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August 19, 2015

BY FEDERAL EXPRESS AND ELECTRONIC MAIL

Ms. Luly E. Massaro, Commission Clerk
State of Rhode Island
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: RI PUC Docket 4570; Comments to the Clean Energy RFP

Dear Ms. Massaro:

In accordance with the Notice of Technical Record Session, Intervention Deadline, and to Solicit Comments (Notice) issued in the above-referenced docket on July 20, 2015, please find enclosed an original and 9 copies of the New England Power Generators Association, Inc.'s Comments in Response to the Clean Energy Request for Proposals filed with the Rhode Island Public Utilities Commission on June 26, 2015. In accordance with the Notice, we have also provided you with an electronic version.

Please contact me if you have any questions in this regard.

Sincerely,

Dan Dolan
President
New England Power Generators Association

cc: Service List Docket 4570 (electronic copy only)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

IN RE: SOLICITATION FOR PROPOSALS
FOR PROPOSALS FOR CLEAN ENERGY
PROJECTS PURSUANT TO R.I. GEN. LAWS § 39-31-1

DOCKET NO. 4570

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

I. INTRODUCTION

On July 20, 2015, the Rhode Island Public Utilities Commission (Commission) issued a Notice of Technical Record Session, Intervention Deadline, And to Solicit Comments in the above-referenced docket. In response to that request, the New England Power Generators Association, Inc. (NEPGA) hereby submits comments regarding the Request for Proposals (RFP) authorized 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," filed with the Commission on June 26, 2015, Docket 4570.¹ NEPGA appreciates the opportunity to offer our perspective on several key aspects of the RFP.

NEPGA is the trade association representing competitive electric generating companies in New England. NEPGA's member companies own and operate more than 110 plants throughout New England representing approximately 25,000 megawatts (MW), or 80 percent of the region's total generating capacity. In Rhode Island, NEPGA's members own over 1,375 MW or nearly 76 percent of

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

the generation capacity in the state from a diverse set of fuels and technologies. NEPGA's mission 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.

NPEGA's comments focus on four main issues in the RFP including:

- (1) RFP contravenes provisions of Rhode Island's Restructuring Act;
- (2) Legal and policy impediments to transmission procurement;
- (3) Benefits of a joint procurement approach for Class I Resources; and
- (4) Need for competitive procurement best practices.

II. ASPECTS OF THE RFP VIOLATE THE RESTRUCTURING ACT

Competitive power generators have invested tens of billions of dollars throughout New England for the opportunity to compete in the marketplace every day. These generators are currently providing the vast majority of power to meet consumer demand reliably and competitively, and are doing so in compliance with all appropriate state and federal environmental regulations, as well as subject to the Regional Greenhouse Gas Initiative. Unfortunately, the competitive market structure that predicated the massive investments from NEPGA members is now being adversely impacted by the RFP's provisions that violate the separation of functions in contravention of the vertical market-power protections incorporated in the 1996 Restructuring Act. ²

² See R.I. Gen. Laws 39-1-1 et seq.

Aspects of the RFP, such as procurement of utility-affiliated transmission projects to transport provincially-owned hydropower, possibly under a deal structure with an obliquely defined “delivery commitment,” run directly contrary to the separation envisioned in the Restructuring Act. The very basis of creating a functionally-separate utility structure was to make the utility agnostic as to the owner or source of electricity supply. Now, the utilities propose to create a procurement that could see the reinstatement of a vertically-integrated structure through the parent holding company.

In this RFP the electric distribution companies (EDCs) propose for themselves a role as both the soliciting entity as well as an expected bidder (or transmission developer with financial interests favoring a particular bidder) through projects like Northern Pass Transmission (NPT) (Eversource), the Green Line (National Grid) and the Northeast Energy Link (National Grid). What all these projects have in common is an initiative to interconnect Canadian provincially-owned hydropower, and possibly wind in Northern New England, with load centers in Southern New England. Most of these projects are years old, having originally been proposed as purely merchant lines. If the project sponsors, due to falling wholesale electricity prices and diminishing economics, will now use the RFP to subsidize these projects, they will be seeking subsidies from the very rate-payers that are their own utility customers.

