

# **COMPETITIVE POWER COALITION OF NEW ENGLAND, INC.**

February 12, 2004

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

Re: Initial Comments on Draft Principles and Recommendations

Dear Ms. Tierney:

The Competitive Power Coalition of New England, Inc. ("CPC") respectfully submits its comments on the Draft Principles and Preliminary Recommendations for managing the Commonwealth's coastal resources that the Massachusetts Ocean Management Task Force ("Task Force") released in December 2003. CPC has serious concerns with both the substantive recommendations of the Task Force as well as the lack of procedural due process provided by the Task Force in formulating its proposals.

CPC believes the majority of the recommendations that the Task Force would have various state agencies implement violate the legislative mandate of those very same agencies. CPC further contends that the Task Force proposal is in direct conflict with 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. Finally, the proposal would impose an energy tax on Massachusetts businesses and consumers, severely threaten fuel diversity and reliability of the region's electric power grid, cost Massachusetts jobs, and fail to achieve its stated objectives, because it is not driven by objective criteria but instead panders to the special interests of a privileged few.

CPC is an industry organization comprised of independent power producers, natural gas suppliers, waste-to-energy facilities, co-generators and power marketers. CPC is acknowledged as the primary representative of the competitive power supply industry in the region and has been a leading advocate throughout New England for electric utility restructuring, which ultimately has delivered rate relief, technological advancement, and environmental benefits to the region. CPC member companies represent a significant portion of both the installed capacity and proposed new power projects in New England. CPC members' generation facilities reflect a comprehensive fuel diversity that ensures both enhanced environmental quality and increased system reliability. Our member generators have invested billions of dollars, created thousands of jobs, and paid hundreds of millions of dollars in taxes in Massachusetts. CPC members will continue to contribute to substantial improvements to the region's environment through

innovation, progressive leadership, and technological advancement as a restructured electric industry continues to evolve. We believe the only effective way of achieving those objectives is through competitive market forces as contemplated by the electric restructuring act and not through baseless and draconian governmental regulation.

At the outset, CPC must register its objection in the strongest possible terms to the composition of the Task Force, the lack of input sought from all interested parties, and the limited notice given for review and comment on the recommendations at public forums. CPC is concerned that several of the Task Force members have a vested interest in matters directly impacted by the Task Force recommendations; this fact calls into question both the fairness and legitimacy of the Task Force itself. CPC is equally disturbed by the fact that the initial draft was made available to the public a mere forty-eight hours before hearings were to be conducted. Indeed, the Task Force has conducted hearings where only selected parties with a particular viewpoint were allowed to participate, further straining the Task Force's credibility. Furthermore, the Task Force has unilaterally and arbitrarily changed the recommendations from the original proposal released in December, so it is even unclear on which proposal parties are to comment.

CPC certainly does not view the Draft document and the Task Force's motives as above board. As CPC noted in its oral testimony on December 10, 2003, the clear mission of the Task Force is to derail by any means possible the Cape Wind Project, a 420 MW renewable energy generating unit proposed in federal waters off Cape Cod. Unfortunately, in an attempt to maintain some semblance of legitimacy, the Task Force's recommendations are ambiguous enough that they would also cause, with the swipe of a broad brush, considerable collateral damage on our economy and impact countless other companies situated on or near coastal waters, including wreaking havoc on the entire energy industry in Massachusetts.

The Task Force proposal would have far reaching adverse impacts (with no public benefit) on all of CPC's members. Since Cape Wind is the obvious target, however, CPC will address that issue in detail. The Task Force proposal erroneously and cynically states there is a "gap" in the regulatory review process. To the contrary, Cape Wind is now in the third year of a comprehensive regulatory review process being conducted jointly by almost a score of Federal and State regulatory agencies. The Cape Wind project, indeed, is subject to a total of seventeen different review processes. This joint review will result in an Environmental Impact Statement under the National Environmental Policy Act (the most comprehensive environmental review standard under Federal law) as well as an Environmental Impact Report under the Massachusetts Environmental Policy Act ("MEPA"). Notably in Cape Wind's ENF Certificate (#12643), the Secretary of Environmental Affairs explained that Cape Wind voluntarily consented to MEPA review of the entire Cape Wind project as well as a greatly extended ENF comment period to allow for maximum public input, with the Secretary of Environmental Affairs concluding that "these commitments ensure that the impacts of the project will receive full disclosure in the state and regional review process..." The current review process, thus, considers all relevant concerns and issues in a seamless manner, with absolutely no "gap" between federal and state review.

