



April 3, 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 Reply Brief of the Sierra Club. An original and one copy are being hand-delivered for filing in each of the above-referenced dockets.

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)	
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REPLY BRIEF OF THE SIERRA CLUB

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Dated: April 3, 2019

TABLE OF CONTENTS

I. INTRODUCTION1

II. ARGUMENT 2

 A. The Proposed Contracts Fail to Ensure an Economic Benefit to Massachusetts Ratepayers
 3

 B. The Proposed Contracts Fail to Ensure an Environmental Benefit to Massachusetts
 Ratepayers5

III. CONCLUSION 6

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REPLY 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 Reply Brief in the above-captioned proceedings.

I. INTRODUCTION

The Department is reviewing contracts implicating billions of dollars of electric ratepayer investment based, in important part, on whether those contracts are cost effective to ratepayers in the Commonwealth over the 20-year term of the contracts taking into consideration potential

economic and environmental benefits to the ratepayers. As set forth in Sierra Club’s initial brief, in order for the contracts to ensure economic and environmental benefits, they must provide Massachusetts ratepayers with something they’re not already receiving. As proposed, this is not the case. The contracts do not guarantee incremental hydropower deliveries into New England above historic or otherwise expected power flows. And they likewise fail to ensure additive greenhouse gas emission reductions. None of the parties supporting approval of the contracts addresses the fatal shortcomings of their structure or countenances the Department’s order in D.P.U. 17-32 affirming the importance of hydropower contracted through Section 83D being incremental. Absent provisions ensuring the contracts result in fully additional hydroelectric deliveries and produce actual—not just paper—greenhouse gas emission reductions, the contracts should be denied.

II. ARGUMENT

As set forth in the Sierra Club’s initial brief, 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.¹ This is because the precondition of incrementality of the hydroelectric purchases—previously affirmed by the Department in D.P.U. 17-32—was jettisoned in the final contracts. Moreover, these contracts also fail to ensure that the purchased generation, which will be drawn from HQ’s existing facilities, is actually incremental to what those facilities would otherwise have been able to produce.

¹ Initial Br. of Sierra Club at 7-13 (hereinafter “Sierra Club Br.”); *see also id.* at 6 (citing 83D(d)(5)(iii); 220 C.M.R. 24.05(1)(a)(3)).

A. The Proposed Contracts Fail to Ensure an Economic Benefit to Massachusetts Ratepayers

Contrary to the positions of a number of parties,² the contracts as proposed are not cost-effective to Massachusetts ratepayers over the term of the contracts when potential economic benefits are properly accounted for.

The electric distribution companies (EDCs) contend that existence of an open and robust competitive bidding process demonstrates the cost-effectiveness of the resulting contracts.³ While that position could potentially be defensible if the final contracts had hewed to the terms of the request for proposals (RFP), the contracts under review diverge from the RFP bids in critical ways. Most significantly, the final contracts replace the RFP's requirement that hydroelectric generation be incremental⁴ with minimum baseline levels of deliveries below which penalties would be assessed.⁵ As detailed in Sierra Club's initial brief,⁶ the contracted baselines are well below historical average deliveries or otherwise expected deliveries and fail to guarantee actual deliveries under the contracts will be incremental hydroelectric generation. Since the calculated "benefits" of the proposal were based on an evaluation of the bid and not the final contracts⁷ which diverge from the bid in fundamental ways, any "benefits" calculated through this evaluation are not reliable⁸ and should be discounted. The EDCs' reliance on the

² Joint Initial Br. of Electric Distribution Companies at 25-26 (hereinafter "EDCs Br."); Initial Br. of Dept. of Energy Resources at 5-6 (hereinafter "DOER Br."); H.Q. Energy Services (U.S.) Initial Br. at 10 (hereinafter "HQUS Br."); Initial Br. of Central Maine Power Co. at 6-7 (hereinafter "CMP Br.).

³ EDCs Brief at 25.

⁴ The RFP 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." Ex. JU-2 at 5.

⁵ See Exhibits H to Ex. JU-3-A, JU-3-B, and JU-3-C.

⁶ Sierra Club Br. at 9-10.

⁷ 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).

⁸ See Hr'g Tr. 50:19-24 (Waltman) (acknowledging 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).

robustness of the RFP process to, in turn, demonstrate the robustness of the substance of the contracts, is misplaced.

In addition, several parties appear to disregard the issue of incrementality altogether and simply argue that the contracts are a cost-effective means of procuring generation.⁹ But any meaningful evaluation of cost-effectiveness hinges on the nature of the product that is being procured, as the Department has affirmed.¹⁰ A cost-effective power purchase agreement (PPA) for financing a new wind farm and procuring its output would not automatically become a cost-effective PPA for procuring energy from an existing wind farm, which is already financed and has every incentive to sell its output. Particularly with other truly incremental clean energy bids scoring very highly in Stage 2 of the RFP,¹¹ it simply does not follow that, just because the New England Clean Energy Connect (NECEC) bid was deemed cost-effective for providing incremental hydroelectric generation, it is cost-effective at the same price for providing non-incremental hydro. Indeed, as RENEW points out in its initial brief, the levelized cost of hydro via the NECEC line (\$59.05/MWh) is only slightly lower than the levelized cost of the winning Section 83C bid from Vineyard Wind (\$64.97/MWh),¹² and the latter provides truly incremental, actually renewable generation, a far greater value to Massachusetts ratepayers.

