

December 28, 2016

Massachusetts Department of Energy Resources
Massachusetts Office of the Attorney General
Fitchburg Gas & Electric Light Company d/b/a Unitil
Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid
NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource
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**Re: Solicitation of Stakeholder Input Regarding the Clean Energy Generation RFP
Pursuant to Section 83D of Chapter 169 of the Acts 2008, as amended by Chapter 188
of the Acts of 2016**

Conservation Law Foundation (“CLF”) appreciates this opportunity to comment on the solicitation of energy market stakeholder input for the upcoming clean energy RFP (“the RFP”) pursuant to Section 83D of Chapter 169 of the Acts 2008, as amended by Chapter 188 of the Acts of 2016 (“Section 83D”). This letter will refer generally to the addressees as the “soliciting parties”.

CLF is a public interest advocacy organization that works to solve the environmental problems that threaten the people, natural resources and communities of New England. Founded in 1966, CLF is a nonprofit, member-supported organization. CLF promotes clean, renewable and efficient energy production in New England. CLF has a decades-long record of advocacy in support of renewable energy development throughout New England, and CLF’s staff has deep expertise in the Massachusetts statutes governing renewable energy. CLF staff members also participated extensively in the legislative process giving rise to Section 83D.

CLF herein provides comment in response to Questions 3, 4, 5, 6, and 12.

Question 3:

At this time, CLF does not propose a specific quantitative methodology for assessing the non-RPS environmental attributes of project bids. It is imperative, though, that the RFP take into account the serious environmental consequences of new impoundment hydropower projects, including the loss of boreal forest habitat and impacts to indigenous communities, as well as the significant environmental and human impacts of improperly sited electric transmission. At a minimum, the RFP should add ranking weight to project bids that meet the following transmission criteria: co-location with existing lines to the extent feasible, burial of

lines where feasible, on-ramp capability for multiple resources, and transmission lines with multi-value functions (stability and reliability in addition to delivery of renewable generation).

With regard to Question 3(b), Section 83D does not require special concern for the “equitable” treatment of RPS Class I resources and non-RPS Class I hydroelectric generation. Section 83D in fact mandates special treatment of RPS Class I resources, requiring DOER to give preference to proposals combining new RPS Class I resources with firm hydroelectric generation over proposals that include only the latter. Section 83D(d).

With regard to Question 3(c), see the response to Question 4 below.

Question 4:

Section 83D was not intended to be a mechanism for compliance with the 2020 emissions reduction requirement of the Massachusetts Global Warming Solutions Act (GWSA).¹ The Massachusetts Department of Environmental Protection is currently proposing regulations to implement the GWSA and the *Kain* decision, which dealt with the 2020 deadline.² While some of its goals may be consistent with the long term implementation of the GWSA, Section 83D does not refer to the GWSA or require the consideration of GWSA-related project attributes in assessing bids. CLF does not anticipate that any major new interstate or international transmission projects will be permitted and constructed in time to deliver incremental clean energy prior to 2020. To the extent that incremental clean energy generation can be provided prior to 2020 over existing transmission lines, CLF expects those bids to include lower transmission-related costs, which should provide them with some advantage in the process.

With regard to the “carbon reduction” attributes of bids to this RFP, it is imperative that the soliciting parties take the actual emissions impacts of the various clean energy resources into account. Specifically, the soliciting parties should not treat new impoundment boreal hydropower as though it has zero carbon emissions by default.³

¹ G. L. c. 21N.

² *Kain v. Department of Environmental Protection*, 49 N.E. 3d 1124, 1142 (Mass. 2016) (“The purpose of G.L. c. 21N is to attain actual, measurable, and permanent emissions reductions in the Commonwealth, and the Legislature included § 3(d) in the statute to ensure that legally mandated reductions are realized by the 2020 deadline.”).

