Holland & Knight

10 St. James Avenue | Boston, MA 02116 | T 617.523.2700 | F 617.523.6850
Holland & Knight LLP | www.hklaw.com

Mark C. Kalpin
+1 617-305-2076
Mark.Kalpin@hklaw.com

April 3, 2019

By Electronic Filing

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

Re: Joint Petition for Approval of Long-Term Contracts for Procurement of Clean Energy Generation pursuant to Section 83D (D.P.U. 18-64, 18-65, 18-66)

Dear Secretary Marini:

Please find enclosed the Reply Brief of the New England Power Generators Association, Inc. ("NEPGA") for filing in the above-referenced proceedings.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely yours,

Mark C. Kalpin

Enclosure

cc: Alan Topalian, Hearing Officer
Service Lists: D.P.U. 18-64, 18-65, 18-66

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Joint Petition of Fitchburg Gas and Electric Company, d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a/ National Grid, and NSTAR Electric Company and Western Massachusetts Electric Company, each d/b/a Eversource Energy 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. 18-64, 18-65, 18-66**

REPLY BRIEF OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

Pursuant to the Procedural Notice issued by the Department of Public Utilities (the "Department") on August 30, 2018, the New England Power Generators Association, Inc. ("NEPGA")[1] files its Reply Brief in the above-captioned proceedings (the "Proceedings").

The initial briefs filed by the participants in these Proceedings overwhelming confirm that the power purchase agreements ("PPAs") and petitions (the "Petitions") at issue here fail to satisfy or otherwise comply with the applicable statutory and regulatory requirements – including but not limited to the requirements that the PPAs procure Incremental Hydroelectric Generation on a firm basis, guarantee that energy delivery will occur in critical winter months, and provide guaranteed environmental benefits in a manner that is cost-effective to Massachusetts ratepayers, The few initial briefs that attempt to argue otherwise are simply not persuasive. As a result, the Department is required to reject the PPAs and deny the Petitions.

[1] The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

I. BACKGROUND

A. NEPGA's Initial Comments on the Petitions

On April 15, 2018, NEPGA filed its Initial Comments in these Proceedings. Of critical importance here, NEPGA stated that the Commonwealth has the authority under Section 83D to approve the PPAs that are the subject of these Proceedings, but only if they comply with requirements of Section 83D.[2] However, because the hydroelectric generation procured under the PPAs would not be new and incremental, nor would it be delivered on a guaranteed basis during the critical winter months, NEPGA cautioned that the approval by the Department of these "out-of-market" PPAs was not in compliance with the requirements of Section 83D, the Department's Regulations,[3] the Order,[4] or the RFP[5] (collectively, the "Applicable Requirements").[6]

Given these concerns, NEPGA stressed that it was essential that the Department exercise both caution and due diligence in its review of the proposed PPAs. To assist and help guide the

[2] The Commonwealth's Energy Diversity Act of 2016 amended the Green Communities Act, St. 2008, c. 169, to create a separate procurement mandate for large-scale hydropower and/or renewable energy, titled Section 83D ("Section 83D"). *See* St. 2016, c. 188, § 12.

[3] 220 CMR § 24.00, *et seq.*

[4] *See* Order, D.P.U. 17-32 (March 27, 2017).

[5] On February 2, 2017, Fitchburg Gas and Electric Light Company, d/b/a Unitil ("Unitil"), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid ("National Grid"), and NSTAR Electric Company and Western Massachusetts Electric Company, each d/b/a Eversource Energy ("Eversource Energy") (collectively, the "Distribution Companies") jointly filed a request with the Department pursuant to Section 83D and the Department's regulations, in which the Distribution Companies sought approval of a proposed timetable and method for the solicitation and execution of long-term contracts for renewable energy through a request for proposals ("RFP") process. *See* D.P.U. 17-32.

