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VIA FIRST CLASS AND ELECTRONIC MAIL

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Subject: Petition for Massachusetts Energy Facilities Siting Board Rulemaking to Establish Regulations to Implement the Global Warming Solutions Act and An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy

Dear Chair Tepper, Commissioner Fraser, Commissioner Rubin, Commissioner Van Nostrand, Commissioner Mahony, Commissioner Heiple, Secretary Hao, Crystal Johnson, Joseph Bonfiglio, and Brian Casey:

Conservation Law Foundation (“CLF”)¹ hereby petitions the Energy Facilities Siting Board (“EFSB” or “the Board”) to initiate one or more rulemaking proceedings to promulgate new and amended regulations under the Commonwealth’s Global Warming Solutions Act (“GWSA”), An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy (“Roadmap Law”), and An Act Driving Clean Energy and Offshore Wind (“2022 Energy Law”) pursuant to M.G.L. c. 30A, § 4 and 310 CMR 2.00. As a result of the Commonwealth’s new net-zero emission standard, its statutory requirement to update the Clean Energy and Climate Plan (“CECP”) and the recent directive from the Massachusetts Legislature to consider environmental justice in climate programs, CLF asserts that previously enacted regulations require review and revision at this time. This petition is one of several concurrent petitions that CLF has filed as part

¹ CLF, on behalf of its members, seeks a multi-agency GWSA implementation plan that puts Massachusetts on the path to be a national leader in both addressing the climate crisis and environmental injustice. Founded in 1966, CLF is a nonprofit, member-supported, regional environmental organization working to conserve natural resources, protect public health, and promote thriving communities for all in the New England region. CLF protects New England’s environment for the benefit of all people. We use the law, science, and markets to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. CLF serves to protect and promote the interests of its 5,300 members, including more than 2,900 members residing throughout the Commonwealth.

of a multi-agency GWSA implementation package in which CLF seeks action by EFSB, Massachusetts Department of Environmental Protection (“MassDEP”), Executive Office of Energy and Environmental Affairs (“EEA”), Massachusetts Department of Energy Resources (“DOER”), Massachusetts Department of Public Utilities (“DPU” or “the Department”), and Massachusetts Department of Transportation (“MassDOT”). The multi-agency GWSA implementation package is summarized in Appendix A.

GWSA compliance and achieving our net-zero climate targets requires a comprehensive set of regulatory amendments. While Massachusetts has begun implementing the GWSA and the Roadmap Law, implementation is lacking and falls short of mandatory climate goals. In particular, the Roadmap Law requires the Secretary to promulgate greenhouse gas (“GHG”) emission limits every five years starting in 2025 and to reach carbon neutrality by 2050.² It also requires that the level of emissions in 2050 should not be higher than 85 percent below the 1990 level.³ Executive Order 569 further holds that agencies should reduce emissions per GWSA limits. With Massachusetts’ new Clean Energy and Climate Plan for 2025/2030 (“2025/2030 CECP”), the state aims to reduce 33 percent of emissions from the 1990 level by 2025 and 50 percent from the 1990 level by 2030.⁴ With this Petition, CLF requests that EFSB undertake these regulatory changes to ensure the Commonwealth achieves its climate mandates and effectively decarbonizes the economy in a just and equitable manner.

Regulatory amendments must address historic disinvestment in Black, Brown, Indigenous, low-income, and immigrant communities, while also setting the stage for emissions reductions in the transportation, electricity, gas, buildings, and solid waste sectors as required by the GWSA and Roadmap Law.⁵ Climate justice can only be achieved if EFSB and other executive agencies promulgate regulations that bring about concrete improvements in the health and lives of communities in the Commonwealth, especially those that both continue to be disproportionately impacted by pollution and experience the worst impacts of climate change and COVID-19. The policies must be holistic and developed and implemented with community participation. Unless climate justice is a central component of the Commonwealth’s path to net-zero emissions, the inequities of the Commonwealth’s past energy and environmental policies will be replicated.

CLF’s significant history of climate and environmental justice advocacy has included litigation to enforce the GWSA, legislative support to advance climate and environmental justice bills, as well as general advocacy to increase zero-emission transportation policies, expand energy efficiency services, reduce reliance on fossil fuels, and support greater reliance on clean energy. For example, in the 2016 case *Kain v. Department of Environmental Protection*, CLF contended that the Commonwealth was obligated to create and implement regulations to meet its carbon emission reduction mandates.⁶ The Massachusetts Supreme Judicial Court agreed with

² St. 2021, c. 8, § 9.

³ *Id.* § 8(b).

⁴ *Massachusetts Clean Energy and Climate Plan for 2025 and 2030*, Executive Office of Energy and Environmental Affairs (June 30, 2022), <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download> (hereinafter 2025/2030 CECP).

⁵ St. 2021, c. 8, § 10; *see also* St. 2021, c. 8, § 56.

⁶ *Kain v. Dep’t of Env’tl. Prot.*, 474 Mass. 278, 288-90 (2016).

CLF's assertion and held that the plain language of the statute and Section 3(d) required MassDEP to promulgate regulations.⁷ CLF has further worked to uphold the goals and purpose of the GWSA through its participation as an amicus curiae in the 2018 case, *New England Power Generators Association v. Department of Environmental Protection*.⁸ Following the above-referenced litigation, MassDEP proceeded to successfully meet its confirmed duties by promulgating GWSA regulations directed at compliance with the GWSA's 2020 targets. In the intervening years climate science, law and policy options have advanced. We are now faced with new information about the climate crisis, more aggressive emissions targets, and the need to formulate and implement a new set of policies aimed at achieving the Commonwealth's new, more stringent emissions mandate for 2030.

CLF has also served on the GWSA Implementation Advisory Committee and now seeks to work with the EFSB to implement the regulatory package discussed herein. Further, CLF co-chairs two Implementation Advisory Committee working groups: (1) the Climate Justice Working Group and (2) the Electricity Working Group. CLF's herein described advocacy and commitment to Massachusetts' communities, environmental protection and justice have yielded significant expertise among CLF staff members in energy and climate matters, as well as matters relating to the transportation, electricity, solid waste, gas, and building sectors. Pursuant to Section 4 of the Massachusetts Administrative Procedure Act,⁹ CLF formally requests through this petition that the Siting Board now enact regulations to implement the GWSA, the Decarbonization Roadmap to 2050, and the Commonwealth's emissions limits to mitigate climate change and protect vulnerable environmental justice populations.

⁷ *Id.* at 292.

⁸ *New England Power Generators Ass'n, Inc. v. Dep't of Envtl. Prot.*, 480 Mass. 398, 399 (2018).

⁹ M.G.L. c. 30A, § 4.

TABLE OF CONTENTS

I.	Background.....	5
	Legislative and Planning Actions	5
	EFSB Implementation.....	7
II.	The Threat of the Climate Crisis Requires Urgent Action	7
	Dire Warnings from Climate Scientists	8
	Severe Climate Impacts Already Hitting Massachusetts	10
III.	Agencies Must Prioritize and Center Equity and Justice in GWSA Implementation.....	11
IV.	The Siting Board Has the Authority to Amend its Regulations to Achieve the GWSA	14
V.	The Siting Board Has an Opportunity to Implement a Cross-Sector Rulemaking Process to Implement the GWSA and Work Toward Net Zero Emissions by 2050	15
	A. Achieving a Decarbonized Electricity Sector Requires Scrutiny over Fossil Fuel Generating Facilities, GHG Impact Review, and Minimizing Harmful Environmental Effects During the Construction Process	15
	Current Status.....	15
	Legal Authority	16
	Needed Action	16
	B. Achieving a Decarbonized Electricity Sector Requires Considering the Effects of Facilities on Residents, especially Environmental Justice Populations.....	18
	Current Status.....	18
	Legal Authority	18
	Needed Action	20
VI.	Conclusion	22
	Appendix A: Comprehensive Multi-Sector Regulatory Package	23
	Appendix B: Redlined Regulations	31
	980 CMR 1.01: Scope and Construction of Rules	32
	980 CMR 1.04: Institution of an Adjudicatory Proceeding	35
	980 CMR 1.08: Rendering of Decisions in Adjudicatory Proceedings	43
	980 CMR 1.09: Supplemental Procedures.....	46
	980 CMR 5.02: Environmental Assessment.....	47
	980 CMR 13.01: Facility Construction and Maintenance	48
	980 CMR 14.00: Site Restoration and Decommission	52

I. BACKGROUND

Legislative and Planning Actions

Recognizing the long-term threat posed by climate change, Massachusetts passed the GWSA in 2008 and was one of the first states to implement a regulatory program to mitigate climate change.¹⁰ The GWSA requires at least an 80 percent reduction in GHG emissions by 2050 from 1990 GHG emission levels.¹¹ It further requires coordinated state agency actions to achieve these GHG emission limits,¹² and mandates the Department to promulgate GHG reporting regulations.¹³ The GWSA also sets forth target goals for the reduction of GHG emissions from all sectors of the Commonwealth's economy.

A history of executive, legislative, and judicial actions followed the GWSA to address the grave threats that the climate crisis presents for the people, natural resources, and environment of the Commonwealth. In May 2016, the Supreme Judicial Court in *Kain* established that MassDEP must set actual enforceable limits for greenhouse gas emissions and not “promulgate regulations that merely establish aspirational goals or unenforceable targets.”¹⁴ The *Kain* decision underscored that the Executive Officer of Energy and Environmental Affairs (“EEA”) and its agencies are primarily responsible for administering the required emission reductions.¹⁵ In September 2016, Governor Baker signed Executive Order 569, which set forth a comprehensive approach to meeting the Commonwealth's GHG emission goals, as well as protecting residents, businesses, and municipalities from the impacts of climate change. In 2018, the Supreme Judicial Court also recognized that the GWSA “is designed to make Massachusetts a national, and even international, leader in the efforts to reduce the greenhouse gas emissions that cause climate change.”¹⁶ In upholding agencies' authority to promulgate sector specific regulations under M.G.L. c. 21N, § 3(d), the Supreme Judicial Court stated that the GWSA “establishes significant, ‘ambitious,’ legally binding, short-and long-term restrictions on those emissions.”¹⁷

In January 2020, Governor Baker announced a commitment for Massachusetts to achieve net-zero GHG emissions by 2050 during his State of the Commonwealth Address.¹⁸ A year later, the Legislature passed S.2995, the Roadmap Law, amending the GWSA to incorporate a 2050 net-zero emissions mandate. After an initial veto, refiling, and passage again by the Legislature, a negotiated and amended version of the Act was enacted on March 26, 2021, requiring an updated 2025/2030 Clean Energy and Climate Plan for 2025 and 2030.¹⁹ On June 30, 2022, EEA

¹⁰ St. 2008, c. 298.

¹¹ M.G.L. c. 21N, § 3B.

¹² M.G.L. c. 21N, §§ 2-3.

¹³ M.G.L. c. 21N §§ 2, 10.

¹⁴ *Kain*, 474 Mass. at 287-290.

¹⁵ See M.G.L. c. 21N, § 7; M.G.L. c. 21A, § 2 clause (30).

¹⁶ *New England Power Generators Ass'n, Inc.*, 480 Mass. at 399.

¹⁷ *Id.* (citations omitted).

¹⁸ Press Release: *Governor Baker Delivers 2020 State of the Commonwealth Address*, MASS GOV (January 21, 2020), <https://www.mass.gov/news/governor-baker-delivers-2020-state-of-the-commonwealth-address>.

¹⁹ St. 2021, c. 8.

released its Clean Energy and Climate Plan for 2025 and 2030. On August 11, 2022, Governor Charlie Baker signed another climate law, An Act Driving Clean Energy and Offshore Wind, which included new measures for clean energy, energy efficiency, and transportation emissions.

EEA has determined that Massachusetts must achieve at least an eighty-five percent gross emissions reduction while meeting the Roadmap Law’s net-zero GHG emissions requirement by 2050. Former EEA Secretary Theoharides issued a Letter of Determination on April 22, 2020, defining the net-zero requirement:

A level of statewide greenhouse gas emissions that is equal in quantity to the amount of carbon dioxide or its equivalent that is removed from the atmosphere and stored annually by, or attributable to, the Commonwealth; provided, however, that in no event shall the level of emissions be greater than a level that is 85 percent below the 1990 level.²⁰

EEA followed this Determination with the Massachusetts 2050 Decarbonization Roadmap (“2050 Roadmap Report”) on December 30, 2020, a technical report that set forth eight pathways to achieve net-zero emissions by 2050. The 2050 Roadmap Report was the culmination of input from a technical advisory committee and implementation advisory committee, in which CLF participates. A plan styled as an “Interim Clean Energy and Climate Plan” for 2030 and a request for comments accompanied the 2050 Roadmap Report.²¹ CLF filed detailed comments on the Interim 2030 CECP.

