



January 9, 2018

Matthew A. Beaton
Chairman, Energy Facilities Siting Board
Secretary, Executive Office of Energy and Environment
One South Station
Boston, MA 02110

Re: EFSB 14-04/D.P.U. 14-153/14- 154

Dear Secretary Beaton,

The Conservation Law Foundation (CLF), the Lawyers' Committee for Civil Rights, and Economic Justice (Lawyers' Committee), and GreenRoots write to express our dismay of the inadequate and exclusionary use of interpretation services at the November 30, 2017 Energy Facilities Siting Board (EFSB or the Board) meeting to approve the Tentative Decision on a proposal by NSTAR Electric Company d/b/a Eversource Energy (Eversource) to construct and operate two new 115-kilovolt underground electric transmission lines in Everett, Chelsea, and East Boston and an above-ground electric substation in East Boston entitled East Eagle Reliability Project (the Project).

Despite ample notice about need from community stakeholders, available interpretation services were plainly inadequate. The interpretation provided was limited and solely for the benefit of those presiding or presenting, not for the community members attending the hearing who sought to learn about the Project, hear EFSB's decision, and understand how it will impact their daily lives. By providing inferior interpretation EFSB effectively cut off meaningful access to community participation in the hearing, robbed constituents of the ability to understand local energy infrastructure and environmental burdens, and failed its duties under existing law and policy to (a) not discriminate based on national origin or English language proficiency and (b) provide effective access for those with Limited English Proficiency ("LEP").

Law and Policy Governing EFSB Proceedings Title VI

Title VI of the Civil Rights Act of 1964, Title VI regulations and state law prohibit discrimination based on national origin.¹ The application of discrimination protection to

¹ See 42 U.S.C.A. § 2000d; see also U.S. Department of Justice *"Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency"* (2002) (LEP Guidance).

LEP individuals was further clarified in Executive Order 13166 (65 FR 50121) issued in 2000. Executive Order 13166 specifically addresses challenges faced by those with LEP and seeks to ensure that those with LEP have meaningful access to government agencies and programs. Legal protection for those with LEP were further bolstered by Executive Order 526 which *requires* state agencies to develop and implement a plan to provide services to persons with LEP, ensuring meaningful access to state programs, services and activities. These legal developments and protections make clear that it is impermissible for government actors, such as the EFSB to discriminate based on national origin by failing to provide, or providing substandard interpretation services.

Language Access Policy and Plans

The Office of Access and Opportunity Language Access Policy and Implementation Guidelines (the Bulletin) outline that it

“is the policy of the Commonwealth that programs, services and activities that executive branch agencies normally provide in English be accessible to non-English speakers and LEP persons, pursuant to these Guidelines. In furtherance of this policy, the Commonwealth’s executive branch agencies shall take all practical and reasonable steps to provide non-English speakers and LEP persons with meaningful access to services, programs, and activities, and shall work to ensure that such access is not inferior or substantially delayed.”²

As directed by the Bulletin, implementation of the policies articulated in the Bulletin are to be effectuated through the development by agencies of Language Access Plans (LAP).

With respect to interpretation or oral translation, the Bulletin states that “each Agency shall provide interpretation services to non-English speaking and LEP persons, into languages spoken by such non-English speaking and LEP Persons, who seek to access or participate in the services, programs, or activities offered by the Agency.” If such services are “not possible due to fiscal limitations or costs,” an agency is directed to articulate a stepped approach in its LAP.

In the notable absence of an LAP developed by the Siting Board itself,³ we can only look to the LAPs of agencies under which the EFSB operates. The LAP of the Executive Office of Energy and Environmental Affairs (EEA) commits the agency to “take reasonable steps to ensure that people who are not proficient in English receive, free of charge, the language assistance necessary to give them meaningful access to effectively participate in and

² Originally issued as ANF Bulletin #16, pursuant to Executive Orders 526 and 527 on October 10, 2012, and updated on March 20, 2015.

