



March 27, 2015

Commissioner Rob Klee, CT Department of Energy & Environmental Protection
Massachusetts Electric Distribution Companies
Narragansett Electric Company

RE: February 25, 2015 Draft Clean Energy RFP

Dear Soliciting Parties:

The New England Power Generators Association, Inc. (NEPGA) appreciates the opportunity to submit comments regarding the draft Request for Proposals (Draft RFP) released by the Commissioner of the Connecticut Department of Energy and Environmental Protection (DEEP), the Massachusetts Electric Distribution Companies (Massachusetts EDCs) and Narragansett Electric Company (Narragansett), collectively known as the “Soliciting Parties,” on February 25, 2015.¹ NEPGA appreciates the opportunity to offer our perspective as the voice of the generating community on several key aspects of the Draft RFP.

NEPGA is the trade association representing competitive electric generating companies in New England. NEPGA’s member companies own and operate over 110 plants through New England representing approximately 25,000 megawatts (MW), or 80% of all the region’s generating capacity. NEPGA’s members provide over 4,100 well-paying and skilled manufacturing jobs and contribute approximately \$237 million in state and local taxes on an annual basis. NEPGA’s mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. We believe that sustainable competitive markets are the best means to provide long-term reliable and affordable supplies of electricity for consumers.

Our comments focus on three main issues in the Draft RFP including:

- Benefits of a joint procurement approach for Class I Resources
- Competitive procurement best practices
- Transmission procurement

¹ The views in these comments reflect those of NEPGA and not necessarily the position of each individual member.

BENEFITS OF JOINT PROCUREMENT APPROACH FOR CLASS I RESOURCES

The New England region differentiates itself from other regions by its well-defined proactive renewable energy goals. As such, each state except Vermont has statutory Renewable Portfolio Standards (RPS) in order to achieve individual state goals for renewable energy use. As a means to meet these individual RPS goals, it makes sense to combine the buying power of the individual states in order to meet the Class I RPS goals of the individual states. The suggested structure of the Draft RFP allows some of the individual states to pool their solicitation with the other states, while maintaining the ultimate authority in the state to determine if a combined proposal meets that state's individual RPS needs.

NEPGA also supports the flexibility granted in the Draft RFP for bidders to respond with different configurations including aggregating capacity among more than one eligible facility. Placing necessary requirements on a bidder to ensure it has met interconnection/delivery requirements and can demonstrate control or an unconditional right to acquire control, over a generation site included in its bid makes sense as well. Finally, NEPGA supports the clear and well-defined schedule for the procurement process. More work, however, must be done to ensure that the procurement process is fair, transparent and truly competitive. In addition, NEPGA has some concerns that not all resources can currently compete in the procurement, and some innovative proposals may need some narrowly focused changes to achieve more competition and benefits to ratepayers.

COMPETITIVE PROCUREMENT BEST PRACTICES

Market-based mechanisms provide the most efficient, reliable and cost-effective supply for consumers. At the wholesale market level this is primarily done by relying on the energy, capacity and ancillary services markets administered by the Independent System Operator of New England (ISO-NE). If, however, a state or group of states make a public policy decision to go outside of the established market process to secure energy supply, a competitive solicitation process should be used to ensure that a market solution continues to provide the best fit resource, at the best price and lowest risk to consumers. If states choose to pursue this path as contemplated by the Draft RFP, it is imperative that the competitive process is well-defined, transparent and open to as much competition as possible. As such, NEPGA offers the following competitive procurement best practices that should be the minimum basis on which any Clean Energy RFP is conducted:

- ***Careful Monitoring of the Utility Role in Competitive Solicitation Processes*** – It is important that states continue to hold to the industry structure that was implemented to ensure competition including holding the electric distribution companies (EDCs) indifferent to the source of supply and protecting the EDC from potential conflicts of interest with projects they may have a financial incentive in seeing developed. This is particularly true when it appears likely that EDC affiliates will be bidding into the RFP. Most restructured states prohibit this inherent conflict of

interest. To the extent that this type of self-dealing will be permitted, strong standards of conduct and separation of the different utility affiliates must be explicitly articulated and implemented. It is also not clear in the Draft RFP how the Evaluation Team and Selection Team will differ in terms of roles, authority, and composition. Both teams have representatives of the EDCs, but it is not clear if these will be same individuals serving on both teams or not. It is important to more clearly define the composition of the Evaluation Team and Selection Team, their roles and what safeguards are in place to monitor the EDCs. This is imperative to ensure the integrity of an open solicitation process that adheres to the competitive industry structure in all the states involved in this RFP process.