On June 30, 2022, former EEA Secretary Beth Card released a final Clean Energy and Climate Plan (“CECP”) for 2025 and 2030, which aims to achieve a 33% reduction in GHG emissions from the 1990 level by 2025 and the Roadmap Law’s statutorily required 50% reduction in GHG emissions from the 1990 level by 2030.²² While the 2025/2030 CECP sets overall objectives for the Commonwealth to tackle the climate crisis, the Plan lacks concrete action goals in multiple areas. Regulatory action is timely as the Department needs to establish concrete opportunities to achieve those goals and promulgate adequate regulations to meet its climate mandates.

On December 21, 2022, EEA released the 2050 CECP, a comprehensive plan to achieve net-zero GHG emissions by 2050.²³ The 2050 CECP reflects the state’s strategies to reach emission goals and is on the right track on phasing out fossil fuels, but still requires additional work to ensure that no environmental justice populations are left behind.

²⁰ Secretary Kathleen Theoharides, *Determination of Statewide Emissions Limit for 2050*, Executive Office of Energy and Environmental Affairs (April 22, 2020), Commonwealth of Massachusetts, <https://www.mass.gov/doc/final-signed-letter-of-determination-for-2050-emissions-limit/download>.

²¹ *Interim Clean Energy and Climate Plan for 2030*, Executive Office of Energy and Environmental Affairs, at 47 (2020) (hereinafter Interim CECP).

²² See generally 2025/2030 CECP, *supra* note 4.

²³ *Clean Energy and Climate Plan for 2050*, Executive Office of Energy and Environmental Affairs (Dec. 2022) (hereinafter 2050 CECP), <https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download>.

In January 2023, Governor Healey signed Executive Order 604, establishing the Office of Climate Innovation and Resilience and appointing a Climate Chief, a new-cabinet level position responsible for prioritizing climate change policies across all agencies. In the appointment of Climate Chief Hoffer to monitor cross-agency climate work, Governor Healey established Massachusetts as the first state in the nation to establish such a position at the cabinet level.

EFSB Implementation

The GWSA directs the Commonwealth’s executive agencies to promulgate regulations that achieve compliance. “In implementing its plan for statewide greenhouse gas emissions limits, the commonwealth and its agencies shall promulgate regulations that reduce energy use, increase efficiency and encourage renewable sources of energy in the sectors of energy generation, buildings and transportation.”²⁴

The EFSB has not made any effort within the past five years to update its regulations in accordance with the GWSA or Roadmap Law. In fact, the Board has failed to promulgate any regulations in over a decade, since 2011. To implement the 2025/2030 CECP and to achieve the emissions limits set forth by the Baker administration, EFSB must take advantage of the present opportunity and amend its regulations to ensure compliance with the Commonwealth’s climate mandates.

II. THE THREAT OF THE CLIMATE CRISIS REQUIRES URGENT ACTION

Climate scientists agree that at least net-zero GHG emissions must be achieved by mid-century to have a chance at mitigating the worst effects of climate change. The Massachusetts Supreme Judicial Court has acknowledged the emerging consensus shared by the scientific community that climate change is attributable to increased emissions, as well as perceptions in the Commonwealth that national and international efforts to reduce those emissions are inadequate.²⁵ As recognized by Governor Healey in her former role as Massachusetts Attorney General, climate change poses an existential threat to living beings.²⁶ The Intergovernmental Panel on Climate Change (“IPCC”) has warned that the time between now and 2030 is the most important for climate action.²⁷

²⁴ M.G.L. c. 21N, § 6.

²⁵ *Kain*, 474 Mass. at 281.

²⁶ *Massachusetts v. Exxon Mobil Corp.*, No. 19-3333, at 49 Massachusetts Superior Court (Oct. 24, 2019), <https://www.mass.gov/files/documents/2019/10/24/Complaint%20-%20Comm.%20v.%20Exxon%20Mobil%20Corporation%20-%2010-24-19.pdf>.

²⁷ Press Release: *The evidence is clear: the time for action is now. We can halve emissions by 2030*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (April 4, 2022), <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>.

Dire Warnings from Climate Scientists

The IPCC has found that global surface air temperature has risen approximately 1.0 degree Celsius (1.8 degrees Fahrenheit) above pre-industrial temperatures.²⁸ The world and the region are also experiencing higher annual temperatures, increased and more severe storms, extreme weather, and rising sea levels as a result of the global rise of GHG emissions.²⁹ A vast majority of these rising emissions are from the burning, extraction, and transportation of fossil fuels over the past decades.³⁰

The IPCC emphasizes that the effects of climate change are increasingly getting more severe, and drastic decarbonization is needed to meet climate goals. For example, in 2014 the IPCC concluded that “continued emission of greenhouse gases will cause further warming” and long-lasting impacts and limiting climate change would require “substantial and sustained reductions in greenhouse gas emissions.”³¹ In 2018, the IPCC provided a graver assessment, concluding that with the current pace of emissions, warming will reach 1.5 degrees Celsius (2.7 degrees Fahrenheit) by mid-century.³² At 1.5 degrees Celsius there are still significant impacts on human health, food and water supply, sea level rise and mass species extinction.³³ Similar warnings came from the United States Global Change Research Program in 2018³⁴ and the World Economic Forum’s Global Risks Report in 2019.³⁵ In 2020, the global community collectively experienced the highest temperatures on record, alarming heat and wildfires in the Arctic, and a record 29 tropical storms in the Atlantic.³⁶

In 2021, the IPCC issued another dire report, finding that climate change is “unequivocally” caused by human influence,³⁷ and that recent changes in the climate system are “unprecedented” over hundreds to thousands of years.³⁸ The report also stated that human-caused climate change is “already affecting many weather and climate extremes in every region across

²⁸ *Global Land-Ocean Temperature Index*, NASA, <https://climate.nasa.gov/vital-signs/global-temperature/>.

²⁹ *The Effects of Climate Change*, NASA, <https://climate.nasa.gov/effects/>.

³⁰ *Climate Change 2014 Synthesis Report Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, (2014), at 5, https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf.

³¹ *Id.* at 8.

³² *Global Warming of 1.5 °C, Chapter 1*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2018), 82, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter1_Low_Res.pdf.

³³ *Id.* at 9.

³⁴ *Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States*, US GLOBAL CHANGE RESEARCH PROGRAM (2018), <https://nca2018.globalchange.gov/>.

³⁵ *The Global Risks Report 2019*, WORLD ECONOMIC FORUM (2019), <https://www.weforum.org/reports/the-global-risks-report-2019>.

³⁶ Damian Carrington, *Climate Crisis: 2020 was joint hottest year ever recorded*, THE GUARDIAN (January 8, 2021), <https://www.theguardian.com/environment/2021/jan/08/climate-crisis-experts-2020-joint-hottest-year-ever-recorded>.

³⁷ *Climate Change 2021: The Physical Science Basis, Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2021) at 4, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf (hereinafter 2021 IPCC Report).

³⁸ *Id.* at 6.

the globe.”³⁹ For instance, heavy precipitation events have increased since 1950 in most land areas and ecological and agricultural droughts have increased as well, mainly due to human-caused climate change.⁴⁰ The 2021 IPCC report warned that there is a narrow window to limit climate change to 1.5 degrees Celsius and policies must be enacted immediately to avoid setting off irreversible tipping points.

In fact, the 2021 IPCC report revealed that global surface temperature will continue to rise “until at least mid-century under all emission scenarios considered.”⁴¹ Mitigating climate change and its most catastrophic effects requires “limiting cumulative CO₂ emissions, reaching at least net zero CO₂ emissions.”⁴² The 2021 IPCC report emphasized the importance of timely action, as every ton of carbon dioxide contributes to climate change and “[w]ith every increment of global warming, changes in extremes continue to become larger.”⁴³ While some effects of climate change would take millennia to reverse, scenarios that severely limit GHG emissions “would have rapid and sustained effects to limit human-caused climate change,” such as flooding.⁴⁴ Limiting emissions in the near term is imperative to minimize future warming and avoid the most devastating and irreversible impacts of climate change.⁴⁵

Since the dire 2021 report, two reports have been released that support cross-cutting regulatory action in Massachusetts. In the 2022 Summary for Policymakers Report on Mitigation, the IPCC recognized that “[c]limate governance is most effective when it integrates across multiple policy domains, helps realise synergies and minimize trade-offs.”⁴⁶ The IPCC further stated that policies that shift behavior changes can also “open up a broader range of mitigation efforts,” including promoting walkable urban areas, electrification, and renewable energy.⁴⁷ Overall, the report called for “a substantial reduction in overall fossil fuel usage,” as well as the “widespread electrification of the energy system.”⁴⁸ The 2022 Summary for Policymakers Report on impacts, adaptation, and vulnerability stated that “[s]oft limits to some human adaptation have been reached,” emphasizing the need for clear action.⁴⁹ The 2022 IPCC

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 8, 10.

⁴¹ *Id.* at 14.

⁴² *Id.* at 27.

⁴³ 2021 IPCC Report, *supra* note 37, at 15 (“For example, every additional 0.5°C of global warming causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves (very likely), and heavy precipitation (high confidence), as well as agricultural and ecological droughts in some regions (high confidence).”).

⁴⁴ *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, Intergovernmental Panel on Climate Change, at 31 (2022), IPCC AR6 WG II, https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf (hereinafter 2022 IPCC Adaptation Report).

⁴⁵ *Id.* at 27-28.

⁴⁶ *Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers*, Intergovernmental Panel on Climate Change, at 59 (2022), IPCC AR6 WG III, https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf.

⁴⁷ *Id.*

⁴⁸ *Id.* at 36.

⁴⁹ 2022 IPCC Adaptation Report, *supra* note 44, at 28.

Adaptation Report concluded that “[i]nclusive governance contributes to more effective and enduring adaptation outcomes and enables climate resilient development.”⁵⁰

Severe Climate Impacts Already Hitting Massachusetts

Massachusetts is already experiencing harmful impacts from climate change and remains particularly vulnerable if GHG emissions continue to rise. Temperatures in Massachusetts already have increased more than the national average, and heavy precipitation in the region is greater than anywhere else in the country.⁵¹ Severe storms have pounded the state in recent years causing flooding, displacement, and millions of dollars of property damage.⁵² Residents living in urban areas such as Boston, particularly the young, ill, and elderly, will also face additional challenges if they live in buildings without air conditioning and “will face greater risks of serious heat-related health illnesses” as heat waves are projected to become more frequent and intense.⁵³ Boston is also at risk of coastal flooding, storm surges, and sea level rise, jeopardizing Boston Logan Airport, the train system, and those living throughout the city. Other coastal areas in Massachusetts are also particularly vulnerable to sea level rise and extreme sea level events that previously occurred once per century and are projected to occur at least annually in many areas by 2100. Low-lying areas will experience increases in the frequency and intensity of flooding, and sandy coasts will undergo more severe coastal erosion. These impacts are most severely felt by environmental justice populations, frontline, and marginalized communities. For example, in addition to Boston, Revere (an environmental justice population), Marshfield, Quincy (an environmental justice population), Hull, and Salisbury are particularly exposed to sea level rise and flooding.⁵⁴

The failure to reduce GHG emissions will force higher costs on the people of Massachusetts and impose greater threats to their health, safety, and property.⁵⁵ This will exacerbate issues felt by environmental justice populations already overburdened by pollution.

As the United Nations Secretary-General stated:

Today’s IPCC Working Group I Report is a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable: greenhouse gas emissions from fossil fuel burning and deforestation are choking our planet and putting billions of people at immediate risk. Global heating is affecting every region on Earth, with many of the changes becoming irreversible.

⁵⁰ *Id.* at 33.

⁵¹ *Rising Temperatures*, RESILIENT MA CLIMATE CHANGE CLEARINGHOUSE FOR THE COMMONWEALTH, <https://resilientma.org/changes/rising-temperatures>.

⁵² *Billion-Dollar Weather and Climate Disasters: Events*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, <https://www.ncdc.noaa.gov/billions/events>.

⁵³ *Id.*

⁵⁴ *U.S. Coastal Property at Risk from Rising Seas*, Union of Concerned Scientists, <https://ucsusa.maps.arcgis.com/apps/MapSeries/index.html?appid=cf07ebe0a4c9439ab2e7e346656cb239>.

