

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petition of NSTAR Electric Company, d/b/a Eversource)
Energy for approval by the Department of Public)
Utilities of two long-term contracts for procurement) D.P.U. 18-64
of Clean Energy Generation, pursuant to)
Section 83D of An Act Relative to Green Communities,)
St. 2008, c. 169, as amended by St. 2016, c. 188, § 12.)
_____)

Petition of Massachusetts Electric Company and)
Nantucket Electric Company, each d/b/a National Grid)
for approval by the Department of Public) D.P.U. 18-65
Utilities of two long-term contracts for procurement)
of Clean Energy Generation, pursuant to)
Section 83D of An Act Relative to Green Communities,)
St. 2008, c. 169, as amended by St. 2016, c. 188, § 12.)
_____)

Petition of Fitchburg Gas and Electric Light Company)
d/b/a Unitil for approval by the Department of Public)
Utilities of two long-term contracts for procurement of) D.P.U. 18-66
Clean Energy Generation, pursuant to)
Section 83D of An Act Relative to Green Communities,)
St. 2008, c. 169, as amended by St. 2016, c. 188, § 12.)
_____)

REPLY BRIEF OF THE DEPARTMENT OF ENERGY RESOURCES

The Massachusetts Department of Energy Resources (“DOER”) respectfully submits this Reply Brief in the above referenced proceedings regarding the approval of three long-term power purchase agreements (“PPAs” or “contracts”) to purchase Clean Energy Generation and Environmental Attributes associated with the New England Clean Energy Connect (“NECEC”) project by NSTAR Electric Company d/b/a Eversource, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, and Fitchburg Gas and Electric Light

Company d/b/a Unutil (collectively, the “Distribution Companies” and each “the Company”). For the reasons set forth in its Initial Brief, and as further detailed in this Reply Brief, DOER respectfully requests that the Department of Public Utilities (“the Department”) find that the PPAs satisfy the requirements and criteria of Section 83D of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12 (“Section 83D”), the Department’s regulations at 220 C.M.R. §24.00, the Department’s precedent, and approve the PPAs.

I. INTRODUCTION

On July 23, 2018, the Distribution Companies filed a petition with the Department seeking approval, pursuant to Section 83D and 220 CMR 24.00, of the PPAs. Parties, including DOER, filed simultaneous Initial Briefs on the merits of the PPAs on March 22, 2019. In its Initial Brief, DOER outlined how the PPAs met the standard of review and warrant approval. Specifically, the PPAs: (1) are a cost-effective method of procuring reliable renewable energy on a long-term basis; (2) meet the statutory and regulatory criteria set forth in Section 83D and 220 CMR 24.00; and (3) are in the public interest. The Distribution Companies properly followed the bid evaluation process set forth in the Request for Proposals (“RFP”) and properly applied the bid criteria. The result of these actions was a solicitation and procurement process that was fair, reasonable, and transparent, which resulted in PPAs that are low-cost, reasonable, and provide reductions to customer’s bills.¹ For these reasons discussed in DOER’s Initial Brief,

¹ See generally Initial Brief for Dep’t Of Energy Res., Petition of Cos. of long-term contracts for procurement of Clean Energy Generation pursuant to Section 83D of An Act Relative to Green Communities, D.P.U. 18-64; D.P.U. 18-65; D.P.U. 18-66 (2018).

the Department should approve the proposed PPAs, without amendment, as cost-effective long-term contracts for the procurement of low-cost renewable energy in satisfaction of Section 83D.

In this Reply Brief, the DOER reiterates its support for the approval of the proposed PPAs as outlined in its Initial Brief and recommends the Department approve the PPAs without amendment, and not adopt the Office of the Attorney General's ("AGO") recommended process changes. In addition, the DOER responds to certain arguments made by the intervening parties as further provided below.²

II. THE PROPOSED PPAS SATISFY THE REQUIREMENTS OF SECTION 83D, AS WELL AS DEPARTMENT PRECEDENT, AND ARE IN THE PUBLIC INTEREST.

A. Contrary to Intervenor's Claims, the Department Should Approve the PPAs as Filed Because NECEC meets the RFP Definition of "Incremental Hydroelectric Generation" and all Requirements of Section 83D Including the Statutory Definition for "Firm Service Hydroelectric Generation."

Some intervenors contend that the Department should either reject the PPAs or take the extraordinary step of amending the Distribution Companies' negotiated PPAs to require Hydro Quebec ("HQ") to contractually require a historical level of delivery of hydroelectricity for a twenty-year period in addition to the delivery of the contracted-for amount of 9.45 TWhs.³ Specifically, either rejecting the PPAs, or the AGO's requested "remedy," to amend PPAs, are predicated on faulty arguments that Section 83D and the RFP collectively create a requirement that the PPAs must guarantee a historical delivery of hydroelectricity to the New

² Silence with respect to any issues or arguments raised in this proceeding should not be construed as acquiescence or consent by the DOER.

