

**CONNECTICUT ENERGY ADVISORY BOARD  
RFP EXEMPTION CRITERIA REVISED STRAW PROPOSAL**

**EXPLANATION OF PROPOSED REVISIONS  
BASED ON WRITTEN COMMENTS**

**I. INTRODUCTION**

The Connecticut Energy Advisory Board (“CEAB”) received Written Comments on its Request for Proposal (“RFP”) Exemption Criteria Straw Proposal (“Straw Proposal”). They were from Northeast Utilities (“NU”); United Illuminating (“UI”); and, the Connecticut Municipal Energy Electric Cooperative (“CMEEC”). The following is an explanation of the suggested modifications that have been incorporated into the Straw Proposal (“revised Straw Proposal”), as well as a discussion of why other suggestions in the Written Comments are not reflected in the revised Straw Proposal.

Specific changes to the Straw Proposal that result from the Written Comments and the discussion below are noted in this document in *bold italics* to facilitate review. In addition, a revised Straw Proposal reflecting the changes discussed below accompanies this document. The CEAB will hold a public hearing at the Legislative Office Building in Hartford, Connecticut on October 10, 2007 at 6:00 p.m. to solicit feedback on the RFP Exemption Criteria and proposed changes. The CEAB will make a final determination on issues associated with the RFP Exemption Criteria following consideration of all public comment received. The findings and explanations below, and associated modifications to the Straw Proposal, are subject to revision pending the CEAB’s final review and deliberation.

As a general matter, the Straw Proposal’s overall discretionary approach is preserved. NU stated that it would prefer exemption criteria be applied in a non-discretionary manner to send the clearest signal to the market about what types of projects would not trigger an RFP. (NU Comments at page 1). However, NU supports the adoption of the exemption criteria as set forth in the Straw Proposal and suggests further criteria be added to the list of exemptions, discussed further below. UI and CMEEC did not comment on the Straw Proposal’s discretionary approach. For the reasons set forth in the Discussion Section of the Straw Proposal, the discretionary approach is maintained in the Revised Straw Proposal.

**II. RECOMMENDATIONS FOR MODIFICATION OF STRAW PROPOSAL**

**A. Presumptions For and Against an RFP Exemption Based on Project Scale**

1. **Comments:** CMEEC recommends relative to the specific exemption criteria set forth in the Straw Proposal that there should be a cost threshold for individual projects below which the exemption criteria would apply but with a presumption of exemption. (CMEEC Comments at 6.) CMEEC defines a

minor project to include those with lesser costs, shorter lead times and more easily defined system needs. (CMEEC Comments at 4). It does not offer a cost threshold. Conversely, CMEEC suggests that for projects which are significant, defined as having large costs, long-lead times, and large implications for overall system development, the presumption should be against exemption. (CMEEC Comments at 6). CMEEC's caveat to this approach relative to large projects that reflect diverse stakeholder involvement is discussed in subsection C., below.

UI suggests that for exemption criteria b, c, and e, smaller projects, defined by UI as costing less than \$50 million, may justify exempting an RFP<sup>1</sup>. (UI Comments at 2). UI states that for major projects, which UI defines as costing more than \$50 million, an RFP should be issued. (UI Comments at 2). It suggests that for these larger projects with longer lead times, any delay an RFP may cause would not likely be material. (UI Comments at 2). UI also urges the CEAB to err on the side of caution and issue an RFP for large projects, given what they put at stake for Connecticut consumers and businesses. (UI Comments at 2).

2. **Discussion:** The CEAB agrees with CMEEC, and the principle offered by UI, that it would be reasonable for the CEAB to lean toward granting an exemption for relatively smaller Projects when it evaluates a Project against the exemption criteria. In the same way, the CEAB agrees that larger Projects, measured by scale, cost, and lead time, should carry a general presumption against exemption to enable the State to determine whether there are, for example, cost-effective alternative solutions that more closely align with the State's Preferential Criteria. The presumption for and against an exemption will operate on a case by case basis in that a small Project that appears at odds with the Preferential Criteria may be exactly the kind of Project for which the CEAB will want to seek alternative solutions. *The Revised Straw Proposal includes new language to reflect that the CEAB's consideration of the exemption criteria will consider these presumptions.*

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<sup>1</sup> Criteria b, c and e provide as follows: 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; 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 with the same characteristics; and 2) the Project materially conforms to the Preferential Criteria.

The CEAB disagrees with UI that a specific dollar figure ought to be established as a demarcation point between minor and major projects in this respect. First, as a practical matter, such an approach has inherent complexities. Estimated project costs often differ, and sometimes significantly, from actual project costs that may emerge with greater clarity as the project moves toward regulatory approval. Picking the date on which estimated project costs should be considered in terms of whether or not the project falls below a set figure could create more complexity than it resolves. In addition, project cost thresholds may also introduce complexity in the circumstance where a project is, or may be considered, a combination of multiple projects, any one of which considered independently could fall under the dollar threshold.