[6] Section 83D, the Department's Regulations, the Order and the RFP *require* that any proposal selected under the RFP *must* consist of Clean Energy Generation from Incremental Hydroelectric Generation, and *also must*: (1) provide enhanced electricity reliability within Massachusetts; (2) contribute to reducing winter electricity price spikes; (3) be cost effective to Massachusetts electric ratepayers over the term of the PPA, taking into consideration potential economic and environmental benefits to the ratepayers; (4) avoid line loss and mitigate transmission costs to the extent possible and ensure that transmission cost overruns, if any, are not borne by ratepayers; (5) allow PPAs for Clean Energy Generation resources to be paired with energy storage systems; (6) guarantee energy delivery in winter months; (7) adequately demonstrate project viability in a commercially reasonable timeframe; and (8) create and foster employment and economic development in Massachusetts, where feasible.

Department in its review, NEPGA provided the Department with a detailed list of questions and associated areas of concern that needed to be fully evaluated in these Proceedings.[7]

B. NEPGA's Initial Brief

In its Initial Brief, NEPGA reiterate its concern that the PPAs failed to satisfy a majority of the Applicable Requirements.[8] NEPGA's conclusion – which was supported by extensive citations to the evidentiary record in these Proceedings – arose from the fact that the PPAs:

1. do not result in the procurement of Incremental Hydroelectric Generation;[9]
2. do not guarantee energy delivery in critical winter months or contribute to the reduction in winter price spikes;[10]
3. do not provide guaranteed environmental benefits (in the form of reductions in GHG emissions) in a cost-effective manner;[11]
4. do not pair generation with energy storage systems;
5. fail to foster levels of employment and economic development in Massachusetts beyond those that would otherwise result under a long-term contract with any type energy generation source; and
6. fail to ensure that that the energy procured is fully deliverable into Massachusetts without the need for additional transmission facilities to be constructed at the expense of Massachusetts ratepayers.

It is against this backdrop, as well as the extensive evidentiary record that has been developed in these Proceedings, that the arguments contained in the initial briefs filed by the other participants in these Proceedings (and, ultimately, the PPAs and Petitions) must be evaluated.

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[7] NEPGA incorporates by reference into this Reply Brief each of the questions and concerns that were set forth in its Initial Comments.

[8] NEPGA incorporates by reference into this Reply Brief each of the concerns and conclusions that were set forth in its Initial Brief.

[9] *See* Exh. AG-DM, at 3, 5-6, 7-8; Exh. AG-DM-Rebuttal-1, at 17; Exh. NEER-RSW-S-1, at 6-7.

[10] *See* Exh. NEER-RSW-S-1, at 16, 18-19.

[11] *See* Exh. AG-DM, at 3, 5, 9, 13, 14; Exh. NEER-JDT, at 9, 10; Exh. JU-3-B, at 4; AG-DM-Rebuttal-1, at 10, 11, 17.

II. THE EVIDENCE DEMONSTRATES THAT THE PPAs FAIL TO COMPLY WITH THE APPLICABLE REQUIREMENTS AND MUST BE REJECTED

Initial Briefs were filed by a limited number of participants – including the Distribution Companies, Hydro Quebec ("HQ"), Central Maine Power Company ("CMP"), the Massachusetts Department of Energy Resources ("DOER"), and the Conservation Law Foundation ("CLF") – in support of the PPAs. The arguments presented in those briefs – when evaluated against the extensive evidentiary record in these Proceedings, as well as the initial briefs submitted by other participants – are not persuasive, and fail to demonstrate that the PPAs comply with the Applicable Requirements. The Distribution Companies are correct when they state that this "proceeding is of paramount importance given the magnitude, longevity and number of procurements called for in the Green Communities Act ("GCA"). EDC Initial Brief, at 2. And it is for that very reason that the Department is required to reject the PPAs and deny the Petitions.

