

DPU 21-50 / EFSB 21-01 Post-Roundtable Joint Comments

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VIA ELECTRONIC MAIL ONLY

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Subject: Comments of Conservation Law Foundation
DPU Docket No. 21-50 *Notice of Inquiry by the D.P.U. on its own Motion into Procedures for Enhancing Public Awareness of and Participation in its Proceedings*, and
EFSB Docket No. 21-01 *Notice of Inquiry by the Energy Facilities Siting Board into Procedures for Enhancing Public Awareness of and Participation in its Proceedings*

Dear Secretary Marini, Hearing Officer Weisman, Hearing Officer Seigal, Presiding Officer Sharkey, and Service Lists:

The undersigned enthusiastically submit the following comments regarding the Department of Public Utilities' ("DPU" or "the Department") and Energy Facilities Siting Board ("EFSB") inquiries into procedures for enhancing public awareness of and participation in its proceedings. These comments build upon the comments jointly submitted in 2021 in the initial phase of this docket, as well as the oral comments provided at the joint DPU/EFSB Roundtable held on August 26, 2022 ("Roundtable").

We Urge the DPU and EFSB to Use Improved Public Participation to Achieve Equitable Decisions

There have been major strides in ensuring public access to Department and EFSB proceedings, but significant shortcomings remain which must be addressed to ensure equitable outcomes. One such change is the need for the DPU and EFSB to provide, by and through final decisions in agency proceedings, meaningful responses to public comments. Historically, comments from members of the public entered at a public hearing or into the docket in writing have been received and hopefully reviewed, but rarely are they incorporated into agency decisions and it appears that they do not have any influence on the final outcome of a matter, despite clear evidence of the very personal

impact DPU and EFSB decisions have on Massachusetts residents.

Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy (the “Roadmap Law”), codified Governor Baker’s and the Legislature’s commitment to net-zero emissions by 2050 and establishment of EJ statutory provisions. Specifically, the Roadmap Law defines EJ populations, which designates neighborhoods that meet one or more of the four criteria as populations entitled to EJ principles and protections. M.G.L. c. 30, § 62. The statutorily defined EJ principles are “principles that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes: (i) the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies; and (ii) the equitable distribution of energy and environmental benefits and environmental burdens.” M.G.L. c. 30, § 62. To apply the second standard of the EJ principles, the DPU and EFSB must assess the equitable distribution of energy and environmental benefits and environmental burdens.

We urge the DPU and EFSB to use in its decisions the information gathered throughout the proceeding to assess the equitable distribution of energy and environmental benefits and environmental burdens, integrate equity, and consider greenhouse gas emissions impacts. Below we provide responses to the Roundtable topics.

Responses to Roundtable Topics

Topic 1: Improved communication with customers, community-based organizations, and local government officials to maximize public engagement in our proceedings and influence outcomes.

The Department and EFSB should engage with the applicable municipal legislative bodies, municipal regional and planning commissions, local elected officials, Community-Based Organizations (“CBOs”), Tribal-serving organizations and Tribal communities (both council and programs, and members), and small businesses to identify platforms and locations where notices will be most effective for the purpose of enhancing public awareness. The specific relevant parties with which the Department and EFSB should consult will depend on the type of proceeding and subject matter being noticed. For instance, in a rate case, the Department should engage with stakeholders in the relevant service territory. In a siting case, the EFSB should focus on the 5-mile radius around the proposed project site, as discussed further below.

The Department and EFSB can pursue several proactive measures to identify relevant CBOs who will be able to understand the content of the notice, the impacts of the project, and the appropriate audience to receive the notice. The Executive Office of Energy and Environmental Affairs (“EEA”) currently maintains a list of individuals and organizations to whom it sends public notices and should work to improve this list regularly to expand its public outreach. Specifically, it should conduct an annual update of this list by contacting organizations on the

existing list to (a) determine additional individuals and groups that should receive public notices and (b) keep contact information current. In addition, the Department and EFSB should explore the possibility of an annual meeting with EEA's Environmental Justice Council to discuss any possible adjustments to the Department's and EFSB's outreach policies.

The Department and EFSB should engage with municipal legislative bodies, municipal regional and planning commissions, local elected officials, Tribal-serving organizations, Tribal communities, and small businesses in areas relevant to a particular proceeding to identify who should receive public notices.

