

HOUSE No. 3696

The Commonwealth of Massachusetts

PRESENTED BY:

Rodney M. Elliott

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:
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>1/18/2023</i>

HOUSE No. 3696

By Representative Elliott of Lowell, a petition (accompanied by bill, House, No. 3696) of Rodney M. Elliott relative to clean energy resources. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3315 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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:

1 SECTION 1. Section 83B of chapter 169 of the acts of 2008, as amended by chapter 188
2 of the acts of 2016, is hereby further amended by striking out, in line 1, the words “83C and
3 83D” and inserting in place thereof the following words:- 83C, 83D, and 83E

4 SECTION 2. Section 83B of Chapter 169, as so appearing, is hereby further amended by
5 striking out the definition of “clean energy generation” and inserting in place thereof the
6 following definition:-

7 “Clean energy generation”, (i) new Class I renewable portfolio standard eligible
8 resources, including but not limited to offshore wind energy generation; (ii) hydroelectric
9 generation; or (iii) any combination of new Class I RPS eligible resources, hydroelectric
10 generation, or energy storage.

11 SECTION 3. Said section 83B of chapter 169, as so appearing, is hereby further amended
12 by inserting after the word “83D,” in line 12, the following words:- or 83E.

13 SECTION 4. Subsection (c) of Section 83C, as so appearing, is hereby amended by
14 inserting after the first sentence, the following new sentence:-

15 The distribution companies shall also consider terms and conditions that require all clean
16 energy certificates from the proposed offshore wind energy generation resources to be delivered
17 to the distribution companies for the entirety of the useful life of the proposed offshore wind
18 energy generation resources.

19 SECTION 5. Clause (3) of subsection (d) of Section 83C, as so appearing, is hereby
20 amended by inserting after the words “long term contract,” the following:-

21 except that the contracting distribution company may not seek remuneration for
22 agreements, terms, or conditions for delivery of clean energy certificates that exceed the term
23 length of the long-term contract,

24 SECTION 6. Said chapter 169, as amended by chapter 188 of the acts of 2016, is hereby
25 further amended by inserting after section 83D the following section:-

26 Section 83E. (a) For the purposes of this section, “clean energy generation” shall mean:
27 (i) new Class I renewable portfolio standard eligible resources, including but not limited to
28 offshore wind energy generation; (ii) hydroelectric generation; or (iii) any combination of new
29 Class I RPS eligible resources, hydroelectric generation, or energy storage. In order to facilitate
30 the financing of clean energy generation resources, not later than December 31, 2030, every
31 distribution company shall jointly and competitively solicit proposals for clean energy generation

32 and, provided that reasonable proposals have been received, shall enter into cost-effective long-
33 term contracts for clean energy generation for an annual amount of electricity up to
34 approximately 9,450,000 megawatt-hours. Long-term contracts executed pursuant to this section
35 shall be subject to the approval of the department of public utilities and shall be apportioned
36 among the distribution companies under this section.

37 (b) The timetable and method for solicitation of long-term contracts shall be proposed
38 jointly by the distribution companies and the department of energy resources and shall be subject
39 to review and approval by the department of public utilities. The distribution companies, in
40 coordination with the department of energy resources, shall consult with the attorney general's
41 office regarding the choice of solicitation method. A solicitation may be coordinated and issued
42 jointly with other New England states or entities designated by those states. The distribution
43 companies may conduct 1 or more competitive solicitations through a staggered procurement
44 schedule developed by the distribution companies and the department of energy resources;
45 provided, that the schedule shall ensure that, as needed in conjunction with any regional or multi-
46 state competitive market procurements for clean energy generation resources that are authorized
47 pursuant to said chapter 169, as amended by chapter 188 of the acts of 2016, the distribution
48 companies enter into cost-effective long-term contracts for the delivery of clean energy
49 generation up to approximately 9,450,000 megawatt-hours by December 31, 2035. Proposals
50 received pursuant to a solicitation under this section shall be subject to review by the department
51 of energy resources. If the department of energy resources, in consultation with the distribution
52 companies and the independent evaluator, determines that reasonable proposals were not
53 received pursuant to a solicitation, the department may terminate the solicitation, and may
54 require additional solicitations to fulfill the requirements of this section.