A. The PPAs *do not Require* the Delivery of Incremental Hydroelectric Generation

In its Order, the Department made clear that no benefit would accrue to Massachusetts ratepayers from the purchase of hydroelectric generation *unless* the energy procured was incremental. Sierra Club Initial Brief, at 2. As a result, the Department required that the Distribution Companies solicit "*incremental* hydroelectric generation so that the contract energy being solicited would provide a net increase in energy deliveries, relative to historical deliveries to New England." AGO Initial Brief, at 17. *See* Exh. JU-2, at 5.

In compliance with the requirements of the Order and the RFP, the Draft PPA included in the RFP adopted the definition of Incremental Hydroelectric Generation from the RFP. AGO Initial Brief, at 17-18 (citing Exh. JU-3-A, at 7; Exh. JU-3-B, at 7; Exh. JU-3-C, at 7). More importantly, in the proposal they submitted in response to the RFP (the "Proposal"), HQ and

CMP adopted the provisions in the Draft PPA regarding incrementality, and thus confirmed that the Proposal satisfied this requirement. *Id.* (citing Exh. NECEC RFP Response (HRE)_Confidential, at 16-19, and Att. 15.1.1, at 13). The Proposal was then evaluated and ultimately selected based on the commitment to deliver Incremental Hydroelectric Generation. *Id.*, at 17. *See* Tr. Vol 1, at 182.

At that point, however, the negotiation process apparently went astray, and the Distribution Companies changed their focus to rely on the "concept of incrementality that was expressly rejected by the Department in [its Order]." Sierra Club Initial Brief, at 8. *See also* Exh. JU-3-A, Exhibit H; Exh. JU-3-B, Exhibit H; Exh. JU-3-C, Exhibit H. More specifically, and for reasons that are not fully clear, once the Proposal "reached the negotiation phase the Evaluation Team, except for National Grid, felt that holding HQUS to the standard of Incremental Hydroelectric Generation was 'Imposing a major obligation or liability on a bidder that was not contemplated by the form PPA ….'" RENEW Initial Brief, at 6 (citing Independent Evaluator Final 83D Report Redacted, at 51). *See also* Sierra Club, at 8-9. The end result was that the Distribution Companies improperly substituted HQ's *claimed capability* to deliver incremental energy for the *guaranteed requirement* to do so. AGO Initial Brief, at 21. *See also* Exh. NEER 1-9; Sierra Club Initial Brief, at 8; Tr. 199-13-15 (Waltman); Tr. 199: 18-19 (Furino); Tr. 202:15-91 (Waltman); Tr. 204:9-12 (Waltman).

In their initial brief, the Distribution Companies expressly acknowledge that 14.8 TWh constitutes the correct "baseline" for measuring annual historical imports of hydroelectric generation into New England. EDC Initial Brief, at 23. Having done so, however, their brief then fails to directly address the fundamental issue that has been presented in these Proceedings – do the PPAs satisfy the Incremental Hydroelectric Generation requirement by *mandating* the

annual delivery of a total of 24.3 TWh of hydroelectric generation (that is, 9.5 TWh above the existing 14.8 TWh "baseline") into New England? Instead, the Distribution Companies simply restate their position that the "PPAs provide for the delivery of 9,554,940 MWh of *firm* Qualified Clean Energy over *firm* transmission service …." *Id*.

In this case, merely asserting that the PPAs require incremental deliveries does not mean that it is a fact – especially when the record in these Proceedings demonstrates otherwise.[12] Rather than address this issue head-on, the Distribution Companies instead attempt to inappropriately merge several issues.

