



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 10-54

July 9, 2010

Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, for approval by the Department of Public Utilities of two long-term contracts to purchase wind power and renewable energy certificates, pursuant to St. 2008, c. 169, § 83 and 220 C.M.R. § 17.00 et seq.

HEARING OFFICER RULING ON PETITIONS TO INTERVENE AND PARTICIPATE

I. INTRODUCTION

On July 2, 2008, Governor Patrick signed into law Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”). Section 83 of the Green Communities Act requires each of the Commonwealth’s electric distribution companies to solicit proposals for long-term contracts from renewable energy developers at least twice over a five-year period beginning on July 1, 2009, and, if the proposals received are reasonable, to enter into cost-effective long-term contracts to facilitate the financing of renewable energy generation. St. 2008, c. 169, § 83; 220 C.M.R. § 17.03(1). The Department of Public Utilities (“Department”) must determine, inter alia, whether approval of any proposed contract filed pursuant to Section 83: (1) provides enhanced electric reliability in the Commonwealth; (2) contributes to moderating system peak load requirements; (3) is cost effective to Massachusetts ratepayers over the term of the contract; and (4) where feasible, creates additional employment. Section 83 provides that the Department shall take into consideration 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 on a long-term basis.

On May 10, 2010, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid (together, “National Grid” or “Company”), filed a petition for approval by the Department of two long-term contracts to purchase wind power and renewable energy certificates (“RECs”) from Cape Wind Associates, LLC (“Cape Wind”). The Department docketed the matter as D.P.U. 10-54. On June 4, 2010, the Company submitted pre-filed direct testimony in support of its petition. The testimony includes National Grid’s proposed ratemaking treatment of the power and RECs it would purchase from Cape Wind under the contracts.

Pursuant to the first proposed contract (“PPA 1”), National Grid will purchase 50 percent of Cape Wind’s estimated total output of electricity supply, associated RECs, and capacity for a 15 year term. Pursuant to the second proposed contract (“PPA 2”), National Grid would be permitted to assign to other buyers the remaining 50 percent of Cape Wind’s estimated total output, RECs, and capacity for a 15 year term. National Grid is not seeking cost recovery for PPA 2.

On May 13, 2010, the Attorney General of the Commonwealth (“Attorney General”) intervened pursuant to G.L. c. 12, § 11E. On June 2, 2010, the Department granted the petitions for leave to intervene filed by the Commonwealth of Massachusetts Department of Energy Resources (“DOER”) and Cape Wind.

On or before June 9, 2010, the Department received petitions for leave to intervene as a full party from the following entities: (1) Alliance to Protect Nantucket Sound (“Alliance”); (2) Associated Industries of Massachusetts (“AIM”); (3) Cape Light Compact; (4) Clean Power Now (“CPN”); (5) Conservation Law Foundation (“CLF”), Natural Resources Defense Council (“NRDC”), and Union of Concerned Scientists (“UCS”) (collectively, “Environmental Petitioners”); (6) Constellation Energy Commodities Group, Inc. and Constellation New Energy, Inc.; (7) Direct Energy Services, LLC (“Direct Energy”); (8) Maine Renewable Energy Association (“MREA”); (9) Thomas Melone (“Melone”); (10) Morris Energy Group LLC and Lowell Cogeneration Company Limited Partnership, LP (together, “Lowell Cogen”); (11) New England Power Generators Association (“NEPGA”); (12) Retail Energy Supply Association (“RESA”); (13) TransCanada Power Marketing, Ltd. (“TransCanada”); and (14) Wal-Mart Stores, East, L.P. and Sam’s East, Inc. (together, “Wal-Mart”). On June 14, 2010, National Grid, DOER and Cape Wind filed responses to the petitions to intervene.¹

¹ Department regulations provide that any party may file a response to a pre-hearing motion no later than five days after such filing. 220 C.M.R. § 1.04(5)(c). It is within the hearing officer’s discretion to determine whether any further response is allowed. 220 C.M.R. § 1.06(6)(a). On June 16, 2010, AIM, the Alliance, Direct Energy, and Thomas Melone each filed a motion for leave to respond to the parties’ responses to the petition to intervene and a response. On June 17, 2010, Lowell Cogen, NEPGA, and Thomas Melone each filed a motion for leave to respond to the parties’ responses to the petitions to intervene and a response. On June 18, 2010, Cape Light Compact and TransCanada each filed a motion for leave to respond to the parties’ responses to the petitions to intervene and a response. On June 21, 2010, Constellation filed a motion for leave to respond to the parties’ responses to the petitions to intervene and a response. Cape Wind filed oppositions to these motions on June 18, 2010, June 21, 2010, and June 22, 2010. Because the additional responses and oppositions present a repetition of the arguments contained in the petitions to intervene and responses, I will render a decision based on the petitions to intervene and responses to petitions to

Also on or before June 9, 2010, the following entities filed petitions requesting limited participant status: (1) NSTAR Electric Company (“NSTAR Electric”); (2) Pioneer Renewable Energy LLC (“Pioneer Energy”); and (3) Western Massachusetts Electric Company (“WMECo”). None of the intervenors opposes these petitions for limited participant status (Cape Wind Response at 4; see Company Response; DOER Response).²

II. STANDARD OF REVIEW

The Department’s regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also Robinson v. Department of Public Utilities, 835 F.2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. 1, 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. Boston Edison, 375 Mass. 1, 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Id.

