

February 12, 2004

Susan F. Tierney, Chair
Ocean Management Task Force
Executive Office of Environmental Affairs
251 Causeway Street
Boston, MA 02114

Dear Ms. Tierney,

We are writing to comment on the Draft Principles and Recommendations that the Ocean Management Task Force has released for public comment. As set forth below, we are very concerned that the current draft document conflicts with important legislative policies, including those established by Chapter 164 of the Acts of 1997, ***An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein.***

Much of the Draft is based upon the criticism that the siting and regulation of new energy facilities as authorized under the Act is improperly “reactive”, i.e., it lacks the “pro-active” predeterminations of the permissible types or locations of future facilities. The fundamental concern of the Task Force seems to be that the Act allows industry participants, who are using their own business, engineering, and technical acumen and private capital, to propose new generation projects, which are then subjected to a rigorous review by the Energy Facilities Siting Board and environmental permitting agencies – a review process that is based upon a site-specific, evidentiary record assessing the merits of the project and full consideration of alternative technologies and locations.

The Task Force should be aware that this current siting process as memorialized in statute reflects a conscious and carefully considered legislative policy. The Act purposefully and thoughtfully redirected the generation industry away from centralized government planning in order to foster entrepreneurial thinking and innovation. Experience demonstrates that the Commonwealth will best realize the benefits evolving from new approaches when entrepreneurial proposals are not precluded by bureaucratic predeterminations or presumptions as to what energy facilities will, in the future, be most consistent with the public interest.

We also note that the Restructuring Act now allows the Siting Board to make the essential public siting decisions in an open process based upon a factual and site-specific record established under the rules of evidence, with assurances of procedural due process. This approach seems far preferable to a “pro-active” bureaucratic predetermination made in the

absence of either any concrete proposals or alternatives, or the associated evidentiary record and procedural due process now afforded for each proposal.

The Task Force should also include a more definite recognition of the substantive policy provisions of the Restructuring Act, including the recognition of the need for new sources of renewable energy. The Legislature, in 1997, aggressively committed to the development of renewable energy projects for Massachusetts and continues to do so even in the face of attempts by various parties to diminish that commitment. The Task Force must realize that if it proposes to hinder the development of renewable energy projects like Cape Wind in these coastal areas where they are economically viable, it would be acting contrary to the existing statutory commitments and requirements of the Commonwealth regarding renewable energy and environmental quality.

We are also concerned that the Task Force proposes to shift to regulatory agencies, in the absence of legislative mandate, the authority to declare coastal sanctuary zones, which is a legislative function. Any such shift of governmental powers requires a more compelling rationale.

Finally, the Task Force has to date not included any estimation of the budgetary requirements of the proposed new bureaucracies and programs. In these times of constrictive fiscal pressures, any responsible proposal put forth by the Task Force must include an analysis and justification of the associated costs the Commonwealth's governmental agencies will incur should the recommendations of the Task Force be ultimately implemented.

Thank you for your attention to this matter.

Sincerely,

John Binienda, Chairman
Joint Committee on Energy

Daniel Bosley, Chairman
Joint Committee on Government Regulations