NEPGA
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.
141 Tremont St., Boston, MA 02111
(t) 617-902-2354 (f) 617-902-2349
www.nepga.org

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NEPGA Comments on NESCOE's Coordinated Competitive Renewable Power Procurement Draft Work Plan

On July 30, 2012, the New England Governor's Conference passed a resolution directing the New England States Committee on Electricity (NESCOE) to develop and implement a work plan on behalf of the New England Governors that will result in the release of an RFP for renewable energy. Pursuant to this mandate, NESCOE issued a Coordinated Competitive Renewable Power Procurement Draft Work Plan ("Plan") on August 10, 2012. NESCOE invited interested parties to submit written comments on the Plan by August 31, 2012. NEPGA encourages the States and NESCOE to develop a timely and precise RFP process that: 1) seeks the type of information developers consider in pricing their projects; 2) limits the amount of time between issuing the RFP and approving contracts; 3) procures resources based in New England; and 4) protects against uneconomic transmission upgrades.[1] NEPGA also offers the following comments about the potential adverse capacity market impacts of resources procured through the States' regional procurement plan.

All generation resources are best developed in response to, and in reliance on, price signals from an open, competitive marketplace. Such markets result in the lowest possible costs and best protect consumers from the construction, operational and price risks associated with these projects. If the States instead choose to procure resources in advance of the market need for capacity, NEPGA strongly believes that any procurement under the Plan should be performed under a timely and transparent competitive procurement of New England-based renewable resources.

NEPGA also cautions against allowing resources procured through the Plan to distort capacity market price signals. Should resources procured by this RFP receive revenue streams outside of ISO-NE's markets, they will be subject to the Minimum Office Price Rules (MOPR) of the ISO-NE's Forward Capacity Market (FCM), as approved by the Federal Energy

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

Regulatory Commission (FERC) in its April 13, 2011, Order. Consistent with that Order, resources may seek exemptions from the MOPR by filing an exemption request with the FERC under Section 206 of the Federal Power Act. The price-suppressing effects of exemptions to MOPRs in capacity markets are unequivocal. Price suppression in capacity markets interferes with price signals intended to incent new resource development and just and reasonable competition for existing resources, thus adversely affecting long-term reliability. As such, neither renewable resources, nor any specific resource type, should be exempt from capacity market MOPRs.

This principle should hold particularly true for renewable resources procured through the RFP. According to the States, the RFP is necessary, in large part, because competitive markets are unable to meet the demand for the lowest possible cost renewable resources. The States believe that changes to the FCM may "limit" renewable resources ability to clear in the FCM. Presumably, the States are referring to the MOPR. The MOPR mitigation precludes new capacity resources from clearing in the FCM below their true cost of new entry in order to ensure just and reasonable competitive market prices for capacity in the ISO-NE market. NEPGA understands that the States may seek to develop renewable resources to meet specific renewable portfolio requirements or goals rather than to satisfy capacity resource needs for reliability. In seeking to achieve their regional procurement goals the States should be mindful of the potentially adverse market consequences of introducing significant renewable resources, should such resources be exempt from market mitigation protection in the capacity markets. To the extent the States seek to send a stronger market signal for renewable energy through long-term contracting under an RFP, such prices can and should send that signal without disturbing the competitive capacity market. Therefore, States, developers, and electric distribution companies should contract for the renewable energy resources procured through the Plan under the assumption that such resources will not be exempt from MOPR mitigation.

I. The RFP Process Will Result in Best Proposals if the RFP and Form Contracts Clearly and Explicitly State Eligibility and Evaluation Criteria

The Plan provides that the Procurement Team (PT) will develop eligibility criteria, evaluation criteria, an RFP, and form contracts. In order to solicit the greatest number and quality of bids, the criteria, RFP and form contract terms must definitively and clearly state the eligibility criteria, evaluation criteria, and the terms winning bidders will presumptively agree to by submitting a bid,[2] and request the type of information relevant to developer decision-making. If the criteria and terms do not contemplate the developers' considerations and are not precise, the RFP will likely solicit a less than optimal volume and quality of bids.

[2] Recognizing that, according to the Plan, winning bidders and electric distribution companies may negotiate non-material amendments to the form contracts.

II. The 16 Month Period from RFP Issuance to Contract Approval Should be Shortened

According to the Plan, the state PUCs will approve contracts, if at all, 16 months after the RFP is issued to bidders.[3] This anticipated period of time is in addition to state siting board approvals. Cumulatively, the combined Plan timeline and state siting board approval process is too long in order for bidders to hold their RFP bids. The lag time will render offers based on assumed financing terms, commodity costs, and other terms stale before the end of the 16 month period. Many developers will be unable to assume the risk inherent in such a long lag time, leading to a relatively weak solicitation. NESCOE should develop a timeline based on, at most, nine months from the date the RFP is issued until the date contracts are approved by the PUCs.

