

Making Clean Energy Decisions in New England

Applied Economics Clinic

Prepared on behalf of
Community Action Works



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April 2022



Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity



Executive Summary

On behalf of Community Action Works, this Applied Economics Clinic (AEC) report profiles six current clean energy and energy justice campaigns in New England states (see Figure ES-1 on the next page):

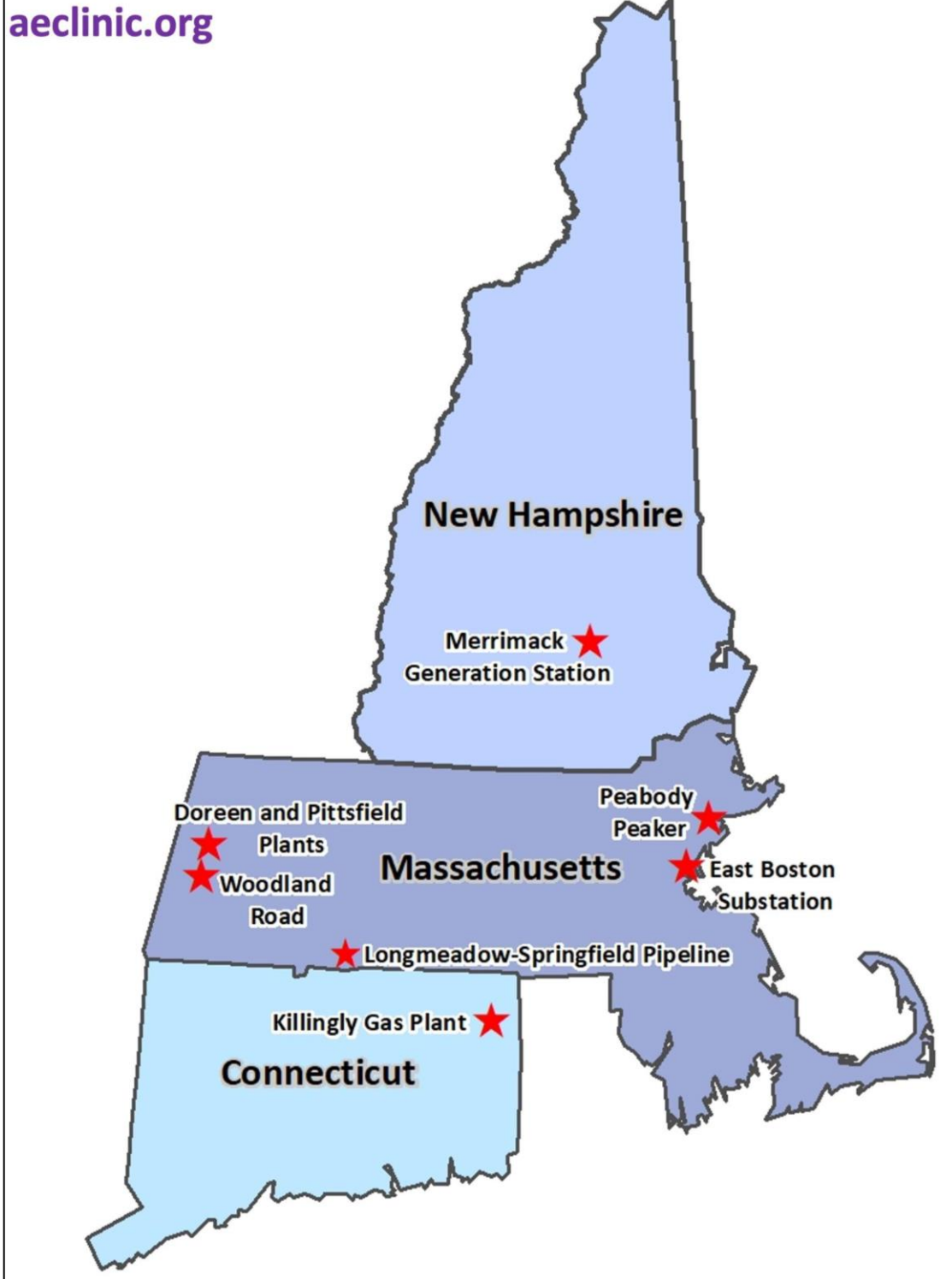
1. The proposed, 60-megawatt (MW) gas/oil-fired peaker plant in **Peabody, Massachusetts**: Advocates oppose the construction and/or operation of the Peabody peaker project.
2. The existing, 482 MW coal-fired Merrimack Generation Station in **Bow, New Hampshire**: Advocates oppose the plant's continued operation and aim to shut down the existing Merrimack Generation Station peaker plant, the last coal-fired plant in New England.
3. Three existing fuel oil, kerosene, and gas-fired peaker plants totaling 217 MW in **Berkshire County, Massachusetts**: Advocates oppose the plants' continued operation using fossil fuels and are advocating for their conversion to renewable energy sources.
4. The proposed, 650 MW gas-fired plant in **Killingly, Connecticut**: Advocates oppose the plant and aim to prevent its construction.
5. The proposed 5.4-mile gas pipeline between Longmeadow and **Springfield, Massachusetts**: Advocates aim to prevent the pipeline's construction because of its potential negative human health and environmental impacts.
6. The approved—but not-yet-constructed—electric substation in **East Boston, Massachusetts**: Advocates aim to prevent the substation's construction at its approved location in East Boston.

AEC's profile of each energy justice campaign includes: a description of the energy project at issue in the campaign—including the project's current status—and an assessment of which decision-making bodies possess the authority to take actions consistent with the goals of advocates. We also summarize the crucially important role that the Independent Service Operator of New England (ISO-NE), Governors and state legislatures play in determining New England's energy mix.

Across these six clean energy and energy justice campaigns, we find that while a project is still in the proposed phase advocates have more opportunities to seek action in line with their goals across a larger number of decision-making bodies with a greater variety of interests and mandates. Once a project has received its necessary approvals and is built, however, it is much more difficult to shut down energy projects, and there are fewer avenues for advocates to realize their goals. For example: Advocates can press at least five different decision-making bodies to take action in line with their goal to prevent construction of the proposed Peabody, Massachusetts peaker plant. In the case of the existing coal-fired plant in Bow, New Hampshire, however, advocates can only press two decision-making bodies that are themselves limited in their ability to act without evidence of noncompliance or false or misleading statements with regard to a specific permit that has already been granted.



Figure ES-1. Six energy justice campaigns



Note: The Woodland Road, Doreen, and Pittsfield plants in Western Massachusetts are the focus of a single campaign.



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Introduction

On behalf of Community Action Works, this Applied Economics Clinic (AEC) report assesses the roles and responsibilities of various decision-making bodies across six current clean energy and energy justice campaigns in Massachusetts, New Hampshire and Connecticut:

1. The proposed, 60-megawatt (MW) gas/oil-fired peaker plant in Peabody, Massachusetts;
2. The existing, 482 MW coal-fired Merrimack Generation Station in Bow, New Hampshire;
3. Three existing fuel oil, kerosene, and gas-fired peaker plants totaling 217 MW in Berkshire County, Massachusetts;
4. The proposed, 650 MW gas-fired plant in Killingly, Connecticut;
5. The proposed 5.4-mile gas pipeline between Longmeadow and Springfield, Massachusetts; and
6. The approved—but not-yet-constructed—electric substation in East Boston, Massachusetts.

Community Action Works provided AEC access to interviews conducted on the podcast *Stories from the Frontlines*¹ to inform two pieces of work: 1) this report, and 2) another report on behalf of the Environmental Defense Fund—*Embedding Equity into Energy Regulatory Decisions*— which shares the experiences of community advocates who have faced barriers in participating in regulatory proceedings regarding the siting of energy infrastructure.

Across these six energy justice campaigns, we find that multiple decision-making bodies have the authority to take actions that would advance the goals of advocates, however, it is much more difficult to shut down energy projects once they are constructed and operational as compared to when a project is still proposed, in the permitting process, and/or recently approved. Before a project is operational, advocates can seek action in line with their goals across a larger number of decision-making bodies with a greater variety of interests and mandates. For example, advocates may press a specific municipality to leverage its authority against a proposed project, or target a range of public institutions whose permissions will be necessary to move a project forward. Once a project is operational, there are fewer avenues for advocates to realize their goals: In general, for a decision-making body to act, there needs to be evidence of noncompliance or false or misleading statements with regard to a specific permit.

A particularly important avenue for advocates is the rapidly evolving area of Environmental Justice (EJ) community protections. Across the six New England states, only New Hampshire has no EJ definitions or protections in place or under consideration by the legislature. However, the specifics of EJ protections vary from state to state, and advocacy approaches should be tailored to context. For example:

- In **Massachusetts**, an EJ population is any that meets one or more of the following criteria: (1) annual median household income is less than 65 percent of the statewide median (the state's

¹ Available on Apple and Spotify. <https://podcasts.apple.com/us/podcast/stories-from-the-frontlines/id1590558244> and <https://open.spotify.com/show/6JyiqX05XoSXS78GKZe4ju>.



median income is about \$81,000²); (2) racial/ethnic minorities account for 40 percent or more of the population; (3) 25 percent or more of households lack English language proficiency; and/or (4) racial/ethnic minorities comprise 25 percent or more of the population *and* the annual median household income does not exceed 150 percent of the statewide median.³ The 2021 *Act Creating a Next-generation Roadmap For Massachusetts Climate Policy* requires an environmental impact report “for any project that is likely to cause damage to the environment and is located within a distance of 1 mile of an environmental justice population.”⁴

- In **Connecticut**, EJ communities are defined as any distressed municipality, as defined by the Department of Economic and Community Development⁵ or any census block group with at least 30 percent of the population living below 200 percent of the federal poverty level.⁶ New statutes went into effect in November 2020 that require “enhanced public participation” in permitting processes for certain kinds of facilities (including electric generators larger than 10 MW) located in an EJ community.⁷
- In **Maine**, *An Act to Require Consideration of Climate and Equity Impacts by the Public Utilities Commission*, enacted in May 2021, defines EJ populations as any census tract in which: the annual median household income is less than 65 percent of the statewide annual median; minority populations comprise 40 percent or more of the population; 25 percent or more of the households in the census tract lack English language proficiency; or minority populations comprise 25 percent or more of the population in the census tract and the annual median household income in the census tract is less than 150 percent of the statewide median.⁸ The law also directs the Maine Public Utilities Commission to “mitigate disproportionate energy burdens and other inequities of affordability and environmental justice.”⁹

² U.S. Census Bureau. n.d. “QuickFacts: Massachusetts.” Available at:

<https://www.census.gov/quickfacts/fact/table/MA/INC110219>.

³ Executive Office of Energy and Environmental Affairs. n.d. “Environmental Justice Populations in Massachusetts.”

Available at: [https://www.mass.gov/info-details/environmental-justice-populations-in-](https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts#:~:text=Languages%20Spoken-)

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[,What%20is%20an%20Environmental%20Justice%20Population%3F,following%20four%20criteria%20are%20true%3A&text=minorities%20comprise%2040%20per%20cent,lack%20English%20language%20proficiency%3B%20or.](https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts#:~:text=Languages%20Spoken-)

⁴ Massachusetts Session Laws Chapter 8 (March 26, 2021). *An Act Creating a Next-generation Roadmap for Massachusetts Climate Policy*. Available at: <https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter8>

⁵ Available at: <https://portal.ct.gov/DEEP/Environmental-Justice/Environmental-Justice-Communities>.

⁶ Miller, K. December 2020. *Connecticut’s Environmental Justice Law*. Office of Legislative Research. Available at:

<https://www.cga.ct.gov/2020/rpt/pdf/2020-R-0286.pdf>.

⁷ CT DEEP. September 2021. *Environmental Justice Public Participation Fact Sheet*. Available at: https://portal.ct.gov/-/media/DEEP/environmental_justice/EJfspdf.pdf.

⁸ 130th Maine Legislature. May 6, 2021. “An Act to Require Consideration of Climate and Equity Impacts by the Public Utilities Commission.” Available at:

<https://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP1251&item=1&snum=130>.

⁹ Ibid.



- In **Vermont**, the state Senate passed S.148, *An act relating to environmental justice in Vermont*, in March 2022.¹⁰ The bill now heads to the House of Representatives.¹¹ The bill, if passed, would establish the state’s EJ policy including defining EJ communities (any census block group in which the annual median household income is no more than 80 percent of the state median; people of color make up at least 6 percent of the population; or at least 1 percent of households have limited English proficiency), establish EJ community funding targets for state agencies, and form an advisory council to elevate the voices of EJ community representatives.¹²
- In **Rhode Island**, EJ communities are currently defined as census block groups with percentages in the top 15 percent of the region or state for low-income residents and/or racial/ethnic minority populations.¹³ Existing protections for EJ communities revolve around the investigation and remediation of contaminated areas,¹⁴ but a bill passed in the State Senate in March 2022 (*Environmental Justice Act*)¹⁵ would update the definition of EJ communities to include any census tract where: annual median household income is less than 65 percent of the statewide median; racial/ethnic minorities account for 40 percent or more of the population; at least 25 percent of households lack English language proficiency; or racial/ethnic minorities account for at least 25 percent of the population *and* the annual median household income does not exceed 150 percent of the statewide median.¹⁶ The proposed *Environmental Justice Act* would also direct state permitting decisions to take the cumulative impact of pollution in EJ communities into account. The bill now heads to the House of Representatives’ Environment and Natural Resources Committee.¹⁷

¹⁰ Cotton, E. March 25, 2022. “Senate unanimously supports Vermont’s 1st environmental justice policy.” *VTDIGGER*. Available at: <https://vtdigger.org/2022/03/25/senate-unanimously-supports-vermonts-1st-environmental-justice-policy/>.

¹¹ Vermont General Assembly. No date. S.148: An act relating to environmental justice in Vermont. Available at: <https://legislature.vermont.gov/bill/status/2022/S.148>.

¹² Thill, D. February 24, 2022. “What does environmental justice look like in Vermont? Bill seeks to answer.” *Energy News Network*. Available at: <https://energynews.us/2022/02/24/what-does-environmental-justice-look-like-in-vermont-bill-seeks-to-answer/>.

¹³ Huertas, M., Cabrera, C. and Jaehnig, A. June 2018. “Environmental Justice Advocates Propose Changes to Diversify CRMC Board.” Available at: <https://ecori.org/2018-6-9-environmental-justice-advocates-propose-changes-to-diversify-crmc-board/#:~:text=Environmental%20justice%20communities%20are%20defined,%2For%20non%2Dwhite%20populations>.

¹⁴ Rhode Island Department of Environmental Management. No date. “Environmental Justice.” Available at: <http://www.dem.ri.gov/programs/wastemanagement/site-remediation/environmental-justice.php>.

¹⁵ State of Rhode Island General Assembly. 2022. S 2087: An Act Relating to State Affairs and Government—Environmental Justice Act. Available at: <http://webserver.rilin.state.ri.us/BillText/BillText22/SenateText22/S2087.pdf>.

¹⁶ Fitzpatrick, E. March 11, 2022. “Senate bill would create ‘environmental justice focus areas’ in R.I.” *Boston Globe*. Available at: <https://www.bostonglobe.com/2022/03/11/metro/senate-bill-would-create-environmental-justice-focus-areas-ri/>.

¹⁷ LegiScan. No date. “Rhode Island Senate Bill 2087.” Available at: <https://legiscan.com/RI/bill/S2087/2022>.

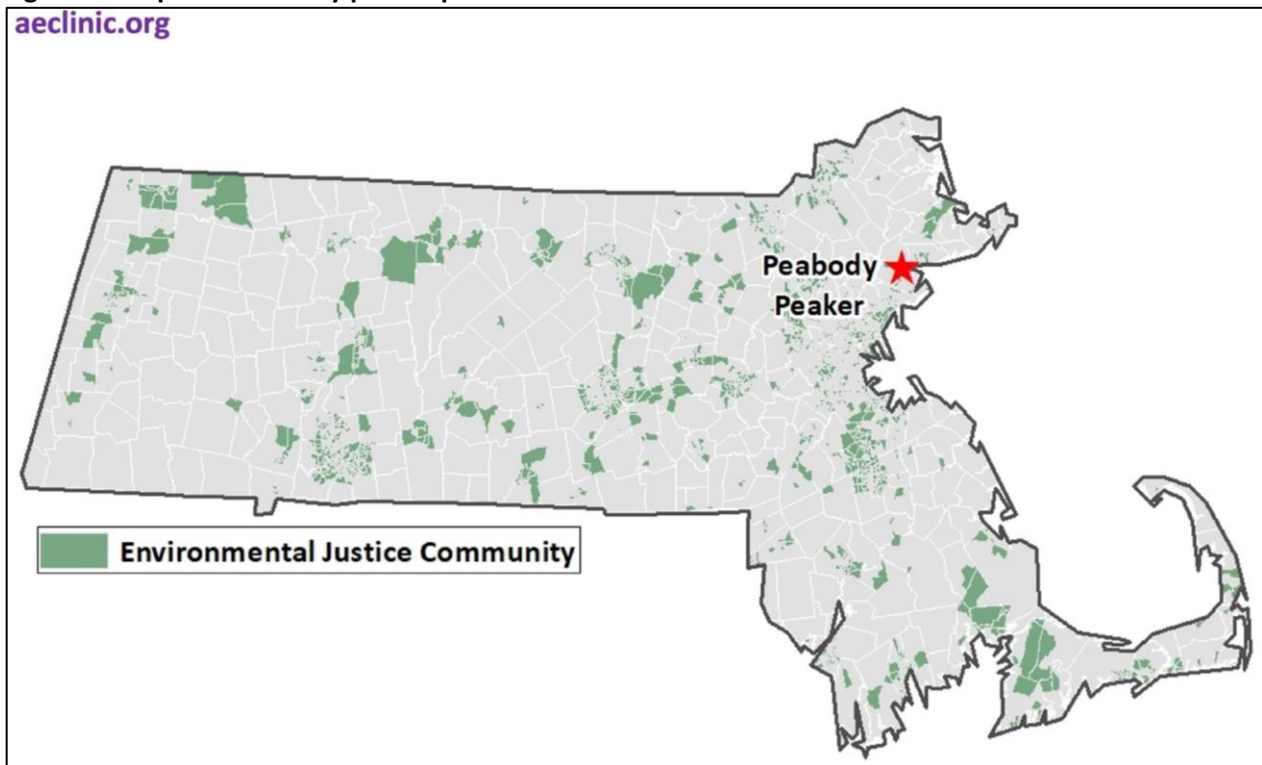


This report also summarizes the crucially important role that the Independent Service Operator of New England (ISO-NE), Governors and state legislatures play in determining New England’s energy mix: ISO-NE—via its markets—selects which energy resources will be used in the future and which utility companies will supply them. Changes to ISO-NE—either from within or from new policy mandates from Governors and state legislators—have the potential to render energy projects like the six covered in this report less competitive.

