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VIA ELECTRONIC AND FIRST CLASS MAIL

Senator Michael W. Morrissey, Senate Chairman
Representative Barry R. Finegold, House Chairman
Joint Committee on Telecommunication, Utilities and Energy
State House Room 473-B
Boston, MA 02133-1053

RE: Comments of the New England Power Generators Association, Inc. on siting legislation pending before the Joint Committee on Telecommunication, Utilities and Energy.

Dear Chairmen Morrissey and Finegold:

In anticipation of the hearing scheduled for May 20, 2009, before the Joint Committee on Telecommunication, Utilities and Energy (“Committee”) to review the above referenced siting legislation, the New England Power Generators Association, Inc. (“NEPGA”) hereby respectfully files these comments.¹ NEPGA is the largest trade association representing competitive electric generating companies in New England. NEPGA’s member companies represent approximately 27,000 megawatts – 85% – of generating capacity in all six states of the region, and 12,000 MW in Massachusetts. NEPGA’s mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy.

1. NEPGA Supports Comprehensive, Formal Planning and Permitting Process for Energy Related Facilities within the Commonwealth of Massachusetts.

NEPGA recognizes and appreciates the need for a comprehensive, formal planning and permitting process for energy related facilities within the Commonwealth. The public policy behind efficient and streamlined permitting is implicitly sound in that it encourages the proposal of prudent new energy infrastructure and necessary environmental improvements to existing energy infrastructure while protecting our natural resources through an inclusive permitting process that provides extensive public comment and agency participation. The existing environmental review processes of the multiple agencies are often overlapping and similar,

¹ The views expressed in these comments do not necessarily represent the positions of each of NEPGA’s members. In addition, nothing in these comments should be deemed to waive any rights that NEPGA or any of its members may have to challenge the administrative, procedural or substantive validity of any resulting statutes or regulations.

thereby resulting in the duplication of adjudicative proceedings for the review of an energy infrastructure proposal based upon the same facts. Therefore, it is logical and economic to facilitate a high level of cooperation among agencies and communities that share the common goals of establishing a coordinated and streamlined review process.

Accordingly, NEPGA supports the efforts of the legislature, the Executive Office of Energy and Environmental Affairs and the siting commission to implement such comprehensive siting reform through SB 1504 and HB 3065. NEPGA encourages the Committee to pursue similar economies in all energy infrastructure development so as to enable greater reliability and efficiency in the bulk power system.

2. NEPGA Opposes Legislation that Limits Resource Diversity and Discourages Future Innovation.

NEPGA supports properly implemented measures to stabilize and then reduce anthropogenic emissions of CO₂; however, we are concerned that the categorical restrictions upon the issuance of approvals for carbon based power plants in HB3069 - *An Act to Reduce Coal Burning and Use* – and HB3080 - *An Act Banning the Construction of Carbon-Based Power Plants* - are overly restrictive. These initiatives could ultimately interfere with the ability of electric generation facility owners to develop new technologies, maintain existing facilities and may adversely affect fuel diversity. The challenge of maintaining adequate electrical supply is constantly being burdened by regional demand increases, capacity shortfalls and the potential for loss of existing installed capacity. Simultaneously, the industry struggles with the ability to develop new generating infrastructure and to maintain existing capacity because of the complexities of permitting and stakeholder obstructions.

HB 3080 - *An Act Banning the Construction of Carbon-Based Power Plants* – prohibits the construction of new carbon-based power generating plants in the Commonwealth of Massachusetts. NEPGA cautions against any categorical limitations placed on all future electrical generation infrastructure because of the unforeseen consequences of such language. In the most extreme cases a permitting authority could prohibit an existing facility from conducting routine maintenance that is necessary to ensure the reliability because of ambiguities in the language involving “new carbon-based power generating plants.” NEPGA maintains that such an outcome was unintended by the proponents of these bills and urges the Committee to deal only prospectively with climate change issues and rigorously protect the ability of existing facilities to maintain electric reliability.

The more prudent policy for the Commonwealth is to review the specific environmental attributes of each electric generation proposal through the existing comprehensive permitting regimen set forth below. This comprehensive permitting process relies on the expertise of agencies including Massachusetts Office of Energy and Environmental Affairs and the Massachusetts Department of Environmental Protection to balance the impacts of proposed facilities against the societal value of resource development. Additionally, a forward looking policy anticipates and encourages innovations in electrical generation technology that will allow

for the use of resources that are currently considered to be inconsistent with existing environmental policies. For the foregoing reasons, NEPGA requests that the Committee vote against HB 3080 and HB 3069.