³ Large newly-flooded boreal reservoir hydropower has average lifetime emissions of between 160 and 250 lbs CO₂/MWh. See, e.g., Steinhurst et al., *Hydropower Greenhouse Gas Emissions: State of the Research* (Feb. 14, 2012), at 2, available at <http://www.clf.org/wp-content/uploads/2012/02/Hydropower-GHG-Emissions-Feb.-14-2012.pdf>. Some of those lifetime emissions should properly be treated as emissions during “generation”, since new impoundment hydropower projects can emit up to seventy percent of the GHGs emitted by a new natural gas plant over the first ten years of the hydropower project as carbon dioxide is released from flooded biological

Question 5:

For non-RPS resources imported into the New England control area, bidders must use a tracking system compatible with the New England Power Pool Generation Information System (NEPOOL GIS). Reliable source attribution is essential to prevent importing bidders from fulfilling their contractual obligations for power delivery with power sourced from other resources or control areas. For example, in recent years Québec has had a seasonal energy arrangement with Ontario, allowing for substantial imports into Québec during winter periods.⁴ Under these circumstances, Québec's exports to New England can be wheeled fossil or nuclear power from Ontario. Without adequate facility-level tagging and assurances of environmental attributes, the Commonwealth cannot be assured that we are actually receiving the clean energy resources for which we are paying via long term contract under Section 83D.

Question 6:

All bids should include the full range of market benefits to be derived from renewable energy resources, including benefits that are monetized in ISO-NE's Forward Capacity Market ("FCM") and ancillary services market. In particular, CLF and some other NEPOOL members believe that the relative importance of the ancillary services market may increase in future years as the need for balancing of variable-output renewables grows. Considering the FCM and ancillary service benefits of renewables will allow electricity customers to realize the full benefit of their renewable energy purchases. These ratepayer benefits, in turn, will help to make clear to the public the multi-faceted benefits of renewable energy.

With regard to Question 6(c), CLF does not support the allocation of risk from possible FCM participation (including possible Pay for Performance penalties) to renewable energy developers or owners.

Question 12:

The plain language and legislative history of Section 83D show that a delivery commitment model along the lines of that used in the New England Clean Energy RFP is disallowed under Section 83D. The section's language not only authorizes the electric

material and other effects. See Teodoru et al., *The Net Carbon Footprint of a Newly Created Boreal Hydroelectric Reservoir* (2012), available at <http://onlinelibrary.wiley.com/doi/10.1029/2011GB004187/epdf>.

⁴ See Joint Memorandum: Seasonal Exchange Of Electricity Capacity Between Ontario And Québec (Nov. 24, 2014), <http://news.ontario.ca/opo/en/2014/11/joint-memorandum-seasonal-exchange-of-electricity-capacity-between-ontario-and-Québec.html>.

distribution companies to enter into “cost-effective long term contracts for clean energy generation”, it mandates that result with the word “shall”. Section 83D(a). The section further mandates a classic long term contract approach in its direction to the Department of Public Utilities to require “associated transmission costs” to be included in bids, and providing for separate recovery of transmission costs through federal transmission rates. Section 83D(d)(4). The section’s language does not authorize the soliciting parties to consider or execute another type of contract or agreement.

With regard to the legislative history, earlier versions of Section 83D explicitly included the delivery commitment option alongside the long term contracting option that was eventually enacted. In fact, the “delivery commitment” language was included in the version of Section 83D that was passed by the Massachusetts House of Representatives on June 8, 2016, and sent to conference committee with the Senate’s version of the bill.⁵ The absence from the final Section 83D of the extensive earlier bill language required to authorize the delivery commitment in that prior bill is a clear indication that the General Court considered but declined to authorize a delivery commitment approach.

The statutory language and legislative history are especially important in the case of the delivery commitment, because a delivery commitment differs dramatically from the long term contracting approach for generation or generation and transmission that is actually authorized under Section 83D. The cost of the latter are recovered through state electric rates, or through state-jurisdiction recovery for generation and federal-jurisdiction recovery for transmission. The Federal Energy Regulatory Commission (“FERC”) has unbundled electric generation and transmission rates, and a proposed FERC tariff that included recovery of both power and transmission costs is unlikely to pass muster at FERC. CLF flagged the obvious legal risk of a delivery commitment approach in its comments on the Draft New England Clean Energy RFP.⁶ These risks, which would inevitably ensnare this proceeding in time-consuming legal challenges if the soliciting parties chose to allow a delivery commitment option in the RFP, are only compounded by the fact that the authors of Section 83D squarely considered and rejected the delivery commitment model.

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⁵ See H.4385 of the 189th General Court of the Commonwealth of Massachusetts at § 1B, *available at* <https://malegislature.gov/Bills/189/H4385>.

⁶ See Comments of Conservation Law Foundation at 2-3, <https://cleanenergyrfpdotcom.files.wordpress.com/2015/03/clf.pdf>.



Thank you again for the opportunity to comment.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Caitlin Peale Sloan", is written over a light gray rectangular background.

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