

DEPARTMENT OF ENERGY AND  
ENVIRONMENTAL PROTECTION

PUBLIC UTILITIES REGULATORY  
AUTHORITY

GOVERNOR'S EXECUTIVE ORDER  
NUMBER 59: DEEP AND PURA  
JOINT PROCEEDING

DOCKET NO. 17-07-32 - DEEP AND  
PURA JOINT PROCEEDING TO  
IMPLEMENT THE GOVERNOR'S  
EXECUTIVE ORDER NUMBER 59

NOTICE OF CLOSE OF PROCEEDING

(April 30, 2018)

The Department of Energy and Environmental Protection (DEEP) and the Public Utilities Regulatory Authority (PURA) opened the above-captioned uncontested proceedings for administrative purposes jointly to conduct a study and produce a report in accordance with the directives of Executive Order Number 59 issued by Governor Malloy on July 25, 2017 (Executive Order). These proceedings also address the requirement of June Special Session Public Act 17-3, *An Act Concerning Zero Carbon Solicitation and Procurement* (the Act), Section 1(b) and (c), to conduct an appraisal regarding nuclear power generating facilities and determine whether a solicitation process for nuclear power generating facilities shall be conducted pursuant to the Act.

On February 1, 2018, DEEP and PURA issued the *Resource Assessment, Appraisal, and Determination Pursuant to Executive Order No. 59 and Public Act 17-3; Determination Pursuant to Public Act 17-3* (Determination). The Determination concluded that while the Millstone Nuclear Units are estimated to be profitable under expected market revenues through 2035, incomplete responses to data requests and lack of audited operational data and costs rendered uncertain the state's assessment of the financial viability of Millstone Nuclear Units. In recognition of the significant value the Millstone Nuclear Units and other existing or new zero-emission generating resources provide to Connecticut and the region, DEEP and PURA DEEP and PURA concluded that pursuant to the Act, DEEP should conduct a procurement or procurements for new and existing zero-emission generating facilities. For the purposes of the Request for Proposals (RFP) under the Act, DEEP anticipates that it will utilize a process similar to those in prior and pending RFPs pursuant to Public Acts 13-303 and 15-107, including the issuance of a draft RFP and opportunities for comment on RFP issues such as schedule, eligibility, and evaluation criteria, etc. In the Determination, DEEP and PURA indicated that an existing resource may seek to be evaluated in any procurement conducted pursuant to the Determination as an "existing resource confirmed at risk." Determination, p. 42.

DEEP and PURA on April 4, 2018 issued a Notice of Request for Written Comments seeking comments on the proposed procedure and criteria for evaluating

whether an existing resource<sup>1</sup> is confirmed “at risk.”<sup>2</sup> DEEP and PURA have received and considered the comments received in response to that Notice, and now confirm the below proposed procedure and criteria for evaluating whether an existing resource is confirmed “at risk.”

As outlined below, PURA will conduct open a proceeding to evaluate and conduct discovery on the petitioning resource’s “at risk” status. DEEP will participate in that proceeding as a party. This approach will enable both agencies to reach separate conclusions about “at risk” status—as appropriate to their independent roles—based on a common evidentiary record. Any “at risk” proceeding will be timed to run in parallel with the RFP process, with appropriate sequencing to ensure fair and competitive bidding in the RFP.

