportation Investigation*.

169. The EFSB and DPU are authorized to adopt rules and regulations. See M.G.L. c. 164, § 69H.

170. See the California PUC's webinar, *Understanding and Interacting with the CPUC*.

171. *See* 2021 Roadmap Act, § 77.

172. In its outreach efforts, the SWG heard from some stakeholders that information should not be provided solely by a project proponent or a utility, but should include DPU/EFSB staff or experts, as well as experts identified by community members.

173. See other sections with recommendations related to accessibility, location, timing, and language access.

174. Technical Conferences are currently utilized within DPU proceedings after adjudicatory proceedings have begun, and attendance is typically limited to those who have been granted the right to intervene. "Technical Sessions" are defined in the EFSB's regulations as "a meeting during which experts may provide detailed or written information in order to facilitate understanding of complex technical issues." 980 C.M.R. § 1.09(5). The Federal Energy Regulatory Commission also holds Technical Conferences on a variety of issues outside of specific docketed proceedings that inform the subsequent work of the Commission.

175. D.P.U. 07-50, *Investigation by the DPU on its own Motion into Rate Structures that will Promote Efficient Deployment of Demand Resources, Vote and Order Opening Investigation*, at 3 (June 22, 2007). The DPU similarly opened a proceeding in D.P.U. 09-03 to investigate tariffs to govern net metering. Through this proceeding, the DPU approved a model net metering tariff and revisions to the Model Interconnection Tariff. In its opening order, the DPU stated that it proposed to address net metering issues in a consistent manner across all distribution companies "through a broadly-represented stakeholder process that includes distribution companies, stakeholders and other interested persons." D.P.U. 09-03, *Investigation by the DPU to Develop Tariffs Governing Net Metering*, at 2 (March 6, 2009).

176. The SWG acknowledges that other non-adjudicatory proceedings are on-going, include the future of gas proceeding, D.P.U. 20-80.

177. The DPU's rulemaking regulations are found in 220 C.M.R. § 2.0.

178. In D.P.U. 08-75, the DPU initiated rulemaking pursuant to the Green Communities Act to adopt rules and regulations necessary to implement net metering provisions. D.P.U. 08-75, Net Metering. The DPU held a technical conference and solicited stakeholder comments before it began rulemaking and filed its proposed regulations. The DPU also held numerous technical conferences in D.P.U. 16-64 relating to net metering regulatory changes to implement recently-enacted legislation. D.P.U. 16-64, Investigation of the DPU, on its own Motion, Instituting an Emergency Rulemaking pursuant to M.G.L. c. 164, §§ 138, 139; M.G.L. c. 30A, § 2; 220 C.M.R. §§ 2.00 et seq.; and Executive Order 562, to Amend 220 C.M.R. § 18.00 et seq. The DPU recently initiated a rulemaking proceeding to amend its Net Metering Regulations to implement the net metering provisions of the 2021 Roadmap Act. D.P.U. 22-100, Investigation of the DPU, on its own motion, instituting a rulemaking pursuant to M.G.L. c. 30A, § 2, and 220 C.M.R. § 2.00, to amend 220 C.M.R. § 100.00 and 220 C.M.R. § 101.00.

179. EFSB 09-RM-1, *Rulemaking to Amend the Regulation Found at 980 CMR 1.01(4)(e) in Order to Establish Exclusions from Siting Board Jurisdiction For Certain 'Facilities' as Defined Therein*.

180. *See* 2021 Roadmap Act, §§ 15, 60.

181. MassDEP's regulation capping CO2 emissions from power plants, 310 C.M.R. § 7.74, provides an example of another agency's rulemaking process. MassDEP's website provides information about stakeholder meetings as well as the draft regulations, public comments, and the final regulation. DEP first promulgated this rule in 2017 and it has been updated twice. The history of the rulemakings including public meetings, and draft and final versions of the regulations are grouped together on DEP's website so viewers can track the history of the regulations. Each rulemaking includes technical support documents to explain the draft regulation, and a response to comments document that is compiled and published with the final regulation. DEP strives to ensure these documents use plain language and the agency has been working to offer more translation services in their documents and public hearings. The response to comment document contains summaries of all comments, with similar ones grouped together, and includes a list of all commenters linked to those who commented on specific aspects of the draft regulation. *See* DEP, *Electricity Generator Emissions Limits (310 C.M.R. 7.74)*.

182. *See* SB 89 (Ca. 2000).

183. *Clean Energy and Pollution Reduction Act of 2015*, SB 350 (Ca. 2015). This statute also requires the California PUC to study the barriers to access (and strategies to overcome the barriers) for renewable energy, energy efficiency, and weatherization for low-income customers. The statute further directs the California PUC to investigate barriers to contracting with small local businesses located in disadvantaged communities.

184. SB 512 (Ca. 2016).

185. *See* California PUC, *CPUC Adopts Updates to Environmental and Social Justice Action Plan* (April 7, 2022).

186. *See* California PUC, *Attachment A: SGIP Equity Resiliency Eligibility Matrix – Residential Customers, version 3*.

187. *See* California PUC, *Updates to the Energy Commission Energy Equity Indicator Tools and Report* (July 19, 2019).

188. *See* HB 21-1266 (Co. 2021).

189. *See* SB 21-103 (Co. 2021).

190. *See* SB 21-272 (Co. 2021).

191. *See* Colorado PUC, Proceeding No. 22M-0171ALL, *Implementation of SB 21-272* (April 19, 2022).

192. *See* Hawaii PUC, Docket No. 2022-0250, Order No. 38759, *Instituting A Proceeding to Investigate Energy Equity*, Dec. 13, 2022, at 1-2.

193. Hawaii PUC, Docket No. 2022-0250, Order No. 38759, at 4.

194. Hawaii PUC, Docket No. 2022-0250, Energy Equity Docket Opening Conferences.

195. *See* Oregon PUC, *Equity and Impacted Communities* (Nov. 15, 2022).

196. *See* Oregon PUC, *Climate and Clean Energy Agenda*.

197. *See* HB 2475 (Or. 2021).

198. *See* Oregon PUC, Docket No. UM 2211.

199. *See* Washington UTC, *Clean Energy Implementation Plans*.