³ Initial Brief for Att'y Gen. Office at 17, Petition of Cos. of long-term contracts for procurement of Clean Energy Generation, D.P.U. 18-64; D.P.U. 18-65; D.P.U. 18-66 (2018). Other intervenors have made similar arguments and recommend the Department reject the proposed PPAs, and DOER's response in this section applies to similar arguments made by these parties.

England region for a twenty-year period, and that the hydroelectricity delivered under the PPAs must be incremental to those historic deliveries.

The Department should approve the PPAs as filed, and reject the AGO's request because: (1) Section 83D does not require a PPA to guarantee delivery of a historical level of electricity into the region in addition to the delivery of the contracted-for amount of 9.45 TWhs; (2) the RFP's inclusion of the term "Incremental Hydroelectric Generation" is misconstrued by the AGO, as it was intended to ensure that bidders had sufficient generation capacity to supply Clean Energy Generation above their historic three-year average sales into ISO New England, as opposed to requiring the bidder to legally guarantee its historical deliveries over a twenty year period; (3) the AGO attempts to use each Distribution Companies' Exhibit H as "evidence" that the statute and RFP required the PPAs to provide an extraordinary guarantee to deliver the entirety of HQ's historic three year average hydroelectric sales into the ISO New England region *above* the proposed amount of energy associated with the NECEC bid for twenty years; and (4) the PPAs meet the public interest standard, by which the Department considers whether the Distribution Companies reasonably followed the bid evaluation process set forth in the RFP and whether the Evaluation Team reasonably applied the RFP criteria in their evaluation of bids; resulting in a solicitation and procurement process that was fair, reasonable, and transparent. The record on this issue is thoroughly developed and shows that NECEC's bid was both consistent with these requirements and was evaluated consistent with the RFP.⁴

⁴ As noted in the IE Report, the form PPA also "did not contain any specific provision requiring that a seller of existing hydropower generation deliver any amount of energy other than that being committed to under the proposed contract". Exh. IE Report, p. 51.

Intervenors have incorrectly applied the statutory requirements for Firm service hydroelectric generation from Section 83D, especially as compared to the distinctly different requirements for Class I renewable resources. In her Initial Brief, the AGO states:

the interpretation of Incremental Hydro as being fully incremental is necessary to ensure consistency with the requirements for renewable bids, which were required to provide... energy that is fully incremental. In fact, renewable bids were required to meet a stricter standard in this respect, since they were required to be *new* resources which necessarily provide incremental energy.⁵

Section 83D permits the Distribution Companies to solicit for “[f]irm service hydroelectric generation,” “[n]ew Class I renewable portfolio standard eligible resources,” and a combination of both resources.⁶ Section 83B defines Firm service hydroelectric generation as:

hydroelectric generation provided without interruption for 1 or more discrete periods designated in a long-term contract, including but not limited to multiple hydroelectric run-of-the-river generation units managed in a portfolio that creates firm service though the diversity of multiple units.⁷

Additionally, Section 83B defines New Class I renewable portfolio standard eligible resources as:

Class I renewable energy generating sources as defined in section 11F of chapter 25A of the General Laws that have not commenced commercial operation prior to the date of execution of a long-term contract or that represent the net increase from incremental new generating capacity at an existing facility after the date of execution of a long-term contract.⁸

Nothing in the statute requires that there be “consistency” between the new RPS Class I resources and Firm service hydroelectric resources eligibility, and the AGO’s argument requiring an interpretation of Incremental Hydro as being “fully incremental” to “ensure consistency” with

⁵ Att’y Gen. *supra* note 3 at 24.

⁶ M.G.L. c. 188 of the Acts of 2018, §83B (2016).

⁷ *Id.*

⁸ *Id.*

requirements for Class I resources is a false equivalency that is inconsistent with the statute and the requirements of the RFP. Section 83B defined and required RPS Class I resources under this procurement to be *new generating sources*, whereas, Section 83B explicitly permits contracts with existing hydroelectric facilities.⁹

As to the RFP's inclusion of the term "Incremental Hydroelectric Generation," the RFP defined eligible bids for Firm service hydroelectric generation bids as resources with sufficient generation capacity to supply Clean Energy Generation above their three year historical sales into the ISO New England region.¹⁰ In order to provide evidence that Firm service hydroelectric bids met this definition in the RFP, bidders were required to demonstrate whether their generation units were new or existing. If their bids included existing generation units, bidders were required to provide evidence that they had sufficient and additional hydroelectric generation capacity to deliver the proposed energy quantity in their bid above their three-year historic deliveries into ISO-NE.¹¹ The NECEC bid met these requirements. Accordingly, the evidence demonstrates that NECEC was evaluated based on information provided by the bidder for their generation resources and increased transmission capacity to New England consistent with the RFP.¹² The historic import assumptions used to build the evaluation model was neither a benchmark nor a requirement for the PPAs.