III. Renewable Resources Procured Through the RFP Should be Limited to New England Based RPS-Eligible Resources

In its Plan, NESCOE suggests that the resource types eligible for the RFP include RPS-eligible renewable resources recognized by all states with an RPS, and, with respect to Vermont, state renewable energy goals, specifically, wind only, wind plus landfill gas only, solar, small hydro and biomass. NEPGA agrees with NESCOE's suggestion that the RFP should define eligible renewable resources consistent with the States' definitions for RPS-eligible renewable resources and renewable energy goals.

According to the Governors, the purpose of the coordinated RFP is to help the States meet their RPS requirements or renewable energy goals at the lowest cost. The regional procurement plan will achieve this goal, in large part, by granting long-term contracts to otherwise uneconomic resources. The Governors also intend for the coordinated RFP to allow New England to develop "homegrown" renewable energy resources to, in part, "stimulate economic development."[4] There is abundant generating potential within New England in order for the States to achieve these goals. In 2010, NESCOE issued a Request For Information (RFI), seeking information from renewable energy projects whose output would qualify as RPS-eligible and are consistent with Vermont's renewable energy goals, and that could be placed into commercial operation by the end of 2016.[5] Pursuant to its RFI, NESCOE solicited information from New England developers, specifically those proposing on-shore wind, off-shore wind, biomass, landfill gas, small hydro, and solar. Over 4,100 MW of New England-based generation responded to the RFI, demonstrating that there are sufficient renewable resources in New England to meet the Plan's goals.

The Plan should not procure renewable resources from outside of New England because the abundant resources within New England will satisfy all of the Plan's goals, namely, helping the

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[3] Plan at 12-13.
[4] Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs press release, "Massachusetts Launches Regional Renewable Energy Initiative With Other 5 New England States," July 30, 2012.
[5] NESCOE December 30, 2012, Request for Information.

States satisfy their RPS requirements and policies, developing local renewable energy resources, and stimulating New England state economic development.

IV. Electric Distribution Company Discretion Should be Limited to the Extent Necessary to Protect Against Affiliate Self-Interest

The Plan gives electric distribution companies (EDCs) discretion to choose to contract with one or more "preferred" project developers, and provides no detail on what scrutiny, if any, the PT will give to transmission costs associated with projects that require new transmission to bring the energy to load. The Plan should limit EDC discretion and more precisely define how it will factor in new transmission costs into its evaluation process.

The Plan provides that EDCs will decide whether to pursue long-term contracts with the PT's preferred projects, and contemplates that projects may require new transmission system upgrades necessary to deliver the energy. Most New England EDCs have transmission affiliates, which may give the EDCs the incentive to choose projects that require new transmission. In order to guarantee the credibility of the project selection process, EDC discretion should be mitigated to the extent necessary to remove any such incentive. NEPGA suggests that the PT appoint an independent evaluator to oversee the EDC selection process to guarantee that the EDCs do not select projects that serve EDC affiliate interests over the States' interests. The independent evaluator should possess sufficient expertise to evaluate and identify decision-making bias. An independent evaluator will enhance bidder confidence that the procurement is fair and credible, thus encouraging a more robust response to the RFP and helping avoid potential objections NESCOE suggests entities could raise.[6]

NEPGA also suggests that the Plan more clearly define how the PT will evaluate the relative cost of projects that require new transmission to bring the energy to load. The New England Regional Transmission Rate has increased six-fold in the 12 years since restructuring of the electric industry and is expected to nearly double in the next three years. In order to keep the regional transmission costs from accelerating further, the cost estimates for projects that require significant transmission expenditures must be closely scrutinized and subject to a mechanism to limit investment to those estimates. The PT should carefully review each proposed project to protect against further uneconomic or unnecessary transmission cost increases. In order to so, the PT will need detailed and specific information concerning any transmission project associated with a renewable resource procured through the RFP. The Plan suggests that the RFP may require developers to provide a price based on necessary transmission upgrades. For any such project, the RFP should also require detail on the transmission projects sufficient for the PT to evaluate the validity of the transmission cost estimates and the asserted need for transmission upgrades, in order for the PT to properly evaluate the relative value of that project to other proposed projects.

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[6] The Plan encourages the States to form a Legal Subteam to guard against delay in the procurement process by, in part, "preemptively prepar[ing] for objections or impediments that some entities could raise." Plan, at 10.

V. Conclusion

All generation resources are best developed in response to price signals from an open and competitive market, in part because the markets protect against the adverse effects of price suppression. Where the States decide to procure resources out of market, price suppression in the capacity markets can be avoided by applying the MOPR mitigation rules to resources the States procure and other resources equally. To ensure a fair and productive procurement process, the RFP should clearly and thoroughly define the eligibility and evaluation criteria, and request the information relevant to developers' decision-making. The States will best meet their goals of satisfying their RPS requirements and policies, developing local renewable energy resources, and stimulating New England state economic development, by procuring New England RPS-eligible resources.