

REDACTED



Independent Evaluator Report

on the Round 3 Solicitation, Evaluation, and Bid Selection and Contract Negotiation Process under Section 83C of the Green Communities Act

Prepared by Peregrine Energy Group
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I. Introduction and Executive Summary

On May 7, 2021, Fitchburg Gas & Electric Light Company d/b/a Unital (“Unital”), Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (“National Grid”), NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource (“Eversource”), each an investor-owned electric distribution company (“Distribution Company” or “EDC” and, collectively, “Distribution Companies” or “EDCs”), in coordination with the Massachusetts Department of Energy Resources (“DOER”), issued a Request for Proposals (“RFP”) pursuant to which the Distribution Companies would solicit proposals for offshore wind energy generation and associated renewable energy certificates (“RECs”) under long-term contracts pursuant to Section 83C of Chapter 169 of the Acts of 2008 (the “Green Communities Act” or “GCA”), as amended by chapter 188 of the Acts of 2016, An Act to Promote Energy Diversity (the “Energy Diversity Act” or “2016 Act”) (hereinafter, “83C”) and Section 21 of Chapter 227 of the Acts of 2018 (“2018 Act,” also known as the Act to Advance Clean Energy). The maximum procurement target was approximately 1,600 MW. The Department of Public Utilities (the “Department”) approved the issuance of the RFP in an order dated May 5, 2021.¹

This was the third solicitation held under 83C. It was a procurement directed by DOER pursuant to the authority granted under Section 21 of the 2018 Act. The 2018 Act allowed DOER to direct the Distribution Companies to jointly and competitively conduct additional offshore wind generation solicitations of up to approximately 1,600 megawatts of aggregate nameplate capacity, in addition to the original 1,600 megawatts required by Section 83C. Upon completing the offshore wind study required by Section 21(a) of the 2018 Act, DOER directed the Distribution Companies in May 2019 to proceed with an additional 1,600 MW of offshore wind energy generation solicitations. As required by Section 21(b) of the 2018 Act, this solicitation was to be conducted pursuant to the solicitation and procurement processes, criteria and requirements of 83C.

The first two offshore wind solicitations both resulted in power purchase agreements (“PPAs”) with two-phased (approximately) 800 MW projects—the first with Vineyard Wind LLC (“Vineyard Wind”) and the second with Mayflower Wind LLC (“Mayflower Wind” or “Mayflower”). The RFPs for both solicitations had been approved for issuance by the Department (with some minor modifications) as were the resulting PPAs with the winning bidders.

In the third round, two bidders submitted multiple project proposals on September 16, 2021, the due date for proposals. On December 17, 2021, following the evaluation of bids, the EDCs selected for contract negotiations two proposals: (1) a 1,200 MW purchase from the proposed 1,232 MW Commonwealth Wind offshore wind project proposed by Vineyard Wind LLC; and (2) an approximate 400 MW purchase from a proposed 480 MW offshore wind facility to be built by Mayflower Wind. The

¹ Fitchburg Gas and Electric Light Company, et al, D.P.U. 21-40 (May 5, 2021) (hereinafter, “D.P.U. 21-40 Order Approving RFP Issuance”).

PPAs with the selected bidders have been filed for approval with the Department (in D.P.U. 22-70, D.P.U. 22-71 and D.P.U. 22-72).

83C requires that DOER and the Attorney General's Office ("AGO") shall jointly select, and DOER shall contract with, an independent evaluator to monitor and report on the solicitation and bid selection process.² Pursuant to that authority, Peregrine Energy Group, Inc. ("Peregrine") was selected to be the Independent Evaluator (the "IE") with respect to this 83C Round 3 solicitation.³

Section 83C(f) states that the purpose of the Independent Evaluator is to help to "ensure an open, fair and transparent solicitation and bid selection process that is not unduly influenced by an affiliated company" and to assist the Department in its consideration of long-term contracts filed for approval. Among the IE's responsibilities include the obligation to "upon opening of an investigation by the department of public utilities into a proposed long-term contract for a winning bid proposal, file a report with the department of public utilities that summarizes and analyzes the solicitation and bid selection process, and provide the independent evaluator's assessment of whether all proposals were evaluated in a fair and objective manner."⁴

This is the IE report that summarizes, analyzes and assesses the solicitation, bid evaluation and bid selection process. In this report, the Independent Evaluator summarizes the development of the RFP and the Department's approval of its issuance, the subsequent development of a detailed evaluation framework by the EDCs and DOER (collectively, the "Evaluation Team"), the receipt of bids, the evaluation of bids, and bid selection. The report also contains the IE's assessment of the solicitation process and results in the context of whether the solicitation process and bid evaluation and selection were conducted in a fair and objective manner and without any undue discrimination against any unaffiliated projects.

DOER, in accordance with the RFP,⁵ requested the IE to monitor the contract negotiations between the EDCs and the winning bidders, and the IE did so. This report also contains the IE's assessment of whether the EDCs fairly negotiated the PPAs without undue discrimination or preference and whether the resulting PPAs are consistent with, and at least as favorable as, the associated bids and were compliant with the provisions of the RFP.

² Section 83C(f).

³ Peregrine's Independent Evaluator team includes subcontractors New Energy Opportunities, Inc., Merrimack Energy Group, Inc., Power Consulting Services, LLC, and Meaden & Moore, LLP. A short summary of the IE team's qualifications and pertinent experience is set forth in Appendix A to this report. Peregrine also served as the IE for the first two 83C solicitations as well as the clean energy generation solicitation conducted under Section 83D of the Energy Diversity Act.

⁴ 83C(f).

⁵ RFP Section 1.5, n. 12.

Of note, this was the first 83C solicitation for which there was an applicable price cap, which was based on the winning bid from the prior solicitation under the provisions of Section 83C(b) (“the department of public utilities shall not approve a long-term contract that results from a subsequent solicitation and procurement period if the levelized price per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized price per megawatt hour plus transmission costs that resulted from the previous procurement.”) There was no price cap for the first round, since there was no prior procurement, and the Legislature removed the price cap just for the second solicitation.⁶ The winning bid price in the second round, which was below that of the first solicitation, set the price cap for the third round.

