New England States
Committee on Electricity

Comment Opportunity
Coordinated Competitive Renewable Power Procurement

Due Date: August 31, 2012

August 10, 2012 - The New England States Committee on Electricity (NESCOE) today issued a Coordinated Competitive Renewable Power Procurement Draft Work Plan. NESCOE welcomes comment on the Draft Work Plan by **Friday, August 31, 2012**. This is in furtherance of the New England Governors' July 2012 Resolution concerning Coordinated Competitive Power Procurement, which can be viewed at this link: http://www.nescoe.com/uploads/CP_Resolution_July_2012.pdf

NESCOE requests that any person who submits comments in excess of five (5) pages also submit a one (1) page Executive Summary. NESCOE further requests that any person who identifies an impediment to any element of the Draft Work Plan also identify potential solutions to such impediment. Interested persons should send comments to MickiBertrand@nescoe.com.

Following receipt and review of comments, NESCOE will schedule a session to allow for discussion of related issues. The timing and details of such session will follow.

Service List - Any person interested in being placed on a service list related to Coordinated Competitive Renewable Power Procurement should send a request and contact information to MickiBertrand@nescoe.com.

New England States
Committee on Electricity

COORDINATED COMPETITIVE RENEWABLE PROCUREMENT
DRAFT WORK PLAN
August 10, 2012

I. SUMMARY

In 2009, the New England states began considering the potential benefits of joint or separate but coordinated competitive renewable power procurement as a means to identify the lowest "all-in" cost resources available to meet state renewable energy objectives. The following documents and work products have informed the states on this matter since that time:

- The 2009 *New England Governors' Renewable Energy Blueprint* prepared by NESCOE and associated technical analysis (2009 Economic Study) prepared by ISO-New England Inc. (ISO-NE)
- The 2010 *Report to the New England Governors on Coordinated Procurement*
- A 2011 *Request for Information* from renewable developers and others including transmission owners
- A 2012 *Renewable Supply Curve Analysis* that provided information about the relative costs of various wind resources[1]

In addition, during the past several years, ISO-NE has conducted a series of studies related to wind development in New England, such as the *2010* and *2011 Economic Studies* and the *New England Wind Integration Study*.

Potential Benefits of Coordinated Procurement

The New England states have ambitious clean energy goals. Analysis suggests that renewable resources located in and around New England could be developed at a lower "all-in" cost to consumers than the cost of building transmission to move equivalent amounts of renewable power from other parts of the country to New England.

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[1] References to wind resources in this draft Work Plan does not indicate a preference for wind relative to other resource types. Rather, references to wind reflect that wind has been the subject of several ISO-NE studies and that wind was the predominant resource that responded to NESCOE's Request for Information, which was open to all resources that satisfy five New England States' Renewable Portfolio Standard requirements and Vermont's renewable energy goals.

Competitive markets have met the demand to date for renewable resources. However, going forward for several reasons it may be necessary[2] to bring lower-cost New England renewable resources to fruition through the use of power purchase agreements and other mechanisms and/or policies.

From 2009-2011, the New England Governors adopted a series of resolutions expressing interest in exploring joint or separate but coordinated, competitive procurement as a means to identify those renewable resources located in or proximate to the region that could help meet the region's clean energy goals at the lowest "all-in" cost (generation and transmission combined).

In 2010, a *Report to the New England Governors on Coordinated Procurement* concluded such activity could "... aggregate demand for renewable power and enhance buying power; stimulate the market for renewable resources; and, provide value to renewable project developers by creating larger revenue streams than might otherwise be possible. Using cooperative competitive processes may, therefore, facilitate development of cost-effective, low-carbon renewable electric generation in and around the region."[3] Further, coordinated competitive procurement fits New England's preference for competitive processes – rather than central planning - to identify what resources are built where, and by whom.

Development of new or increased transmission capacity will most likely be needed to interconnect the amount of renewable energy needed to meet aggressive renewable energy goals. Long-term contracts for renewable energy could stimulate necessary transmission development. Proceeding in a coordinated fashion could facilitate efficient transmission development consistent with state policy goals.

On July 30, 2012, the New England Governors adopted a *Resolution Directing NESCOE to Implement a Work Plan for the Competitive Coordinated Procurement of Regional Renewable Power.* The Resolution, attached as an Appendix to this draft Work Plan, identifies the goal of issuing a solicitation for procurement by the end of December 2013.

Coordinated Procurement Draft Work Plan

In the spring of 2012, the NESCOE Managers requested that NESCOE staff, which focuses in part on system planning and expansion, prepare a draft Work Plan associated

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[2] Several factors influence the New England competitive market's ability to attract and support additional renewable resources, including: a) fundamental shifts in the natural gas supply have lowered forecasted energy revenues for renewable resources; b) macroeconomic conditions have exacerbated the challenge of financing renewable resource development; c) diminishing available transfer capacity on the New England transmission system in regions with lowest cost renewable resources have complicated the interconnection incentives; d) changing market rules that may limit renewable resources ability to clear in the current capacity market, and e) the clogged interconnection queue, which can impede all generation resource development.

[3] See, *2010 Report to New England Governors on Coordinated Procurement* at page 5.

with coordinated competitive procurement of renewable resources that could help the states achieve their renewable resource objectives at the lowest all-in cost - the cost of generation and transmission combined. This preliminary draft Work Plan was provided in response to the request and formed the basis for the Governors' July 2012 Resolution concerning Coordinated Competitive Procurement.