⁵⁵ *Id.*

The internationally agreed threshold of 1.5 degrees Celsius is perilously close.

[...]

*We must act decisively now to keep 1.5 alive.*⁵⁶

The regulations proposed herein provide concrete steps that the Commonwealth should take to immediately implement the 2050 Roadmap Law and align with the spirit and urgency of the most recent 2022 IPCC report to maintain climate change at 1.5 degrees Celsius.

III. AGENCIES MUST PRIORITIZE AND CENTER EQUITY AND JUSTICE IN GWSA IMPLEMENTATION

The “climate crisis, species loss, pollution, and predatory capitalism have placed increased pressures on our natural and built environment, often leaving the most marginalized communities, especially people of color, low-income residents, and limited English proficient residents, to bear the worst of the burden of environmental pollution.”⁵⁷ Race determines which neighborhoods are safe and healthy places to live, learn, work, commute, and play,⁵⁸ and the COVID-19 pandemic has exacerbated these long-standing inequities in health outcomes between white people and people of color.⁵⁹ Environmental justice populations⁶⁰ are specifically at risk of

⁵⁶ Press Release, *Secretary-General’s statement on the IPCC Working Group I Report on the Physical Science Basis of the Sixth Assessment*, UNITED NATIONS (Aug. 9, 2021), <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>.

⁵⁷ *Recommendations for 80x50 Study Scenario Planning*, Climate Justice Working Group (February 24, 2020), <https://www.mass.gov/doc/gwsa-iac-climate-justice-working-group-memo/download>.

⁵⁸ Daniel R. Faber and Erie J. Krieg, *Unequal Exposure to Ecological Hazards 2005: Environmental Injustices in the Commonwealth of Massachusetts*, Report by Philanthropy and Environmental Justice Research Project Northeastern University (October 2005), at 1, <https://web.northeastern.edu/ejresearchnetwork/wp-content/uploads/2014/10/Final-Unequal-Exposure-Report-2005-10-12-05.pdf>.

⁵⁹ *Weekly COVID-19 Public Health Report*, Massachusetts Department of Public Health COVID-19 Dashboard, at 46 (Dec. 24, 2022) (The most recent data set released by the Department of Public Health regarding COVID-19 as of December 2020 shows that 19 of the 20 municipalities with the highest total average daily cases in the Commonwealth contain EJ populations), <https://www.mass.gov/doc/weekly-covid-19-public-health-report-december-24-2020/download>; *See also Weekly Dashboard Data, City/Town* and “Race and Ethnicity” Tabs, <https://www.mass.gov/doc/weekly-public-health-report-raw-data-december-24-2020/download> compared to 2010 *Environmental Justice Populations*, <https://www.mass.gov/doc/ej2010communitystatisticspdf/download>. Many of these communities also have poor air quality and are home to essential workers who do not have the luxury of being able to work remotely. *See COVID-19 and Health Neighborhoods Study Communities*, Conservation Law Foundation (2020), <https://www.clf.org/covid-19-and-healthy-neighborhoods-study-communities/>; *see also Data Show COVID-19 is Hitting Essential Workers and Communities of Color Hardest*, ACLA Massachusetts (2020), <https://www.aclum.org/en/publications/data-show-covid-19-hitting-essential-workers-and-people-color-hardest>; and *see Lisa Friedman, New Research Links Air Pollution to Higher Coronavirus Death Rates*, NEW YORK TIMES (April 7, 2020), <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

⁶⁰ M.G.L. c. 30, § 56 (“Environmental justice population”, 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

suffering from health conditions from criteria pollutants such as particulate matter, ground-level ozone, lead, carbon monoxide, nitrogen oxides, volatile organic compounds, black carbon, and researchers found that more people have died from fossil fuel pollution than earlier suggested.⁶¹ The Commonwealth will not succeed in achieving net zero emissions without ensuring emission reductions in all communities and concurrent improvements in air quality, public health, and economic opportunity in historically disinvested communities.

EFSB, DPU, EEA, MassDEP, DOER, and MassDOT have a responsibility and opportunity to concurrently meet their obligations under the GWSA, Green Communities Act (“GCA”), Green Jobs Act, Executive Order on Environmental Justice Number 552, the EEA’s 2021 Environmental Justice Policy, and to begin to redress environmental injustice and work toward climate justice. Environmental justice means that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthy environment regardless of race, income, national origin, or English language proficiency.⁶² Climate justice focuses on the root causes of climate change – human-caused GHG emissions – and making systemic changes that are required to address unequal burdens to our communities and realign our economy with our natural systems.⁶³ At its core, climate change is a social and ethical issue as the effects of climate change will be most severely felt by low-income and underserved communities. As a form of environmental justice, climate justice advocates hold that all humans (some would say species/living beings too) have the right to access and obtain the resources needed to have an equal chance of survival and freedom from discrimination.

The GWSA requires the EEA secretary to determine “whether activities undertaken to comply with state regulations and efforts disproportionately impact low-income communities” and to “consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources and other benefits to the economy, environment and public health.”⁶⁴

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; provided, however, that for a neighborhood that does not meet said criteria, but a geographic portion of that neighborhood meets at least 1 criterion, the secretary may designate that geographic portion as an environmental justice population upon the petition of at least 10 residents of the geographic portion of that neighborhood meeting any such criteria; provided further, that the secretary may determine that a neighborhood, including any geographic portion thereof, shall not be designated an environmental justice population upon finding that: (A) the annual median household income of that neighborhood is greater than 125 per cent of the statewide median household income; (B) a majority of persons age 25 and older in that neighborhood have a college education; (C) the neighborhood does not bear an unfair burden of environmental pollution; and (D) the neighborhood has more than limited access to natural resources, including open spaces and water resources, playgrounds and other constructed outdoor recreational facilities and venues.”)

⁶¹ *Conservation Law Foundation Comments on Interim 2030 Clean Energy and Climate Plan*, at 12, 14-15 (March 22, 2021) (hereinafter CLF Comments on Interim 2030 CECP).

⁶² EXEC. ORDER No. 552 (2014).

⁶³ *Climate Justice Working Group Memorandum*, Massachusetts GWSA Implementation Advisory Committee (Feb. 24, 2020), <https://www.mass.gov/doc/gwsa-iac-climate-justice-working-group-memo/download>.

⁶⁴ M.G.L. c. 21N, § 5.

Massachusetts passed the GCA in 2008 “to help municipalities become more sustainable, control rising energy costs, and incubate clean energy technologies and practices.”⁶⁵ The GCA also laid out several provisions to ensure that low-income communities have access to the benefits of energy efficiency resources. Section 141 states that “[i]n all decisions or actions regarding rate designs, the department [of energy resources] shall consider the impacts of such actions” and “[w]here the scale of on-site generation would have an impact on affordability for low-income customers, a fully compensating adjustment shall be made to the low-income rate discount.”⁶⁶ Additionally, the GCA requires the Secretary of EEA to prepare “a 5-year plan for meeting the renewable and alternative energy and energy efficiency goals of the commonwealth” that addresses the “equitable distribution of program benefits to all customers and particularly low income customers to address the affordability and adverse impacts on low-income households of energy costs and demand mitigation strategies, and mitigation of such adverse impacts, such as by compensating adjustments to the low-income rate discount.”⁶⁷

In November 2014, former Governor Deval Patrick issued Executive Order (“EO”) 552 “to encourage sustained and continued efforts now and into the future to ensure that environmental justice (EJ) remains a priority for the Executive branch.” Each Secretariat, including the EEA and MassDOT, must develop a strategy to incorporate environmental justice considerations into its programs, including through permitting processes, economic development opportunities, and public participation and outreach.⁶⁸ EO 552 directs the EEA Secretary to update the Environmental Justice Policy originally issued in 2002.⁶⁹ The 2017 Environmental Justice Policy requires that, “EEA agencies shall consider the current and future impacts that climate change will have on EJ populations” and “shall take appropriate measures towards ensuring that EJ populations are equally protected from hazards and health risks imposed by future climate changes and properly informed of appropriate measures taken to increase their adaptive capacity.”⁷⁰

Through initiating rulemaking proceedings as recommended by this petition, executive agencies can simultaneously advance work to achieve the 2030 and 2050 climate targets while complying with a variety of other statutory mandates and benefiting environmental justice populations that have been marginalized and face additional burdens from climate change.

⁶⁵ *Massachusetts Clean Energy and Climate Plan for 2020*, Secretary of Energy and Environmental Affairs Matthew A. Beaton, at 111 (2015), <https://www.mass.gov/files/documents/2017/12/06/Clean%20Energy%20and%20Climate%20Plan%20for%202020.pdf>.

⁶⁶ St. 2008, c. 169, § 141.

⁶⁷ St. 2008, c. 169, § 116(b)(3).

⁶⁸ EXEC. ORDER No. 552 § 5.

⁶⁹ *Id.* § 3.

⁷⁰ *Environmental Justice Policy of the Executive Office Of Energy And Environmental Affairs*, at 13, Executive Office of Energy and Environmental Affairs (June 24, 2021), https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf.

IV. THE SITING BOARD HAS THE AUTHORITY TO AMEND ITS REGULATIONS TO ACHIEVE THE GWSA

The right to petition agencies to engage in rulemaking is enshrined in Section 4 of the Massachusetts Administrative Procedure Act (“MassAPA”), which provides that “[a]ny interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent.”⁷¹ It further states: “Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions.”⁷² Agencies in Massachusetts also have a right to engage in the rulemaking process. See *Borden, Inc. v. Commissioner of Public Health*, 338 Mass. 707 (1983) (citing *Cambridge Elec. Light Co. v. Department of Pub. Utils.*, 363 Mass. 474, 486-487 (1973)) (“The nature of the rule-making process is such that one may reasonably contemplate that the regulatory body will, either on the basis of some external or internal impetus, determine that a potential problem exists and further investigation is warranted to determine whether (1) such a problem does, in fact, exist and (2) some regulation is necessary to resolve the problem.”); see also *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 312-313, (1981) (“an agency may adopt policies through adjudication as well as through rule-making.”).

The Siting Board regulations allow for a petition for matters “over which the Board has jurisdiction.”⁷³ The Board staff functions include conducting rulemaking hearings.⁷⁴ Per its own regulations, the EFSB has the power to “adopt and publish rules and regulations consistent with the purposes of sections sixty-nine H to section sixty-nine Q, and to amend the same from time to time.”⁷⁵ As long as a regulation proposed is related to or furthers the duties and purposes of the Board, the Board may adopt the regulation. Additionally, within the Department, “[a]ny interested person or his attorney may at any time petition the department to adopt, amend, or repeal any regulation.”⁷⁶ The EFSB was established as an independent entity within the Department in Massachusetts.⁷⁷ CLF proposes the following regulatory amendments to enable the Commonwealth to achieve the 2030 and 2050 climate targets and work toward climate justice.

⁷¹ M.G.L. c. 30A, §4.

⁷² *Id.*

⁷³ 980 CMR 1.04(1).

⁷⁴ 980 CMR 2.05(3).

⁷⁵ M.G.L. c. 164, § 69H.

⁷⁶ 310 CMR 2.02.

⁷⁷ See *Providence & Worcester R.R. Co. v. Energy Facilities Siting Bd.*, 453 Mass. 135, 136 (2009) (“[t]he board is an independent agency established by the Legislature within the Department of Public Utilities.”).

V. THE SITING BOARD HAS AN OPPORTUNITY TO IMPLEMENT A CROSS-SECTOR RULEMAKING PROCESS TO IMPLEMENT THE GWSA AND WORK TOWARD NET ZERO EMISSIONS BY 2050

Based upon the expertise gained through its experience advocating for climate policies, CLF is confident that the best strategy to achieve the Commonwealth's decarbonization and emissions goals is a multi-sectored approach,⁷⁸ wherein the largest gains will come from reforming the building and transportation sectors. Because Siting Board regulations affect the electricity sector, the below is a summary of regulatory changes that should be enacted and implemented to achieve the best possible and practicable results. The regulations below should be enacted and implemented by sector to achieve the best possible and practicable results.