Following the filing of the RFP, the Massachusetts Legislature passed legislation that, as part of the Climate Roadmap Bill, increased the total mandatory Offshore Wind Energy Generation solicitation target from 3,200 MW to a mandatory total of 5,600 MW, with contracts for that amount to be executed by June 30, 2027.⁷ The impact of the legislation was that there would be future solicitations

⁶ The legislation, which was associated with the passage of the Fiscal Year 2020 budget, provided:

SECTION 1. Subsection (b) of section 83C of chapter 169 of the acts of 2008, as inserted by section 12 of chapter 188 of the acts of 2016, is hereby amended by striking out, in the fifth sentence, the following words:- provided, however, that the department of public utilities shall not approve a long-term contract that results from a subsequent solicitation and procurement period if the levelized price per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized price per megawatt hour plus transmission costs that resulted from the previous procurement.

SECTION 2. Subsection (b) of section 83C of chapter 169 of the acts of 2008, as inserted by section 12 of chapter 188 of the acts of 2016, is hereby amended by adding, in the fifth sentence, the following words:- provided, however, that the department of public utilities shall not approve a long-term contract that results from a subsequent solicitation and procurement period if the levelized price per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized price per megawatt hour plus transmission costs that resulted from the previous procurement.

SECTION 3. Section 1 shall apply to any long-term contract that results from a solicitation issued in calendar year 2019.

SECTION 4. Section 1 is hereby repealed.

SECTION 5. Sections 2 and 4 shall take effect on January 1, 2021.

SECTION 6. Except as otherwise specified this act shall take effect as of July 1, 2019.

⁷ Section 91 of Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy and Sections 69 and 72 of Chapter 24 of the Acts of 2021, An Act Making Appropriations for the Fiscal Year 2022. See <https://macleanenergy.com/2021/08/18/83c-iii-legal-authority-update/>. On August 18, 2021, the Evaluation Team issued a notification that the Round 3 solicitation would be conducted in accordance with the recently enacted legislation. *Id.*



under 83C, even if the EDCs were to select and contract for all of the maximum 1,600 MW procurement target in this third 83C round.

It is uncertain that the current 83C price cap will apply to future 83C solicitations. There are pending bills in the Legislature which would remove or modify the price cap for future 83C rounds.⁸ The winning bids in Round 3 complied with the price cap for this solicitation. Mayflower Wind and Commonwealth Wind were the only two bidders in Round 3. Bay State Wind, an Eversource affiliate and one of four holders of offshore wind leases in the Massachusetts/Rhode Island offshore leasing area, had submitted bids in the first two 83C solicitations but did not bid in Round 3.⁹

The Independent Evaluator's assessment is that the bids for the most part were fairly and objectively evaluated and that the Commonwealth Wind 1,200 MW bid (from a 1,232 MW facility) and the Mayflower Wind 400 MW bid (from a 480 MW facility) were fairly selected. Moreover, based on the IE's monitoring of the contract negotiations, the IE's assessment is that the contracts were fairly negotiated and the resulting PPAs are at least as favorable to the EDCs and their customers as the bids submitted and are in accord with the requirements of the RFP.

Mayflower's 400 MW bid was part of an overall proposal or plan to build a transmission line from Mayflower's offshore wind lease area to Brayton Point for up to [REDACTED] delivered, which involved amending its Round 2 PPAs to allow changing the delivery point from Falmouth/Bourne to Brayton Point as well as changing contractual commercial operation dates ("CODs"). The EDCs selected the Mayflower 400 MW bid but, at Eversource's urging, with the condition (not initially communicated to Mayflower) that the Round 3 PPAs be negotiated totally separately from the Round 2 PPA amendments, that negotiations for the Round 2 PPAs not commence until after the Round 3 PPAs were executed, and that the Round 2 PPA amendments be negotiated outside of this 83C Round 3 procurement process. This was based on Mayflower's statement, in response to an Evaluation Team question, that the Round 3 PPAs and the Round 2 PPA amendments were not contingent or conditioned on each other.

The IE had and has reservations regarding the process that led to these conditions on the Mayflower Wind contract negotiations as well as the substance of those conditions, which are addressed in this report. However, the Round 2 PPA negotiations have been completed and the EDCs have filed for

⁸ Removal of the price cap is one feature of legislation proposed by Governor Baker, <https://www.mass.gov/news/baker-polito-administration-files-legislation-to-invest-750-million-in-clean-energy-innovation-workforce-development>. Modification of the price cap is a feature of a bill passed in March by the House of Representative (H 45158, Section 20), <https://malegislature.gov/Bills/192/H4515> and by the Senate in April 2022. See <https://www.natlawreview.com/article/massachusetts-legislature-moves-forward-reforms-would-reshape-energy-sectors-to>.

⁹ The other MA/RI offshore wind leaseholder, Equinor, has not submitted any bids in a Massachusetts 83C solicitation.

approval of those amendments.¹⁰ The IE has had the opportunity to review the amendments relative to what was included in Mayflower's bid, responses to Evaluation Team letter requests, and the Round 3 PPAs, and it appears that the Round 2 PPA amendments are consistent with Mayflower's proposal or plan in 83C Round 3 and the IE has no reason to believe that the amendments were not fairly negotiated. Hence, as a practical matter, the IE's reservations have been effectively mooted.

Finally, this report contains the IE's recommendations for improvements for the next 83C solicitation process.

