HOUSE DOCKET, NO. 3217 FILED ON: 1/16/2015

HOUSE . . . . . No. 2881

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia A. Haddad

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to promote energy diversity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Patricia A. Haddad	*5th Bristol*
Michael J. Rodrigues	*First Bristol and Plymouth*
Antonio F. D. Cabral	*13th Bristol*
Carole A. Fiola	*6th Bristol*
Steven S. Howitt	*4th Bristol*
Robert M. Koczera	*11th Bristol*
Christopher M. Markey	*9th Bristol*
Keiko M. Orrall	*12th Bristol*
Elizabeth A. Poirier	*14th Bristol*
Paul A. Schmid, III	*8th Bristol*
Alan Silvia	*7th Bristol*
Sarah K. Peake	*4th Barnstable*
Jeffrey N. Roy	*10th Norfolk*
Colleen M. Garry	*36th Middlesex*
Denise Provost	*27th Middlesex*
Ann-Margaret Ferrante	*5th Essex*
Timothy R. Whelan	*1st Barnstable*
John V. Fernandes	*10th Worcester*

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HOUSE . . . . . No. 2881

By Mrs. Haddad of Somerset, a petition (accompanied by bill, House, No. 2881) of Patricia A. Haddad and others for legislation to encourage the development of clean energy security, energy diversity and economic growth. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to promote energy diversity.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. This act shall be construed in a manner to achieve its public purposes, which are to encourage the development of energy security and energy diversity and economic growth while facilitating the commonwealth's clean energy goals. Because the long term cost of various traditional energy sources cannot be accurately calculated and the commonwealth faces a reliability crisis as 8,000 megawatts of existing generation are expected to retire, it is important that Massachusetts enact a balanced, long-term energy plan to best assure varied energy sourcing; safe, efficient and uninterrupted energy delivery; coupled with sound and integrated economic development and mindful of climate change and the cost to the consumer.

SECTION 2. Section 22 of chapter 21A of the General Laws, as so appearing in the 2012 Official Edition, is hereby amended by inserting at the end of subsection (b) the following:-

Parcels of land on which electric generating plants previously were operated shall be designated as preferred sites for reuse as electric generation sites for all technologies. With such

designation, the owner of the new generation facility, one which receives a Capacity Supply Obligation in the ISO-NE's Forward Capacity Market No. 10 or later, shall receive on January 1 of each of the first five years that the new facility has achieved commercial operation, from the Commonwealth at no cost to the owner, emission allowances to be used under the Regional Greenhouse Gas Initiative, or successor program, during such first five years of commercial operation, if said new electric generation facility is able to demonstrate documented reduction in the emissions rate of 33 1/3 percent using as a baseline the average emission rate of the electric generating plant previously operated on such site during its last 24 months of operation. The total number of the emission allowances that may be granted by the commonwealth in any calendar year under this section shall be limited to one-third of the total number of allowances allocated to the commonwealth, with no new facility receiving more than 1,000,000 allowances in any such calendar year.

SECTION 3. Subsection (c) of section 11F of chapter 25A of the General Laws, as appearing in the 2012 Official Edition, is hereby further amended by striking out paragraph (6) and inserting in place thereof, the following paragraph:-

(6) energy generated by new hydroelectric facilities, or incremental new energy from increased capacity or efficiency improvements at existing hydroelectric facilities; provided however that (i) each such new facility or increased capacity or efficiency at each such existing facility must meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities ("Environmental Standards"); (ii) in any case in which: (a) pursuant to

action initiated with or by the Federal Energy Regulatory Commission (FERC) after January 1, 2000, the FERC reviewed and approved an increase of capacity or efficiency at an existing facility, or (b) pursuant to action initiated with or by the Federal Energy Regulatory Commission (FERC) after January 1, 2009, the FERC reviewed and approved a new facility, then such increased capacity or efficiency at each such existing facility, or such new facility, shall be deemed, by the department, to have satisfied the Environmental Standards, defined above, and except as limited by the following sub-section (6)(iv), shall, upon application, be qualified as a Class I renewable energy generating source, without further review; (iii) all facilities, once qualified, either by meeting the terms of the immediately preceding sub-section (ii) or otherwise shall, remain qualified, so long as they annually certify that they have substantially met the operating conditions placed upon them by FERC; (iv) only energy from new facilities having a capacity of 30 megawatts or less, or energy attributable to improvements to an existing hydroelectric facility that incrementally increase capacity or efficiency by up to 30 megawatts shall qualify; and (v) no such facility shall involve pumped storage of water;

