



March 22, 2019

BY HAND DELIVERY AND E-FILING

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

RE: Petitions for Approval of Long-Term Contracts for Clean Energy Pursuant to Section 83D; D.P.U. 18-64/18-65/18-66

Dear Secretary Marini:

Please find enclosed for filing on behalf of the Sierra Club the Initial Brief of the Sierra Club. An original and five copies are being hand-delivered.

Thank you for your attention to this matter.

Sincerely,

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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petition of NSTAR Electric Company d/b/a)	
Eversource Energy for Approval of Proposed)	
Long Term Contracts for Clean Energy Projects)	
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

Petition of Massachusetts Electric Company and)	
Nantucket Electric Company d/b/a National Grid)	
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INITIAL BRIEF OF THE SIERRA CLUB

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Dated: March 22, 2019

TABLE OF CONTENTS

I. INTRODUCTION1

II. FACTUAL BACKGROUND 2

III. LEGAL STANDARD6

IV. ARGUMENT 7

 A. The Proposed Contracts Fail to Ensure an Economic Benefit to Massachusetts Ratepayers Because They Do Not Require that the Hydroelectric Generation Being Purchased is Incremental to Hydroelectric Generation New England Already Receives7

 B. The Proposed Contracts Fail to Ensure an Environmental Benefit to Massachusetts Ratepayers Because They Do Not Require that the Hydroelectric Generation Being Purchased is Incremental to Generation the Facilities Currently Produce12

V. CONCLUSION 13

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INITIAL BRIEF OF THE SIERRA CLUB

Pursuant to the Hearing Officer’s August 30, 2018 Procedural Notice and Ground Rules, the Sierra Club respectfully submits this Initial Brief in the above-captioned proceeding.

I. INTRODUCTION

Through the contracts at issue in these dockets Massachusetts electric ratepayers would pay more than \$12.5 billion¹ for 9.55 terawatt-hours (“TWh”) per year of electricity delivered via a new transmission line from Quebec into Maine for a period of twenty years. This power would

¹ In nominal dollars, based on 9,554,950 MWh/year and the \$/MWh found in Exhibit D to the three proposed PPAs (Ex. JU-3-A, JU-3-B, and JU-3-C), excluding remuneration to the electric distribution companies of 2.75 percent.

be principally hydroelectric generation from Hydro-Québec's existing fleet of dams. Hydro-Québec already delivers, on average, nearly 15 TWh of electricity per year into New England generated by these same dams, and more recently has delivered even higher amounts.

The environmental and climate benefits to Massachusetts ratepayers of this massive investment hinge on the hydroelectric deliveries being incremental to what New England would otherwise receive from Hydro-Québec absent the contracts, and on the generation itself being incremental to what Hydro-Québec is already producing from those dams. Unfortunately, the proposed contracts, in their final form, fail to ensure that either of these conditions is met. Under the proposed contracts, Hydro-Québec could continue to deliver amounts of hydroelectric power into New England similar to historic averages without incurring any penalties. Further, because the contracts fail to ensure that the underlying generation is incremental to what Hydro-Québec's dams are already producing, the contracts fail to guarantee any real world greenhouse gas emissions benefit. In D.P.U. 17-32 the Department expressly disavowed the benefit to Massachusetts ratepayers of purchasing hydroelectric power that is not incremental. Consistent with that order, the Department should find that the proposed contracts are not cost effective to Massachusetts ratepayers over the term of the contracts when potential economic and environmental benefits to ratepayers are considered, and should deny the contracts.

II. FACTUAL BACKGROUND

In 2016, the Massachusetts General Court enacted An Act to Promote Energy Diversity, which Amended the Green Communities Act by adding Section 83D "to facilitate the financing of clean energy generation resources."² Section 83D requires the Massachusetts electric distribution companies ("EDCs"), by April 1, 2017, to competitively solicit proposals for clean

² An Act to Promote Energy Diversity, St. 2016, c. 188, § 12.

energy generation and authorizes the EDCs to enter into cost-effective long-term contracts for clean energy generation for approximately 9.45 TWh per year. The legislation defined “clean energy generation” to be either: (i) firm service hydroelectric generation from hydroelectric generation alone; (ii) new Class I [Renewable Portfolio Standard] eligible resources that are firmed up with firm service hydroelectric generation; or (iii) new Class I renewable portfolio standard eligible resources.³ Section 83D is intended to advance the goals of the Global Warming Solutions Act, which established mandatory goals for reducing statewide greenhouse gas emissions.⁴