III. PETITIONS TO INTERVENE

A. Introduction

As set forth in the sections below, I address the petitions to intervene in the following sequence: (1) the Alliance (see Section III.B.1); (2) petitioners claiming individual residential or commercial ratepayer interests (see Sections III.B.2 and III.B.3); (3) retail electric suppliers (see Section III.B.4); (4) Cape Light Compact (see Section III.B.5); (5) wholesale electric

intervene and need not address the additional filings here. Accordingly, the aforementioned motions for leave to respond are denied.

² On June 25, 2010, Constantine Gonatas submitted a late-filed petition for limited participant status (“Gonatas Petition”) with no stated reasons for filing two weeks after the deadline and no description of how he is substantially and specifically affected by the proceeding (see Gonatas Petition). Absent a statement of good cause for the late-filed petition or a sufficient interest in the proceeding, I find the petition deficient on its face. Therefore, I deny the Gonatas Petition.

suppliers (see Sections III.B.6 and III.B.7); and (6) Environmental Petitioners and CPN (see Section III.B.8). The three timely-filed petitions for limited participant status are addressed in Section III.C.

B. Petitions to Intervene

1. Alliance

The Alliance as an organization and 14 of its individual members who are National Grid ratepayers seek full intervenor status in the proceeding (Alliance Petition at 1).³ The Alliance is a non-profit organization whose members are “concerned about the associated costs, environmental impacts and other significant impacts of the proposed Cape Wind project” (*id.* at 3). The Alliance has been involved in a myriad of Cape Wind proceedings for many years, including the numerous proceedings before the Massachusetts Energy Facilities Siting Board. See, e.g., Cape Wind Associates, LLC, EFSB 07-8 (2009); Cape Wind Associates, LLC and Commonwealth Electric Company, d/b/a NSTAR Electric, EFSB 02-2A/D.T.E. 02-53 (2008); Cape Wind Associates, LLC and Commonwealth Electric Company, d/b/a NSTAR Electric, EFSB 02-2 (2005).

According to the Alliance, its membership includes hundreds of electric ratepayers in Massachusetts, some of whom are National Grid ratepayers (Alliance Petition at 3). The Alliance argues that it is substantially and specifically affected because should the Department approve PPA 1, those Alliance members who are National Grid customers would be subject to a substantial increase in electric rates and suffer other economic harm (*id.* at 4). In addition, the Alliance argues that if other Massachusetts electric distribution companies become the assignees of PPA 2, their customers also would experience substantial rate increases and economic harm (*id.*).

National Grid and DOER assert that the Alliance, as an organization, and its 14 individual National Grid ratepayers seeking full party status, are in the same position as other residential ratepayers whose interests are represented by the Attorney General (Company Response at 16; DOER Response at 2). National Grid and DOER do not object to the limited participation of the Alliance (Company Response at 2; DOER Response at 3).

³ The Alliance purports to seek full intervenor status on behalf of the following members whom it states are National Grid ratepayers: Luke Olivieri, Lisa Pennick, Barbara Durkin, Michael Durkin, Diane Leavitt, Thomas Andrews, Denise Andrews Ara Charder, Hector Ribas, Chelly Bayard, Peter Kaiser, Robert DeCosta, R.C. Taylor, and Nathalie Agostino (Alliance Petition at 3).

Cape Wind asserts that the petition to intervene of the Alliance is deficient in that it has not alleged any damage from the PPAs that would affect it in a peculiar or unique manner, either as an organization or as a representative of its individual members (Cape Wind Response at 14-16). Cape Wind asserts that all pertinent ratepayer interests will be fully and fairly examined by the Department and the Attorney General, and that the Attorney General is the proper advocate for the general ratepayer concerns articulated by the Alliance (*id.*). Moreover, Cape Wind maintains that there is no reference to the cost of electricity or general ratepayer interests in the Alliance's Articles of Organization (*id.* at 17). Cape Wind asserts that the Alliance's corporate purpose is limited to the environmental and ecological issues related to Nantucket Sound, while its "self-evident mission" is to stop the construction of the Cape Wind project (*id.*). However, Cape Wind states it does not object to the Department's granting the Alliance limited participant status (*id.*).