A. Achieving a Decarbonized Electricity Sector Requires Scrutiny over Fossil Fuel Generating Facilities, GHG Impact Review, and Minimizing Harmful Environmental Effects During the Construction Process

Current Status

The Massachusetts electricity sector has achieved GHG reductions, in part, due to the Regional Greenhouse Gas Initiative as the first cap-and-invest regional initiative.⁷⁹ However, there is still ample opportunity to do more and declare the end of dirty and inequitable electricity in Massachusetts. Currently, the electricity sector is responsible for approximately 19% of emissions.⁸⁰ Additionally, “about half of the emissions that must be cut by 2050 come from households and small business.”⁸¹ Massachusetts' electricity sector must become cleaner to achieve net zero by 2050.⁸²

Additionally, the 2050 Decarbonization Report also addresses cumulative impacts to ensure that EJ populations and other residents across the entire Commonwealth do not suffer from location-specific environmental burdens.⁸³ Renewable facilities that help Massachusetts towards its decarbonization goals must also ensure that they help revitalize communities and are considerate of emissions, noise impacts, water supply, and any potential archaeological/cultural resources.

⁷⁸ *Massachusetts 2050 Decarbonization Roadmap*, at 12 Massachusetts Executive Office of Energy and Environmental Affairs (Dec. 2020), <https://www.mass.gov/doc/ma-2050-decarbonization-roadmap/download> (hereinafter *Massachusetts 2050 Decarbonization Roadmap*).

⁷⁹ See *The Regional Greenhouse Gas Initiative: an initiative of Eastern States of the US*, <https://www.rggi.org/>.

⁸⁰ *Id.* at 55.

⁸¹ *Id.* at 21.

⁸² *Massachusetts 2050 Decarbonization Roadmap*, Massachusetts Executive Office of Energy and Environmental Affairs, at 20 (Dec. 2020), <https://www.mass.gov/doc/ma-2050-decarbonization-roadmap/download> (hereinafter “2050 Decarbonization Roadmap”).

⁸³ *Id.* at 17.

Legal Authority

The Roadmap Law requires certain agencies to integrate cumulative impacts review into permit proceedings.⁸⁴ Cumulative impacts review is necessary for decisionmakers to consider and determine whether additional polluting facilities and operations beyond a property boundary contribute to public health, environmental racism, or other forms of disparate impacts. Yet, the Roadmap Law does not specify a change to the criteria that the EFSB considers when reviewing a proposal to approve a new fossil fuel generation facility, electrical substation, or intrastate transmission line.

Needed Action

The Board can promulgate several new regulations to ensure renewable energy such as solar, wind, and geothermal is sited fairly with limited barriers to implementation, while also considering the impacts on environmental justice communities, and increase the permitting review timeline for fossil fuel generating facilities. The Board should mandate that applicants to submit exhibits on the following considerations: consistency with energy planning objectives, environmental justice, public involvement, terrestrial ecology, cultural resources, socioeconomic impacts, and public health, safety, and security. These exhibits will help the Board review the burden of the facility on communities.

On renewable energy facility siting, Massachusetts should follow NY's commitment to expedite the siting of major renewable energy projects with its Accelerated Renewable Energy Growth and Community Benefit Act of 2020.⁸⁵ New York has recognized the need to adopt renewable energy to minimize climate impact within the next decade. As such, the Siting Board can undergo a quicker review for renewable energy facilities and may also, if needed, elect not to apply, in whole or in part, any local law or ordinance which would make it unreasonably burdensome if applied to a proposed major renewable energy facility in view of the environmental benefits. New York further demonstrated its commitment to ensuring facilities are sited correctly with minimal impacts on local neighborhoods by ensuring "that activities undertaken to comply with the regulations do not result in a net increase in co-pollutant emissions" and to "[p]rioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities ... and encourage early action to reduce greenhouse gas emissions and co-pollutants."⁸⁶ EFSB should also ensure that any facility approved does not result in an increase in net greenhouse gas emissions. If the facility cannot be completed or after the end of the useful life of a facility, the Board shall require the applicant to establish a de-commissioning site and restoration plan.

⁸⁴ M.G.L. c. 30, § 62A.

⁸⁵ *New York State Announces Passage of Accelerated Renewable Energy Growth and Community Benefit Act as Part of 2020-2021 Enacted State Budget*, NEW YORK STATE (April 3, 2020), <https://www.nyserda.ny.gov/About/Newsroom/2020-Announcements/2020-04-03-NEW-YORK-STATE-ANNOUNCES-PASSAGE-OF-ACCELERATED-RENEWABLE-ENERGY-GROWTH-AND-COMMUNITY-BENEFIT-ACT-AS-PART-OF-2020-2021-ENACTED-STATE-BUDGET>.

⁸⁶ N.Y. Env'tl Conserv. Law § 75-0109 (McKinney 2023).

Below are regulatory amendments that CLF recommends the Siting Board integrate into proposed regulations for public comment.

Regulatory Proposals

Mandate Pre-Filing Requirements and Environmental Assessments

- Amend 980 CMR 1.04(1)(a) (Institution of an Adjudicatory Proceeding) to add a pre-filing requirement.
- Amend 980 CMR 5.02 (Environmental Assessment) to add reference to 980 CMR 1.08 for environmental assessment.
- Amend 980 CMR 1.04 (Institution of an Adjudicatory Proceeding) to require applicants to submit exhibits on the following: consistency with energy planning objectives, environmental justice, public involvement, terrestrial ecology, cultural resources, socioeconomic impacts, and public health, safety, and security.

Implement Expedited Permitting Review for Renewables vs. Carbon-Intensive Fuels

- Amend 980 CMR 1.08 to require the Board to petitions on separate timelines for fossil fuel generating facilities vs. solar, wind, or geothermal energy.
- Amend 980 CMR 1.08 to allow the Board, if it elects, not to apply, in whole or in part, any local law or ordinance which would make it unreasonably burdensome if applied to a proposed major renewable energy facility in view of the environmental benefits.

Minimize Local Impacts

- Implement regulation 980 CMR 13.01 (Facility Construction and Maintenance) to add language to minimize air emissions during construction, minimize noise impacts during construction, to require visual impact minimization/mitigation plans for solar and wind facilities, and to protect water supply.
- Amend 980 CMR 1.08 to mandate that the Board does not approve a permit for any energy facility that will result in an increase in greenhouse gas emissions.

Establish a De-Commissioning Site and Restoration Plan

- Implement regulation 980 CMR 14.00 if facility cannot be completed or after the end of the useful life of a facility to establish a de-commissioning site and restoration plan.

B. Achieving a Decarbonized Electricity Sector Requires Considering the Effects of Facilities on Residents, especially Environmental Justice Populations

Current Status

As Massachusetts Governor Maura Healey pointed out in a EJ brief describing the insufficiency of current environmental justice laws in the Commonwealth, “environmental justice guidelines inform but do not drive decision-making,” permitting “the concentration of polluting industries and facilities in our most vulnerable communities.”⁸⁷ Recently, the state of New Jersey enacted an EJ law authorizing decisionmakers to deny permits following the determination that a facility subject to permit review would result in cumulative impacts that contribute to adverse environmental or public health stressors.⁸⁸ Cumulative impacts, according to the New Jersey EJ law are the impacts together with other environmental or public health stressors affecting the overburdened community, cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community that are higher than those borne by other communities within the state. It is time for Massachusetts to catch up to New Jersey and enact the next EJ law that expands the Roadmap Law cumulative impact requirements to affect energy siting.

Legal Authority

Over the last 12 years, the Siting Board has approved six fossil fuel power plants, five of which are located in EJ communities.⁸⁹ The Siting Board did not reject any power plant proposals or substation proposals. Instead, in the power plant proceedings affecting EJ populations, residents raised concerns about being overburdened by pollution. Overall, such concerns were not meaningfully addressed by the Siting Board, demonstrating the need for regulatory amendments within the Board’s legal authority.

Most recently, the Siting Board claimed that EJ policy is largely procedural in nature and only considered whether the requirement of enhanced public participation was met. The first case the Siting Board had the opportunity to consider EJ policy was located in Brockton.⁹⁰ First, the

⁸⁷ Office of the Massachusetts Attorney General Maura Healey, “COVID-19’s Unequal Effects in Massachusetts; Remediating the Legacy of Environmental Injustice & Building Climate Resilience.” May 12, 2020, <https://www.mass.gov/doc/covid-19s-unequal-effects-in-massachusetts/download>.

⁸⁸ N.J.S.A. 13:1D-157, et seq.

⁸⁹ In Brockton, MA *see* EFSB 07-7/D.P.U. 07-58/07-59 Final Decision (Aug. 7, 2009), <https://www.mass.gov/files/documents/2017/09/20/Brockton%208-7-09.pdf>; in Milford, MA *see* EFSB 17-04, Final Decision (Oct. 1, 2018), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9879054>; in Medway, MA, *see* EFSB 15-01, D.P.U. 15-25 Final Decision (Nov. 18, 2016), <https://www.mass.gov/files/documents/2017/09/20/Exelon%2011-18-16.pdf> and EFSB 17-01, Final Decision (Aug. 4, 2017), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9175979>; in Salem, MA *see* EFSB 12-2, Final Decision (Oct. 10, 2013), <https://www.mass.gov/files/documents/2017/09/20/Footprint%2010-10-13.pdf> and Salem, MA EFSB 13-1, Final Decision (Feb. 25, 2014), <https://www.mass.gov/files/documents/2017/09/20/Footprint%202-25-14.pdf>; in Sandwich, MA, *see* EFSB 15-06, D.P.U. 15-180 Final Decision (July 5, 2017), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9177341>; and in Westfield, MA, *see* EFSB 08-1, Final Decision (Oct. 19, 2009), <https://www.mass.gov/files/documents/2017/09/20/Westfield%2010-19-09.pdf>.

⁹⁰ *See* Brockton EFSB 07-7/D.P.U. 07-58/07-59 Final Decision, *supra* note 89, at 90.

Siting Board found that Brockton satisfied all four criteria as an EJ community.⁹¹ The City of Brockton and other concerned parties argued that approving the proposed project would increase pollution in the EJ community, exacerbating “an equal protection problem” and would further disadvantage a community already “overburdened with environmentally hazardous sites and facilities.”⁹² The Siting Board stated that “it is difficult to know how to apply requirements that are implicit at best.”⁹³ Instead, the Board concluded that the facility was consistent with EJ policy for two reasons. First, the Board stated that the proposed project was not “actually in an EJ area,” but was 0.5 miles or less away from the project facility.⁹⁴ However, the criteria for an EJ population is a five-mile radius,⁹⁵ which the Siting Board acknowledged.⁹⁶ Second, the Board noted that the Secretary of the EEA had concluded in the Massachusetts Environmental Policy Act Certificate that the Company met its requirement for enhanced public participation for projects impacting EJ populations.⁹⁷

The Siting Board has continued this pattern across other orders where EJ policy applied, claiming that EJ policy is procedural in nature and halting analysis after acknowledging that companies met the expectation of public notice and participation. In the Medway matter, the Siting Board acknowledged the EJ communities in the two nearby towns of Milford and Franklin, noting both were within a five-miles of the proposed facility and so enhanced public participation and mitigation analysis were required.⁹⁸ However, the Siting Board then stated that the company “appropriately conducted air quality dispersion monitoring” to determine the NOx and particulate emissions impacts in Milford and Franklin, suggesting that any adverse impact on those EJ communities were sufficiently addressed.⁹⁹ Likewise, in the 2013 Salem matter, the Siting Board briefly acknowledged Salem as an EJ population, and then explained the strategies by which the company notified the public, delving into the number of weeks it published notice, to whom, and in which languages, without exploring the adverse impacts on the community beyond public notice.¹⁰⁰ In both matters, the Board’s EJ policy analysis prematurely ceased, after simply noting that the EEA Secretary had previously reviewed and approved environmental impact plans.¹⁰¹

In other orders, the Siting Board has refused to properly apply relevant EJ policy. For example, in Sandwich, the Siting Board’s Order halted commentary by including a footnote in the Order stating that EJ policy does not apply because there were “no neighborhoods that meet

⁹¹ *Id.* at 88 (“[A]n EJ area is a neighborhood in which the median household income is below 65% of the statewide median income for Massachusetts, or one in which 25% of the residents are either minority, foreign born, or lacking in English proficiency; a neighborhood need only satisfy one of these four criteria to constitute an EJ area”).

⁹² *Id.* at 89.

⁹³ *Id.* at 91.

⁹⁴ *Id.*

⁹⁵ *Environmental Justice Policy of the Executive Office of Environmental Affairs*, MASS GOV, at 8 (updated June 24, 2021), <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>.

⁹⁶ See Brockton EFSB 07-7/D.P.U. 07-58/07-59, *supra* note 89, at 88.