The draft Work Plan includes: 1) identification of those steps necessary toward one or more regulatory proceedings in which each state's regulatory authorities could consider whether to approve long-term contract(s) for renewable resources; 2) rough estimates of timeframes associated with steps (Activities) in the procurement and contracting process; and 3) identification of open issues, including some that require advance discussion and resolution.

The process described here (and illustrated immediately below in the Coordinated Procurement Process Diagram) does not assume any state would make any commitment with regard to procuring any level of resources unless and until its state regulatory authority reviews and approves - or rejects - a contract brought to that regulatory authority by an Electric Distribution Company (EDC) operating in that state or by some other entity designated by a state to enter into contracts for renewable power. Further, the process allows for any number of states - two, three or four - to move forward together to procure resources even if some other states elect not to participate. The process assumes:

> 1) The six New England states support the development and issuance of a Request for Proposals (RFP) with no commitment by any state at that point in time to procure any level of resources. *The New England Governors' July 2012 Resolution concerning Coordinated Procurement expresses six state support for issuing such RFP.*
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> 2) The six New England states participate through state personnel assigned to a Procurement Team (PT), which also may include EDC representatives from some states as each state deems appropriate, in the development of preliminary procurement-related documents and in the resolution of process and legal questions to ensure the process conforms to requirements and preferences of all states.[4] At this stage, there is no commitment by any state to procure any level of resources.
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> 2a) The PT conducts an open process to solicit stakeholder comments on the draft RFP, draft form contract and draft evaluation criteria, and to address proactively any challenges or disputes about the contemplated process. Any stakeholder

[4] The Draft Work Plan's PT framework can accommodate different configurations, which may be determined on a state-by-state basis. Participation of state regulatory authority staff and EDC representatives will vary by state. Depending upon statutory authority and each state's preferences, some states may wish to exclude EDC participation while others would permit or even require direct EDC participation on the PT. Further, each state may choose to assign state energy office or state regulatory authority staff to represent the state's interest.

comments received would be considered, and either reflected in the final RFP documents, or rejected for reasons articulated by the PT.

2b) The PT issues the final RFP and RFP-related documents, and conducts the RFP process. This includes soliciting and answering questions from bidders[5] collecting bidder responses, addressing any ambiguities in responses, evaluating the responses, and developing a "short list" of preferred responses, in accordance with the final evaluation criteria.

3) Each EDC (or otherwise as each state deems appropriate such as, for example, Maine, where the regulatory authority may administer procurements) will decide whether to pursue long-term contracts with the PT's preferred projects(s).[6] Each state may have different state agencies involved in the RFP process; approval of the contracts would remain with the state regulatory authority. At this stage, there is no commitment by any state to procure any level of resources.

4) EDCs that enter into contracts with the PT's preferred project(s) assign allocated portions of those project(s) among participating EDCs such that each state could consider and approve individual contracts reflecting their jurisdictional EDCs' allocated project(s) portion. At this stage, there is no commitment by any state to procure any level of resources.

5) Each state's regulatory authority ultimately considers whether to approve long-term contracts with project(s) the EDC advances to their respective regulatory authority.

6) Coordinated procurement could result in any number of states – as few as two or as many as all six - deciding by regulatory order to approve one or more contracts. Each state's commitment to procure resources would arise in the context of the state regulatory authority's consideration of proposed contracts.

Finally, the process described here and represented in the diagram below could be used in an initial, relatively modest process – not one designed to fully meet all six states' long-term renewable energy goals in the course of one procurement process - with subsequent procurement processes for incremental resources modified as informed by experience.

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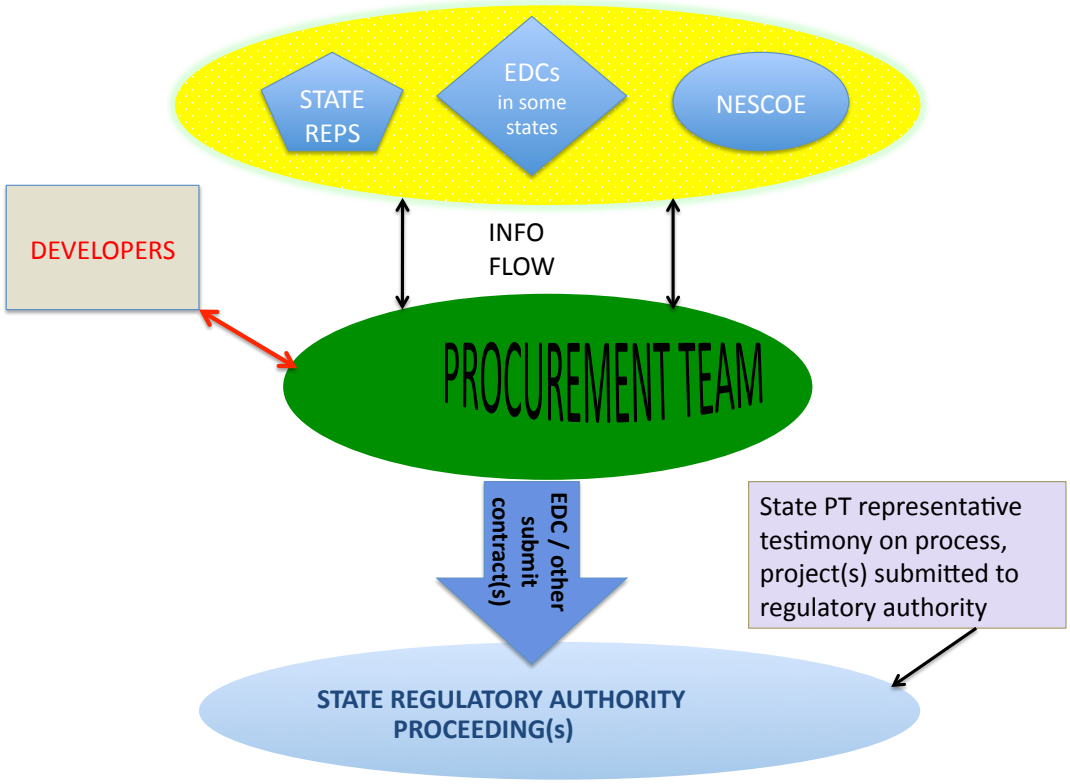
[5] Subject to discussion by the Legal Subteam and or PT, Bidders may include, for example, renewable power project developers or suppliers who own or have contractual relationships with renewable power generators.

