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August 15, 2018

## **BY E-MAIL AND BY HAND**

Mark D. Marini, Secretary  
Department of Public Utilities  
One South Station, 5th Floor  
Boston, MA 02110

**Re: Petition of Fitchburg Gas and Electric Company d/b/a Unitil for approval by the Department of Public Utilities of a long-term contract for procurement of Clean Energy Generation, pursuant to Section 83D of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12 (D.P.U. 18-66)**

Dear Secretary Marini:

Pursuant to the Hearing Officer's July 27, 2018 Notice of Filing, Procedural Conference, and Request for Comments in the above-captioned proceeding, please find enclosed for filing the Initial Comments of the New England Power Generators Association, Inc. ("NEPGA"), along with its Certificate of Service.

Thank you for your attention to this matter. If you have any questions please contact me.

Sincerely yours,

HOLLAND & KNIGHT LLP



Mark C. Kalpin

Enclosures

cc: Alan Topalian, Hearing Officer  
DPU 18-66 Service List



approximately 1,400 workers in the Commonwealth and contribute nearly \$70 million in annual state and local taxes.

NEPGA's mission is to support competitive wholesale electricity markets in New England. NEPGA believes that sustainable, competitive markets guided by stable public policies are the best means to provide long-term reliable and affordable supplies of electricity for consumers. A sensible, market-based approach furthers economic development, jobs and a balanced environmental policy for the region.

On July 23, 2018, Fitchburg Gas and Electric Light Company d/b/a Unitil ("Unitil" or "Company") filed a petition with the Department seeking approval of a 20-year long-term contract to purchase electric power, pursuant to Section 83D of *An Act Relative to Green Communities*, St. 2008, c. 169, ("Section 83D") and the Department's regulations at 220 CMR 24.00. Section 83D was added to An Act Relative to Green Communities by An Act To Promote Energy Diversity, St. 2016, c. 188, § 12.

Under the proposed power purchase agreement ("PPA") between Unitil and H.Q. Energy Services (U.S.) Inc. ("HQ"), Unitil would acquire its pro rata share of an annual aggregate quantity of 9,554,940 megawatt-hours ("MWh") of electric power and associated environmental attributes from existing hydroelectric generation in Canada to be delivered into New England, during the next 20 years, over new transmission infrastructure. If approved, the proposed new transmission infrastructure, which is referred to as the NECEC Transmission Line ("NECEC" or the "Project"), would deliver that electric power in accordance with a transmission service agreement ("TSA") by and between Central Maine Power Company ("CMP") and each of the three Massachusetts electric distribution companies (*i.e.*, Unitil; NSTAR Electric Company d/b/a/

Eversource Energy; and Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid).

## **II. Comments**

As an initial matter, NEPGA acknowledges that the Commonwealth has the authority under Section 83D to authorize the Distribution Companies to enter into the type of PPAs and TSAs that are the subject of this proceeding, if done in accordance with the requirements of Section 83D. NEPGA also acknowledges that the Commonwealth is concerned about its ability to achieve the self-imposed greenhouse gas emission reduction goals that are established under the Global Warming Solutions Act. M.G.L c. 21N (the “GWSA.

In 1997, the Commonwealth enacted *An Act Relative to Restructuring the Electric Utility in the Commonwealth*, St. 1997, c. 164 (the “Restructuring Act”). Massachusetts was one of the first states in the nation to restructure its electric industry, which was done (in part) in an effort to address the high cost of electricity in the region.

Since the passage of the Restructuring Act, Massachusetts has received tremendous benefits from participating in the ISO-NE competitive wholesale electric market. Access to the most efficient generating resources in the region has been maximized, and system reliability has increased. This increased competition has driven down wholesale electricity supply prices, and the price of “actual” electricity has gone down by nearly twenty percent (20%). At the same time, massive reductions in carbon dioxide emissions – amounting to approximately 60% since 1990 – have been realized. And all of this has been accomplished without any long-term contractual or financial risk to ratepayers.

The PPA and TSA that are the subject of this proceeding involve the procurement of a 20-year supply of electric power and transmission services on a bilateral basis that are available

from and could otherwise be procured in response to and within the ISO-NE wholesale markets. That supply of electric power is not new and incremental, and is not required to be delivered on a reliable basis during the critical winter months. As a result, and notwithstanding its prior acknowledgements above, NEPGA is concerned that the approval by the Department of these “out-of-market” procurements may not be in compliance with the requirements of Section 83D, and will directly and negatively affect the operation and continued viability of the ISO-NE competitive wholesale markets. Ultimately, the approval of the PPA and TSA could undermine and negate the substantial benefits that have been realized under the Restructuring Act.