Having conceded that 14.8 TWh is the appropriate "baseline," the Distribution Companies attempt to distinguish those baseline deliveries as having occurred on either a firm or non-firm basis. *Id.* While that topic may be of interest, it has no relevance the issue of incrementality under the Applicable Requirements. Similarly, while the question of whether the Project will provide firm transmission service is relevant to other criteria established in the Applicable Requirements, it similarly has no relevance to the issue of the incrementality. Instead, the Distribution Companies have the burden of proof in demonstrating that the PPAs *actually require* the firm delivery of 9.5 TWh of Incremental Hydroelectric Generation on an annual basis. The Distribution Companies have not satisfied that burden.[13]

[12] HQ, CMP and the DOER each take a similar, but less detailed approach, to the issue of compliance with each of the Applicable Requirements in their respective initial briefs, and instead rely almost exclusively on the conclusions contained in the Independent Evaluator's Report, along with the assertions contained in the initial joint testimony filed by the Distribution Companies in support of the Petitions. Unfortunately, that approach fails to address any of the concerns that were raised or contradictory evidence that was introduced in the evidentiary hearing.

[13] This failure is especially problematic, as cost-effective proposals that complied with the incrementality requirements of Section 83D, and which may have offered greater benefits to Massachusetts ratepayers, were inappropriately removed from consideration during Stage 3 of the evaluation process. AGO Initial Brief, at 32; RENEW Initial Brief, at 4.

The record in these Proceedings demonstrates that the PPAs fail to *require* the delivery of Incremental Hydroelectric Generation. *See* AGO Initial Brief, at 17; NEER Initial Brief, at 3 ("The record, however, indicates that HQUS' energy is neither from hydroelectric energy alone nor is the energy firm."). Instead, the PPAs only "require 0 percent (*i.e.*, for Eversource and Unitil), to at most 44 percent (*i.e.*, for National Grid) of the Contract Energy to be incremental (i.e., above the historical average of 14.8 TWh)." AGO Initial Brief, at 20. *See also* Sierra Club Initial Brief, at 9; Exh. AG-DM, at 8. Because the PPAs do not require the delivery of Incremental Hydroelectric Generation, the Department must reject them and deny the Petitions.[14]

B. The PPAs do not Guarantee Delivery in Winter Months or Contribute to the Reduction of Winter Price Spikes

Serious questions have also been raised regarding whether the PPAs guarantee the delivery of hydroelectric energy during critical winter months, such that they would contribute to the reduction of winter price spikes. The evidentiary record demonstrates that the PPAs would not satisfy either of these requirements.

On this point, the Distribution Companies acknowledged in their initial brief that the PPAs allow shortfalls in delivery to occur during critical winter months (a "Curable Delivery Shortfall"), and that any such shortfall can be cured by delivering make-up power (the "Qualified Shortfall Energy") during the corresponding period in *either* the current or subsequent year (the "Shortfall Cure Period"). *Id.*, at 24. A delivery cannot reasonably be considered to be *firm* if the Seller *is excused from performance today* as long as it *provides replacement power at some point*

[14] In its Initial Brief, the AGO discusses in detail the manner in which the PPAs could be amended to procure fully Incremental Hydroelectric Generation. *See* AGO Initial Brief, at 2, 25-30. While NEPGA acknowledges the considerable efforts of the AGO to salvage the defective PPAs on this issue, NEPGA respectfully submits that those amendments would not be sufficient to resolve the failure of the PPAs to satisfy other parts of the Applicable Requirements. It is for that reason the NEPGA requests that the Department, without prejudice to the ability of the Distribution Companies to file petitions and power purchase agreements in the future that fully comply with each of the Applicable Requirements, reject the PPAs and deny the Petitions.

in time with the next year. *Id.* And while the Distribution Companies may believe that the failure to require firm deliveries of energy is acceptable – on the basis that the PPA's "Cover Damages provisions would act as an insurance policy protecting Massachusetts customers from the effect of price spikes"[15] – it is indisputable that the purposes of Section 83D *do not* include the procurement of an insurance policy.

