



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY  
ATTORNEY GENERAL

(617) 727-2200  
(617) 727-4765 TTY  
[www.mass.gov/ago](http://www.mass.gov/ago)

March 26, 2021

Mark D. Marini, Secretary  
Department of Public Utilities  
One South Station, 5<sup>th</sup> Floor  
Boston, MA 02110

Re: *Joint Petition of Fitchburg Gas and Electric Light Company d/b/a Until, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and, NSTAR Electric Company d/b/a Eversource Energy for approval of a proposed timetable and method for the solicitation and execution of long-term contracts for offshore wind energy generation, D.P.U. 21-40*

Dear Secretary Marini:

Enclosed please find the Initial Comments of the Attorney General's Office. Please file according to your usual practice. Thank you for your assistance in this matter.

Sincerely,

/s/ Elizabeth Mahony  
Elizabeth Mahony  
Assistant Attorney General

Enclosures

cc: Mary Alice Davey, Hearing Officer  
Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

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**Joint Petition of Fitchburg Gas and Electric  
Light Company d/b/a Util, Massachusetts  
Electric Company and Nantucket Electric  
Company, each d/b/a National Grid, and,  
NSTAR Electric Company d/b/a Eversource  
Energy for approval of a proposed timetable  
and method for the solicitation and execution  
of long-term contracts for offshore wind  
energy generation, pursuant to Section 83C of  
An Act Relative to Green Communities, St.  
2008, c. 169, as amended by St. 2016, c. 188, §  
12 and Section 21 of Chapter 227 of the Acts of  
2018.**

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**D.P.U. 21-40**

**INITIAL COMMENTS OF THE  
OFFICE OF THE ATTORNEY GENERAL**

**I. INTRODUCTION**

On March 10, 2021, Fitchburg Gas and Electric Light Company d/b/a Util, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and NSTAR Electric Company, d/b/a Eversource Energy (collectively, “Distribution Companies”), jointly filed a request with the Department of Public Utilities (“Department”) pursuant to Section 83C of An Act Relative to Green Communities (“GCA”), St. 2008, c. 169 (“Section 83C”)<sup>1</sup> and Section 21,

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<sup>1</sup> On August 8, 2016, Governor Baker signed into law Chapter 188 of the Acts of 2016, An Act to Promote Energy Diversity (“2016 Act”). Section 12 of the 2016 Act adds Sections 83B, 83C, and 83D to An Act Relative to Green Communities, which directs the Distribution Companies to jointly solicit for long-term contracts for offshore wind energy generation and clean energy generation.

St. 2018, c. 227 (“2018 Act”),<sup>2</sup> for approval of a proposed timetable and method for the solicitation and execution of long-term contracts for offshore wind energy generation through a request for proposals (“RFP”) process (the “Proposed RFP”).

Pursuant to Section 83C, the Distribution Companies are required to jointly and competitively solicit proposals for offshore wind energy generation equal to approximately 1,600 megawatts (“MW”) of aggregate nameplate capacity, and, provided that they have received reasonable proposals, enter into cost-effective long-term contracts for offshore wind energy generation.<sup>3</sup> The Distribution Companies offer the Proposed RFP within twenty-four months of the previous Section 83C solicitation (May 23, 2019), as directed by the statute. Section 83C. The Office of the Attorney General (“AGO”) offers the following comments regarding the Distribution Companies’ Proposed RFP and the resulting evaluation process.

## **II. COMMENTS**

In these comments, the AGO respectfully requests that the Department direct the Distribution Companies to disclose their bid evaluation protocol, including the relative values of the qualitative factors used to evaluate bids.

The Commonwealth is the first state to lock in large-scale offshore wind generation contracts for its residents and is home to both the New Bedford Marine Commerce Terminal and the Wind Technology Testing Center, infrastructure designed to nurture the offshore wind industry in Massachusetts. Ratepayers are making a significant investment in offshore wind

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<sup>2</sup> On August 9, 2018, Governor Baker signed into law Chapter 227 of the Acts of 2018, An Act to Advance Clean Energy. Under Section 21 of the 2018 Act, DOER may require additional joint solicitations for up to 1,600 megawatts of offshore wind by the Distribution Companies. On May 31, 2019, DOER recommended additional solicitations, pursuant to the 2018 Act.

<sup>3</sup> St. 2016, c. 188, § 12; 220 C.M.R. § 23.00 et seq.

generation pursuant to Section 83C Power Purchase Agreements (“PPAs”). Given these commitments, it is crucial that the Department ensure that the competitive procurement process is robust, is fair, and prioritizes ratepayer protections and the Commonwealth’s clean energy, environmental justice, and economic development objectives. The timing of this Proposed RFP presents a unique opportunity to work towards these objectives following at least twelve months of unprecedented economic strain, racial and environmental justice awakening, and a health crisis that has been exacerbated by climate change, which has had a disproportionate impact on Massachusetts’ environmental justice communities. The Proposed RFP, however, fails to clearly signal to bidders the importance of addressing economic development, low-income ratepayer benefits, and environmental/socioeconomic siting impacts in proposed bids.

