

**STATE OF CONNECTICUT
CONNECTICUT ENERGY ADVISORY BOARD**

Request for Comment on Reactive RFP Exemption Criteria	August 31, 2007
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**COMMENTS
OF THE
CONNECTICUT MUNICIPAL ELECTRIC ENERGY COOPERATIVE**

The Connecticut Energy Advisory Board (“CEAB”) issued its “Request for Comments on Reactive RFP Exemption Criteria” dated August 7, 2007 (the “Request for Comments”), inviting comments from the public on the CEAB’s “Strawman Proposal” contained in the Request for Comments. The Connecticut Municipal Electric Energy Cooperative (“CMEEC”) submits these comments in response to the Request for Comments.

As indicated in the Request for Comment, Public Act 07-242, section 54(b) amended Conn. Gen. Stat. Section 16a-7c(b) to allow for the exemption of “facilities” subject to approval by the grant of a certificate of environmental compatibility and public need under the Public Utility Environmental Standards Act, Conn. Gen. Stat. Sections 16-50g et seq., from the requirement for the conduct of a request for proposals (“RFP”) administered by the CEAB. The Act also directs the CEAB to promulgate criteria for granting such exemptions. The CEAB’s Strawman Proposal contained in the Request for Comments is a listing of potential criteria which, when issued in final form by CEAB, will be utilized by it in determining whether to grant such exemptions.

As the Request for Comments indicates, during the approximate three and half year period during which the pre-existing reactive RFP process has been in effect, reactive RFPs were issued with respect to projects “for which there was a low likelihood

that alternatives solutions would be presented that could meet the [p]roject[s'] stated need. In response to those RFPs, no alternative solutions were proposed.” Request for Comments, p. 1. The amendment effected by Public Act 07-242, section 54(b) providing for exemption from the RFP requirement was presumably, in part, intended to give the CEAB the flexibility to better target the RFP process so as to minimize the circumstances where the RFP process is likely not to elicit meaningful competing proposals.¹

The Strawman Proposal sets forward the following proposed criteria for granting exemptions from the reactive RFP process.:

- a. The Project provides evidence to the CEAB that it sought alternative solutions from the market in an open and transparent solicitation process to meet the stated need or parts of the stated need in the context of formulating the proposal and that no alternative solutions responded to such solicitation.
- b. The CEAB has issued an RFP for the same or materially similar facility proposed to meet the same or similar need and: 1) no alternative solution responded to such RFP; or, 2) no alternative solution came forward in response to the RFP that, in the CEAB’s judgment, favorably relate to the Preferential Criteria.
- c. The Project provides evidence to the CEAB that it has been selected by the Department of Public Utility Control following a competitive bid process that solicited a range of energy infrastructure solutions to meet a need recognized by the State of Connecticut.
- d. The Project provides the CEAB comprehensive alternative solution analysis, which analysis demonstrates to the CEAB’s satisfaction that alternative solutions to the stated need are not technically viable; do not conform to the Preferential Criteria; and/or, are cost prohibitive.
- e. The Project provides the CEAB evidence that: 1) the Project’s characteristics, such as its size and Connecticut Class I renewable energy source status, would not preclude the development of additional projects

¹ It should be noted that all of the unresponded-to-RFPs for alternative solutions were for substation projects. Public Act 07-242 separately removes electric substations from those type of “facilities” which trigger the reactive RFP process, thereby already directly addressing the specific circumstances of CEAB’s unsatisfactory prior experience with reactive RFPs. *See* Public Act 07-242, section 55.

with the same characteristics; and 2) the Project materially conforms to the Preferential Criteria.

f. The Project provides evidence to the CEAB that the time or cost associated with a Reactive RFP would jeopardize the Project's viability if the Project: 1) has a unique profile, such as, for example, a relatively small, low cost project with no environmental or quality of life impacts; 2) has exigent circumstances; and, 3) the Project materially conforms to the Preferential Criteria.

g. Any other fact or circumstance that, in the CEAB's judgment, renders a Reactive RFP unnecessary.