To the extent the Commonwealth believes there is a need to conduct an out-of-market procurement to satisfy state-sponsored initiatives or policy concerns, NEPGA believes those procurements should be conducted both sparingly and cautiously. For example, such solicitations may be appropriate in cases where the Commonwealth is attempting to foster the development of new technologies and/or an industry which are not yet commercially available in the competitive market, as long as the solicitation is conducted in a thoughtful manner, with an open and unbiased competitive procurement and on a reasonable scale.

But as a general matter, NEPGA does not think that out-of-market contracts are justified when they result in the procurement of large amounts of existing generation resources – such as the hydropower that is the subject of this proceeding – that are readily available from (and already are being procured in) the ISO-NE competitive market. In addition, based on its initial review of the PPA and TSA, NEPGA believes that a number of unintended consequences will result from this procurement – namely, the Commonwealth’s ratepayers will be required to financially support (and thus be at risk for) the costs of the PPAs and TSAs, and new merchant transmission

facilities will be developed by a regulated utility company, instead of through the normal ISO-NE regional transmission planning process.

In light of this, as well as the process concerns that were noted by the Independent Evaluator in its Report filed with the Department,<sup>2</sup> the need for the Department to exercise caution and due diligence in its review of the proposed PPA and TSA in this proceeding cannot be over-emphasized. While NEPGA has only had a limited amount of time to review the provisions of the proposed PPA and TSA, based on that review it strongly recommends that the following questions and associated areas of concern be evaluated by the Department in this proceeding:

1. Is the decision of the Distribution Companies to award the entire procurement of energy to a single source, as opposed to a portfolio of resources comprised of different generation sources, justified from both an economic and risk basis?
2. Does the PPA, when coupled with the TSA, actually result in the procurement of Incremental Hydroelectric Generation as required by the RFP?<sup>3</sup> In this regard, NEPGA notes the following:
  - a. All of the HQ resources from which Qualified Clean Energy will be procured under the PPA currently exist and are operational.
  - b. According to a presentation made by HQ in Boston on June 15, 2016,<sup>4</sup> HQ imported 15.2 TWh of electricity generated from its hydroelectric resources into the ISO-NE market on an annual basis.
  - c. The PPA defines Baseline Hydroelectric Generation (the quantity above which constitutes Incremental Hydroelectric Generation) as either 3 TWh/year (in the case of the each of the Eversource and Unitil PPAs) or 9.45 TWh/year (in the case of the National Grid PPA).<sup>5</sup>
  - d. Assuming that HQ has continued to import the full 15.2 TWh into New England since 2016:

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<sup>2</sup> See, e.g., *Independent Evaluator Report* at 3, 17-19, 27, 36 and 48.

<sup>3</sup> The *Independent Evaluator Report*, at 52 - 53, indicates that this specific issue was raised by National Grid during the evaluation process, and that its concerns were not addressed. Notwithstanding that fact, the Joint Testimony filed by the Distribution Company in this proceeding states that the “PPA provides for a delivery of an aggregate of 9,554,940 MWh annually of *incremental hydroelectric generation* ....” *Joint Testimony of Waltman/Brennan/Furino* at 36.

<sup>4</sup> See <http://www.hydroquebec.com/data/international/pdf/2016-06-15-martel-presentation-strategic-plan.pdf>.

<sup>5</sup> See *Joint Testimony of Waltman/Brennan/Furino* at 15.

- i. Can the electric power that is the subject of the PPA be procured in the ISO-NE wholesale market on a competitive basis, as opposed to through Section 83D?
  - ii. Will the Department’s approval of the proposed Baseline Hydroelectric Generation quantity in the PPA ensure that new Incremental Hydroelectric Generation actually is procured in response to the RFP and Section 83D?<sup>6</sup>
3. Under a number of circumstances, the PPA allows HQ to deliver Qualified Shortfall Energy to the Distribution Companies using alternative transmission resources (that is, other than the NECEC Project) to cure a Delivery Shortfall.
  - a. If this alternative delivery capability exists, will the energy actually delivered constitute Incremental Hydroelectric Generation?
  - b. If so, why is the NECEC Project needed, and why should ratepayers be at risk for its construction as an “Elective Transmission Upgrade” under the ISO-NE Tariff?
4. Does the PPA, when coupled with the TSA, actually result in the delivery of Incremental Hydroelectric Generation on a firm and reliable basis, especially during the Winter Period when it is needed the most in Massachusetts? In this regard, NEPGA notes the following:
  - a. The PPA allows HQ to cure a Delivery Shortfall by delivering the Shortfall Cure Amount of Qualified Shortfall Energy to the Distribution Companies during a corresponding period of time in the Shortfall Cure Period – that is, either in the same Contract Year or in the subsequent Contract Year.
  - b. How does the right to cure a delivery default in the subsequent Contract Year (that is, a year later than delivery was required and the energy was needed for reliability purposes) ensure that the energy is delivered on a firm and reliable basis?
5. Is the Project viable, and was sufficient scrutiny placed on this issue during the evaluation process?
  - a. Is Project schedule reasonable?
  - b. Does the Project have all necessary permits? If not, is it expected that the Project will obtain all of those permits prior to the applicable milestone dates set forth in the PPA and TSA?
  - c. What risk, in terms of delay, viability and potential cost overruns, could arise given the Project is in the early stages of the ISO-NE interconnection process?<sup>7</sup> Are ratepayers required to bear any of this risk?