1. Proposed Peabody, Massachusetts gas peaker plant

Project: A proposed 60-megawatt (MW) gas/oil-fired peaker plant in Peabody, Massachusetts¹⁸ (see Figure 1).

Figure 1. Proposed Peabody peaker plant and Massachusetts Environmental Justice communities



Advocacy goal: Multiple advocacy organizations including Breath Clean North Shore, Massachusetts Climate Action Network, Community Action Works, 350Mass, and Clean Power Coalition advocate against the construction, and/or operation of the Peabody peaker project.

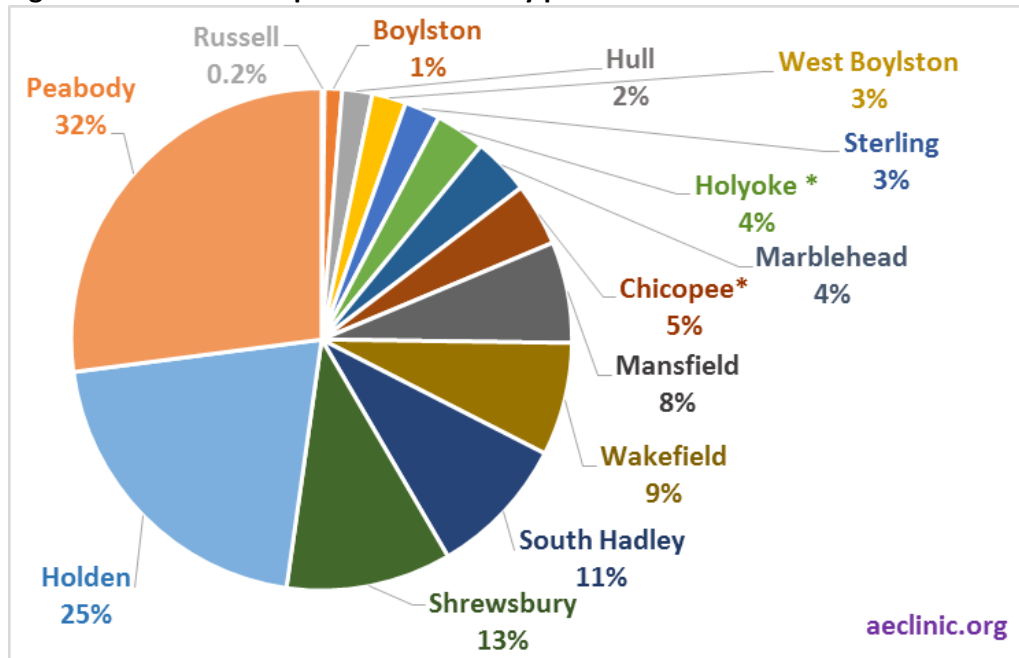
Status: The Peabody “Project 2015A” peaker received its air permit from the Massachusetts Department of

¹⁸ MMWEC. 2021. “Project 2015A”. Available at: <https://www.project2015a.org>.



Environmental Protection (MassDEP) in September 2020¹⁹ and the Massachusetts Department of Public Utilities (DPU) approved Massachusetts Municipal Wholesale Electric Company's (MMWEC) request to issue \$170 million in bonds to fund the facility in August 2021.²⁰

Figure 2. MLP ownership shares in Peabody peaker



Data source: MMWEC. February 2021. "Project 2015A: Power Sales Agreement." Exhibit A.

*Note: Holyoke and Chicopee have informed MMWEC and DPU of their intent to withdraw from the contract.

The plant will be built on land owned by the City of Peabody under a License and Use Agreement between the City and MMWEC, the operator of the project.²¹ Fourteen Massachusetts Municipal Light Plants (MLPs) have signed contracts to own a portion of the project (see Figure 2): Boylston, Chicopee, Holden, Holyoke, Hull, Marblehead, Mansfield, Peabody, Russell, Shrewsbury, South Hadley, Sterling, West Boylston, and

¹⁹ MassDEP. September 30, 2020. "Final Air Quality Plan Approval". Available at: <https://www.project2015a.org/wp-content/uploads/2021/07/MMWEC-Peabody-Final-Plan-Approval.pdf>.

²⁰ MA DPU. August 12, 2021. Docket 21-29. "Order regarding the Petition of Massachusetts Municipal Wholesale Electric Company for authorization and approval to issue revenue bonds, notes or other evidence of indebtedness in an amount not to exceed \$170,000,000 pursuant to St. 1975, c. 775, §§ 5(p), 9, 11, and 17." Available at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/13865736>.

²¹ 1) Peabody Municipal Light Plant. June 24, 2021. "Peabody Municipal Lighting Commission Minutes of Regular Meeting". Available at: <http://pmlp.com/docs/2021-agendas/pmlc-meeting-minutes-jun24-2021.pdf>. 2) Mass DEP. September 30, 2020. "Final Air Quality Plan Approval". Available at: <https://www.project2015a.org/wp-content/uploads/2021/07/MMWEC-Peabody-Final-Plan-Approval.pdf>.



Wakefield. In April 2021, Holyoke Gas and Electric Department²² and Chicopee Electric Light Department²³ alerted the DPU that they had informed MMWEC of their intent to withdraw from the contract.

Roles and responsibilities of decision-makers:

MassDEP has the authority to revoke the Peabody peaker's air permit. Section 5 of MassDEP's final air permit states that, "This Plan Approval may be suspended, modified, or revoked by MassDEP if MassDEP determines that any condition or part of this Plan Approval is being violated,"²⁴ including (but not limited to):

- **Nuisance:** if the facility fails to "take appropriate steps"²⁵ to abate nuisance conditions like smoke, dust, odor, or noise;
- **Regulatory compliance:** if the facility fails to "comply with any other applicable Federal, State, or local laws or regulations now or in the future";²⁶
- **Delayed construction:** if the facility fails to begin construction work "within two years from the date of issuance of this Plan Approval, or if the construction work is suspended for one year or more"²⁷; or
- **Exceed permitted limits:** if the facility fails to comply with any of the operational, production, emission limit, monitoring, testing, record keeping, or reporting requirements or special terms and conditions outlined in its air permit.²⁸

DPU has the authority to reconsider its previous orders. Stakeholders may file motions that call on DPU to "reconsider or clarify" previous Orders. Such motions have been filed historically by entities that include

²² MA DPU. April 2, 2021. Docket 21-29. "Statement of Holyoke & Electric Department on the Petition of Massachusetts Municipal Wholesale Electric Company (MMWEC) for authorization and approval to issue revenue bonds, notes or other evidence of indebtedness in an amount not to exceed \$170,000,000 pursuant to St. 1975, c. 775, §§ 5(p), 9, 11, and 17." Available at:

<https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/13368248>.

²³ MA DPU. April 6, 2021. Docket 21-29. "Comments of the Chicopee Municipal Lighting Plant on the Petition of Massachusetts Municipal Wholesale Electric Company (MMWEC) for authorization and approval to issue revenue bonds, notes or other evidence of indebtedness in an amount not to exceed \$170,000,000 pursuant to St. 1975, c. 775, §§ 5(p), 9, 11, and 17." Available at:

<https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/13381726>.

²⁴ MassDEP. September 30, 2020. "Final Air Quality Plan Approval". Available at: <https://www.project2015a.org/wp-content/uploads/2021/07/MMWEC-Peabody-Final-Plan-Approval.pdf>. Page 57.

²⁵ Ibid. Page 56.

²⁶ Ibid. Page 57.

²⁷ Ibid.

²⁸ Ibid. Table 2-7.



the New England Public Communications Counsel,²⁹ the electric and gas distribution companies,³⁰ and the state Attorney General.³¹ Massachusetts law specifies that “any party interested aggrieved [sic] by such ruling may object”³² to any DPU ruling. In the case of the Peabody peaker, that means that any of the advocacy organizations opposing the project could appeal DPU’s Order approving MMWEC’s bond request. However, the costs of that appeal would fall on the appealing party.

The **Executive Office of Energy and Environmental Affairs (EEA)** could mandate an environmental impact review for the Peabody peaker. This would involve re-opening the Massachusetts Environmental Policy Act Office (MEPA) process, which requires state agencies to: (1) conduct environmental impact reviews for projects requiring state permitting, financial assistance, or land disposition, and (2) use all feasible measures to avoid, minimize and mitigate damage to the environment.³³ As discussed above, the 2021 *Act Creating a Next-generation Roadmap For Massachusetts Climate Policy* requires an environmental impact report “for any project that is likely to cause damage to the environment and is located within a distance of 1 mile of an environmental justice population.”³⁴ As a result of their new obligations under the Climate Roadmap Act, EEA and MEPA produced updated EJ policies, which require “that existing facilities in [EJ] neighborhoods comply with state environmental, energy, and climate change rules and regulations.”³⁵ Therefore, EEA appears to have the authority to mandate an environmental impact review of the Peabody peaker despite its initially having been approved without one, due to the location of multiple EJ communities within 1 mile of the proposed peaker (see Figure 3).

²⁹ MA DPU/DTE. Dockets 97-88/97-18 (Phase II-A). “Investigation by the Department of Telecommunications and Energy on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX’s Public Access Smart-pay Line Service and (4) the rate policy for operator services providers”. Available at: <https://www.mass.gov/doc/3300motionpdf/download>.

³⁰ MassDEP. 2020. “Department of Public Utilities Annual Report.” Submitted to the General Court of the Commonwealth of Massachusetts pursuant to G.L. c. 25, sec. 2. Available at: <https://www.mass.gov/doc/dpu-annual-report-2020/download>. Page 18.

³¹ Geary, J. March 7, 2019. MA DPU Docket 18-15. “Investigation by the Department of Public Utilities, on its own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies.” Available at: <https://www.law.nyu.edu/sites/default/files/DPU%2018-15%20AGO%20Motion%20for%20Clarification%20and%20Reconsideration.pdf>.

³² Massachusetts General Laws Chapter 25, Section 5. *An Act Establishing the Rulings; orders; appeal; costs; staying enforcement; burden of proof; evidence*. Available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter25/Section5>.

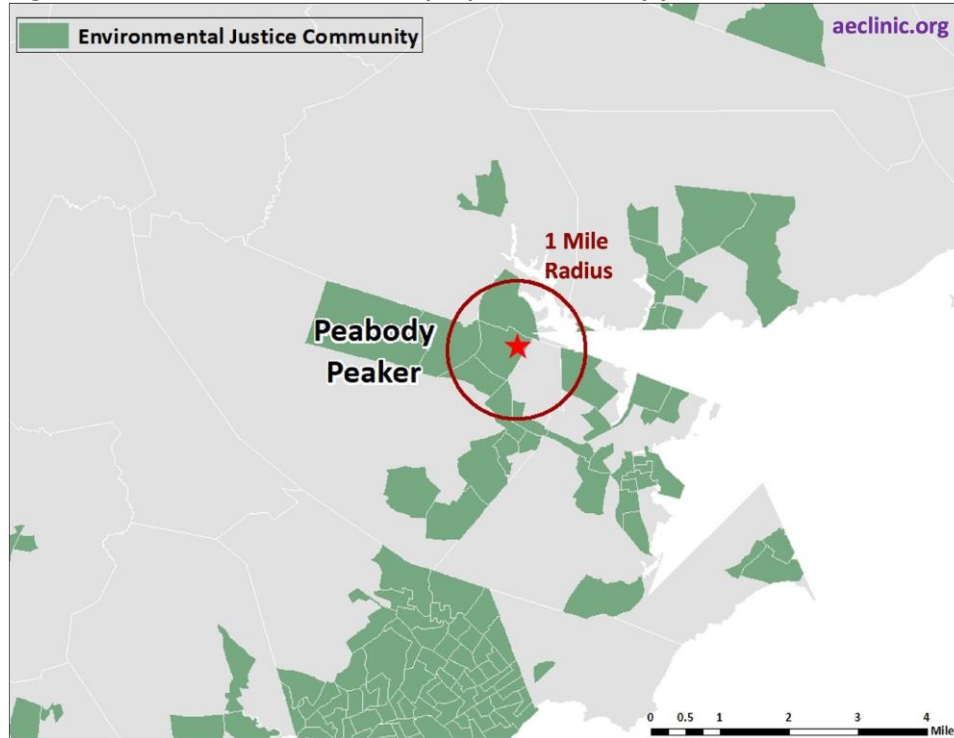
³³ MEPA. n.d. “Massachusetts Environmental Policy Act Office.” Available at: <https://www.mass.gov/orgs/massachusetts-environmental-policy-act-office>.

³⁴ Massachusetts Session Laws Chapter 8 (March 26, 2021). *An Act Creating a Next-generation Roadmap for Massachusetts Climate Policy*. Available at: <https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter8>

³⁵ Constitution of the Commonwealth of Massachusetts Article 97. June 24, 2021. *Environmental Justice Policy of The Executive Office of Energy and Environmental Affairs*. Available at: <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>. Pages 5-6.



Figure 3. EJ communities near the proposed Peabody peaker



Whether or not the **City of Peabody** has the power to revoke the right to build the Peabody peaker on land it owns is yet to be established. At a public meeting of the Peabody Municipal Lighting Commission (PMLC) on June 24, 2021, a member of the public asked whether the Peabody City Council could revoke MMWEC’s right to use the land for the Peabody peaker project. PMLC’s former Manager Charles Orphanos responded that he could not answer, as it is a legal question.³⁶

The **14 MLPs with ownership shares of the Peabody peaker** have the power to withdraw from the contract. Two of the 14 MLPs have already taken the first step to do so: In April 2021, Holyoke Gas and Electric Department³⁷ and Chicopee Electric Light Department³⁸ filed with the DPU announcing their intent

³⁶ 1) Peabody Municipal Light Plant. June 24, 2021. “Peabody Municipal Lighting Commission Minutes of Regular Meeting”. Available at: <http://pmlp.com/docs/2021-agendas/pmlc-meeting-minutes-jun24-2021.pdf>. Page 3.

³⁷ MA DPU. April 2, 2021. Docket 21-29. “Statement of Holyoke & Electric Department on the Petition of Massachusetts Municipal Wholesale Electric Company (MMWEC) for authorization and approval to issue revenue bonds, notes or other evidence of indebtedness in an amount not to exceed \$170,000,000 pursuant to St. 1975, c. 775, §§ 5(p), 9, 11, and 17.” Available at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/13368248>.

³⁸ MA DPU. April 6, 2021. Docket 21-29. “Comments of the Chicopee Municipal Lighting Plant on the Petition of Massachusetts Municipal Wholesale Electric Company (MMWEC) for authorization and approval to issue revenue bonds, notes or other evidence of indebtedness in an amount not to exceed \$170,000,000 pursuant to St. 1975, c. 775, §§ 5(p), 9, 11, and 17.” Available at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/13381726>.

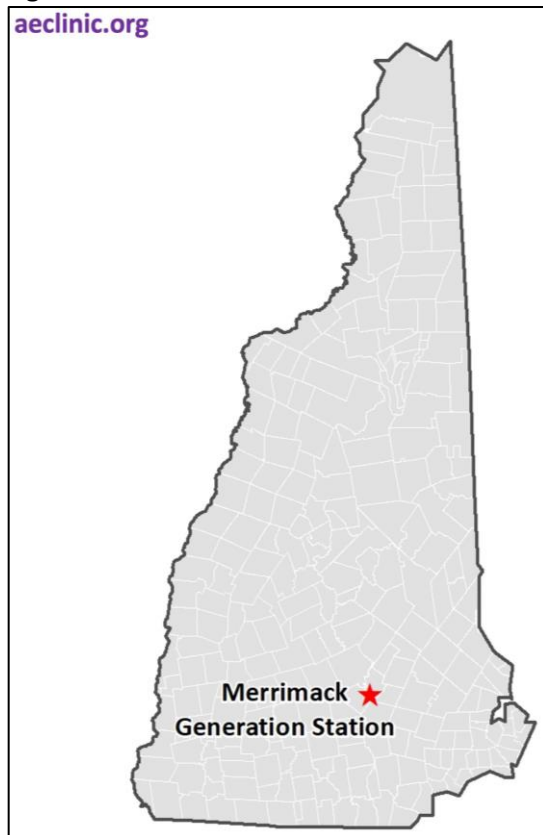


to withdraw from the contract. Under the provisions of the contract, any MLP may request to leave the contract, and MMWEC must “use its best efforts to sell and transfer all or a portion of a Participant’s Share.”³⁹ If more MLPs make the decision to withdraw from the contract, it will become more difficult for MMWEC to justify a need for the total capacity of the plant, and the project could become stalled or stopped entirely.

2. Existing Merrimack Generation Station coal peaker plant in Bow, New Hampshire

Project: 482 MW coal-fired plant in Bow, New Hampshire⁴⁰ in operation since the 1960s (see Figure 4).