- ***Use of an Independent, Third-Party Monitor*** – As a means to address the EDCs’ role in the contemplated solicitation, the Soliciting Parties should use a third-party independent monitor to oversee the solicitation, evaluation and selection processes. This independent monitor can help ensure transparency and resolve any conflicts that may arise due to the unique nature of the EDCs serving as the solicitors, bidders, evaluators and selectors for a process that may involve projects that the EDCs have a financial interest in their ultimate success – as well as varying state interests. This protects not only the EDCs but also the integrity of the process and its outcomes for all New England ratepayers.
- ***Clearly Defined Evaluation Criteria*** – The Draft RFP outlines a high level qualitative criteria to guide the selection process. More clearly defining these criteria, including what represents “operational viability” and “economic development benefits” is important to ensure to the market that all bids be will evaluated on a level playing field, transparent to the market. It is important that the principle of comparability is met where all proposals meet the same requirements and are evaluated under the same well-defined standards, known to bidders before submitting proposals.

Competitive procurement processes offer an avenue to go outside of established market processes to meet specific public policy goals. Decisions to pursue this type of out-of-market process should not be done lightly and should seek to embrace market-based principles. The ultimate decision – and process to reach these decisions – should be guided by the goal of transparency in order to credibly evaluate a full range of resource alternatives in a process that is fair, well-defined and understood by bidders prior to the commencement of the solicitation process.

TRANSMISSION PROCUREMENT

Competitive power generators – many who are currently providing significant quantities of power with little carbon pollution – have invested tens of billions of dollars throughout New England for the opportunity to compete in the marketplace every day. These generators provide competitively-priced, reliable and environmentally responsible electricity for consumers without guaranteed cost recovery, or guaranteed returns. Unfortunately, the competitive market structure that predicated the massive investments

from NEPGA members is being called starkly into question with the attempt by the Draft RFP to circumvent statutory prohibitions and limits placed by the states for the types of resources being sought. Soliciting for provincially-owned large scale hydropower is a driving goal of the contemplated solicitation process with the Draft RFP stating “this solicitation is broader in scope and geography than those state-specific legal requirements and therefore, certain aspects of the Draft RFP may require legal and/or regulatory action in order to ensure cost recovery for certain types of proposals.”

As the Soliciting Parties move forward, a key legal question to be cognizant of is whether elements of the Draft RFP would infringe upon the Federal Energy Regulatory Commission’s (FERC) wholesale rate making ability and whether they would qualify for the ISO-NE’s Minimum Offer Price Rule (MOPR) exemption as new entry in the Forward Capacity Market (FCM). The legality of the states playing this type role has been called into questions in well-publicized cases in New Jersey and Maryland. In these cases, the Third and Fourth Circuit Courts of Appeals affirmed Federal District Court decisions which found that the efforts of New Jersey and Maryland to conduct competitive solicitations to construct new capacity were preempted by the Federal Power Act, and impinged upon the exclusive jurisdiction of FERC to review and approve wholesale rates for sales of power in interstate commerce. In this respect, moving forward with the Draft RFP appears problematic from a legal perspective as it would interfere with the FERC-approved, market-based mechanism currently in place for establishing wholesale rates within New England. If the New England states move forward with this Draft RFP some of these same concerns could apply and open the states to potentially lengthy and costly litigation processes.

There are also questions regarding the various products that the Draft RFP would seek to procure. On the specific question of soliciting hydropower, the Massachusetts EDCs and Narragansett Electric state several times in the RFP that they are not pursuing energy and/or RECs from hydropower resources. Only the Connecticut EDCs are pursuing a limited amount of energy and/or RECs from hydropower pursuant to their authority to do so pursuant to Public Act 13-303, with this authority excluding all hydropower that is not over 30 MW with a vintage date after 2003, thereby disqualifying all sources of domestic hydro from competing in this solicitation and only allowing for provincially-owned Canadian hydro to “compete” against itself. If this procurement does go forward, it cannot be biased in favor of large-scale hydro resources to the detriment of smaller, more local forms of hydropower that should be afforded the opportunity to compete in such a procurement.