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<sup>6</sup> This is an important point, as the Independent Evaluator’s Report indicates that one proposal from an existing resource located within ISO-NE was disqualified on the grounds that it would not produce incremental generation. See *Independent Evaluator Report* at 22.

<sup>7</sup> According to the Independent Evaluator, the great majority of the 17 proposals that were disqualified (out of a total of 53 proposals submitted) were “determined not to satisfy the interconnection and delivery requirements set forth in Section 2.2.1.9 of the RFP ....” *Independent Evaluator Report* at 22. It is not clear from that Report what facts (if any) justified a different treatment of the NECEC Transmission Line in the evaluation process.

6. In light of the questions raised by the Independent Evaluator in its Report,<sup>8</sup> are the Liquidated Damages provided in the PPA and TSA adequate to fully compensate and provide full “cover damages” to the Distribution Companies in an event of default?<sup>9</sup>
7. Under the PPA, HQ will Deliver energy to the Distribution Companies at the Delivery Point in Lewiston, Maine, and transfer title to that energy via an Internal Bilateral transaction executed through ISO-NE and settled at the Delivery Point in Maine. In this regard:
  - a. What additional costs and risks will the Distribution Companies incur to transmit the energy Delivered under the PPA to ISO-NE load zones located in Massachusetts?
  - b. Assuming (as indicated in the Independent Evaluator’s Report and the filings of the Distribution Companies) that each Distribution Company intends to liquidate the energy purchased under the PPA in the ISO-NE real-time market, what additional costs and risks will the Distribution Companies potentially incur?
  - c. Since the Distribution Companies intend to share any revenue with, and recover their costs and any losses from, ratepayers as a result of the liquidation of energy purchased under the PPA in the ISO-NE real-time market, what additional costs and risks will ratepayers potentially incur?<sup>10</sup>
8. Assuming the Project ends in Maine, how will 10,147 jobs be created in *Massachusetts* and New England during the development and construction of the Project?<sup>11</sup>
9. Is the proposal to allow HQ to manage and sell excess capacity on the NECEC Transmission Line on an open-access basis, to recover its costs incurred in doing so, and to then keep 10% of any revenue received from those sales, just and reasonable and in the best interest of the ratepayers?
10. How were the fixed transmission costs under the TSA calculated, and are they just and reasonable?

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<sup>8</sup> See *Independent Evaluator Report* at 52 – 53. Interestingly, the Report does not indicate whether this concern was adequately addressed. Instead, it merely states that the Distribution Companies were able to negotiate risk allocation provisions that were better “than those included in the NECEC/HQ bids.” *Id.* At 53.

<sup>9</sup> It is not clear why the Seller Termination Payment under Section 9.3(b)(iii)(B) of the National Grid PPA is based on exposure over a sixty-month period, while under the Eversource and Unitil PPAs it is based over the entire remaining term of the PPA. See *Joint Testimony of Waltman/Brennan/Furino* at 14.

<sup>10</sup> See *Joint Testimony of Waltman/Brennan/Furino* at 53.

<sup>11</sup> See *Joint Testimony of Waltman/Brennan/Furino* at 43. In contrast, 15. In contrast, NECEC’s own website indicates that Project “will provide 1,700 construction jobs on average annually through 2022, primarily in western Maine counties that need jobs” (see <https://www.necleanenergyconnect.org/maine-benefits/>), and is expected to “expand employment by nearly 2,000 full time jobs” in Massachusetts (see <https://www.necleanenergyconnect.org/massachusetts-benefits/>).

### III. Conclusion

NEPGA appreciates the opportunity to present these initial comments, and looks forward to having these issues fully evaluated in the course of this proceeding.

Respectfully submitted,

NEW ENGLAND POWER GENERATORS  
ASSOCIATION, INC.

By its attorney:

A handwritten signature in black ink, appearing to read "Mark C. Kalpin", with a long horizontal flourish extending to the right.

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Dated: August 15, 2018

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES

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Petition of Fitchburg Gas and Electric Light )  
Company d/b/a Unitil for approval by the )  
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contract for procurement of Clean Energy ) **D.P.U. 18-66**  
Generation, pursuant to Section 83D of An Act )  
Relative to Green Communities, St. 2008, c. 169, as )  
amended by St. 2016, c. 188, § 12. )

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1).



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Dated: August 15, 2018