Although the Distribution Companies and others have asserted that the PPAs require the delivery of firm energy, in reality the PPAs "grant HQUS the flexibility to minimize winter performance by overperforming at a later period, not delivering energy every hour, and paying a monetary penalty in lieu of making energy deliveries." RENEW Initial Brief at 5. *See also* Exh. JU-3-A, Section 4.3; EDC Initial Brief, at 24-25; NEER Initial Brief, at 6 (The PPAs "do not designate any discrete period in which interruption is not permitted, as required by the statutory definition."). In this regard, HQ is allowed to "interrupt or otherwise fail to deliver up to 20% of the time over a 12-month period, which equates to 73 days a year of allowable interruptions or non-deliveries without HQUS being in default of the PPA." NEER Initial Brief, at 6. *See also* Exh. JU-3-B, at 56; Exh. NEER 1-75; Exh. NEER 1-77; Exh. AG-DM-1, at 12:3-6.

Simply put, the PPAs do not *guarantee* the delivery of energy when it actually is needed the most during critical winter months. Because of this, along with the fact that the quantitative modeling of benefits performed by Tabors Caramanis and Rudkevich ("TCR") also assumed that fully incremental energy would be delivered, any claimed price suppression benefits that are associated with the PPA (including suppression of winter price spikes), are pure speculation. *See* NEER Initial Brief, at 12.

[15] EDC Initial Brief, at 25.

C. The PPAs do not Provide the Claimed Environmental Benefits

The initial briefs filed by both the Distribution Companies and CLF claim that the PPAs will deliver environmental benefits – in the form of significant reductions in GHG emissions – to Massachusetts ratepayers.[16] However, because the realization of environmental benefits and reductions in GHG emissions is tied to the delivery of Incremental Hydroelectric Generation, that claim is not correct. *See* Sierra Club Initial Brief, at 2 ("The environmental and climate benefits to Massachusetts ratepayers of this massive investment hinge on the hydroelectric deliveries being incremental ….)".

CLF claims that the quantitative evaluation performed by TCR supports a conclusion that the PPAs will substantially reduce the Commonwealth's GHG emissions. CLF Initial Brief, at 7. Unfortunately, CLF's reliance on the TCR evaluation is misplaced. When TCR performed its quantitative evaluation of the Proposal, it assumed that fully incremental energy would be delivered. *See* AGO Initial Brief, at 24. *See also* Sierra Club Initial Brief, at 5, 10-11; Tr. 48:24-50;18 (Rudkevich); Tr. 180:201-21 (Rudkevich). As a result, the claimed environmental benefits associated with the Project would be realized only if fully incremental energy was delivered.[17] Sierra Club Initial Brief, at 10-11; NEER Initial Brief, at 11; Tr. 50-19-24 (Waltman).

[16] In its initial brief, CLF argues that the approval of the PPAs should be based on a single factor – their claimed ability to dramatically reduce the Commonwealth's statewide GHG emissions. CLF, at 2. In support of its argument, CLF states that the "fundamental purpose" of Section 83D and the "core aim" of the RFP is to "permanently reducing GHG emissions in the electricity sector …." CLF, at 2-3. As an initial matter, NEPGA does not dispute that the reduction of GHG emissions is required to be evaluated under *one* of the *eight* equally important criteria established by Section 83D. But it is not appropriate to treat it as the sole factor that must be considered, especially since the stated purpose Section 83D (as established in subsection (a)) is to "facilitate the financing of clean energy generation sources" that best satisfy *each of eight criteria* enumerated in Section 83D.

[17] Because TCR's evaluation of economic benefits (including increased employment) similarly assumed that fully incremental energy would be delivered, its conclusions on these benefits are equally flawed.

But the record makes clear that the PPAs do not require such a result. As such, the claimed environmental benefit (in the form of reductions of GHG emissions) that would flow from the PPAs has been dramatically overstated – indeed, in the case of the Eversource and Unitil PPAs, the evidence indicates that the actual reductions in GHG emissions could be indistinguishable from zero. *See* Sierra Club Initial Brief, at 2 (The PPAs "fail to guarantee any real world greenhouse gas emissions benefit."). *Id.,* at 12.