In fact, to this date, Cape Wind has received tremendously positive reviews from every regulatory agency that has concluded its process. Is this fact what really troubles the Task Force

- not that there is inadequate regulatory oversight, but that Cape Wind would actually be approved on the merits? As stated above, CPC's members include hydro, nuclear, gas, coal, and oil fired generating units. Is it the position of the Task Force that renewable energy projects be ultimately subjected to a more rigorous regulatory review process than any and all of those units?

CPC believes that the Draft proposal would contradict the tenets memorialized into statute and regulation by the 1997 Restructuring Act in several regards. First, the Legislature expressed clearly that the Commonwealth's energy facility siting statute was in grave need of reform. The Commonwealth – indeed, the New England region – was in dire need of more generation capacity in order to meet usage demands and projected future need as populations and economics grew. The Massachusetts siting law prior to 1997 was proficient at discouraging efforts to address these needs. A siting process centered on government inspired central planning guaranteed that any entrepreneurial effort to improve energy capacity was unsuccessful. In response to this situation, the Legislature enacted siting law reforms designed to move our Commonwealth's energy capacity needs forward, not backward, by encouraging innovative clean, efficient, state-of-the-art power plants. All of these units were built with private capital, at no risk to ratepayers, by entrepreneurs with real life expertise. CPC worked closely with legislators, regulators, and other interested parties to help craft a statute that would ensure the Commonwealth did not literally remain in the dark. In fact, the siting reforms were perceived so positively that others in the New England region – namely, Connecticut and Maine – adopted virtually the same statutes soon thereafter. The cornerstone of this reform was a belief that competitive markets were far superior to governmental central planning at meeting the Commonwealth's energy supply needs. Incredibly, the Task Force ignores this unqualified success and would have the Commonwealth regress to the bad old days of “politbureau” style central planning with respect to renewable energy.

Hand in hand with these reforms, the Restructuring Act made an equally strong commitment to developing renewable energy generation in the Commonwealth. Through the renewable portfolio standard the Legislature sent a clear signal to regulators, developers, and consumers that Massachusetts had a commitment to encourage the development of “green” power. The Legislature went so far as to explicitly enumerate the various renewable power sources, and wind is prominent among them. The unequivocal Legislative intent was to encourage the development of renewable energy resources in the Commonwealth so that Massachusetts citizens might realize both the environmental and economic benefits. The Cape Wind project is exactly the type of project envisioned by the Restructuring Act, as evidenced by the support of the Cape Wind project by the very legislators that actually drafted the legislation. Again, incredibly, the Task Force proposal would ignore and undermine this clear legislative intent.

In both these regards – siting reform and the promotion of renewable energy – the Legislature could not have been more precise as to what it intended. It has now taken the creation of the Task Force but six months to try to undue the very progress the Legislature has created.

Equally disturbing to CPC is the adverse impact the Task Force would have on every energy project in Massachusetts, again with no corresponding public benefit. Every power plant,

LNG facility, gas pipeline and transmission line, to name but a few, would now be subject to additional and unnecessary bureaucratic review and costs which would inevitably be passed onto business and consumers. The problem would be exacerbated by the fact that government bureaucrats would make unilateral decisions based on subjective opinions, without the balance provided by specific objective criteria, adjudicatory process and a public record.

Finally, CPC would submit that government action does not come without a cost. Back door repeal of siting reform and the renewable portfolio standard through the Task Force's proposals surely will have one set of costs. Expanded regulatory activities and agency functions carries with it another set of costs, which are not addressed in the Draft document. At a minimum, in these tight budgetary times, the Task Force owes it to legislators, taxpayers, and the regulated community a discussion of what it will cost the Commonwealth to institute these newly proposed agency activities. CPC takes solace in the fact that executive branch agencies cannot unilaterally expand or dramatically alter their domain or authority. Clearly, the proposal set forth by the Task Force would require legislative approval. CPC welcomes the opportunity to publicly, openly, and realistically debate the recommendations as they are taken up in the legislative process.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Neal B. Costello".

Neal B. Costello  
General Counsel  
Competitive Power Coalition  
of New England, Inc.

NBC/df