The Massachusetts Supreme Judicial Court ("SJC") has recognized that a residential ratepayer alleging no peculiar damage to himself has no constitutional or statutory right to participate fully in Department proceedings as an intervenor. See Robinson v. Department of Public Utilities, 416 Mass. 668 (1993). Moreover, the SJC has stated that even the possibility that the Attorney General may not address all of a residential customer's concerns does not require the Department to afford that residential ratepayer full party status in the proceeding. *Id.* at 673-674. In accordance with G.L. c. 12, § 11E, the Attorney General is authorized to represent any group of consumers in connection with matters before the Department. The Attorney General has exercised this right in this proceeding. Moreover, pursuant to G.L. c. 12, § 11E(b), as amended by St. 2008, c. 169, § 4, the Attorney General has received Department authority to expend up to \$150,000 to retain experts to assist her in representing ratepayer interests in this proceeding (Attorney General Notice of Retention of Experts and Consultants ("Attorney General Notice") approved June 23, 2010). The Attorney General indicated that she will use these funds to supplement or complement her existing staff's expertise by retaining consultants to evaluate the impacts of the proposed long-term contracts on Massachusetts ratepayers, including the cost-effectiveness of the proposed contracts to ratepayers over their 15 year term (Attorney General Notice at 5).

Thus, with respect to 14 of its members who are National Grid residential ratepayers, the Alliance has not stated an interest in the proceeding that can be distinguished from the interests of other residential ratepayers. The Attorney General serves as the representative of the Alliance's residential ratepayers in this proceeding.

With respect to the Alliance as an organization, I reach a different result. The Department has found that when ruling on a petition to intervene, a Hearing Officer may consider a variety of factors, including but not limited to, the interests of the petitioner, whether the petitioner's interests are unique and cannot be represented by any other petitioner, the scope of the proceeding, the potential effect of the petitioner's intervention on the proceeding, and the nature of the petitioner's evidence, including whether such evidence will

help to elucidate the issues raised in the proceeding. See, e.g., Boston Edison Company, D.P.U. 96-23, at 10-11, Interlocutory Order on Appeal of Hearing Officer Ruling (October 16, 1997). I find that the Alliance as an organization, by virtue of its extensive involvement in the range of Cape Wind permitting proceedings over the last several years, has demonstrated that it is substantially and specifically affected by this proceeding. The Alliance's interests are so deeply and directly connected to the future of Cape Wind that in my view its interests are unique and cannot be represented by any other petitioner. Additionally, given the Alliance's historical involvement with the range of Cape Wind matters to date, it may provide evidence that will help to elucidate the issues herein. Therefore, I grant the Alliance, as a uniquely situated organization with respect to the Cape Wind project, full intervenor status in the proceeding.

2. Thomas Melone

Thomas Melone, an NSTAR Electric residential ratepayer in Edgartown, Massachusetts, asserts that any cost increases resulting from Department approval of the PPAs will directly affect him (Melone Petition at 5). In addition, Mr. Melone questions National Grid's decision to use all of its renewable energy authority for the proposed project (id.). Mr. Melone also raises a number of concerns related to siting issues and alleged environmental impacts of the Cape Wind project including, but not limited to, his impaired view of Nantucket Sound, his alleged property value loss, and potential oil and other leaks (id. at 6). Mr. Melone also states that as the chief executive officer of Allco Renewable Energy Limited, he has experience in renewable energy finance and cost structure for long-term power purchase agreements (id.).

National Grid, DOER and Cape Wind each contend that Mr. Melone has failed to demonstrate any peculiar damage and that the Attorney General by statute represents the interests of individual ratepayers in this proceeding (Company Response at 15; DOER Response at 2; Cape Wind Response at 19).

As stated above, a residential ratepayer alleging no peculiar damage to himself has no constitutional or statutory right to intervene in Department proceedings. See Robinson v. Department of Public Utilities, 416 Mass. 668 (1993). Mr. Melone's Edgartown property is not within National Grid's service territory. Moreover, Mr. Melone's stated concern with potential rate increases that would result from Department approval of PPA 2 cannot be distinguished from the concerns of other residential ratepayers in the Commonwealth. Therefore, I find that Mr. Melone's interests are adequately represented by the Attorney General. Accordingly, I deny Mr. Melone's petition to intervene.

3. Wal-Mart and AIM

As a National Grid large commercial ratepayer with a competitive supplier of electricity, Wal-Mart argues that it is substantially and specifically affected because its electric distribution costs will increase if the Department approves National Grid's proposal for recovery of costs of the proposed contracts (Wal-Mart Petition at 4). According to Wal-Mart, it is already paying for costs associated with its competitive supplier's compliance with the Commonwealth's renewable portfolio standards ("RPS") (*id.* at 5-6). Wal-Mart argues that, if National Grid's proposal is approved, customers with competitive suppliers effectively would incur a double charge for RPS compliance (*id.* at 6).