⁹⁷ *Id.*

⁹⁸ See Medway EFSB 15-01, D.P.U. 15-25 Final Decision, *supra* note 89, at 127.

⁹⁹ *Id.* at 131-132.

¹⁰⁰ See Salem EFSB 12-2, Final Decision, *supra* note 89, at 7, 102-103.

¹⁰¹ *Id.*; see also Medway EFSB 15-01, D.P.U. 15-25 Final Decision, *supra* note 89, at 129

Environmental Justice criteria located within five miles of the Proposed Facility,”¹⁰² despite Sandwich’s current classification as an EJ community.¹⁰³ In the Milford matter, the Siting Board did not clarify whether it viewed Milford as an EJ population or not.¹⁰⁴ However, Milford is an EJ population,¹⁰⁵ and the Siting Board has acknowledged this fact in other Orders including the Medway Order from two years prior.¹⁰⁶ Yet, the Siting Board stated that EJ policy did not apply because no policy thresholds were triggered, noting that the Company had complied with normal Siting Board public notice requirements.¹⁰⁷

Finally, in the 2014 Salem and Westfield matters, despite both being EJ populations,¹⁰⁸ the Siting Board did not acknowledge their EJ status or any EJ policy, with the phrase “environmental justice” not appearing in the Orders at all.¹⁰⁹ Additionally, in the previous 2013 Salem matter, the Siting Board held that evidence brought by CLF and local residents pertaining to adverse health effects the community would suffer from was insufficient to reach a conclusion.¹¹⁰

The Siting Board has consistently demonstrated across all these Orders that it does not recognize EJ concerns, making regulatory proposals necessary. Furthermore, the Siting Board has also approved numerous intrastate transmission lines and natural gas infrastructure running through EJ populations, demonstrating existing processes to site facilities are not working in an equitable manner.

Needed Action

Regulatory amendments resulting in a holistic and balanced review of how energy infrastructure is sited, especially within environmental justice communities, are desperately needed. The Board should revise regulations to add language about environmental justice communities, language access, cumulative impact analysis, and evaluation of disproportionate impacts. The Board also needs to mandate that applicants undergo site visits to proposed facilities and invite residents of environmental justice populations. Polluting facilities must no longer be sited in the Commonwealth’s most vulnerable communities as stated by Governor Healey. Massachusetts must not only follow but lead states in undergoing proper cumulative impact assessments and review environmental and public health stressors affecting the overburdened communities.

¹⁰² See Sandwich EFSB 15-06, D.P.U. 15-180 Final Decision, *supra* note 89, at 5.

¹⁰³ See *Massachusetts 2020 Environmental Justice Populations*, MASS-EOEEA MAPS, <https://mass-eoeea.maps.arcgis.com/apps/webappviewer/index.html?id=1d6f63e7762a48e5930de84ed4849212>.

¹⁰⁴ See *generally* Milford EFSB 17-04, Final Decision, *supra* note 89.

¹⁰⁵ See *Massachusetts 2020 Environmental Justice Populations*, *supra* note 103.

¹⁰⁶ *Id.*; See also Medway EFSB 15-01, D.P.U. 15-25 Final Decision, *supra* note 89, at 127.

¹⁰⁷ See Milford EFSB 17-04, Final Decision, *supra* note 89, at 8, 35.

¹⁰⁸ See *Massachusetts 2020 Environmental Justice Populations*, *supra* note 103.

¹⁰⁹ See *generally* Westfield EFSB 08-1, Final Decision; *supra* note 89; see also Salem EFSB 13-1, Final Decision, *supra* note 89.

¹¹⁰ See Salem EFSB 12-2, Final Decision, *supra* note 89, at 96.

Below are regulatory amendments that CLF recommends the Siting Board integrate into proposed regulations for public comment.

Regulatory Proposals

Revise regulations to add language about environmental justice communities, language access, cumulative impact analysis, and evaluation of disproportionate impacts

- Amend 980 CMR 1.01 (Scope and Construction of Rules) to add a definition for environmental justice population.
- Amend 980 CMR 1.04(3)(c), 1.04(5) (Institution of an Adjudicatory Proceeding) to add language access language.
- Amend 980 CMR 1.04(1)(c) (Institution of an Adjudicatory Proceeding) to add greenhouse gas emissions, alternative sites, resiliency, and environmental justice.
- Amend 980 CMR 1.08 (Rendering of Decisions in Adjudicatory Proceedings) to add language about environmental justice assessment, cumulative impact analysis, and climate mitigation.
- Amend 980 CMR 1.09 (Supplemental Procedures) to add language to the site visit of a proposed facility about inviting residents of environmental justice populations.
- Implement 980 CMR 13.01 to ensure the review of greenhouse gas emissions and environmental justice concerns during facility construction and maintenance.
- Implement 980 CMR 14.00 to require decommissioning site and restoration plans.

VI. CONCLUSION

As outlined above, CLF contends that a multi-sectoral approach will best allow the Commonwealth to achieve its 2030 and 2050 climate targets, while meeting additional statutory mandates and working toward climate justice. CLF is ready and able to work with EFSB and other agencies to amend current regulations and promulgate new ones, as needed, to meet the 2030 emissions target and more pressing timeline facing Massachusetts. CLF urges EFSB to take action to make these changes to help protect Massachusetts residents, communities, and natural resources from the potentially devastating effects of climate change.

Thank you for your continued work and dedication. CLF looks forward to continuing to work together to achieve just, equitable, and effective solutions for the Commonwealth.

Respectfully submitted,



Caitlin Peale Sloan
Vice President, Massachusetts



Anxhela Mile
Staff Attorney

APPENDIX A: COMPREHENSIVE MULTI-SECTOR REGULATORY PACKAGE

Department of Environmental Protection

Regulation	Description
<u>310 CMR 4.01: Purpose, Authority, and General Provisions</u>	Ensures all permits of any kind approved by DEP comply with no net emissions increase requirement
<u>310 CMR 7.00: Statutory Authority; Legend; Preamble; Definitions</u>	Defines net GHG emissions and zero emissions vehicles; adds the GWSA as statutory authority under DEP’s air pollution control chapter
<u>310 CMR 7.02 U Plan Approval and Emission Limitations</u>	Ensures all air permits approved by DEP comply with no increase in net GHG emissions requirement
<u>310 CMR 7.11: U Transportation Media</u>	Accelerates zero emission vehicle deployment for MBTA trains and state or municipality-owned fleets
<u>310 CMR 7.32: Natural Gas-Fired Furnace NOx Emissions Standards</u>	Phases out NOx emitting natural gas-fired furnace and boiler sales and installations between 2024 and 2030
<u>310 CMR 7.35: Water Heater NOx Emissions Standards</u>	Phases out NOx emitting water heater sales and installations between 2024 and 2030
<u>310 CMR 7.37: MB High Occupancy Vehicle Lanes</u>	Increases deployment of bus-only and HOV lanes
<u>310 CMR 7.40: U Low Emission Vehicle Program</u>	Accelerates zero emission vehicle deployment for state or municipality-owned fleets
<u>310 CMR 7.73: Reducing Methane Emissions from Natural Gas Distribution Mains and Services</u>	Accelerates methane emissions reductions from and phase out of gas distribution system
<u>310 CMR 7.75: Clean Energy Standard</u>	Eliminates biomass from Clean Energy Standard; Requires hydroelectric power GHG emissions reporting
<u>310 CMR 7.77: Net Zero Communities Program</u>	Empowers municipalities to accelerate climate action and enforce consistency with climate plans
<u>310 CMR 7.78: Reducing Peak Electric Sector Emissions</u>	Requires electric utilities to reduce the difference between peak and average electric system demand
<u>310 CMR 9.01: Purpose</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 9.02: Definitions</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 9.31: Summary of License and Permit Requirements</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 10.01: Introduction and Purpose</u>	Ensures all wetlands permits approved by DEP comply with no net emissions increase requirement

<u>310 CMR 10.04: Definitions</u>	Ensures all wetlands permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.01: General Requirements</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.02: Definitions</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Phases out high heat waste processing facilities
<u>310 CMR 16.03: Exemptions from Site Assignment</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Reduces methane emissions feedstocks from landfills
<u>310 CMR 16.04: General Permit for Recycling, Composting or Aerobic and Anaerobic Digestion Operations</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.05: Permit for Recycling, Composting and Conversion (RCC) Operations</u>	Phases out high heat waste processing facilities
<u>310 CMR 16.08: Site Assignment Application Submission Requirements</u>	Requires application for site suitability to confirm that facility will not increase GHGs or harm EJ populations
<u>310 CMR 16.13: Department Report on Suitability (Report)</u>	Requires that applications that increase net greenhouse gas emissions or harm an environmental justice population receive negative determinations of suitability
<u>310 CMR 19.001: Authority</u>	Adds the GWSA as statutory authority under DEP's solid waste permitting chapter
<u>310 CMR 19.002: Purpose</u>	Adds the reduction of GHG emissions as a purpose under DEP's solid waste permitting chapter
<u>310 CMR 19.006: Definitions</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Requires amendment to definition of recyclable material to create recyclable guidelines document every two years
<u>310 CMR 19.018: Third-party Inspections</u>	Improves enforcement of waste ban requirements
<u>310 CMR 19.032: Permit Procedure for a New Facility or Expansion Permit Application</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 36.01: Authority</u>	Adds the GWSA as statutory authority under DEP's water management permitting chapter
<u>310 CMR 36.02: Purpose</u>	Adds the reduction of GHG as a purpose under DEP's water management permitting chapter
<u>310 CMR 36.03: Definitions</u>	Defines net GHG emissions within DEP's water management permitting chapter.

<u>310 CMR 36.07: Registration Conditions</u>	Ensures all DEP-registered withdrawals comply with no net GHG emissions increase requirement
<u>310 CMR 36.27: Issuance of Permits</u>	Ensures all water management permits approved by DEP comply with no net GHG emissions increase requirement
<u>310 CMR 60.03: U Conformity to the State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. Or the Federal Transit Act</u>	Updates environmental justice and greenhouse gas emissions reduction requirements for transportation implementation plan; adds increased EV charging requirements and reduced internal combustion engine sales numbers as supplemental measures
<u>310 CMR 60.05: Global Warming Solutions Act Requirements for Transportation</u>	Accelerates transportation sector greenhouse gas reduction requirements

Department of Energy Resources

Regulation	Description
<u>225 CMR 4.02: RCS Program</u>	Focuses the RCS program on equity, affordability, and deployment of heat pumps
<u>225 CMR 14.02: Definitions</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives
<u>225 CMR 14.05: Eligibility Criteria for RPS Class I, Solar Carve-out Renewable Generation Units, and Solar Carve-out II Renewable Generation Units</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives
<u>225 CMR 15.02: Definitions</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives; tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.05: Eligibility Criteria for RPS Class II Generation Units</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives; tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.06: Statement of Qualification Process for RPS Class II Renewable Generation Unit</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.07: Renewable Energy Portfolio Standard -- Class II</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.08: Compliance Procedures for Retail Electricity Suppliers</u>	Tightens standards for waste combustion to qualify for RPS incentives

<u>225 CMR 22.1.00: [Re] Scope and Administration</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 22.2.00: [Re] Definitions</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 22.4.00: [Re] Residential Energy Efficiency</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>Appendix RC: MASSACHUSETTS MUNICIPAL OPT-IN SPECIALIZED STRETCH CODE 2023</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 23.2.00: [Ce] Definitions</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 23.4.00: [Ce] Commercial Energy Efficiency</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
APPENDIX CC - MASSACHUSETTS MUNICIPAL OPT-IN SPECIALIZED ENERGY CODE 2023	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>780 CMR 2.02 Definitions</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.1: Carbon Limits for Building Materials Procurements</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.2 Low-Embodied Carbon Concrete</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.3 Establish a Materials Reuse Facility</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.4 Carbon Reduction or Salvaging Requirement for Demolitions</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.5 Renovation vs. Knock-Down and Rebuild Comparison</u>	Addresses embodied carbon in construction materials