SECTION 4. Subsection (d) of section 11F of chapter 25A, as so appearing, is amended by striking out paragraph (6) and inserting in place thereof, the following paragraph:-

(6) energy generated by existing hydroelectric facilities, provided that such existing facilities shall meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities (“Environmental Standards”); once the department has, by appropriate means, determined that an existing facility meets the Environmental Standards, such existing

facility shall be qualified as a Class II renewable energy generating source; any facilities, once so qualified shall remain qualified so long as they annually certify, to the satisfaction of the department, that they have substantially met the operating conditions placed upon them by the FERC; and provided further, that only energy from existing facilities up to 7.5 megawatts shall be considered renewable energy and no such facility shall involve pumped storage of water nor construction of any new dam or water diversion structure constructed later than January 1, 1998;

SECTION 5. Section 138 of said chapter 164 of the General Laws, as so appearing in the 2012 Official Edition, is hereby amended by inserting after the word “digestion” in line 29 the following word:- , water,

SECTION 6. Section 138 of said chapter 164, as so appearing, is hereby amended, in line 45, by inserting after the words “solar net metering facility” the following words:- hydropower net metering facility,

SECTION 7. Section 138 of said chapter 164, as so appearing, is hereby amended, in line 63, by inserting after the words “solar net metering facility” the following words:- hydropower net metering facility,

SECTION 8. Section 138 of said chapter 164, as so appearing, is hereby amended, in lines 68-69, by inserting after the words “anaerobic digestion net metering” the following words:- , hydropower net metering facility,

SECTION 9. Section 138 of chapter 164, as so appearing, is hereby amended by inserting after the definition of “customer” the following definition:- Hydropower net metering facility, a facility for the production of electrical energy that uses water to generate electricity and is interconnected to a distribution company.

SECTION 10. Subsection (f) of said section 139 of said chapter 164, as so appearing, is hereby further amended by inserting after the word “facility”, in line 77, the following words:- , or a hydropower net metering facility.

SECTION 11. Chapter 169 of the Acts of 2008, as amended by chapter 209 of the Acts of 2012, is hereby further amended by inserting after section 83A the following section:-

Section 83B: Beginning on or before June 30, 2016 all distribution companies in the commonwealth, as defined in section 1 of chapter 164 of the General Laws, shall be required to conduct periodic joint solicitations for proposals from offshore wind energy developers to deliver an annual amount of electricity and, provided reasonable proposals have been received, enter into commercially reasonable long-term contracts to facilitate the financing of offshore wind energy generation. The first solicitation shall be for no less than 1,500,000 MWh per annum. Subsequent solicitations must occur within 24 months of the previous solicitation and shall be for no less than 1,000,000 MWh. Under this section, distribution companies must enter into long-term contracts for 8,500,000 MWh per annum in the aggregate by 2030. The department of public utilities shall promulgate rules and regulations consistent with this section.

For purposes of this section, the term "commercially reasonable" shall mean terms and pricing that are reasonably consistent with what an experienced power market analyst would expect to see in transactions involving newly developed offshore wind energy resources. Commercially reasonable shall include having a credible project operation date, as determined by the department of public utilities, but a project need not have completed the requisite permitting process to be considered commercially reasonable. If there is a dispute about whether

any terms or pricing are commercially reasonable, the department of public utilities shall make the final determination after evidentiary hearings.

The timetable and method for solicitation and execution of contracts under this section shall be proposed by the distribution company, in consultation with the department of energy resources, and shall be subject to review and approval by the department of public utilities. This long-term contracting obligation for offshore wind shall be separate and distinct from the electric distribution companies' obligation to meet applicable annual renewable portfolio standard, hereinafter referred to as RPS, requirements, under section 11F of chapter 25A of the General Laws.

A distribution company may fulfill its responsibilities under this section through individual competitive solicitations that are independent from the periodic joint solicitations for proposals from offshore wind energy developers and, provided reasonable proposals have been received, enter into commercially reasonable long-term contracts to facilitate the financing of offshore wind energy generation under this section if, upon petition to the department of public utilities prior to the first joint solicitation, the department rules that a solicitation by an individual distribution company would be more commercially reasonable than said distribution company engaging in a joint solicitation.

