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By email to Thomas.Ferguson@mass.gov

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Subject: Clearway Energy Group – Section 83E Round 1 Comments

Mr. Ferguson,

Clearway Energy Group ("Clearway") appreciates the opportunity to submit comments to the Massachusetts Department of Energy Resources ("DOER") in response to the February 21, 2025 Request for Public Comment regarding the Round 1 Solicitation for mid-duration energy storage projects under Section 83E ("83E Round 1").

Clearway is a leading developer, owner, and operator of utility-scale onshore wind, solar, and energy storage assets across 30 states, with significant project development interests in Massachusetts. Our experience bringing over 9 GW of clean energy and storage projects into operation through more than $20.5 billion in capital raised for financing means Clearway is well versed in financing underwriting requirements and risk appetites within the tax equity and broader financing community. Clearway's experience in the energy storage sector includes deployment of 45 MW (140 MWh) of distributed storage paired with solar projects in Massachusetts, 680 MW (2,720 MWh) of utility-scale storage operational in California and Hawaii, and 550 MW (2,200 MWh) of utility-scale storage financed and in construction in Texas and California. Clearway's development pipeline includes more than 10 GW of storage capacity across the U.S., including in Massachusetts and across the ISO-NE region. As a long-term owner-operator of energy facilities, Clearway approaches project development and state-led procurements with careful consideration of long-term technical and financial performance.

Key Points

Clearway urges DOER to 1) recognize the benefit of providing long term fixed revenue streams for ensuring project success and reducing developer financing costs and therefore ratepayer costs, 2) prioritize developer experience in financing, permitting, development, construction, and operation of projects of similar technology and scale, and 3) for future procurements beyond Round 1, open eligibility to resources located throughout the ISO-NE region to increase competition.

Responses to Specific Prompts

Prompt #4: Eligible Bids

Project location. We understand that eligibility for Round 1 may be limited to in-state resources because of the timing need to limit the Round 1 incentive mechanism to the current Clean Peak Energy Certificate (CPEC) structure and the current regulatory definition of Clean Peak Resource. However, for future procurements, DOER should open eligibility to resources across the ISO-NE control area to increase competition and deliver the best available solutions for ratepayers.

Project maturity. Developers should be required to submit proof of full site control (using ISO-NE's MWh/acre requirements) along with a substantial bid deposit to ensure only serious bidders participate. Clearway recommends a tiered deposit structure based on project size. Bid deposits should be in the form of cash, letter of credit, or surety bond; should convert to development security upon selection; and should be fully refundable upon notice that a project has not been selected.

Prompt #5: Facilitating the Financing of Projects

Clearway urges DOER to recognize the interplay between revenue certainty and financing costs and the reality that developer financing costs will be passed through to ratepayers via bid prices. We encourage DOER to strive for an optimal balance that minimizes financing costs for developers as well as minimizes ratepayer costs over the long term.

To this end, for the Round 1 solicitation, DOER should make clear in its RFP and form contract that CPEC revenues are effectively a revenue floor that will enable lender confidence, with the understanding that developers will be responsible for effectively operating the storage asset to generate CPECs. In other words, DOER should not introduce a contracting mechanism that could undercut CPEC revenue certainty.

Prompt #8: Contract Length and Form

Clearway recommends a contract term of 20 years. This time length aligns with the asset life and standard industry practices. Furthermore, DOER should mandate that owners maintain contract capacity constant over the life of the contract. This will result in responsible maintenance and plans for replacement capacity that will deliver the best value for Massachusetts ratepayers.

DOER should include in its form contract specific mechanisms to manage tariff, tax credit, and supply chain risk, as discussed in our response to Prompt $10 below.

Prompt #10: Project Viability & Other Qualitative Factors

Developer experience. DOER should prioritize developer experience in financing, development, permitting, construction, and operation of projects of similar technology and scale. Developers should be required to demonstrate proven experience in access to construction capital, along with safety plans and mitigation measures.

Community engagement. Clearway encourages DOER to award points for robust community engagement experience and project-specific plans and commitments.