As a general matter, CMEEC believes that the CEAB RFP process is an innovative and vital regulatory tool to assure the promotion of the public interest in the context of the restructured/deregulated electric markets which now exists in Connecticut. Along and coupled with the integrated resource planning ("IRP") process also enacted by Public 07-242, the RFP process facilitates comprehensive planning of cost effective expansion of the State's electric infrastructure which must necessarily include balanced consideration of all three legs of the "three-legged stool" comprising the electric infrastructure chain – generation resources, transmission/distribution facilities and demand-side initiatives. The RFP process provides the opportunity for the evaluation of real cost effective alternatives by diverse market participants to meet an identified need for reliable and cost-effective functioning of the electric system on a relatively equal footing. This is especially important in the context of the new, restructured electric market where: (a) individual market participants sponsoring projects, in many cases, have strong incentives to pursue the development of only one or two but not, on a balanced basis, all legs of the proverbial three-legged electric system stool; and (b) the cost allocation policies dictated by the Federal Energy Regulatory Commission ("FERC") and the Independent System Operator – New England, Inc. ("ISO-NE") impose the costs of

many of the projects ultimately constructed on all consumers in the State through administratively set regulated rates (*e.g.*, transmission cost recovery through the ISO-NE open access transmission tariff and generation cost recovery through the forward capacity market (“FCM”) capacity charges and reliability must-run (“RMR”) payments). In this context, any broad-based exemption from the CEAB RFP process is not warranted and would undercut the important benefits which the process affords.

On the other hand (and as recognized by the legislature in enacting Public Act 07-242, section 53, providing for exemptions from the process), the RFP process does entail significant transaction costs in preparing the appropriate analyses, designing and administering the RFP and the additional time required to complete the process. The process for exemption created by the legislation would appear primarily directed at establishing proportionality between these transactions costs and the inherent benefits the RFP process brings to the planning process. In other words, “significant” projects with large costs, long development lead-times and large and long-range implications for the development of the overall electric system should not be exempt – because it is precisely for such projects that the comprehensive planning and balanced development incentives and characteristics of the RFP process are most needed and most likely to result in net benefits. By contrast, “minor” projects with lesser costs, shorter lead-times, and more easily defined system “needs” to which such projects are responsive would be exempted – where the transaction costs of the RFP process would more likely outweigh the benefits of the conduct of the process. CMEEC has not determined where precisely to draw the line between “significant” and “minor” projects consistent with this framework. However, analogous balancing of the degree of public review of a project with the

significance of its impact has a long history of administration in other contexts (*e.g.*, the National Environmental Policy Act (“NEPA”) process for making “Findings of No Significant Impact” or “FONSIs” with respect to federal actions; the Connecticut Environmental Policy Act’s determination of “significant” State actions requiring the preparation of an Environmental Impact Evaluation, Conn. Gen. Stat. Sections 22a-1b(c), 22a-1(c); Massachusetts Environmental Policy Act review thresholds. Mass.G..L. c. 30, sections 61-62H, 310 C.M.R. 11.00, 11.03). These other contexts and criteria might be looked to by analogy, with adjustment for the difference in context, in establishing what constitutes “significant” for purposes of administering exemptions from the CEAB RFP process. The CEAB may also want to consider a project investment threshold, as suggested by the comments of the United Illuminating Company) for establishing a project’s “significance” for purposes of granting an exemption.

CMEEC also submits that there may be a certain class of projects which, even though otherwise “significant” in the context previously discussed, reflect sufficient diverse stakeholder involvement in the project’s sponsorship, planning and development and clear net benefits so as to qualify for exemption – where the comprehensive and cost-effective planning benefits of the reactive RFP process are already fully satisfied by the project’ sponsors in their application for an exemption. Such an exemption should not, however, be generally available for any project or projects, which is otherwise “significant”, sponsored by a single or reduced group of market participants, where the recovery of some of the costs of the project are shifted to other market participants. This prohibition is premised on the inherent infirmities of such a process (*i.e.*, the potentially

biased incentives and selective expansion mandates of single market participants when coupled with market-wide cost recovery of the costs of the expansion projects).

With the foregoing as general background, CMEEC comments on the specific elements contained in the CEAB's Strawman Proposal, CMEEC believes that: (a) there should be a cost threshold for individual projects (or which are "minor" in nature) – below which (or if qualifying) the stated criteria could still apply but with a presumption in favor of exemption; and (b) for projects which are "significant" (meaning having a cost greater than the threshold, long-lead time and large implications for the overall electric system), there should be a presumption against exemption – unless the joint and comprehensive, planning, development, net benefit and broad sponsorship criterion suggested above can be established by the project applicants.

We thank the CEAB for this opportunity to provide comment and look forward to the CEAB's further deliberations on this important matter.

Respectfully submitted,
CONNECTICUT MUNICIPAL ELECTRIC ENERGY COOPERATIVE



By: _____
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