Finally, as the Attorney General observed, it was deeply inconsistent for the EDCs to decline to advance the highest scoring bids from Stage 2 to Stage 3 of the RFP because those bids provided less than the target 9.45 TWh per year of generation, and then negotiate baselines for hydroelectric generation via NECEC that guarantee even smaller amounts of incremental

⁹ See, e.g., DOER Br. at 11-12; CMP Br. at 6-7; HQUS Br. at 10.

¹⁰ See, e.g., Order D.P.U. 17-32 at 33 (affirming that the nature of the generation being procured is critical to the analysis, noting with regard to the importance of incrementality that “[i]f 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.”).

¹¹ Ex. AG-DM at 22-23 (the two highest scoring bids at Stage 2 were not advanced to Stage 3).

¹² Initial Br. of RENEW Northeast, Inc. at 4 (citing Indep. Evaluator 83D Rpt. Redacted at 70; Indep. Evaluator 83C Rpt. Redacted at 56).

generation into New England.¹³ The Department should not require Massachusetts ratepayers to enter into 20-year contracts for hydroelectric generation that is “incremental” in name only.¹⁴ This is not cost-effective and does not provide Massachusetts ratepayers with an economic benefit.

B. The Proposed Contracts Fail to Ensure an Environmental Benefit to Massachusetts Ratepayers

The final contracts, as submitted, also fail to guarantee actual environmental benefits in the form of greenhouse gas (GHG) reductions, undercutting their ability to meet the statutory and regulatory approval criteria.¹⁵

Several parties contend that the contracts will produce GHG emission reduction benefits, uniformly basing their claims on the Taboris Caramanis and Rudkevich (TCR) modeling.¹⁶ But as explained above and in Sierra Club’s initial brief,¹⁷ the TCR modeling looked at the bids, which contained an incrementality requirement, not the final contracts. As noted, the incrementality requirement was negotiated out of the final contracts, undercutting the representativeness of the TCR modeling results. The GHG benefits identified by the TCR modeling were a product of the model’s assumption that the contracts resulted in hydroelectric deliveries that were fully incremental to historic deliveries into New England.¹⁸ Since that assumption is flawed, the modeled GHG benefits cannot be relied upon.

¹³ Initial Br. of the Office of the Attorney General at 33-34.

¹⁴ See JU-3-A at 7; JU-3-B at 7; JU-3-C at 7 (stating without support that “the output of the Hydro-Québec Power Resources, delivered through the New Transmission Facilities . . . shall constitute incremental hydroelectric generation during the Services Term”).

¹⁵ See Sierra Club Br. at 12-13 (discussing compliance with 83D(d)(5)(iii); 220 C.M.R. 24.05(1)(a)(3)).

¹⁶ See, e.g., CMP Br. at 7; DOER Br. at 8; Initial Br. of Conservation Law Foundation at 7 (hereinafter “CLF Br.”).

¹⁷ Sierra Club Br. at 10-11.

¹⁸ Hr’g Tr. 48:24-49:3 (Rudkevich) (“The model used historical hourly schedules of energy from Hydro-Quebec over the period of 2012 and assumed that the same hourly schedule would persist into the future.”). TCR used 2012 deliveries because those values were representative of 2014 to 2016 historical deliveries. Hr’g Tr. 48:1-8.

In addition, some parties argue that the contracts will facilitate accounting compliance with the Global Warming Solutions Act (GWSA) and that this is the only relevant climate consideration.¹⁹ This argument has two flaws. First, it overlooks the statutory approval standard, which requires an environmental benefit,²⁰ not merely the ability of the Commonwealth to take paper accounting credit for otherwise-occurring GHG emission reductions. As NextEra's witnesses pointed out, GHG emissions have impacts on global-level climatic systems²¹ necessitating a decrease in overall GHG emissions as a precondition to establishing an environmental benefit. Paper compliance with the GWSA is simply the wrong metric for evaluating the environmental impacts of the contracts and ensuring their compliance with the evaluation criteria in Section 83D. Second, even if GWSA compliance were the correct metric, the flaws with the structure of the contracts discussed above undercut the ability of Massachusetts to take credit even for paper reductions in GHG emissions.

Absent provisions that ensure not merely a paper GHG benefit, but also an actual GHG benefit, the contracts fail to provide an environmental benefit and should be denied.

III. CONCLUSION

Consistent with the decisional criteria in Section 83D, the Department should ensure that Massachusetts ratepayers are receiving the full benefit of the bargain from these multi-billion dollar long-term contracts. Unfortunately, given the flaws in the structure of the contracts, they are not. Rather than procuring a product that would have ensured incremental deliveries—to the benefit of Massachusetts ratepayers—the EDCs have proposed contracts that protect the interests of Hydro-Québec and the companies' shareholders without meaningfully advancing clean

¹⁹ See, e.g., CLF Br. at 4-9.

²⁰ See 83D(d)(5)(iii).

²¹ Ex. NEER-RSW-S-1 at 2.

energy. For the reasons set forth above, and in the initial brief of the Sierra Club, the proposed contracts should be denied.

Respectfully submitted,



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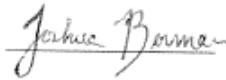
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served true copies of the REPLY 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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