Consistent with the schedule set forth in 83D, on March 27, 2017, the Department issued an order in D.P.U. 17-32 approving the EDCs’ proposed Section 83D request for proposals (“RFP”).⁵ Among other things, the RFP required that eligible hydroelectric generation be incremental to existing deliveries and defined “Incremental Hydroelectric Generation” as “Firm Service Hydroelectric Generation that represents a net increase in MWh per year of hydroelectric generation from the bidder and/or affiliate as compared to the 3 year historical average and/or otherwise expected delivery of hydroelectric generation from the bidder and/or affiliate within or into the New England Control Area.”⁶

Several parties to D.P.U. 17-32, including H.Q. Energy Services (US) (“HQUS”), objected to the definition in the RFP and requested that the Department broaden it. HQUS urged that the definition be enlarged to cover “Firm Service Hydroelectric generation that is capable of providing net increase in MWh per year of hydroelectric generation from the bidder and/or

³ *Id.*

⁴ *See* An Act Establishing the Global Warming Solutions Act, St. 2008, c. 298. Statewide greenhouse gas emissions include emissions of greenhouse gases from the generation of electricity delivered to and consumed in the Commonwealth. *Id.* § 6.

⁵ Order D.P.U. 17-32 (Mar. 27, 2017).

⁶ Ex. JU-2 at 5.

affiliate as compared to the 3 year historical average delivery of hydroelectric generation from the bidder and/or affiliate within or into the New England Control Area.”⁷ Emera and RENEW objected to HQUS’s proposed change, observing that “the proposed amendment would result in a situation where the RFP requires only that the bidder indicate a hypothetical ability to provide a net increase to its current hydroelectric generation delivery volumes, not a commitment to increase such delivery.”⁸

The Department agreed with Emera and RENEW, explaining that “there would be a risk to ratepayers if an electric distribution company entered into a contract with a bidder based on the bidder’s capability to provide a net increase in MWh/year of hydroelectric generation. If the bidder subsequently failed to provide a net increase in generation, ratepayers would have paid for a service (i.e., Incremental Hydroelectric Generation) that the bidder did not deliver.”⁹ Moreover, noting that 83D limits eligibility for Class I renewables to those providing a “net increase from incremental new generating capacity,” the Department determined that “the electric distribution companies appropriately applied discretion when determining that hydroelectric generation should be incremental.”¹⁰

On July 23, 2018, the three Massachusetts EDCs filed petitions with the Department seeking approval for 20-year power purchase agreements (“PPAs”) with HQUS for energy and clean energy attributes from power Hydro-Québec Power Resources delivered over a newly proposed New England Clean Energy Connect (“NECEC”) high voltage direct current transmission line terminating at the Larrabee Road substation in Lewiston, Maine.¹¹ The total energy contracted for in the three PPAs is 9,554,950 MWh per year. Exhibit D to the contracts

⁷ Order D.P.U. 17-32 at 32 (quoting HQUS Comments at 8) (emphasis added).

⁸ *Id.* (summarizing Emera Reply Comments at 5; RENEW Reply Comments at 2-3).

⁹ *Id.* at 33.

¹⁰ *Id.*

¹¹ *See* Exs. JU-3-A, JU-3-B, JU-3-C.

specifies the energy and environmental attribute pricing, which commences at \$51.51/MWh (in nominal dollars) in contract year 1 and increases to \$82.35/MWh (in nominal dollars) in contract year 20.¹² If all 9,554,950 MWh were purchased at the prices specified in Exhibit D, the total cost of the contracts in nominal dollars would be \$12.57 billion. All of the power would be generated from the existing HQ hydropower system.¹³

Deviating from the sample PPA accompanying the RFP, the proposed contracts do not expressly require that the energy be Incremental Hydroelectric Generation as that term had been previously defined. Rather, the proposed contracts establish minimum baseline levels of delivery—untethered from the “3 year historical average and/or otherwise expected delivery of hydroelectric generation from the bidder and/or affiliate within or into the New England Control Area”¹⁴—below which penalties would attach. For Eversource and Unitil, these baselines (3 TWh) are a small fraction of average and even minimum historic deliveries.¹⁵ For National Grid, the baseline is somewhat higher (9.45 TWh), but still far below historic average and recent actual deliveries, and is subject to a number of potential downward adjustments.¹⁶ Despite failing to ensure incrementality of deliveries in the contract, the evaluation of benefits assumed the generation from the contracts is incremental to the full historic baseline.