³ The Commonwealth’s website lists the Executive Branch Agency Language Access Plans at <http://www.mass.gov/governor/administration/groups/oa/language-access/executive-branch-agency-language-access-plans.html>. The website does not list an LAP for the EFSB.

benefit from all EEA services, programs, information and opportunities.” The Department of Public Utilities (DPU) LAP similarly commits that for “each public hearing held in a service territory . . . the Department will assess whether interpreters are needed to provide language access to LEPs” and will “consult with stakeholders on the need for translation of documents . . . and the availability of interpreters at public hearings.”

Environmental Justice Policy

Explicitly reinforcing and enhancing the rights created by Title VI, the EEA and all the agencies and divisions that fall within its purview, including the EFSB, are subject to the EEA’s Environmental Justice Policy (“EJ Policy”).⁴ The EJ Policy defines environmental justice as “the equal protection and meaningful involvement of all people 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.”⁵ Consistent with the language of Title VI, “[e]nvironmental justice is based on the principle that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment regardless of race, income, national origin or English language proficiency.”

Under the EJ policy, an environmental justice or “EJ” population includes those communities for whom 25% of the population is identifies as an “English Isolated” household—one that does not have an adult that speaks only English or English very well. The goals set for EEA under the policy include working with agencies to ensure Secretariat wide compliance with the Bulletin requiring Language Access Plans (“LAPs”) for each Department. As to the EFSB, specifically, EJ Policy states that the Board “shall *continue* to require that translators be available at public comment hearings for project locations where EJ populations are present.” (Emphasis added.)

EFSB’s Failure to Provide Adequate Interpretation Services

Since 2015, the Siting Board has presided over three consolidated petitions, filed by Eversource to construct the Project in Everett, Chelsea, and East Boston. According to the American Community Survey, 69.9% of Chelsea, MA citizens are speakers of a non-English language, which is substantially higher than the national average of 21%. In 2015, the most common non-English language spoken in Chelsea, MA was Spanish. 53.4% of the overall population of Chelsea, MA are native Spanish speakers. Similarly 53.5% of East Boston households speak Spanish at home—the highest percentage of any of Boston’s 18 neighborhoods. 70.6% of those speaking Spanish do not speak English well.

⁴ EFSB has affirmed that it is subject to EEA’s EJ Policy. *City of Brockton v. Energy Facilities Siting Bd.*, 469 Mass. 196, n.11 (2014).

⁵ Massachusetts Environmental Justice Policy, 2017 (emphasis added).

The Board makes clear in its December 1 Final Decision that

Based on a linguistic analysis of the populations in the Project area communities, . . . the Presiding Officer directed Eversource to implement a number of public outreach measures consistent with the enhanced public participation component of the EJ Policy, including publication of the Notice of Public Hearing in Spanish and Portuguese as well as English; publication of the Notice in English-language, Spanish-language and Portuguese language newspapers; and the provision of a Spanish and Portuguese-speaking translator at the public hearing.⁶

Without question, the delivery of interpretation services for LEP residents was both necessary and mandated under existing policy. EFSB has failed in its provision of these services.

The first Public Notice on the Project issued by EFSB,⁷ with respect to a July 29, 2015 public meeting, announced that a “Spanish/English and Portuguese/English translator [would] be present.” By all accounts, translators were available to provide adequate interpretation⁸ for participants at the hearing. However, this appears to have been the last time EFSB provided for such interpretation to be made available to local LEP residents.

Community stakeholders communicated explicitly to the Board that local residents intended to be active participants in the proceedings surrounding the Project and needed adequate interpretation services to ensure their ongoing meaningful participation. Two weeks prior to the November 30, 2017 public meeting, GreenRoots sent a letter to the EFSB, on behalf of ninety signatories, including four limited participants. Outlining health and safety concerns of community members regarding the site, the letter concluded by stating that the group planned “to provide verbal testimony at the Public Hearing scheduled

⁶ Final Decision, Petition of NSTAR Electric Company d/b/a Eversource Energy 145 (December 1, 2017).

⁷ EFSB, Notice of Adjudication/Notice of Public Comment Hearing (undated).