Finally, the initial brief of CLF attempts to rebut the concerns raised by other participants in these Proceedings regarding the issues of "resource shuffling," "leakage," and whether the PPAs will result in the actual reduction of GHG emissions. As an initial matter, NEPGA submits that CLF's arguments on these issues are not relevant, given the failure of the PPAs to require the delivery of Incremental Hydroelectric Generation. Because NEPGA believes that it is important for the Department to have a complete record on these issues, however, NEPGA respectfully offers the following response.

CLF, in support of its rebuttal, cites to the Supreme Judicial Court's decision in *Kain v. Dep't of Envtl. Prot.,* 474 Mass. 278 (2016) ("*Kain*") for the proposition that the reductions in GHG emissions that are required under the Global Warming Solutions Act ("GWSA") (and thus the requirements of Section 83D) must be "actual, measureable, and permanent," and that this requirement will be met because any reduction in GHG emissions that results from the PPAs will be measured by the MassDEP GHG Inventory. CLF Initial Brief, at 4 (citing *Kain*, 474 Mass. At 283, 297-98, 300). Taking this argument one step further, CLF references the Court's decision in *New England Power Generators Ass'n, Inc. v. Dep't of Envtl. Prot.,* 480 Mass. 398, 408-10 (2018) ("*NEPGA*") for the proposition that the requirements of the GWSA (and thus the requirements of Section 83D) can be met even if the reductions GHG emissions that result from

the PPAs create the potential for generalized increases in regional GHG emissions. CLF Initial Brief, at 5-6.

Unfortunately for CLF's position, the holdings in both *Kain* and *NEPGA* do not support the approval of the PPAs under the circumstances presented here – especially given the failure of the PPAs to satisfy the incrementality requirement. *See also* NEER-RSW-S-1, at 2; Sierra Club Initial Brief, at 12 ("There is no environmental benefit to shifting the greenhouse gas emissions of existing generation from one jurisdiction's greenhouse gas balance sheet to another. Nothing is gained environmentally …."). In *NEPGA*, the Court determined that because the Commonwealth "was aware that some leakage was inevitable" when it enacted the GWSA, the fact that some amount of leakage might occur was not sufficient to overturn the MassDEP's GHG emission reduction regulations that were applicable to the electric power sector. *Id.*, at 6 (citing *NEPGA*, at 408, 409 n.12). Or, as CLF has distilled it, the "the Court rejected that challenge – as the Department should here – recognizing that such assertions were 'mere speculation.'" *Id.,* at 9.

The facts presented in *NEPGA* are markedly different from those presented in these Proceedings. As a result, the analysis of this issue must also be different. While the potential for "leakage" to occur that was addressed in *NEPGA* was dismissed by the Court as "mere speculation," that is not the case here. As discussed in the Initial Brief of NextEra Energy Resources ("NEER"), the record contains ample evidence that the PPAs do not require the annual delivery of 9.5 TWh of Incremental Hydroelectric Generation, that the HQ system likely cannot provide that amount of hydroelectric generation given its existing system load requirements, and that even if HQ could, it most likely cannot deliver (given the location of its conversion station) only hydroelectric generation under the PPAs. As a result, and unlike the

fact pattern presented in NEPGA, it is not "mere speculation" that resource shuffling and leakage will occur under the PPAs. Instead, it is a fact. As such, even if CLF's position on the extent of the GHG emissions reduction mandate in Section 83D were to be correct, *Kain* and *NEPGA* each would still fail to offer adequate grounds for the Department to approve the PPAs and Petitions.

D. The Evidence Fails to Demonstrate that the PPAs are "Cost-Effective"

In the course of these Proceedings, additional questions have been raised regarding whether the PPAs would be "cost-effective" for Massachusetts ratepayers. An analysis of the record indicates that the answer to these questions is "no."