¹² See Exhibit D to Exs. JU-3-A, JU-3-B, JU-3-C.

¹³ Joint Testimony of Russo, Stoddard, and Whitley at 16:30-17:2 (quoting Ex. RSW-3 (stating that “one hundred percent of HQUS’s energy deliveries under the PPAs will be generated from the existing Hydro-Quebec hydropower system”)).

¹⁴ *cf.* JU-2 at 5.

¹⁵ For 2014 to 2016, average deliveries were 14.8 TWh. Ex. AG-DM-Rebuttal-1 at 19. NextEra’s witnesses note that deliveries have ranged from 12.3 TWh to 14.5 TWh in the past five years over Phase II and Highgate alone (i.e., not accounting for the 2 TWh hydropower wheeled into New England through New York). See Joint Testimony of Russo, Stoddard, and Whitley at 13:24-26; Hr’g Tr. 42:11-13 (Brennan).

¹⁶ See JU-3-B, Ex. H.

III. LEGAL STANDARD

In evaluating proposed contracts for clean energy, the DPU “shall consider both the potential costs and benefits of such contracts and shall approve a contract only upon a finding that it is a cost effective mechanism for procuring low cost renewable energy on a long-term basis taking into account the factors outlined in this section.”¹⁷ These factors are set forth in the statute¹⁸ and incorporated into the Department’s regulations¹⁹ and require that the clean energy resources to be used by a developer under the proposal meet the following criteria:

- (i) provide enhanced electricity reliability within the commonwealth;
- (ii) contribute to reducing winter electricity price spikes;
- (iii) are cost effective to electric ratepayers in the commonwealth over the term of the contract taking into consideration potential economic and environmental benefits to the ratepayers;
- (iv) avoid line loss and mitigate transmission costs to the extent possible and ensure that transmission cost overruns, if any, are not borne by ratepayers;
- (v) allow long-term contracts for clean energy generation resources to be paired with energy storage systems;
- (vi) guarantee energy delivery in winter months;
- (vii) adequately demonstrate project viability in a commercially reasonable timeframe; and
- (viii) where feasible, create and foster employment and economic development in the commonwealth.

¹⁷ 83D(e).

¹⁸ 83D(d)(5)(i)-(viii).

¹⁹ 220 C.M.R. 24.05(1)(a).

IV. ARGUMENT

The proposed contracts are not cost effective to electric ratepayers in Massachusetts over the term of the contract when potential economic and environmental benefits to the ratepayers are considered.²⁰ Despite the Department's clear affirmation of the importance of hydroelectric generation being incremental to historical or otherwise expected deliveries in D.P.U. 17-32, this incrementality requirement was abandoned in the final contracts, which fail to guarantee that imports will be significantly higher under the contracts than they are presently. Moreover, the contracts fail to ensure that the generation, which will be drawn from HQ's existing facilities, is actually incremental to what those facilities would otherwise have been able to produce. Consequently, Massachusetts ratepayers are being asked to foot an enormous bill for a product that they may already be receiving, and one that may not result in a real world reduction in greenhouse gas emissions. Because the contracts fail to guarantee these critical economic and environmental benefits, they should be rejected.

A. The Proposed Contracts Fail to Ensure an Economic Benefit to Massachusetts Ratepayers Because They Do Not Require that the Hydroelectric Generation Being Purchased is Incremental to Hydroelectric Generation New England Already Receives.

In D.P.U. 17-32, the Department concluded that the EDCs "appropriately applied discretion when determining that hydroelectric generation should be incremental."²¹ Mandating incrementality for hydroelectric generation is critical for at least two reasons. First, incrementality is necessary for fairness and symmetry across different types of resources. As the Department pointed out, incrementality is already required for "new Class I renewable portfolio

²⁰ 83D(d)(5)(iii); 220 C.M.R. 24.05(1)(a)(3).