For purposes of this section, a long-term contract shall be a contract with a term of 15 to 20 years. A contract may have a term longer than 20 years if the department of public utilities finds that it would be cost-effective for ratepayers when compared to one or more contracts proposed for other generation resources with the same physical attributes but that have a term of no more than 25 years. In developing proposed long-term contracts, the distribution companies

shall consider multiple contracting methods, including long-term contracts for renewable energy certificates, hereinafter referred to as RECs, for energy, and for a combination of both RECs and energy. Beginning on or before June 30, 2016, the electric companies shall jointly select a reasonable method of soliciting proposals from offshore wind energy developers using a competitive bidding process only. Distribution companies may use timetables and methods for the solicitation of competitively bid long-term contracts approved by the department of public utilities prior to June 30, 2016. A distribution company may structure its contracts, pricing or administration of the products purchased to mitigate impacts on the balance sheet or income statement of the distribution company or its parent company, subject to the approval of the department of public utilities. The distribution companies shall consult with the department of energy resources and the attorney general's office regarding the choice of contracting methods and solicitation methods. All proposed contracts shall be subject to the review and approval of the department of public utilities.

The department of public utilities and the department of energy resources each shall adopt regulations consistent with this section. The regulations shall: (a) allow offshore wind energy developers to submit proposals for long-term contracts conforming to the contracting methods specified in the second paragraph; (b) require that contracts executed by the distribution companies under such proposals are filed with, and approved by, the department of public utilities before they become effective; (c) provide for an annual remuneration for the contracting distribution company equal to 1.50 per cent of the annual payments under the contract to compensate the company for accepting the financial obligation of the long-term contract, such provision to be acted upon by the department of public utilities at the time of contract approval;

(d) require that the department of public utilities, if it has determined the obligations under this section result in increases to ratepayers, provide relief for distribution customers utilizing over 10,000 kWh per month; and (e) require that the proposed offshore wind energy project meet the following criteria: (1) have a commercial operation date, as verified by the department of energy resources, on or after October 1, 2018; (2) be qualified by the department of energy resources as eligible to participate in the RPS program, under said section 11F of said chapter 25A, and to sell RECs under the program; (3) have control or a right to acquire control over a suitable site; (4) be developed by a team with a sufficient amount of relevant experience to successfully develop, finance, construct and operate its proposed project; and (5) be determined by the department of public utilities to: (i) provide enhanced electricity reliability within the commonwealth; (ii) contribute to moderating system peak load requirements in the commonwealth; (iii) demonstrate that the offshore wind energy will be delivered to the ISO New England Control Area including, where feasible, at or near the location of retiring carbon emitting generation sources; (iv) be commercially reasonable; (v) where feasible, create additional employment and economic development in the commonwealth; and (iv) where feasible, utilize publically owned facilities.

As part of its approval process, the department of public utilities shall consider the attorney general's recommendations, which shall be submitted to the department of public utilities within 45 days following the filing of such contracts with the department of public utilities. The department of public utilities shall consider both the potential costs and benefits of such contracts and shall approve a contract only upon a finding that it is a commercially reasonable mechanism for procuring offshore wind energy on a long-term basis taking into account the factors outlined in this section.

The joint solicitations required under this section shall be coordinated among the electric distribution companies by the department of energy resources. If distribution companies are unable to agree on a winning bid under a solicitation under this section, the matter shall be submitted to the attorney general, in consultation with the department of energy resources and the department of public utilities, for a final, binding determination of the winning bid.

The electric distribution companies shall each enter into a contract with the winning bidders for their apportioned share of the market products being purchased from the project. The apportioned share shall be calculated and based upon the total energy demand from all distribution customers in each service territory of the distribution companies. As long as an electric distribution company has entered into long-term contracts in compliance with this section, it shall not be required by regulation or order or by other agreement to enter into additional long-term contracts; provided, however, that an electric distribution company may execute such contracts voluntarily, subject to the approval of the department of public utilities.

An electric distribution company may elect to use any energy purchased under such contracts for resale to its customers, and may elect to retain RECs to meet the applicable annual RPS requirements under said section 11F of said chapter 25A. If the energy and RECs are not so used, such companies shall sell such purchased energy into the wholesale spot market and shall sell such purchased RECs through a competitive bid process. Notwithstanding the previous sentence, the department of energy resources shall conduct periodic reviews to determine the impact on the energy and REC markets of the disposition of energy and RECs under this section and may issue reports recommending legislative changes if it determines that actions are being taken that will adversely affect the energy and REC markets.

If a distribution company sells the purchased energy into the wholesale spot market and auctions the RECs as described in the above paragraph, the distribution company shall net the cost of payments made to projects under the long-term contracts against the proceeds obtained from the sale of energy and RECs, and the difference shall be credited or charged to all distribution customers through a uniform fully reconciling annual factor in distribution rates, subject to review and approval of the department of public utilities. The reconciliation process shall be designed so that a distribution company recovers all costs incurred under such contracts. If the RPS requirements of said section 11F of said chapter 25A terminate, the obligation to continue periodic solicitations to enter into long-term contracts shall cease; provided however, that contracts already executed and approved by the department of public utilities shall remain in full force and effect.