The proposal of the Draft RFP to solicit transmission projects is clearly directed to procure provincially-owned hydropower resources circumventing the limits on hydropower purchases in Connecticut set forth in Public Act 13-303 as well as the failure to pass enabling legislation last year in Massachusetts which would have provided such contracting authority². The approach proposed in the Draft RFP to procure transmission with “delivery commitments” (also undefined) is tantamount to an

² Massachusetts House Bill 3968, *Clean Energy Resources Act*, 188th General Court

end-run around the explicit and well-debated state-set limits on EDC contracting for power. Such issues become even more troubling when the EDCs' role as both the soliciting entity of this questionable procurement as well as a likely bidder through projects like Northern Pass (Eversource), the Green Line (National Grid) and the Northeast Energy Link (National Grid). This cannot be allowed to occur.

These concerns are raised from a legal/implementation perspective³ and also from a more fundamental policy perspective regarding the wisdom of subsidizing large-scale, provincially-owned resources that inadvertently harm more economically sound projects developed without any state subsidy. In considering last year's proposed legislation in Massachusetts – supported by both Eversource and National Grid – NEPGA commissioned an independent analysis of the cost impact of subsidizing the type of large-scale, provincially-owned hydropower contemplated in the Draft RFP. Dr. Susan Tierney of the Analysis Group found that the cost of the transmission alone would be \$1 billion.⁴ Dr. Tierney stated that the procurement “is destined to have negative cost and other unintended consequences for Massachusetts consumers and the state's economy.”

A previous report by the PA Consulting Group⁵, commissioned by NEPGA addressed this issue and concluded in the case of the proposed Northern Pass Transmission (NPT) line that “projected annual revenues received by HQ barely cover annualized transmission construction costs.” The report factored in the transmission-related costs of NPT and necessary cost recovery to the energy costs of the line – similar to how a bid combining transmission and electric supply might look. When PA Consulting included its estimate for the U.S. and Canadian portion of the line, the investment costs for transmission-related facilities was \$1,365/kW, as compared to the average cost of a new combined cycle plant between \$1,000 and \$1,200/kW. This greatly calls into question whether bids as contemplated by the draft RFP would be the lowest-cost option available to New England electricity consumers.

As Dr. Tierney further noted speaking on the failed Massachusetts Clean Energy Resources Act, if the goals of the type of procurement process is to reach carbon-

³ Questions to be addressed include what statutory provisions are the individual states relying upon as the rationale for allowing the EDCs to procure transmission projects? In the case of transmission projects being bid as part of a package bid with hydropower resources, can Massachusetts and Rhode Island EDCs even entertain these types of bids since they acknowledge they do not have the statutory authority to procure hydropower resources? What type of approvals would be necessary to move forward with a successful bid for a transmission projects including what role would FERC have in approving such projects? And how does the cost recovery work for these types of projects – how would the rate-regulated EDCs recover costs for these projects when it is not clear they have the statutory authority to solicit these projects. These are not simple questions and must be addressed before the Soliciting Parties can seek to procure transmission projects.

⁴ <http://nepga.org/wp-content/plugins/custom-post-type-attachment-pro/download.php?id=NTqx&file=Mg==>

⁵ *The Economic Impacts of the Northern Pass Transmission Project*, PA Consulting Group, June 2012.

reduction mandates, this type of procurement is simply not be the best approach. As she stated in her report:

“However well-intentioned those goals are, this bill is not the way to reach the state’s goals. The bill would introduce many unintended costs and financial risks for Massachusetts consumers and its utilities, and would wreak havoc on the state’s and region’s electric industry.”

Instead, she said, the Commonwealth “should take advantage of the clean energy *and* market-based principles that Massachusetts and other New England states have been at the forefront of pursuing, and provide transitional approaches that respect both of those approaches, rather than supporting one at the peril of the other.” Dr. Tierney notes:

“The most cost-effective way to meet the state’s carbon emissions targets is through non-discriminatory regulations that allow any resource that can qualify to compete. This is the hallmark model that has been used in virtually every successful emissions market in the world, including the Regional Greenhouse Gas Initiative that all New England states participate in today.”

To the extent individual states feel that more must be done on carbon regulation, NEPGA notes that the use of a Clean Energy Standard (CES) provides a market-based approach to reach desired emissions criteria. Such a mechanism does so on a resource-neutral basis without picking winners and losers in the marketplace, as the Draft RFP appears to do. Currently the Massachusetts Department of Environmental Protection (DEP)⁶ has a pending CES proposal whereby a carbon threshold level is established and all eligible resources able to meet the specified emissions rate would qualify. While NEPGA differs with the DEP on a number of details, we believe if all resources that meet the stated emissions target – new or existing, regardless of technology type – the state’s policy goals can be met in the most cost-effective, open, transparent and competitive fashion possible. This type of policy path provides a better option for reaching carbon reduction goals.