⁸ “Interpreting is a complex task that combines several abilities beyond language competence in order to enable delivery of an effective professional interpretation in a given setting. Consequently, extreme care must be exercised in hiring interpreters and interpreting duties should be assigned to individuals within their performance level. Command of at least two languages is prerequisite to any interpreting task. The interpreter must be able to (1) comprehend two languages as spoken and written (if the language has a script), (2) speak both of these languages, and (3) choose an expression in the target language that fully conveys and best matches the meaning of the source language.

From the standpoint of the user, a successful interpretation is one that faithfully and accurately conveys the meaning of the source language orally, reflecting the style, register, and cultural context of the source message, without omissions, additions or embellishments on the part of the interpreter.

Professional interpreters and translators are subject to specific codes of conduct and should be well-trained in the skills, ethics, and subject-matter language. Those utilizing the services of interpreters and translators should request information about certification, assessments taken, qualifications, experience, and training. Quality of interpretation should be a focus of concern for all recipients.” Limited Language Proficiency, *Interagency Website – Definitions* (found at www.Lep.gov).

for 30 November 2017 and do plan on having a number of Spanish-speaking residents present. Accordingly, [the group] expects that the EFSB will provide materials in Spanish, as well as translation services at the hearing.”

On November 21, 2017, EFSB General Counsel Kathryn Sedor sent an email out to “Parties, Interested Persons, GreenRoots, and Mr. Jesse Purvis,” which stated, in part,

You will note that Greenroots in its comment letter asks, among other things, that a Spanish-speaking translator be available at the Siting Board meeting on November 30th. The Siting Board has decided to grant this request. Accordingly, we would ask, as is the case with public hearings, that Eversource arrange to have a Spanish translator at the Board meeting. The purpose of the translator will be: (1) to translate for the Board any oral comments by a Spanish speaker who is granted leave by the Board Chairman to present comments; and (2) to translate any questions and answers that may occur between Board members and a Spanish speaker.

This is just what occurred. At the November 30th Board meeting, approximately twenty Spanish speaking residents attended the hearing, most with limited to zero English proficiency. An interpreter was onsite, but *only* for the one Spanish-speaking resident who was able to testify to the Board.⁹ EFSB allowed for and requested that Eversource provide a translator to (a) ensure that the Siting Board would understand any testimony offered by non-English speaking residents and (b) facilitate questions from Board members to any individual resident offering testimony. Notably missing from this plan was the provision for interpretation to make certain that numerous Spanish speaking residents—who reside in the communities of the Project and will be directly impacted by the Project—understood the proceeding as a whole, regardless of whether they had opportunity to testify.¹⁰ No allowance was made to consecutively translate the proceedings from English to Spanish, nor was equipment provided to facilitate simultaneous interpretation.

When GreenRoots Executive Director Roseann Bongiovanni, a limited participant, inquired about simultaneous interpretation, Ms. Sedor informed Ms. Bongiovanni that neither the EFSB nor the interpreter had the equipment necessary to provide this interpretation. When Ms. Bongiovanni inquired about consecutive interpretation, Ms.

⁹ In Ms. Sedor’s email to “Parties, Interested Persons, Greenroots, and Mr. Jesse Purvis,” dated November 21, 2017, and referenced above, Ms. Sedor requested that “Greenroots designate one spokesperson to address oral comments to the Board on behalf of the organization and the signatories to the organization’s comment letter,” in addition to those signatories to the comment letter who are also limited participants. Thus, had all the Spanish speaking residents wished to benefit from translation services by engaging directly with EFSB members, they would have been precluded from doing so.

¹⁰ In fact, some of the Spanish-speaking residents might have felt more confident to testify or ask questions of the EFSB, had they been given the opportunity to understand the information presented over the course of 2.5 hours by various parties including the project proponent, intervenors and the EFSB itself. Furthermore, participants were unable to even understand the EFSB’s final decision as none of this pertinent information was interpreted.

