

HOUSE No. 4336

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 26, 2016.

The committee on Telecommunications, Utilities and Energy to whom was referred the petition (accompanied by bill, House, No. 2881) of Patricia A. Haddad and others for legislation to encourage the development of clean energy security, energy diversity and economic growth, reports recommending that the accompanying bill (House, No. 4336) ought to pass.

For the committee,

THOMAS A. GOLDEN, JR.

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to promote energy diversity.

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. Chapter 169 of the acts of 2008, as amended by chapter 209 of the acts of
2 2012, is hereby further amended by inserting after section 83A the following sections:-

3 Section 83B. Definitions

4 For the purposes of sections 83C and 83D, the following terms, unless context clearly
5 indicates otherwise, shall have the following meanings:-

6 “Clean energy generation”, either: (1) firm service hydroelectric generation from
7 hydroelectric generation alone; or (2) new Class I RPS eligible resources that are firm up with
8 firm service hydroelectric generation.

9 “Distribution company”, a distribution company as defined in section 1 of chapter 164 of
10 the General Laws.

11 “Firm service hydroelectric generation”, hydroelectric generation provided without
12 interruption for a period designated in a contract, including but not limited to multiple

13 hydroelectric run-of-the-river generation units managed in a portfolio that creates firm service
14 though the diversity of multiple units.

15 “New Class I RPS eligible resources”, Class I renewable energy generating sources as
16 defined in section 11F of chapter 25A of the General Laws, which have a commercial operation
17 date on or after January 1, 2017.

18 “Offshore wind developer”, provider of electricity developed from a generation project
19 located on the Outer Continental Shelf within the Massachusetts Wind Energy Area designated
20 by the U.S. Department of the Interior on May 30, 2012, or the Rhode Island/Massachusetts
21 Wind Energy Area designated by the U.S. Department of the Interior on February 24, 2012.

22 “Offshore wind energy generation”, offshore wind electric generating resources that: (1)
23 are Class I renewable energy generating sources, as defined in section 11F of chapter 25A of the
24 General Laws; (2) have a commercial operation date on or after January 1, 2018, as verified by
25 the department of energy resources; and (3) operate in a competitively solicited federal lease
26 area.

27 Section 83C. Offshore Wind Solicitation

28 (a) Notwithstanding any general or special law to the contrary, beginning on or before
29 June 30, 2017, all distribution companies in the commonwealth shall jointly and competitively
30 solicit proposals from offshore wind developers and, provided reasonable proposals have been
31 received, shall enter into cost-effective long-term contracts to facilitate the financing of offshore
32 wind energy generation resources, apportioned among the distribution companies under this
33 section.

34 (b) The timetable and method for solicitations and execution of such contracts shall be
35 proposed jointly by the distribution companies and the department of energy resources using a
36 competitive bidding process only, and shall be subject to review and approval by the department
37 of public utilities. Solicitations may be coordinated and issued jointly with other New England
38 states or entities designated by said states. Distribution companies may conduct 1 or more
39 competitive solicitations through a schedule or staggered procurement schedule developed by the
40 department of energy resources; provided, that distribution companies shall jointly enter into
41 cost-effective long-term contracts for offshore wind energy generation totaling no less than 1200
42 megawatts of aggregate nameplate capacity by June 30, 2027. Individual solicitations shall seek
43 proposals for no less than 400 megawatts of aggregate nameplate capacity of offshore wind
44 energy generation resources. Distribution companies must issue a competitive solicitation under
45 this section no later than June 30, 2017, and subsequent solicitations under a staggered
46 procurement schedule developed by the department of energy resources, if applicable, shall
47 occur within 24 months of a previous solicitation. If the department of public utilities determines
48 that reasonable proposals were not received pursuant to a solicitation, the department may
49 terminate the solicitation, and may require additional solicitations to fulfill the requirements of
50 this section.

51 (c) For the purposes of this section, a long term contract shall be a contract with a term of
52 15 to 20 years. In developing proposed long-term contracts, the distribution companies shall
53 consider long-term contracts for renewable energy certificates, hereinafter referred to as RECs,
54 for energy, and for a combination of both RECs and energy. A distribution company may decline
55 to consider contract proposals having terms and conditions that it determines would require the
56 contract obligation to place an unreasonable burden on the distribution company's balance sheet,

57 and may structure its contracts, pricing or administration of the products purchased to mitigate
58 impacts on the balance sheet or income statement of the distribution company or its parent
59 company, subject to the approval of the department of public utilities; provided, that such
60 mitigation shall not increase costs to ratepayers. In the event a distribution company deems all
61 contract proposals to be unreasonable, the department of public utilities shall initiate a docket to
62 determine the distribution company's rationale for declining said proposals. The distribution
63 companies shall consult with the department of energy resources and the attorney general's
64 office regarding the choice of contracting methods and solicitation methods. All proposed
65 contracts shall be subject to the review and approval of the department of public utilities.