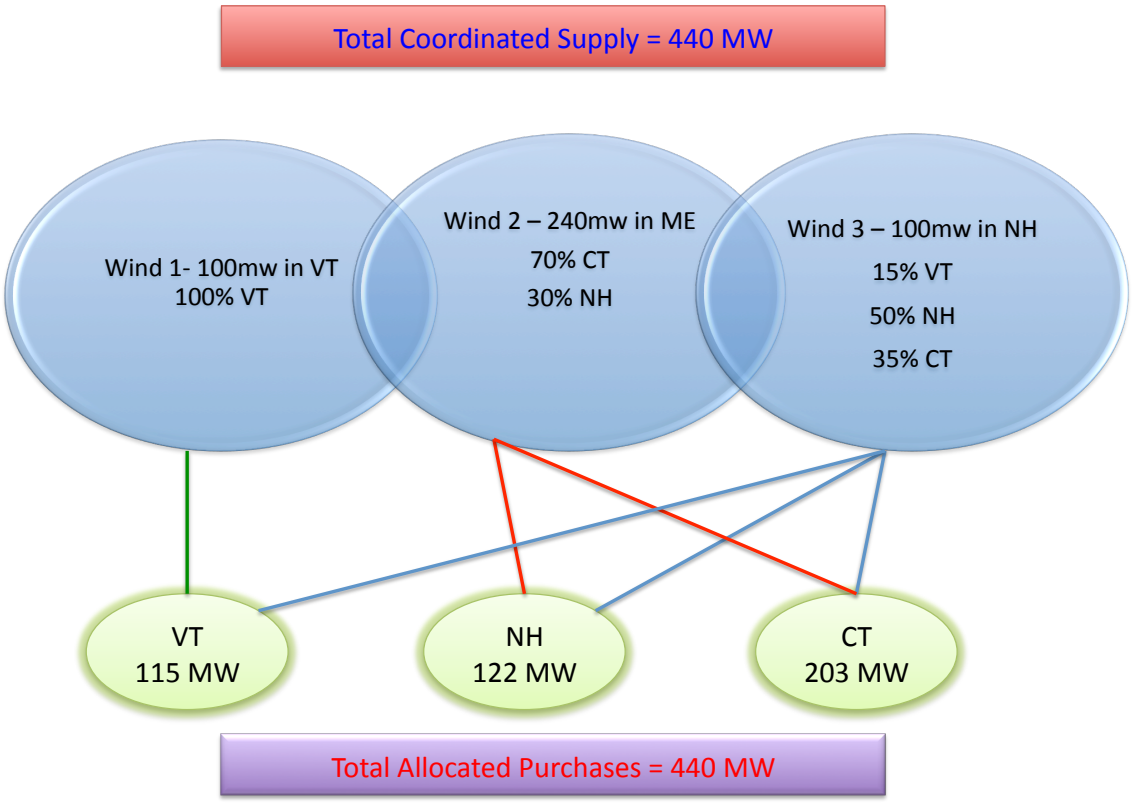
[6] Each state's approach to procurement may vary. Ultimately, the Draft Work Plan contemplates EDCs being the contractual counterparties to any power purchase agreements that may result from this process. The specific details of how each state (that wishes to procure renewable resources through this process) proceeds from a commitment to a contract will be determined through state participation on the Legal Subteam.

