Utilities say they shouldn't have to buy Cape Wind

JAY LINDSAY - Associated Press - Associated Press

NStar and Northeast Utilities on Wednesday said Massachusetts regulators can't force them to buy power from the Cape Wind offshore wind farm to win approval for a deal that combines their operations, adding that such a requirement could be unconstitutional.

The arguments were part of a joint filing with the state Department of Public Utilities in which the companies made a case for approving the merger, which would create New England's largest utility.

In the filing, they responded to Cape Wind, which has said the combined utility should have to buy half its power to get the deal approved.

"The Department has no authority under (state law), or any other statutory provision to impose a requirement to enter into a long-term contract for renewable power," the utilities argued.

But the companies didn't rule out buying from Cape Wind, saying in a footnote that the constitutional concern "would not exist if NSTAR Electric were to unilaterally decide to enter into a contract with Cape Wind."

Last year, the Cape Wind project was the first offshore wind farm in the nation to win federal approval, and advocates say it can be the foundation of a new renewable energy industry. Critics say the power is overpriced and an environmental and aesthetic hazard.

The project planned for Nantucket Sound hopes to begin producing power in 2013 and has sold half its power to National Grid. But it needs to sell the other half to win financing for the full 130-turbine project.

Boston-based NStar is the only Massachusetts utility large enough to buy a significant share of Cape Wind, but has so far looked to fill a state mandate to buy renewable power with cheaper land wind.

But some believe Gov. Deval Patrick's administration, an ardent Cape Wind backer, is using NStar's deal with Hartford-based Northeast Utilities to pressure NStar to buy Cape Wind's more expensive power. For instance, the state asked the DPU to delay the deal for a review of NStar's rates, which NStar said could kill the agreement.

The state has denied any attempt to pin the deal's approval on an NStar purchase from Cape Wind. State energy chief Mark Sylvia has said officials are in discussions with NStar about buying Cape Wind power.

Last month in a letter to the DPU, Cape Wind argued the approval of the NStar-Northeast Utilities deal should depend on "the purchase by the merged entities of the remaining output of Cape Wind." It cited, among other things, state law requiring drastic reductions in greenhouse gas emissions and the Patrick administration's argument that such mergers should have significant public benefits, including furthering the state's clean energy goals, such as developing offshore wind.

In Wednesday's filing, the utilities argued if they are required to purchase Cape Wind as a condition of the merger, it could violate the Dormant Commerce Clause of the U.S. Constitution by effectively forcing NStar to buy from an in-state power company.

"This anti-discrimination policy prevents states from engaging in protectionism, whereby an advantage is given to in-state industries at the expense of out-of-state competitors," the utilities argued.

They also said while the state's anti-global warming law could be used to support a DPU decision to approve a proposed long-term contract for wind power it "does not provide the Department with the authority that would be needed to require an electric distribution company to enter into a long-term contract for off-shore wind."

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