Department of Public Utilities

Regulation	Description
<u>220 CMR 5.02: Format of Tariffs, Schedules and Contracts</u>	Ensures all tariffs explain in plain language how rates reflect resilient infrastructure based on climate science
<u>220 CMR 10.000: Hazard Mitigation and Climate Plans</u>	Mandating the filing of Hazard Mitigation and Climate Plans; prescribing what should be included
<u>220 CMR 11.02: General Definitions</u>	Facilitates ZEV deployment
<u>220 CMR 11.04: Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Facilitates ZEVs; Prohibit utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 11.09: Forward Capacity Market</u>	Triggers for leaving ISO
<u>220 CMR 11.10: Charge Electric Vehicles Utility Pole Program (Charge EVs UPP)</u>	Accelerating municipal EV charging on utility poles
<u>220 CMR 11.11: Electric Vehicle Charging Station Installation</u>	Prohibiting approval of EV charging station installation by EDCs w/o a Dept finding that it will withstand climate change stressors
<u>220 CMR 14.01: Purpose and Scope</u>	Updates LDC purpose to include networked geothermal
<u>220 CMR 14.02: General Definitions</u>	Updates LDC definitions to include networked geothermal
<u>220 CMR 14.03: Local Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Updates LDC requirements to include networked geothermal; Prohibits utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 14.05: Information Disclosure Requirements</u>	Updates LDC info disclosure requirements to include networked geothermal; requires GHG disclosures; requires analysis before using alternative gases
<u>220 CMR 17.05: General Criteria for Long-term Contracts and Renewable Energy Generation Sources</u>	Ensures long-term contracts have RE generation sources that are resilient to current and future climate hazards
<u>220 CMR 19.03: Performance Standards for Emergency Preparation and Restoration of Service</u>	Ensures LDCs consider their Hazard Mitigation and Climate Adaptation Plan and general hazard mitigation and climate resilience planning in the development of emergency preparation
<u>220 CMR 19.04: Emergency Response Plans</u>	Requires LDCs to identify applicable components of their Hazard Mitigation and Climate Adaptation Plans that considers climate science in making hazard predictions and response plans

<u>220 CMR 19.05: Department Investigation into Company Performance; Remedies</u>	Allows Department denial of LDC recovery for failure to follow a Hazard Mitigation and Climate Adaptation Plan during outages
<u>220 CMR 79.01: Annual Return for Gas Companies</u>	Requires reporting of just transition workforce data for LDCs
<u>220 CMR 79.04: Annual Return for Electric Companies</u>	Requires reporting of just transition workforce data for EDCs
<u>220 CMR 112.11: Plans and Procedures</u>	Ensures that LNG plant operators update plans and procedures every 5 years for safety planning, using climate science
<u>220 CMR 115.04: Annual Reporting Requirements</u>	Requires accurate tracking of methane emissions from gas leaks
<u>220 CMR 274.02: Definitions</u>	Requires TNC fleet decarbonization
<u>220 CMR 274.08: Transportation Network Vehicle Requirements</u>	Requires TNC fleet decarbonization
<u>220 CMR 274.12: Reporting Requirements</u>	TNC fleet reporting statistics

Energy Facilities Siting Board

Regulation	Description
<u>980 CMR 1.01: Scope and Construction of Rules</u>	Environmental justice and GHG emissions updates to definitions
<u>980 CMR 1.04: Institution of an Adjudicatory Proceeding</u>	Environmental justice, GHG emissions, and climate resilience pre-filing requirement
<u>980 CMR 1.08: Rendering of Decisions in Adjudicatory Proceedings</u>	Environmental justice, GHG emissions, and climate resilience conditions for granting petitions
<u>980 CMR 1.09: Supplemental Procedures</u>	Environmental justice site visit procedures
<u>980 CMR 5.02: Environmental Assessment</u>	Environmental justice requirements for environmental assessments
<u>980 CMR 13.01: Facility Construction and Maintenance</u>	Environmental justice, GHG emissions
<u>980 CMR 14.00: Site Restoration and Decommission</u>	Requiring a decommissioning site and restoration plan

Executive Office of Energy and Environmental Affairs

Regulation	Description
<u>301 CMR 11.01: General Provisions</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.02: Definitions</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.03: Review Thresholds</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.04: Fail-Safe Review</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.05: ENF Preparation and Filing</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.06: ENF Review and Decision</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.07: EIR Preparation and Filing</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.08: EIR Review and Decision</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.11: Waivers</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.01: Authority and Purpose</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.02: Definitions</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.03: Implementation of the Coastal Zone Management Program</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.01: Purpose</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.02: Definitions</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.04: Review Procedures</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.01: Authority and Purpose</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.02: Definitions</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.03: Toxic Use Fees</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement

<u>310 CMR 40.05: Fee Waiver</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
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Department of Transportation

Regulation	Description
<u>700 CMR 4.01: Purpose</u>	Accelerates deployment of electric rail
<u>700 CMR 4.02: Definitions</u>	Accelerates deployment of electric rail
<u>700 CMR 4.04: Administration</u>	Accelerates deployment of electric rail
<u>700 CMR 4.07: Application Process</u>	Accelerates deployment of electric rail
<u>700 CMR 4.08: Evaluation Criteria</u>	Accelerates deployment of electric rail
<u>700 CMR 7.01: Scope and Effect</u>	Adds equity and GHG reductions to Purpose of DOT
<u>700 CMR 7.02: Definitions</u>	Defines electric vehicle
<u>700 CMR 7.09: Traffic, Operation, and Safety</u>	Accelerates deployment of HOV lanes
<u>700 CMR 11.05: Vehicle Operations</u>	Codifies Tobin Bridge bus-only lane
<u>700 CMR 14.08: Miscellaneous for Contractors</u>	Requires GHG-related disclosures in bidding documents
<u>700 CMR 15.00 Planning and Transit Operations</u>	Accelerates electrification of MBTA-owned vehicles

APPENDIX B: REDLINED REGULATIONS

980 CMR 1.01: Scope and Construction of Rules

- (1) Scope. 980 CMR 1.00 [and the Global Warming Solutions Act, M.G.L. c. 21N, § 3](#) shall govern the conduct of adjudicatory proceedings before the Energy Facilities Siting Board.
- (2) Application of 980 CMR 1.00. 980 CMR 1.00 shall apply to all adjudications conducted by the Board except when a specific provision of 980 CMR indicates otherwise.
- (3) Effective Date. 980 CMR 1.00 shall take effect on February 19, 2010, and shall apply to proceedings initiated after that date.
- (4) Definitions. For the purpose of 980 CMR, the following definitions shall apply unless the context or subject matter requires a different interpretation:

Applicant means a person who submits to the Board an application or petition seeking determination of a matter within the Board’s jurisdiction, or who, pursuant to M.G.L. c. 25, § 4, has a matter referred to the Board by the Chairman of the Department of Public Utilities pursuant to M.G.L. c. 164, § 69H.

Board means the Energy Facilities Siting Board.

Board Member means any of the nine persons set forth in 980 CMR 2.03(1) or any person named to serve as a designee under the terms of 980 CMR 2.03(3).

Chairmanperson means the Chairmanperson of the Energy Facilities Siting Board, as described in 980 CMR 2.03(2).

Director means the person appointed by the Chairmanperson of the Department of Public Utilities to direct the work of the siting division and to conduct the day-to-day business of the Board as well as to perform any other duty delegated by the Chairmanperson.

[Environmental Justice Population means a population as defined in M.G.L. c. 30, § 62.](#)

Facility means any “facility” described in M.G.L. c. 164, § 69G including:

- (a) any generating unit designed for or capable of operating at a gross capacity of 100 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities;
- (b) a new electric transmission line having a design rating of 69 kilovolts or more and which is one mile or more in length on a new transmission corridor;
- (c) a new electric transmission line having a design rating of 115 kilovolts or more which is ten miles or more in length on an existing transmission corridor except reconductoring or rebuilding of transmission lines at the same voltage;

(d) an ancillary structure which is an integrated part of the operation of any transmission line which is a facility

(e) a unit, including multiple tanks and associated buildings and structures, designed for, or capable of, the manufacture or storage of gas, except:

1. a unit with a total gas storage capacity of less than 25,000 gallons and also with a manufacturing capability of less than 2,000 MMBtu per day;
2. a unit whose primary purpose is research, development, or demonstration of technology and whose sale of gas, if any, is incidental to that primary purpose; or
3. a landfill or sewage treatment plant.

(f) a new pipeline for the transmission of gas having a normal operating pressure in excess of 100 lbs. per square inch gauge which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity; and

(g) any new unit, including associated buildings and structures, designed for, or capable of, the refining, the storage of more than 500,000 barrels or the transshipment of oil or refined oil products and any new pipeline for the transportation of oil or refined oil products which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity.

Generating Facility means any generating unit designed for or capable of operating at a gross capacity of 100 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities.

Hand Delivery means delivery by methods other than pre-paid U.S. mail (*e.g.*, Federal Express or paid courier service). Hand delivery shall not include delivery by electronic mediums such as facsimile or e-mail unless authorized by the Presiding Officer.

Limited Participant means any person allowed to participate in an adjudicatory proceeding pursuant to M.G.L. c. 30A, § 10, and 980 CMR 1.05(2). A limited participant is not a party.

Net Greenhouse Gas Emissions shall have the meaning as defined in 310 CMR 7.00.

Party means an applicant, any person allowed to intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, § 1(3), and 980 CMR 1.05(1), or any person who intervenes in an adjudicatory proceeding by right.

Person means a natural person, partnership, corporation, association, society, authority,

agency or department of the Commonwealth, or any body politic or political subdivision of the Commonwealth including municipal corporations.

Renewable Facility means Electric generating facilities that use natural resources including solar, wind, and water for fuel and do not utilize combustion technologies.

(5) Net Greenhouse Gas Emissions: On and after January 1, 2025, the Board shall not approve a permit for any energy facility that will result in an increase in net greenhouse gas emissions.

980 CMR 1.04: Institution of an Adjudicatory Proceeding

(1)(a) Pre-filing Requirement. If one or more Environmental Justice Populations are located within two miles around the Facility, the Applicant shall undertake measures to provide public involvement opportunities for such Environmental Justice Populations at least 60 days prior to Commencement of the Proceeding. An Applicant shall provide advance notification of a Facility, in a form determined by the Executive Office of Energy and Environmental Affairs Environmental Justice Director, for any Facility that will be before the Board. The Proponent's failure to complete a pre-filing requirement shall allow the Presiding Officer to require the proceeding to pause to allow time for an Applicant to complete the Pre-Filing Requirement.

As part of the public involvement opportunities, the Applicant shall provide a written description of the Facility and potential impacts. The description shall include a concise but accurate description of the Facility and its alternatives, present the Applicant's initial assessment of potential environmental impacts, propose mitigation measures, indicate whether the Facility is reasonably likely to negatively or positively affect any Environmental Justice Population located within a two mile radius and what measures will be taken to provide meaningful opportunities for public involvement by such Environmental Justice Populations. The written description shall be translated into all languages spoken by 3 percent or more of residents who identify as limited English proficient in any census tract that is located in whole or in part within the two-mile radius of the Facility.

The information provided in the written description shall be designed to facilitate consultation, elicit comments identifying any relevant and significant issues, and identify any additional measures to be used to provide opportunities for public involvement by Environmental Justice Populations located within a two-mile radius around the Facility. Within 30 days of publicly posting and circulating a written statement, the Applicant shall invite community-based organizations, local elected officials, the director of environmental justice at the Executive Office of Energy and Environmental Affairs, to a meeting to review the proposed project. An Applicant shall make adjustments to the Facility that address Environmental Justice Population concerns about safety, public health, location, or mitigation, or abandon plans to file its petition to the Board.

(1)(b) Commencement of Proceeding. Proceedings may be initiated by a petition to construct, a petition for a certificate of environmental impact and public interest, a petition for other matters over which the Board has jurisdiction, or the Board's own motion.

(1)(c) Content of Petition: A petition to construct a generating facility shall include, in such form and detail as the board shall from time to time prescribe, the following information: (i) a description of the proposed generating facility, including any ancillary structures and related facilities; (ii) a description of the environmental impacts and the costs associated with the mitigation, control, or reduction of the environmental impacts of the proposed generating facility; (iii) a description of the project development and site selection process used in choosing the design and location of the proposed generating facility; (iv) either (a) evidence that the expected emissions from the facility meet the technology performance standard in effect at the time of filing, or (b) a description of the environmental impacts, costs, and reliability of other fossil fuel

generating technologies, and an explanation of why the proposed technology was chosen; (v) an environmental justice impact statement detailing all potential impacts to environmental justice populations as defined in section 62 of chapter 30 and comparing the proposed site to other potential sites that do not impact environmental justice populations; (vi) impacts of the facility with respect to mitigating climate change; (vii) plans for the facility to adapt to a changing climate including current and future flooding, storm surges, and sea level rise; (viii) public health impacts of the proposed facility; (ix) a cumulative impact assessment that considers an exposure, public health or environmental risk, or other effect occurring in a specific geographical area, including from any environmental pollution emitted or released routinely, accidentally, or otherwise, from any source, and assessed based on the combined past, present, and reasonably foreseeable emissions and discharges affecting the geographical area; and (x) any other information necessary to demonstrate that the generating facility meets the requirements for approval specified in this section.

