

## APPENDIX 8: COMPARISON OF REVIEW PROCESSES IN OTHER STATES – MA, NH, RI, VT

### Massachusetts

The MA- EFSB and DPU Siting review process is a legal proceeding, in which the burden is on the developer or utility company to demonstrate that the proposed project meets the requirements set forth in the statutes and regulations. See [EFSB and DPU Siting Process | Mass.gov](#). A few of the relevant processes are included below.

#### ***MA: Approval of Petitions for Approval of Construction***

No “facility” can be constructed, in Massachusetts, without a petition for approval of construction being issued by the EFSB. In the case of an electric or gas company which is required to file a long-range forecast, that facility must be consistent with the most recently approved long-range forecast for that company. In addition, no applicant can commence construction of a generating facility unless a petition for approval of construction has been approved by the board. There are different rules and procedures related to petitions for approval of construction that distinguish “generating facilities” from other “non-generating facilities.”<sup>61</sup>

A “facility” is defined as “(1) a generating facility; (2) 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; (3) a new electric transmission line having a design rating of 115 kilovolts or more which is 10 miles or more in length on an existing transmission corridor except reconductoring or rebuilding of transmission lines at the same voltage; (4) an ancillary structure which is an integral part of the operation of any transmission line which is a facility; (5) a unit, including associated buildings and structures, designed for or capable of the manufacture or storage of gas, except such units below a minimum threshold size as established by regulation; and (6) a new pipeline for the transmission of gas having a normal operating pressure in excess of 100 pounds per square inch gauge which is greater than one mile in length except restructuring, rebuilding, or relaying of existing transmission lines of the same capacity.”<sup>62</sup>

A “generating facility” is defined as, “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.”<sup>63</sup>

With respect to generating facilities, the board only reviews the environmental impacts of those facilities, because Massachusetts has a policy of allowing market forces to determine the need for and cost of such facilities.<sup>64</sup> The board also coordinates the permitting and licensing of certain hydropower generating facilities.<sup>65</sup>

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<sup>61</sup> [M.G.L.A. 164 Sec. 69J](#) and [M.G.L.A. 164 Sec. 69J1/4](#).

<sup>62</sup> [M.G.L.A. 164 Sec. 69G](#).

<sup>63</sup> Definitions for “facility” and “generating facility” are in [M.G.L.A. 164 Sec. 69G](#).

<sup>64</sup> [M.G.L.A. 164 Sec. 69H](#).

<sup>65</sup> [M.G.L.A. 164 Sec. 69H1/2](#).

### **MA: Certificate of Environmental Impact**

The EFSB can also issue certificates of environmental impact for “facilities” and “generating facilities.” Such a certificate, if granted, has the legal effect of providing all state and local permits that are required for construction and operation of the facility, as requested by the applicant.<sup>66</sup>

With respect to “facilities,” generally, an electric, gas or oil company which proposes to construct or operate a facility can petition the Board for a certificate. The EFSB will review matters where a proposed facility is potentially being blocked by government action or inaction. The board considers certificates when: (1) the electric, gas or oil company is prevented from building a facility because it cannot meet standards imposed by a state or local agency with commercially available equipment; (2) the processing or granting by a state or local agency of any approval, consent, permit or certificate has been unduly delayed for any reason; (3) the company believes there are inconsistencies among resource use permits; (4) a nonregulatory issue or condition has been raised or imposed by such state or local agencies such as, but not limited to, aesthetics and recreation; (5) the facility cannot be constructed due to any disapprovals, conditions or denials by a state or local agency or body, except with respect to any lands or interests therein, excluding public ways, owned or managed by any state agency or local government; or (6) any state or local agency has imposed a burdensome condition or limitation on any license or permit which has a substantial impact on the board’s responsibilities. Also, for “generating facilities” if the facility cannot be constructed because of delays caused by the appeal of any approval, consent, permit or certificate.

Notwithstanding the provisions of any other law to the contrary, when a certificate is issued, no state agency or local government can require any approval, consent, permit, certificate or condition for the construction, operation or maintenance of the facility with respect to which the certificate is issued and no state agency or local government can impose or enforce any law, ordinance, by-law, rule or regulation nor take any action nor fail to take any action which would delay or prevent the construction, operation or maintenance of the facility.

A certificate is in the form of a composite of all individual permits, approvals, or authorizations which would otherwise be necessary for the construction and operation of the generating facility, and that portion of the certificate which relates to subject matters within the jurisdiction of a state or local agency is enforced by said agency under the other applicable laws of the commonwealth as if it had been directly granted by the said agency.<sup>67</sup>

The statutes further set forth: what must be contained in the petition for the certificate and the notice requirements;<sup>68</sup> requirements related to public hearings;<sup>69</sup> the parties to the proceedings;<sup>70</sup> and what

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<sup>66</sup> <https://www.mass.gov/doc/energy-facilities-siting-handbook-revised-january-2019>.

<sup>67</sup> [M.G.L.A. 164 Sec. 69K](#) (non-generating) and [M.G.L.A. 164 Sec. 69K ½](#) (generating).

<sup>68</sup> [M.G.L.A. 164 Sec. 69L](#) (non-generating) and [M.G.L.A. 164 Sec. 69L ½](#) (generating).