AIM is an organization of Massachusetts companies representing more than 6000 employers in Massachusetts that advocates public policy and promotes an expanding economy in the Commonwealth (AIM Petition at 1). AIM states that it has hundreds of members in National Grid's service territory that will be affected by the Department's disposition of PPA 1 (*id.* at 1, 4). AIM argues that if the Department approves the contracts, AIM's members will experience significant rate increases associated with the delivery costs of electricity and that no other party can represent their interests in this proceeding (*id.* at 3).

According to the Company, Wal-Mart's and AIM's stated concerns relate not to the contracts, but rather to the Company's proposed approach to rate recovery of the costs of the contracts (Company Response at 13). National Grid asserts that if the Department finds that Wal-Mart and AIM qualify as intervenors, it should restrict their intervention to the limited issue of the proposed allocation of costs of the contracts between basic service customers and distribution customers (*id.* at 14).

DOER and Cape Wind argue that the Attorney General has statutory authority to represent the interests of all ratepayers, including large retail customers such as Wal-Mart and the commercial and industrial customers AIM represents (DOER Response at 2; Cape Wind Response at 18, 20). DOER and Cape Wind maintain that neither Wal-Mart nor AIM presented facts to support a contention that they would be more specifically and substantially affected or affected in a unique manner relative to other ratepayers or ratepayer groups (DOER Response at 2; Cape Wind Response at 18, 20). Accordingly, DOER and Cape Wind argue that Wal-Mart's and AIM's petitions should be denied. Neither DOER nor Cape Wind objects to granting limited participant status to Wal-Mart and AIM (DOER Response at 2; Cape Wind Response at 3-4, 18, 20).

Wal-Mart is a large commercial ratepayer and competitive supply customer with 28 stores in National Grid's service territory. AIM is an organization representing numerous large commercial, industrial, and institutional ratepayers of National Grid. As discussed above, the Attorney General is authorized to represent ratepayers in connection with matters before the Department. G.L. c. 12, § 11E. In exercising its broad discretion under

G.L. c. 30A, § 10, the Department has on occasion granted individual ratepayers intervenor status upon a demonstration that their interests will not be adequately represented by the Attorney General's participation in a proceeding. See, e.g., Western Massachusetts Electric Company, D.T.E. 03-34, Hearing Officer Ruling on Intervention at 2 (November 18, 2003); Boston Gas Company, D.P.U. 94-109 (Phase II), Hearing Officer Rulings on Petitions to Intervene (May 11, 1995). However, the SJC has directed the Department to be mindful that the extensive participation by an individual ratepayer should only be permitted "if careful consideration discloses special circumstances in justification." New England Telephone and Telegraph Company, D.P.U. 93-125 at 5, citing Boston Edison, 375 Mass. 46.

Here, I find that such special circumstances exist. Recognizing the complexity of this case, coupled with Wal-Mart's status as a large commercial customer and a purchaser of competitive electricity supply and AIM's representation of numerous large, commercial, industrial and institutional ratepayers of National Grid, I find that these entities have demonstrated that they are substantially and specifically affected by the proceeding and their interests cannot be adequately represented by the Attorney General. Accordingly, I grant the petitions to intervene filed by Wal-Mart and AIM, with the right to participate fully in the proceeding. As National Grid ratepayers and a representative of ratepayers, their intervention will not be limited to the issue of the proposed rate recovery of the contracts as requested by National Grid.

4. Direct Energy, Constellation New Energy, Inc. and RESA

Direct Energy and Constellation New Energy, Inc.⁴ are licensed retail suppliers of electricity in Massachusetts that serve National Grid customers as well customers of other Massachusetts electric distribution companies, and RESA is an advocacy group for retail suppliers in Massachusetts (Direct Energy Petition at 1; Constellation Petition at 2; RESA Petition at 1). Direct Energy and RESA each maintains that it has a substantial and specific interest in ensuring that the terms and conditions of the proposed long-term contracts between National Grid and Cape Wind are legally supported, reasonable, and do not adversely affect its customers or members and electric retail competition in Massachusetts (Direct Energy Petition at 3; RESA Petition at 2).

National Grid acknowledges that the interests of licensed electric suppliers are distinct from the general consumer interests that the Attorney General represents (Company Response

⁴ Constellation New Energy, Inc. is retail supplier of electricity, while Constellation Energy Commodities Group, Inc. is a wholesale supplier of electricity. These subsidiaries of Constellation Energy Group, Inc. filed a joint petition to intervene ("Constellation Petition"). For a discussion of Constellation Energy Commodities Group, Inc., see Section III.B.6.

at 12). The Company states that if the Department determines the retail suppliers' interest in the proceeding warrants intervenor status, the Department must limit any such intervention to those issues solely related to recovery of costs of the contracts (i.e., those issues that may affect retail competition) (id.).