II. Background

A. Relevant Statutes and Offshore Lease Area Potential Sources of Supply

Section 83C of the Energy Diversity Act, signed into law by Governor Baker on August 8, 2016, provided that in order to facilitate the financing of offshore wind energy generation resources in the Commonwealth, each Massachusetts electric distribution company shall jointly and competitively solicit proposals for offshore wind energy generation equal to approximately 1,600 megawatts ("MW") of aggregate nameplate capacity in staggered procurements.¹¹ In 2018, DOER was authorized to require the EDCs to solicit and procure up to 1,600 MW of additional offshore wind energy generating capacity.¹²

In 2021, the Legislature increased the total mandatory offshore wind procurements to 5,600 MW and provided that proposals bid into solicitations shall be subject to the review of the Executive Office of Housing and Economic Development in addition to the Department of Energy Resources but left 83C otherwise intact, including the requirements that solicitations be conducted no longer than two years apart and for a minimum of 400 MW for each solicitation.¹³

¹⁰ See Electric Distribution Companies' Joint Motion to Approve Amendments to Mayflower Wind 83C Round II Power Purchase Agreements, D.P.U. 20-16, D.P.U. 20-17, D.P.U. 20-18 (filed May 25, 2022).

¹¹ Section 83C(b).

¹² This was effectuated by (a) enactment of *An Act to Advance Clean Energy*, Chapter 227 of the Acts of 2018, which authorized DOER to require the EDCs to solicit and procure up to 1,600 MW of additional offshore wind energy generation capacity under Section 83C if, based on an investigation, DOER were to conclude that such additional solicitations were warranted, and (b) DOER's decision to proceed with an additional 1,600 MW of offshore wind generation solicitations based on the findings in its May 2019 Offshore Wind Study, <https://www.mass.gov/doc/offshore-wind-study/download>. DOER's decision was articulated in a letter to the Clerks of the Senate and House of Representatives attaching the Offshore Wind Study and announced on DOER's website, <https://www.mass.gov/service-details/offshore-wind-study>.

¹³ Section 91 of Chapter 8 of the Acts of 2021, *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* and Sections 69 and 72 of Chapter 24 of the Acts of 2021, *An Act Making Appropriations for the Fiscal Year 2022*.

“Offshore wind energy generation” is defined under the relevant statutes as offshore electric generating resources that “operate in a designated wind energy area for which an initial federal lease was issued on a competitive basis after January 1, 2012,” while an “offshore wind developer” is defined as a provider of electricity developed from an offshore wind energy generation project that is located on the Outer Continental Shelf and for which no turbine is located within 10 miles of any inhabited area.”¹⁴ At the commencement of the 83C Round 3 solicitation, there were four potential bidders or bidding teams with offshore wind leases off the Massachusetts and Rhode Island coasts that qualified as “offshore wind developers” with the ability to bid “offshore wind energy generation” under 83C. Below is a table that show the universe of likely potential bidders for the 83C Round 3 solicitation, their lease areas (with notes regarding subsequent reassignments), and the lease areas that may be devoted (at least in part) to other offtake arrangements (PPAs or similar contracts).

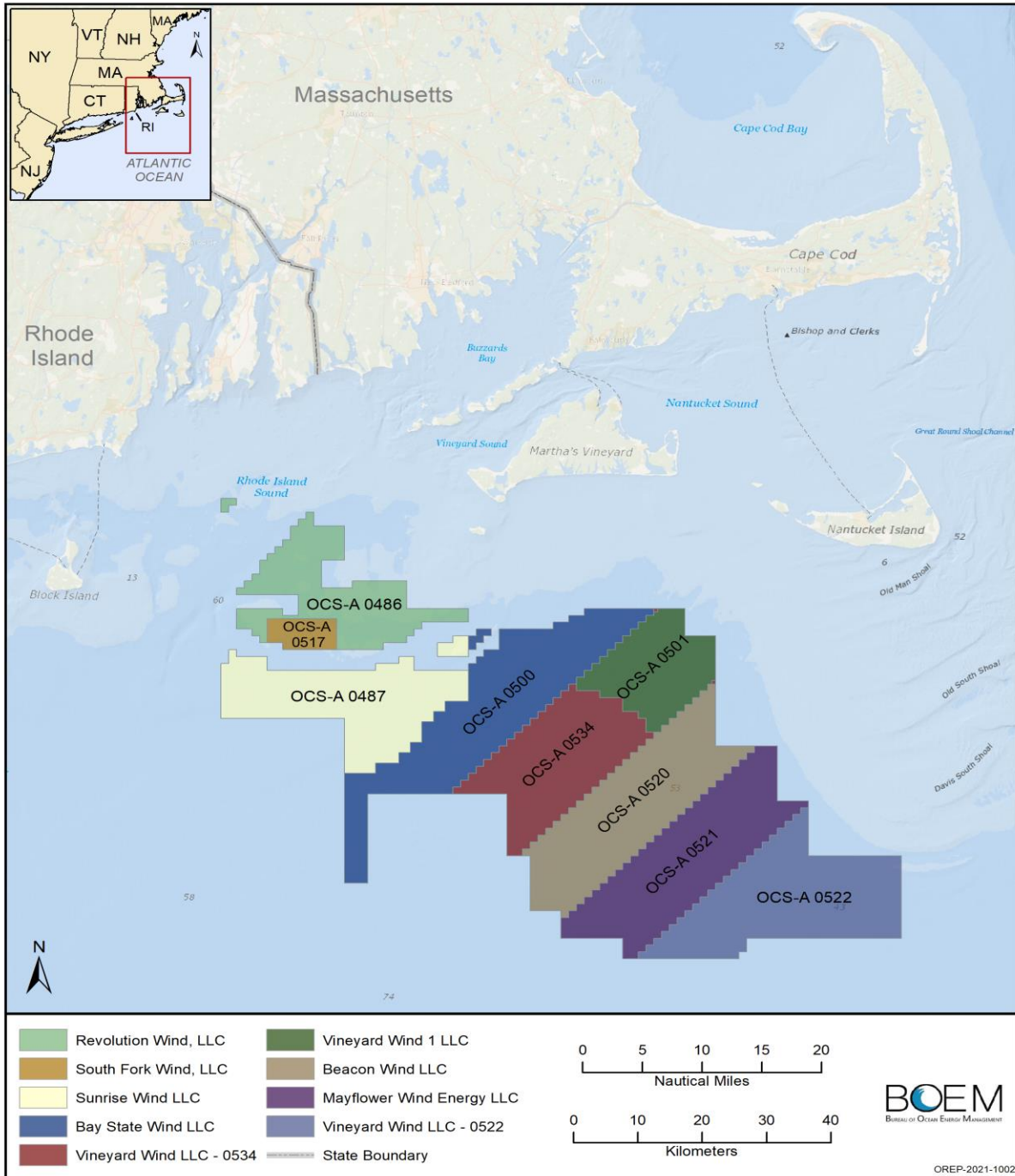
Table 1: Potential Bidders in 83C Round 3¹⁵