Even with proactive efforts, it is possible not all interested parties will be identified. Therefore, the Department and EFSB should provide on its website information regarding this public notice distribution list, as well as a place for CBOs and other interested parties to sign up to receive notices of proceedings. The purpose of this public engagement should be to influence the Department and EFSB proceedings.

Topic 2: Whether all notices for agency proceedings should receive the same level of publication and outreach, or whether there should be some prioritization or variation in approach to avoid overwhelming or desensitizing readers with frequent notices. If there should be variation, discuss the types of proceedings that warrant additional publication and outreach efforts.

The Department and EFSB should bear in mind that the type and extent of public notice depends on factors unique to each proceeding. A process that is sensitive to these factors requires the Department and/or the EFSB to consider the different needs of service territories, the type of the proceeding that is being noticed, the size of the proceeding's expected impacts, and the location of the impacts, among other considerations. When the size, scope, and location of the proceeding and the needs of the community warrant significant public awareness, the chosen platforms and locations, taken together, should be aimed at reaching as many residents, residential and commercial customers as possible.

The Department and EFSB can enhance public awareness of its proceedings by making public notices accessible on social media, in local gathering places, and in additional non-English language news and radio media. As an initial matter, not every proceeding will require the Department or EFSB to pursue all of the public posting options described below. The Department and EFSB should consider the type of proceeding and the needs of the impacted communities when determining where public notice should be published and in which language(s).

Type of Proceeding

Proceedings that are likely to have a significant and tangible impact on residents require more extensive public notice. This includes, but is not limited to, proceedings concerning rate changes (including rate increases), renewable energy project financing, interconnection, siting of new transmission lines or liquefied natural gas facilities, the implementation of new legislative requirements involving climate change and renewable energy, and gas pipeline safety matters. In

these cases, the Department and EFSB should consider pursuing the applicable publishing opportunities described in this section.

The Department and EFSB should develop a separate and more robust public notice distribution list for projects that the Department or the EFSB identifies as having greater potential impact and ensuring that these receive expanded and enhanced notices to provide the best opportunity for interested parties to learn about the project and its consequences and to get involved in the proceeding.

Extent of Distribution of Public Notice

The geographic area(s) to which public notice should be disseminated also depends on the type of proceeding. For instance, in a rate change proceeding, mailing public notice to customers is already required within the impacted service territory. Such notices should be printed using a larger size font compared to other portions of information included in the mailings with an alert on the outside of the envelope alerting customers that information regarding a proceeding that could affect their rates is enclosed. For EFSB cases and pipeline safety matters, public notice should be posted in community institutions such as libraries, municipal buildings, community centers, and large businesses located within a 5-mile radius of the proposed facility, transmission or pipeline location. This is consistent with EEA's Environmental Justice (EJ) policy;¹ the Department's and EFSB's notice requirements should be updated as needed if the EJ policy is revised.

Translation of Public Notice

The Department and EFSB should require and set thresholds for translation of public notices wherever an impacted community includes an environmental justice population designated as such on the basis of a portion of its members being households with limited English proficiency. The Department should work with EEA to convene a meeting of language access and environmental justice advocates, agency representatives, and people with GIS and statistical experience (collectively “language access group”) who will work through the details of setting a threshold to trigger language translation and interpretation. This effort should include selection of the appropriate dataset(s) that minimize the margins of error, which may affect the reliability of information, and is recent enough to capture demographic shifts. Data regarding limited English proficiency status could be based on both the Decennial Census data and American Community Survey (“ACS”) data; while the Decennial Census reflects a broader sample size and contains a lower margin of error, the ACS is updated more regularly and therefore will better capture demographic shifts. Further, while ACS data may be less statistically rigorous, they are more likely to capture a more current population. On the other hand, the Decennial Census is more statistically rigorous than ACS data and this should be considered as well. The language access group should use a radius-based approach instead of relying on census blocks to determine the significant portion of the population that would trigger translated materials.

¹ Matthew A. Beaton, “Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs”, available at https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf (accessed June 11, 2021).