Cape Wind argues that the Department should restrict Direct Energy, Constellation New Energy, Inc., and RESA to limited participation in the proceeding (Cape Wind Response at 25). Cape Wind argues that protection of competitor or competitive interests is not sufficient to warrant intervenor status in a Section 83 proceeding (id.).

DOER argues that while their interests do not merit full intervention, these petitioners may be able to contribute to the development of the record on the issue of the recovery of costs of the contract (DOER Response at 3). Accordingly, DOER recommends that the Department create "additional avenues" of limited participation by affording the retail suppliers the right to conduct discovery, cross-examination, and jointly sponsor a witness on cost recovery issues (id.).

As retail suppliers of electricity active in National Grid's service territory, and as a representative of competitive suppliers in National Grid's service territory, Direct Energy, Constellation New Energy, Inc., and RESA all have demonstrated a substantial and specific interest in the ratemaking treatment of the recovery of costs of PPA 1. Specifically, these entities, as retail competitive suppliers, have a substantial and specific interest in the determination of how the costs of PPA 1 are recovered from National Grid's basic service customers and distribution service customers. These entities have not, however, alleged or demonstrated that they are substantially and specifically affected by issues other than the ratemaking treatment of PPA 1. The SJC has determined that it is clearly within the Department's broad discretion under G.L. c. 30A, § 10 to limit the scope of an intervenor's participation in a proceeding. KES Brockton, Inc. v. Department of Public Utilities, 415 Mass. 158, 165 (1993); Boston Edison, 375 Mass. at 44-45. Accordingly, I grant the petitions to intervene of Direct Energy, Constellation New Energy, Inc. and RESA on the issue of the rate treatment of the cost recovery of the proposed contracts. As such, Direct Energy, Constellation New Energy, Inc., and RESA may participate in this proceeding solely regarding the issue of the proposed ratemaking treatment of PPA 1, including how costs may be recovered from basic service and distribution service customers.

5. Cape Light Compact

Cape Light Compact is a municipal aggregator under G.L. c. 164, § 134 and consists of 21 towns in Barnstable and Dukes Counties, as well as the counties themselves (Cape Light Compact Petition at 5). Cape Light Compact states that its purpose is to negotiate the best rates for supply and distribution of electricity for ratepayers on Cape Cod and the Islands, to advance consumer protection and the interests of those customers, to improve service quality,

and to use and encourage renewable energy development (id., citing Cape Light Compact Intergovernmental Agreement at Article 1). The Cape Light Compact states that it operates a municipal aggregation program which provides electric power supply on an opt-out basis to approximately 160,000 customers who otherwise would be NSTAR Electric basic service customers (id.).

According to Cape Light Compact, it is substantially and specifically affected by this proceeding because its customers are directly affected by changes to the wholesale energy market in New England, as those changes ultimately influence the price that its customers pay for electricity under competitive energy supply agreements (id. at 11). Cape Light Compact further argues that approval of a cost recovery structure for PPA 1 sets precedent for other electric distribution companies, such as NSTAR Electric, which may purchase Cape Wind power and RECs in the future under PPA 2 (id. at 15).

The Company asserts that because Cape Light Compact operates exclusively in NSTAR Electric's service territory, National Grid's rates do not have an impact on the Cape Light Compact's customers (Company Response at 16). Additionally, the Company argues that this proceeding will not have an impact on Cape Light Compact's stated interests and that the Attorney General will represent Cape Light Compact's more generalized concerns (id. at 16-17). Accordingly, National Grid argues that Cape Light Compact's petition should be denied (id.).

Cape Wind argues that Cape Light Compact has alleged nothing more than general ratepayer issues and notes that none of Cape Light Compact's ratepayers is a National Grid customer (Cape Wind Response at 23). Cape Wind maintains that Cape Light Compact's concerns with the precedential effect of National Grid's proposed accounting of the PPAs can be sufficiently assessed through limited participation in the proceeding (id.).

DOER asserts that Cape Light Compact has failed to demonstrate specific impacts of the outcome of the proceeding that would warrant its participation as a full intervenor (DOER Response at 3). DOER, however, suggests that Cape Light Compact may be able to contribute to the evaluation of the cost allocation issues, and recommends that the Department provide the Cape Light Compact with "additional avenues" of procedure (id.).

Cape Light Compact has no National Grid ratepayers among its customers. While Cape Light Compact has stated a general interest in ratemaking issues, I find that it has not articulated a substantial and specific interest warranting intervenor status in the proceeding. Further, Cape Light Compact's concerns regarding the impact of these contracts on the wholesale energy market generally do not warrant full intervention in the proceeding. Therefore, I deny Cape Light Compact's petition to intervene. Nonetheless, I find that Cape Light Compact, as a municipal aggregator, has demonstrated a sufficient interest in this proceeding to participate in a limited fashion. Accordingly, I grant Cape Light Compact

limited participant status in the proceeding with the right to receive copies of all pleadings, discovery requests and responses, and to file briefs in accordance with the Department's procedural schedule.