MA/RI Lease Area Summary			
Lease Area	Developers/Owners	Project Name	Offtake (MW)
OCS-A-0486	Orsted/Eversource	Revolution Wind	RI 400/CT 304
OCS-A 0517	Orsted/Eversource	South Fork	NY 130
OCS-A 0487*	Orsted/Eversource	Sunrise Wind	NY 880
OCS-A 0500*	Orsted/Eversource	Bay State Wind/Residual	
OCS-A 0501	Copenhagen Infrastructure/Avangrid	Vineyard Wind	MA 800
OCS-A 0534**	Copenhagen Infrastructure/Avangrid	Park City Wind/Residual	CT 804
OCS-A 0520	Equinor	Beacon Wind/ Residual	NY 1,230
OCS-A 0521	Shell/EDPR/ENGIE	Mayflower Wind/Residual	MA 804
OCS-A 0522***	Copenhagen Infrastructure/Avangrid	Residual	
*BOEM information indicates Sunrise Wind will also use part of original Lease Area OCS-A0500, redesignated as OCS-A0530			
** OCS-A0534 was formerly part of OCS-A501; after 83C Round 3 bid submittal, ownership of development rights in this lease area was transferred to Avangrid			
*** After 83C Round 3 bid submittal, ownership of development rights in this lease area was transferred to Copenhagen Infrastructure			

¹⁴ Section 83B.

¹⁵ The sources for this table include NREL, 2019 Offshore Wind Technology Data Update (Oct. 2020), <https://www.nrel.gov/docs/fy21osti/77411.pdf> <https://www.businesswire.com/news/home/20210113005811/en/Equinor-Selected-for-Largest-ever-U.S.-Offshore-Wind-Award>, and <https://www.boem.gov/sites/default/files/documents/renewable-energy/Assignment-Approved-Sunrise-Wind.pdf>.

A map of the Massachusetts/Rhode Island lease areas with their developer/owners (not including recent lease reassignments) is shown below:¹⁶



¹⁶ The source of the map is <https://www.boem.gov/sites/default/files/images/ma-ri-leases.png>. Vineyard Wind LLC is a reference to the joint venture of Avangrid Renewables and Copenhagen Infrastructure Partners.

Section 83C requires “associated transmission costs to be incorporated into a proposal; provided that, to the extent there are transmission costs included in a bid, the department of public utilities may authorize or require the contracting parties to seek recovery of such transmission costs of the project through federal transmission rates, consistent with policies and tariffs of the Federal Energy Regulatory Commission, to the extent the department finds such recovery is in the public interest.”¹⁷

Aside from satisfying the policy directives encompassed within Section 83C, the RFP states that another fundamental purpose of the solicitation is to assist the Commonwealth with meeting its goals under the Global Warming Solutions Act (“GWSA”), which requires aggressive reductions in greenhouse gas emissions in specified percentages by specified dates.¹⁸ The Climate Roadmap Act, amended the GWSA in March 2021, codifying the Baker Administration’s requirement of net zero greenhouse gas emissions by 2050 and directed the adoption of a 2030 emissions limit of at least 50 percent below 1990 levels and a 2040 emissions limit of at least 75 percent below 1990 levels.¹⁹ These are aggressive binding emissions reductions targets based on the Legislature’s and Administration’s commitment to take serious, effective action to address the climate challenge.

83C requires that the Distribution Companies and DOER must propose “the timetable and method for solicitation of long-term contracts” to the Department, after consulting with the AGO.

Section 83C contains a number of criteria that are relevant to the design and implementation of the 83C RFP. They include the following criteria applicable to offshore wind project proposals:

1. Provide enhanced electricity reliability;
2. Contribute to reducing winter electricity price spikes;
3. Are cost effective to electric ratepayers in the commonwealth over the term of the contract taking into consideration potential economic and environmental benefits to the ratepayers;
4. Avoid line loss and mitigate transmission costs to the extent possible and ensure that transmission cost overruns, if any, are not borne by ratepayers;
5. Allow offshore wind energy generation resources to be paired with energy storage systems;
6. Adequately demonstrate project viability in a commercially reasonable timeframe;
7. Where possible, mitigate any environmental impacts;

¹⁷ Section 83C(d)(4)

¹⁸ RFP Section 1.2.

¹⁹ See Sections 8 and 10 of An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, Chapter 24 of the Acts of 2021.

8. Where feasible, create and foster employment and economic development in the commonwealth.²⁰

83C(d) states that DOER is to give preference to proposals that demonstrate a benefit to low-income ratepayers without adding to the cost of the project.

Section 83C(c) authorizes an EDC to decline to pursue a proposal if “the proposal’s terms and conditions would require the contract obligation to place an unreasonable burden on the distribution company’s balance sheet,” provided that the EDC takes all reasonable actions to structure the contract or pricing to mitigate any such impact, and such mitigation shall not increase costs to ratepayers.

Under Section 83C(e), the Department “shall consider the potential costs and benefits of the proposed long-term contract and shall approve a proposed long-term contract if the department finds that the proposed contract is a cost-effective mechanism for procuring reliable renewable energy on a long-term basis, taking into account the factors outlined in this section.”²¹

These and other matters were taken into consideration by the Distribution Companies and DOER in developing and implementing the 83C Round 3 RFP.