## **PROCEDURE FOR EXISTING RESOURCES SEEKING “AT RISK” STATUS**

1. No later than May 31, 2018, an eligible resource, as defined below, may petition PURA to initiate a proceeding to determine that the resource is an “existing resource confirmed at risk.” If PURA receives such a petition, PURA will open a proceeding to consider the petition. DEEP will independently evaluate the information submitted, as a party in the PURA proceeding, and submit in the PURA proceeding its independent recommendation regarding the “at risk” status of any petitioning resource. In order to develop a record, such proceeding shall be conducted in a docket opened by PURA for the purpose of: (1) determining the “at risk” status of petitioning eligible resources; and (subsequently) (2) evaluating any contract(s) resulting from selection by DEEP through the RFP conducted pursuant to § 1(2)(d) of the Act.
2. Any existing resources not deemed an “existing resource confirmed at risk” will be included in the base case of DEEP’s evaluation in any RFP issued by DEEP pursuant to the Act, subject to reasonable assumptions regarding anticipated resource retirements.
3. In order to be eligible to petition PURA for a determination that it is an “existing resource confirmed at risk,” a resource must:
  - a. Be an existing resource that has delivered electricity to the ISO New England grid in the past;

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<sup>1</sup> For the purpose of this evaluation, “existing resource” shall mean a generation resource that has delivered electricity to the New England Control Area on or before January 1, 2018.

<sup>2</sup> As stated in the Determination, if DEEP and PURA conclude that a resource is not profitable and will likely retire without ratepayer support, then the resource may be deemed an “existing resource confirmed at risk.”

- b. Be one of the following generating resource types:
    - i. An eligible nuclear power generating facility, as defined in the Act,  
or
    - ii. Hydropower not eligible to receive Class I Renewable Energy Credits as defined by Connecticut General Statutes § 16-1;and
  - c. Have a nameplate capacity of no less than 2 MW, consistent with past requirements in prior DEEP grid-scale procurements by DEEP.<sup>3</sup>
4. An eligible resource may seek protective treatment of information submitted to PURA, provided such petitioner clearly identifies which Freedom of Information Act exemption applies to the specific content. Any such request should be accompanied by: (1) a motion for protective order providing a precise description of the information to be protected and clearly substantiating the need for protection; (2) a sworn affidavit attesting to the confidential nature of the information and the potential for harm if such information is disclosed to the public; (3) where possible, a public version with all confidential information redacted of any document for which protection is sought; and (4) a draft protective order for PURA to sign.
- a. DEEP, PURA, and the Office of Consumer Counsel (OCC) shall have access to materials subject to a protective order.
  - b. Materials subject to a protective order may be reviewed in closed hearings open to DEEP, PURA, OCC and the petitioning resource's representatives.
    - i. Subject to consent from the petitioning resource, representatives of New England's regional state committee or representatives of governmental entities from Maine, Massachusetts, New Hampshire, Rhode Island, or Vermont may petition PURA to be designated as an observer in these sessions.
5. PURA will issue an interim decision on each eligible resource's request to be deemed an "existing resource confirmed at risk." The determination of an existing resource's "at risk" status will be issued only after bids are submitted in the procurement conducted by DEEP pursuant to § 1(2)(d) of the Act.
6. Following issuance of the "at risk" determination, PURA will suspend the

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<sup>3</sup> PURA reserves the right to consolidate evaluation of petitioning hydro resources of similar size where necessary and appropriate for administrative efficiency.

docket, but will reopen the docket for the purpose of reviewing any contract entered into with a resource selected in the procurement conducted by DEEP pursuant to § 1(2)(d) of the Act.

**Preliminary Timeline:<sup>4</sup>**

<b>Action</b>	<b>Preliminary Timeframe</b>
PURA initiates “at risk” proceeding	April 2018
DEEP initiates RFP proceeding	May 1, 2018
Bids due in DEEP’s RFP proceeding	September 2018
PURA issues interim determination regarding “at risk” resources and suspends docket	October 2018
DEEP selects winning bidders	Late 2018 – early 2019
Contracts submitted to PURA	Mid – late 2019

This Notice concludes the above-captioned joint proceedings. Following the close of these joint proceedings, DEEP and PURA will observe separate roles with respect to further proceedings contemplated pursuant to the Act, i.e., the issuance of the RFP and selection of proposals conducted by DEEP, and the review and approval of contracts that may result from selection conducted by PURA.

Dated at New Britain, Connecticut, this 30th day of April, 2018.

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<sup>4</sup> Dates and timeframes subject to change.