6. Lowell Cogen, TransCanada, NEPGA, and Constellation Energy Commodities Group

Lowell Cogen states that it is a wholesale renewable energy supplier that filed a timely response to the January 15, 2010 Request for Proposals for Renewable Energy Projects ("RFP") issued by National Grid et al. (Lowell Cogen Petition at 2). Lowell Cogen states that its existing 31.5 megawatt facility meets the qualifications set forth in the RFP, and that National Grid improperly suspended the RFP process to enter into a contract with Cape Wind (id. at 1). As a potential competitor of Cape Wind for a long-term contract with National Grid under Section 83, Lowell Cogen argues that it is substantially and specifically affected by this proceeding (id. at 4).

TransCanada is a power marketing company whose corporate parent and sister companies generate power in Canada as well as in the United States (TransCanada Petition at 1). TransCanada states that it has developed a wind farm in Maine capable of providing renewable energy to Massachusetts and seeks to compete for long-term contracts pursuant to Section 83 of the Green Communities Act (id.). As a competitor of Cape Wind in securing the limited number of long-term contract opportunities available under Section 83, TransCanada maintains that it is substantially and specifically affected by the proceeding (id.).

NEPGA states that it is an organization that represents wholesale suppliers of electricity in New England (NEPGA Petition at 1). NEPGA asserts that the interest of its members in the proceeding is to ensure that the Department's determination in this proceeding is reasonable, does not have an adverse impact on the wholesale market competition, and encourages a fair and open solicitation process, as provided in Section 83 (id. at 2-3).

Constellation Energy Commodities Group states that it is a wholesale supplier of electricity (Constellation Petition at 1).

National Grid argues that the impact of the proposed PPAs on the wholesale power market is unrelated to the Department's Section 83 review (Company Response at 9). The Company maintains that Section 83 requires the Department to determine whether the PPAs will: (1) facilitate the financing of Cape Wind; (2) satisfy the statute's vintage and fuels requirements; and (3) produce appropriate RECs (id.). The Company also states that if the wholesale marketers are afforded intervenor status, this would create significant concerns related to confidential data access (id.). National Grid, therefore, asserts that affording competitive wholesale suppliers limited participation status will "at the very least reduce, and

possibly avoid both, the inevitable distractions in this proceeding to address this potentially contentious issue” (id. at 10).

Both DOER and Cape Wind argue that a Section 83 proceeding is not a forum for aggrieved bidders to advance their competitive interests (Cape Wind Response at 21; DOER Response at 3). Cape Wind maintains that the SJC has decided the issue of intervention as it applies to industry competitors, finding that such competitors do not satisfy the “substantially and specifically affected” standard simply by nature of their competitive interest (Cape Wind Response at 21, citing Cablevision Sys. Corp. v. Department of Telecommunications and Energy, 428 Mass.436, 438-439 (2001) (“Cablevision”). Cape Wind further asserts that granting intervention to a multiplicity of parties with solely competitive interests would not contribute to the efficient conduct of the case (Cape Wind Response at 22, citing Save the Bay v. Department of Public Utilities, 366 Mass. 667, 672 (1975)).

It is undisputed that the petitioning wholesale electric suppliers are potential competitors for a limited pool of Section 83 contracts, and have an interest in the outcome of this proceeding. While Cape Wind relies on the Cablevision decision to support its position that competitors do not have standing to intervene in Department cases simply based on their competitive interests, this argument is misplaced. In that decision, the SJC found that competitors in an industry other than the one at issue did not have standing in a Department proceeding. See Cablevision at 438. The SJC has specifically recognized that agencies have allowed intra-industry competitors standing to challenge agency action. Cablevision at 438, citing Massachusetts Ass’n of Indep. Ins. Agents & Brokers, Inc. v. Commissioner of Insurance, 373 Mass. 290, 295-296 (1977); A.B. & C. Motor Transp. Co. v. Department of Public Utilities, 327 Mass. 550, 551 (1951). The Department has granted intervenor status to a competitor in an adjudicatory proceeding when its position as a winning bidder in an RFP process was threatened by a complaint regarding the ranking of bids. DLS Energy, Inc., D.P.U. 92-153-1, Interlocutory Order on Appeal of Hearing Officer Ruling (July 22, 1993). Thus, I find that these entities have demonstrated that they are substantially and specifically affected by the Department’s determination in this proceeding. In addition, the wholesale suppliers or representative of wholesale suppliers may have the ability to contribute potentially significant information on the cost-effectiveness of the proposed contracts. Therefore, I grant the petitions of Lowell Cogen, TransCanada, NEPGA, and Constellation Energy Commodities Group to intervene fully in the proceeding.⁵

⁵ While the parties raise legitimate concerns about the efficient conduct of the proceeding, these are not sufficient grounds to deny intervention to parties with a substantial and specific interest. The Department strongly encourages all parties to reach agreement on issues related to discovery and confidential treatment. See, e.g., NSTAR Electric Company, D.P.U. 07-64, Interlocutory Order on Appeal of Hearing Officer Ruling (2008).