⁹ M.G.L. c. 188 of the Acts of 2018, §83B (2016).

¹⁰ Exh. JU-2, p. 5. "Incremental Hydroelectric Generation" means "Firm Service Hydroelectric Generation that represents a net increase in MWh per year of hydroelectric generation from the bidder and/or affiliate as compared to the 3-year historical average and/or otherwise expected delivery of hydroelectric generation from the bidder and/or affiliate within or into the New England Control Area."

¹¹ Appendix B of the RFP required bidders to provide the following: "Describe why the generation proposal qualifies as Incremental Hydropower Generation. If the entire project is not new, specify the amount of power provided to or sold into the ISO-NE market during 2014, 2015, and 2016. Provide information which demonstrates that the resources and transmission capacity described in your proposal are capable of providing an increase in the amount of such power compared to the average power deliveries in ISO-NE over those three years." Exh. JU-2, p. 55.

¹² Transcript of Cross Examination at 24-25, Petition of Cos. of long-term contracts for procurement of Clean Energy Generation, D.P.U. 18-64; D.P.U. 18-65; D.P.U. 18-66 (2018); *Id.* at 508-509; *Id.* at 568.

Further, the intervenors' interpretation of the RFP's inclusion of incrementality misses the point of the Section 83D procurement. Currently, the majority of HQ's current sales into the ISO New England region are sold into the wholesale spot market on a non-contractual basis; therefore, HQ currently has the discretion to decrease its deliveries into New England at any time and introduce volatility to energy pricing.¹³ The intervenor's arguments are based on a flawed assumption that in order for NECEC to remain incremental, HQ's three year historical deliveries must continue indefinitely into the future. During their cross-examination the Distribution Companies responded to questions from the Department that described the current composition of HQ's hydroelectric imports and how the historic average differs from Section 83D contracted energy:

WALTMAN: ...9.55 is the incremental energy that we've signed up for with the PPAs. The 14.8 before, that was used to prove they could deliver over and above the 14.8. ... The 14.8 was considered – is mainly – for the majority of that energy, it is –it's nonfirm. So... we don't know in the future whether or not that's going to be delivered. It can be or it can't be regardless of these contracts. If these contracts weren't here, that may or may not be delivered, but we know now that some amount of energy is going to be delivered....¹⁴

These historic sales could be discontinued and shifted by HQ at any time, regardless of whether or not the Distribution Companies contracted with NECEC. By having NECEC under contract the Commonwealth's ratepayers will be guaranteed the delivery of Clean Energy Generation regardless of any changes in economic conditions that may incentivize HQ to reduce its spot market deliveries. Beyond that guarantee, each Distribution Company's Exhibit H provides additional protections to the Commonwealth's ratepayers over and above the delivery of the

¹³ Transcript *supra* note 12 at 30.

¹⁴ *Id.* at 203, ll, 9-21.

contracted 9.55 TWh of energy by including penalties in the event that non-contracted HQ hydroelectric energy deliveries into ISO-NE fall below a negotiated, commercially reasonable standard.¹⁵ These protections should not be misinterpreted that the PPAs should have guaranteed delivery of electricity resources in addition to the contracted for 9.45 TWh.

Notably, the IE monitored the contract negotiation phase from several perspectives, including whether the PPAs as negotiated were consistent with the bids as evaluated, and whether the resulting PPAs conformed with the requirements of the RFP.¹⁶ The IE concluded that “the contracts that resulted from the negotiation process were no less adverse to the EDCs than the proposals and associated contracts submitted by HRE and CMP and, in many cases, were more favorable to the EDCs and their customers,” and that “the EDCs fairly negotiated the terms of the HQUS PPA and CMP PPA consistent with the requirements of the RFP.”¹⁷

In presenting arguments for including protections for historical imports as part of the PPAs, intervenors have also inaccurately compared the emission benefits of contracted versus non-contracted energy. In her Initial Brief the AGO states that “[u]nless the Proposed PPAs require that Contract Energy be Incremental Hydro, HQ has no incentive to ... provide the benefits sought by the solicitation.”¹⁸ This assertion is facially untrue. As noted above, the PPAs provide a level of guaranteed delivery. Under the proposed PPAs, HQ will be under contract to deliver 9.55 TWh of Firm service hydroelectric generation for 20 years; an amount that was required by statute, solicited for through the RFP, submitted by NECEC, and ultimately selected. Placing this amount of energy under contract for firm delivery of Clean Energy Generation and

¹⁵ While each Distribution Company’s Exhibit H take a different approach to securing this benefit, each are reasonable and consistent with the terms of the RFP. Transcript *supra*, note 12 at 203, 208.