55 (c) In developing proposed long-term contracts, the distribution companies shall
56 consider long-term contracts for clean energy certificates for energy and for a combination of
57 both clean energy certificates and energy, if applicable. The distribution companies shall also
58 consider terms and conditions that require all clean energy certificates from the proposed clean
59 energy generation to be delivered to the distribution companies for the entirety of the useful life
60 of the proposed clean energy generation resources. A distribution company may decline to
61 pursue a proposal if the proposal's terms and conditions would require the contract obligation to
62 place an unreasonable burden on the distribution company's balance sheet; provided, however,
63 that the distribution company shall take all reasonable actions to structure its contracts pricing or
64 administration of the products purchased to mitigate impacts on the balance sheet or income
65 statement of the distribution company or its parent company, subject to the approval of the
66 department of public utilities; provided further, that mitigation shall not increase costs to
67 ratepayers. If a distribution company deems all proposals to be unreasonable, the distribution
68 company shall, within 20 days of the date of its decision, submit a filing to the department of
69 public utilities. The filing shall include, in the form and detail prescribed by the department of
70 public utilities, documentation supporting the distribution company's decision to decline the
71 proposals. Following a distribution company's filing, and within 4 months of the date of filing,
72 the department of public utilities shall approve or reject the distribution company's decision and
73 may order the distribution company to reconsider any proposal. If distribution companies are
74 unable to agree on a winning bid following a solicitation under this section, the matter shall be
75 submitted to the department of energy resources which shall, in consultation with the
76 independent evaluator, issue a final, binding determination of the winning bid; provided that the
77 final contract executed shall be subject to review by the department of public utilities. The

78 department of energy resources may require additional solicitations to fulfill the requirements of
79 this section.

80 (d) The department of public utilities shall promulgate regulations consistent with this
81 section. The regulations shall: (1) allow developers of clean energy generation resources to
82 submit proposals for long-term contracts; (2) require that contracts executed by the distribution
83 companies under such proposals are filed with, and approved by, the department of public
84 utilities before they become effective; (3) provide for an annual remuneration for the contracting
85 distribution company of 2.5 per cent of the annual payments under the contract to compensate
86 the company for accepting the financial obligation of the long-term contract, except that the
87 contracting distribution company may not seek remuneration for agreements, terms, or
88 conditions for delivery of clean energy certificates that exceed the term length of the long-term
89 contract, such provision to be acted upon by the department of public utilities at the time of
90 contract approval; (4) require associated transmission costs to be incorporated into a proposal;
91 provided that, to the extent there are transmission costs included in a bid, the department of
92 public utilities may authorize or require the relevant parties to seek recovery of such transmission
93 costs of the project through federal transmission rates, consistent with policies and tariffs of the
94 Federal Energy Regulatory Commission, to the extent the department finds such recovery is in
95 the public interest; and (5) require that the clean energy resources to be used by a developer
96 under the proposal meet the following criteria: (i) provide enhanced electricity reliability within
97 the commonwealth; (ii) are cost effective to electric ratepayers in the commonwealth over the
98 term of the contract taking into consideration potential economic and environmental benefits to
99 the ratepayers; (iii) avoid line loss and mitigate transmission costs to the extent possible and
100 ensure that transmission cost overruns, if any, are not borne by ratepayers; (iv) allow long-term

101 contracts for clean energy generation resources to be paired with energy storage systems; (v)
102 adequately demonstrate project viability in a commercially reasonable timeframe; and (vi) where
103 feasible, create and foster employment and economic development in the commonwealth. The
104 department of energy resources shall give preference to proposals that demonstrate a benefit to
105 low-income ratepayers in the commonwealth without adding cost to the project.

106 (e) A proposed long-term contract shall be subject to the review and approval of the
107 department of public utilities. As part of its approval process, the department of public utilities
108 shall consider recommendations by the attorney general, which shall be submitted to the
109 department of public utilities within 45 days following the filing of such contracts with the
110 department of public utilities. The department of public utilities shall consider both the potential
111 costs and benefits of such contracts and shall approve a contract only upon a finding that it is a
112 cost effective mechanism for procuring low cost clean energy generation on a long-term basis
113 taking into account the factors outlined in this section.