This proposed framework undermines Rhode Island’s ability to protect consumers from vertical market power and facilitate consumer access to a competitive marketplace. The Restructuring Act clearly laid out the legislature’s

intent that transmission, distribution and generation functions be separate by requiring EDCs to submit plans for restructuring.³ Following such separation, the statute further provides that EDCs “shall be prohibited from selling electricity at retail and from owning, operating or controlling transmission or generation facilities...”⁴ The purpose of this prohibition is to guard against the exercise of vertical market power or the joint ownership of facilities at differing levels in the chain of production, such as generation, transmission, and distribution. The RFP potentially creates precisely this type of situation where EDCs will have the ability to use such joint ownership to influence price to the participants’ own benefit.

The Commission cannot allow such an outcome to occur and must protect and remain faithful to the letter and the spirit of the Restructuring Act, as specifically prescribed by the legislature. Anything less than a prohibition of this attempt to assert vertical-market power would allow for a shadow reintegration of one of the most robust competitive markets in the country.

III. THE PROPOSED PROCUREMENT OF PROVINCIALY-OWNED HYDROPOWER CONTRAVENES IMPORTANT AND SOUND PUBLIC POLICY

Clearly, soliciting for provincially-owned large scale hydropower is a driving goal of the contemplated solicitation process with the RFP. Although the language stating that “this solicitation is broader in scope and geography than those state-specific legal requirements and therefore, certain aspects of the RFP may require legal and/or regulatory action in order to ensure cost recovery for certain types of proposals” was deleted from the final draft, there can be no doubt

³ R.I. Gen. Laws 39-1-27(b).

⁴ R.I. Gen. Laws 39-1-27(d).

that it remains a primary objective. In fact, the RFP itself follows legislative action taken in Connecticut and Rhode Island providing for limited and tightly controlled solicitations for provincially-owned hydropower. Notably, however, Massachusetts has been unsuccessful in passing such legislation, thus creating additional legal impediments in the Commonwealth, which NEPGA has raised in the companion docket currently pending before the Massachusetts Department of Public Utilities.⁵

NEPGA's concerns, however, are also raised from a more fundamental policy perspective regarding the long term wisdom of subsidizing large-scale, provincially-owned resources with the potential to harm more economically sound projects developed without any state subsidy. Recently, 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 by the RFP. Dr. Susan Tierney of the Analysis Group found that the cost of the transmission alone would be \$1 billion.⁶ Dr. Tierney stated that the procurement “is destined to have negative cost and other unintended consequences for Massachusetts consumers and the state's economy.”

⁵ Massachusetts Department of Public Utilities, Docket 15-84.

⁶ <http://nepga.org/wp-content/plugins/custom-post-type-attachment-pro/download.php?id=NTgx&file=Mg==>

A previous report by the PA Consulting Group,⁷ commissioned by NEPGA, addressed this issue and concluded in the case of the proposed NPT line that “projected annual revenues received by [Hydro Quebec] 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 is even a conservative estimate as more recent real-world proposals indicate combined cycle development of \$777/kW.⁸ This analysis raises serious questions whether bids, as contemplated by the RFP, would be the lowest-cost option available to New England electricity consumers.

As Dr. Tierney further noted, if the goals of the type of procurement process are to reach carbon reduction mandates, this type of procurement is simply not 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 regions electric industry.”

Instead, she suggested that to reach those goals, states “should take advantage of the clean energy and market-based principles that Massachusetts and other

⁷ The Economic Impacts of the Northern Pass Transmission Project, PA Consulting Group, June 2012.

⁸ Invenergy’s Clear River Energy Center proposed at 900 MW for approximately \$700 million <http://www.providencejournal.com/article/20150804/NEWS/150809749>

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 RFP appears to do. Development of a CES proposal whereby a carbon threshold level is established and all eligible resources able to meet the specified emissions rate would qualify. NEPGA supports a CES where all resources that meet the stated emissions target – new or existing, regardless of technology type – are eligible for the CES, and the state’s policy goals can be met in the most cost-effective, open and transparent 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 likely not yield the most cost-effective, competitive supply for

consumers. Instead, the detrimental impacts on existing supply resources in New England and Massachusetts' consumers would be significant.