Each application for an energy facility siting permit shall also include the following exhibits:

1. Exhibit on Consistency with Energy Planning Objectives

(a) A statement demonstrating the degree of consistency of the construction and operation of the facility with Massachusetts energy policies;

(b) A description of the impact the facility would have on reliability in the state;

(c) A description of the impact the facility would have on fuel diversity in the state;

(d) A description of the impact the facility would have on regional requirements for capacity;

(e) A description of the impact the facility would have on electric transmission constraints;

(f) An analysis of the comparative advantages and disadvantages of reasonable and available alternative locations or properties identified for construction of the facility; and

(g) A statement of the reasons why the facility will promote public health and welfare, including minimizing the public health and environmental impacts related to climate change.

2. Exhibit on Environmental Justice

(a) An identification and evaluation of significant and adverse disproportionate environmental impacts of the facility on an Environmental Justice (EJ) area, if any, resulting from its construction and operation, including any studies which were used in the evaluation and identifying the author and dates thereof. The impact study area for purposes of EJ analysis shall be:

(1) At a minimum, be within a two (2)-mile radius around the proposed facility;
or

(2) A greater radius based on site-specific factors, including nature, scope and magnitude of the environmental impacts, the projected range of those impacts on various environmental resources, and the geography of the area surrounding the location of the proposed facility.

(b) Separately identified to the fullest extent possible and with sufficient detail, the nature and magnitude of all significant and adverse disproportionate environmental impacts of the facility resulting from its construction and operation required to be identified pursuant to subdivision (a) of this section, a description of:

(1) The specific measures the applicant proposes to take to avoid such impacts to the maximum extent practicable for the duration of the siting permit, including a description of the manner in which such impact avoidance measures will be verified and a statement of the cost of such measures;

(2) If such impacts cannot be avoided, measures the applicant proposes to take to minimize such impacts to the maximum extent practicable for the duration that the siting permit is granted, including a description of the manner in which such impact mitigation measures will be verified and a statement of the cost of such measures; and

(3) If such impacts cannot be avoided, the specific measures the applicant proposes to take to offset such impacts to the maximum extent practicable for the duration that the siting permit is in effect, including a description of the manner in which such impact offset measures will be verified and a statement of the cost of such measures.

(c) A qualitative and, where possible, quantitative analysis demonstrating that the scope of avoidance, mitigation and offset measures is appropriate given the scope of significant and adverse disproportionate environmental impacts of the facility resulting from its construction and operation.

(d) A summary of the applicant's final EJ analysis, including the evaluation of any significant and adverse disproportionate environmental impacts in the impact study area. The statement shall provide a detailed explanation of the rationale for any conclusions made related to EJ issues and identify the individual studies and investigations relied upon in conducting each element of the EJ analysis. The applicant shall articulate the reasons why the proposed measures to avoid, minimize, or offset any disproportionate environmental impacts of the proposed facility will, to the maximum extent practicable, avoid, minimize or offset any identified significant and adverse disproportionate impacts,

including a description of the manner in which such measures can be verified and a statement of the cost of such measures

3. Exhibit on Public Involvement

(a) A brief description of the major components of the facility, including collection lines, transmission lines, interconnections, access roads and related facilities. A brief, clearly and concisely written overall analysis in plain language that assembles and presents relevant and material facts regarding the facility upon which the applicant proposes that the Board make its decision. The analysis shall be analytical and not encyclopedic and shall specifically address each required finding, determination and consideration the Office shall make or consider in its decision and explain why the applicant believes that the requested permit should be granted; and

(b) A brief description of applicant's local engagement and outreach efforts.

4. Exhibit on Terrestrial Ecology

(a) An analysis of the impact of the construction and operation of the facility and interconnections on wildlife, wildlife habitats, and wildlife travel corridors.

5. Exhibit on Cultural Resources

(a) A study of the impacts of the construction and operation of the facility, interconnections and related facilities on archeological/cultural resources within the project impact area, including:

(1) A summary of the nature of the probable impact on any archeological/cultural resources identified, addressing how those impacts shall be avoided or minimized;

(2) A study of the impacts on historic resources within the project impact area, including the results of field inspections, a review of the statewide inventory of historic property, and consultation with local historic preservation groups and federal/state-recognized Indian Nations to identify sites or structures listed or eligible for listing in the State or National Register of Historic Places.

6. Exhibit on Socioeconomic Impacts

(a) A statement as to the host community benefit(s) to be provided by the applicant.

(b) A description of the host community benefits to be provided, including an estimate of the incremental amount of annual taxes (and payments in lieu of taxes, benefit charges and user charges) it is projected would be levied against the post-construction facility site, its improvements and appurtenances, payments to be made pursuant to a host community agreement or other project agreed to with the host community.

7. Exhibit on Public Health, Safety, and Security

(a) A statement and evaluation that identifies, describes, and discusses all efforts made to avoid and minimize potential adverse impacts of the construction and operation of the facility, the interconnections, and related facilities on the environment, public health, and safety, other than as already detailed in other relevant Exhibits, at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence, identifies the current applicable statutory and regulatory framework, and also addresses:

(1) The anticipated gaseous, liquid and solid wastes to be produced at the facility during construction and under representative operating conditions of the facility, including their source, anticipated volumes (excluding estimates for minor waste volumes, such as concrete washout wastes), composition and temperature, and such meteorological, hydrological and other information needed to support such estimates and any studies, identifying the author and date thereof, used in the analysis;

(2) The anticipated volumes of such wastes to be released to the environment during construction and under any operating condition of the facility;

(3) The treatment processes to eliminate or minimize wastes to be released to the environment;

(4) The manner of collection, handling, storage, transport and disposal for wastes retained and not released at the site, or to be disposed of;

(5) Maps of the study area and analysis showing relation of the facility site to: public water supply resources (to the extent locations are publicly available); community emergency response resources and facilities including police, fire and emergency medical response facilities and plans; emergency communications facilities; hospitals and emergency medical facilities; existing known hazard risks including flood hazard zones, storm surge zones, areas of coastal erosion hazard, landslide hazard areas, areas of geologic, geomorphic or hydrologic hazard; dams, bridges and related infrastructure; explosive or flammable materials transportation or storage facilities; contaminated sites; and other local risk factors;

(6) All significant impacts on the environment, public health, and safety associated with the information required to be identified pursuant to paragraphs (1) through (5) of this subdivision, including all reasonably related short-term and long-term effects;

(7) Any measures proposed by the applicant to minimize such impacts;

(8) Any measures proposed by the applicant to mitigate such impacts; and

(9) Any monitoring of such impacts proposed by the applicant.

(b) A Site Security Plan for the operation of proposed facility, including site plans and descriptions site security features.

(c) A Safety Response Plan to ensure the safety and security of the local community, including:

(1) An identification of contingencies that would constitute a safety or security emergency;

(2) Emergency response measures by contingency;

(3) Evacuation control measures by contingency;

(4) Community notification procedures by contingency;

(5) A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies and hazardous substance incidents ;

(6) A description of all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident; and

(7) A requirement to conduct training drills with emergency responders at least once per year.

(2) Presiding Officer.

(a) A Presiding Officer shall be assigned by the Director to conduct each adjudicatory proceeding. The Presiding Officer shall have the authority to take all actions necessary to ensure a fair, orderly and efficient proceeding. Such actions may include, but are not limited to: conducting evidentiary and public comment hearings; ensuring multilingual communication to potentially impacted residents and small businesses, conducting site visits; ruling on petitions to intervene or to participate in a proceeding; establishing ground rules for a proceeding; holding procedural or other conferences; regulating the course of the hearing; prescribing the order in which evidence shall be presented; administering oaths and affirmations; examining witnesses and requiring them to produce evidence which will aid in the determination of any question of law or fact at issue; disposing of procedural requests or similar matters; hearing and ruling upon motions; issuing subpoenas; causing depositions to be taken; ruling upon offers of proof and receiving relevant material and probative evidence; fixing the time for filing briefs, motions and other documents in connection with hearing; and excluding any person from a hearing for disrespectful, disorderly, or contumacious language or conduct.

(b) A Presiding Officer may at any time withdraw from a proceeding if the Presiding Officer deems himself or herself disqualified. Should a Presiding Officer withdraw, another

Presiding Officer shall be appointed. Any party who becomes aware of grounds that may exist for the disqualification of a Presiding Officer must immediately file an affidavit which clearly sets forth the grounds for the disqualification.

(3) Notice of Adjudication.

(a) Notice shall be given at the beginning of any adjudicatory proceeding. The Presiding Officer shall give notice or shall require the applicant to give notice of an adjudication.

(b) A notice shall set forth a summary statement of the matter to be adjudicated. The notice shall state:

1. the name and address of the applicant;
2. the address of the Board and the statement that any person desiring further information or wishing to participate in the proceeding may contact the Board; and
3. the date, time, and address of any scheduled public comment hearing.

(c) In cases where a proposed facility is the subject of the proceeding, notice shall be given by publication in at least two newspapers available in the vicinity of the proposed facility, available in non-English media for a Facility that potentially impacts one or more limited English proficient populations, publicize on social media, and as otherwise ordered by the Presiding Officer. In cases where a proposed facility is not the subject of the proceeding, notice by publication shall be given as ordered by the Presiding Officer. Notice shall further be given by first class mail or hand delivery to any person required by law or regulation to be so notified and to such other persons as the Presiding Officer may direct. Additional notice or publication shall be made, if required by statute or regulation, in the manner prescribed therein. Unless otherwise directed by the Board or Presiding Officer, the applicant is responsible for all costs related to the publication and distribution of notice. The board shall conduct a public hearing on every petition to construct a facility or notice of intention to construct an oil facility within six months of the filing thereof. A public hearing shall be held in each neighborhood in which a Facility would be located. The public hearing shall ensure language access, including simultaneous language interpretation in the languages spoken by three percent or more of a limited English proficient population. Language access shall allow residents and other attendees to understand others' comments and that allows members of the department to understand speakers' comments.

(d) In cases where a proposed facility is the subject of the proceeding, the notice shall contain a deadline for the filing of petitions to intervene as a party or participate as a limited participant. This deadline shall be no less than 14 days after the public comment hearing.

(e) In cases where a proposed facility is not the subject of the proceeding, the deadline for the filing of petitions to intervene as a party or participate as a limited participant shall be as ordered by the Presiding Officer.

(4) Repository of Documents. The Presiding Officer may require an applicant to place certain documents in one or more repositories to provide for public access to these documents. A repository of documents is a public library, public office, applicant's office, or similar location where documents involved in a particular proceeding may be kept and made available to members of the public. If a repository is required, the applicant shall be responsible for placing the documents therein and making adequate arrangements for convenient public access to the documents.

(5) Public Comment Hearing. When required by statute or otherwise determined appropriate by the Presiding Officer, the Board shall hold a public comment hearing in one or more of the affected cities or towns. A public comment hearing shall be 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. Comments made at a public comment hearing are not deemed to be evidence. Where a facility potentially impacts a limited English proficient population, the Presiding Officer shall require simultaneous interpretation during the public comment hearing to allow non-English speaking residents the opportunity to hear in their first language the content of the hearing.

980 CMR 1.08: Rendering of Decisions in Adjudicatory Proceedings

(1) Form of Decisions. Every tentative and final decision shall be in writing and shall contain a statement of the reasons therefor, including a determination of issues of fact or law necessary to the decision.

(1)(a): All petitions shall (i) demonstrate to the board that the planning, design, engineering and specifications for the project include adaptation measures sufficient to address climate risks that will arise over the economic life of the project or the term of financing, whichever is longer, based on the best available climate science; and (ii) disclose in all design engineering, architectural, or other drawings and analyses the climate assumptions used in evaluating and addressing climate risks. It shall be the policy of the Commonwealth to minimize the negative impacts of climate change and the energy transition on environmental justice populations and prioritize renewable energy and climate adaptation investment in these areas.