66 (d) The department of public utilities and the department of energy resources each shall
67 adopt regulations consistent with this section. The regulations shall: (1) allow developers of
68 offshore wind energy generation resources to submit proposals for long-term contracts consistent
69 with this section; (2) require that contracts executed by the distribution companies under such
70 proposals are filed with, and approved by, the department of public utilities before they become
71 effective; (3) allow transmission costs to be incorporated into a proposal; (4) to the extent there
72 are transmission costs included in a bid, the department of public utilities may authorize or
73 require the contracting parties to seek recovery of such transmission costs of the project through
74 federal transmission rates, consistent with policies and tariffs of the federal energy regulatory
75 commission, to the extent the department finds such recovery is in the public interest; (5) require
76 that offshore wind energy generating resources to be used by a developer under the proposal
77 meet the following criteria: (i) provide enhanced electricity reliability within the commonwealth;
78 (ii) contribute to reducing winter electricity price spikes; (iii) be cost effective to Massachusetts
79 electric ratepayers over the term of the contract; (iv) avoid line loss and mitigate transmission

80 costs to the extent possible; (v) adequately demonstrate project viability in a commercially
81 reasonable timeframe; (vi) provide reliability, price, economic and environmental benefits that
82 outweigh any costs to ratepayers; and (vii) where feasible, create additional employment and
83 economic development in the commonwealth.

84 (e) As part of its approval process, the department of public utilities shall consider the
85 attorney general's recommendations, which shall be submitted to the department of public
86 utilities within 45 days following the filing of such contracts with the department of public
87 utilities. The department of public utilities shall consider both the potential costs and benefits of
88 such contracts and shall approve a contract only upon a finding that it is a cost effective
89 mechanism for procuring reliable renewable energy on a long-term basis, taking into account the
90 factors outlined in this section.

91 (f) Distribution companies, the department of energy resources and the attorney general
92 shall jointly select an independent evaluator to assist the department of public utilities in
93 monitoring the competitive solicitation and bid selection process. The independent evaluator
94 shall provide expertise and unbiased analysis to encourage an open, fair and transparent process
95 and ensure contracts are in the public interest. The independent evaluator shall: (1) within 30
96 days of submission, issue a report to the department of public utilities analyzing the solicitation
97 process proposed under subsection (b) of this section, including recommendations for improving
98 the process, if any; and (2) within 45 days following the filing of a long-term contract for a
99 winning bid proposal, issue a report to the department of public utilities analyzing the bid
100 selection process, including a comprehensive assessment of bid valuation and selection criteria to
101 ensure all bids were evaluated in a fair and non-discriminatory manner. Distribution companies
102 and the department of energy resources shall consult with the independent evaluator when

103 developing its solicitation process, bid valuation and bid selection criteria. The independent
104 evaluator shall have access to all information and data related to the competitive solicitation and
105 bid selection process necessary to fulfill the purposes of this subsection, but shall ensure all
106 proprietary information remains confidential. The department of public utilities shall consider the
107 findings of the independent evaluator, may adopt recommendations of the independent evaluator
108 as a condition for approval, and may reject bids that were the result of an unfair or discriminatory
109 solicitation or bid selection process.

110 (g) If distribution companies are unable to agree on a winning bid under a solicitation
111 under this section, the matter shall be submitted to the department of energy resources, in
112 consultation with the department of public utilities, for a final, binding determination of the
113 winning bid. Electric distribution companies shall each enter into a contract with the winning
114 bidders for their apportioned share of the market products being purchased from the project. The
115 apportioned share shall be calculated and based upon the total energy demand from all
116 distribution customers in each service territory of the distribution companies.

117 (h) A distribution company may elect to use any energy purchased under such contracts
118 for resale to its customers, and may elect to retain RECs to meet the applicable annual renewable
119 portfolio standard requirements under said section 11F of said chapter 25A. If the energy and
120 RECs are not so used, such companies shall sell such purchased energy into the wholesale spot
121 market and shall sell such purchased RECs through a competitive bid process. Notwithstanding
122 the previous sentence, the department of energy resources shall conduct periodic reviews to
123 determine the impact on the energy and REC markets of the disposition of energy and RECs
124 under this section. The department may issue reports recommending legislative changes if it
125 determines that said disposition adversely affects the energy and REC markets.