The electricity 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 reliable and sustainable power system in New England. Rushing to embrace methods to in effect "flood the market" with provincially-owned large scale hydro resources, even utilizing a competitive solicitation, runs counter to the entire purpose of restructuring the electric industry. By subsidizing provincially-owned hydropower, the RFP creates a situation that makes it possible that Rhode Island-based investments that are more economic may be forced to prematurely retire or never be pursued. This puts at substantial risk the largest tax providers and employers in most host communities.⁹

For the remaining generators trying to remain commercially viable in New England, this would likely bring the region back to a place where the Independent System Operator of New England (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. These RMR contracts would be artificially priced in the market not reflecting the true cost of generation due to their guaranteed payment structure. In effect this would artificially suppress pricing in the merchant market causing energy revenues to decrease

⁹ The Rhode Island Affordable Clean Energy Act requires, among other things, that the PUC show that benefits to Rhode Island exceed costs (in 39-31-3), and such an analysis should take into account the effects of the subsidies on capacity and transmission costs.

for the other power plants in New England. This in turn would lead to earlier than expected retirements and increased capacity prices to incent generators to add new capacity in an environment without adequate energy revenues. In essence, this 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 such an environment 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 of moving forward with an ill-conceived and ill-defined procurement for transmission projects with or without associated commitment of energy supplies.

Far from failing, the competitive electricity market is thriving. Indeed, it is ironic that at the very time when this type of procurement is being contemplated in New England, investment capital is rushing into the region based on the open, competitive market structures in place. Currently there are more than 90 market-based/merchant projects totaling 13,000 MW with applications pending to connect to the New England grid. More than 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. ISO-NE successfully completed its annual forward capacity 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 – this represents nearly one half of the total installed capacity currently in the New England region. In total, there are over 1,800 MW of new supply projects currently under development that have cleared the forward capacity market – all doing so without the promise of a long-term contract. In the last few weeks, Rhode Island itself has seen this type of development.

Just last month Invenergy announced its intention to develop a 900-MW power plant here in Rhode Island in Burrillville bringing hundreds of construction jobs and tens of millions of dollars in local taxes. This plant is being pursued as a market-based investment at the developer's risk without a state-subsidized contract, unlike what is being contemplated in this docket. As developments like this one move forward, only the most cost-effective supply sources will be selected through the forward capacity market to meet consumer needs going forward. Out-of-market procurement of the scale contemplated in the RFP for provincially-owned hydro would dramatically undermine the potential for local, market-based investments raising serious questions about where local investments will come from moving forward.

In adopting the Restructuring Act, the legislature expressly noted that it “it is in the public interest to promote competition in the electricity industry.”¹⁰ Far from promoting competition, long-term contracts such as those contemplated by the RFP, stifle competition; especially given the robust competitive market, long-term contracts are antithetical to the competitive market structure contemplated by the Restructuring Act.

What has been most extraordinary in 2015 is that the region has experienced four of the six lowest average price months for wholesale electricity since the ISO markets began as we know them in 2003. According to the ISO, “June’s average real-time electric energy price of \$19.61/MWh was nearly half the June 2014 average price of \$37.92/MWh and nearly 23% lower than the previous record low average monthly price of \$25.39/MWh, recorded during March 2012.”¹¹ There is no question that New England’s energy markets are in a time of transition and yet for even in this period of flux to see the pricing experienced in 2015 is nothing short of remarkable.

IV. 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 has enacted statutory Renewable Portfolio Standards (RPS) in order to achieve individual state goals for renewable energy use. As a means to meet these individual RPS

¹¹ <http://isonewswire.com/updates/2015/7/15/wholesale-electricity-prices-and-demand-in-new-england.html>

goals,¹² NEPGA supports the policy basis and approach established in the RFP regarding Class I renewable procurement and believes it makes sense to combine the buying power of the individual states in order to meet the statutorily-established Class I RPS goals. NEPGA further appreciates that the basic structure of the RFP allows some of the states to pool their solicitation with others, yet still allows each state to maintain ultimate authority to determine if a combined proposal meets that state's individual RPS needs.

NEPGA supports the flexibility granted in the RFP for bidders to respond with different configurations, including aggregating capacity, with more than one eligible facility. Placing necessary requirements on a bidder to ensure that 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 is also sound policy. Finally, NEPGA supports the clear and well-defined schedule for the procurement process. NEPGA cautions, however, that additional safeguards must be implemented to ensure that the procurement process is fair, transparent and truly competitive.