As an initial matter, the AGO has legitimately questioned whether the Project is even needed, especially since the PPAs "do not require materially more energy deliveries than the existing transmission system can accommodate." AGO Initial Brief, at 23 (The "1.1 TWh difference between the total deliveries required by the stricter National Grid Proposed PPA and the actual amounts delivered in 2017 over the existing system would utilize only about a tenth of the NECEC transmission line's capacity."). As a result, Massachusetts ratepayers would be required to pay for transmission capacity on a new transmission line that they *barely* utilize. Under this scenario, the Project is *not* cost-effective to Massachusetts ratepayers.

In addition, serious questions have been raised about whether HQ will be able deliver only hydroelectric generation under the PPAs. The Distribution Companies conducted no analysis to determine if the hydroelectric facilities identified in Exhibit A of each PPA are, in fact, deliverable to the Project. NEER Initial Brief, at 5. *See also* NEER 3-1. More importantly, HQ has admitted that it cannot meet its own system peak load with hydroelectric generation only, which increases the likelihood that energy procured under the PPAs during critical winter months will include energy from non-renewable sources. NEER Initial Brief, at 4, 7. *See also* EDC-NEER 1-2, Att. 1, at 3 and Att. 5, at 7, 11 n.b, 16 ("[T]he call that HQUS has on the HQP

Exhibit A hydroelectric facilities cannot be considered firm, but only generally available, as they are otherwise already obligated to HQD"); NEER Initial Brief, at 5 (Given the location of its facilities and generation sources, "HQUS would need to re-locate its AC to DC converter substation" to be able to source energy directly from hydroelectric generation); Exh. AG-DM-R-1, at 18:3-4.

Finally, even if HQ could deliver only hydroelectric energy into the Project, serious questions exist as to whether that energy is fully deliverable into Massachusetts (as opposed to only the ISO-NE PTF). Evidence has been presented indicating that "ISO-NE will require upgrades that are not covered and paid for under the Proposed TSAs." NEER Initial Brief, at 16. *See* Exh. JU-9-A, at 7 ("… NECEC's deliveries at times will be constrained …. NECEC is making no upgrades to the Maine to New Hampshire interface."). If those upgrades are required, the likely cost would be between $5 and $10 billion, and Massachusetts ratepayers would be required to pay at least half of those costs. *See* NEER Initial Brief, at 13-17; Exh. JU-9-A, at 7, n.5; Tr. 294:19-21 (Whitley); Exh. RSW, at 25; RSW-6, at 17; Exh. RSW-S-1, at 25, 28; Tr., at 388; NEER 2-6(d).

In light of this evidence, the Distribution Companies have not met their burden of proof and established that the PPAs would be "cost-effective" for Massachusetts ratepayers. Given this failure, and the abundance of contradictory evidence in the record, the Department cannot approve the PPAs or the Petitions.

III. CONCLUSION

The evidentiary record in these Proceedings demonstrates that the PPAs fail to comply with the vast majority of the Applicable Requirements. As to the few remaining requirements, there is insufficient evidence in the record to support a determination that the Distribution

Companies have satisfied their burden of proof. Because of this failure, NEPGA respectfully concludes that the Department is required to reject the PPAs and deny the Petitions that are the subject of these Proceedings.

Respectfully submitted,

NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

By its attorney,

Mark C. Kalpin (BBO # 635836)
HOLLAND & KNIGHT LLP
10 St. James Avenue, 11th Floor
Boston, MA 02116

Dated: April 3, 2019

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Joint Petition of Fitchburg Gas and Electric Company, d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a/ National Grid, and NSTAR Electric Company and Western Massachusetts Electric Company, each d/b/a Eversource Energy 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. 18-64, 18-65, 18-66**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing *REPLY BRIEF OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.* upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1).

Mark C. Kalpin (BBO # 635836)
HOLLAND & KNIGHT LLP
10 St. James Avenue, 11th Floor
Boston, MA 02116

Dated: April 3, 2019