This section shall not limit consideration of other contracts for RECs or power submitted by a distribution company for review and approval by the department of public utilities. If this section is subject to a judicial challenge, the department of public utilities may suspend the applicability of the challenged provision during the pendency of the judicial action until final resolution of the challenge and any appeals and shall issue such orders and take such other actions as are necessary to ensure that the provisions that are not challenged are implemented expeditiously to achieve the public purposes of this section.

SECTION 12. (a) Not later than January 1, 2017, the department of public utilities shall adopt guidelines for a regional transmission solution for the purpose of allowing utility companies to submit proposals for the construction of competitively bid electricity transmission lines supplying electricity to the commonwealth. In developing the guidelines, the department shall: (1) establish a methodology to analyze whether an application of a transmission line

project is cost-effective; (2) consider the potential benefits of transmission line projects, including whether a transmission line project would: (i) improve reliability of electrical transmission or distribution systems; (ii) reduce peak demand for electricity; (iii) improve the integration of different types of renewable resources; (iv) reduce greenhouse gas emissions; or (v) defer investment in generation or distribution of electricity; and (3) consider any other factor reasonably related to the procurement of a regional transmission solution.

(b) Not later than January 1, 2018, a utility company may submit one or more proposals to the department for developing a project that includes one or more regional transmission solutions. Each proposal submitted under this section must include, but is not limited to, a description of the proposed project. The description must include (1) technical specifications for each project, including: (i) the location of the project (ii) a description of how the project will fulfill the needs of the utility company; (2) an evaluation of the cost-effectiveness of the project; and (3) all potential impact to ratepayers of the commonwealth.

(c) The department shall consider each proposal submitted to the department under subsection (b) of this section and evaluate each proposal to determine whether the proposal: (1) is consistent with the guidelines adopted by the department under subsection (a) of this section; (2) is reasonably balances the benefits of transmission to ratepayers; and (3) is in the public interest.

(d) If authorized to develop a project under subsection (c) of this section, a utility shall develop the project in accordance with any competitive bidding guidelines prescribed by the department.

SECTION 13. The department of public utilities shall establish a tariff to be paid and for the purpose of the construction of additional gas pipeline capacity. The department shall offer a request for proposal to qualified bidders to solicit competitive bids for the construction of the pipeline. The winning bid shall be chosen though a competitive bidding process. The entity selected shall auction the pipeline capacity, subject to approval by the department, the proceeds of which shall be directed to reimbursing the ratepayers of the commonwealth. Upon remittance of payment by said entity, the entity shall hold full ownerships rights to the pipeline. The department shall promulgate rules and regulations consistent with this section.

SECTION 14. There shall be a commission which shall study and make recommendations on the siting of energy facilities in the commonwealth. The study shall include, but not be limited to, the following: (a) the development of a procedure or procedures to streamline siting for all energy facilities, including renewables; (b) the consideration of a one-stop siting process though a single agency; (c) creating a defined role for local community input into the siting process; (d) coordinating the siting process to coincide with the ISO New England Forward Capacity Market; (e) ensuring that stakeholders have a constructive opportunity to participate in the process; (f) eliminating the need for multiple filings at multiple agencies; (g) consideration of changes to existing facilities such as retrofitting to provide dual fuel capability; (h) examining site redevelopment opportunities, including the nexus between federal and state requirements for retiring facilities, ensuring proper communication channels between retiring plants and host communities and creating a business environment to attract new generation

resources to consider a former plan site for redevelopment; and (i) considering the implementation of a flexible tax structure to encourage more energy development in the commonwealth.

The commission shall consist of the secretary of energy and environmental affairs or a designee, who shall be the chair of the commission; the attorney general or a designee; the chairman of the department of public utilities or a designee; the house chair for the joint committee on telecommunications, utilities and energy; the senate chair for the joint committee on telecommunications, utilities and energy; 1 representative of the utilities; 1 representative of competitive electric generating companies; 1 representative of the Associated Industries of Massachusetts; and1 representative of environmental organizations. The commission shall hold its first meeting within 30 days of the effective date of this act. The commission shall file a report with its finding, including any legislative and regulatory recommendations, with the clerks of the senate and house of representatives, the joint committee on telecommunications, utilities and energy and the senate and house committees on ways and means not later than 6 months after the effective date of this act.