V. COMPETITIVE PROCUREMENT BEST PRACTICES

Market-based mechanisms provide the most efficient 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 ISO-NE and the Renewable Energy Credit or Regional Greenhouse Gas Initiative markets. If, however, a state or group of states make a public policy decision

¹² NEPGA takes no position with respect to RPS as a policy matter, but does note that if a state chooses to use an RPS, consistency in policy, definition and competitive procurement mechanisms is critical to successful long-term development.

to go outside of the established market process to secure energy supply, a competitive solicitation process should be used to ensure that a solution with some market principles 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 RFP, it is imperative that the competitive process be well-defined, transparent and open to the greatest degree of competition possible. As such, NEPGA offers the following competitive procurement best practice guidelines that should be the minimum basis on which any Clean Energy RFP is conducted.

A. Careful Monitoring of the Utility Role in a Competitive Solicitation

It is important that states continue to abide by the industry structure that was implemented to ensure competition, including: (1) holding the EDCs indifferent to the source of supply; and (2) protecting consumers from potential EDC conflicts of interest regarding projects in which they may have a financial incentive in seeing developed. This is particularly so where, as here, it appears that EDC affiliates will be bidding into the RFP (either directly as bidders or indirectly as developers of Elective Transmission Upgrades) – a component of the proposed RFP that NEPGA finds troubling. 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. NEPGA appreciates that a Utility Standards of Conduct was included in the final RFP (Appendix J) after there being no mention of such affiliate protections in the Draft RFP. NEPGA,

however, still remains deeply concerned about the self-dealing potential in this RFP.

B. Use of an Independent, Third-Party Monitor

As a means to potentially mitigate 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 in which the EDCs have a vested financial interest in their ultimate success in addition to varying state interests. This protects not only the EDCs themselves, but also the integrity of the process and its outcomes for all New England ratepayers. This is a best practice used across the country and is recognized as an appropriate mechanism to provide consumer and market protections.¹³

C. Clearly Defined Evaluation Criteria

The RFP outlines high-level qualitative criteria to guide the selection process. While these criteria are a good starting point, they should be more clearly defined and, at a minimum, include greater detail on what represents "operational viability" and "economic development benefits." Specific criteria and well-defined terms are critical to the market and will ensure that all bids will be

¹³ See the final report of the National Association of Regulatory Utility Commissioners/Federal Energy Regulatory Commission Competitive Procurement Collaborative Final Report. *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices* Dr. Susan F. Tierney, Dr. Todd Schatzki, Analysis Group, July 2008 <http://www.naruc.org/Publications/NARUC%20Competitive%20Procurement%20Final.pdf>
See also, Electric Power Supply Association Guidebook on Competitive Procurement, *Getting the Best Deal for Electric Utility Customers* Boston Pacific Company http://epsa.org/forms/uploadFiles/359D0000003.filename.Policy_Guide_5.pdf

evaluated on a level playing field, transparent to the market. It is important that the principle of comparability is met, i.e., that all proposals meet the same requirements and are evaluated under the same well-defined standards, known to bidders before submitting proposals. Even clearly-defined criteria, however, cannot assure competitiveness or comparability if the criteria are structured in a manner to limit the number of bidders or to steer bids to projects in which the EDCs have a vested financial interest.

Competitive procurements are a deviation from and are external to established market processes to meet specific public policy goals. Decisions to pursue this type of out-of-market process should not be undertaken lightly and such efforts should continue to adhere to market-based principles to the greatest extent possible. The ultimate decision – and the process to reach this decision – 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.

VI. CONCLUSION

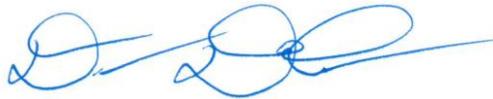
NEPGA appreciates the opportunity to offer the perspective of the competitive generation community on these fundamental market and policy issues. There are elements of the RFP that make a great deal of policy sense, in particular grouping the buying power of the states to solicit proposals for Class I RPS resources to meet individual state goals. The statutory authority exists for this and if 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, 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. To the extent there is a desire to meet state policy objectives through the marketplace such as through the mechanism of a Clean Energy Standard (CES), resource/vintage/technology neutral and market-based mechanisms should be utilized, such as a type of emissions standard used under the Regional Greenhouse Gas Initiative. To instead create additional carve-outs in the marketplace for specific types (and geographic source) of resources is nothing more than picking winners and losers and undermining competitively priced power for consumers.

Respectfully submitted,

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



Date: August 18, 2015

By: _____

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