



August 31, 2012

New England States Committee on Electricity  
655 Longmeadow St.  
Longmeadow, MA 01106

Filed Electronically: [MickiBertrand@nescoe.com](mailto:MickiBertrand@nescoe.com)

Re: CESA Comments on Coordinated Competitive Renewable Power Procurement

Dear NESCOE staff:

These comments are respectfully submitted by Clean Energy States Alliance (CESA) for consideration by the New England States Committee on Electricity (NESCOE) regarding the Draft Work Plan for Coordinated Competitive Renewable Power Procurement (issued August, 2012).<sup>1</sup>

CESA is a nonprofit 501(c)(3) organization, created to serve as a network of states and related organizations working together to promote renewable energy, energy efficiency, and a strong clean energy economy. CESA's mission is to support leadership, policies, and programs at the state and local level to accelerate the nation's adoption of clean energy technologies. CESA also manages a collaborative among the states in the Atlantic Coast region, major environmental organizations, and key federal agencies to accelerate offshore wind development in the U.S. Through this initiative – called the Offshore Wind Accelerator Project (OWAP) – CESA works with a broad range of stakeholders to address major challenges facing offshore wind development.

The primary purpose of CESA's recommendations is to encourage inclusion of offshore wind energy (OSW) in the coordinated renewable power procurement portfolio as a **preferred resource**. We also provide recommendations on finance tools and off-takers that could benefit the New England effort.

### Comments and Recommendations

1. The New England procurement Request for Proposals (RFP) should include offshore wind as an eligible and preferred resource as it represents one of the most significant renewable energy resources in the region, with a near-term potential to transform the energy portfolio of the New England states, create a new industry sector, meet state RPS goals, and reduce carbon emissions. OSW is a very large resource that is accessible to New England's major load centers,

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<sup>1</sup> These recommendations represent the perspective of the Clean Energy States Alliance only, and do not represent the specific position of any individual CESA member.

reducing transmission investment costs. It can be deployed now and poses minimal environmental risk.

2. NESCOE should consider design of the solicitation to encourage a diverse procurement portfolio that includes predominantly long-term contracts but should allow some purchasers to use shorter-term contracts (while some purchasers will be able to get internal approval for 20-year contracts, some will not). In particular, for reasons discussed below, this structure may allow the Department of Defense (DOD), and other federal agencies, to participate in the coordinated procurement effort because it will produce a more competitive price and provide a structure under which the DOD may be able to limit its purchase to a 10-year term. DOD and other governmental entities are beneficial to the effort because they are retail rather than wholesale buyers.
3. In addition to electric distribution companies (EDCs), CESA recommends that NESCOE consider organizing a broader buyers' consortium, including other creditworthy purchasers, who may be interested in entering into long-term contracts with developers for renewable energy. This approach would allow power purchasers such as governmental entities and municipal utilities to participate in the coordinated procurement process.
4. The procurement process should consider taking advantage of innovative, effective financing tools that could result in lower-cost debt. For example, if the process includes municipal utilities, municipalities that have elected community choice aggregation, or state power authorities, these entities can sell tax-exempt bonds and use the proceeds to prepay for their power purchase as a mechanism for financing all or a part of the selected projects. To that end, the work plan should include an action item to conduct discussions with the financial community to determine its interest in and recommendations for the coordinated procurement enterprise. The work plan also should call for evaluating the use of financial measures to allow the procurement participants (and selected project developers) to access low-cost debt and state financial incentives. Specific tools that the New England effort could consider include:
  - a. Tax exempt bond financing. Municipal utilities, community choice aggregators, and state or regional power authorities (such as NYPA or LIPA) that sell power directly or indirectly to the public can issue tax-exempt bonds and use the proceeds of the bonds to prepay for the power output of renewable energy projects. The issuance of the bonds indirectly provides funds for project construction. In addition, non-governmental power purchasers can use taxable bonds to make equivalent prepayments.
  - b. Partnering with state clean energy funds. Many of the New England states have established state clean energy funds, supported by system benefit charges or other funding sources (e.g., Massachusetts Clean Energy Center, Connecticut Clean Energy Investment Authority, etc). These state programs offer significant incentive support for renewable energy. Most of the programs have authority to revise the focus of their program offerings in terms of financial support and technology priorities. Therefore, NESCOE should consider working with participating New England states to recommend use of state clean energy fund programs to provide support to projects selected by the

coordinated procurement process, in the form of grants, loans, equity investments, loan loss reserves, interest buy-downs, and/or other credit enhancements.

