HOUSE DOCKET, NO. 4112 FILED ON: 2/21/2014

HOUSE . . . . . No. 3968

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack and Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to clean energy resources.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Mark J. Cusack	*5th Norfolk*	*2/21/2014*
Barry R. Finegold	*Second Essex and Middlesex*	*2/21/2014*

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By Representative Cusack of Braintree and Senator Finegold, a joint petition (subject to Joint Rule 12) of Mark J. Cusack and Barry R. Finegold relative to clean energy resources. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to clean energy resources.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Beginning on June 1, 2014 and continuing until December 31, 2014, all distribution companies in the commonwealth, as defined in section 1 of chapter 164 of the General Laws, shall be required to jointly solicit proposals, from developers of clean energy generation, for no less than 18,900,000 MWh of electricity annually from clean energy generation sources and, provided reasonable proposals have been received, may enter into additional cost-effective long-term contracts to facilitate the Commonwealth's clean energy goals. For the purposes of this Act, 'clean energy generation sources' shall mean, individually or collectively, Class I RPS eligible renewable energy generation source as defined under said section 11F of said chapter 25A and/or hydroelectric generation source. Said sources shall be capable of generating 18,900,000 MWh of electricity annually. The solicitation shall be comprised of clean energy generation sources, said renewable energy generation to be apportioned among the distribution companies under this Act. The timetable and method for solicitation and execution of such contracts shall be proposed by the distribution companies in consultation with the department of energy resources and shall be subject to review and approval by the department of public utilities.

Prior to the joint solicitation, an individual distribution company may fulfill its responsibilities under this Act through individual competitive solicitations that are independent from the joint solicitation for proposals from clean energy developers. Provided reasonable proposals have been received by the individual distribution company, it may enter into cost effective long-term contracts with clean energy generation sources if, upon petition to the department of public utilities prior to the joint solicitation, the department of public utilities rules

that a solicitation by an individual distribution company would be more cost effective to ratepayers than said distribution company engaging in a joint solicitation.

For purposes of this Act, a long-term contract shall be a contract with a clean energy generation source with a term of 20 to 25 years. In developing proposed long-term contracts, the distribution companies shall consider multiple contracting methods, including long-term contracts for renewable energy certificates, hereinafter referred to as RECs, for only renewable energy, and for a combination of both RECs and renewable energy. This long-term contracting option shall be separate and distinct from the distribution companies' obligation to meet applicable annual renewable portfolio standard, hereinafter referred to as RPS, requirements, under section 11F of chapter 25A of the General Laws. Notwithstanding the provisions of this Act, the procurement of RECs shall apply only to that portion attributable to Class I RPS-eligible renewable energy generation and shall not apply to hydroelectric generation sources contracted under this Act.

Beginning June 1, 2014, the distribution companies shall jointly select a reasonable method of soliciting proposals, which may include one developed by a regional organization in coordination with other New England States, from clean energy generation developers using a competitive bidding process only. A distribution company may decline to consider contract proposals having terms and conditions that it determines would require the contract obligation to place an unreasonable burden on the distribution company's balance sheet, and may structure its contracts, pricing or administration of the products purchased to mitigate impacts on the balance sheet or income statement of the distribution company or its parent company, subject to the approval of the department of public utilities; provided, that such mitigation shall not increase costs to ratepayers. The distribution companies shall consult with the department of energy resources and the Attorney General regarding the choice of contracting methods and solicitation methods. All proposed contracts shall be subject to the review and approval of the department of public utilities.