B. Development of the 83C RFP and the Department’s Approval of Its Issuance

The kickoff meeting for the third 83C solicitation was held on November 18, 2020. Representatives of DOER, the Distribution Companies, the AGO, and the IE were in attendance. The meeting was conducted by a videoconference call, as were all subsequent meetings, due to the Covid 19 pandemic.

The initial meeting of the Evaluation Team followed DOER’s determination, pursuant to Section 21(a) of the 2018 Act, not to require the Distribution Companies to solicit competitive proposals separately for offshore wind transmission to deliver the up to 1,600 MW of offshore wind energy that DOER had previously determined would be subject to additional procurement(s). After entertaining several rounds of public comments and holding a technical conference on offshore wind transmission, DOER concluded that the costs and risks of holding an offshore wind transmission solicitation outweighed the potential benefits and, hence, DOER decided not to require the Distribution Companies to pursue a transmission solicitation.²² However, based on stakeholder feedback and discussion, DOER decided to revise its

²⁰ Section 83C(d)(5).

²¹ The Department has enacted regulations to implement 83C.20 CMR 23.00. These regulations track the requirements and criteria set forth in 83C.

²² Letter from DOER Commissioner Woodcock to the Chairmen of the Joint Committee of Telecommunications, Utilities and Energy dated July 28, 2020 (the letter is also included in Appendix D to the RFP).

recommendations made in the offshore wind study with respect to the sizing and timing of additional solicitations—from two staggered 800 MW solicitations to one 1,600 MW solicitation—with the goal of maximizing efficient use of transmission and interconnection infrastructure and minimizing environmental impacts. In addition, DOER recommended a process that would provide for receiving stakeholder comments prior to filing the RFP with the Department and for bid selection in 2022.²³

Over the next 10 weeks, the Evaluation Team addressed a variety of issues pertaining to the third 83C solicitation. The Distribution Companies agreed with DOER’s recommendation to have a procurement target of up to 1,600 MW, with individual bids also allowed to be up to 1,600 MW (the minimum procurement target would be 400 MW as required by 83C and minimum bids would be 200 MW as in the prior 83C solicitations). The Evaluation Team also agreed with DOER’s recommendation to issue a draft RFP for stakeholder comment, with February 8, 2021 as the target date for posting.

As part of the discussion on scheduling, the Evaluation Team conducted some basic research into the potential megawatts of offshore wind energy capacity that might be produced from the Massachusetts/Rhode Island offshore federal lease areas, from which the supply for the upcoming procurement is expected to be produced. The Evaluation Team also looked into the demand from potential procurements from other states competing for contracts with offshore wind developers from the same lease areas, Connecticut, Rhode Island and New York, and the amounts and timing of such procurements. The Evaluation Team was also aware of recent ISO New England (“ISO-NE”) analysis estimating the potential amounts of offshore wind that could be relatively cost-effectively interconnected and delivered to the ISO-NE grid and the potential interconnection locations as well as a cluster study planned for interconnections to Cape Cod.²⁴

The Evaluation Team decided that the schedule for the 83C Round 3 solicitation should be designed to result in bid selection in 2021. The schedule was predicated on issuance of the RFP by May 7, 2021, following a Department order approving issuance of the RFP:

RFP Issuance	May 7, 2021
Due Date for Bids	September 16, 2021

²³ *Id* at 4-5. Under Section 21(a) of the 2018 Act, the additional procurements were required to be held by December 31, 2035.

²⁴ See 2019 Economic Study Offshore Wind Transmission Interconnection Analysis (June 17, 2020), https://www.iso-ne.com/static-assets/documents/2020/06/a4_2019_economic_study_offshore_wind_transmission_interconnection_analysis.pdf and Notice of Initiation of the Cape Cod Resource Integration Study (October 21, 2020), [a6_initiation_of_the_cape_cod_resource_integration_study.pdf \(iso-ne.com\)](https://www.iso-ne.com/static-assets/documents/2020/10/a6_initiation_of_the_cape_cod_resource_integration_study.pdf). In this regard, a subgroup of the Evaluation Team engaged ISO-NE representatives on the status and timing of potentially relevant interconnection studies as input into the Evaluation Team’s decision-making process on the solicitation schedule.

Bid Selection December 17, 2021

Execute Contracts March 28, 2022

Submit Contracts for Approval April 27, 2022

Other than increasing the maximum size of the procurement target and allowable bids, other changes from the first two offshore wind solicitations were discussed. Joint bids by offshore wind developers for PPAs using common transmission and/or interconnection facilities were to be explicitly allowed (subject to meeting the same requirements as other bids). The requirement that bidders submit bids with and without Commitment Agreements was eliminated;²⁵ instead, bidders would be required to bid to a form Commitment Agreement, just as they would to form PPAs, and would be evaluated based on the extent and impact of their exceptions. Bidders would also be required to conduct a deliverability study based on criteria and assumptions detailed in an appendix to the RFP to identify potential delivery constraints; however, bidders would not be required to identify solutions or additional network upgrades to address the potential constraints. The qualitative evaluation provisions regarding economic development and environmental impacts (sections 2.3.2.i and 2.3.2.vii and Appendix J) were substantially expanded to include, among other things, requiring a plan to promote diversity, equity and inclusion (“DEI”) and requiring descriptions of any impacts, positive and negative, on environmental justice communities.

Shortly after the Evaluation Team began its deliberations on the Round 3 RFP, Congress passed a law increasing the Investment Tax Credit (“ITC”) available to owners of offshore wind energy facilities to 30 percent for projects that are deemed to commence construction by December 31, 2025.²⁶ This led to discussions regarding what the price cap should be for the Round 3 solicitation due to the fact that the Mayflower Wind PPAs signed as part of the Round 2 solicitation had price adjustment clauses that would reduce the PPA price at commercial operation if Mayflower Wind qualified for the 30 percent ITC. The Evaluation Team did not reach a consensus.