As stated above the goal of a competitive procurement process is to yield the most efficient, reliable and cost-effective supply for consumers. The energy obtained through the proposed procurement of transmission and associated “clean energy” will not yield the most cost-effective, competitive supply for consumers. Instead, the detrimental impacts on existing supply resources in New England would be catastrophic.

The energy market in the region depends heavily on private companies and capital markets providing investments to keep electric supply affordable. Ensuring a healthy and sustainable investment climate is key to a sustainable power system in New

⁶ <http://www.mass.gov/eea/agencies/massdep/climate-energy/climate/ghg/ces.html>

England. Rushing to embrace methods to in effect “flood the market” with provincially-owned large scale hydro resources, even utilizing a market-based solicitation, runs counter to the entire purpose of restructuring the electric industry, which all three states have been leaders in supporting. By subsidizing provincially-owned hydropower, the Draft RFP ensures that New England-based investments that are more economic will be forced to prematurely retire. This eliminates the largest tax providers and employers in most host communities throughout the region.

For the remaining generators trying to remain commercially viable in New England, this would likely bring the region back to a place where ISO-NE has to begin offering Reliability Must Run (RMR) contracts as an out-of-market mechanism for keeping vital plants needed for reliability from retiring. Such a spiral would send the region to requiring long-term contracts or subsidies for all material power supply options going back to centralized planning and reverting all price, cost overrun and development risks back to ratepayers. It is unclear how, or even if, retail choice could continue in a sizeable fashion; thereby eliminating many of the choices enjoyed by roughly 90 percent of commercial and industrial load. These are just some of the possible unintended consequences for the current generation industry of moving forward with an ill-defined procurement for transmission projects with or without associated energy supplies.

And yet, at the very time when this type of procurement to meet energy supply needs is being contemplated in New England, capital is rushing to invest in the region based on the open, competitive market structures in place. Currently there are 77 market-based projects totaling 11,200 MW with applications pending to connect to the New England grid – all doing so without the promise of a long-term contract. Over 8,500 MW of new resources were qualified to compete in the ISO-NE’s recently concluded Forward Capacity Auction (FCA) to line up resources to meet New England’s capacity supply needs in 2018. The ISO-NE successfully completed its annual forward capacity market auction on February 2, 2015 securing adequate resources to meet system reliability in 2018 and attracting investment in new generation resources. New generation resources totaling 1,060 MW cleared the auction, including 815 MW at two generation sites in Connecticut and a 190 MW peaking plant in Massachusetts. The window for resources to express interest in the upcoming FCA in early 2016 recently closed with 16,000 MW of new resources providing expressions of interest.

In addition to pending generation projects throughout the region, several natural gas pipeline projects have been proposed in New England to bring up to 2.74 billion cubic feet (bcf) of new natural gas infrastructure into the region between 2016 and 2018. Additionally, there are five major transmission proposals pending in New England including the 340-mile proposed Green Line, the 187-mile proposed Northern Pass, the 230-mile proposed Northeast Energy Link, the 150-mile proposed New England Clean Power link and the 37-mile Gran Isle Intertie. These merchant lines propose to bring 400 to 1,200 MW of power each, with target in-service dates ranging from late 2016 to 2019.

It is clear that new capacity is interested in coming into the New England market. But flooding the market with uneconomic and unnecessary provincially-owned hydropower will put these critical new investments as well as all existing market-based investments at serious risk. All while actually bringing in more expensive power to the region's consumers.

CONCLUSION

NEPGA appreciates the opportunity to offer the perspective of the competitive generation community. There are elements of the Draft RFP that make a great deal of policy sense, in particular grouping the buying power of the states to solicit proposals for Class I RPS resources to meet individual state goals. The statutory authority exists for this and as long as sound principles of competitive procurement are established upfront and adhered to during the solicitation, evaluation and selection process, NEPGA does not oppose this element of the Draft RFP.

NEPGA, however, opposes in the strongest terms the attempt proposed here by the utilities to go beyond and subsidize their own transmission projects to bring in provincially-owned hydropower.

Sincerely,



Dan Dolan
President
New England Power Generators Association

cc: Secretary, Massachusetts Executive Office of Energy and Environmental Affairs
Commissioner Marion Gold, Rhode Island Office of Energy Resources