COORDINATED PROCUREMENT PROCESS DIAGRAM



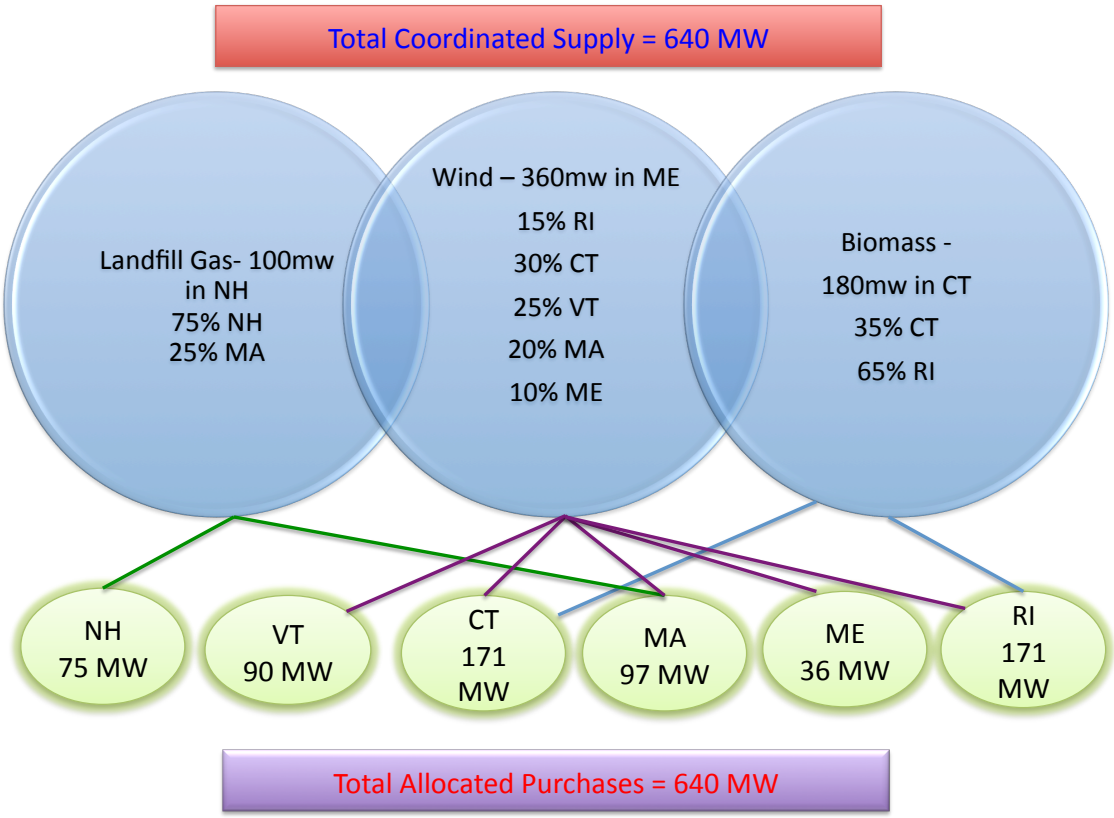
As noted, the process contemplates that any contracts with projects that the EDCs or others as appropriate may advance to state regulatory authorities for review and approval (or rejection) are allocated across participating EDCs so that the benefits of the PT's preferred projects are shared equitably among states that elect to enter into contracts (e.g., the benefits of the contracts will be apportioned as agreed to among the EDCs). State regulatory authorities may need to revisit their initial allocation decisions if a state siting authority subsequently issues a ruling on the transmission facility and it includes new conditions that influence project economics or the flow of its benefits. The following charts illustrate examples of such project output sharing, which would be reflected in individual contracts with respective EDCs, under various hypothetical scenarios.

Illustrative Allocation Scenario 1: Assumes that following a six (6) state coordinated Request for Proposal (RFP) process, only three (3) state regulatory authorities ultimately decide to approve contracts with an aggregate total of 440MW of wind power from three (3) wind projects.[7] Each of the three (3) states in this scenario approve contracts representing different amounts of MW. Each pathway between the project and the states represents a separate contract that the EDC in each state files with various state regulatory authorities for review and approval or rejection. As noted above, the process allows for any number of states to move forward together to procure various types of renewable resources even if other New England states elect not to consider or approve contracts in this coordinated procurement round.



[7] As noted above, the resource type used in this example is for illustration purposes. The next example shows coordinated procurement of several resource types within the same process.

<u>Illustrative Allocation Scenario II</u>: Assume that following a six (6) state coordinated RFP process, regulatory authorities in all of the six (6) states approve contracts with an aggregate of 640MW of renewable resources from three (3) resources – wind, landfill gas and biomass. Each of the six (6) states in this scenario approves contracts representing different amounts of MW. Each pathway between the project and the states represents a separate contract that the EDC in each state files with various state regulatory authorities for review and approval or rejection.



II. ESTIMATED OVERALL TIME-FRAME

An estimated timeframe from a regional Request for Proposal (RFP) announcement through document development and process execution to contract approval(s) following 180-day state regulatory proceeding(s) is roughly 24 months. The time estimated for each step (Activity) assumes participating state personnel on the PT consider coordinated procurement as a priority and provide direction and/or responses as needed to maintain the schedule. To the extent one or more states require more time than is allocated to each Activity in order to be responsive on any given Activity during the process, the overall estimated timeframe could be materially longer. Adherence to the published schedule is important throughout the process. It becomes critical after RFP respondents submit bids to move the process through to contract submission for approval in order to maintain the integrity of bids. For this reason, a successful process requires states to resolve all foreseeable issues in advance of commencing the process.

III. THRESHOLD ISSUES & POTENTIAL INCREMENTAL TIME

A. Process-Related Preliminary Considerations: The time states may collectively require to make some important threshold decisions would be incremental to the timeframes associated with each Activity in the procurement and contracting process that comprise that 24-month period. The threshold process-related issues include the following:

1) Determining Interest in Proceeding: Determine whether there is sufficient New England state collective interest in pursuing at least the initial stages of a coordinated, competitive renewable procurement process (e.g., participate in the creation and release of an RFP that does not commit a state to procure anything).