The majority of the Evaluation Team—DOER, Eversource and Unitil—took the position that the price cap should be \$77.76/MWh, which was evaluated as the winning bid from Mayflower Wind in the Round 2 solicitation. National Grid took the position that the price cap, initially \$77.76/MWh, should be reduced to \$70.26/MWh based on the adjusted price under the Mayflower Wind PPAs if and when Mayflower

²⁵ The form Commitment Agreement (entitled “Voluntary Agreement Commitment Agreement”) requires the offshore wind developer to commit that in the event future third-party offshore wind developers request interconnection service, the developer will negotiate in good faith and use commercially reasonable best efforts to enter into a voluntary agreement regarding interconnection to and expansion of the developer’s Interconnection Customer Interconnection Facilities.

²⁶ Section 204 of Division EE of the Consolidated Appropriations Act, 2021. <https://www.congress.gov/bill/116th-congress/house-bill/133/text>. Subsequently, the Internal Revenue Service issued guidance which provided, among other things, that an offshore wind project, could generally receive the 30 percent ITC if the project went into service within 10 calendar years after it was deemed to have commenced construction. IRS Notice 21-05. <https://www.irs.gov/pub/irs-drop/n-21-05.pdf>.

Wind qualifies for the 30% ITC upon the Commercial Operation Date. The IE viewed this matter as an issue to be decided by the Department, with a single approach that would apply to all proposals by bidders to all three Distribution Companies.

National Grid also proposed a novel provision for its form PPA, which would require sellers under the PPA to negotiate in good faith (late in the term of the PPA) for a separate agreement which would, among other things, give National Grid first rights to procure RECs at market value.

On February 8, 2021, the Evaluation Team posted on the www.macleaneenergy.com website the draft RFP, certain appendices to the RFP, the National Grid PPA provision previously discussed, and a request for comments.²⁷

More than two dozen sets of stakeholder comments were received.²⁸ After reviewing the comments, the Evaluation Team made various changes to the proposed RFP, which the Distribution Companies filed with the Department on March 10, 2021:

- A provision allowing joint bidding by two or more eligible bidders was eliminated due to antitrust concerns;²⁹
- The weighting of the qualitative evaluation in the Stage 2 evaluation (relative to the quantitative evaluation) was increased from the 25/75 split used in prior solicitations to a 30/70 split;
- Section 2.3.2.i of the RFP was revised to require bidders to submit a DEI plan, and the quality and level of commitment of that plan (which would include a workforce diversity plan and a supplier diversity program) would be a component of the economic benefit qualitative evaluation factor (now renamed “Economic Benefits to the Commonwealth and Diversity, Equity and Inclusion”);
- Section 2.2.2.vii and Appendix J (Environmental and Socioeconomic Impacts) were modified to highlight a bidder’s past and current track record with various stakeholders and the potential impacts, positive and negative, on Environmental Justice populations;
- Different examples for demonstrating direct benefits to low-income ratepayers were added to Section 2.2.2.ii.

²⁷ <https://macleaneenergy.com/83c-iii/>.

²⁸ <https://macleaneenergy.com/public-comment-on-draft-rfp/>.

²⁹ See Independent Evaluator Report on the Proposed Timetable and Method of Solicitation and Solicitation Process under Section 83C of the Green Communities Act—Round 3, D.P.U. 21-40 (March 15, 2021), pp. 5, 7-9.

After the filing of the proposed RFP, the IE submitted its report on the design of the solicitation. Three offshore wind developers (Bay State Wind, Vineyard Wind, and Mayflower Wind) submitted comments on the proposed RFP, as did the Attorney General, RENEW Northeast, Associated Industries of Massachusetts, Northeast Committee for Offshore Wind, three legislators, Environmental League of Massachusetts, and 49 leaders in southeastern Massachusetts.

On May 5, 2021, the Department approved issuance of the RFP, with several conditions:

- The Department approved \$77.76 nominal levelized \$/MWh as the price cap, as proposed by Eversource, Unitil, and DOER, with support from the IE and several commenting parties, and disapproved the National Grid proposal (with its potential contingent price cap reduction); (pp. 16-30);
- In response to recommendations from the IE, the Department disapproved two National Grid-specific form PPA provisions pertaining to (a) a buyer option to require sellers to negotiate a REC sale to the buyer for delivery after the term of the contract and (b) a price adjustment clause if the ITC is increased to over 30 percent (pp. 31-39);
- In response to a request for clarification by Vineyard Wind, the EDCs proposed, and the Department approved, a replacement sentence to RFP Section 2.2.1.3 stating that a bid with an alternative interconnection point would require an additional bid fee (pp. 79-80).

The Department also considered a variety of suggested changes to the proposed RFP but did not require that any of them be incorporated in the RFP (pp. 40-42, 45-78).

On May 7, 2019, the Evaluation Team posted the RFP on the website for the RFP process, www.macleaneenergy.com. Also posted on the RFP website were National Grid and Eversource standards of conduct, the names of EDC evaluation team members and Eversource and National Grid bid team members, and the form model PPAs, one for National Grid and another for Eversource and Unitil, and forms to be filled out by bidders.³⁰ Email notification of the posting was sent out to a notification list of industry participants and stakeholders.

C. Independent Evaluator Scope and Standard of Review

The Energy Diversity Act specifies the standard of “open, fair and transparent” with regard to 83C solicitation and bid selection processes and requires that they be “not unduly influenced by an affiliated company.” The Department has applied essentially the same standards in approving for issuance the Clean

²⁹ <https://macleaneenergy.com/83c-iii-documents/>. The bidder response forms included the CPPD (Certification, Pricing, and Project Data) form in Excel format for submission of proposed pricing, the Bidder Response Form in Word format, the bid fee submittal form in Excel format, and Section 14 addendum (economic development summary sheet) in Excel format.