7. MREA

MREA states that it is a not-for-profit association of renewable power producers, suppliers of goods and services to those producers, and supporters of the renewable power industry in Maine (MREA Petition at 1). MREA asserts that its members participate broadly in the New England energy markets, including Massachusetts, and that no other party can adequately represent its interests in the proceeding (id.).

The Company and Cape Wind argue that the generalized interests of MREA can be addressed through its limited participation in the proceeding (Company Response at 11; Cape Wind Response at 3). DOER asserts that MREA has failed to demonstrate that it is specifically affected by the proceeding, but would recommend MREA's limited participation in the proceeding (DOER Response at 2).

While MREA maintains it has an interest in the proceeding, it has provided no reasons in its petition to demonstrate any substantial or specific interest. Therefore, I deny MREA's petition to intervene. Nonetheless, as an association representing renewable power producers in New England, some of which may seek to provide energy and RECs under Section 83, MREA has demonstrated a sufficient interest in this proceeding that I will exercise my discretion and grant MREA limited participant status. MREA will be permitted to receive copies of all pleadings, discovery requests and responses, and to file briefs in accordance with the Department's procedural schedule.

8. Environmental Petitioners and CPN

The Environmental Petitioners submit that they have a substantial interest in the proceeding, including the advancement of the objectives of Section 83 (Environmental Petitioners Petition at 2). CLF is a non-profit organization that "works to solve the environmental problems threatening the people, natural resources and communities of New England" (id. at 3,4). CLF states it has a significant interest in the deployment of renewable energy generation in order to reduce greenhouse gas emissions while increasing energy security and reliability (id. at 3). CLF further states that it has been involved in both state and federal regulatory reviews of the Cape Wind project, including participation in proceedings before the Massachusetts Energy Facilities Siting Board (id. at 4). NRDC is a non-profit environmental advocacy organization; NRDC states that one of its priorities is reducing global warming emissions and promoting the development of clean energy through increased use of renewable energy resources (id.). NRDC also states that it has "participated extensively in various phases of the federal and state regulatory and environmental review process that ultimately led to approval of the Cape Wind Project by the U.S. Department of the Interior" (id.). UCS is a science-based nonprofit that combines independent scientific research and citizen action "to develop innovative, practical solutions and secure responsible changes in government policy, corporate practices and consumer choices" (id. at 5). UCS states that in

furtherance of these ends, it participates in the design and implementation of state renewable energy policies (id.).

The Environmental Petitioners argue that they have a substantial and specific interest in the proceeding and the necessary expertise to ensure that the Department's evaluation of the cost-effectiveness and reasonableness of the first proposed PPAs under Section 83 includes an examination of the value of avoided emissions such as greenhouse gasses and other pollutants, as well as of other significant economic, environmental and energy security and reliability benefits (id. at 7). The Environmental Petitioners also state that for almost nine years they have actively participated in various regulatory reviews of the Cape Wind project (id.). Because of their special expertise, the Environmental Petitioners assert their full participation in the proceeding will help elucidate the issues, develop the record, and contribute to the Department's issuance of a final decision that is consistent with the mandates of Section 83 (id.). The Environmental Petitioners and CPN seek intervenor status in the proceeding or, in the alternative, limited participant status (id. at 9-10; CPN Petition at 7).

CPN is a non-profit organization incorporated in 2003 by a group of Cape Cod residents to promote the development of renewable energy resources (CPN Petition at 1). CPN states it has been an advocate of the Cape Wind project and has actively participated in local, state, regional and federal proceedings regarding the project (id. at 2). CPN maintains that, due to its expertise in environmental issues associated with renewable and non-renewable energy resources, it "will help facilitate an expeditious and appropriate result" in the process (id.). CPN asserts it would address the global warming externalities associated with fossil fuels as well as the benefits of wind energy relative to the "true cost" of fossil fuels (id. at 5).

DOER argues that the Environmental Petitioners and CPN have not demonstrated that they are substantially and specifically affected by the proceeding and should be afforded only limited participant status (DOER Response at 3-4). Cape Wind does not oppose the petitions to intervene filed by CPN and the Environmental Petitioners (Cape Wind Response at 4).