## **B. Projects That Offer Alternative Solution Analysis**

- 1. Comments:** UI suggests that criteria a. and d. as set forth in the Straw Proposal should not be a general basis for considering an RFP exemption. (UI Comments at 2). For reference, criteria a. is the circumstance in which the project demonstrates to the CEAB's satisfaction that it sought alternatives from the market in an open and transparent process and that no alternatives responded; criteria d. is the circumstance in which a project provides the CEAB with comprehensive alternative solution analysis which demonstrates to the CEAB's satisfaction that alternative solutions are not technically viable, do not conform to the Preferential Criteria and/or are cost prohibitive. UI states that absent protections or special circumstances, these criteria would mean that the CEAB would accept as its own a process performed by another entity whose charter is not equivalent to the CEAB's. (UI Comments at 2). UI also states that evaluating such third party analysis would take substantial time and effort and that it would be more efficient and transparent to issue an RFP in such circumstances. (UI Comments at 3). UI further suggests that criteria a. and d. may be appropriate in circumstances where, for example, a project is jointly sponsored by UI, CL&P and CMEEC. (UI Comments at 3).
- 2. Discussion:** The CEAB agrees with UI that if the CEAB were to exempt a Project from an RFP based on the Project's own prior solicitation for alternative solutions or its own comprehensive alternative solution analysis, the process and/or the analysis would have to be subjected to rigorous review since the CEAB would be, to some extent, relying on the process, analysis and/or work product of a Project sponsor. The CEAB also agrees that in some cases, depending in large part on the quality of the analysis the CEAB receives and the Project sponsor's responsiveness to CEAB requests for further information as needed, it may be more efficient for the CEAB to issue an RFP. However, it is proper for the CEAB to encourage Project sponsors to

perform thorough alternative solution analysis. Encouraging entities planning to propose infrastructure solutions to undertake serious and comprehensive reviews of potential alternative solutions is especially fitting given the state's new annual integrated resource planning obligation. UI's comments relative to jointly sponsored projects is discussed in Section C., below. ***The CEAB adds language to Straw Criteria a. and d. to underscore that alternative solution solicitation process or analysis submitted to the CEAB will need to be comprehensive, detailed, and able to withstand rigorous review***

### C. Projects Jointly Sponsored

1. **Comments**: CMEEC offers that the presumption against exemption for large projects should stand unless joint and comprehensive, planning, development, net benefit and broad sponsorship criterion is established by the project sponsors. (CMEEC Comments at 6). UI offers joint sponsorship might justify exempting an RFP under Straw Proposal exemption criteria a. and d., discussed above. The example UI offers is a major transmission project jointly sponsored by UI, CL&P and CMEEC, where the project filing establishes that alternative solutions were considered and the assumptions and method of analysis is clear. (UI Comments at 3).
2. **Discussion**: Whether or not a project has multiple sponsors does not necessarily amend the kind of analysis the CEAB would undertake in deciding whether or not to exempt a project from an RFP. For example, a joint transmission project offered by UI, NU and CMEEC may or may not include the balanced consideration of, as CMEEC states, all three legs of the energy infrastructure stool – generation, demand-side and transmission/distribution resources - particularly if the project sponsors do not have the comparable incentives to pursue all three solutions on an equivalent basis. On the other hand, the CEAB's deliberations of the exemption criteria set forth in the Straw Proposal may be influenced by a project jointly sponsored by an electric distribution company and a demand response provider, for example, if such proposal is accompanied by analysis of why generation was not capable of meeting the identified need. Criteria a. and d. in the Straw Proposal, discussed above, accommodates CEAB's consideration of joint sponsorship when such project offers other information to the CEAB to justify an exemption.

### D. Projects that Result from a State Process

1. **Comments**: In broad terms, NU suggests projects be considered for an RFP exemption if they result from state agency action or are required to be constructed by state law or regulation. (NU Comments at 1). They include projects that are: included in a procurement plan approved by the Department of Public Utility Control ("DPUC") pursuant to Section 52 of Public Act 07-

242; for peaking generation approved by the DPUC pursuant to Section 50 of Public Act 07-242; included within a comprehensive plan for the procurement of energy resources approved by the CEAB; and, required to be constructed by state law or regulatory order. (NU Comments at 1).