Energy RFP under Section 83A of the GCA.³¹ There, the Department stated that “the RFP may result in the submission of bids from the electric distribution companies’ affiliates or include projects in which the electric distribution companies or their affiliates have a financial interest,” thus, requiring “safeguards. . . to ensure that no potential bidder receives preferential treatment.”³² Similarly, there was the prospect for the 83C Round 3 solicitation that Distribution Company affiliates, or projects in which the Distribution Companies or their affiliates have a financial interest, would be bidders or participants in a bid. In enacting 83C (as well as 83D), the Massachusetts Legislature required the retention and use of an Independent Evaluator as a safeguard to help ensure the openness, fairness and transparency of solicitations and to safeguard against any undue preferences toward affiliates or unjust discrimination against any bidder.

FERC has enunciated what are sometimes referred to as the *Edgar-Allegheny* principles in decisions involving transactions between affiliates in which the buyer is a regulated utility. In the *Edgar* case in 1991, FERC required that a seller of wholesale electric power making a sale to an affiliated regulated utility for resale at market-based rates demonstrate that the rates and other terms and conditions of the power sales contract are not unduly preferential to the seller.³³ Where there is a competitive procurement process, FERC has required assurance that:

1. The process was designed and implemented without undue preference for the affiliate seller,
2. The analysis of the bids or responses did not favor the affiliate, particularly with respect to evaluation of non-price factors, and
3. Selection was based on some reasonable combination of price and non-price factors.³⁴

In *Allegheny Electric Supply Company, LLC*, 108 FERC ¶ 61,082 (2004), FERC set forth guidelines applicable to its review of competitive solicitation processes under the *Edgar* standards.

1. “Transparency: the competitive solicitation process should be open and fair.
2. Definition: the product or products sought through the competitive solicitation should be precisely defined.
3. Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders.
4. Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company’s selection.”

³¹ *Fitchburg Gas and Electric Company et al.*, D.P.U. 15-84 (2015) at 43-45 (“fair, transparent, and competitive” and “fair, open, and transparent”).

³² *Id.* at 43-44.

³³ *Boston Edison Electric Co: Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (“Edgar”).

³⁴ *Edgar*, 55 FERC ¶ 61,382 at 62,128.

More recently, FERC has found it sufficient for the independent third party to have overseen the design and implementation of the competitive bidding process, rather than to be responsible for the conduct of the process itself.³⁵ The purpose of the FERC guidelines is to provide assurance that regulated electric utilities do not unduly favor their affiliates, to the detriment of their customers.

Peregrine views the 83C standard of “open, fair and transparent” and “not unduly influenced by an affiliated company” to be substantially the same as the *Edgar-Allegheny* principles enunciated by FERC. Hence, the Independent Evaluator has viewed the *Edgar-Allegheny* principles as providing guidance in its review of the design and implementation of the 83C Round 3 RFP.

There are other contextual matters that have been important for our review. The requirement for an Independent Evaluator is a matter of Massachusetts law and pertains to the conduct of competitive solicitations held under sections 83C and 83D of the Act. 83C(f) requires the IE to assess “whether *all bids* were evaluated in a fair and objective manner.” (emphasis added). Hence, the IE views the standard of “fairness” as meaning fairness to *all* bidders, regardless of whether they are or are not affiliates of an EDC or whether any EDC affiliate has submitted a bid in a solicitation.

Also, we note the industry practice where independent evaluators are used, or have been used, to oversee the conduct of competitive solicitations in a variety of states, including California, Nevada, and Delaware.³⁶ Importantly, we also take into consideration key differences between the 83C process and other solicitations overseen by independent evaluators. Typically, a single electric utility conducts a solicitation, which is overseen by an independent evaluator. Here, multiple distribution companies are conducting the solicitation in coordination with the state energy policy agency, DOER, and the RFP design phase also includes the involvement of the state’s consumer advocacy agency, the AGO. In addition, the issuance of the RFP requires Department approval after providing for opportunity to comment by industry stakeholders and prospective bidders. The multiplicity of interests involved in the design and implementation of the solicitation may reduce the potential for one or more Distribution Company affiliates to be recipients of undue preferences or other bidders to be treated unfairly but does not eliminate it. The Independent Evaluator has taken into consideration the composition of the

³⁵ *Southern California Edison Company: Re Sycamore Cogeneration Company*, 142 FERC ¶ 61,101 (2013). The role of the Independent Evaluator in competitive bidding processes conducted by electric utilities regulated by the California Public Utilities Commission typically involves an oversight function, rather than the actual conduct of the competitive solicitation.

³⁶ See Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s, and San Diego Gas & Electric Company’s Long-Term Procurement Plans, D.07-12-05 (CPUC 2007) at 131-142, http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/76979.PDF, https://www.nvenergy.com/company/doingbusiness/rfps/Emissions-Capacity_RFP.cfm (NV Energy renewable energy RFP); 26 Del C. §1107(d)(2) (requiring retention of an independent consultant for solicitation of long-term contracts), <http://delcode.delaware.gov/title26/c010/>. Other states with formal competitive bidding rules and/or guidelines which require an Independent Monitor or Independent Evaluator, at least for solicitations in which a utility-ownership or affiliate option is present, include Georgia, Louisiana, Oregon, Utah, and Hawaii.

procurement team but has been guided by the provisions of 83C and the *Edgar-Allegheny* principles in the conduct of its responsibilities.

III. Summary of the Solicitation, Bid Evaluation and Selection Process

A. Structure of the RFP

The RFP specifies the products being solicited, also referred to as “Eligible Bid Categories,” identifies the threshold requirements applicable to all proposals, and describes the evaluation criteria and process to be used in evaluating the proposals. The RFP sets forth the overall procurement target and allowable sizes of individual bids:

- The Distribution Companies are seeking to procure at least 400 MW and up to 1,600 MW of Offshore Wind Energy Generation.
- Proposals may range from 200 MW to a nominal 1,600 MW in size.