¹⁶ Exh. IE Report, p. 36.

¹⁷ Exh. IE Report, p. 54.

¹⁸ Att’y Gen *supra* note 3 at 22.

associated Environmental Attributes directly to the Commonwealth, meets the direct intent of the statute, the solicitation and guarantees attributable emission reductions are received by the Commonwealth's ratepayers.¹⁹ If HQ chooses not to deliver according to the provisions in the PPAs, the PPAs include damages to protect ratepayers.²⁰

The AGO also argues that “based on average emission rates of Massachusetts imports, the greenhouse gas (“GHG”) reductions attributable to Massachusetts would be lower (i.e., emissions attributable to Massachusetts would be higher) if HQ delivered only what is required by the PPAs, relative to the case if the Contract Energy was Incremental Hydro.”²¹ This conclusion is incorrect. Currently, emissions benefits from non-contracted hydroelectric imports are shared across all New England states.²² Pursuant to Section 83D, the contracted Environmental Attributes from NECEC must all be retired for Massachusetts' Global Warming Solutions Act (“GWSA”) compliance. Placing NECEC's 9.55 TWh of Firm service hydroelectric generation under contract for twenty years, ensures the Commonwealth will directly and solely receive the entirety of HQ's Environmental Attributes provided through the NECEC project for the life of the contract; attributes that will positively contribute to the Commonwealth's GWSA targets.

In asserting that the Commonwealth's GHG reductions would actually be lower under the proposed PPAs, the AGO relies on an erroneous calculation that significantly overstates the impact of non-contract deliveries from HQ into the ISO New England wholesale market on Massachusetts GWSA compliance, because it incorrectly attributes one hundred percent of the

¹⁹ See Exh. JU-3A/B/C, §4.7(d) p. 36 (requiring that NECEC will transfer Environmental Attributes pursuant to each Distribution Companies PPA). Additionally, the Distribution Companies shall retain NECEC's Environmental Attributes. M.G.L. c. 188 of the Acts of 2018, §83D(h) (2016).

²⁰ Exh. EDC-RB-1, p. 20-26 (describing the damages in place and the approach each Company took to require HQUS' performance under the contracts).

²¹ Att'y Gen *supra* note 3 at 24.

²² See Exh. JU-6, p. 39-40.

existing 14.8 TWh of *New England* hydroelectric imports to Massachusetts alone.²³ Instead, the emissions benefits from the existing hydroelectric imports are shared across New England. By contrast, under the PPAs and consistent with statute, NECEC emissions rates are directly attributable to only Massachusetts and thus the NECEC Project reduces the state's reliance on existing non-contracted deliveries for GWSA compliance. This secures the GWSA compliance benefit for Massachusetts ratepayers, without regard to whether existing imports shift in the future.²⁴

As part of its public interest analysis, the Department considers whether the Distribution Companies reasonably followed the bid evaluation process set forth in the RFP and whether the Evaluation Team reasonably applied the RFP criteria in their evaluation of bids; resulting in a solicitation and procurement process that was fair, reasonable, and transparent. The record on this issue is thoroughly developed and shows that NECEC's bid was aligned with the RFP requirements and was evaluated consistent with the RFP.²⁵ The PPAs are a cost-effective method of procuring reliable renewable energy on a long-term basis and meet the criteria set for in Section 83D and the Department's regulations.²⁶ Specifically, the PPAs provide Firm service hydroelectric generation that is in the public interest of the Commonwealth's ratepayers by providing cost-effective firm Clean Energy Generation and Environmental Attributes directly to the Commonwealth under a long term contract. The PPAs conform with the terms of the RFP, provide cost-effective, firm, Clean Energy Generation and Environmental Attributes directly to

²³ The quoted number is the level of historical deliveries into New England, averaged 2014 through 2016. Exh. NEER-1-8.

²⁴ Existing non-firm imports are allocated to the states in the MassDEP Inventory based on their need, where a state's electricity consumption is greater than its generation. *See* Exh. JU-6, p. 39-40. By attributing NECEC attributes to Massachusetts's electricity consumption as Massachusetts generation, there will be a smaller difference between consumption and generation. This reduces Massachusetts's overall import need.