We recommend that proximity be determined by a radius, rather than be based on the census tract that the project is in, because a project located on the edge of a census tract could have a significant impact on neighboring tracts which would not otherwise be captured. For each project, the Department or EFSB should direct the project proponent to use the following steps to determine whether and how translation services should be provided:

1. Draw a radius of 1 or 5 miles around the proposed project that will be seeking Department and/or EFSB review.
 - a. A minimum radius of 1 mile is generally accepted and supported by the literature, and a 5-mile radius could be used for projects with associated air emissions, which may have more of a geographic reach than other impacts. This aligns with the EEA Environmental Justice Policy 2017.
2. Determine whether that radius intersects with any environmental justice populations per the EJ Viewer Tool.²
3. If yes, determine whether English isolation is a characteristic of any of these block groups.
4. If yes, draw a 1- or 5-mile buffer using GIS around the site, and for all census tracts that intersect that buffer, take the sum of the population and then calculate the percentage of the population that speaks each language and identifies as limited English proficiency. Provide translation services for any languages that are spoken by more than a certain percent of the population according to Census data on language spoken at home by ability to speak English.
 - a. Additionally, community outreach should be conducted to determine whether translation should be provided for other languages identified in the census reporting but below the X% threshold. It is possible that the census may be underreporting on these languages and therefore outreach is important to ensure that people speaking these languages are not overlooked in the public involvement process.

When developing a threshold to trigger language translation and interpretation, the Department and EFSB should err on the side of inclusivity, which could only result in providing more translated information to the community rather than failing to accurately inform them.

Further, if a specific geographical area – including a utility’s service territory – will be impacted by a proceeding, the Department and EFSB should undertake the steps outlined above to determine whether translation services should be provided. Materials should be translated into the language or languages used in that area and disseminated in the same manner as English notices.

Further, once DPU or the EFSB determines that translation is required, it should publish public notice in language-specific social media, print news, and radio. It should also ensure that notice posted in local venues is translated into the appropriate language(s).

² The EJ Viewer Tool is available at [Environmental Justice Populations in Massachusetts \(arcgis.com\)](https://arcgis.com).

Location of Public Notice

a) Local venues

The Department and EFSB should consider posting language-appropriate materials in gathering spaces that are commonly visited by the public. This may include places of worship, community and senior centers, grocery stores, schools, laundromats, post offices, bus and train stations, and large multi-unit residential buildings and should be printed on brightly colored paper and written in large text to draw attention. The notice should include a plain-language statement indicating how the proceeding is expected to impact affected residents. This explanation will enhance the effectiveness of the public notice by providing readers with sufficient, easy to understand information that will inform their decision of whether to participate in a proceeding.

b) Social Media

The Department should establish Twitter and Facebook accounts, at a minimum, so that it can post public notices to these social media platforms. In addition to posting on the Department's social media accounts, public notices should be shared via the social media accounts of the utility proposing the project, as well as social media accounts for local news, municipalities, and CBOs. However, because the algorithms that push posts to viewers are dependent on the platform and a variety of inputs, social media should be used for the purpose of enhancing public outreach and not viewed as sufficient in and of itself.

Targeted Enhanced Outreach

We recommend that the DPU and EFSB conduct and require project proponents to conduct targeted outreach to populations within one mile of a site-specific proposal and a one-mile buffer around a proposed transmission line or other linear point. Enhanced outreach includes targeted emails, phone calls, and mailed letters to elected and appointed officials in that geographic radius, CBOs, and Tribal communities. Targeted enhanced outreach is more than a check the box scenario and should involve an invitation for one or more meetings pre-filing to discuss the proposal.

Topic 3: The most effective methods that Distribution Companies use currently to reach customers

Distribution companies are already using some of the methods described above to reach customers, but there remains significant room for improvement. For example, during the Roundtable, the utilities emphasized their use of social media in reaching customers. However, as noted above, social media algorithms may prevent posts from reaching their customers. Distribution companies should attempt to post at specific times or purchase ad space on social media platforms to ensure notices are pushed to a wide audience. Further, as noted above, social media should only be used in addition to other forms of public notice and not viewed as sufficient on its own.

We thank the Department and EFSB for their commitment to implementing the Roadmap Law (Chapter 8 of the Acts of 2021) and expanding access to agency proceedings. We welcome any additional inquiries and collaboration on this matter. To that end, please contact Staci Rubin (srubin@clf.org) or Priya Gandbhir (pgandbhir@clf.org) with any questions or comments. Thank you for your time and attention to this matter.

Very truly yours,

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CC: 21-50 Service List, EFSB 21-01 Service List