The department of public utilities and the department of energy resources each shall adopt regulations consistent with this section. The regulations shall: (a) allow clean energy generation developers to submit proposals for long-term contracts conforming to the contracting methods specified in the third paragraph; (b) require that contracts executed by the distribution companies under such proposals are filed with, and approved by, the department of public utilities before they become effective; (c) require that the clean energy generation sources under the proposal meet the following criteria: (1) any Class I RPS eligible renewable energy generation source must be qualified by the department of energy resources as eligible to participate in the RPS program under said section 11F of said chapter 25A, and to sell RECs under the program; and (2) clean energy generation source emits no more than 775 lbs/MWh in green house gases per year; and (3) be determined by the department of public utilities to: (i) provide enhanced electricity reliability within the commonwealth; (ii) be cost effective to Massachusetts electric ratepayers over the term of the contract; (iii) where feasible, create

additional employment and economic development in the commonwealth; (iv) demonstrate that the clean energy generation source projects are substantially likely to become operational by having the appropriate state and local permits in place and a demonstration that the project is able to secure financing; and (v) demonstrate that the renewable energy generations sources are associated with a transmission project scheduled to deliver capacity to one of the nodes within the ISO NE's Internal Hub.

As part of its approval process, the department of public utilities shall consider the attorney general's recommendations, which shall be submitted to the department of public utilities within 45 days following the filing of such contracts with the department of public utilities. The department of public utilities 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 renewable energy generation source(s) on a long-term basis taking into account the factors outlined in this section.

Notwithstanding the provisions of this section, that portion of the electricity generation attributable to hydroelectric generation shall not be eligible to participate in the Commonwealth's RPS program under said section 11F of said chapter 25A.

The joint solicitation and evaluation of submitted proposals required under this Act shall be coordinated among the distribution companies by the department of energy resources. If distribution companies are unable to agree on a winning bid from the solicitations submitted under this Act, the matter shall be submitted to the attorney general, in consultation with the department of energy resources and the department of public utilities, for a final, binding determination of the winning bid. The distribution companies may each enter into a contract with the winning bidders for their apportioned share of the market products being purchased from the project. The apportioned share shall be calculated and based upon the total energy demand from all distribution customers in each service territory of the distribution companies.

A distribution company may elect to use any energy purchased under such contracts for resale to its customers, and for that portion of the energy generation attributable to Class I RPS eligible renewable generation may elect to retain RECs to meet the applicable annual RPS requirements under said section 11F of said chapter 25A. If the energy and RECs are not so used, such companies shall sell such purchased energy into the wholesale spot market and shall sell such purchased RECs through a competitive bid process.

Notwithstanding the previous sentence, the department of energy resources shall conduct periodic reviews to determine the impact on the energy and REC markets of the disposition of energy and RECs under this Act and may issue reports recommending legislative changes if it determines that actions are being taken that will adversely affect the energy and REC markets.

If a distribution company sells the purchased energy into the wholesale spot market and auctions the RECs as described in the fifth paragraph, the distribution company shall net the cost

of payments made to projects under the long-term contracts against the proceeds obtained from the sale of energy and RECs, and the difference shall be credited or charged to all distribution customers through a uniform fully reconciling annual factor in distribution rates, subject to review and approval of the department of public utilities. The reconciliation process shall be designed so that a distribution company recovers all costs incurred under such contracts. If the RPS requirements of said section 11F of said chapter 25A terminate, the obligation to continue periodic solicitations to enter into long-term contracts shall cease; provided however, that contracts already executed and approved by the department of public utilities shall remain in full force and effect.

Notwithstanding any provision contained herein to the contrary, this Act, and the implementation thereof, shall be subject to the rules, orders and regulations established by the Federal Energy Regulatory Commission. This Act shall not limit consideration of other contracts for RECs or power submitted by a distribution company for review and approval by the department of public utilities.

If this Act is subject to a judicial challenge, the department of public utilities may suspend the applicability of the challenged provision during the pendency of the judicial action until final resolution of the challenge and any appeals and shall issue such orders and take such other actions as are necessary to ensure that the provisions that are not challenged are implemented expeditiously to achieve the public purposes of this Act.

SECTION 2: Effective January 1, 2014, the Secretary of Energy and Environmental Affairs, or his/her designee, may designate a regional organization, in coordination with other New England States, and/or through a process coordinated by the Independent System Operator (ISO), to solicit proposals for transmission in furtherance of clean energy generation contracts. The secretary is further authorized to include in such designation such terms and conditions he/she deems necessary and appropriate to further the objectives contained in Section 1, subject, however, to the rules, orders and regulations established by the Federal Energy Regulatory Commission.