²⁵ Exh. JU-6, p. 11; Exh. NEER-3-6; Transcript *supra*, note 12 at 55.

²⁶ DOER *supra*, note 1 at 2.

the Commonwealth under a long-term contract, and meet all criteria set forth in Section 83D and the Department’s regulations. Accordingly, the Department should find that the PPAs are in the public interest and should be approved without amendment.

B. Intervenor’s Claims that System Mix Energy May Be Substituted for Clean Energy Generation is Unfounded.

In its Initial Brief, NextEra asserts that, because HQ’s total generation fleet includes both hydroelectric generation and some non-hydroelectric generation, that the contracted energy could include non-clean energy generation.²⁷ This assertion is simply untrue. Consistent with Section 83D, the RFP, and the PPAs, unit-specific tracking of generation attributes is required, which in New England is the NEPOOL-GIS system.²⁸ All bidders were required to “utilize an appropriate tracking system to ensure a unit specific accounting of the delivery of clean energy, to enable [MassDEP], in consultation with the DOER, to accurately measure progress in achieving the Commonwealth’s [GWSA] goals.”²⁹ The Commonwealth utilizes energy attributes to track and allocate emissions; not the physical flow of energy. To comply with this requirement, the proposed PPAs require that the NEPOOL GIS unit specific tracking system is used to ensure that any contracted energy is associated with a hydroelectric attribute, including any allowable shortfall energy, and that all energy under the contract will be Qualified Clean Energy from hydroelectric generation resources, which must be tracked on a generating unit specific basis, Consistent with the Section 83D and RFP requirements, the PPAs will allow MassDEP, in consultation with DOER, to track NECEC’s compliance with clean energy regulations, including

²⁷ Initial Brief for NextEra Energy Res. at 8, Petition of Cos. of long-term contracts for procurement of Clean Energy Generation pursuant to Section 83D of An Act Relative to Green Communities, D.P.U. 18-64; D.P.U. 18-65; D.P.U. 18-66 (2018).

²⁸ *Id.* at 3.

²⁹ Exh. JU-2, p. 28.

the Clean Energy Standard (“CES”), and for allocating emissions.³⁰ By requiring unit specific tracking, the PPAs are consistent with the legislative and RFP requirements and are in the public interest.

III. THE EVALUATION TEAM IMPLEMENTED THE REQUIRED STAGE THREE ANALYSIS CONSISTENT WITH THE REQUIREMENTS OF THE RFP TO DETERMINE THE MOST COST-EFFECTIVE PORTFOLIO TO REACH THE PROCUREMENT TARGET

Contrary to the AGO and RENEW’s position, the Evaluation Team properly applied and conducted the Stage Three Portfolio Analysis RFP evaluation criteria. The Stage Three evaluation required that the Evaluation Team examine the portfolio effect of various combinations of bids in order to identify the most cost effective portfolio of project to achieve the stated goals of the RFP and statute.³¹ Among these goals was the directive procure total of approximately 9.45 TWh of Clean Energy Generation.³² The Stage Three evaluation was a necessary step as the Stage Two results did not represent the full market impacts of 9.45 TWh of Clean Energy Generation.³³ The costs and benefits of multiple individual projects are not simply additive and must be modeled as a portfolio to correctly evaluate the greatest benefits to ratepayers. In conducting the Stage Three Analysis, the Evaluation Team appropriately applied the criteria established in the RFP, consistent with the objectives of the RFP and Section 83D, and the Department’s precedent; thus, the PPAs should be approved.

³⁰ Transcript *supra*, note 12 at 503.

³¹ Exh. JU-6, p. 40.

³² Exh. WP Support Tab F, p. 1.

³³ Exh. JU-6, p. 40.

A. The Evaluation Team Met the Objective of the Stage Three Evaluation to Select Portfolios of Approximately 9.45TWh, as Stated in the RFP and in Accordance with the Associated Protocol.

The Stage Three Evaluation Protocol states the “objective of the Stage 3 evaluation is to select the proposal(s) that provide the greatest impact and value consistent with the stated objectives and requirements of Section 83D, as set forth in the RFP” including the “goal of selecting a portfolio of proposals for Clean Energy Generation for an annual amount of electricity equal to approximately 9.45TWh at low cost with limited risk.”³⁴ The RFP clearly stated that the Distribution Companies sought “an amount of electricity equal to approximately 9.45TWh,” and further specified that, in determining which proposals proceed from Stage Two to Stage Three, the “total annual MWh/year quantities of the proposals relative to the annual procurement target” would be a key consideration.³⁵ The record evidence demonstrates that the Evaluation Team reasonably implemented this stated objective.³⁶

Fifty-three bids were part of a highly competitive Section 83D solicitation, many of which were included in portfolios and considered in the Stage Three analysis. The Evaluation Team was able to evaluate a number of portfolios in Stage Three that cost-effectively met the procurement target of 9.45 TWh and selected the most cost-effective and beneficial project pursuant to Section 83D, satisfying the entirety of the solicitation and statutory requirement, eliminating the need for any additional 83D solicitations.³⁷

³⁴ Exh. WP Support Tab F, p. 1.