✓ *The New England Governors' July 2012 Resolution concerning Coordinated Procurement expresses six state support for issuing such solicitation.*

2) Evaluating Whether the Work Plan is Sufficiently Comprehensive: Assess whether the draft Work Plan includes all issues and steps each state may consider necessary in light of specific state statutory or regulatory provisions.

This assumes formation of a state Legal Subteam, described further below, to review the proposed process in light of six state statutory requirements. Such state Legal Subteam would later advise the PT.

3) Communications with Electric Distribution Companies: For those states that conclude participation on the PT is appropriate and/or necessary, communicate with and obtain agreement from respective EDCs to participate in coordinated procurement. Specifically, assuming state interest in pursuing coordinated, competitive power procurement, states that conclude EDC participation on the PT is appropriate and/or necessary will need to communicate

with EDCs to determine: a) the manner in which EDCs agree to participate in the process, including potential membership on the PT, pursuant to individual state preferences and/or requirements, and b) whether and under what conditions EDCs will consent to acting as a contractual counter-party and to allocation of costs associated with the projects the PT identifies as preferred. In states where EDC participation on the PT is problematic, states may conclude that some EDC technical analysis may be beneficial. In those cases, states may tailor EDC participation as appropriate.

Some EDCs, for example, claim that having long-term contracts on their balance sheet may lead to additional financial implications. To the extent EDCs raise such concerns, each state would need to respond accordingly. Some potential solutions include: 1) mitigating the impact of imputed debt on the credit rating of a purchasing EDC through regulatory policies which provide assurance of contract cost recovery (Standard & Poor's methodology, for example, applies a risk factor to the debt calculation which is intended to reflect the probability that contract costs will be fully recovered in rates - the greater the probability of contract cost recovery, the smaller the risk factor, and the smaller the amount of imputed debt from a particular set of contracts.)[8]; *and/or* 2) structuring contracts as financial rather than physical arrangements to help minimize EDC concerns.

It is not possible to predict with any degree of accuracy the time states individually and collectively will require to discuss and reach closure on the threshold issues above. It could range from one to many months. However, any issues that require state discussion and resolution should be resolved before the release of any eventual RFP to enable an RFP schedule to remain on track once it commences. Similarly, as noted, there can be no delay from the established timeframe after bidders submit bids to preserve bid integrity.

B. Procurement-Related Preliminary Considerations: In addition, if the states decide to proceed to issue an RFP, prior to commencing a coordinated procurement process and organizing a PT to execute Activities, the states should have a preliminary discussion concerning some basic procurement criteria preferences to help inform important decisions the PT will have to make. This may include determining collective preferences associated with issues such as:

1) **Possible preferred aggregate procurement volumes**: Consider identifying a rough estimate of renewable resources that each state could potentially be interested in procuring in light of state RPS requirements or other preferences.

2) **Identification of preferred eligible resource types**: Consider identifying preferred resource types, such as Class I renewable resources recognized by all

[8] See, Brattle Group paper for the Edison Electric Institute on debt imputation issue at page 36: http://www.hks.harvard.edu/hepg/Papers/Brattle%20Imputed%20Debt%2025%20May%202008%20final%20.pdf

New England states with a Renewable Portfolio Standards, wind only, wind plus landfill gas only, solar and biomass, etc.

3) **Identification of preferred products**: Consider indicating whether project developers should be required to submit information on one or more of the following:

    a) a bundled "all in" energy price, including all the necessary transmission system upgrade to deliver the renewable energy to the New England hub or some other specified location;
    b) an unbundled basis (price for renewable energy delivered at the closest point of interconnection with the bulk transmission system, with a separate price for transmission system upgrades necessary to deliver the energy to the New England hub);
    c) Renewable Energy Certificates (RECs) *only* to provide insight, based on actual project proposals, into the magnitude and split between the cost of the renewable resource and the required transmission infrastructure enhancements; *and/or*
    d) some other combination of products (RECs, installed capacity, energy delivered to specific locations, etc.) that may provide the most useful information for the PT's consideration.

4) **Identification of preferred evaluation criteria:** Consider indicating preferences about project evaluation criteria, such as whether price is paramount or whether the PT should assign weight to other factors. Non-price factors could include, as one example, project Generator Interconnection Queue position. Identifying project evaluation criteria with some clarity and specificity may be important to attract serious bids and merits the states' close attention.

Again, NESCOE staff cannot predict with accuracy how long states would require to consider and to reach agreement on the issues immediately above. However, many of these issues are not new. The states might be able to consider them in relatively short order, such as a month, for example.

IV. FORMATION OF STATE LEGAL SUBTEAM & THRESHOLD LEGAL ISSUES THAT MAY INFLUENCE PROCUREMENT DESIGN

In advance of commencing a coordinated competitive procurement process, the states should form a team of attorneys employed by state agencies (Legal Subteam) with experience in power procurement and knowledge of state statutory, regulatory and/or procedural requirements.

The Legal Subteam would: 1) consider threshold process issues and preemptively prepare for objections or impediments that some entities could raise, and 2) provide legal guidance to the PT throughout the procurement process. A Legal Subteam would more cost-effectively and efficiently address specific questions related to laws, regulations and

practices in each of the New England states than would other options, such as NESCOE counsel. A Legal Subteam would protect the integrity of the process and ensure that the procurement process is appropriately transparent and fair. To assist with coordination and execution, NESCOE would provide counsel and resources to supplement the core legal expertise of the individual states.