2. **Discussion:** The CEAB agrees with NU that in the course of considering an RFP exemption, the CEAB should consider whether the specific project is the direct result of a solicitation by a state agency, or has otherwise been selected or directed to be constructed by regulatory order or state law. Within that broad category, the CEAB should consider, for example, whether the agency that selected the project sought a range of infrastructure solutions for an identified need. If the agency sought only one type of resource, the CEAB should consider the agency's rationale. *The revised Straw Proposal broadens the language in criteria c. to reflect this discussion. For reference, criteria c. pertained to projects selected by the DPUC following a broad based competitive bid process.*

It is important that the CEAB consider treatment of projects that result from a state process on a case by case basis. For example, a project selected by a state agency for a narrow reason may present a serious environmental or quality of life concerns embodied in the Preferential Criteria and may be just the kind of project the RFP process was intended to address.

The exemption criteria should set forth the general principle the CEAB will consider and be designed to remain applicable over time, irrespective of specific changes in state law or agency decision. If the exemption criteria listed the specific items as NU suggests, such as peaking facilities to be considered pursuant to Public Act 07-242, the CEAB would have to continually revise the exemption criteria to account for agency decisions and changes in state law. That would be inefficient and unnecessary so long as the criteria are broad and generally applicable.

Finally, to the extent the legislature specifically exempts certain categories of projects from a CEAB RFP, the CEAB will comply with that directive.

#### **E. Projects in the ISO Regional System Plan or Determined by ISO to Meet a Regional System Need**

1. **Comments:** NU suggests that any project included in the Independent System Operator of New England's ("ISO") Regional System Plan be considered for an exemption. (NU Comments at 1). Similarly, NU suggests that any project determined by the ISO to be required to meet a regional system need be considered for an exemption. (NU Comments at 1)

- 2. Discussion:** The ISO's regional planning process addresses regional reliability. The ISO indicates that its planning process is not designed to produce optimal economic or environmental outcomes. (ISO letter to CEAB dated March 22, 2007). The economic and environmental implications of a proposed project are, of course, critical to Connecticut. In the same way, the ISO's planning process does not account for the range of quality of life-related criteria in the Preferential Criteria, such as for example, local public health concerns. Additionally, the ISO has stated that it is not equipped to present a full non-transmission alternative to projects identified in its regional system plan. (ISO letter to CEAB dated March 22, 2007).

A project's inclusion in an ISO plan alone does not provide an adequate basis to consider exempting it from an RFP for alternative solutions that can meet the identified need. ISO's planning and analysis is relatively narrow and focused on reliability to the exclusion of myriad important factors at the center of the Preferential Criteria and otherwise important to Connecticut.

A project included in the ISO's regional system plan or identified by the ISO as needed to meet a regional system need could nevertheless be considered for an exemption from an RFP if the electric distribution company proposing to build the project provides the CEAB comprehensive alternative solution analysis that establishes to the CEAB's satisfaction that alternative solutions are not technically viable, do not conform to the Preferential Criteria and/or are cost prohibitive.

## **F. Projects That Extend Outside of Connecticut Boundaries**

- 1. Comments:** NU suggests that an RFP exemption should be considered for projects comprised of facilities located in multiple states such that the facility located in Connecticut does not by itself solve a system need. (NU Comments at 1) Similarly, NU states that a project subject to the siting authority in one or more states in addition to Connecticut should be considered for an RFP exemption. (NU Comments at 1)
- 2. Discussion:** That a project crosses state lines does not provides reason to exempt the project from a solicitation seeking potential alternatives. First, projects that require approval of siting authorities in more than one state may, as a practical matter, be exactly the kind of project for which an RFP for alternative solutions is appropriate. A project that extends beyond Connecticut boundaries, whether underwater or above ground, is as likely as a wholly intra-state project to present, for example, the quality of life or environmental concerns for Connecticut that the RFP process is designed to address. Additionally, projects with multi-state components are likely to be in category of large and long-lead time projects discussed above that, as UI and CMEEC counsel, should carry the presumption of an RFP when evaluated against the exemption criteria

**G. Explanation of Reason for Exemption**

1. **Comments**: UI said it assumes that Straw Proposal Criteria g., which is any other fact or circumstance that merits exemption in the CEAB's judgment, will include an explanation of the decision if an RFP exemption is granted. (UI Comments at 3).
2. **Discussion**: Any CEAB determination that an RFP is not required, for any reason, will be accompanied by an explanation of the CEAB's reasons consistent with Section 54 of Public Act 07-242.

**III. CONCLUSION**

Informed by public input, the Straw Proposal is revised to better equip the CEAB to determine the circumstances in which a project should be exempt from an RFP consistent with the goals set forth in the Straw Proposal. The CEAB appreciates the time and effort offered by interested parties to date and look forward to further public feedback prior to the CEAB adopting the criteria in final form by December 1, 2007.