Managing external risks. Tariffs and tax credits pose significant risks to supply chains through increased costs and disrupted trade flows. To protect project viability, DOER should include in its RFP and form contract specific clauses that allow for reasonable adjustments to price and schedules that account for uncertainties outside of the control of the developer. Additionally, Clearway recommends that DOER include in its draft form contract a mechanism for the parties to share in the tariff cost risk, up to a certain cap at which either party can terminate. This is preferred over asking developers to price in potential tariff risk, which could result in overly aggressive bids that ultimately fail in the face of unanticipated tariffs, or overly conservative bids that result in unnecessary ratepayer costs if tariffs are lower than anticipated. The draft form contract should also allow for delays in milestone dates and commercial operation date (COD), with a maximum delay period, after which either party can terminate the contract.

Prompt #15: Future RFPs

Project eligibility. For Section 83E procurements after Round 1, DOER should open eligibility to resources across the ISO-NE control area to increase competition and deliver the best available solutions for ratepayers. DOER should maintain requirements for full site control and a substantial bid deposit at time of bid, using a tiered deposit structure based on project size. For Round 2, project eligibility should not be tied to permitting status due to the timeline of changes in Massachusetts' permitting regime, but developers should be required to demonstrate permitting competency.

Facilitating the financing of projects. Clearway urges DOER to recognize the interplay between revenue certainty and financing costs and the reality that developer financing costs will be passed through to ratepayers via bid prices. We encourage DOER to strive for an optimal balance that minimizes financing costs for developers as well as minimizes ratepayer costs over the long term.

CPEC-only contracts for utility-scale BESS are untested in terms of successful financing and execution. For future procurements, Clearway encourages DOER to expand the products procured beyond CPECs to include energy services (energy arbitrage and ancillary services) at a minimum, and to consider alternative contracting mechanisms that have proven to result in successful project execution and operation.

DOER should prioritize simplicity in its procurement design and adopt procurement design elements that create a guaranteed long-term revenue stream for project owner-operators. DOER's goal should be certainty of deployment through simple, transparent, tried-and-true contracting mechanisms. Long-term contracts with a revenue stream that acts a floor are most efficiently financed and therefore accelerate the deployment of this newer asset class. For storage, full tolling agreements are a proven type of long-term contract that ascribe guaranteed revenue to projects for their contribution to system reliability. A recent independent review of storage financing risks states: "Tolling agreements, which provide predictable revenue for owner-operators, are currently most successful in mitigating post-contract award attrition, ensuring reliable operations over the life of the projects."[1] One promising structure is New York's Utility Dispatch Rights model, in which developers are compensated under a long-term tolling agreement and the electric distribution companies (EDCs), either directly or through a third-party vendor, take full control of BESS operation to participate in wholesale markets and provide grid services. Exelon utilities have proposed a similar model in Maryland.

<u>Contract length and Project viability and qualitative factors.</u> Clearway's responses to Prompts #8 and #10 above carry forward to future procurements.

<u>Timing.</u> With the additional time before the Round 2 procurement, DOER should incorporate lessons learned from Round 1 and consider whether better results could be achieved in Round 2 by adjusting the products procured, the financing and contract structure, required project maturity milestones, and other procurement elements. While a slight delay in Round 2 issuance in order to incorporate such lessons learned may be warranted, DOER should keep in mind that developers will need as much certainty as possible before ISO-NE Large Generator Interconnection Agreement (LGIA) deposits are due at the end of the transitional interconnection study, at a minimum in the form of clarity

[1] "Tolling agreements are favorable from a financing perspective as they drastically reduce exposure due to market price volatility. Put simply, tolling/rental agreements make it easier to obtain funding for a BESS project. It is expected that much of the BESS capacity coming online in the next two years will be operated under a tolling agreement or a bilateral agreement with a similar structure." Source: https://www.jdsupra.com/legalnews/understanding-the-rise-of-us-battery-1412263/

on Round 2 procurement design and perhaps in the form of an in-process Round 2 solicitation. This likely means not delaying Round 2 procurement beyond the end of 2026.

Conclusion

Clearway appreciates the opportunity to offer these comments and looks forward to collaborating with DOER on the execution of a successful utility-scale energy storage program for the Commonwealth.

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