The Legal Subteam should consider and resolve certain threshold legal issues in the course of carrying out the coordinated procurement process. For example, some states may need to open proceedings to provide the regulatory context for procurement, and states will need to identify and satisfy legal and procedural prerequisites. Also, the PT would need to adopt mechanisms for the PT to receive confidential information from bidders and implement non-disclosure agreements in the context of a coordinated procurement.[9] Further, the Legal Subteam should identify and form responses to potential objections that EDCs or others have or might raise to participating in coordinated procurement in light of specific state statutory provisions. Some might include any potential:

- EDC reluctance to act as a counter-party and assume long-term obligations under power purchase contracts due to their perceived impact on utility balance sheets;
- EDC assertions that coordinated procurement might raise antitrust issues; and,
- EDC questions about the form of recovery of the costs EDCs would incur if regulatory authorities approve long-term contracts with renewable projects

None of the issues above is a likely obstacle to the goals of coordinated competitive procurement. Balance sheet concerns and cost recovery are economic issues that the states will need to resolve if the EDCs raise them in discussions about long-term contracts. Resolving these kinds of issues prior to commencing the RFP process increases its likelihood of success. Antitrust concerns may arise when parties engage in anticompetitive conduct; these are not likely to be implicated where the EDCs are engaged in a state-driven process whose objectives are to achieve public policy goals. Nevertheless, some EDCs have raised anti-trust concerns in the past in the context of comments on coordinated procurement.[10] While these issues are not likely to be impediments to coordinated procurement, these issues may influence aspects of the specific process design.

States will also need to consider rate issues before the PT begins drafting contracts. Interactions between federal and state jurisdiction, and the effect of FERC's jurisdiction over wholesale rates, will need to be factored into the proposed deal structure and pricing parameters.

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[9] For example, to the extent that EDCs participate on the PT, the EDC representatives with corporate affiliations to other market participants must keep PT deliberations and bid information confidential.

[10] See, NU comments on behalf of CL&P, WMECO & PSNH at page 2, dated September 13, 2010 (http://www.nescoe.com/uploads/Northeast_Utilities_EDC_s_Comments.pdf)

V. COORDINATED PROCUREMENT ACTIVITIES & OPEN ISSUES

The following Activity Matrix generally reflects the procurement process identified in the *2010 Report to the New England Governors on Coordinated Procurement*. That process was developed with the input of a Coordinated Procurement Team that included representatives of each New England state with power procurement experience. The estimated timeframes are generally based on process documents from several recent New England Public Utility Commission (PUC) power contract review proceedings. Discussion of each Activity follows the Activity Matrix, along with any Open Issues.

A. Activity Matrix

Activity	Timeline (Days)	Cumulative from Start (Months)*	Cumulative from RFP (Months)*
1. Public Announcement of Process	5 Days	0.17	N/A
2. Create Procurement Team (PT) & Legal Subteam	25 Days	1.00	N/A
3. Develop eligible project criteria & threshold review criteria	45 Days	2.50	N/A
4. Develop RFP & draft contract	60 Days	4.50	N/A
5. Public comment period on project criteria, threshold review criteria, the RFP & draft RFP contract	30 Days	5.50	N/A
6. Consider Public Comments and incorporate any associated revisions to project criteria, threshold review criteria, the RFP, and the draft RFP contract	30 Days	6.50	N/A
7. Announce RFP & Release to Bidders	5 Days	6.67	Begin
8. Informational Q&A Session	10 Days	7.00	0.50
9. Accept written only questions – email/regular mail	10 Days	7.33	0.83
10. Post questions & answers on website	15 Days	7.83	1.33
11. Proposal Due dates	10 Days	8.17	1.67
12. Selection of short-listed bidders by PT based on Scorecard	45 Days	9.67	3.17
13. Notification to Short-List bidders	5 Days	9.83	3.33
14. Bidder presentations to PT with follow-up questions	15 Days	10.33	3.83
15. PT Identifies Preferred Projects	30 Days	11.33	4.83

Activity	Timeline (Days)	Cumulative from Start (Months)*	Cumulative from RFP (Months)*
16. Notification of Finalist	5 Days	11.50	5.00
17. Negotiate & Execute Contract(s)	60 Days	13.50	7.00
18. Prepare Submission for PUC review	90 Days	16.50	10.00
19. PUC review of Contract & Cost Recovery	180 Days	22.50	16.00

- These projected timeframes do not include time to address the threshold matters explained above. Further, any legal challenge to a regulatory authority's contract approval could stall the selected developer's access to financing during the pendency of any action. The processes should seek to preempt such challenges to the greatest extent possible. Thus, participation of state agency attorneys familiar with state statutory and regulatory requirements related to procurement on a Legal Subteam would help to reduce the potential for any time to be lost to post-decisional legal challenges.

  Finally, this process does not set forth the siting approval process(es) for generation and/or transmission that would follow before a project has full approval to begin construction. To the extent state siting authorities impose conditions on a transmission facility that influence the contract's economics and/or the flow of benefits state regulatory authorities assumed during their earlier proceedings, state regulatory authorities may need to revisit prior allocation determinations in light of any unforeseen state siting condition.