Figure 4. Location of the Merrimack Generation Station



Advocacy goal: Multiple advocacy organizations including New Hampshire Conservation Law Foundation (CLF), Sierra Club, 350 New Hampshire, Climate Disobedience Center, New Hampshire Youth Movement

³⁹ Massachusetts Municipal Wholesale Electric Company (MMWEC). February 2021. DPU 21-29. MMWEC Exhibit 1, Attachment 7. “Power Sales Agreement.” Page 22.

⁴⁰ Granite Shore Power. n.d. “Merrimack Station.” Available at: <https://www.graniteshorepower.com/merrimack-station>.



and No Coal No Gas oppose the plant's continued operation and aim to shut down the existing Merrimack Generation Station peaker plant, the last coal-fired plant in New England.⁴¹

Status: The Merrimack Generating Station has two coal-fired units that were built in 1960 and 1968.⁴² Merrimack installed a single scrubber system for both of its coal-fired units in 2012 in order to reduce its mercury emissions to a level compliant with New Hampshire law.⁴³ In 2017, Granite Shore Power purchased the plant from Eversource. When the plant was sold, there was negotiation over how the capital costs of the scrubber would be covered, but it was ultimately decided that the full cost of the scrubber (approximately \$500 million) could continue to be recovered through customer rates—that is, electric customers would pay for the scrubber's cost, plus interest.⁴⁴ That decision—allowing the cost of the scrubber (plus interest) to be collected through rates, both at the time of the scrubber's installation and at the time of a change in ownership—was a controversial one. Opponents maintain that the cost of the scrubber was imprudent,⁴⁵ particularly because the plant has run less and less often over time,⁴⁶ that the owners started modifications without the proper permits,⁴⁷ and that the scrubber does not reduce the plant's greenhouse gas emissions.⁴⁸

Since the plant came under new ownership, it has been operated as a peaker plant:⁴⁹ Over the last five years, the plant has operated at about 8 percent of its maximum potential.⁵⁰ That means electric customers are paying for a scrubber that reduces mercury emissions from a coal-fired power plant that

⁴¹ Ropeik, A. 2021. "N.H. Coal Plant Will Run Through At Least 2025 After Latest Grid Auction." *New Hampshire Public Radio*. Available at: <https://www.nhpr.org/climate-change/2021-03-01/n-h-coal-plant-will-run-through-at-least-2025-after-latest-grid-auction>.

⁴² U.S. EPA. 2011. *Draft National Pollutant Discharge Elimination System (NPDES) permit to discharge to waters of the United States pursuant to the Clean Water Act (CWA)*. Available at: <https://www3.epa.gov/region1/npdes/merrimackstation/pdfs/MerrimackStationFactSheet.pdf>. Page 4.

⁴³ Neville, A. 2012. "TOP PLANT: Merrimack Station's Clean Air Project, Bow, New Hampshire." *Power*. Available at: <https://www.powermag.com/top-plantmerrimack-stations-clean-air-project-bow-new-hampshire/>.

⁴⁴ Sanders, B. 2015. "Merrimack scrubber at the center of Eversource's divestiture plan." *NH Business Review*. Available at: <https://www.nhbr.com/merrimack-scrubber-at-the-center-of-eversources-divestiture-plan/>.

⁴⁵ Evans-Brown, S. October 14, 2014. "'Scrubber' Cost Dispute Heard By Regulator." *New Hampshire Public Radio*. Available at: <https://www.nhpr.org/environment/2014-10-14/scrubber-cost-dispute-heard-by-regulator>.

⁴⁶ Peress, N.J. June 4, 2012. "Ratepayers Subsidizing PSNH's Addiction to Coal." *Conservation Law Foundation*. Available at: <https://www.clf.org/blog/ratepayers-subsidizing-psnhs-addiction-to-coal/>.

⁴⁷ Morford, S. March 5, 2009. "Survival Strategy for an Aging Coal Plant: New Hampshire's 'Big Dig'." *Inside Climate News*. Available at: <https://insideclimatenews.org/news/05032009/survival-strategy-aging-coal-plant-new-hampshires-big-dig/>.

⁴⁸ No Coal, No Gas. n.d. "About Bow." Available at: <https://www.nocoalnogas.org/about-bow>.

⁴⁹ David Brooks. 2021. "Coal-fired Merrimack Station in Bow wins another year of funding." *Concord Monitor*. Available at: <https://www.concordmonitor.com/coal-merrimack-station-bow-nh-39127335>.

⁵⁰ 1) U.S. Energy Information Administration. 2016-2020. *Form EIA-860 Data - Schedule 3, 'Generator Data'*. Available at: <https://www.eia.gov/electricity/data/eia860/>. 2) U.S. Energy Information Administration. 2016-2020. *Form EIA-923 Monthly Generation and Fuel Consumption Data*. Available at: <https://www.eia.gov/electricity/data/eia923/>.



runs very little.

In February 2021, the Merrimack plant cleared ISO-New England’s Forward Capacity Auction—which means the plant is committed to making its generation capacity available to the regional grid through May 2025.⁵¹ The plant was granted its most recent water discharge permit (under the National Pollutant Discharge Elimination System (NPDES)) by the U.S. Environmental Protection Agency (EPA) Region 1 in Spring 2020, effective from September 1, 2020 through August 31, 2025.⁵² After CLF and the Sierra Club appealed the permit,⁵³ on August 3, 2021, the EPA Appeals Board ordered EPA Region 1 to reconsider the permit’s water discharge limits and offer an opportunity for public comment.⁵⁴ This public comment period had not yet begun, as of the publication of this white paper.⁵⁵

Roles and responsibilities of decision-makers:

The **U.S. EPA** has the authority to modify, revoke, or terminate⁵⁶ the Merrimack plant’s water discharge permit and/or Title V air permit “at the request of any interested person”⁵⁷ for permit noncompliance, failure to disclose all relevant facts, misrepresentation of facts, or the endangerment of human health or the environment.⁵⁸ EPA issues the Merrimack peaker’s water discharge (NPDES) permit, which translates general requirements of the Clean Water Act into specific provisions for the operation of a particular plant.⁵⁹ Merrimack’s previous NPDES permit was supposed to expire in 1997, but was “administratively continued”⁶⁰—in practice, as long as the EPA receives a complete application for a new permit, the expired

⁵¹ ISO New England. February 26, 2021. “Forward Capacity Auction Results Filing.” Available at: https://www.iso-ne.com/static-assets/documents/2021/02/fca_15_results_filing_2-26-2021.pdf.

⁵² U.S. EPA. n.d. “Merrimack Station Final NPDES Permit No. NH0001465.” Available at: <https://www.epa.gov/npdes-permits/merrimack-station-final-npdes-permit-no-nh0001465#2020FinalPermit>.

⁵³ O’Neill, J. August 3, 2021. “Merrimack Station Permit Sent Back to Drawing Board.” CLF. Available at: <https://www.clf.org/newsroom/merrimack-station-permit-sent-back-to-drawing-board/>.

⁵⁴ Environmental Appeals Board of the U.S. EPA. August 3, 2021. NPDES Appeal No.s 20-05 and 20-06 regarding GSP Merrimack LLC NPDES Permit No. NH0001465. “Remand Order.” Available at: <https://www.clf.org/wp-content/uploads/2021/08/GSP-Merrimack-LLC.pdf>.

⁵⁵ Ausubel, L. February 26, 2021. Docket ER21-000., “ISO New England Inc. Forward Capacity Auction Results Filing.” Available at: https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Slip%20Opinions%20and%20Published%20and%20Unpublished%20Decisions?SearchView&Query=IN%20RE%20GSP%20MERRIMACK%20L.L.C.%20&SearchMax=0&SearchWV=TRUE.

⁵⁶ GPO. *Environmental Protection Agency § 124.5 Modification, revocation and reissuance, or termination of permits.* Available at: <https://www.govinfo.gov/content/pkg/CFR-2014-title40-vol22/pdf/CFR-2014-title40-vol22-sec124-5.pdf>.

⁵⁷ Ibid.

⁵⁸ GPO. *Environmental Protection Agency § 122.64 Termination of permits (applicable to State programs, see § 123.25).* Available at: <https://www.govinfo.gov/content/pkg/CFR-2011-title40-vol22/pdf/CFR-2011-title40-vol22-sec122-62.pdf>.

⁵⁹ U.S. EPA. *NPDES Permit Basics.* Available at: <https://www.epa.gov/npdes/npdes-permit-basics>.

⁶⁰ U.S. EPA. *Merrimack Station Final NPDES Permit No. NH 0001465.* Available at: <https://www.epa.gov/npdes-permits/merrimack-station-final-npdes-permit-no-nh0001465#2020FinalPermit>.



permit continues in force until the effective date of a new permit.⁶¹ The final NPDES permit was not issued until 2020 and has since been remanded on appeal (as described above).⁶²

The EPA also has the authority to regulate excess pollution from plants associated with their startup, shutdown, and malfunction (SSM) via State Implementation Plans (SIPs) submitted under Section 110 of the Clean Air Act. The Obama administration issued new guidance on SSM emissions, which was rolled back under the Trump administration, and reinstated under the Biden administration.⁶³ In January 2022, the EPA found that ten states—including Rhode Island, Alabama, North Carolina, Tennessee, Illinois, Ohio, Arkansas, South Dakota, California and Washington—and the District of Columbia failed to submit necessary SIP revisions related to SSM emissions and mandated that they do so within two years.⁶⁴ Once revisions are filed, the EPA has six months to determine whether the revisions are sufficient. If the state does not submit complete or sufficient revisions, the EPA can establish a Federal Implementation Plan and/or issue sanctions including emissions offset requirements for all new and modified major pollution sources and restrictions on highway funding.⁶⁵ If the Merrimack plant's SSM emissions were found to be in violation of the Clean Air Act, a complaint could be filed with the U.S. EPA in the same way as was done for the states that were sanctioned earlier this year.⁶⁶

The **New Hampshire Department of Environmental Services (NHDES)** has the authority to revoke the Merrimack plant's Title V air permit for permit noncompliance, if facts presented to obtain the permit were false or misleading, or if the pollution from the plant poses a danger to public health ("alone or in conjunction with other sources of the same pollutant").⁶⁷ NHDES issues five types of permits to stationary sources of air pollution: temporary permits, permits to operate, general state permits, Title V operating permits, and permits-by-notification.⁶⁸ Title V air permits must be obtained for major sources of any air pollutants; the threshold for qualifying as a "major" source is 100 tons per year of emissions for any air

⁶¹ Legal Information Institute. *40 CFR § 122.6 - Continuation of expiring permits*. Cornell Law School. Available at: <https://www.law.cornell.edu/cfr/text/40/122.6>.

⁶² U.S. EPA. 2021. *NPDES Appeal Nos. 20-05 & 20-06*. Available at: <https://www.clf.org/wp-content/uploads/2021/08/GSP-Merrimack-LLC.pdf>. Pages 1-2.

⁶³ Environmental & Energy Law Program. 2022. "Power Plant Startup, Shutdown, and Malfunction Rule." Available at: <https://eelp.law.harvard.edu/2017/09/power-plant-startup-shutdown-and-malfunction-rule/>.

⁶⁴ *Ibid.*

⁶⁵ U.S. Environmental Protection Agency. January 12, 2022. 40 CFR Part 52. "Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying To Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *Federal Register* 1680. Available at: <https://www.govinfo.gov/content/pkg/FR-2022-01-12/pdf/2022-00138.pdf>.

⁶⁶ JDSUPRA. September 2021. "Startup, Shutdown and Malfunction/State Implementation Plans: Sierra Club Judicial Complaint Alleges U.S. Environmental Protection Agency Violation of the Clean Air Act." Available at: <https://www.jdsupra.com/legalnews/startup-shutdown-and-malfunction-state-1855881/>.

⁶⁷ NHDES. *New Hampshire Code of Administrative Rules Chapter Env-A 600: Statewide Permit System*. Available at: <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/Env-A%20600.pdf>. Page 50.

⁶⁸ NHDES. 2020. *New Hampshire's Air Permit Program*. Available at: <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/ard-17.pdf>. Pages 3-4.



pollutant⁶⁹—according to U.S. EPA data, Merrimack Station emitted more than 146,000 tons of pollutants in 2020.⁷⁰ Merrimack Station’s Title V permit was issued by NHDES’ Air Resources Division in 2020.⁷¹ State and local authorities have primary responsibility for issuing Title V permits (dubbed Part 70 programs), but Title V permitting falls under the oversight of EPA regional offices.⁷² Chapter Env-A 600 of the New Hampshire Code of Administrative Rules notes that an air permit may be revoked by NHDES or EPA.⁷³

3. Existing Berkshire County, Massachusetts peakers

Project: Three peaking plants in Berkshire County: the 20 MW fuel oil and kerosene-fired Woodland Road plant in Lee, operational since 1969;⁷⁴ the 21 MW kerosene-fired Doreen plant in Pittsfield, also operational since 1969;⁷⁵ and four gas and fuel oil-fired peaking units totaling 176 MW called the Pittsfield Generating plant in Pittsfield, operational since 1990 (see Figure 5).⁷⁶

Advocacy goals: Multiple advocacy organizations including No Fracked Gas in Mass⁷⁷ and NAACP Berkshires⁷⁸ as well as the Pittsfield Board of Health⁷⁹ oppose the plants’ continued operation using fossil fuels and are advocating for their conversion to renewable energy sources.

⁶⁹ U.S. EPA. *Who Has to Obtain a Title V Permit?* Available at: <https://www.epa.gov/title-v-operating-permits/who-has-obtain-title-v-permit>.

⁷⁰ U.S. EPA. January 27, 2022. “Download Data: eGRID2020.” Available at: <https://www.epa.gov/egrid/download-data>.

⁷¹ NHDES. 2020. *Title V Operating Permit: TV-0055*. Available at: <https://www4.des.state.nh.us/OneStopPub/Air/330130002616-0056TypePermit.pdf>.

⁷² U.S. EPA. *Basic Information about Operating Permits*. Available at: <https://www.epa.gov/title-v-operating-permits/basic-information-about-operating-permits>.

⁷³ NHDES. *New Hampshire Code of Administrative Rules Chapter Env-A 600: Statewide Permit System*. Available at: <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/Env-A%20600.pdf>. Page 29.

⁷⁴ Energy Justice Network. *Woodland Road*. Available at: <http://www.energyjustice.net/map/displayfacility-64722.htm>.

⁷⁵ Energy Justice Network. *Doreen*. Available at: <http://www.energyjustice.net/map/displayobject.php?giFacilityid=64717&gsTable=facility>.

⁷⁶ Energy Justice Network. *Pittsfield Generating LP*. Available at: <http://www.energyjustice.net/map/displayfacility-67302.htm>.

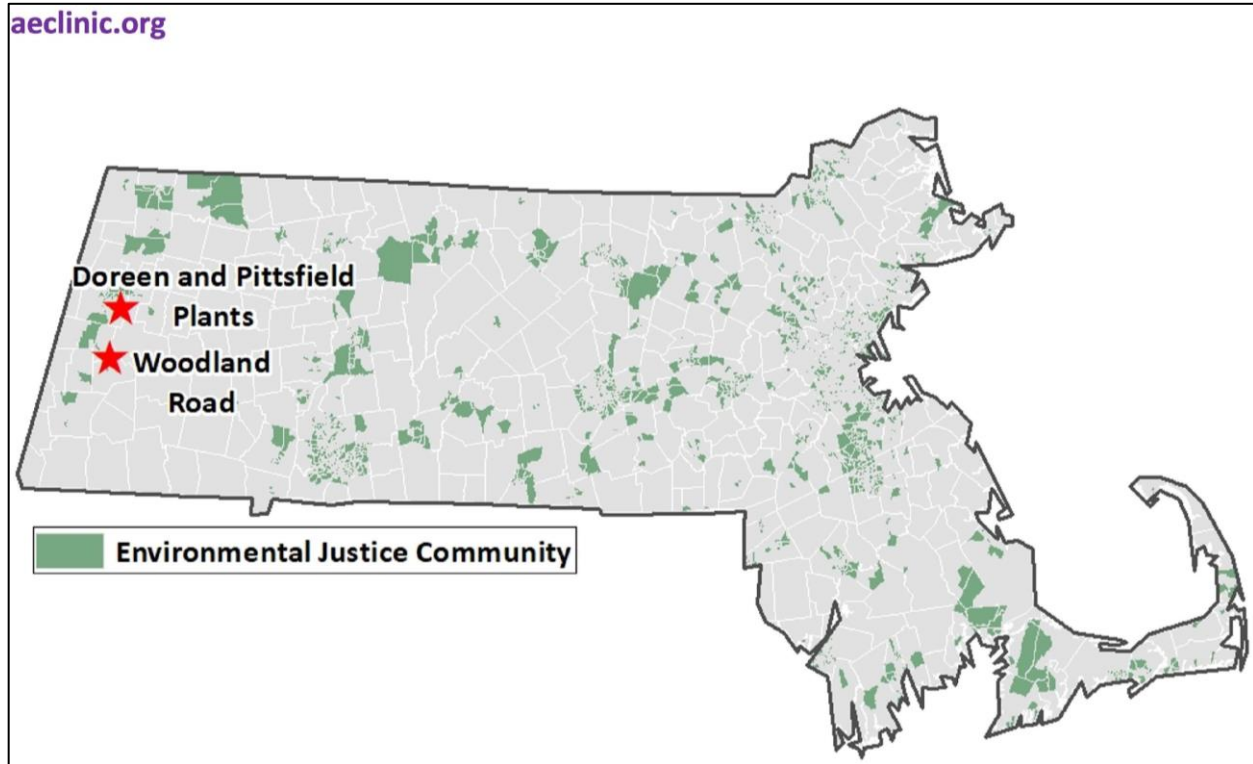
⁷⁷ No Fracked Gas in Mass. n.d. “Put Peakers in the past.” Available at: <https://nofrackedgasbulletins.wordpress.com/put-peakers-in-the-past/>.