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

<sup>70</sup> [M.G.L.A. 164 Sec. 69N](#).

needs to be included in the decision.<sup>71</sup>

### ***MA: State Representative before FERC***

In addition to conducting facility reviews, the MA-EFSB may represent the Commonwealth in proceedings before the Federal Energy Regulatory Commission ("FERC") having to do with the construction of interstate natural gas pipelines in Massachusetts. The MA-EFSB typically intervenes when interstate natural gas pipeline companies petition FERC to construct major interstate gas pipelines in Massachusetts. At the request of hydroelectric facility applicants seeking FERC approval, the MA-EFSB is authorized to coordinate the information collection process for permitting and licensing of hydropower generating facilities, in consultation with state and federal permitting and licensing agencies.<sup>72</sup>

## **New Hampshire**

### ***Certificate***

No person can construct any energy facility in New Hampshire without first obtaining a certificate from the site evaluation committee. The facilities are constructed, operated and maintained in accordance with the terms of the certificate.<sup>73</sup> Sizeable changes or additions to existing facilities also require a certificate. A certificate is conclusive on all questions of siting, land and offshore uses and air and water quality.<sup>74</sup>

An "Energy Facility" is defined as:

Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include, but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network; (b) Electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts or more; (c) An electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility under subparagraph (b), over a route not already occupied by a transmission line or lines; (d) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length, over a route not already occupied by a transmission line; (e) A new electric transmission line of design rating in excess of 200 kilovolts; (f) A renewable energy facility; (g) An electrical storage facility

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<sup>71</sup> [M.G.L.A. 164 Sec. 69O](#) (non-generating) and [M.G.L.A. 164 Sec. 69O ½](#) (generating).

<sup>72</sup> <https://www.mass.gov/doc/energy-facilities-siting-handbook-revised-january-2019>.

<sup>73</sup> [N.H. Rev. Stat. Sec. 162-H:5](#).

<sup>74</sup> [N.H. Rev. Stat. Sec. 162-H:16](#).

with a peak storage capacity of 30 megawatts or greater; (h) Any other facility and associated equipment that the committee determines requires a certificate pursuant to that process.<sup>75</sup>

A “Renewable Energy Facility” is defined as:

electric generating station equipment and associated facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 megawatts and powered by wind energy, geothermal energy, hydrogen derived from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas, biomass technologies, solar technologies, or hydroelectric energy. “Renewable energy facility” shall also include [under certain circumstances] electric generating station equipment and associated facilities of 30 megawatts or less nameplate capacity...<sup>76</sup>

Any certificate issued by the site evaluation committee is based on the record. The decision to issue a certificate in its final form or to deny an application, once it has been accepted, is made by a majority of the full membership. A certificate is conclusive on all questions of siting, land [use] and offshore uses, and air and water quality.<sup>77</sup>

## Rhode Island

### ***RI: License***

In Rhode Island, “[n]o person shall site, construct, or alter a major energy facility within the state without first obtaining a license from the siting board....”<sup>78</sup> The siting board 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.<sup>79</sup> The licensing decision issued by the siting board constitutes the sole, final, binding, and determinative regulatory decision within the state for the purposes of siting, building, operating, or altering a major energy facility.<sup>80</sup>

“Major energy facilities”, are defined as:

“facilities for the extraction, production, conversion, and processing of coal; facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more; transmission lines of sixty-nine (69) KV or over; facilities for the conversion, gasification, treatment, transfer, or storage of liquified natural and liquified petroleum gases; facilities for the processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts; facilities for the refining of oil, gas, or other petroleum products; facilities of ten (10) megawatts or greater capacity for the generation of electricity by water power, and facilities associated with the transfer of oil, gas, and coal via pipeline; any energy facility project of the Rhode Island economic development corporation....”<sup>81</sup>

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<sup>75</sup> [N.H. Rev. Stat. Sec. 162-H:2 \(VII\)](#).

<sup>76</sup> [N.H. Rev. Stat. Sec. 162-H:2 \(XII\)](#).

<sup>77</sup> [N.H. Rev. Stat. Sec. 162-H:16](#).

<sup>78</sup> [R.I. Gen. Laws Ann. Sec. 42-98-4](#).

<sup>79</sup> [R.I. Gen. Laws Ann. Sec. 42-98-7 \(a\)\(1\)](#).

<sup>80</sup> [R.I. Gen. Laws Ann. Sec. 42-98-12 \(a\)](#).

<sup>81</sup> [R.I. Gen. Laws Ann. Sec. 42-98-3 \(d\)](#).

The board can also create regulations to further define a “major energy facility,”<sup>82</sup> as well as rules and regulations governing construction within the state of high-voltage transmission lines of sixty-nine (69) kV or greater.<sup>83</sup>

Waste to energy facilities are not considered major energy facilities.<sup>84</sup>

## **Vermont**

### ***Certificate of Public Good***

With certain exceptions, no site preparation for or construction of an electric generation facility, energy storage facility, or electric transmission facility and no exercise of eminent domain can occur unless the Public Utility Commission issues a certificate that it will promote the general good of the State of Vermont. Additionally, the Public Utility Commission must issue a certificate that natural gas facilities, including natural gas transmission lines, will promote the general good of the State of Vermont (unless they fall solely within federal jurisdiction).<sup>85</sup>

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<sup>82</sup> [R.I. Gen. Laws Ann. Sec. 42-98-3 \(d\)](#)

<sup>83</sup> [R.I. Gen. Laws Ann. Sec. 39-25-3.](#)

<sup>84</sup> [R.I. Gen. Laws Ann. Sec. 42-98-3 \(d\).](#)

<sup>85</sup> [30 V.S.A. Sec. 248 et seq.](#)