B. Activity Discussion & Associated Open Issues

1. Public Announcement

To provide notice to potential market participants and bidders, states collectively through NESCOE as appropriate, announce commencement of regionally coordinated, competitive procurement process, and explain the anticipated process and its objectives.

2. Create Procurement Team

States and EDCs, as appropriate, identify and appoint representatives to the PT, which would include members from some EDCs as determined by each state, states (non-PUC/decision-maker representative), and NESCOE. The PT identifies a process manager to lead the PT, coordinate meetings, and ensure the PT achieves milestone goals on time. NESCOE could assist in this regard.

The PT is responsible for executing activities in the Activity Matrix within the allotted timeframes. PT members are authorized to participate on behalf of their organizations and are responsible for coordinating, as appropriate and required, with decision-makers in

their organizations throughout the process. The Legal Subteam, discussed above, provides resolution of threshold issues and ongoing legal support to the PT.

The rationale for the population of the PT is as follows:

- In some states, ***EDC*** participation on the PT is critical. First, as noted above, EDCs may perceive a long-term power purchase agreement as an encumbrance on their balance sheet. Direct participation on the PT from the onset may help assuage EDCs' financial concerns. Second, EDCs have extensive power procurement experience. Their direct and early participation provides valuable expertise in project proposal evaluation. Third, the EDC will ultimately identify and submit contracts to PUCs for review.

  In some other states, EDC participation on the PT is problematic due to statutory and/or market structures. Thus, each state determines whether EDC representatives from their jurisdiction will participate on the PT. Some states may also seek EDC analysis without direct and complete EDC participation on the PT.

- ***State*** participation on the PT is critical to developing and executing the process in a way that conforms to state preferences, complies with state legal criteria, and results in selecting project(s) that meet state policy objectives.

  Each state determines who is/are the appropriate state representative(s) to participate on the PT. State participants could include personnel from State Energy Offices, policy offices or PUCs (if functionally separated from PUC decision-makers). In all cases, state participants on the PT must be functionally separated from the regulatory authority decision-maker that will ultimately hear and determine whether to approve proposed contract(s).

  State representatives on the PT are responsible throughout the process to ensure that their respective state policy officials (not regulatory authorities that will ultimately rule on contracts) are aware of and are comfortable with decision points, including for example, the process and criteria to identify short-listed projects and, later, the project(s) the PT ultimately identifies as preferred.

  As noted, ultimately, the procurement process may proceed with any number of states deciding to move forward to procure resources, with other states electing not to procure resources in this round. At this early stage of the process, however, six state participation helps ensure the process and details are designed to accommodate the potential interests of all states.

- ***NESCOE*** participation on the PT facilitates multi-state coordination and communication and brings resources important to system planning and expansion to the process. Any assigned NESCOE staff would be formally and functionally separated from related substantive communications to NESCOE Managers that are, in some cases, also on the state regulatory authority that ultimately rules on

proposed contracts. NESCOE can also act as an administrative agent for the PT by executing tasks such as posting RFP-related documents, scheduling bidder meetings, and so forth.

State personnel and NESCOE staff participation on the PT also mitigates any actual or apparent conflicts that may arise in the event some New England EDC or related Transmission Owners (TO) have an economic interest in pursuing different and specific ways to meet New England renewable resource goals. For example, in some states, entities that own EDCs also own generating assets that may submit bids. For this reason, transparency and integrity of the process at each step is critical. To the extent EDCs participate in administering and evaluating bids and recommending them, or not, to state regulatory authorities, an EDC or its related corporate entity could at least apparently influence the process or create from bidders' perspectives the appearance of a conflict. State participation on the PT and testimony or comments to the state regulatory authority would mitigate such actual or apparent conflict of interest issues. Ensuring the process is appropriately transparent would further mitigate any apparent or actual conflict of interest concerns.

Threshold Open Issues for Resolution Early in the Process:

a. *Legal Subteam identifies processes (filing and redaction requirements) and forms (non-disclosure agreements, requirements for bidder claims of confidentiality) to govern treatment of confidential, market-sensitive information provided by bidders to PT and exchanged by PT members.*
b. *Legal Subteam prepares to respond to any anti-trust or other concerns market participants and/or EDCs may raise.*

3. PT Develops Project, Bid, and Evaluation Criteria

The PT identifies the primary criteria for project eligibility and bids. Identifying project evaluation criteria with clarity and specificity will be important to attract serious bids. This element of the process merits the states' early and priority attention. Further, the opportunity for public comment on project eligibility and bid criteria is important substantively and for transparency.

Such criteria could include:

- RFP participant eligibility (financial resources, etc.)
- Resource type eligibility (e.g., resources recognized as RPS-eligible in all states with RPS, other)
- Preferred contract duration (10, 15, 20 years or flexible opportunity for bidders to submit varying length proposals)
- Pricing mechanisms (capacity, energy, RECS and/or transmission system upgrades; fixed or defined by indices or formulas, etc.)
- Financial v. physical arrangements

- Procurement levels (amount of resources the states may have collective interest in procuring)
- Financial assurance policies

After the PT establishes the criteria for project eligibility and bids, such as those above, the PT establishes evaluation criteria (Scorecard) by which it will evaluate bids. The evaluation criteria identify factors – price and non-price – and the relative weight the PT will assign to each factor in the evaluation process. An example of a non-price factor could be the weight afforded to a project's place in ISO-NE's Interconnection Queue. Prior state RFPs and power contracts could assist in identifying other non-price factors. Later in the process, the PT uses the Scorecard to narrow the field of bidders to those that appear to provide the lowest all-in cost and to best meet state policy objectives (Short Listed Bidders).

