

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF PUBLIC UTILITIES**

Joint Petition of Fitchburg Gas and Electric Light  
Company d/b/a Unitil, Massachusetts Electric  
Company and Nantucket Electric Company d/b/a  
National Grid, and NSTAR Electric Company and  
Western Massachusetts Electric Company  
(each d/b/a Eversource Energy) for approval of  
a proposed timetable and method for the solicitation  
and execution of long-term contracts for renewable  
energy, pursuant to St. 2012, c. 209, § 36.

**D.P.U. 15-84**

**REPLY COMMENTS OF**  
**THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

**I. INTRODUCTION**

The New England Power Generators Association, Inc. (NEPGA) appreciates the opportunity to submit these reply comments in the above-captioned docket, supplementing its initial comments submitted on July 17, 2015.<sup>1</sup>

NEPGA is the trade association representing competitive electric generating companies in New England. Our member companies represent approximately 25,000 megawatts (MW) of generating capacity throughout New England, including over 11,000 MW of generation in Massachusetts, or 85 percent of the electric generating capacity in the Commonwealth. NEPGA's Massachusetts companies provide power for the Commonwealth from a diverse portfolio of plants, which together pay over \$70 million annually in state and local taxes. In addition, NEPGA's Massachusetts companies provide nearly 1,400 well-paying and skilled jobs in Massachusetts. NEPGA's mission

<sup>1</sup> These Reply Comments represent the views of NEPGA, but not necessarily those of any particular member.

is to support competitive wholesale electricity markets in New England. We believe that open markets guided by stable public policies are the best means to provide reliable and competitively-priced electricity for consumers. A sensible, market-based approach furthers economic development, jobs and balanced environmental policy for the region.

NEPGA remains committed to both the policy and legal arguments made in its initial comments, and incorporates those arguments by reference here. While NEPGA continues to believe that certain additional safeguards need to be implemented to ensure that any procurement process undertaken as a result of the Request for Proposals (RFP) is both competitive and transparent, this reply focuses on the legal arguments, as NEPGA believes that the critical issue for the Department of Public Utilities (DPU or Department) at this juncture is resolving the question of the DPU's legal authority to review and approve long-term contracts for transmission in the context of a multi-state RFP.

The filing parties, in the cover letter accompanying the initial filing, allude to the fact that additional Department approval would be necessary for transmission projects under a performance-based tariff without a power purchase agreement.<sup>2</sup> Similarly, the Attorney General, in her Initial Comments, seeks clarification that the Department's approval of the RFP is limited to its methodology and timeframe for executing long-term contracts, and is not an approval of the underlying legal authority for entities to enter into the types of transmission contracts contemplated by the RFP. The Attorney General's response specifically calls for a separate proceeding whereby the Department would evaluate whether a project complies with the Restructuring Act and related

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<sup>2</sup> Cover letter with Initial Filing (15-84, filed June 25, 2015) at 2, fn. 4.

statutory authority.<sup>3</sup> Despite the language of the cover letter accompanying the RFP and the Attorney General's confirmation of a later approval proceeding, the Department should not leave for another day its analysis of the legal authority underlying the RFP, especially where, as here, that analysis jeopardizes the ultimate implementation of the RFP. Postponement of analyzing this issue makes no legal or practical sense. Failure to resolve the question of authority in the first instance will yield the unavoidable result of companies spending millions of dollars in preparing bid responses and taking initial steps in furtherance of those obligations, only to risk having those proposals rejected based on the very legal grounds advanced by NEPGA in its initial filing: that this activity violates the Restructuring Act (Act).

When adopted, the Act expressly identified the Department's role to "guard against the exercise of vertical market power,"<sup>4</sup> defining "vertical market power" as "a situation in which one or a few market participants, having joint ownership of facilities at differing levels in the chain of production, such as generation, transmission, and distribution, possess the ability to use such joint ownership to influence price to the participants' own benefit."<sup>5</sup> Succinctly stated, it is not difficult to contemplate any number of scenarios where implementation of the RFP would violate the Act. The Department cannot allow such an outcome to occur and must protect and remain faithful to the letter and the spirit of the Act, as specifically prescribed by the legislature. Anything short of a prohibition of this attempt to assert vertical-market power would be tantamount to endorsing the reintegration of the Massachusetts

<sup>3</sup> Comments of the Attorney General (15-84, filed July 17, 2015) at 4.

<sup>4</sup> 1997 Mass. Acts c. 164, § 1(j).

<sup>5</sup> G. L. c. 164, § 1.



competitive electricity markets, all to the detriment of the ratepayers and the businesses that have invested billions of dollars in creating this market.

## II. CONCLUSION

NEPGA appreciates the opportunity to offer the perspective of the competitive generation community on these fundamental legal and policy issues. There are elements of the 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 provided 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 RFP.

NEPGA, however, vehemently opposes the attempt proposed here by the utilities to go beyond and subsidize their own transmission projects to bring in provincially-owned hydropower, particularly where such action will almost certainly conflict with the core objectives and goals of the Restructuring Act. Based on these concerns, NEPGA again urges the Department to address the underlying legal issues involved in the proposed procurement under the RFP. Including the solicitation of transmission under a FERC Tariff or any other "delivery commitments."

Respectfully submitted,

**New England Power Generators  
Association, Inc.**

Date:

7/31/15

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