With this Proposed RFP and anticipated future solicitations,<sup>4</sup> Massachusetts continues to invest in an offshore wind generation industry that has the potential to deliver more than just clean energy to its residents. The requirements, expectations, and evaluation metrics under this and future RFPs can drive how and where such investments are made. Indeed, the Proposed RFP advances this discussion with updated and expanded language regarding the evaluation of proposals for “Economic Benefits to the Commonwealth and Diversity, Equity and Inclusion,” “Low Income Ratepayers in the Commonwealth,” and “Environmental and Socioeconomic Impacts from Siting.” Sections 2.3.2.i., 2.3.2.ii., 2.3.2.vii.<sup>5</sup> Furthermore, the change of point

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<sup>4</sup> On March 26, 2021, the Governor signed “An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy,” which requires the solicitation of an additional 2,400 MW of offshore wind pursuant to Section 83C.

<sup>5</sup> Of note, many of these changes are included in response to a robust stakeholder comment period that allowed the public and potential bidders to seek clarity on RFP provisions or offer updates to the language. The AGO advocated for this early stakeholder comment opportunity, prior to Department review, and finds value in its continued practice for future RFP development.

allocation in the RFP itself—moving from a 75/25 split to a 70/30 split—is a result of the important shift in priorities enumerated in the Proposed RFP. Section 2.3. These are welcome improvements, especially in light of the new challenges that the Commonwealth’s Gateway Cities and environmental justice communities face due to the current economic crisis and the other impacts of the COVID-19 pandemic. These improvements, however, may not be fully realized because bidders preparing proposals do not know how these priorities rank against competing qualitative evaluation metrics.

Although the Department has not previously required the Distribution Companies to publish the evaluation protocol with the release of prior RFPs, it should do so here.<sup>6</sup> For the Proposed RFP, because bidders must meet or beat the price of the last PPA bid, pricing may not be as definitive a deciding factor. Furthermore, the RFP now assigns 30 points to the qualitative evaluation, increasing the value of non-price factors in calculating the cost-effectiveness of proposed bids. Accordingly, qualitative factors will play a larger role in determining the winner. Bidders should know the relative importance of the qualitative factors in advance. This advance notice will ensure that bidders will both focus on the qualitative factors that are most important to the Commonwealth and offer measurable plans and commitments to deliver on those factors. Indeed, the Proposed RFP directs bidders to include specific commitments in their bid proposals, including commitments to diversity, equity, and inclusion; use of and investment in port facilities and infrastructure; and economic development activities and investments that directly benefit economically distressed areas. Section 2.3.2.i. The Proposed RFP’s failure to disclose the

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<sup>6</sup> In past RFPs, the Distribution Companies have kept their evaluation protocol secret, including the metrics and maximum scores to be used in an RFP, until after PPAs are submitted for Department review (and even then, the breakdown of potential points is kept confidential).

evaluation protocol, including the failure to disclose the relative value that evaluators will place on each of the Proposed RFP's required commitments, may result in missed opportunities for the Commonwealth.

The Department previously hesitated to release the evaluation protocol due to concerns of bid manipulation.<sup>7</sup> However, if the protocol were more transparent for the public, bidders would be able to ensure their bids meet the stated goals of the Proposed RFP. Here, the RFP inches towards transparency by expressly stating that the motivation for the increased qualitative points is the intent to place more emphasis on three qualitative evaluation sections—economic development, low-income ratepayers, and environmental and socioeconomic impacts from siting. Indeed, the Proposed RFP now includes “(t)he increase from 25 to 30 points for qualitative factors was adopted in this solicitation *to increase the evaluation’s emphasis* on RFP Sections 2.3.2.i, 2.3.2.ii, and 2.3.2.vii.” Section 2.3 (emphasis added). The AGO supports the addition of this new and significant information in the Proposed RFP; however, it is critical that the Department ensure that the RFP offers transparency as to the total number of points that will be allocated to these criteria and how the other qualitative evaluation criteria rank in comparison.

Further, keeping this information confidential contradicts the goals of the GCA, which expressly requires that the EDCs, the Department, and bidders undertake an “open, fair and transparent solicitation and *bid selection* process.”<sup>8</sup> Indeed, the combination of Section 2.3’s modified division of quantitative/qualitative points and emphasis on certain criteria with the expectations for firm commitment agreements, sets the Proposed RFP apart from previous

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<sup>7</sup> D.P.U. 19-45 *Joint Petition for approval of a proposed timetable and method for the solicitation and execution of long-term contracts for offshore wind energy generation*, at 46 (May 17, 2019).

<sup>8</sup> St. 2008, c. 169, § 83C(f) (emphasis added).

solicitations in its need for transparency. Thus, the Department should direct the EDCs to publish the points associated with the evaluation protocol or, at a minimum, the percentage of maximum points possible for RFP Sections 2.3.2.i, 2.3.2.ii, and 2.3.2.vii relative to other qualitative evaluation criteria.

### **III. CONCLUSION**

Accordingly, the AGO recommends that, in approving the Proposed RFP, the Department require the above-suggested changes to the RFP.

Respectfully submitted,

MAURA HEALEY  
ATTORNEY GENERAL

By: /s/ Elizabeth Mahony  
Elizabeth Mahony  
Shannon Beale  
Assistant Attorneys General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

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D.P.U. 21-40

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1)

(Department's Rules of Practice and Procedure). Dated at Boston this 26<sup>th</sup> day of March, 2021.

By: /s/ Elizabeth Mahony  
Elizabeth Mahony  
Assistant Attorney General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200