

## **APPENDIX 14: COMPARISON OF OTHER STATE AGENCIES IN SITING – MA, NH, RI**

State agencies can have a role, to varying degrees, in advising or working in conjunction with siting bodies. Each of the New England states seems to handle the relationship between state agencies and the state’s siting body differently.

Unlike Connecticut, the siting boards in other states have a larger crossover with their PUC. In CT, the chairperson of PURA (or the chairperson’s designee) represents one vote of the nine- member board. Additionally, PURA is one of the state agencies which provides comments to CSC. There is limited overall involvement of PURA as required by statute.

In contrast to Connecticut, in New Hampshire, three of the five members of SEC are the three commissioners from the PUC and the chairperson of the SEC is the chairperson of PUC. Therefore, the majority of the board and the chairperson come from the PUC. Also, there is a shared staff member hired by and under supervision of chair of the PUC who performs duties for both PUC and SEC with SEC having higher priority. In Rhode Island, one of the three members of EFSB is the chair of PUC. Also, the chair of PUC acts as the chair of EFSB. In Massachusetts, the DPU is overseen by a 3-person commission and 2 members of that commission are on the EFSB. The DPU also has a siting division, and the DPU siting division staff are the staff for the EFSB.

In CT, an attorney general is appointed to act as counsel for CSC. In contrast, in New Hampshire, the attorney general is appointed to act as counsel for the public.

Another difference between Connecticut and other states is that the Connecticut statutes list the agencies which will give advisory opinions to the CSC. In Massachusetts and Rhode Island, the board is allowed to choose which agencies to contact and obtain advisory opinions from (the role of other state agencies in siting is covered in Chapter 1 of this report).

### **Massachusetts**

The Commonwealth Utilities Commission (also referred to as the Department of Public Utilities Commission) is a three-member body in charge of the Department of Public Utilities in Massachusetts. The Chairman of the Commonwealth Utilities Commission has the statutory authority to “refer matters related to the need for, construction of, or siting of facilities...as he deems appropriate to the energy facilities siting board....” Further, two members of the EFSB are two Commissioners from the Commonwealth Utilities Commission.<sup>127</sup>

The Massachusetts Department of Public Utilities also has a role in siting. The Department of Public Utilities (DPU) has a facility siting division which performs functions as the Commonwealth

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<sup>127</sup> [M.G.L.A. 25 Sec. 2](#), [M.G.L.A. 25 Sec. 4](#), and [M.G.L.A. 164 Sec. 69H](#).

Utilities Commission may determine in relation to the administration, implementation, and enforcement of the siting statutes.<sup>128</sup>

While the Energy Facilities Siting Board (EFSB) oversees the siting of many large energy facilities, the DPU also plays a complementary role that long pre-dates the creation of the EFSB. The DPU reviews proposals to: (1) construct and operate electric transmission lines; (2) obtain exemptions from municipal zoning ordinances for necessary energy facilities; (3) authorize the survey of land for proposed energy facilities; and (4) authorize the taking of land (or easements) for necessary energy facilities. The DPU Siting Division administers DPU siting functions and serves as staff to the EFSB. When proposed energy facilities involve both the DPU and EFSB, the DPU assigns its responsibilities to the EFSB in a consolidated proceeding. The Department of Public Utilities (DPU) administratively supports the work of the EFSB and its staff, but the nine-member EFSB makes its decisions independently. EFSB staff also conducts DPU siting-related cases that do not fall within the EFSB's jurisdiction.<sup>129</sup>

In carrying out its functions, the EFSB cooperates with, and may obtain information and recommendations from every agency of the state government and of local government which may be concerned with any matter under the purview of the EFSB. Each state or local government agency is directed to provide such information and recommendations as may be requested by the EFSB.<sup>130</sup>

The EFSB is authorized to make joint investigations, hold joint hearings within or without the commonwealth, and issue joint or concurrent orders in conjunction or concurrence with any official agency of any state or of the federal government. Whether in the holding of such investigations or hearings, or in the making of such orders, the board may function under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the federal government or otherwise. The board, in the discharge of its duties under this section is further authorized to negotiate and enter into agreements or compacts with agencies of the federal government or other states, pursuant to any consent of congress, for cooperative efforts in certifying the construction, operation and maintenance of energy facilities in accord with the purposes of this section and for the enforcement of the respective laws of the commonwealth or of said states regarding same.<sup>131</sup>

## **New Hampshire**

Each application in New Hampshire needs to contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and must include each agency's completed application forms, which are contemporaneously filed with the state

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<sup>128</sup> [M.G.L.A. 25 Sec. 12N.](#)

<sup>129</sup> [DPU Siting Division | Mass.gov](#) and [Energy Facilities Siting Board | Mass.gov](#)

<sup>130</sup> [M.G.L.A. 164 Sec. 69H.](#)

<sup>131</sup> [M.G.L.A. 164 Sec. 69Q.](#)

agency having jurisdiction. Upon receipt of a copy, each agency conducts a preliminary review to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of the state agencies having permitting or other regulatory authority, that agency, in writing, notifies the chairperson or designated presiding officer and the applicant of that fact and specifies what information the applicant must supply. Notwithstanding any other provision of law, for purposes of the time limitations, any application made under this section shall be deemed not accepted either by the chairperson or designated presiding officer or by any of the state agencies having permitting or other regulatory authority if the applicant is reasonably notified that it has not supplied sufficient information for any of the state agencies having permitting or other regulatory authority in accordance with this paragraph.

