

## Frequently Asked Questions - General

Q: Where does the Energy Facility Siting Board's authority come from?

A: The Board was created by the [Energy Facility Siting Act of 1986](#). The Board is specifically established in [section 42-98-5](#). Additionally, the Board was empowered in [section 42-98-7\(c\)](#) to adopt [rules and regulations](#) to effectuate the purposes of the Act.

Q: How many Board Members are there?

A: Three. Two Board Members constitute a quorum, which is needed to make a decision.

Q: What or who determines the makeup of the Board? Does the Governor appoint the Board?

A: The Governor does not directly appoint Board Members. [Section 42-98-5\(a\)](#) of the act provides for three Board members; "the chairperson of the public utilities commission, who shall serve as chairperson of the siting board; the director of the department of environmental management; and the associate director of administration for planning."

Q: What is the Board's review timeline?

A: The Board's process and timeline are set forth in the Energy Facility Siting Act, and are therefore statutory. Some projects, because of their size, qualify for expedited Board review. Large facilities, like power plants and extensive transmission projects, require the most involved and rigorous review.

The Board's timeline for large facilities is as follows:

- Board receives an application to site, construct, and/or alter a major energy facility.
- Board docket complete application or returns incomplete application to applicant – within 30 days of receipt of application<sup>1</sup>
- Board convenes Preliminary Hearing – between 45 to 60 days after docketing<sup>2</sup>
- Board makes a preliminary decision – between 30 to 45 days after convening Preliminary Hearing<sup>3</sup>
- Board issues preliminary order – with or shortly after preliminary decision
- A 6-month period (or less) beginning on the issue date of preliminary order is allowed for agencies to render advisory opinions<sup>4</sup>
- Board conducts public comment hearings – typically after preliminary hearing, but before final hearing and final action<sup>5</sup>
- Board convenes final hearing – within 45 days of advisory opinion deadline<sup>6</sup>
- Board concludes final hearing – not more than 60 days after convening<sup>7</sup>
- Board issues final decision – within 60 days of concluding final hearing<sup>8</sup>
- Board issues final order – with or shortly after final decision
- Board transmits decision to Speaker of the House and Senate President – within 10 days of order<sup>9</sup>

- Appeals period – within 10 days of order<sup>10</sup>
- Post-licensure proceedings – as necessary after issuance of final order<sup>11</sup>

Q: What factors are considered in the Board’s review of an application?

A: Per the Energy Facility Siting Act, “The board shall consider as issues in every proceeding the ability of the proposed facility to meet the requirements of the laws, rules, regulations, and ordinances under which, absent this chapter, the applicant would be required to obtain a permit, license, variance, or assent.”<sup>12</sup>

Additionally, the Act requires the Board to make specific findings. If the Board Members find all of the following are supported by the record, the license application will be approved; if one or more are not supported by the record, the license application will be denied.

- (1) Construction of the proposed facility is necessary to meet the needs of the state and/or region for energy of the type to be produced by the proposed facility.<sup>13</sup>
- (2) The proposed facility is cost-justified, and can be expected to produce energy at the lowest reasonable cost to the consumer consistent with the objective of ensuring that the construction and operation of the proposed facility will be accomplished in compliance with all of the requirements of the laws, rules, regulations, and ordinances, under which, absent this chapter, a permit, license, variance, or assent would be required, or that consideration of the public health, safety, welfare, security and need for the proposed facility justifies a waiver of some part of the requirements when compliance cannot be assured.<sup>14</sup>
- (3) The proposed facility will not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state.<sup>15</sup>

Q: What information does the Board use to determine if the application is consistent with the necessary findings above?

A: The applicant has the burden of establishing that the project is needed; it is cost-justified; it will not cause unacceptable harm to the environment; it will enhance the socio-economic fabric of the State; and that it will comply with all applicable laws, ordinances, regulations, etc., or that consideration of the public health, safety, welfare, security and need for the proposed facility justifies a waiver of some part of the requirements when compliance cannot be assured. Other parties to the Board’s docket may also present evidence that supports or contradicts the applicant’s evidence. Public comment is also part of the Board’s decision making process.<sup>16</sup> Additionally, the Board asks state and local agencies to render advisory opinions on specific matters within their area of expertise.

Q: What advisory opinions does the Board ask for?