⁷⁸ NAACP Berkshires. n.d. “Learn how Peaker plants are polluting the Berkshires.” Available at: <https://www.naacpberkshires.org/announcements/learn-how-peaker-plants-are-polluting-the-berkshires/>.

⁷⁹ Polito, B. July 08, 2021. “Pittsfield Health Board Supports Peaker Plant’s Switch to Clean Energy.” *iBerkshires.com*. Available at: <https://www.iberkshires.com/story/65340/Pittsfield-Health-Board-Supports-Peaker-Plant-s-Switch-to-Clean-Energy.html>.



Figure 5. Doreen, Pittsfield, and Woodland Road plants and Massachusetts EJ communities



Status: Due to their age, the Woodland Road and Doreen plants are exempted from the obligation to obtain air permits under the Clean Air Act.⁸⁰ According to No Fracked Gas in Mass, the owner of these plants—Cogentrix—plans to transition them to run on clean energy and energy storage sources by the end of 2023.⁸¹ Pittsfield Generating plant’s previous air quality permit was issued in 2016 and expired in October 2021,⁸² and the plant received an updated draft air quality operating permit from MassDEP in November 2021.⁸³ The differences between the 2016 permit and the 2021 draft permit are limited: The emission limits for particulate matter, nitrogen oxides, carbon monoxide, volatile organic compounds and

⁸⁰ 1) Flatt, V. & Connolly, K. 2005. ‘Grandfathered’ Air Pollution Sources and Pollution Control: New Source Review Under the Clean Air Act. A Center for Progressive Regulation White Paper. Available at: https://cpr-assets.s3.amazonaws.com/documents/NSR_504.pdf; 2) Parnass, L. July 8, 2021. “‘Peaker’ power plant owner should discuss cleaner operation, Pittsfield health officials say.” *The Berkshire Eagle*. Available at: https://www.berkshireeagle.com/news/local/peaker-power-plant-owner-should-discuss-cleaner-operation-pittsfield-health-officials-say/article_86bdb26a-dff9-11eb-b5cb-83c756551a4b.html.

⁸¹ No Fracked Gas in Mass. n.d. “Put Peakers in the past.” Available at: <https://nofrackedgasbulletins.wordpress.com/put-peakers-in-the-past/>.

⁸² MassDEP. 2016. *Air Quality Operating Permit: AQ ID: 1170006*. Available at: <https://www.mass.gov/doc/pittsfield-pittsfield-generating-co-lp/download>.

⁸³ MassDEP. 2021. *Air Quality Operating Permit (DRAFT): AQ ID: 1170006*. Available at: <https://www.mass.gov/doc/draft-operating-permit-renewal-pittsfield-generating-co-lp/download>.



ammonia are identical, while the limit for sulfur dioxide was reduced (from 249 tons per year to 88 tons per year).⁸⁴ There was a hearing on the draft permit on December 7, 2021.⁸⁵ There have not been any further official updates since the hearing.

Roles and responsibilities of decision-makers:

MassDEP has the authority to revoke, modify, reopen, reissue, or terminate Pittsfield Generating plant's draft operating permit (MassDEP has no such authority over the Woodland Road or Doreen plants because their age makes them exempt from permit mandates).⁸⁶ Section 16 of MassDEP's final air permit states that, "This Permit may be modified, revoked, reopened, and reissued, or terminated for cause by the MassDEP and/or EPA...in accordance with the conditions and procedures under 310 CMR 7.00: Appendix C(14)."⁸⁷ Those conditions include:

- New federal requirements;
- New requirements under the acid rain program;
- The permit contains a "material mistake" or "inaccurate statements" in the establishment of emission standards; and/or
- "The Department or EPA determines that the permit must be revised to assure compliance with the applicable requirements."⁸⁸

Under the 2021 *Act Creating a Next-generation Roadmap for Massachusetts Climate Policy*, MassDEP is mandated to incorporate "cumulative impact analysis" into its review of "certain categories of air permits and approvals" and must develop regulations that include opportunities for public comment.⁸⁹ MassDEP's current timeline for these activities includes draft regulation by September 2022, public hearings and

⁸⁴ Britton-Mehlisch, M. December 7, 2021. "Politicians and activists frustrated with DEP rules that allow business as usual for local 'peaker' plant." *The Berkshire Eagle*. Available at: https://www.berkshireeagle.com/news/central_berkshires/politicians-and-activists-frustrated-with-dep-rules-that-allow-business-as-usual-for-local-peaker/article_aa0af2bc-57a1-11ec-9470-5379b554121b.html.

⁸⁵ 1) Polito, B. December 8, 2021. "Clean Energy Advocates Urge MassDEP to Deny Pittsfield Plant Permit." *iBerkshires.com*. Available at: <https://www.iberkshires.com/story/66694/Clean-Energy-Advocates-Urge-MassDEP-to-Deny-Pittsfield-Plant-Permit.html>. 2) CT DEEP. 2021. "Pittsfield Generating Company LP PUBLIC NOTICE." Available at: <https://portal.ct.gov/DEEP/Public-Notices/Public-Notices-Proposed-Actions---Opportunity-for-Comment/Proposed-Permits-or-Actions-from-Adjacent-States/Pittsfield-Generating-Company-LP>.

⁸⁶ MassDEP. 310 CMR: Department of Environmental Protection. Available at: <https://www.mass.gov/doc/310-cmr-700-air-pollution-control-regulations/download>. Appendix C (3)(f)(7)(c). PDF page 587.

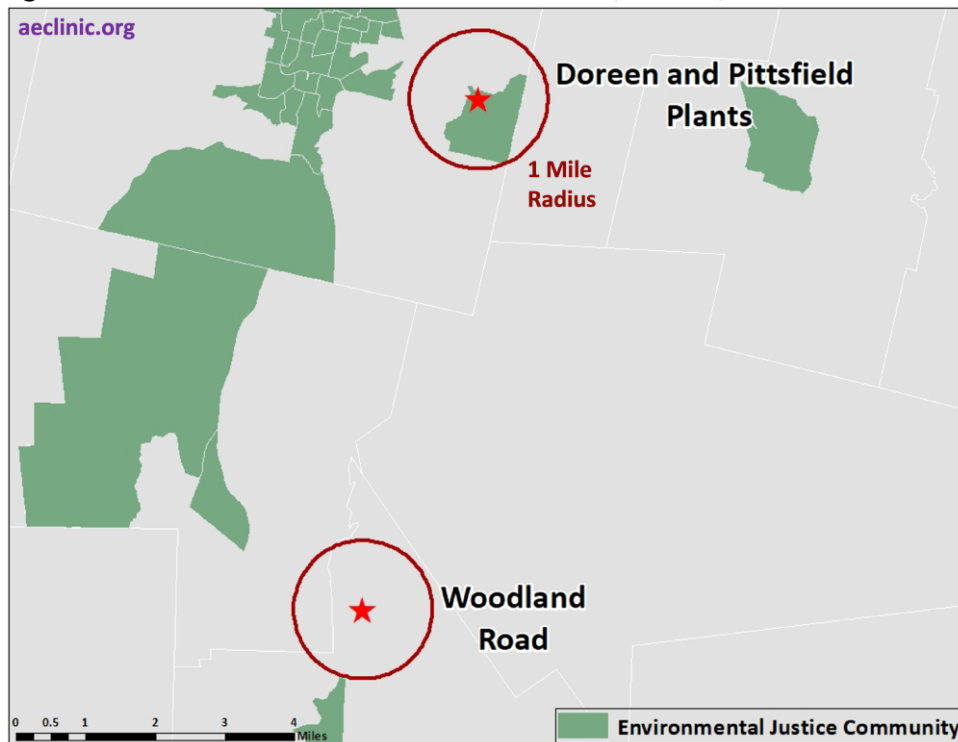
⁸⁷ MassDEP. November 15, 2021. *Air Quality Operating Permit (Draft): 21-AQ14-0003-REN*. Available at: <https://www.mass.gov/doc/draft-operating-permit-renewal-pittsfield-generating-co-lp/download>. Page 31.

⁸⁸ MassDEP. n.d. 310 CMR 7.00: *Air Pollution Control*. Available at: <https://www.mass.gov/doc/310-cmr-700-air-pollution-control-regulations/download>. Pages 600-601.

⁸⁹ MassDEP. 2021. "Cumulative Impact Analysis in Air Quality Permitting". Available at: <https://www.mass.gov/info-details/cumulative-impact-analysis-in-air-quality-permitting>.

comment in November-December 2022, and final regulation by April 2023.⁹⁰ Not only is the Pittsfield Generating plant located in close proximity to vulnerable EJ communities as defined by the Commonwealth (see Figure 6),⁹¹ but there are cumulative, inequitable impacts from other polluting, hazardous, and toxic facilities as well. In addition to the three polluting electric generators in Pittsfield—Doreen, Woodland Road and Pittsfield Generating plants—according to the U.S. EPA Toxics Release Inventory, three facilities in Pittsfield release toxic chemicals that pose a threat to human health and the environment.⁹² EPA’s EJ mapping tool ranks more than half of Pittsfield’s area in the 90 to 100th percentile (nationally) for proximity to superfund sites.⁹³

Figure 6. EJ communities near the Woodland Road, Doreen, and Pittsfield Generating plants



EPA has the authority to object to the draft permit issued by MassDEP and revoke the permit if MassDEP fails to respond to any objections. MassDEP is obligated to forward its draft permit and supporting

⁹⁰ Ibid.

⁹¹ Massachusetts Executive Office of Energy and Environmental Affairs. 2020. “Massachusetts 2020 Environmental Justice Populations”. *Esri GIS map*. Available at: <https://mass-eoeea.maps.arcgis.com/apps/webappviewer/index.html?id=1d6f63e7762a48e5930de84ed4849212>.

⁹² U.S. EPA. 2022. “Toxics Release Inventory (TRI) Program.” EPA. Available at: <https://www.epa.gov/toxics-release-inventory-tri-program>.

⁹³ U.S. EPA and EJ Screen. 2022. “EPA’s Environmental Justice Screening and Mapping Tool (Version 2.0).” Available at: <https://ejscreen.epa.gov/mapper/>.

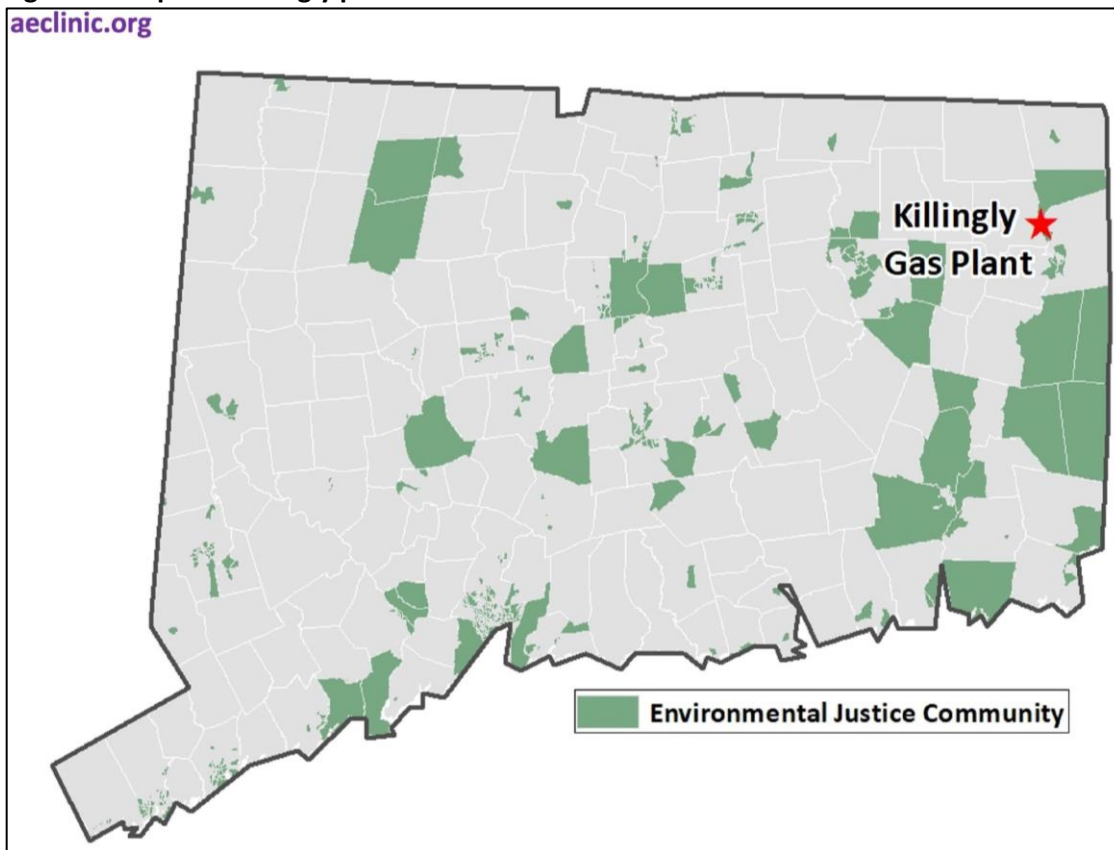


information to EPA.⁹⁴ EPA may then submit objections to MassDEP’s permit up to 45 days after the submission of the draft permit.⁹⁵ If objections are filed, MassDEP must revise and resubmit the proposed operating permit.⁹⁶ If EPA does not make any objections, any person may petition the EPA to make objections within 60 days after EPA’s review period.⁹⁷ If MassDEP issues an operating permit prior to the receipt of any and all objections, EPA may modify, terminate, or revoke the permit.⁹⁸

4. Proposed Killingly, Connecticut gas plant

About: A proposed, 650 MW gas-fired combined cycle plant in Killingly, Connecticut (see Figure 7).⁹⁹

Figure 7. Proposed Killingly plant and Connecticut EJ communities



⁹⁴ MassDEP. n.d. *310 CMR 7.00: Air Pollution Control*. Available at: <https://www.mass.gov/doc/310-cmr-700-air-pollution-control-regulations/download>. Appendix C(6)(j). PDF page 595.

⁹⁵ Ibid.

⁹⁶ Ibid. Appendix C(6)(k). PDF page 595.

⁹⁷ Ibid. Appendix C(6)(l)(3). PDF page 595.

⁹⁸ Ibid.

⁹⁹ NTE Energy. n.d. "Killingly Energy Center." Available at: <https://www.killinglyenergycenter.com/#projectoverview>.



Advocacy goals: Multiple community and advocacy organizations including Sierra Club Connecticut, C3M (CT Climate Crisis Mobilization),¹⁰⁰ Sunrise Connecticut,¹⁰¹ Save the Sound,¹⁰² 350.org Connecticut,¹⁰³ the Windham-Willimantic branch of the NAACP, Willimantic B'nai Israel synagogue,¹⁰⁴ No More Dirty Power¹⁰⁵ and Not Another Power Plant¹⁰⁶ oppose the plant and aim to prevent its construction.

Status: NTE—the developer of the Killingly gas plant—received permission to construct and operate the plant in December 2018 from the Connecticut Department of Energy and Environmental Protection's (DEEP) Bureau of Air Management.¹⁰⁷ After an initial decision by the Connecticut Siting Council in May 2017 determined that a public need for the Killingly gas plant had not been demonstrated,¹⁰⁸ in January 2019 NTE submitted a motion to reopen and modify the decision, which was granted.¹⁰⁹ In June 2019, the Connecticut Siting Council issued a Certificate of Environmental Compatibility and Public Need, permitting NTE to construct the plant at its proposed location.¹¹⁰ In 2020, Not Another Power Plant appealed the Siting Council's June 2019 decision before the state Supreme Court¹¹¹ on the basis that the Siting Council

¹⁰⁰ Connecticut Climate Crisis Mobilization. No date. Homepage. Available at: <https://ctclimatecrisismobilization.org/>.

¹⁰¹ Sunrise Movement Connecticut. Facebook page. Available at: <https://www.facebook.com/sunriseconn/>.

¹⁰² Save the Sound. No date. Homepage. Available at: <https://www.savethesound.org/>.

¹⁰³ 350CT.org. No date. Homepage. Available at: <https://350ct.org/>.

¹⁰⁴ Dynowski, S., Donnelly, K. and Trehan, A. November 5, 2021. "ISO-NE Requests Termination of Killingly Contract." *Sierra Club*. Available at: <https://www.sierraclub.org/press-releases/2021/11/iso-ne-requests-termination-killingly-contract>.

¹⁰⁵ Ahlquist, Steve. November 8, 2021. "From Burrillville to Killingly: No more fossil fuel power plants!" *Uprise RI*. Available at: <https://upriseri.com/from-burrillville-to-killingly-no-more-fossil-fuel-power-plants/>.

¹⁰⁶ Dynowski, S., Donnelly, K. and Trehan, A. November 5, 2021. "ISO-NE Requests Termination of Killingly Contract." *Sierra Club*. Available at: <https://www.sierraclub.org/press-releases/2021/11/iso-ne-requests-termination-killingly-contract>.

¹⁰⁷ CT DEEP. December 10, 2018. *Bureau of Air Management New Source Review Permit to construct and operate a stationary source*. Available at: <https://static1.squarespace.com/static/56ec00b407eaa0a2a553f8e1/t/5c2d0c6bf950b7c3928b3e0f/1546456180730/NTE+CT+LLC+Final+Permit.pdf>.

¹⁰⁸ CT Siting Council. May 11, 2017. Docket 470. "NTE Connecticut, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a 550-megawatt dual-fuel combined cycle electric generating facility and associated electrical interconnection switchyard located at 180 and 189 Lake Road, Killingly, Connecticut. Decision and Order." Available at: https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/Docket470/FINAL_DECISION/D470DOFINALpdf.pdf.

¹⁰⁹ CT Siting Council. January 18, 2019. Docket 470. "Motion of NTE Connecticut, LLC to reopen and modify the decision in Docket No. 470 due to changed conditions." Available at: https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/Docket470/MotiontoReopen2019/motiontoreopen/02MotionToReopenpdf.pdf.