Additionally, when an application is filed, the attorney general is notified. The attorney general appoints an assistant attorney general to act as a counsel for the public. This counsel represents the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.

When initiating a proceeding for a committee matter, the committee shall expeditiously notify state agencies having permitting or other regulatory authority or that are identified in administrative rules. State agencies having permitting or other regulatory authority may participate in SEC proceedings as follows: (a) Receive proposals or permit requests within the agency's permitting or other regulatory authority, expertise, or both; determine completeness of elements required for such agency's permitting or other programs; and report on such issues to the SEC; (b) Review proposals or permit requests and submit recommended draft permit terms and conditions to the SEC; (c) Identify issues of concern on the proposal or permit request or notify the SEC that the application raises no issues of concern; and (d) When issues of concern are identified by the agency or SEC, designate one or more witnesses to appear before the committee at a hearing to provide input and answer questions of parties and committee members.

Within 30 days of receipt of a notification of proceeding, a state agency not having permitting or other regulatory authority but wishing to participate in the proceeding shall advise the presiding officer of the SEC in writing of such desire and be allowed to do so provided that the presiding officer determines that a material interest in the proceeding is demonstrated and such participation conforms with the normal procedural rules of the committee.

The commissioner or director of each state agency that intends to participate in a committee proceeding shall advise the presiding officer of the name of the individual on the agency's staff designated to be the agency liaison for the proceeding. The presiding officer may request the attendance of an agency's designated liaison at a session of the committee if that person could materially assist the committee in its examination or consideration of a matter.

A state agency may intervene as a party in any committee proceeding in the same manner as other persons. An intervening agency shall have the right to rehearing and appeal of a certificate or other decision of the committee.<sup>132</sup>

## Rhode Island

The RI-EFSB is the licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state. Any agency, board, Council, or commission of the state or political subdivision of the state which would otherwise be required to issue a permit, license, assent, or variance in order for the siting, construction, or alteration of a major energy facility to proceed, sits and functions at the direction of the RI-EFSB. These agencies follow the procedures established by statute, ordinance, and/or regulation provided for determining the permit, license, assent, or variance, but instead of issuing the permit, license, assent, or variance, will instead forward its findings from the proceeding, together with the record supporting the findings and a recommendation for final action, to the RI-EFSB.<sup>133</sup>

The RI-EFSB can direct action by other state agencies. After receiving an application, the RI-EFSB will conduct a preliminary hearing where it determines issues to be considered by the Board in evaluating an application. The Board can then designate agencies of state government and of political subdivisions of the state to render advisory opinions on these issues, which they then must do. Each agency of the state or political subdivision of the state designated under § 42-98-9 proceeds to consider the issue or issues consigned to it for review. Each agency must then issue an advisory opinion not more than six (6) months following its designation or any lesser time that the board may require, or the right to exercise the function shall be forfeited to the board.

There are three types of advisory opinions: those enumerated in the statutes, jurisdictional licenses and permits and discretionary. The statutes require two advisory opinions. First, the public utilities commission must conduct an investigation concerning the need for the proposed facility (and typically cost) in which the division of planning of the department of administration, the governor's office of energy assistance and the division of public utilities and carriers participate. The statewide planning program within the department of administration also must conduct an investigation as to the socio-economic impact of the proposed facility and its construction and consistency with the state guide plan. The EFSB also designates all state and local agencies that would normally have issued required licenses, permits, etc. to render an advisory opinion on whether or not the necessary licenses, permits, etc. should be granted. Finally, the Board's Rules allow the EFSB to designate agencies to render discretionary advisory opinions that do not convey an opinion on a specific license, but rather an opinion on how a project conforms to an applicable law or policy.<sup>134</sup>

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<sup>132</sup> [N.H. Rev. Stat. Sec. 162-H:7](#), [N.H. Rev. Stat. Sec. 162-H:7-a](#), and [N.H. Rev. Stat. Sec. 162-H:9](#).

<sup>133</sup> [R.I. Gen. Laws Ann. Sec. 42-98-7 \(a\)\(1\)](#) and [R.I. Gen. Laws Ann. Sec. 42-98-7 \(a\)\(2\)](#).

<sup>134</sup> [R.I. Gen. Laws Ann. Sec. 42-98-9\(a\) – 10\(a\)](#) and [General FAQ \(ri.gov\)](#).