114 (f) The department of energy resources and the attorney general shall jointly select,
115 and the department of energy resources shall contract with, an independent evaluator to monitor
116 and report on the solicitation and bid selection process in order to assist the department of energy
117 resources in determining whether a proposal received pursuant to subsection (b) is reasonable
118 and to assist the department of public utilities in its consideration of long-term contracts or filed
119 for approval. To ensure an open, fair and transparent solicitation and bid selection process that is
120 not unduly influenced by an affiliated company, the independent evaluator shall: (1) issue a
121 report to the department of public utilities analyzing the timetable and method of solicitation and
122 the solicitation process implemented by the distribution companies and the department of energy
123 resources under subsection (b) and include recommendations, if any, for improving the process;

124 and (2) upon the opening of an investigation by the department of public utilities into a proposed
125 long-term contract for a winning bid proposal, file a report with the department of public utilities
126 summarizing and analyzing the solicitation and the bid selection process, and providing its
127 independent assessment of whether all bids were evaluated in a fair and non-discriminatory
128 manner . The independent evaluator shall have access to all information and data related to the
129 competitive solicitation and bid selection process necessary to fulfill the purposes of this
130 subsection but shall ensure all proprietary information remains confidential. The department of
131 public utilities shall consider the findings of the independent evaluator and may adopt
132 recommendations made by the independent evaluator as a condition for approval. If the
133 independent evaluator concludes in the findings that the solicitation and bid selection of a long-
134 term contract was not fair and objective and that the process was substantially prejudiced as a
135 result, the department of public utilities shall reject the contract.

136 (g) The distribution companies shall each enter into a contract with the winning
137 bidders for their apportioned share of the market products being purchased from the project. The
138 apportioned share shall be calculated and based upon the total energy demand from all
139 distribution customers in each service territory of the distribution companies.

140 (h) An electric distribution company may elect to use any energy purchased under
141 such contracts for resale to its customers, and may elect to retain clean energy certificates to
142 meet any applicable annual portfolio standard requirements, including section 11F of said
143 chapter 25A, and other clean energy compliance standards as applicable. If the energy and clean
144 energy certificates are not so used, such companies shall sell such purchased energy into the
145 wholesale market and shall sell such purchased clean energy certificates attributed to any
146 applicable portfolio standard eligible resources to minimize the costs to ratepayers under the

147 contract. The department of energy resources shall conduct periodic reviews to determine the
148 impact on the energy and clean energy certificate markets of the disposition of energy and clean
149 energy certificates under this section and may issue reports recommending legislative changes if
150 it determines that actions are being taken that will adversely affect the energy and clean energy
151 certificate markets.

152 (i) If a distribution company sells the purchased energy into the wholesale spot
153 market and auctions the clean energy certificates as described in this section, the distribution
154 company shall net the cost of payments made to projects under the long-term contracts against
155 the net proceeds obtained from the sale of energy and clean energy certificates, and the
156 difference shall be credited or charged to all distribution customers through a uniform fully
157 reconciling annual factor in distribution rates, subject to review and approval of the department
158 of public utilities.

159 (j) A long-term contract procured under this section shall utilize an appropriate
160 tracking system to ensure a unit specific accounting of the delivery of clean energy, to enable the
161 department of environmental protection, in consultation with the department of energy resources,
162 to accurately measure progress in achieving the commonwealth's goals under chapter 298 of the
163 acts of 2008 or chapter 21N of the General Laws.

164 (k) The department of energy resources and the department of public utilities may
165 jointly develop requirements for a bond or other security to ensure performance with
166 requirements under this section.

167 (l) The department of energy resources may promulgate regulations necessary to
168 implement this section.

169 (m) If this section is subjected to a legal challenge, the department of public utilities
170 may suspend the applicability of the challenged provision during the pendency of the action until
171 a final resolution, including any appeals, is obtained and shall issue an order and take other
172 actions as are necessary to ensure that the provisions not subject to the challenge are
173 implemented expeditiously to achieve the public purposes of this section.