³⁵ Exh. JU-2, p. 41.

³⁶ Transcript *supra*, note 12 at 66.

³⁷ Transcript *supra*, note 12 at 471.

B. The Highest Ranked Projects After Stage Two were Fully and Appropriately Evaluated in Stage Three of the Evaluation

Intervenors have raised issues with the process used by the Evaluation Team in terms of Stage Two rankings, and the evaluation of projects in Stage Three. Specifically, RENEW opines that the Evaluation Team excluded the two top ranked bids at the end of Stage Two from further consideration in final Stage Three evaluation.³⁸ Similarly, as part of recommendations for future solicitations, the AGO suggests that by not making a portfolio solely comprised of the two top ranked bids the Evaluation Team “effectively removed from consideration what may have been one of, if not the, highest value portfolios.”³⁹ However, these intervenors misunderstand the intended purpose of the portfolio analysis in Stage Three and its impacts on the relative cost-effectiveness of proposals, as explained in detail herein.

The AGO’s initial brief recommends that “highest ranking projects after Stage Two should be prioritized in Stage Three portfolio development.”⁴⁰ The AGO’s recommendation is already consistent with how the Evaluation Team developed portfolios in this solicitation. The Evaluation Team followed the RFP requirement that the “Evaluation Team will determine which proposals proceed to Stage Three following the Stage Two evaluation based on the following considerations: (1) the rank order of the proposals at the end of the Stage Two evaluation; (2) the cost effectiveness of the proposals based on the Stage Two quantitative evaluation; and (3) the total annual MWh/year quantities of the proposal(s), relative to the annual procurement target.”⁴¹ The Evaluation Team used “combinations of higher-ranked proposals” to build the Stage Three

³⁸ Initial Brief for RENEW NE. at 3, Petition of Cos. of long-term contracts for procurement of Clean Energy Generation pursuant to Section 83D of An Act Relative to Green Communities, D.P.U. 18-64; D.P.U. 18-65; D.P.U. 18-66 (2018).

³⁹ Att’y Gen *supra* note 3 at 32.

⁴⁰ *Id.* at 31.

⁴¹ Exh. JU-2, p. 35.

portfolios, which included considering the top two ranked projects from Stage Two.^{42 43} RENEW's assertion that the Evaluation Team excluded the two top ranked bids at the end of Stage Two from further consideration in final Stage Three evaluation is incorrect.⁴⁴ The projects noted by Intervenors were fully and appropriately evaluated in Stage Three, and at the conclusion of Stage Three were not the most cost-effective portfolios.⁴⁵

By utilizing the Stage Two results as conclusory evidence of the relative cost-effectiveness of specific proposals or combinations of proposals, both RENEW and the AGO misunderstand that Stage Two results of multiple projects cannot be considered additive and as such cannot be considered final.⁴⁶ Stage Three analysis contained a necessary portfolio effect evaluation so that a project's total, comprehensive cost effectiveness could be determined.

The AGO makes an unsubstantiated assumption that portfolios with the top two ranked projects from Stage Two ranked lower in Stage Three because their value was "diluted" with projects with "lower net direct benefits."⁴⁷ This assumption does not consider the fact that other market impacts may affect different portfolios, including impacts to the RPS and CES markets. Portfolios included hydroelectric energy generation, RPS eligible energy, and a combination of both, all resources that have different compliance obligation eligibility, which creates different RPS and CES direct and indirect benefits.

For example, a portfolio of 9.45 TWh of Class I RPS-eligible energy introduced to a large supply of existing Class I RECs would greatly exceed the RPS and CES obligation.⁴⁸ A

⁴² Exh. TDI-NE-1-2.

⁴³ Transcript *supra*, note 12 at 489.

⁴⁴ RENEW *supra* note 38 at 3.

⁴⁵ See Exh. JU-7 CONFIDENTIAL.

⁴⁶ Exh. JU-6, p. 40.

⁴⁷ Att'y Gen. *supra* note 3 at 32.

