



For a thriving New England

CLF Rhode Island 55 Dorrance Street
Providence, RI 02903
P: 401.351.1102
F: 401.351.1130
www.clf.org

Conservation Law Foundation (CLF) respectfully submits its comments on the NESCOE Coordinated Competitive Renewable Procurement – Draft Work Plan, dated August 10, 2012 (Draft Work Plan).

CLF is a public interest advocacy organization that works to solve the environmental problems that threaten the people, natural resources and communities of New England. Founded in 1966, CLF is a nonprofit, member-supported organization. CLF promotes clean, renewable and efficient energy production in New England. CLF has an unparalleled record of advocacy in support of renewable energy development throughout New England. CLF staff have written many of the state statutes in New England governing renewable energy; and CLF staff attorneys litigate regularly in utility commission proceedings to enforce those statutes.

CLF strongly supports the concept of encouraging joint (or separate but coordinated) procurement for renewable energy among the six New England states. Such joint or coordinated procurement would help the New England states reap the environmental and carbon-emission-reduction benefits from deployment of new renewable resources, while simultaneously reducing costs for ratepayers. The New England region has vast potential for renewable deployment. Regional procurement provides a cost-effective means to convert this potential into new renewable capacity needed to meet state renewable energy standards.

CLF specifically endorses the suggestion that the process allow for any number of states to move forward in coordination, even if all six New England states do not. [Draft Work Plan, page 3, lines 17-19.] The benefits of regional coordination are large enough that those benefits should be reaped by a consortium of several states, even if some states elect not to participate.

All of the New England states recognize that there are multiple benefits to be had from development of new renewable resources in New England. Many of these benefits – including the important environmental and carbon-emission-reduction benefits – obtain regardless of where in New England the renewable resources are located. The NESCOE proposal will encourage all of the New England states to view development of renewable energy in a long-term and regional (that is, New England-wide) manner, rather than only as a means of obtaining short-term, single-state benefits. In the Independent System Operator-New England (ISO-NE), New England has a single wholesale electricity market and a single Regional Transmission Organization. It makes eminent good sense for renewable energy procurement to be coordinated on a New England-wide basis as well.

A coordinated New England-wide renewables procurement will also complement NESCOE's pending proposal, in ISO-NE's FERC Order 1000 compliance filing

proceeding, for a process to identify public policy-driven transmission needs in the region and competitively select transmission solutions. By harmonizing these procurement and planning processes, NESCOE could greatly enhance the likelihood that needed renewables projects get developed. NESCOE's current Order 1000 proposal has great potential, but the process that it proposes lacks certainty of financial commitment and participation by the individual states and risks planning and resource expenditures based upon generation projects that are either hypothetical or without certainty of being developed. This combined lack of certainty is likely to limit states' confidence in the future of the generation or related transmission projects and prompt them to opt-out of any role in financing them. Regional procurement by the states has the potential to bring to fruition generation projects around which public policy transmission can be planned at the ISO-NE level. This integration of public policy transmission planning with generation resource procurement could exponentially increase the potential that these projects get built and that the renewable energy goals of the states are achieved on schedule.

The Draft Work Plan discusses at several places the procurement of long-term contracts (LTCs) for new renewables. [Draft Work Plan, page 3, ¶ 2; page 4, lines 8-10.] CLF strongly supports obligations on utilities to enter into LTC's (20 years or more) for procurement of new renewable energy resources. It is well understood that developers of renewable energy projects need LTCs to secure funding for their projects. Further, the importance of LTCs is recognized in the statutes of several of our states, which obligate utilities to enter into LTCs for new renewable resources – statutes which CLF actively supported. The Draft Work Plan recognizes the role of electric distribution companies as counterparties to LTCs for renewable resources, a role which is critical to the success of regional procurement. For these reasons, CLF suggests that where EDCs are statutorily obligated to enter into LTCs, that such obligations must be integrated into the procurement process.

CLF understands that some distribution companies “claim that having long-term contracts on their balance sheet may lead to additional financial implications.” [Draft Work Plan, page 9, lines 9-10.] As a purely descriptive matter, this is true; under Generally Accepted Accounting Principles (GAAP), LTCs do have implications for a utility's balance sheet. However, it is also true that our New England states have found innovative ways to address these accounting concerns, including the providing of pecuniary incentives to utilities to enter into LTCs, and permitting rate recovery on the distribution (not commodity) side of bills.

For all of these reasons, CLF does not support the proposal that distribution companies would have the election of opting out of entering into LTCs. [Draft Work Plan, page 4, ¶ 2.]

Beginning on page 10, the Draft Work Plan (Section IV) discusses the creation of a legal subteam to consider legal questions and provide legal guidance. CLF would caution that the NESCOE proposal to use only “attorneys employed by state agencies” contains two flaws. First, as a practical matter, overworked state lawyers may be unavailable for seconding to NESCOE. At least as importantly, for sound reasons of public policy, lawyers from public-interest environmental organizations should be encouraged to serve on this legal subteam. These lawyers have extensive experience with the state statutes governing renewable energy, having assisted in the drafting of many of these laws. Moreover, including public-interest lawyers on the legal subteam will broaden the background and experience that the legal subteam will have. CLF believes that there is no policy reason for limiting the membership on the legal subteam.

Beginning on page 13, the Draft Work Plan (Section V.B.2) discusses the creation of a Procurement Team. The proposal is to draw members of the team from three places: (a) distribution companies; (b) state government; and (c) NESCOE. Here again, CLF believes that the Procurement Teams would be benefitted by the addition of public-interest environmental advocates. To be sure, the challenges of renewable energy procurement include many purely technical issues, concerning which distribution company personnel are often quite knowledgeable. However, renewable procurement emphatically does not present solely technical issues; renewable procurement presents multiple and substantial issues of public policy. In this regard, the development and implementation of project evaluation criteria (page 15, ¶ 3) is a critical task, which will ultimately determine which proposed projects are deployed –and which requires careful balancing of public policy objectives. Broadening to proposed Procurement Team to include environmental public-policy advocates provides a more sound footing for the development of evaluation criteria and their implementation and is therefore crucially important.

Respectfully submitted,



Jerry Elmer, Staff Attorney
CONSERVATION LAW FOUNDATION