¹¹⁰ CT Siting Council. June 6, 2019. Docket 470B. "NTE Connecticut, LLC application for a Certificate of Environmental Compatibility and Public Need...Decision and Order." Available at: https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/Docket_470B/FINALDECISIONDOCS/D470BDOFINALpdf.pdf.

¹¹¹ CT Judicial Branch. February 2022. "Supreme and Appellate Court Case Detail." *Appellate/Supreme Case Look-up*. Available at: <http://appellateinquiry.jud.ct.gov/CaseDetail.aspx?CRN=73528>.



had failed to properly weigh the environmental impact of the project against its public benefit.¹¹² The Court concluded that the Council’s decision was reasonable, and the appeal was dismissed.¹¹³

Between May 2020 and January 2021, DEEP granted NTE a water quality certification,¹¹⁴ a Best Available Control Technology (BACT) re-certification,¹¹⁵ and a wastewater discharge permit.¹¹⁶

In November 2021, ISO-NE submitted a resource termination filing to the Federal Energy Regulatory Commission (FERC) for the Killingly plant, which would remove the ability for the plant to receive any payments or participate in ISO-NE’s Forward Capacity Market. ISO-NE cited the developer’s inability to deliver capacity within the deadline for the Forward Capacity Auction and requested that FERC accept the termination filing so the plant would be excluded from the February 7, 2022 capacity auction.¹¹⁷ In January 2022, FERC agreed to ISO-NE’s request.¹¹⁸ On February 4th, 2022, the D.C. Circuit Court of Appeals issued a stay on FERC’s decision to exclude the Killingly plant from the ISO-NE capacity auction “while federal regulators decide whether to hold a hearing on the matter,” which meant that the plant was allowed to participate in the auction.¹¹⁹ ISO-NE announced that it would not disclose the results of the auction until the matter was resolved, and—accordingly—calculated two different results of the auction: one with the Killingly plant and one without.¹²⁰ On February 23, 2022, FERC affirmed its prior decision that ISO-NE was justified in their decision to pull the plant’s capacity contract due to “NTE’s repeated delays and extensions

¹¹² Robinson, C. J., and McDonald, D’Auria, Mullins, Kahn and Ecker, Js. n.d. *Not another power plant v. Connecticut Siting Council et al.* (SC 20464). Available at:

<https://www.jud.ct.gov/external/supapp/Cases/AROCR/CR340/340CR45.pdf>. PDF page 5.

¹¹³ Ibid.

¹¹⁴ CT DEEP Bureau of Water Protection and Land Reuse Land & Water Resources Division. *Connecticut Department of Energy and Environmental Protection License: Section 401 Water Quality Certification*. Available at:

<https://static1.squarespace.com/static/56ec00b407eaa0a2a553f8e1/t/5ec2c3e8f3aa4c5b4fef4ebe/1589822442020/KEC+Final+WQC+signed+5.14.2020.pdf>.

¹¹⁵ Babbidge, T. November 24, 2020. “BACT Recertification for NTE Connecticut, LLC.” *CT DEEP*. Available at:

<https://static1.squarespace.com/static/56ec00b407eaa0a2a553f8e1/t/5fc67396cb3e0f57712eafee/1606841239073/BACT+Recertification+Approval.pdf>.

¹¹⁶ CT DEEP. January 20, 2021. “Office of Adjudications in the matter of APP. No. 201615592: Final Decision.”

Available at:

<https://static1.squarespace.com/static/56ec00b407eaa0a2a553f8e1/t/6011caaf25207f7b7f17dcde/1611778736230/DEEP+NTE+Wastewater+Discharge+Permit+Final+Decision.pdf>.

¹¹⁷ ISO New England. November 4, 2021. Docket No. ER22-000. “Resource Termination Filing.” Available at:

https://s3.documentcloud.org/documents/21098803/public_resource_termination_filing.pdf.

¹¹⁸ Spiegel, J. January 5, 2022. “Federal decision goes against proposed Killingly gas power plant.” *The CT Mirror*.

Available at: <https://ctmirror.org/2022/01/05/federal-decision-goes-against-proposed-killingly-gas-power-plant/>.

¹¹⁹ Crowley, B. February 7, 2022. “Not So Fast... Circuit Court Gives New Life to Gas-fired Killingly Energy Center.” *The Connecticut Examiner*. Available at: <https://ctexaminer.com/2022/02/07/not-so-fast-circuit-court-gives-new-life-to-gas-fired-killingly-energy-center/>.

¹²⁰ Christian, M. February 25, 2022. “Biden announces historic court pick at high-stakes time for climate, energy law.” *S&P Global Market Intelligence*. Available at: <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/biden-announces-historic-court-pick-at-high-stakes-time-for-climate-energy-law-69100689>.



of milestones to secure funding and construct the plant.”¹²¹ Though NTE still has the right to appeal FERC’s decision in federal court,¹²² ISO-NE has announced that—no matter the outcome (that is, whether or not FERC’s decision is upheld)—“Killingly’s capacity supply obligations are terminated.”¹²³

Construction of the Killingly plant was originally anticipated to begin in 2021, with commercial operation planned for 2024.¹²⁴ However, as of this publication, construction has not begun.¹²⁵

Roles and responsibilities of decision-makers:

The **Town of Killingly** has the power to terminate its two agreements with NTE (a municipal tax agreement and a community environmental benefit agreement) in the event that NTE violates the terms of these agreements. With regard to the municipal tax agreement, the contract may be terminated if: 1) NTE misses tax payments after repeated notices; 2) if commercial operation does not begin before July 1, 2025; or 3) if NTE seeks “additional tax exemptions or benefits” that would reduce its tax payments to the Town.¹²⁶ With regard to the community environmental benefit agreement, the contract may be terminated if NTE fails to satisfy all requirements of the Connecticut Environmental Justice Act (C.G.S. § 22a-20a)¹²⁷ or violates its commitments to “support local trade union hiring, including minorities” or to “supply the Town with all reports or testing results it generates and/or supplies to any state or federal agency.”¹²⁸

DEEP has the ability to revoke the permits it has issued for the construction and operation of the Killingly plant if: NTE violates the terms of its permits, failed to disclose and/or misrepresented facts in its application, failed to comply with a Commission request, is “causing or is reasonably likely to cause air or water pollution or to endanger human health, safety, or welfare or the environment”; or if there is a

¹²¹ Crowley, C. February 24, 2022. “Further Setback for Killingly Gas-Fired Plant.” *The Connecticut Examiner*. Available at: <https://ctexaminer.com/2022/02/24/further-setback-for-killingly-gas-fired-plant/>.

¹²² Ibid.

¹²³ Hale, Z. February 25, 2022. “FERC affirms move to terminate capacity obligation for New England gas generator.” *S&P Global Market Intelligence*. Available at: <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/ferc-affirms-move-to-terminate-capacity-obligation-for-new-england-gas-generator-69075151>.

¹²⁴ NTE Energy. n.d. “Killingly Energy Center.” Available at: <https://www.killinglyenergycenter.com/#projectoverview>

¹²⁵ Crowley, Brendan. November 5, 2021. “Plans for 650 MW Killingly Power Plant in Doubt as Delays Threaten Price Guarantee.” *The Connecticut Examiner*. Available at: <https://ctexaminer.com/2021/11/05/plans-for-650-mw-killingly-power-plant-in-doubt-as-delays-threaten-price-guarantee/>.

¹²⁶ Town of Killingly and NTE Connecticut, LLC. 2018. *Agreement for Stabilization of Municipal Tax Payments*. Available at:

<https://static1.squarespace.com/static/56ec00b407eaa0a2a553f8e1/t/5a736dac71c10b5d1090ef59/1517514169226/Agreement+for+Stabilization.pdf>. Paragraphs 6, 12, 13.

¹²⁷ Connecticut Department of Energy and Environmental Protection. n.d. “Chapter 439.” Available at: https://www.cga.ct.gov/current/pub/chap_439.htm#sec_22a-20a.

¹²⁸ Town of Killingly and NTE Connecticut, LLC. 2018. *Community Environmental Benefit Agreement*. Available at: <https://static1.squarespace.com/static/56ec00b407eaa0a2a553f8e1/t/5a73837d4192020b71ec4a28/1517519756213/CEBA+-+executed.pdf>. 3(b)2(c), 6(b), 6(d).



“pertinent” change in law.¹²⁹ If DEEP decides to revoke a permit, it must notify NTE, and NTE has the right to file a request for a hearing within 30 days.¹³⁰

DEEP is also responsible for enforcing the state’s EJ community protections.¹³¹ As described in the *Introduction* section above, new statutes went into effect in November 2020 that require “enhanced public participation” in Connecticut permitting processes for certain kinds of facilities (including electric generators larger than 10 MW) located in an EJ community.¹³² The Killingly plant—though less than 1 mile from two nearby EJ communities (see Figure 8)—is not located “directly in the defined census block or the distressed municipality”¹³³ and therefore is not subject to the enhanced public participation provision of Connecticut law. However, Killingly was designated an EJ community from 2010 to 2017 (including when the project was announced in 2016), and again in 2019 (though not in 2020 or 2021—the most recent available).¹³⁴

The Connecticut Siting Council has the power to reopen and modify its 2019 approval of NTE’s Certificate of Environmental Compatibility and Public Need given certain conditions, including: 1) if the plant’s construction is not completed within five years; 2) failure to make timely payments for annual assessments; 3) failure to comply with DEEP’s exhaust stack regulations, or; 4) primary operation using any fuel other than gas (with the exception of using ultra-low sulfur distillate fuel for a maximum of 720 hours per year, or as permitted by DEEP.)¹³⁵

¹²⁹ 1) Regulations of Connecticut State Agencies. Section 22a-3a-5(d) (2015). *Delicensing proceedings*. Available at: https://eregulations.ct.gov/eRegsPortal/Browse/RCSA?id=Title_22aSubTitle_22a-3aSection_22a-3a-5/. 2) Connecticut General Statutes. Chapter 446c, Section 22a-174(c). *Modification, revocation, and suspension of permits. Grounds*. Available at: https://www.cga.ct.gov/current/pub/chap_446c.htm#sec_22a-174c.

¹³⁰ Connecticut General Statutes Chapter 54, Section 4-182(c). *Matters involving licenses*. Available at: https://www.cga.ct.gov/current/pub/chap_054.htm#sec_4-182.

¹³¹ Miller, K. December 2020. *Connecticut’s Environmental Justice Law*. Office of Legislative Research. Available at: <https://www.cga.ct.gov/2020/rpt/pdf/2020-R-0286.pdf>.

¹³² CT DEEP. September 2021. *Environmental Justice Public Participation Fact Sheet*. Available at: https://portal.ct.gov/-/media/DEEP/environmental_justice/EJfspdf.pdf.

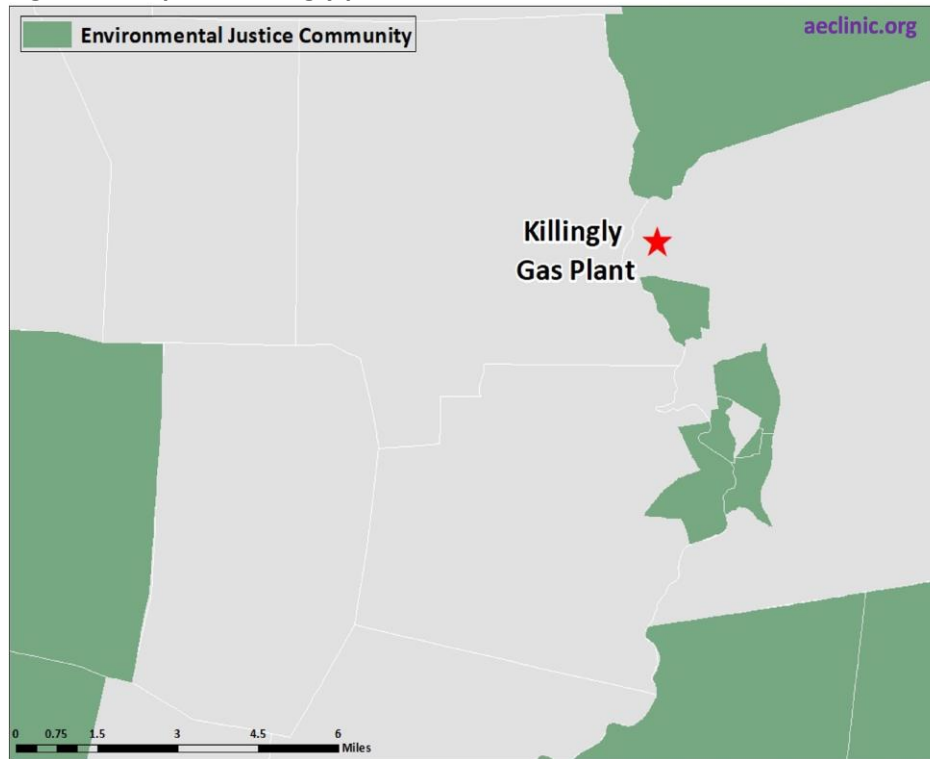
¹³³ CT DEEP. September 2021. *Environmental Justice Public Participation Fact Sheet*. Available at: https://portal.ct.gov/-/media/DEEP/environmental_justice/EJfspdf.pdf.

¹³⁴ Connecticut’s Official State Website. “Distressed Municipalities.” Available at: https://portal.ct.gov/DECD/Content/About_DECD/Research-and-Publications/02_Review_Publications/Distressed-Municipalities.

¹³⁵ Connecticut Siting Council. June 7, 2019. NTE Certificate of Environmental Compatibility and Public Need. *Docket No. 470B*. Available at: https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/Docket_470B/FINALDECISIONDOCS/do470bcertpackage20190607pdf.pdf.



Figure 8. Proposed Killingly plant and Connecticut EJ communities



5. Proposed Longmeadow-to-Springfield, Massachusetts gas pipeline

About: A proposed, redundant 16-inch diameter,¹³⁶ 5.4-mile gas pipeline between Longmeadow and Springfield, Massachusetts (see Figure 9). Under development by Eversource, the pipeline is part of the Company’s larger Western Massachusetts Natural Gas Reliability Project, and Eversource has identified a preferred route for the pipeline as well as three alternative routes (see Figure 10).¹³⁷ Assuming the project receives its necessary approvals, construction is anticipated to begin in late 2023 with the pipeline becoming operational in late 2024.¹³⁸

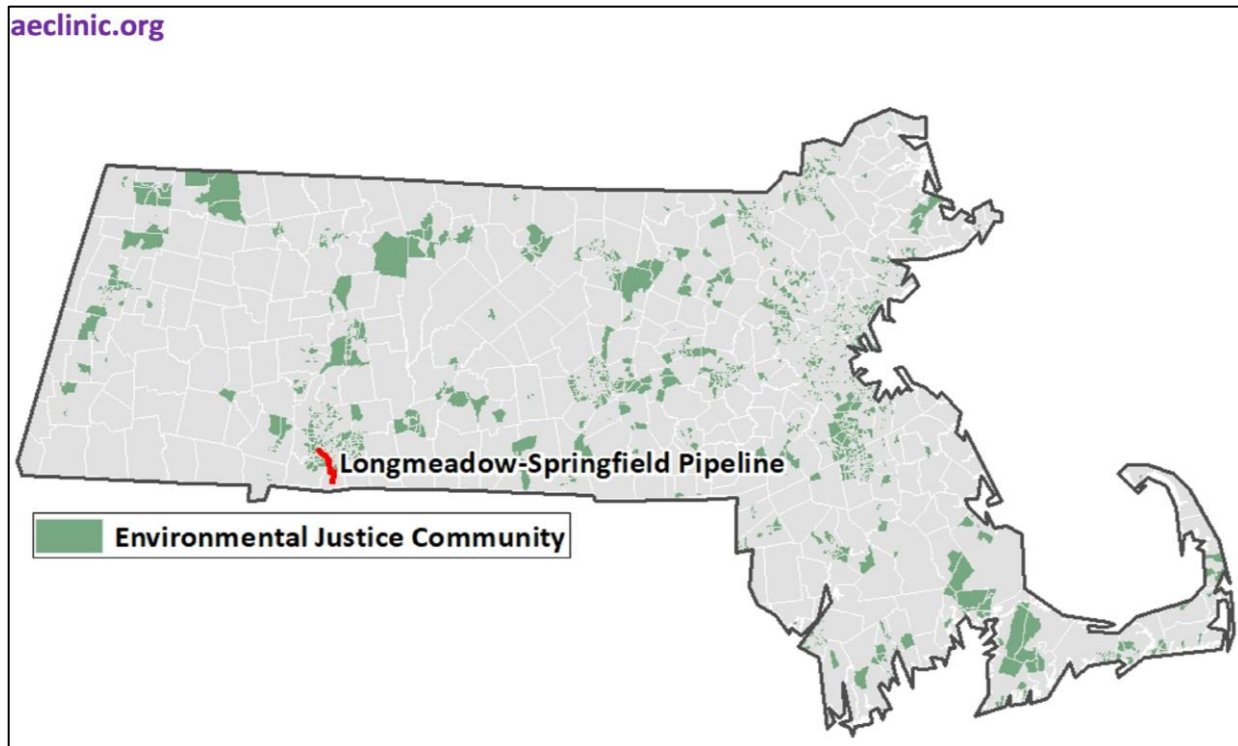
¹³⁶ Hook, D. 2021. “Springfield activists speak out on the steps of city hall against the proposed \$33M Eversource gas pipeline.” *MassLive*. Available at: <https://www.masslive.com/springfield/2021/11/springfield-activists-speak-out-on-the-steps-of-city-hall-against-the-proposed-33m-eversource-gas-pipeline.html>.

¹³⁷ Eversource Energy. 2021. *Western Massachusetts Reliability Project Community Virtual Open House* [PowerPoint Slide]. Available at: <https://www.columbiagasma.com/docs/librariesprovider15/default-document-library/open-house-presentation-wma-nov-2021.pdf>.