A: For the purposes of this document, there are three types of advisory opinions: those enumerated in the Act, jurisdictional licenses and permits, and discretionary.

Enumerated in the Act: Two advisory opinions are specifically determined by the act. First, the Public Utilities Commission (PUC) will render an advisory opinion on the need (and typically cost) of the facility.<sup>17</sup> Second, the Statewide Planning program will render an advisory opinion on the socio-economic impact of the proposed facility and its consistency with the state guide plan.<sup>18</sup>

Jurisdictional Licenses: The Board designates all state and local agencies that would normally have issued required licenses, permits, etc. to render an advisory opinion on whether or not the necessary licenses, permits, etc. should be granted.<sup>19</sup>

Discretionary: Some applicable laws do not have associated permits. Thus, the Board's Rules allow the Board to designate agencies to render discretionary advisory opinions that do not convey an opinion on a specific license, but rather an opinion on how a project conforms to an applicable law or policy.<sup>20</sup>

Q: How do designated agencies render advisory opinions?

A: Agencies follow their normal processes for determining whether a license, permit, etc. should be granted that would have been followed absent the Act.<sup>21</sup> If the agency rendering the advisory opinion does not have a process that allows for any of the parties to rebut or challenge the evidence it relies on in drafting its advisory opinion or for public comment, that agency must provide a witness at the Board's final evidentiary hearings to respond under oath to inquiry from the Board and/or the other parties regarding the advisory opinion.

Q: Is the Board required to accept the advisory opinions?

A: No. Prior to making its final decision, the Board takes a comprehensive, consolidated, statewide perspective on the issues reviewed and the recommendations made in the proceedings before the designated agencies. If one or more agencies render advisory opinions unfavorable to the project, the Board may still find that other parts of the record support approval.<sup>22</sup>

Q: Can the Board set conditions on its approval of an application?

A: In certain instances, the Board place a condition on its approval.<sup>23</sup>

Q: Can the Board approve settlement agreements?

A: Yes, settlements negotiated between parties and stakeholders have been entered into the record in past applications and have been approved in Board decisions in some cases. The terms of the settlement agreement must comply with the law.

Q: Are the Board's records public?

A: Yes. With the exception of any information that is subject to a protective order, the Board's records are public record. The Board has some of its records available through its website: [www.ripuc.org/efsb/index.html](http://www.ripuc.org/efsb/index.html). Additionally, the Board's records can be reviewed in person at the Board's offices at 89 Jefferson Boulevard, Warwick, Rhode Island 02888 between 8:30 AM and 4:00 PM. The office is closed on weekends and state holidays. Additionally, public information can be obtained through a request pursuant to the Board's [Access to Public Records Regulation](#).

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This document was prepared by Board staff and is intended for general information purposes only. The information does not convey the opinions or policy of the Board or any Board Member.

## Endnotes

1. [EFSA Section 42-98-8\(b\)](#)
2. [EFSA Section 42-98-9\(a\)](#)
3. [EFSA Section 42-98-8\(f\)](#)
4. [EFSA Section 42-98-10\(a\)](#)
5. [EFSA Section 42-98-9.1\(b\)](#)
6. [EFSA Section 42-98-11\(a\)](#)
7. [EFSA Section 42-98-11\(a\)](#)
8. [EFSA Section 42-98-11\(c\)](#)
9. [EFSA Section 42-98-11\(c\)](#)
10. [EFSA Section 42-98-12\(b\)](#)
11. [Board Rule 1.14](#)
12. [EFSA Section 42-98-9\(b\)](#)
13. [EFSA Section 42-98-11\(b\)\(1\)](#)
14. [EFSA Section 42-98-11\(b\)\(2\)](#)
15. [EFSA Section 42-98-11\(b\)\(3\)](#)
16. [EFSA Section 42-98-9.1\(e\)](#)
17. [EFSA Section 42-98-9\(d\)](#)
18. [EFSA Section 42-98-9\(e\)](#)
19. [EFSA Section 42-98-9\(b\)](#)
20. [Board Rule 1.9\(e\)\(2\)](#)
27. [EFSA Section 42-98-7\(a\)\(2\)](#)
22. [EFSA Section 42-98-11\(b\)\(2\)](#)
23. [EFSA Section 42-98-11\(c\)](#)