⁴⁸ The Massachusetts CES obligation (inclusive of the Massachusetts RPS obligation) was projected to be 9,339 GWh in 2020, less than 9.45 TWh procurement target. See Exh. JU-6, p.108. Additionally, a large portion of the

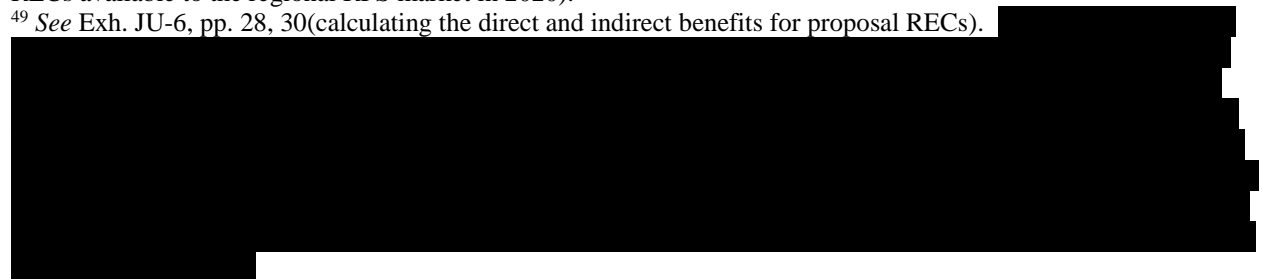
single Class I RPS project may receive significant direct and indirect benefits from RPS and CES compliance in Stage Two of the analysis, but, when combined into a portfolio creating a significant oversupply of the regional REC market, the portfolio may have lower RPS benefits.⁴⁹ If the REC and CEC markets are significantly oversupplied from such a portfolio, similar reduced RPS market benefits would occur whether the energy was procured in one solicitation or split between two solicitations.

This example demonstrates why creating a portfolio of solely the top two ranked projects from Stage Two, procuring those projects, then conducting additional solicitation(s) to reach the remaining amount of the total 9.45 TWh procurement target would not have achieved significantly different quantitative results than the Evaluation Team's portfolios in this solicitation. The assertions made by RENEW and the AGO omit the application of the portfolio analysis in Stage Three and its impacts on the relative cost-effectiveness of individual proposals when grouped into a portfolio. Therefore, the Department should disregard these assertions made by RENEW and the AGO and find that the Evaluation Team reasonably conducted the Stage Three analysis, and the selection of NECEC is consistent with the Department's standard of review and thus the PPAs merit approval.

IV. THE DEPARTMENT SHOULD NOT DIRECT THE DISTRIBUTION COMPANIES TO MAKE SPECIFIC CHANGES TO FUTURE SOLICITATIONS AS A PART OF A CONTRACT REVIEW PROCEEDING,

obligation could also be met by existing RPS eligible resources. *See* Exh. JU-6, p. 66 (displaying the number of RECs available to the regional RPS market in 2020).

⁴⁹ *See* Exh. JU-6, pp. 28, 30 (calculating the direct and indirect benefits for proposal RECs).



**BUT RATHER SHOULD LEAVE SUFFICIENT FLEXIBILITY TO
CONSIDER CHANGES DURING THE RFP DRAFTING PROCESS**

The AGO recommends that various changes be made to future solicitation processes directed by the Green Communities Act.⁵⁰ However, the Department has consistently held that the RFP drafting process and associated dockets for Department review, and not contract review proceedings, are the appropriate time and forum to consider process improvements.⁵¹

As an initial matter, DOER notes that if the Department approves the PPAs in the instant proceeding, there are no future solicitations authorized under Section 83D. While, DOER certainly agrees that there are lessons to be learned during any evaluation process, it is more appropriate for any changes to be considered if and when there is authorization for another Green Communities Act solicitation. At that time, the Distribution Companies, the DOER, and the AGO can consider process improvements collaboratively in that RFP drafting process. The Department need not direct the Distribution Companies to adopt specific changes to future RFPs, such as those recommended by the AGO, in the instant proceeding.

The AGO has provided no compelling reasons for the Department to depart from its consistent prior determinations on recommendations for future solicitations in contract review proceedings.⁵² Each of the AGO's proposed recommendations are subject matters that would more appropriately be addressed in the solicitation drafting process, and subsequent review of the draft RFP before the Department. Prior Green Communities Act solicitations have required the timetable and method of solicitations for long-term contracts be jointly developed by the

⁵⁰ Att'y Gen *supra* note 3 at 30.

⁵¹ See Petitions of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, NSTAR Electric Company, d/b/a as Eversource, Fitchburg Gas and Electric Company d/b/a Unitil, D.P.U. 17-117, 17-118, 17-119, 17-120, 72 (2017).

