



City of Boston  
Environment



City of Boston  
Mayor Michelle Wu

Rick Collins  
Department of Energy Resources  
100 Cambridge Street, Suite 900  
Boston, MA 02114

October 17, 2025

By Electronic Submission to [DOER.Siting.Permitting@mass.gov](mailto:DOER.Siting.Permitting@mass.gov)

**Re: DOER Regulations Governing Consolidated Local Permitting**

To Director Collins,

Thank you for the opportunity to provide written comments on the draft regulations, *Small Clean Energy Infrastructure Facility Siting and Permitting* (225 CMR 29.00) filed by the Department of Energy Resources (“Department”) on September 12, 2025. The draft regulations are one part of the many changes to statewide siting and permitting of energy infrastructure resulting from the 2024 Climate Act.<sup>1</sup> The City of Boston (“City”) appreciates the Department’s commitment to facilitating the Commonwealth’s clean energy transition and supporting the role of municipalities in the siting of critical infrastructure. The thoughtful siting of small clean energy infrastructure facilities aligns with the City’s climate and clean energy goals. The City respectfully submits the following comments on the draft regulations.

The 2024 Climate Act established a new consolidated permit process for local government siting of small clean energy infrastructure facilities and granted Department the authority to “establish standards, requirements, and procedures,” including uniform public health, safety, and environmental standards, a common application, pre-filing requirements, and “standards for applying site suitability guidance developed by the executive office of energy and environmental affairs.”<sup>2</sup> The City appreciates that the Legislature recognized the importance of delegating small clean energy infrastructure siting and permitting to local governments, as having the best understanding of local needs and acting as a crucial link between community and development. In turn, the Department has the important responsibility of developing such standards consistent with the 2024 Climate Act and in a way that promotes and supports local governments’ ability to execute the consolidated permit process. The City has three primary concerns with the draft regulations: 1) the usurpation of local government decision making in the site suitability assessment process; 2) the Regulatory Circuit Rider resolving disputes between applicants and local governments; and 3) the reliance on guidelines where regulations are necessary.

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<sup>1</sup> *An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers* (“2024 Climate Act”), St. 2024, c. 239.

<sup>2</sup> *Id.* at § 23, codified at G.L. c. 25A, § 21.



The City is concerned that the site suitability assessments do not allow local governments to make any determination related to site suitability. The statute provides, the Executive Office of Energy and Environmental Affairs (“EEA”) “shall establish and periodically update a methodology for determining the suitability of sites” for clean energy infrastructure facilities and the Department “shall establish standards, requirements and procedures governing the siting and permitting of small clean energy infrastructure facilities by local governments that shall include...applying site suitability guidance developed by [EEA] ... to evaluate the social and environmental impacts” of proposed facilities.<sup>3</sup> Put simply, EEA shall develop the guidance and the Department shall establish the standards for how local governments should apply the EEA guidance. Instead, the methodology described in EEA’s guidance and in the draft regulations subsection 29.07 do not appear to allow local governments to make any determination related to site suitability.<sup>4</sup>

The draft regulations and guidance require that the applicant estimate and submit a site suitability score to a third party, selected by the Department and EEA, to review and determine the final site suitability score to be submitted to the local government as part of the complete consolidated permit application. If the local government disagrees with the site suitability report, it may submit a request to the Department to review and make a final determination that is “final and not subject to appeal.” This language is in direct conflict with the statutory language providing, “[t]he only decision of a local government that is subject to further review is the single, final decision issued by the local government that includes all individual decisions necessary for a project to proceed with construction...which shall be reviewable by a de novo adjudication of the permit application by the director of the energy facilities siting division of the department of public utilities.”<sup>5</sup> The 2024 Climate Act reimagined how electric infrastructure is to be sited in the Commonwealth and the Legislature recognized the value in having local governments, that are most familiar with the needs of its community, be responsible for the siting and permitting of small infrastructure. We do not believe it was the intent of the 2024 Climate Law for the Department to substitute its judgment on any part of a consolidated permit application for that of a local government. When we consider the rich information from planning and community engagement that we will bring to the site evaluation process, we do not see a process described that predictably accounts for our community’s voice.