¹³⁸ Eversource Energy. 2021. *Western Massachusetts Reliability Project Community Virtual Open House* [PowerPoint Slide]. Available at: <https://www.columbiagasma.com/docs/librariesprovider15/default-document-library/open-house-presentation-wma-nov-2021.pdf>.



Figure 9. Proposed Longmeadow-to-Springfield, Massachusetts gas pipeline and Massachusetts EJ communities



Advocacy goals: Advocacy organizations including the Longmeadow Pipeline Awareness Group¹³⁹ and the Springfield Climate Justice Coalition¹⁴⁰ as well as local healthcare workers¹⁴¹ aim to prevent the pipeline’s construction because of its potential negative human health and environmental impacts. State officials have also expressed skepticism about the need for the project: for example, Massachusetts State Representative Carlos González (10th Hampden) has stated that he is “concerned for the potential hazard the proposal may have on the residents of Springfield,”¹⁴² and has not received “clarity” as to why Eversource cannot repair the existing pipeline rather than build a new one.¹⁴³

¹³⁹ Stop the Toxic Pipeline. n.d. “About us.” Available at: <https://www.stophetoxicpipeline.org/>.

¹⁴⁰ Amherst Indy. November 2021. “Local Residents, Healthcare Workers And Politicians Take Position Against Eversource Springfield-Longmeadow Pipeline.” *Amherst Indy*. <https://www.amherstindy.org/2021/11/05/local-residents-healthcare-workers-and-politicians-take-position-against-eversource-springfield-longmeadow-pipeline/>.

¹⁴¹ Eversource. n.d. *Healthcare Worker Sign-on Letter to Eversource to Stop Springfield Pipeline Construction* [Google Form]. Available at: <https://docs.google.com/forms/d/11ZyFYMUyKy6iQNccPhHSOp1XI06SwXW3ucVJJe0N70/edit>.

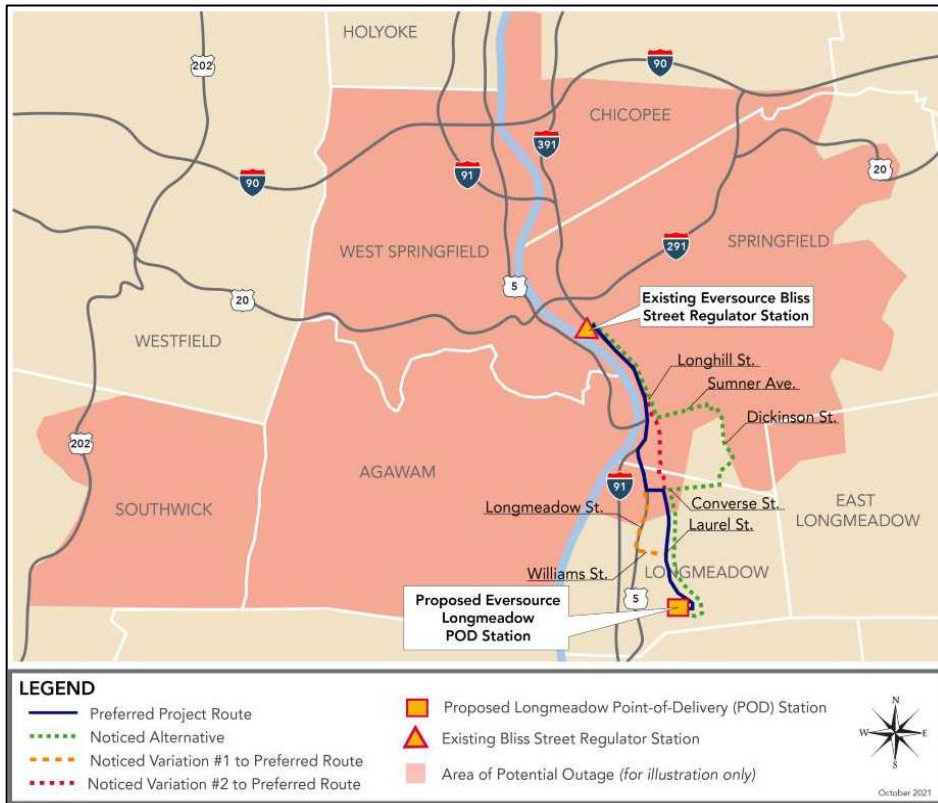
¹⁴² Hook D. November 2021. “Springfield activists speak out on the steps of city hall against the proposed \$33M Eversource gas pipeline.” *Mass Live*. <https://www.masslive.com/springfield/2021/11/springfield-activists-speak-out-on-the-steps-of-city-hall-against-the-proposed-33m-eversource-gas-pipeline.html>.

¹⁴³ Hook D. December 2021. “Eversource gas pipeline proposal brings out residents in Springfield as state reps hold listening session.” *Mass Live*. Available at: <https://www.masslive.com/springfield/2021/12/eversource-gas-pipeline-proposal-brings-out-residents-in-springfield-as-state-reps-hold-listening-session.html>.



Status: According to Eversource, the Longmeadow-Springfield pipeline was to be submitted for consideration by MEPA and the Massachusetts Energy Facilities Siting Board (EFSB) in December 2021.¹⁴⁴ However, as of early April 2022, there are no open dockets for this project with MEPA¹⁴⁵ or EFSB.¹⁴⁶ Once the proposal is submitted before MEPA and EFSB, it will launch an approximately two-year regulatory process that includes public and evidentiary hearings.¹⁴⁷

Figure 10. Eversource’s preferred route (and identified alternative routes) for Longmeadow-to-Springfield gas pipeline



Reproduced from Eversource. 2022. “Proposed Western Massachusetts Natural Gas Reliability Project.” Available at: <https://www.columbiagasma.com/services/work-in-your-neighborhood/western-massachusetts-natural-gas-reliability-project>.

¹⁴⁴ Eversource Energy. 2021. *Western Massachusetts Reliability Project Community Virtual Open House* [PowerPoint Slide]. Available at: <https://www.columbiagasma.com/docs/librariesprovider15/default-document-library/open-house-presentation-wma-nov-2021.pdf>. NOTE: Hyperlink was accessed in February 2022 but is no longer active.

¹⁴⁵ MA EEA. *Dockets*. Available at: <https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/recent>.

¹⁴⁶ MA DPU. 2021. “EFSB and DPU Siting Open Dockets.” Available at: <https://www.mass.gov/service-details/efsb-and-dpu-siting-open-dockets/>.

¹⁴⁷ Eversource. “Proposed Western Massachusetts Natural Gas Reliability Project.” Available at: <https://www.columbiagasma.com/services/work-in-your-neighborhood/western-massachusetts-natural-gas-reliability-project>. NOTE: Hyperlink was accessed in February 2022 but is no longer active.



Roles and responsibilities of decision-makers:

The **MEPA**—part of Massachusetts EEA—has the authority to conclude that the Longmeadow-Springfield pipeline does not comply with MEPA regulations. MEPA is responsible for conducting environmental impact reviews for projects requiring state permitting, financial assistance or land disposition, and to use all feasible measures to avoid, minimize and mitigate damage to the environment. In response to the 2021 *Act Creating a Next-generation Roadmap for Massachusetts Climate Policy's* requirement that MEPA prepare an environmental impact report “for any project that is likely to cause damage to the environment and is located within a distance of 1 mile of an environmental justice population,” EEA and MEPA have produced updated EJ policies.¹⁴⁸ The new policies not only mandate that any proposed project within 1 mile of an EJ population must undergo an environmental review—per the Climate Roadmap—but also that:

- Environmental reviews must assess “existing unfair or inequitable environmental burden[s]”¹⁴⁹ in the impacted EJ communities;
- “[E]xisting facilities in [EJ] neighborhoods comply with state environmental, energy, and climate change rules and regulations;”¹⁵⁰ and
- EJ communities should not face inequitable environmental burdens, defined as “any destruction, damage, or impairment of natural resources that is not insignificant, resulting from intentional or reasonably foreseeable causes, including but not limited to climate change, air pollution, water pollution...or other activity that contaminates or alters the quality of the environment and poses a risk to public health.”¹⁵¹

The proposed Longmeadow-Springfield pipeline passes directly through communities with high shares of racial/ethnic minorities, low-income households and English-isolated populations protected by the Commonwealth as EJ populations¹⁵² (see Figure 11), and there are cumulative, inequitable impacts from

¹⁴⁸ 1) MEPA. December 2021. *301 CMR 11.00: MEPA REGULATIONS*. Executive Office of Energy and Environmental Affairs. Available at: <https://www.mass.gov/doc/december-2021-301-cmr-1100-clean/download>. 2) EEA. June 24, 2021. “Environmental Justice Policy of [EEA].” Article 97. Available at: <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>.

¹⁴⁹ MEPA. December 2021. “301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS. 301 CMR 11.00: MEPA REGULATIONS.” Available at: <https://www.mass.gov/doc/december-2021-301-cmr-1100-clean/download>. PDF page 24.

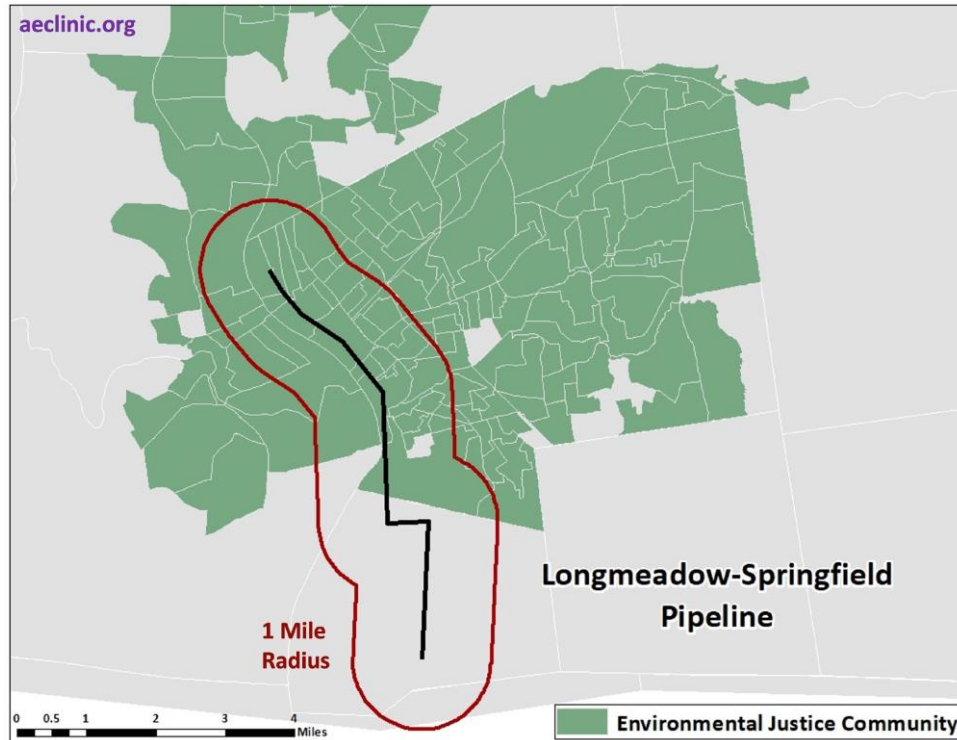
¹⁵⁰ Constitution of the Commonwealth of Massachusetts, Article 97 (June 24, 2021). *Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs*. Available at: <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>. Page 5.

¹⁵¹ Constitution of the Commonwealth of Massachusetts, Article 97 (June 24, 2021). *Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs*. Available at: <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>. Page 4.

¹⁵² Massachusetts Executive Office of Energy and Environmental Affairs. 2020. “Massachusetts 2020 Environmental Justice Populations”. *Esri GIS map*. Available at: <https://mass-eoea.maps.arcgis.com/apps/webappviewer/index.html?id=1d6f63e7762a48e5930de84ed4849212>

other polluting, hazardous, and toxic facilities to consider. According to the U.S. Energy Information Administration, there are already two polluting electric generators in Springfield: the gas-fired 6 MW Indian Orchard and 261 MW Masspower plants.¹⁵³ According to the U.S. EPA Toxics Release Inventory, nine facilities in Springfield release toxic chemicals that pose a threat to human health and the environment.¹⁵⁴ EPA’s EJ mapping tool ranks about half of Springfield’s area in the 80 to 95th percentile (nationally) for proximity to hazardous waste sites.¹⁵⁵

Figure 11. EJ communities along the preferred route of the Longmeadow-Springfield pipeline



The **Massachusetts EFSB**—also part of EEA—has the authority to deny Eversource’s siting application for the Longmeadow-Springfield pipeline. The EFSB is composed of nine members—the Secretaries of EEA and Housing and Economic Development, the Commissioners of DEP and the Department of Energy Resources, two Commissioners from the Commonwealth Public Utilities Commission, and three public members

¹⁵³ U.S. EIA. September 9, 2021. “Form EIA-860 Data - Schedule 3, 'Generator Data' (Operable Units Only).” Available at: <https://www.eia.gov/electricity/data/eia860/>.

¹⁵⁴ U.S. EPA. 2022. “Toxics Release Inventory (TRI) Program.” Available at: <https://www.epa.gov/toxics-release-inventory-tri-program>.

¹⁵⁵ U.S. EPA and EJ Screen. 2022. “EPA’s Environmental Justice Screening and Mapping Tool (Version 2.0).” Available at: <https://ejscreen.epa.gov/mapper/>.



appointed by the Governor to represent environmental, labor, and energy interests¹⁵⁶—and is responsible for approving or denying siting proposals for large energy projects like power plants, electric transmission infrastructure, and gas pipelines and storage tanks. The EFSB is mandated to make decisions to “provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost” by reviewing a project’s need, cost, and environmental impact.¹⁵⁷ In July 2021, the EFSB opened “a formal inquiry to assess opportunities to enhance equitable public awareness of, and meaningful participation in, EFSB proceedings.”¹⁵⁸ Similarly to EEA and MEPA, the EFSB ultimately expects to establish an EJ policy.¹⁵⁹ Recent proposals from Massachusetts State Representative Madaro¹⁶⁰ and Boston City Councilor Lydia Edwards¹⁶¹ (soon-to-be State Senator) would impact decision-making at the EFSB. Those initiatives arose in response to the EFSB’s ruling on a proposed electric substation in East Boston, and are described in more detail in Section 6 below. The public comment period for gathering input on the EFSB process for public participation concluded in September 2021,¹⁶² and there have been no updates since that time.¹⁶³

In the event that the company seeks eminent domain to secure property rights to the land needed for the pipeline along its route, the **Massachusetts DPU** has the authority to deny the petition if it is not determined to be “required in the public interest, convenience and necessity.”¹⁶⁴ If DPU denies the petition for eminent domain, the company must wait one year before filing again.¹⁶⁵

The **City of Springfield** can express its opposition to Eversource constructing the pipeline using actions

¹⁵⁶ Massachusetts General Law Chapter 164 (Manufacture and Sale of Gas and Electricity), Section 69(h). An Act Establishing the *Energy facilities siting*. Available at:

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter164/Section69h>.

¹⁵⁷ Ibid.

¹⁵⁸ MA DPU. January 2021. “Energy Facilities Siting Board Opens Inquiry to Enhance Inclusivity, Participation in Energy Siting Proceedings.” Available at: <https://www.mass.gov/news/energy-facilities-siting-board-opens-inquiry-to-enhance-inclusivity-participation-in-energy-siting-proceedings>.

¹⁵⁹ Norton, M. at the State House News Service. July 2021. “State inquiry eyes more participation in energy facility siting.” *The Salem News*. Available at: https://www.salemnews.com/news/state-inquiry-eyes-more-participation-in-energy-facility-siting/article_20702280-de6f-11eb-a301-1b93e7dcbd9f.html.

¹⁶⁰ Massachusetts Bills H.3336. *An Act relative to energy facilities siting reform to address environmental justice, climate, and public health*. Available at: <https://malegislature.gov/Bills/192/HD3679>.

¹⁶¹ Ibid.

¹⁶² Sharkey, D. July 1, 2021. Docket EFSB 21-01. “Notice of Inquiry by the Energy Facilities Siting Board on its Own Motion into Procedures for Enhancing Public Awareness of and Participation in its Proceedings.” Available at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/13718951>.

¹⁶³ MA Executive Office for Energy and Environmental Affairs. Dockets EFSB21-01. Available at: <https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber/EFSB21-01>.

¹⁶⁴ James, D. Masterman, P. Traurig, P. Russell P. *Massachusetts Law Covering Eminent Domain and Pipeline Companies*. Prepared by LLP One International Place. Available at: <https://pstrust.org/wp-content/uploads/2013/04/Massachusetts-Eminent-Domain-2014.pdf>. Page 2.

¹⁶⁵ Ibid.



similar to those taken recently by the Cities of Holyoke and Northampton. The Longmeadow-Springfield pipeline is one portion of the larger Western Massachusetts Natural Gas Reliability Project.¹⁶⁶ Another portion of the larger project—a proposed pipeline from West Springfield to Holyoke¹⁶⁷—was impacted when Holyoke Mayor Morse terminated the City’s precedent agreement for fuel from the project¹⁶⁸ and wrote to FERC asking it to deny the project because it would increase emissions and hamper the City’s ability to meet its clean energy goals.¹⁶⁹ Another portion of the larger project—a proposed pipeline in Agawam—saw opposition from the City of Northampton. After the Northampton City Council voted unanimously to oppose gas infrastructure expansion,¹⁷⁰ City Solicitor Alan Seewald wrote to FERC asking it to deny the project because it would increase gas supply to Northampton and interfere with the City’s clean energy goals.¹⁷¹

6. Approved East Eagle Street electric substation in East Boston, Massachusetts

About: An approved, but not yet constructed, 115/14-kilovolt (kV) electric substation at East Eagle Street in East Boston—which is one portion of Eversource’s larger “Mystic—East Eagle—Chelsea Reliability Project” (see Figure 12).¹⁷²

¹⁶⁶ Eversource Energy. 2021. *Western Massachusetts Reliability Project Community Virtual Open House* [PowerPoint Slide]. Available at: <https://www.columbiagas.com/docs/librariesprovider15/default-document-library/open-house-presentation-wma-nov-2021.pdf>. NOTE: Hyperlink was accessed in February 2022 but is no longer active.