As noted above, the states' preliminary discussion of these issues would provide useful guidance to the PT in its ultimate development of project eligibility and bid criteria, as well as evaluation criteria.

Open Issues (see also, bullets above):

a. *Project Evaluation Criteria that identify price and any non-price factors along with relative weight (prior state RFPs and contracts instructive)*
b. *Confirmation of allocation or assignment of contract output among participating EDCs/states (see allocation illustration charts above)*

4. PT Develops Draft Request For Proposal and Draft Form Contract

Referencing the project, bid, and evaluation criteria developed above, PT develops the draft RFP and draft form contract.[11] The draft form contract contains all material terms and conditions.

Some individual EDC and/or states may – later in the process, if and when an EDC enters final contract negotiations with a project - need to make non-material modifications to the draft contract(s) that are ultimately filed with state regulatory authorities so that the contract conforms to any nuances of state law. For example, in Maine, the regulatory authority staff may evaluate bids and negotiate with bidders. RFP-related documents may have to be adjusted to account for such variations.

5. PT Conducts Stakeholder Process on Draft RFP & Draft Form Contract, Revises & Finalizes RFP-Related Documents As Appropriate

PT takes stakeholder comment on draft RFP and contract terms. This stakeholder input opportunity includes an opportunity to comment on the project and bid evaluation criteria identified earlier in the process. To the extent the project and bid evaluation criteria are

[11] NESCOE has a preliminary draft RFP from 2010 Coordinated Procurement Team.

not an element of the draft RFP and/or draft contract, such criteria is attached as an appendix to allow for comment. Stakeholder comment opportunity increases overall length of time to complete process however it is likely to improve RFP-related documents. It may also assist the PT in addressing preemptively potential legal challenges. The Legal Subteam advises on the type and extent, if any, of stakeholder input requirements in state statutes.

Following consideration of stakeholder comment and any revisions of the draft RFP and contract, PT finalizes RFP and contract form.

Open Issues:

a. *Legal Subteam identifies any state statutory or regulatory requirements for stakeholder process associated with developing RFP and contract documents.*
b. *Legal Subteam determines whether, pursuant to any state laws or preferences, the PT or only state representatives review stakeholder comments on draft RFP and contract, modify documents as appropriate and consider preparing a general reply to any material comments that are not incorporated into documents.*

6. PT Issues RFP, Conducts Bidder Q & A, Announces Due Date & Submission Requirements

Open Issues:

As noted, earlier in the process, the Legal Subteam identifies mechanisms to grant confidential treatment to competitively sensitive information including filing protocols and non-disclosure agreements.

7. PT Evaluates Bids & Identifies Short-Listed Bidders

Using the Scorecard established in step 3, above, PT conducts analysis to identify those projects that best achieve the objectives of meeting state renewable energy objectives at the all-in lowest cost and best match evaluation criteria to create a short list of bidders (Short Listed Bidders). PT invites Short Listed Bidders to present to the PT other relevant details concerning their projects and to answer PT questions.

Open Issues:

a. *The PT may receive some non-conforming bids. The Legal Subteam considers whether bidders that submit immaterially non-conforming bids have an opportunity to cure before PT identifies Short Listed Bidders. The Legal Subteam advises whether and to what extent allowing immaterial non-conforming bidders to modify bids increases litigation risk.*

b. *If non-conforming bids have an opportunity to cure, the Legal Subteam and PT identifies appropriate process and timeframe.*

8. PT Indentifies Preferred Project(s), EDCs Commence Final Contract Negotiation

Following Short-Listed Bidders presentations to PT and PT discussion of distinguishing information, PT identifies preferred project(s).

EDCs commence negotiations of non-material terms with PT's preferred bidder(s) and execute long-term power purchase contract. Contracts are effective subject to subsequent regulatory authority review and approval.

Open Issues:

Legal Subteam confirms that the preferred bidder(s)' right is the opportunity to negotiate non-material terms for final contract with the EDCs (or state or other entity as appropriate pursuant to state decisions), subject to review and approval.

9. EDCs Prepare & Submit Contract for Regulatory Authority Review; State Representatives on PT Prepare & Submit Testimony to Regulatory Authority

EDCs submit executed contracts, supporting testimony, and cost recovery plans to the regulatory authority of their respective states for review and approval or rejection. The state regulatory authorities review reasonableness of the contracts (and any other statutory requirements) and rules on the associated cost recovery mechanism.

States' representatives on the PT also provide testimony or comments in participating state regulatory authority proceedings to explain the state representatives' role in the procurement process and the state representatives' view of proposed contracts.

10. Regulatory Authority Review of Executed Contracts

The regulatory authorities follow standard procedure for reviewing the power purchase agreements, including notice, procedural conferences, hearings, and final Orders. As noted, regulatory authorities may need to revisit Orders if any state siting authority's final Order imposes conditions on a generation or transmission facility that influences the contract's economics and/or the flow of its benefits that state regulatory authorities assumed at the time of contract approval.