126 (i) If a distribution company sells the purchased energy into the wholesale spot market
127 and auctions the RECs as described in this section, the distribution company shall net the cost of
128 payments made to projects under the long-term contracts against the proceeds obtained from the
129 sale of energy and RECs, and the difference shall be credited or charged to all distribution
130 customers through a uniform fully reconciling annual factor in distribution rates, subject to
131 review and approval of the department of public utilities.

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

137 Section 83D. Hydropower Solicitation

138 (a) Notwithstanding any general or special law to the contrary, beginning on January 1,
139 2017, all distribution companies in the commonwealth shall jointly and competitively solicit
140 proposals from developers of clean energy generation resources to deliver an annual amount of
141 electricity of not more than 9,450,000 megawatts-hours, and, provided reasonable proposals have
142 been received, shall enter into either long-term contracts or delivery commitment agreements to
143 facilitate the financing of clean energy generation resources, apportioned among the distribution
144 companies under this section.

145 (b) The timetable and method for solicitation shall be proposed jointly by the distribution
146 companies and the department of energy resources using a competitive bidding process only, and
147 shall be subject to review and approval by the department of public utilities. Solicitations may be

148 coordinated and issued jointly with other New England states or entities designated by said
149 states. If the department of public utilities determines that reasonable proposals were not
150 received pursuant to a solicitation, the department may terminate the solicitation, and may
151 require additional solicitations to fulfill the requirements of this section.

152 (c) For the purposes of this section, a long term contract shall be a contract with a term of
153 15 to 20 years. In developing proposed long-term contracts, the distribution companies shall
154 consider long-term contracts for renewable energy certificates, hereinafter referred to as RECs,
155 for energy, and for a combination of both RECs and energy, if applicable. A distribution
156 company may decline to consider proposals having terms and conditions that it determines
157 would require the contract obligation to place an unreasonable burden on the distribution
158 company's balance sheet, and may structure its contracts, delivery commitments, pricing or
159 administration of the products purchased to mitigate impacts on the balance sheet or income
160 statement of the distribution company or its parent company, subject to the approval of the
161 department of public utilities; provided, that such mitigation shall not increase costs to
162 ratepayers. In the event a distribution company deems all proposals to be unreasonable, the
163 department of public utilities shall initiate a docket to determine the distribution company's
164 rationale for declining said proposals. The distribution companies shall consult with the
165 department of energy resources and the attorney general's office regarding the choice of
166 contracting methods and solicitation methods. All proposals shall be subject to the review and
167 approval of the department of public utilities.

168 (d) For the purposes of this section, a delivery commitment agreement shall be a
169 contractual commitment by a clean energy developer to deliver electricity to the ISO New
170 England Control Area for a term of 15 to 20 years, subject to the rules governing that market as

171 approved by the federal energy regulatory commission, for a designated number of megawatt-
172 hours per year during designated periods. Such output shall be from clean energy generation, as
173 defined in section 83B of this act. Delivery commitment agreements may be contingent upon a
174 transmission line being constructed, maintained, and placed under the operational control of ISO
175 New England that adds sufficient capacity to the ISO New England transmission system to
176 enable the delivery into the New England market of the electric energy comprising the supplier's
177 delivery commitment. A clean energy generation developer shall be obligated, in the event it
178 fails to meet its delivery commitment agreement in any designated period, to pay liquidated
179 damages to the electric distribution company, which in turn shall be returned to ratepayers. The
180 department of public utilities, in consultation with the department of energy resources, may
181 promulgate regulations to implement the provisions of this section, subject to the applicable
182 rules, orders and regulations established by the federal energy regulatory commission.