¹⁶⁷ Serreze, M. January 2019. “City of Northampton opposes natural gas pipeline project in Agawam.” *Mass Live*. Available at: https://www.masslive.com/news/2018/11/city_of_northampton_opposes_te.html.

¹⁶⁸ U.S. Federal Energy Regulatory Commission. February 21, 2020. Docket CP19-7-000. “Order granting partial waiver of condition.” Available at: <https://www.ferc.gov/sites/default/files/2020-06/C-6-022020.pdf>. Page 3.

¹⁶⁹ 1) Shemkus, S. July 2019. “Massachusetts mayor says access to cheap gas not worth the cost to climate.” *Energy News Network*. Available at: <https://energynews.us/2019/07/09/massachusetts-mayor-says-access-to-cheap-gas-not-worth-the-cost-to-climate/>. 2) U.S. Federal Energy Regulatory Commission. December 19, 2019. Docket CP19-7-000. “Order issuing certificate and approving abandonment.” Available at: <https://cms.ferc.gov/sites/default/files/whats-new/comm-meet/2019/121919/C-6.pdf>. See footnote 21: “City of Holyoke June 17, 2019, Comment at 2 (noting that the City intends to utilize existing infrastructure and energy conservation initiatives to meet future heating needs in order to obtain 100 percent renewable energy).”

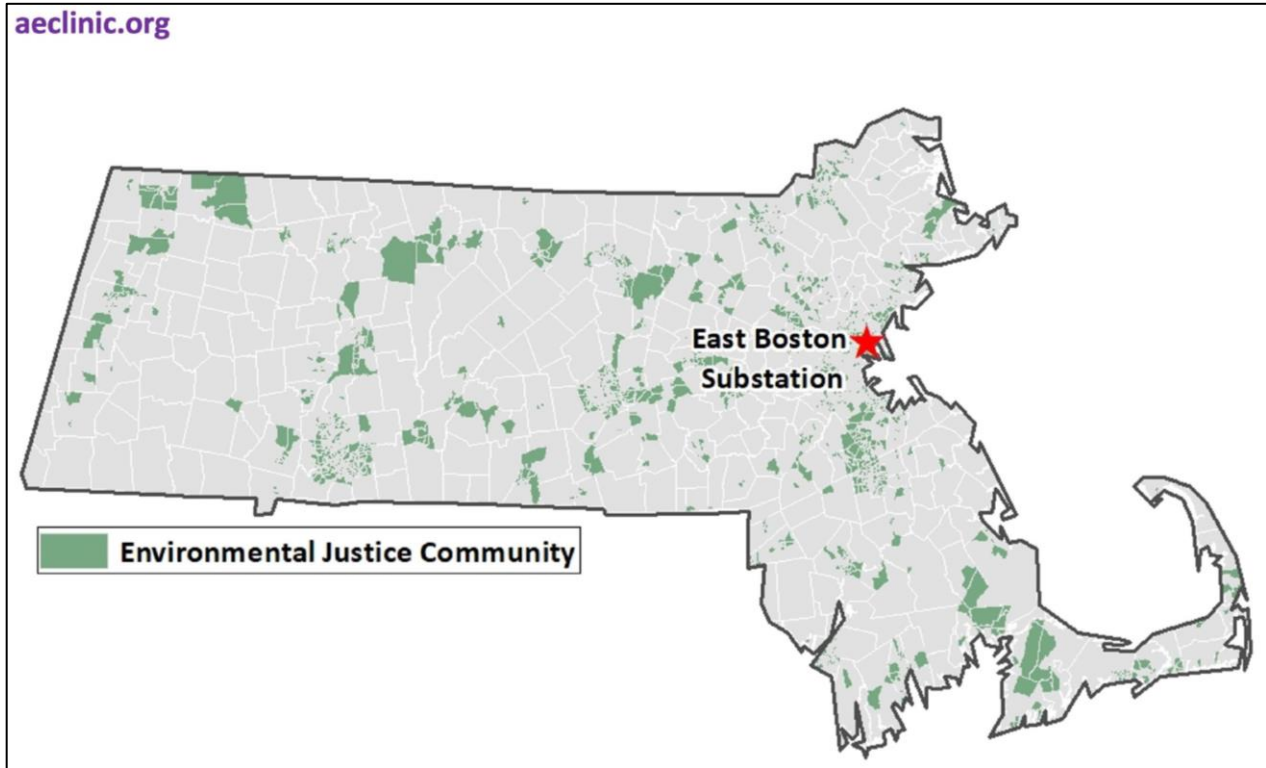
¹⁷⁰ City of Northampton, MA. October 2018. “R-18.170. A resolution opposing the expansion of gas infrastructure and calling for increased development and implementation of renewable and clean energy sources” Available at: <https://northamptonma.gov/AgendaCenter/ViewFile/Item/10614?fileID=114034>.

¹⁷¹ SCRIBD. n.d. “Northampton Motion to Intervene in FERC Docket for TGP 261 Upgrade in Agawam.” Available at: https://www.scribd.com/document/393964677/Northampton-motion-to-intervene-in-FERC-docket-for-TGP-261-Upgrade-in-Agawam#from_embed.

¹⁷² Eversource. n.d. “Mystic - East Eagle - Chelsea Reliability Project.” Available at: <https://www.eversource.com/content/nh/residential/about/transmission-distribution/projects/massachusetts-projects/mystic---east-eagle---chelsea-reliability-project>.



Figure 12. Proposed East Boston substation and Massachusetts EJ communities



Advocacy goals: Multiple advocacy organizations including GreenRoots,¹⁷³ Extinction Rebellion Boston,¹⁷⁴ Emergency Watertown,¹⁷⁵ and CLF¹⁷⁶ aim to prevent the substation’s construction at its EFSB-approved location in East Boston. Public officials including Boston Mayor Michelle Wu, Massachusetts Senators Ed Markey and Elizabeth Warren, U.S. Representatives for Massachusetts Ayanna Pressley, Katherine Clark and Joe Kennedy, and State Representatives and City Councilors have also voiced their support for the

¹⁷³ GreenRoots. March 18, 2021. “GreenRoots Appeals EFSB Decision Approving Substation. Appeal filed with the Supreme Judicial Court.” Available at: <http://www.greenrootschelsea.org/news/2021/3/18/greenroots-appeals-efsb-decision-approving-substation>.

¹⁷⁴ Extinction Rebellion. n.d. “Eastie Substation.” Available at: <https://xrboston.org/wiki/substation/>.

¹⁷⁵ Hadjis, E. February 2, 2022. “‘No Eastie Substation’ – Climate activists protest Eversource Energy project in East Boston.” *The Boston Scope*. Available at: <https://thescopeboston.org/7542/climate-justice/no-eastie-substation-climate-activists-protest-eversource-energy-project-in-east-boston/>.

¹⁷⁶ CLF. January 24, 2022. “East Boston Substation Project Must Not Move Forward. CLF appeals decision granting facility a license.” Available at: <https://www.clf.org/newsroom/east-boston-substation-project-must-not-move-forward/>.



advocates' goals.¹⁷⁷

Status: In 2014, Eversource requested approval of the Massachusetts EFSB and DPU to construct the East Boston substation, and construct and operate two new 115-kV underground electric transmission lines in Everett, Chelsea, and East Boston. In December 2017, the EFSB and DPU approved the need for the substation, but asked the Company to relocate it to prevent electromagnetic radiation from interfering with equipment at a nearby fish processing plant.¹⁷⁸ In November 2018, Eversource filed another petition with EFSB to relocate the substation—moving it west by 190 feet.¹⁷⁹ In June 2020, GreenRoots, CLF, and Lawyers for Civil Rights filed a federal complaint¹⁸⁰ under Title VI of the Civil Rights Act of 1964 against the EEA, DPU and EFSB for failing to make meetings about the project accessible to all residents because of a lack of translation services.¹⁸¹ In January 2021, GreenRoots, CLF, and Lawyers for Civil Rights filed a federal lawsuit¹⁸² against the EPA for failing to investigate the discrimination concerns raised in its June 2020 Title VI complaint.¹⁸³

In February 2021, EFSB unanimously approved the updated location of the substation.¹⁸⁴ In March 2021,

¹⁷⁷ 1) Wuthmann, W. January 27, 2022. "Opponents appeal East Boston substation's waterfront license." *WBUR*. Available at: <https://www.wbur.org/news/2022/01/27/opponents-appeal-east-boston-substation-waterfront-license>.

2) Letter to Secretary Kathleen A. Theoharides, Executive Office of Energy and Environmental Affairs. December 7, 2020. "RE: Energy Facilities Siting Board Final Decision on NSTAR Electric Company d/b/a Eversource Energy, in EFSB 14-04/D.P.U. 14-153/14-154, the facility approved by the Energy Facilities Siting Board in its Final Decision dated December 1, 2017." Available at: <https://d279m997dpfwgl.cloudfront.net/wp/2020/12/LETTER-Proposed-East-Boston-Substation-12.7.20.pdf>.

¹⁷⁸ 1) Commonwealth of Massachusetts Energy Facilities Siting Board. December 1, 2017. Final Decision. EFSB 14-04, D.P.U. 14-153 and D.P.U. 14-154. Page 165. 2) Wasser, M. February 22, 2021. "In A Blow To Environmental Justice Advocates, State Regulators Approve Controversial East Boston Substation." *WBUR*. Available at: <https://www.wbur.org/news/2021/02/22/east-boston-substation-final-approval-eversource-environmental-justice>.

¹⁷⁹ Wasser, M. February 22, 2021. "In a Blow to Environmental Justice Advocates, State Regulators Approve Controversial East Boston Substation." *WBUR*. Available at: <https://static1.squarespace.com/static/5936d98f6a4963bcd1ed94d3/t/5cffcb70771cbf00015edeba/1560267632700/Woods+testimony+7June2019+%281%29.pdf>.

¹⁸⁰ U.S. District Court of Massachusetts. June 1, 2020. *Complaint under Title VI of the Civil Rights Act of 1964*. Before the EPA. Available at: <https://www.clf.org/wp-content/uploads/2020/06/Consolidated-Title-VI-Complaint-06-01-2020.pdf>.

¹⁸¹ CLF. November 13, 2020. "Eversource, State Plow Ahead with East Boston Substation Plans." Available at: <https://www.clf.org/newsroom/eversource-state-plow-ahead-with-east-boston-substation-plans/>.

¹⁸² U.S. District Court of Massachusetts. January 13, 2021. Case 1:21-cv-10065. "Complaint for Declaratory and Injunctive Relief." Available at: <http://lawyersforcivilrights.org/wp-content/uploads/2021/01/greenroots-v.-epa-no.-21-cv-10065-d.-mass.-pdf>.

¹⁸³ Lynds, J. January 20, 2021. "EPA Sued by CLF for Refusing to Investigate Discrimination Claims as Part of the East Boston Substation Project." *East Boston Times – Free Press*. Available at: <https://eastietimes.com/2021/01/20/epa-sued-by-clf-for-refusing-to-investigate-discrimination-claims-as-part-of-the-east-boston-substation-project/>.

¹⁸⁴ MA Energy Facilities Siting Board. February 26, 2021. Docket EFSB 14-04A/D.P.U. 14-153A/14-154A Petition of NSTAR Electric Company d/b/a Eversource Energy, Notice of Project Change. "Final Decision." Available at: <https://www.mass.gov/doc/efsb14-04adpu-14-153a14-154a-final-decision/download>.



GreenRoots filed an appeal of EFSB’s final approval, which is pending before Massachusetts Supreme Judicial Court.¹⁸⁵ In response to the EFSB’s approval of the East Boston substation, in January 2022, Massachusetts State Representative Madaro proposed a bill—*An Act relative to energy facilities siting reform to address environmental justice, climate, and public health*¹⁸⁶—that, according to Madaro, seeks to make the EFSB “more accountable and to make it a process that actually has the best interests of the residents of Massachusetts in mind.”¹⁸⁷ In February 2022, Boston City Councilor Lydia Edwards (who will continue to represent East Boston, Charlestown and the North End until the end of April when she transitions into her new role as State Senator) proposed a measure that would make three changes to Boston’s zoning legislation: 1) the City’s building commissioner would have the power to stop projects that violate environmental rights; 2) the zoning exemption for utility companies would be removed; and 3) the Boston Zoning Commission would be directed to establish rules for zoning reviews of energy projects.¹⁸⁸ The proposal first needs City approval, after which point it would head to the State House—if approved there, these new rules would take effect.¹⁸⁹

It is important to note that the East Boston substation is located in close proximity to communities with high shares of racial/ethnic minorities, low-income households and English-isolated populations protected by the Commonwealth as EJ populations (see Figure 13).¹⁹⁰

At the same time, Eversource has also sought and received a waterfront license from Mass DEP. Eversource first applied for a waterfront license from MassDEP in November 2014. In 2018, Eversource submitted an updated application. In 2019, MassDEP notified Eversource that the 2018 application was deficient because the Company needed to submit a Notice of Intent to the Boston Conservation

¹⁸⁵ GreenRoots. March 18, 2021. “GreenRoots appeals EFSB Decision Approving Substation.” Available at: <http://www.greenrootschelsea.org/news/2021/3/18/greenroots-appeals-efsb-decision-approving-substation>.

¹⁸⁶ Massachusetts Bills H.3336. *An Act relative to energy facilities siting reform to address environmental justice, climate, and public health*. Available at: <https://malegislature.gov/Bills/192/HD3679>.

¹⁸⁷ Shemkus, S. January 26, 2022. “Boston substation fight fuels push to reform how energy projects are sited.” *Energy News Network*. Available at: https://energynews.us/2022/01/26/boston-substation-fight-fuels-push-to-reform-how-energy-projects-are-sited/?utm_source=Energy+News+Network+daily+email+digests&utm_campaign=2ce87947e8-EMAIL_CAMPAIGN_2020_05_11_11_42_COPY_01&utm_medium=email&utm_term=0_724b1f01f5-2ce87947e8-89263591.

¹⁸⁸ McDonald, D. February 28, 2022. “Lydia Edwards files proposal that could halt East Boston electric substation.” *Boston Globe*. Available at: <https://www.bostonglobe.com/2022/02/28/metro/lydia-edwards-files-proposal-that-could-halt-east-boston-electric-substation/>.

¹⁸⁹ Ibid.

¹⁹⁰ Massachusetts Executive Office of Energy and Environmental Affairs. 2020. “Massachusetts 2020 Environmental Justice Populations”. *Esri GIS map*. Available at: <https://mass-eoea.maps.arcgis.com/apps/webappviewer/index.html?id=1d6f63e7762a48e5930de84ed4849212>.



Commission and put the application on hold.¹⁹¹ In November 2020, the Boston Conservation Commission approved an “Order of Conditions” for the substation, which a group of residents appealed. In response, MassDEP issued a “Superseding Order of Conditions” approving the project under the state’s Wetlands Protection Act in October 2021.¹⁹² In January 2022, CLF and 17 East Boston residents appealed the project’s waterfront license as granted by MassDEP.¹⁹³

Figure 13. EJ communities near the East Boston substation



Sponsored by Boston City Councilor Lydia Edwards and ten East Boston residents, a non-binding ballot question regarding the substation appeared on the ballot during Boston’s Municipal Election in November

¹⁹¹ MassDEP Office of Appeals and Dispute Resolution. 2022. DEP File No.: Waterways Application No. W14-4297 In the matter of NSTAR Electric Company d/b/a Eversource Energy. “Notice of claim / Request for an Adjudicatory Hearing.” Available at: https://www.clf.org/wp-content/uploads/2022/01/Eversource-License-Appeal_FINAL_Redacted.pdf. Page 8.

¹⁹² Ibid. Page 15.

¹⁹³ MassDEP Office of Appeals and Dispute Resolution. 2022. DEP File Waterways Application No. W14-4297 In the matter of NSTAR Electric Company d/b/a Eversource Energy. “Notice of claim / Request for an Adjudicatory Hearing.” Available at: https://www.clf.org/wp-content/uploads/2022/01/Eversource-License-Appeal_FINAL_Redacted.pdf.



2021.¹⁹⁴ The result: almost 84 percent of Boston voters opposed the project.¹⁹⁵

In February 2022, Eversource applied for a “Certificate of Environmental Impact and Public Interest” with the EFSB, which seeks to exercise EFSB’s Certificate authority to grant “15 state and local permits required for construction and operation of a new electric substation in East Boston”¹⁹⁶ that—according to Eversource—have been “unduly delayed and inappropriately conditioned.”¹⁹⁷ Parties have until April 19, 2022 to file as intervenors in the Docket (EFSB 22-01).¹⁹⁸

Roles and responsibilities of decision-makers:

The **Massachusetts EFSB** has the authority to reopen and reconsider previous decisions. As discussed above in Section 5 (on the Longmeadow-Springfield pipeline), the EFSB is responsible for approving or denying siting proposals for large energy projects on the basis of need, reliability, environmental impact, and cost.¹⁹⁹ In its final decision approving the location of the substation, the EFSB notes that its “procedural regulations permit the reopening of a completed adjudicatory hearing or record only for good cause, and only with respect to evidence that was unavailable at the time of hearing.”²⁰⁰ To demonstrate “good cause,” the entity seeking to reopen must present new evidence that “would be likely to have a significant impact on the Siting Board’s decision in the proceeding.”²⁰¹ According to regulation,²⁰² motions to reopen must be filed before a final decision is rendered, and motions to reconsider must be filed within 5 days of a

¹⁹⁴ Lynds, J. September 22, 2021. “Eversource Substation Question Will Appear on November’s Ballot.” *East Boston Times – Free Press*. <https://eastietimes.com/2021/09/22/eversource-substation-question-will-appear-on-novembers-ballot/>.