²¹ Order D.P.U. 17-32 at 33.

standard eligible resources,”²² which only qualify under Section 83D if they “have not commenced commercial operation prior to the date of execution of a long-term contract” or they “represent the net increase from incremental new generating capacity at an existing facility after the date of execution of a long-term contract.”²³ It would be anomalous to require Class I renewable resources to be incremental but not require the same of hydroelectric generation. More fundamentally, incrementality goes to the heart of the economic benefit that would be needed to justify the massive financial outlay asked of Massachusetts ratepayers here.

The proposed contracts would render the Department’s incrementality requirement meaningless. Rather than defining “Incremental Hydroelectric Generation,” the contracts state that “the output of the Hydro-Québec Power Resources, delivered through the New Transmission Facilities . . . shall constitute incremental hydroelectric generation during the Services Term,”²⁴ eliminating the previously-included definition.²⁵ But asserting that the deliveries are incremental does not make them so.

Indeed, the EDCs rely on a concept of incrementality that was expressly rejected by the Department in D.P.U. 17-32. In justifying their approach to incrementality, the EDCs stated that “[t]he burden of proof in our mind was on Hydro-Quebec folks to tell us – to show us that they could deliver over and above the 14.8 [TWh historical average]. Once they showed us that, we felt that they met the incremental requirements at that point.”²⁶ But this is precisely the modified definition of “Incremental Hydroelectric Generation” proposed by HQUS in D.P.U. 17-32²⁷ that

²² *Id.*

²³ See 83B (definitions).

²⁴ JU-3-A at 7; JU-3-B at 7; JU-3-C at 7 (emphasis added).

²⁵ See WP Support Tab G at 11, 19.

²⁶ Hr’g Tr. 202:15-19 (Waltman); see also Hr’g Tr. 204:9-12 (acknowledging that, while there was “no guarantee” Hydro-Québec was offering the historic average of 14.8 TWh, the EDCs “showed that they had the capacity . . . to deliver that.”) (Waltman) (emphasis added).

²⁷ Cf. Order D.P.U. 17-32 at 32 (quoting HQUS Comments at 8 requesting definition of Incremental Hydroelectric Generation be modified to mean “Firm Service Hydroelectric generation that is capable of providing net increase in

was rejected by the Department given its inconsistency with Section 83D's purpose to "facilitate the financing of Clean Energy Generation resources."²⁸

The only provisions in the contracts that purport to establish a baseline for deliveries from Hydro-Québec outside of the contracted 9.55 TWh fall far short of ensuring true incrementality. Although the specific formulations differ in the contracts for the different EDCs,²⁹ in all cases the threshold levels of deliveries below which penalties apply under the contracts are significantly smaller than historic average or otherwise expected deliveries.

To begin with, the 3 TWh baselines in the proposed contracts for Eversource and Unitil are a grossly inadequate substitute for requiring actual incrementality in these contracts. Indeed, the EDCs' rationales for the sizing of 3 TWh baseline evidence no concern for ensuring a reasonable bargain for Massachusetts ratepayers. Eversource explained that the 3 TWh value was arrived at through "asking [HQ], you know, what number they had in mind and phone discussions."³⁰ Even more problematically, Unitil testified that: "I think we were looking for a volume that [HQ] could absolutely agree to."³¹ When facing a potential \$12.5 billion obligation where the benefit of the bargain hinges on the product being additional to what they're already receiving, Massachusetts ratepayers deserved more zealous protection.

The National Grid contract's baseline is higher, but still fatally deficient. As an initial matter, the 9.45 TWh unadjusted starting level of the National Grid baseline is on par with the lowest level of historical deliveries in the past ten years.³² As the Attorney General's witness Mr.

MWh per year of hydroelectric generation from the bidder and/or affiliate as compared to the 3 year historical average delivery of hydroelectric generation from the bidder and/or affiliate within or into the New England Control Area") (emphasis added).

²⁸ Order D.P.U. 17-32 at 33.

²⁹ Cf. Ex. JU-3-A Exhibit H to Ex. JU-3-B Exhibit H to Exhibit JU-3-C Exhibit H.

³⁰ Hr'g Tr. 199:13-15 (Waltman).