In reviewing the petitions to intervene of the Environmental Petitioners and CPN, I find that these organizations have been extensively involved with various state and federal proceedings concerning the Cape Wind project. In addition, the Environmental Petitioners and CPN assert that development of renewable energy projects, including of Cape Wind, has been a central issue in their respective organizations. I find that through the combination of these factors, the Environmental Petitioners and CPN have demonstrated they are substantially and specifically affected by the present proceeding. The interests of the Environmental Petitioners and CPN are unique and cannot be fully represented by any other petitioner. Moreover, given the nature of the Environmental Petitioners and CPN's involvement with Cape Wind to date, the evidence to be presented by the Environmental Petitioners and CPN may help to elucidate the issues in the proceeding. Accordingly, I grant the petitions to intervene filed by the Environmental Petitioners and CPN.

C. Petitions for Limited Participant Status

1. NSTAR Electric and WMECo

Both NSTAR Electric and WMECo are electric distribution companies subject to the provisions of Section 83. Their petitions state that issues related to implementation of the statute that are the subject of the proceeding are common to the other Massachusetts electric distribution companies (NSTAR Electric Petition at 2; WMECo Petition at 2). None of the parties objects to affording limited participant status to NSTAR Electric and WMECo.

As electric distribution companies subject to the provisions of Section 83, NSTAR Electric and WMECo have demonstrated sufficient interest in the proceeding to warrant limited participant status. Accordingly, I grant the NSTAR Electric's and WMECo's petitions for limited participant status with the right to receive copies of all pleadings, discovery requests and responses and to file briefs in accordance with the Department's procedural schedule.

2. Pioneer Energy

Pioneer Energy holds rights to a proposed biomass renewable energy facility to be constructed in Greenfield, Massachusetts (Pioneer Energy Petition at 1). Pioneer Energy maintains that any determination and findings the Department may make in this first long-term contract proceeding will establish precedent for all future contracts, including a contract Pioneer Energy is pursuing (*id.* at 2). None of the parties to the proceeding objects to the limited participation of Pioneer Energy.

As the holder of rights to a proposed renewable energy facility that is seeking to enter into a Section 83 contract, Pioneer Energy has demonstrated sufficient interest in the proceeding to be a limited participant. Therefore, I grant Pioneer Energy's petition for limited participant status with the right to receive copies of all pleadings, discovery requests and responses and to file briefs in accordance with the Department's procedural schedule.

IV. CONCLUSION

This adjudication of National Grid's proposed long-term contracts with Cape Wind filed pursuant to Section 83 presents issues of first impression for the Department. In this ruling, I recognize that I have granted intervenor status to a number of entities, and that National Grid and Cape Wind have expressed concerns that such participation could result in protracted proceedings. I have found in this case that potential delays in the proceeding related to discovery or confidentiality disputes are not sufficient grounds for denial of a petition to intervene. As we enter the discovery phase of the proceeding, I urge parties to make a good faith effort to resolve any such disputes prior to raising them with the Department. See 220 C.M.R. § 1.06(6)(c). I further expect the parties' full cooperation in ensuring that the Department's review of National Grid's contracts proceeds without undue delays.

V. RULING

For the reasons addressed above, the following petitions to intervene filed pursuant to 220 C.M.R. § 1.03 are hereby GRANTED: Alliance to Protect Nantucket Sound; Associated Industries of Massachusetts; Clean Power Now; Conservation Law Foundation, Natural Resources Defense Council, and Union of Concerned Scientists; Constellation Energy Commodities Group, Inc.; Morris Energy Group LLC and Lowell Cogeneration Company, L.P.; New England Power Generators Association; TransCanada Power Marketing, Ltd.; and Wal-Mart Stores East, L.P. and Sam's East, Inc.

For the reasons stated above, the following petitions to intervene are hereby GRANTED in part and DENIED in part, as set forth above: Direct Energy Services, LLC; Constellation New Energy, Inc; and Retail Energy Supply Association. In accordance with this ruling, each of these petitioners may participate as an intervenor in the proceeding on the sole issue of the proposed ratemaking treatment of PPA 1, including how the costs of the contracts will be recovered from basic service and distribution service customers.

For the reasons addressed above, the following petitions to intervene are hereby DENIED: Cape Light Compact; and Maine Renewable Energy Association. In accordance with 220 C.M.R. § 1.03(1)(e), Cape Light Compact and Maine Renewable Energy Association are hereby GRANTED limited participant status with the right to receive copies of all pleadings, discovery requests and responses, and to file briefs in accordance with the Department's procedural schedule.

For the reasons addressed above, the petition to intervene of Thomas Melone is hereby DENIED.

The following petitions for limited participant status are hereby GRANTED: NSTAR Electric Company; Pioneer Renewable Energy, LLC; and Western Massachusetts Electric Company.

The late-filed petition of Constantine Gonatas to participate in the proceeding is hereby DENIED.

Under the provisions of 220 C.M.R. § 1.06(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. Responses to any appeal of this Ruling to the Commission must be filed within five (5) days of any such appeal.

/s/

Laura C. Bickel
Hearing Officer