The City recognizes that many local governments may not have the capacity to conduct site suitability assessments for individual projects; however, the default assessment should not circumvent local processes. The City recommends amending the application of the site suitability criteria to allow the local government to make a final determination and allow local authorities to opt into using a third party reviewer selected by EEA and the Department if it does not have the capacity to complete the assessment. This approach would be consistent with

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<sup>3</sup> 2024 Climate Act §§ 5, 23, codified at G.L. c. 21A, § 30 and c. 25A, § 21, respectively.

<sup>4</sup> The City recognizes that the Executive Office of Energy and Environmental Affairs is responsible for the Draft Guidance on Site Suitability Assessments and plans to submit additional comments through the respective public comment process.

<sup>5</sup> 2024 Climate Act § 23, codified at G.L. c. 25A, § 21.



subsection 29.10(2)(a) where a local government may request the Director of the Energy Facilities Siting Board to review a consolidated local permit application where the local government “lacks the resources, capacity or staffing to review.”

In addition to the foregoing, the City is concerned about the role of a “Regulatory Circuit Rider,” employed by the Department to advise applicants on the local government’s consolidated permitting process and in resolving disputes between applicants and the local government. While many of the base considerations for the local government process will be a direct result of these regulations, there may be additional standards or procedures established by the local government (for example, standards the City determines to be reasonably necessary to protect the public health, safety, or welfare pursuant to subsection 29.06(2)) that the Department would not be best-positioned to advise an applicant on or resolve a dispute regarding. Again recognizing that some local governments might prefer this approach due to lack of resources, the City recommends that the regulations provide the Regulatory Circuit Rider only to the applicants within local governments where said local government has determined it is appropriate to use their services.

Finally, the City is concerned that the draft regulations’ reliance on guidelines to define procedural and substantive requirements that significantly affect the rights of the public will impair the City’s ability to lawfully execute the consolidated permitting process. Since the City’s process will be governed by these regulations, any dispute over the process will become a dispute over the validity of these regulations. Therefore, it is critical that the Department develop unassailable regulations. Our understanding, from as recently as *Attorney General v. Town of Milton*, 495 Mass. 183 (2025), is that guidelines should be developed to clarify details on implementation or provide administrative direction, but cannot create binding legal obligations or expand regulatory requirements.

The effectiveness and legality of these regulations is critical to the success of each local government’s ability to efficiently and effectively permit small clean energy infrastructure. As currently drafted, several referenced guidelines in the regulation appear to establish enforceable standards and conditions that we believe would be better within the regulation itself. These guidelines include: *Guideline on Public Health, Safety, and Environmental Standards*; *Guideline on Minimization and Mitigation Measures*; and the *Guideline on Common Conditions*. The *Guideline on Public Health, Safety, and Environmental Standards* will include “setback requirements, zoning criteria, compliance monitoring, discharge controls, erosion and runoff prevention, monitoring impacts on abutting properties, contamination and remediation.” The City urges the Department to avoid the question of whether it is permissible to regulate by guideline and instead include the substantive information and standards that is currently proposed to be in guideline in the regulations themselves. The current approach increases legal risk for local governments and could lead to delays in delivering effective local government permitting.

The City respectfully requests the Department take the above concerns into consideration and re-release the draft regulations inclusive of all standards and requirements that local governments and applicants will be required to comply with. While the Department is revising



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Mayor Michelle Wu

the draft regulations, the City encourages the Department to consider ways in which deferring to local governments to develop their own definitions for terms that vary by type of municipality advances our shared goals.<sup>6</sup>

Thank you for your consideration of the City's comments on the Department's draft regulations, *Small Clean Energy Infrastructure Facility Siting and Permitting*. Should you have any questions about these comments, please do not hesitate to contact me at (617) 635-0031 or [Oliver.SellersGarcia@boston.gov](mailto:Oliver.SellersGarcia@boston.gov).

Sincerely,

Oliver Sellers-Garcia  
Green New Deal Director, Office of Mayor Michelle Wu  
Commissioner of the Environment Department, City of Boston

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<sup>6</sup> For example, the "Key Stakeholders" definition includes residents and organizations within one mile of a facility. In Boston and other dense, urban environments, a one-mile radius might not make the most sense. Taking City Hall as a discrete example, a one-mile radius includes ten different neighborhoods of Boston. This is another example of how local governments are best positioned to make decisions based on local dynamics and needs.