5. The work plan should include an action item to reach out to key federal officials at DOD, Department of Energy (DOE), General Services Administration, DOI, Office of Management and Budget, etc., to determine how to make the coordinated procurement process consistent with Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulations (DFAR). Federal agencies represent an important potential purchasing participant in any coordinated procurement effort because of their significant energy needs and responsibilities to procure renewable energy. To facilitate federal agency participation, the NESCOE effort could be structured in a way that is conducive to addressing federal renewable energy goals, acquisition barriers, and the environment within which federal agencies consider renewable energy procurement.<sup>2</sup>

It is important to note that long-term contracts provide federal agencies with the best opportunity to minimize renewable power price premiums. Unfortunately, federal procurement authorities governing purchase of renewable energy (FAR, 48 CFR 1 and DFAR, 48 CFR 2) significantly hinder the ability of federal agencies to use longer-term contracts. Specifically, the regulations limit contract terms for commodity power to 5 years, and utility service contracts for power delivery to 10 years. These limitations make it difficult for federal agencies to obtain renewable energy supply offers with lower price premiums because of the inability to enter longer-term PPAs of 20 to 30 years. However, there are important exceptions to the FAR and DFAR contract-term limitations applicable to DOD, allowing DOD to take advantage of longer-term contracts and resulting lower power costs. Therefore, it could be of substantial benefit to the New England effort if the procurement process were designed to serve as an effective

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<sup>2</sup> The requirements of the Energy Policy Act of 2005 and Executive Order 13423 represent the primary drivers of federal agency renewable energy demand today. EPACT 2005 requires, in part, that the President, acting through the Secretary of Energy, shall seek to ensure that, to the extent economically feasible and technically practicable, of the total amount of electric energy the federal government consumes during any fiscal year, the following amounts shall be renewable energy:

- a. Not less than 5 percent in fiscal years 2010 through 2012
- b. Not less than 7.5 percent in fiscal year 2013 and each fiscal year thereafter

Executive Order 13423 further requires that agencies ensure that (a) at least half of the statutorily required renewable energy consumed by the agency in a fiscal year comes from new renewable sources, and (b) to the extent feasible, the agency implements renewable energy generation projects on agency property for agency use.

Section 203(c) of EPACT provides federal agencies with a bonus equivalent to doubling the amount of renewable energy used or purchased if (a) the renewable energy is produced and used on-site at a federal facility, (b) the renewable energy is produced on federal lands and used at a federal facility, or (c) the renewable energy is produced on Indian land and used at a federal facility.

mechanism for DOD and other federal agencies to take advantage of these acquisition authority exceptions, obtain favorable renewable energy pricing, and meet their federal renewable requirements in an efficient manner.

Specifically, DOD may enter into multi-year contracts for electricity from renewable energy sources for a period up to 10 years.<sup>3</sup> However, contracting for a period greater than 5 years (but not longer than 10) must be justified by a business case analysis demonstrating that:

- (1) The proposed purchase of electricity under such contract is cost effective;
- and (2) It would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

DOD also may enter an energy contract for a period of as long as 30 years under 10 USC 2922a. However, the law requires that the facility must be on real property under the jurisdiction of the Secretary of a branch of the armed services (for offshore wind, this condition could be met by withdrawing federal submerged lands from the jurisdiction of DOI and placing them under DOD jurisdiction, or possibly by DOI providing DOD with a leasehold interest in the lands).

Under either exception, the most effective way for the DOD to enter into a cost effective contract for renewable energy is through competitive procurement from large-scale projects. Competitive procurement is generally required by 10 USC 2304. Given this procurement context, the New England effort could be of significant value to DOD because it would produce a more competitive price and provide a structure under which the DOD could limit its purchase to a 10-year term. As an example, the New England process could result in 20-year PPAs with developers, sell part of the output to the DOD under a 10-year agreement, and sell the output of years 11-20 to a non-federal buyer that has greater procurement flexibility.

Notably, the Economy Act (31 USC 1355) allows *non-DOD federal facilities* to piggy back on DOD contracts, although contract terms for those agencies must be consistent with applicable provisions of FAR and DFAR. Therefore, a New England coordinated procurement process that satisfies DOD requirements is likely to work for other federal agencies.

6. NESCOE should consider issuing an initial request for information (RFI) to obtain information from potential purchasers and developers on the procurement process. An RFI is useful because not enough is known, at the current time, regarding how developers will view the coordinated procurement process, what terms to expect (pricing), and whether the terms will be attractive given the prices that participating buyers are paying for renewable energy under RPS or other supporting policies. NESCOE also should consider including a proposed draft “model” PPA in the RFI. This would allow potential participants and developers to comment on a set of PPA terms that they expect to be attractive and feasible.

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<sup>3</sup>See 10 USC 2304; DFAR 217.174

7. NESCOE should consider developing an RFP that includes (or is preceded by) a bidder pre-qualification process. Bidder pre-qualification may streamline the selection process, and ensures that participants are contracting with high quality developers. Pre-qualification may also be necessary for purposes of establishing REC-eligibility.
  
8. NESCOE should consider evaluating proposals on a “best value” rather than “lowest cost” basis. While cost-competitiveness should be a primary criterion, multiple criteria will be more valuable to evaluate proposals, including developer capabilities, past performance, financial information, how the developer intends to use available incentives and other financing tools, use of industry best practices, long-term maintenance costs, etc.

### **Conclusion**

CESA would be pleased to work with NESCOE in any way useful to make the coordinated renewable power procurement effort a success for New England. We will follow up with a call to discuss our recommendations in more detail.

Thank you for considering our input.

Sincerely,



Mark Sinclair  
Executive Director