³¹ Hr'g Tr. 199:18-19 (Furino).

³² Hr'g Tr. 208:6-8 (Brennan) ("I believe within the last ten years one year they went as low as 9.45 in those historical flows.").

Murphy observes, recent deliveries have been trending upward, with 2017 deliveries nearly double the 9.45 historic low.³³ Additionally, the National Grid baseline is subject to up to six downward adjustments that take it even farther out of the range of historical average and likely future deliveries.³⁴ Based on 2017 ISO-NE Locational Marginal Price data, NextEra’s witnesses determined that just one of these adjustments would have lowered the baseline in that year by 1.9 TWh.³⁵ Setting aside whether the downward adjustments identified in Appendix H of the National Grid contract duplicate those already incorporated through the negotiation process to justify the 9.45 TWh starting point,³⁶ even by National Grid’s own calculation the “net increase per year” under its proposed contract with no subtractions from the 9.45 TWh baseline is only 5.6 TWh,³⁷ far short of the contracted 9.55 TWh. With a 1.9 TWh downward adjustment on par with what NextEra’s witnesses calculated for just a single adjustment factor, this “net increase” would be only 3.7 TWh.

Given the significant deltas between the baselines in all three of the EDCs’ contracts and actual historic import levels, the benefits of the project can only meaningfully be evaluated based on what the final contracts actually guarantee to ratepayers. But this is not the approach the EDCs took. The EDCs testified repeatedly that, despite the elimination of an incrementality requirement in the final contracts and its replacement with the Exhibit H provisions, they believe actual deliveries will continue to mirror historic ones.³⁸ And they modeled the benefits of HQUS’s proposed deliveries as though they were incremental to actual historic import levels, not

³³ Ex. AG-DM-Rebuttal-1 at 14:19-20, 16:23-24; *see also* Hr’g Tr. 208:8-9 (Brennan) (“I think one was close to 17.9, close to 18.”).

³⁴ Ex. JU-3-B at 92-93 (Exhibit H).

³⁵ Joint Testimony of Russo, Stoddard, and Whitley at 15:5-11.

³⁶ *See* Hr’g Tr. 206:7-207:12 (Brennan) (describing negotiation process involving repeated application of downward adjustments from initial 14.8 TWh initial negotiating point).

³⁷ EDC-RB-1 at 26-27.

³⁸ *See e.g.*, Hr’g Tr. 25:5-6 (Brennan) (“It’s not necessarily reflective of what we expect or hope”); Hr’g Tr. 30:23-31:1 (Furino) (explaining that the 3 TWh baseline is “really not expected -- does not reflect our expectation. Our expectation is much higher.”).

to the minimum baselines in the final PPAs.³⁹ This approach to calculating benefits is flawed, and any modeled benefits based on assumed full incrementality should be disregarded. Indeed, the EDCs acknowledge that the model would have yielded different results if the Hydro-Québec bid had been evaluated using the minimum baseline values in the contracts rather than historical imports.⁴⁰ And the NextEra witnesses' testimony illustrates this point as well, observing that the effective transmission costs per kW-month under the contract increase dramatically if the contracts only result in minimum baseline rather than fully incremental hydroelectric deliveries.⁴¹

Ultimately, the EDCs' failure to incorporate meaningful safeguards in the contracts to ensure the generation being procured is truly incremental to what Hydro-Québec has been, and is, reasonably expected to be importing into New England in the future, absent the NECEC line, denies Massachusetts ratepayers the benefit of the bargain. Given Hydro-Québec's current import capacity of 18.2 TWh into New England⁴² and recent deliveries near that level, the EDCs have not shown that the proposed contracts, as written, represent cost-effective mechanisms for procuring low-cost renewable energy on a long-term basis, as required by Section 83D. Rather, these contracts could readily result in ratepayers paying for a service (Incremental Hydroelectric Generation) that Hydro-Québec is not delivering, precisely the result the Department attempted to insure against through its Order in D.P.U. 17-32.⁴³

³⁹ Hr'g Tr. 48:24-50:18; *see also* Hr'g Tr. 180:20-21 ("We evaluated the bid. What happened after that I'm not aware of.") (Rudkevich).

⁴⁰ Hr'g Tr. 50:19-24 (Waltman).

