

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.

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

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

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

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

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

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

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

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

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

(c) In developing proposed long-term contracts, the distribution companies shall consider long-term contracts for clean energy certificates for energy and for a combination of both clean energy certificates and energy, if applicable. The distribution companies shall also consider terms and conditions that require all clean energy certificates from the proposed clean energy generation to be delivered to the distribution companies for the entirety of the useful life of the proposed clean energy generation resources. A distribution company may decline to pursue a proposal if the proposal's terms and conditions would require the contract obligation to place an unreasonable burden on the distribution company's balance sheet; provided, however, that the distribution company shall take all reasonable actions to 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 further, that mitigation shall not increase costs to ratepayers. If a distribution company deems all proposals to be unreasonable, the distribution company shall, within 20 days of the date of its decision, submit a filing to the department of public utilities. The filing shall include, in the form and detail prescribed by the department of public utilities, documentation supporting the distribution company's decision to decline the proposals. Following a distribution company's filing, and within 4 months of the date of filing, the department of public utilities shall approve or reject the distribution company's decision and may order the distribution company to reconsider any proposal. If distribution companies are unable to agree on a winning bid following a solicitation under this section, the matter shall be submitted to the department of energy resources which shall, in consultation with the independent evaluator, issue a final, binding determination of the winning bid; provided that the final contract executed shall be subject to review by the department of public utilities. The

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

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

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

(e) A proposed long-term contract shall be subject to the review and approval of the department of public utilities. As part of its approval process, the department of public utilities shall consider recommendations by the attorney general, 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 low cost clean energy generation on a long-term basis taking into account the factors outlined in this section.

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

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

(g) The distribution companies shall 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.

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

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

(i) If a distribution company sells the purchased energy into the wholesale spot market and auctions the clean energy certificates as described in this section, the distribution company shall net the cost of payments made to projects under the long-term contracts against the net proceeds obtained from the sale of energy and clean energy certificates, 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.

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

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

(l) The department of energy resources may promulgate regulations necessary to 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.