¹⁹⁵ DeCosta-Klipa, N. November 9, 2021. “Boston voted overwhelmingly against a planned East Boston substation. Does it matter?” *Boston.com*. Available at: <https://www.boston.com/news/politics/2021/11/09/boston-question-2-east-boston-substation-ballot-question/>.

¹⁹⁶ Eversource. No date. “Mystic - East Eagle - Chelsea Reliability Project.” Available at: <https://www.eversource.com/content/ema-c/residential/about/transmission-distribution/projects/massachusetts-projects/mystic---east-eagle---chelsea-reliability-project>.

¹⁹⁷ Eversource. February 16, 2022. “EFSB 22-01 Eversource Initial Petition and Application for a Certificate of Environmental Impact and Public Interest.” Available at: https://www.eversource.com/content/docs/default-source/projects-infrastructure/efsb-22-petition-application.pdf?sfvrsn=6e898f62_2.

¹⁹⁸ EFSB. March 8, 2022. “Re: NSTAR Electric Company d/b/a/Eversource Energy, Petition and Application for a Certificate of Environmental Impact and Public Interest, EFSB 22-01.” Available at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/14593270>.

¹⁹⁹ Massachusetts General Laws Chapter 164, Section 69 (h). *An Act Establishing the Energy facilities siting board*. Available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter164/Section69h>.

²⁰⁰ MA Energy Facilities Siting Board. February 26, 2021. Docket EFSB 14-04A/D.P.U. 14-153A/14-154A. “Final Decision. On Petition of NSTAR Electric Company d/b/a Eversource Energy, Notice of Project Change.” Available at: <https://www.mass.gov/doc/efsb14-04adpu-14-153a14-154a-final-decision/download>. Page 19.

²⁰¹ Ibid.

²⁰² MA Energy Facilities Siting Board. *980 CMR 1.09(1)(8): Rules for The Conduct of Adjudicatory Proceedings. Supplemental Procedures*. Available at: <https://www.mass.gov/doc/980-cmr-1-rules-for-the-conduct-of-adjudicatory-proceedings/download>.



final decision. However, there are historical instances of EFSB modifying final decisions after they have occurred: In 2014, EFSB modified a final decision after the 5-day limit on the location of a pipeline in Sandwich, Massachusetts based on new evidence.²⁰³ As an office of the Massachusetts EEA, EFSB is subject to the EEA EJ policy, which includes:

- “Enhancing opportunities for residents to participate in environmental, energy, and climate change decision-making”;
- “Enhancing the environmental review of new or expanding significant sources of environmental burdens in [EJ] neighborhoods”;
- “Ensuring that existing facilities in [EJ] neighborhoods comply with state environmental, energy, and climate change rules and regulations”;
- “Encouraging investment in responsible economic growth in [EJ] neighborhoods where there is existing infrastructure, in particular where an opportunity exists to restore a degraded or contaminated site and encourage its clean, productive and sustainable use.”²⁰⁴

Therefore, EEA may have the authority to mandate EFSB to reconsider a previous decision if that decision were found to violate its EJ policy.

The **Massachusetts Supreme Judicial Court** will rule on GreenRoots’ appeal of EFSB’s final approval of the substation and will either uphold the Board’s decision or set it aside.²⁰⁵

MassDEP has the power to grant CLF and 17 East Boston residents’ request for an adjudicatory hearing²⁰⁶ on the project’s waterfront license and approve the relief sought, including the reversal of the license approval.²⁰⁷

²⁰³ MA Energy Facilities Siting Board. August 14, 2014. Docket EFSB 05-02A. “Final decision on Sagamore Gas Pipeline augmentation project change filing.” Available at: <https://www.mass.gov/files/documents/2017/09/18/colonial%208-14.pdf>.

²⁰⁴ Constitution of the Commonwealth of Massachusetts Article 97. June 24, 2021. *Environmental Justice Policy of The Executive Office of Energy and Environmental Affairs*. Available at: <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>. Page 5.

²⁰⁵ MA Supreme Judicial Court. n.d. “Supreme Judicial Court Single Justice Practice and Procedure.” Available at: <https://www.mass.gov/guides/supreme-judicial-court-single-justice-practice-and-procedure>.

²⁰⁶ MassDEP. *310 CMR 9.17(3): Waterways. Appeals*. Available at: <https://www.mass.gov/doc/310-cmr-9-waterways/download>.

²⁰⁷ MassDEP Office of Appeals and Dispute Resolution. DEP File No.: Waterways Application No. W14-4297 In the Matter of NSTAR Electric Company d/b/a Eversource Energy. “Notice of Claim / Request for an Adjudicatory Hearing.” Available at: https://www.clf.org/wp-content/uploads/2022/01/Eversource-License-Appeal_FINAL_Redacted.pdf. Page 34.



Recommendations

In addition to the state and federal actors mentioned above, the Independent Service Operator of New England (ISO-NE) plays a critically important role in determining New England’s energy mix because ISO-NE—via its markets—selects which energy resources will be used in the future and which utility companies will supply them. Changes to ISO-NE—whether those changes take place from a shift in ISO-NE membership or from new policy mandates from Governors and State legislators—have the potential to prevent new energy projects like the six covered in this report.

ISO-NE is a not-for-profit company authorized by the Federal Energy Regulatory Commission (FERC) to ensure the constant availability of competitively priced wholesale electricity in the six states of New England (Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine). Created in 1997, ISO-NE is responsible for operating, overseeing, and administering the regional grid and wholesale electricity markets.²⁰⁸ ISO-NE works closely with two stakeholder groups in order to carry out its operations and decision-making processes: New England Power Pool (NEPOOL) and New England States Committee on Electricity (NESCOE).

NEPOOL is an association of over 500 electric utilities, power generators, brokers, consumer-owned utilities, end users, and other market actors. To become a NEPOOL Participant, entities must submit paperwork and an application fee ranging from \$500 for end user participants to \$5,000 for large utility companies; presently, of the 535 NEPOOL participants, 211 are suppliers, 94 are alternative resources, 62 are publicly-owned entities, 78 are in transmission and generation, 49 are in non-energy sectors, and 41 are end users (see Figure 14).²⁰⁹ NEPOOL contains four principal committees that are overseen by the Participants Committee, composed of representatives from each participant entity, which serves as ISO-NE’s primary stakeholder advisory body. NESCOE is a federally recognized Regional State Committee that consists of representatives of the six New England Governors and represents their collective perspectives and interests in minimizing electricity costs for customers. NESCOE cannot act unilaterally to affect market rules, but works within the FERC-sanctioned stakeholder process with ISO-NE and NEPOOL.²¹⁰ NEPOOL and NESCOE, in their advisory capacities, are meant to represent the perspectives of utilities, end use customers, and regulators, in order to inform ISO-NE’s market decisions.

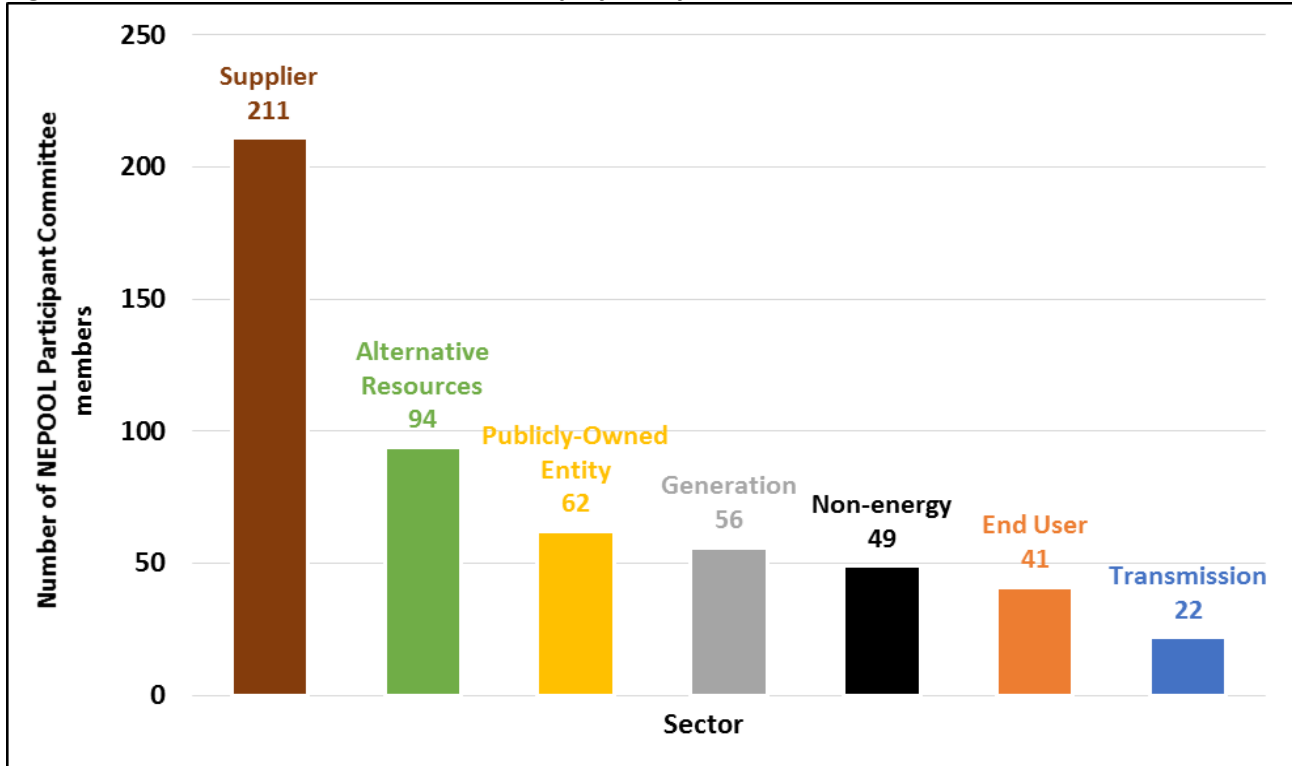
²⁰⁸ Independent Service Operator of New England (ISO-NE). n.d. “Our History.” *ISO-NE*. Available at: <https://www.iso-ne.com/about/what-we-do/history/>.

²⁰⁹ (1) Doot, D.T. 2005. *New England Power Pool: Second Restated NEPOOL Agreement*. ISO-NE. Available at: https://www.iso-ne.com/static-assets/documents/2015/01/op_2d_rna.pdf; (2) ISO-NE. n.d. “Participant Directory.” *ISO-NE*. Available at: <https://www.iso-ne.com/participate/participant-asset-listings/directory?id=1&type=committee>

²¹⁰ New England States Committee on Electricity (NESCOE). N.d. “About NESCOE.” *NESCOE*. Available at: <https://nescoe.com/about-nescoe/>.



Figure 14. Breakdown of NEPOOL Membership by Entity Sector



ISO-NE establishes market prices through a competitive bidding process among hundreds of regional electric distributors and suppliers, with three main categories of markets and products: energy markets for day-to-day electric power, a capacity market for long-term energy supply, and ancillary services for short-term maintenance. ISO-NE’s Forward Capacity Market (FCM) holds Forward Capacity Auctions (FCAs) each year, wherein different energy resources compete to receive market-priced capacity payments in exchange for their promise to supply electric capacity three years in the future and to be ready to provide energy when needed. Suppliers bid into the capacity market with their price offer, and ISO-NE selects those with the lowest-priced offers until capacity reaches the total amount of capacity needed (forecasted peak electric demand plus a reserve margin of approximately 16 percent).²¹¹ Selected resources “clear” the auction and receive capacity payments based on the clearing price—the price of the most expensive resource selected in the auction. ISO-NE’s FCAs determine which energy resources will be used in the future and which utility companies will supply them—with obvious implications for New England states’ abilities to meet their clean energy and emission reduction targets.

In theory, ISO-NE is an unbiased facilitator of the region’s electric markets, independent of profit motives

²¹¹ Kotha, M. 2018. “Proposed Installed Capacity Requirement (ICR) Values for the 2022-2023 Forward Capacity Auction (FCA 13).” *ISO-NE*. Available at: https://www.iso-ne.com/static-assets/documents/2018/08/a3_pspc_prpsd_icr_values_08302018.pdf.



and solely interested in cost-effectiveness, reliable electric supply, and efficiency. It claims no role in policymaking and is meant to be a neutral arbiter between electric suppliers and consumers. In practice, however, the line between energy markets and policy is not so clear-cut. According to OpenSecrets data, ISO-NE has employed a lobbying firm, Owen Evans Ingols, which represents an array of electric utility clients, for congressional and executive branch lobbying activities amounting to at least \$120,000 per year for over a decade.²¹² In addition, the use of the “minimum offer price rule” (MOPR) in ISO-NE’s FCM—a capacity bid price floor which was designed to prevent market participants from offering artificially low bids to suppress capacity prices—has had the effect of harming the ability of renewable energy suppliers that have low operational costs to participate in FCAs and secure future capacity obligations. In February 2022, NEPOOL’s Participants Committee voted—by a margin of six votes—to keep the MOPR through 2024, rather than eliminate it. The decision to uphold the MOPR rule has undeniable ramifications for state and local clean energy policy actions; by upholding a rule that disadvantages clean energy suppliers in the capacity market, ISO-NE effectively places a limit on clean energy expansion in New England through at least 2024.

Avenues for change at ISO-NE

There are three primary ways that ISO-NE could change that would benefit the clean energy transition in New England: a shift in NEPOOL membership, a shift in NESCOE membership resulting from state election results, and/or new policy mandates from Governors and state legislatures:

- NEPOOL’s membership is currently dominated by electric suppliers (currently 40 percent). If NEPOOL membership had a larger share of end user representatives (currently less than 10 percent) and alternative resources representatives (currently less than 20 percent), the members of the Participants Committee would better represent consumer interests and alternative resources like renewable energy. In addition, a reduction or elimination of the NEPOOL membership application fee would better enable end users and smaller alternative resources to join.
- NESCOE membership currently consists only of staff representatives of the six Governors of New England states. If more state legislators across different departments and levels of government, including those specifically in state-level offices of Environmental Justice or Consumer Protection, were able to send representatives to NESCOE, the committee might serve as a more vocal and active advocate for consumer needs and the public good in its work with ISO-NE and NEPOOL.
- Given that markets are confined by the boundaries set by policy, more aggressive state-level policy stances on expanding renewable energy and/or reducing greenhouse gas emissions in New England would set the terms of ISO-NE’s decisions. Governors and state legislators are also the

²¹² OpenSecrets. N.d. “Client Profile: ISO New England.” *OpenSecrets*. Available at: <https://www.opensecrets.org/federal-lobbying/clients/hired-firms?cycle=2021&id=D000052432>.



ones with the power to change what state agencies can and must do. For example, the 2021 *Act Creating a Next-generation Roadmap for Massachusetts Climate Policy* established new Environmental Justice (EJ) criteria and legal protections in Massachusetts, requiring all Massachusetts state agencies to develop new EJ policies that are in line with those mandates.²¹³ Similarly, the Governor of Connecticut signed Executive Order No. 21-3 in December 2021, directing state agencies to implement 23 policy actions to reduce carbon emissions and establish an Office of Climate and Public Health, an Equity and Environmental Justice Advisory Council, and a Clean Economy Council.²¹⁴

Conclusion

This report describes six clean energy and energy justice campaigns across New England and finds that advocates have more opportunities to seek action in line with their goals while a project is still in the proposed phase (rather than built and operational). EJ community protections present a particularly important avenue for advocates who can challenge energy developments that are sited in or near vulnerable or underserved communities—a relatively new and rapidly evolving space.

While advocates can press relevant state and federal decision-making bodies to take action on proposed and existing projects, this report also finds that—for energy projects related to the electric sector—ISO-NE is the common denominator decision-making body that determines which energy resources are competitive, and therefore, which energy projects get proposed, built, and operated. Changes at ISO-NE have the potential to render many New England energy projects less competitive.

No parallel planning, operations, and oversight organization exists for New England’s gas distribution network. Advocates instead address gas projects piecemeal—state agency by state agency—and very little cross-utility planning occurs, a cause for concern in a decarbonizing energy sector. State-level models of more wholistic planning do exist, however: In Massachusetts, public pressure helped lead to an investigation called the “Future of Gas” which solicited reports from each gas company about their role in meeting the Commonwealth’s climate goals, and is currently undergoing a public comment and participation phase.²¹⁵ In California, a patchwork of city building codes that reduce gas reliance led to a Public Utility Commission rulemaking to regulate the state’s transition away from gas²¹⁶ and an Energy

²¹³ Massachusetts Session Laws Chapter 8 (S.B.9), 2021. *An Act Creating a Next-generation Roadmap for Massachusetts Climate Policy*. Available online: <https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter8>.

²¹⁴ Connecticut Executive Order No. 21-3 (E.O. 21-3), 2021. *An Order Directing Connecticut Executive Branch State Agencies to Take Significant Actions within their Authority to Reduce Carbon Emissions and Prepare for the Impacts of the Climate Crisis*. Available online: <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-21-3.pdf>.

²¹⁵ Future of Gas. Homepage. Available at: <https://thefutureofgas.com/>.

²¹⁶ Public Utilities Commission of the State of California. January 2020. Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and Perform Long-Term Gas System Planning.” Available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M324/K792/324792510.PDF>.



Commission report on the customer costs and public health benefits of that transition.²¹⁷ While many states have climate and emission reduction goals that are consistent with a transition away from gas, gas utilities and their regulators have generally continued to operate business-as-usual.

²¹⁷ California Energy Commission. April 2020. “The Challenge of Retail Gas in California’s Low-Carbon Future.” Available at: <https://www.energy.ca.gov/sites/default/files/2021-06/CEC-500-2019-055-F.pdf>.