⁴¹ *See* Joint Testimony of Russo, Stoddard, and Whitley at 18:12-21.

⁴² Ex. EDC-RB-5 at 2.

⁴³ *Cf.* Order D.P.U. 17-32 at 33.

B. The Proposed Contracts Fail to Ensure an Environmental Benefit to Massachusetts Ratepayers Because They Do Not Require that the Hydroelectric Generation Being Purchased is Incremental to Generation the Facilities Currently Produce.

Not only do the proposed contracts fail to ensure an economic benefit for Massachusetts ratepayers, but, as drafted, they also fail to ensure an environmental benefit. To demonstrate an environmental benefit in the form of real world greenhouse gas emissions from contracting with Hydro-Québec for power from its existing network of hydroelectric facilities, the EDCs would need to structure the contracts to ensure that all power being purchased was additional to what those facilities are currently producing. The EDCs have not done so.

The EDCs attempt to deflect concerns about whether the contracts will result in real world greenhouse gas emission reductions by pointing out that the Global Warming Solutions Act merely requires reductions in statewide greenhouse gas emissions.⁴⁴ But this is a Pyrrhic victory for the EDCs. Even if the contracts facilitate paper compliance with the Global Warming Solutions Act, the Section 83D evaluation criteria concern themselves with environmental benefits.⁴⁵ There is no environmental benefit to shifting the greenhouse gas emissions of existing generation from one jurisdiction's greenhouse gas balance sheet to another.⁴⁶ Nothing is gained environmentally unless the facilities producing the generation being contracted for are producing additional MWh of generation as a direct consequence of these contracts.

As drafted, the proposed contracts do not require, and the EDCs have not demonstrated, that the generation being purchased is incremental to what the Hydro-Québec facilities identified in the contracts currently produce.⁴⁷ The EDCs cite to a single uncorroborated letter from Hydro-

⁴⁴ Ex. EDC-RB-1 at 8:19-9:1.

⁴⁵ See 83D(d)(5)(iii)

⁴⁶ See, e.g., Ex. NEER-RSW-S-1 at 2 (explaining that the impact of emissions of carbon and other greenhouse gas is on global-level climatic systems).

⁴⁷ See, e.g., Ex. AG-DM-Rebuttal-1 at 17:8-10.

Québec's Director of Energy Transactions claiming that Hydro-Québec spilled 4.5 TWh worth of energy in 2017 and 10.4 TWh worth of energy in 2018 (through mid-December) due to lack of economic transmission, and that Hydro-Québec anticipates that future spillage will be similar to 2018.⁴⁸ If these projections are accurate, the contracts could presumably have incorporated protections for ratepayers by ensuring that the generation procured represents truly incremental generation from the identified facilities in the Hydro-Québec system. As discussed in Section IV.A above, the contracts fail to even require that the imported generation is incremental to historic or otherwise expected deliveries of hydroelectric generation into New England, let alone that the generation is also incremental to what Hydro-Québec's existing facilities are already producing. Moreover, if Hydro-Québec's spillage forecasts are inaccurate, the proposed contracts are merely relabeling an existing product at a high premium to Massachusetts ratepayers. In either event, the contracts fail to guarantee an environmental benefit commensurate with their cost.

V. CONCLUSION

While the EDCs are proposing to receive a guaranteed remuneration of 2.75 percent of the annual payments under the contracts and Transmission Service Agreements, the contracts as negotiated provide ratepayers no similar guarantee of benefits. Rather, the contracts grant HQUS significant leeway regarding how much, if at all, to increase hydroelectric deliveries into New England and fail to ensure that deliveries from existing facilities are incremental to the current output of those facilities. Absent those guarantees, which directly implicate the economic and environmental benefits of the bargain, the contracts are not cost-effective. For the reasons set

⁴⁸ Ex. EDC-RB-5 at 1.

forth above, the Sierra Club respectfully requests that the Department deny the proposed contracts as inconsistent with the requirements of Section 83D.

Respectfully submitted,



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Dated: March 22, 2019

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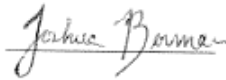
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served true copies of the INITIAL BRIEF OF THE SIERRA CLUB on the parties on the service lists in accordance with the Procedural Notice and Ground Rules in the above-caption dockets.

Sincerely,



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