⁵² *Id.* at 72.

DOER and the Distribution Companies, in consultation with the AGO, and requires oversight by an Independent Evaluator. The solicitation drafting process is collaborative and allows for significant input from each of these parties to create the best outcomes possible for the evaluation. Recommendations for process and RFP changes benefit greatly from robust discussions of the participating parties and improvements to proposals greatly benefit from the collaborative drafting process required by the Green Communities Act. Accordingly, the AGO's recommendations are most appropriately considered during the RFP drafting process, and not within the Department's contract review proceedings. there are other, more appropriate opportunities for evaluation of potential changes to the procurement process, consistent with its prior determinations, the Department should not direct specific changes to future solicitations in the current contract review proceeding.

In particular, the Department should not adopt the GWSA methodology changes suggested by the AGO's witness, as it contains a mistake that will introduce a risk of overvaluing the GWSA compliance value of certain resources, which could result in the future selection of a project that is less cost effective for ratepayers. The AGO's witness statement that "[t]he GWSA metric as constructed and used in this solicitation does not accurately represent the GWSA contributions of the potential projects" demonstrates that the AGO's witness misunderstands the GWSA metric. The "GWSA metric" referenced by the AGO in its Initial Brief is actually the "Value of GWSA Over and Above the RPS and CES Metric."⁵³ The total GWSA contributions of the potential projects are not measured through the metric referenced by the AGO, but rather by the total Inventory Impact of the proposal relative to the base case. This Inventory Impact is

⁵³ See generally Exh. JU-6.

then valued through the RPS and CES market direct and indirect benefits and, if not yet valued, through the “Value of GWSA Over and Above the RPS and CES Metric.”

The Evaluation Team appropriately subtracts the impact of RPS and CES compliance from the total Inventory Impact to isolate those emission reductions not yet valued. The AGO’s witness states that “evaluation approach already nets off the value of the Base Case (and the Base Case includes RPS and CES compliance)” because “the project value calculated is already net of the value of RPS and CES compliance;” this is simply not correct. As stated in the Evaluation Report and by the EDCs in an information response to the AGO, the Capacity Expansion module utilized by the Evaluation Team consultant to develop the base case and proposal cases “minimize[s] the net present value of the total cost, i.e., capital, fuel and operating, of the generation fleet serving the wholesale market within the ISO-NE electrical footprint subject to resource adequacy, operational and environmental constraints” which includes the cost of complying with the RPS and CES.⁵⁴ As noted by the DOER witness, the model allows for the RPS to be undersupplied and ACP payments to be made.⁵⁵ Therefore, a REC used for RPS or CEC compliance in a proposal case is not necessarily offsetting a REC or CEC in the base case, and the AGO’s witness’ generalization is inaccurate and the suggested methodology could introduce a risk of double counting the value of an emission reduction.

Double counting emission reductions from RPS compliance would unfairly weight some projects more than others, even if they had the same total impact on the emissions Inventory. The GWSA methodology as utilized by the Evaluation Team ensured that all emission reductions are valued only once, thereby ensuring project proposals are compared on a level playing field for their total emissions benefits. The Department should not depart from its

⁵⁴ Exh. JU-6, p. 9; Exh. AGO 2-1.

⁵⁵ Transcript *supra*, note 12 at 505; Exh. JU-6, p. 66.

consistent determination that contract review proceedings are not the correct forum to address recommendations for future procurements and should not adopt either the AGO's process recommendations or changes to the GWSA methodology.

V. CONCLUSION

As detailed in its Initial Brief, the IE Report, and this Reply Brief the proposed PPAs: (1) are a cost-effective method of procuring reliable renewable energy on a long-term basis; (2) meet the eight criteria set forth in the Department's regulations; and (3) are in the public interest. The Distribution Companies properly followed the bid evaluation process set forth in the RFP and properly applied the bid criteria resulting in a solicitation and procurement process that was fair, reasonable, and transparent and resulted in PPAs that are low-cost, reasonable and result in acceptable bill impacts on customers.

Further, consistent with Department precedent, the Department should not adopt the AGO's recommendations regarding changes to the RFP and evaluation process, including the GWSA methodology, as such recommendations for changes to future solicitations are beyond the scope of this proceeding, and are best left to stakeholders, including the AGO, to address in the RFP drafting process and associated proceedings at the Department. Finally, the Department should not adopt the Attorney General's witness' recommendation regarding the value of GWSA over and above the RPS and CES metrics.

Respectfully, DOER requests the Department approve the proposed PPAs, without amendment, and not adopt any proposed process changes for future solicitations in the instant proceeding.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENERGY RESOURCES

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