Sedor stated this would make the process too long and cumbersome. And when Ms. Bongiovanni requested that the interpreter be placed by the Spanish speaking residents to translate simultaneously yet quietly, Ms. Sedor refused this request stated it would be “too disruptive.” Ms. Sedor told Ms. Bongiovanni that this was the first time that the EFSB had ever accommodated a request for interpretation services. Finally, though a small forest of documents and reports have been produced over a three year period, none have been translated to Spanish.

Ms. Sedor’s statement that simultaneous translation would be “disruptive” offers the only window we have into why adequate interpretation services were not provided. Her statement is incorrect. Simultaneous interpretation, when conducted with the proper equipment, can be seamless. Had interpretation been provided to Spanish-speaking residents through headphones, the Board could have conducted the meeting with little to no delay in the process. Board members might not have even noticed it was happening except to see a larger number of participants benefit from understanding the proceedings. Finally, to the extent that EFSB chooses now to cite cost efficiency as a rationale, the cost of interpretation services was not born by the Commonwealth, but by Eversource, for whom the small cost of interpretation equipment is dwarfed by the enormity of expense associated with a project of the scale proposed.

Ms. Sedor’s statement is also discriminatory of LEP residents seeking to engage in decision making that touches their lives. Providing interpretation for the benefit of the EFSB, rather than for the people who most need them, runs counter to Title VI; the right of all Commonwealth residents to benefit from a healthy environment and be protected from environmental burdens, regardless of national origin or English Language Proficiency; and myriad commitments by Commonwealth agencies to meaningful involvement in and access to proceedings that impact the health and safety of LEP residents.

On November 25, 2014, Governor Deval Patrick signed Executive Order 552 on Environmental Justice. Dozens of affected residents looked on as the Governor signed that order in Chelsea, one of the communities most impacted by environmental injustice. Many of those residents were present at the EFSB hearing more than three years later. When Governor Baker upheld the executive order and required his administration to implement it, residents celebrated this administration’s concern for environmental justice. In contrast, the failure to provide adequate interpretation services shows blatant disregard for the principles instilled in the EJ Executive Order and EJ Policy by the Secretariat who is responsible for implementing these policies.

The EFSB’s final decision on the Project should be reversed and reconsidered. Because the November 30, 2017 hearing was in violation of Federal law, Commonwealth policy, and of the purpose of the proceedings, we call on the EFSB to cease further action on the Eversource project until an accessible public meeting with meaningful language access and

interpretation for all present can be held. This would bring EFSB into legal compliance and advance the goals of the project and public hearings generally.

We were pleased to hear from Patrick Woodcock, at a recent Restructuring Roundtable, that EEA recognizes the need to “do better” on environmental justice, noting the intent of EEA and/or the EFSB to promulgate regulations to further this goal.¹¹ The issues discussed above fall squarely into the purview of such a regulatory process. We look forward to collaborating with EEA and EFSB to give life to such an effort.

However, even as we await initiation of a regulatory process, the EFSB must take affirmative steps to formalize its approach to ensuring meaningful access and involvement of LEP individuals, specifically, and promoting environmental justice in all neighborhoods, more generally. The EFSB can begin by creating and implementing a language access plan. We call on the Board to follow the guidance of the DPU LAP in developing and publicizing such a document in close consultation with stakeholders, most notably the very LEP individuals who have previously been marginalized from participating in past EFSB proceedings.

Sincerely,



Bradley Campbell
President
Conservation Law Foundation



Ivan Espinoza-Madriral
Executive Director
Lawyers' Committee for Civil Rights and
Economic Justice

¹¹ Restructuring Roundtable, *Improving Energy Facility Siting and Permitting in New England* (Panel Discussion) (December 15, 2017).



A handwritten signature in black ink that reads "Roseann Bongiovanni".

Roseann Bongiovanni
Executive Director
GreenRoots

cc: Governor Charlie Baker
Patrick Woodcock, Assistant Secretary of Energy
Andy Greene, Director, Energy Facilities Siting Board
Kathryn Sedor, Senior Counsel, Energy Facilities Siting Board
Catherine Keuthen, Esq., Keegan Werlin LLP, for NSTAR Electric Company d/b/a
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