3. NEPGA Opposes Legislation that Unnecessarily Burdens the Established Permitting Process in the Commonwealth of Massachusetts.

NEPGA opposes the initiatives advanced through Senate Bill 1544 - *An Act Relative to Consumer Protection in Energy Facility Siting* - and Senate Bill 1545 - *An Act Requiring Local Approval from Neighboring Communities in Energy Facility Siting* – that seek to create a separate and distinct class of permitting stakeholders in addition to those that are currently represented by the permitting regimen for all energy projects within the Commonwealth. Consistency of review and primacy of specialized state permitting agencies are essential in any comprehensive process so as to ensure that all residents benefit from a reliable and cost effective energy supply. SB1544 and SB1545 provide no greater protection to communities than that currently afforded under the existing permitting regime, and could adversely affect electric reliability by discouraging energy resource development and interfering with routine facility maintenance or technological upgrades.

NEPGA encourages and values community participation in the energy infrastructure permitting process; however, the Commonwealth has, over time, implemented a number of statutory and regulatory schemes for the selection, permitting and construction of energy infrastructure that already provide for extensive community participation. Primarily, the Department of Public Utilities (DPU) oversees electric and gas infrastructure siting in conjunction with the Massachusetts Energy Facilities Siting Board (“EFSB”). While the EFSB provides a comprehensive approach to energy infrastructure permitting, a vast number of other agencies have extensive authority and participation in the permitting of energy infrastructure including, most extensively, the MEPA Unit of the Massachusetts Office of Energy and Environmental Affairs² and the Massachusetts Department of Environmental Protection.³

SB 1544 and SB 1545 merely attempt to create an additional statutory hurdle that is unnecessary and without effect in that the communities and/or residents can, with very little effort, participate in the extensive adjudicatory process that is conducted by the EFSB.⁴

² The intent of the MEPA review is to inform project proponents and state agencies of potential adverse environmental impacts while a proposal is in the planning stage. MEPA provides opportunities for extensive public review of the potential environmental impacts of projects. See, Massachusetts Environmental Policy Act M.G.L. c. 30, §§ 61-62H, and MEPA Regulations, 301 CMR 11.00.

³ Other participating agencies and departments include the Department of Public Utilities; the Division of Energy Resources; the Department of Environmental Management; the Massachusetts Historical Commission; the Department of Public Safety; the Massachusetts Highway Department; the Office of Coastal Zone Management; the Massachusetts Water Resources Authority and municipal departments and boards.

⁴ 980 CMR 1.05(1)(b)

Furthermore, if a community or resident ultimately disagrees with the decision of the EFSB as a matter of fact or law, that party may, as an aggrieved party, appeal the decision on the comprehensive record of the adjudicatory hearing in which they had participated.⁵ The benefits of creating a distinct and separate class of participants than that those that are currently represented through the existing adjudicatory process are unclear to NEPGA. The time and resources that are dedicated to the existing permitting process for energy infrastructure is exhaustive for both project proponents and participating agencies and stakeholder groups, and SB 1544 and SB 1545 will only served to discourage diverse energy resource development. Accordingly, NEPGA urges the Committee to vote against SB 1544 and SB 1545.

Massachusetts' siting initiatives should be prudently implemented in an economically efficient manner that does not compromise the integrity of the competitive energy markets or the economy in New England. Among the benefits of the competitive market system has been substantial new investment in efficient generating plants, much of it in Massachusetts. These units are cleaner and more efficient, so emissions of key pollutants have gone down even as electricity consumption throughout the region has increased. As a result of competitive market signals for cleaner energy facilities, the competitive market has delivered 10,000 megawatts of privately financed energy facilities that have decreased regional carbon dioxide emissions by 7.5%, nitrogen oxide emissions by 44%, and sulfur dioxide emissions by 65%. NEPGA encourages the Committee to create efficiencies, rather than complexities, in energy resource permitting as a way to further the environmental and energy goals of the Commonwealth of Massachusetts.

NEPGA appreciates the opportunity to comment on these legislative initiatives. Please contact us if we can provide any further comment.

Sincerely,



Christopher P. Sherman
General Counsel

⁵ Decision of the EFSB are appealed to the Supreme Judicial Court pursuant to G.L.C. 25, §5, as made applicable to the EFSB by G.L.c. 164, §69P.