183 (e) The department of public utilities and the department of energy resources each shall
184 adopt regulations consistent with this section. The regulations shall: (1) allow developers of
185 clean energy generation resources to submit proposals for long-term contracts or delivery
186 commitment agreements; (2) require that contracts or delivery commitment agreements executed
187 by the distribution companies under such proposals are filed with, and approved by, the
188 department of public utilities before they become effective; (3) allow transmission costs to be
189 incorporated into a proposal; (4) to the extent there are transmission costs included in a bid, the
190 department of public utilities may authorize or require the relevant parties to seek recovery of
191 such transmission costs of the project through federal transmission rates, consistent with policies
192 and tariffs of the federal energy regulatory commission, to the extent the department finds such
193 recovery is in the public interest; (5) require that the clean energy resources to be used by a

194 developer under the proposal meet the following criteria: (i) provide enhanced electricity
195 reliability within the commonwealth; (ii) contribute to reducing winter electricity price spikes;
196 (iii) be cost effective to Massachusetts electric ratepayers over the term of the contract or
197 delivery commitment agreement; (iv) avoid line loss and mitigate transmission costs to the extent
198 possible; (v) allow the contract or delivery commitment agreement price to be recalculated
199 annually based on wholesale market prices and decrease in periods of low wholesale prices; (vi)
200 guarantee energy delivery in winter months; (vii) adequately demonstrate project viability in a
201 commercially reasonable timeframe; (viii) provide reliability, price, economic and environmental
202 benefits that outweigh any costs to ratepayers; (ix) give preference for proposals that combine
203 more than 1 source of clean energy generation; (x) where feasible, create additional employment
204 and economic development in the commonwealth.

205 (f) As part of its approval process, the department of public utilities shall consider the
206 attorney general's recommendations, which shall be submitted to the department of public
207 utilities within 45 days following the filing of such contracts or delivery commitment agreements
208 with the department of public utilities. The department of public utilities shall consider both the
209 potential costs and benefits of such contracts and shall approve a contract or delivery
210 commitment agreement only upon a finding that it is a cost effective mechanism for procuring
211 low cost renewable energy on a long-term basis taking into account the factors outlined in this
212 section.

213 (g) The distribution companies, the department of energy resources and the attorney
214 general shall jointly select an independent evaluator to assist the department of public utilities in
215 monitoring the competitive solicitation and bid selection process. The independent evaluator
216 shall provide expertise and unbiased analysis to encourage an open, fair and transparent process

217 and ensure contracts are in the public interest. The independent evaluator shall: (1) within 30
218 days of submission, issue a report to the department of public utilities analyzing the solicitation
219 process proposed under subsection (b) of this section, including recommendations for improving
220 the process, if any; and (2) within 45 days following the filing of a long-term contract for a
221 winning bid proposal, issue a report to the department of public utilities analyzing the bid
222 selection process, including a comprehensive assessment of bid valuation and selection criteria to
223 ensure all bids were evaluated in a fair and non-discriminatory manner. Distribution companies
224 and the department of energy resources shall consult with the independent evaluator when
225 developing its solicitation process, bid valuation and bid selection criteria. The independent
226 evaluator shall have access to all information and data related to the competitive solicitation and
227 bid selection process necessary to fulfill the purposes of this subsection, but shall ensure all
228 proprietary information remains confidential. The department of public utilities shall consider the
229 findings of the independent evaluator, may adopt recommendations of the independent evaluator
230 as a condition for approval, and may reject bids that were the result of an unfair or discriminatory
231 solicitation or bid selection process.

232 (h) If distribution companies are unable to agree on a winning bid under a solicitation
233 under this section, the matter shall be submitted to the department of energy resources, in
234 consultation with the department of public utilities, for a final, binding determination of the
235 winning bid. The electric distribution companies shall each enter into a contract or delivery
236 commitment agreement with the winning bidders for their apportioned share of the market
237 products being purchased from the project. The apportioned share shall be calculated and based
238 upon the total energy demand from all distribution customers in each service territory of the
239 distribution companies.

240 (i) An electric distribution company may elect to use any energy purchased under such
241 contracts or delivery commitments for resale to its customers, and may elect to retain RECs to
242 meet the applicable annual RPS requirements under said section 11F of said chapter 25A. If the
243 energy and RECs are not so used, such companies shall sell such purchased energy into the
244 wholesale spot market and shall sell such purchased RECs through a competitive bid process.
245 Notwithstanding the previous sentence, the department of energy resources shall conduct
246 periodic reviews to determine the impact on the energy and REC markets of the disposition of
247 energy and RECs under this section and may issue reports recommending legislative changes if it
248 determines that actions are being taken that will adversely affect the energy and REC markets.

249 (j) If a distribution company sells the purchased energy into the wholesale spot market
250 and auctions the RECs as described in this section, the distribution company shall net the cost of
251 payments made to projects under the long-term contracts or delivery commitments against the
252 proceeds obtained from the sale of energy and RECs, and the difference shall be credited or
253 charged to all distribution customers through a uniform fully reconciling annual factor in
254 distribution rates, subject to review and approval of the department of public utilities.

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