(1)(b): The board shall approve a petition to construct a generating facility only if the board determines that the petition meets all of the following requirements: (i) the description of the proposed generating facility and its environmental impacts are substantially accurate and complete; (ii) the description of the site selection process used is accurate; (iii) the plans for the construction of the proposed generating facility are consistent with current health, environmental protection, climate, and environmental justice policies of the commonwealth and with such policies as are adopted by the commonwealth for the specific purpose of guiding the decisions of the board; (iv) such plans minimize the environmental impacts consistent with the minimization of costs associated with the mitigation, control, and reduction of the environmental impacts of the proposed generating facility; (v) the environmental justice impact statement demonstrates a finding of environmental and energy benefits to the impacted environmental justice populations without any environmental or energy burdens; (vi) the cumulative impact assessment demonstrates that there is no adverse public health, environmental, or climate impact to the impacted communities; (vii) construction, operation, and/or alteration of the facility shall only be undertaken when those actions are justified by long term local energy need forecasts; (viii) demonstrate local need for a generating facility and that such need cannot be accomplished through less harmful means; and (ix) if the petitioner was required to provide information on other fossil fuel generating technologies, the construction of the proposed generating facility on balance contributes to a reliable, low-cost, diverse, regional energy supply with minimal environmental impacts. The board may reopen the record to reconsider need for a facility if more than 12 months expire between a project approval and construction. The board may, at its discretion, evaluate alternative sites for a generating facility if the applicant or resident living in proximity to the facility requests such an evaluation, or if such an evaluation is an efficient method of administering an alternative site review required by another state or local agency.

(1)(c): An environmental justice impact statement shall be required for any Facility located within two miles of an environmental justice population, detailing all potential impacts to environmental justice populations and comparing the proposed site to other potential sites that do not impact environmental justice populations. A facility within one mile of an environmental justice population shall complete a cumulative impact assessment that considers an exposure,

public health or environmental risk, or other effect occurring to one or more environmental justice populations, including from any environmental pollution emitted or released routinely, accidentally, or otherwise, from any source, and assessed based on the combined past, present, and reasonably foreseeable emissions and discharges affecting the geographical area.

(1)(d): The board shall, after review of the environmental justice impact statement and cumulative impact assessment, deny a petition for a new facility or for the expansion of an existing facility, or apply new conditions to the renewal of an existing facility's approval, upon a finding that approval of the petition, as proposed, would, together with other environmental, climate, or public health stressors affecting the environmental justice population, cause or contribute to adverse cumulative environmental, climate, or public health stressors in the overburdened community that are higher than those borne by other communities within the Commonwealth or other geographic unit of analysis as determined by the executive office of energy and environmental affairs pursuant to rule, regulation, or guidance.

(2) Tentative Decisions.

(a) A written tentative decision shall be issued on each matter adjudicated by the Board unless a quorum of the Board has heard the matter or has read the evidence.

(b) A copy of any tentative decision shall be sent to each party and limited participant in the proceeding. The Presiding Officer shall designate a comment period, extending at least seven days from the issuance of the tentative decision, during which parties and limited participants may file written comments regarding the tentative decision.

(3) Final Decisions.

(a) Every final decision of the Board in an adjudicatory proceeding shall be issued following a vote taken at a meeting of the Board conducted pursuant to 980 CMR 2.04.

(b) If a tentative decision was issued in a matter, the Board shall meet following the comment period to vote on the tentative decision. At such meeting, parties and limited participants may be afforded an opportunity to present oral comments under such conditions as the Board may provide. The Board shall render a final decision after considering the tentative decision, all timely-filed written comments and any oral comments permitted. The Board need not consider written comments received after the close of the comment period.

(c) If a quorum of the Board has heard a matter, the Board may at its discretion render a final decision without first issuing a tentative decision pursuant to 980 CMR 1.08(2).

(4) Judicial Review. By the terms of M.G.L. c. 25, § 5, as made applicable to the Board by M.G.L. c. 164, § 69P, a party may seek judicial review of a final Board decision.

(5) On and after January 1, 2025, the Board shall not approve a permit for any energy facility that will result in an increase in net greenhouse gas emissions.

(6) Timing: The Board shall also review petitions on separate timelines on the following criteria:

- (a) A generating facility that is powered by fossil fuels shall have the longest period of time for going through the adjudicatory process, that is no shorter than eighteen months of time from the date of filing through the conclusion of briefing and not less than three months to obtain a ruling from the Board;
- (b) An energy storage system or ancillary structure shall have a shorter period of time for going through the adjudicatory process than a generating facility that is powered by fossil fuels; and
- (c) A generating facility that is powered by solar, wind, or geothermal energy shall have the shortest period of time for going through the adjudicatory process, requiring not more than six months of time from the date of filing through the conclusion of briefing and not more than three additional months to obtain a ruling from the Board.

(7) Substantive Requirements: The Board may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed major renewable energy facility, it is unreasonably burdensome in view of the environmental benefits of the proposed major renewable energy facility.

980 CMR 1.09: Supplemental Procedures

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(10) Site Visit of a Proposed Facility. The Board and Board staff may visit a proposed facility site and any alternative sites in order to facilitate an understanding of the pending matter. A site visit is for informational purposes only and shall not be considered as evidence in the proceeding. When the Board and Board staff conduct a site visit, residents of Environmental Justice Populations shall be invited to attend and all efforts shall be made by the Applicant to ensure that content covered during the Site Visit is in plain language and interpretation shall be provided, as necessary to facilitate meaningful public engagement.

980 CMR 5.02: Environmental Assessment

(1) Environmental Assessment and Impact Reports. During the course of its review of long-range forecasts, supplements, and notices of intent, the Siting Council is not required to comply with the procedural requirements of the Massachusetts Environmental Policy Act. See M.G.L. c. 164, § 69I. Nevertheless, the Council shall comply in all of its proceedings with the environmental policies of the Commonwealth as these are set forth in Article 49 of the Constitution, Article 97 of the Constitution, M.G.L. c. 30, §§ 61-~~62K~~, and environmental statutes, ~~and~~ regulations, ~~and~~ policies.

The Siting Council Board shall comply with procedural and substantive requirements of M.G.L. c. 30, §§ 61 – ~~62H~~, 62K and implementing regulations of the Executive Office of Environmental Affairs in all of its rulemaking proceedings pursuant to Chapter C of its regulations.

An applicant for a certificate of environmental impact and public need pursuant to Chapter F of 980 CMR 5.00 shall comply with the procedural and substantive requirements of M.G.L. c. 30, §§ 61 - 62H and implementing regulations of the Executive Office of Environmental Affairs.

An environmental assessment and impact report shall comply with the requirements of 980 CMR 1.08.

980 CMR 13.01: Facility Construction and Maintenance

(a) Air Emissions. To minimize air emissions during construction, the permittee shall:

(1) Prohibit contractors from leaving generators idling when electricity is not needed and from leaving diesel engines idling when equipment is not actively being used;

(2) Implement dust control procedures to minimize the amount of dust generated by construction activities;

(3) Use construction equipment powered by electric motors where feasible, or by ultra-low sulfur diesel; and

(4) Dispose or reuse cleared vegetation in such a way that that minimizes greenhouse gas emissions (e.g., lumber production or composting).

(b) Construction Noise. To minimize noise impacts during construction, the permittee shall:

(1) Maintain functioning mufflers on all transportation and construction machinery;

(2) Respond to noise and vibration complaints according to the complaint resolution protocol approved by the Office; and

(3) Comply with all substantive provisions of all local laws regulating construction noise unless they are waived.

(c) Visual Mitigation.

(1) Wind Facilities. The permittee shall implement the approved Visual Impacts Minimization and Mitigation Plan, including the following:

(i) Adoption of visual design features requirements;

(ii) Visual contrast minimization and mitigation measures;

(iii) Operational effects minimization measures, including shadow flicker minimization mitigation and other measures necessary to achieve a maximum of thirty (30) hours annually at any non-participating residential receptor, subject to verification using shadow prediction and operational controls at appropriate wind turbines;

(iv) Lighting Plan; and

(v) Screen Planting Plans.

(2) Solar Facilities. The permittee shall implement the approved Visual Impacts Minimization and Mitigation Plan as required in section 900-2.9 of this Part, including the following:

(i) Visual contrast minimization and mitigation measures;

(ii) Lighting Plan;

(iii) Solar glare mitigation requirements; and

(iv) Screen Planting Plans.

(3) Screen Planting Plans. The permittee shall retain a qualified landscape architect, arborist, or ecologist to inspect the screen plantings for two (2) years following installation to identify any plant material that did not survive, appears unhealthy, and/or otherwise needs to be replaced. The permittee shall remove and replace plantings that fail in materials, workmanship or growth within two (2) years following the completion of installing the plantings.

(d) Water Supply Protection.

(1) For wind facilities:

(i) No wind turbine shall be located within one hundred (100) feet of an existing, active water supply well or water supply intake.

(ii) Blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake on a non-participating property.

(iii) The permittee shall engage a qualified third party to perform pre- and postconstruction testing of the potability of water wells within the below specified distances of construction disturbance before commencement of construction and after completion of construction to ensure the wells are not impacted, provided the permittee is granted access by the property owner:

(a) Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property;

(b) Blasting within one thousand (1,000) feet of an existing, active water supply well on a non-participating property; and

(c) Horizontal Directional Drilling (HDD) operations within five hundred (500) feet of an existing, active water supply well on a non-participating property.

(iv) Should the third-party testing, as required by subparagraph (iii) of this paragraph, conclude that the water supplied by an existing, active water supply well met federal and state standards for potable water prior to construction, but failed to meet such standards after construction as a result of facility activities, the permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least five hundred (500) feet from wind turbines, as practicable given siting constraints and landowner preferences. The results of such tests and reports shall be made available to the relevant municipalities upon request.

(2) For solar facilities:

(i) Pier and post driving activities, except for fence and utility poles, shall be prohibited within one hundred (100) feet of any existing, active drinking water supply well; use of earth screws is permitted.

(ii) If required, blasting shall be prohibited within five hundred (500) feet of any known existing, active water supply well or water supply intake on a non-participating property.

(iii) The permittee shall engage a qualified third party to perform pre- and postconstruction testing of the potability of water wells within the below specified distances of construction disturbance before commencement of civil construction and after completion of construction to ensure the wells are not impacted, provided the permittee is granted access by the property owner:

(a) Collection lines or access roads within one hundred (100) feet of an existing, active water supply well on a non-participating property;

(b) Blasting within one thousand (1,000) feet of an existing, active water supply well on a non-participating property;

(c) Pier or post installations within two hundred (200) feet of an existing, active water supply well on a non-participating property; and

(d) HDD operations within five hundred (500) feet of an existing, active water supply well on a non-participating property.

(iv) Should the third-party testing conclude that the water supplied by an existing, active water supply well met federal and state standards for potable water prior to construction, but failed to meet such standards post construction as a result of

facility activities, the permittee shall cause a new water well to be constructed, in consultation with the property owner, at least one hundred (100) feet from collection lines and access roads, and at least two hundred (200) feet from all other facility components. The results of such tests and reports shall be made available to the relevant municipalities upon request.

980 CMR 14.00: Site Restoration and Decommission

In the event that facility cannot be completed or after the end of the useful life of a facility, a Decommissioning Site and Restoration Plan shall be prepared, which shall, at a minimum, address the following:

(1) Safety and the removal of hazardous conditions;

(2) Environmental impacts;

(3) Aesthetics;

(4) Recycling;

(5) Potential future uses for the site;

(6) Funding; and

(7) Schedule.

(b) For facilities to be located on lands owned by others, a description of all site restoration, decommissioning and security agreements between the applicant and landowner, municipality, or other entity, including provisions for turbines, foundations, and electrical collection, transmission, and interconnection facilities.

(c) A gross and net decommissioning and site restoration estimate, the latter including projected salvage value (including reference to the salvage value data source), with line items (and associated dollar amounts) for decommissioning of all facility components removed four (4) feet below grade in agricultural land and three (3) feet below grade in non-agricultural land and removal and restoration of access road locations, where appropriate, based on the facility layout. The gross cost estimates shall include a fifteen (15) percent contingency cost based on the overall decommissioning and site restoration estimate. The net amount shall be allocated between Cities, Towns, or Villages based on the estimated cost associated with the removal and restoration of the facilities located in each City, Town, or Village.

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

Petition of Conservation Law Foundation
For Mitigating Greenhouse Gas Emissions
and Implementing the 2030 Clean
Energy and Climate Plan

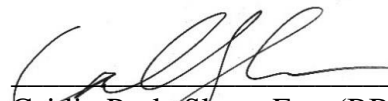
APPEARANCES OF COUNSEL

Please enter our appearances on behalf of Conservation Law Foundation in the above-captioned proceeding.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

By its attorneys



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