The RFP sets forth a three-stage evaluation system. In Stage 1, bids are to be reviewed to determine whether they satisfy specified eligibility, threshold and other minimum requirements (hereinafter, “threshold requirements”).³⁷ Threshold requirements include pricing requirements, interconnection and delivery requirements, security requirements, and other minimum requirements. In Stage 2, bids are to be reviewed quantitatively and qualitatively based on the criteria set forth in the RFP, resulting in a numerical score for individual bids.³⁸ In Stage 3, bids are to be reviewed based on the Stage 2 evaluation criteria and, at the Evaluation Team’s discretion, various other considerations, including portfolio effects, risks associated with the viability of the proposals, and other benefits, costs, or risks to customers not fully captured in the Stage 2 evaluation.³⁹ Some of the more salient RFP provisions, including the timetable for the process, are summarized in Appendix B to this report.

³⁷ RFP Section 2.2.

³⁸ RFP Section 2.3.

³⁹ RFP Section 2.4.

B. Post-RFP Issuance: Bidders Conference; Answers to Bidder Questions; Development of the Detailed Evaluation Framework; Bid Submittal

1. Bidders Conference

The Evaluation Team held a bidders’ conference by Zoom webinar on May 18, 2021, with a presentation provided on the solicitation and bid evaluation process.⁴⁰ Bidder questions were entertained, but prospective bidders were advised that questions needed to be submitted in writing in order for the Evaluation Team to provide an official response.

2. Questions and Answers

Seven questions were submitted in writing. The questions were submitted to a dedicated email account, which was the specified method by which prospective bidders could communicate to the Evaluation Team. The Evaluation Team provided written responses in two batches.⁴¹ The responses were a collaborative effort by the Distribution Companies and DOER, with IE oversight to assure consistency with the RFP, accuracy, and fairness.

3. Detailed Evaluation Framework

a. Introduction

Work on developing the detailed evaluation framework for 83C Round 3 began shortly after the RFP was posted on the RFP website in May 2021. Thereafter, the Evaluation Team developed the base case for the quantitative evaluation and the protocols for the Stage 2 quantitative evaluation, the Stage 2 qualitative evaluation, and the Stage 3 evaluation. The Evaluation Team started with the detailed evaluation framework prepared for the 83C Round 2 solicitation and applied the particular terms and conditions associated with the 83C Round 3 RFP and adapted the protocols to take into consideration more recent information. These were steps needed to implement the broad terms of the RFP and to provide guidance to the Evaluation Team for the evaluation of bids on a fair and non-discriminatory basis. Similar to 83C Round 2, the Evaluation Team organized itself into several committees: a Steering Committee to oversee the work of the Evaluation Team and develop and implement the Stage 3 evaluation protocol, a Quantitative Committee responsible for the development and implementation of the detailed quantitative evaluation, and a Qualitative Committee responsible for development and

⁴⁰<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fmacleanenergy.files.wordpress.com%2F2021%2F05%2Fsection-83c-round-3-bidder-conference-presentation.pptx&wdOrigin=BROWSELINK>. The Commonwealth’s Supplier Diversity Office also participated in the presentation.

⁴¹ <https://macleanenergy.com/83c-iii/83c-iii-q-a/>.

implementation of the detailed qualitative (non-price) evaluation as well as conducting the threshold (Stage 1) evaluation.

This section of the report summarizes the development of the detailed framework for the evaluation of bids.

b. Quantitative Evaluation Protocol and Base Case Development

The essential objectives for developing the 83C quantitative evaluation protocol and base case were to draw on the evaluation framework and base case used in 83C Round 2 and apply it to the task of evaluating Round 3 offshore wind proposals in the context of the framework laid out in the Round 3 RFP. This resulted in a number of changes from the Round 2 evaluation framework.

The RFP provided for a maximum individual bid size and procurement target of 1,600 MW, rather than 800 MW, as in prior solicitations, and removed the requirement of bidders submitting a 400 MW bid. This led to the evaluation being based on 1,600 MW of incremental offshore wind generation (against a base case without such generation). The 1,600 MW of offshore wind generation would include proxy generation to fill out the evaluated generation for bids less than 1,600 MW in size. Because there were no required 400 MW bids to provide a basis for determining the cost of proxy generation, the Evaluation Team determined to assess a levelized cost for the proxy generation based on the cost of the bid generation. In the Stage 3 evaluation, portfolios of individual bids amounting to 1,600 MW in total could be evaluated, which would remove the need for incorporation of proxy generation in the evaluation of such portfolio(s).

Development of the quantitative evaluation protocol and base case took place over several months, with the Evaluation Team working with Tabors Camaranis Rudevich (“TCR”), the Evaluation Team Consultant.⁴² In developing the base case, the Evaluation Team and TCR included offshore wind and other renewable generation under contract to the EDCs and other regional utilities, including generation yet to be built. This included approximately 1,600 MW of offshore wind generation contracted under the first two 83C solicitations and the import of hydroelectric energy from Hydro Quebec via the proposed NECEC transmission line through Maine contracted under the 83D solicitation. One issue was how to evaluate certain proposals with delivery to Cape Cod because [REDACTED] [REDACTED] [REDACTED] the total capacity in the first cluster study was approximately 1,200 MW ■ The Evaluation Team developed special rules for

⁴² TCR was also the Evaluation Team Consultant that performed the quantitative analysis for the 83D and 83C Round 1 and Round 2 solicitations.

■ [REDACTED] [REDACTED]

bids with delivery to Cape Cod. A bid with an [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The purpose of these provisions was to address potential bids that may have priority to interconnection capacity ahead of the 83C Round 2 contract generation (which was embedded into the base case) without having to change the base case.

Considerable time was spent in developing a load forecast that the Evaluation Team considered reasonable and appropriate for the intended use—evaluation of bids for an offshore wind energy procurement. Relative to that focus, existing legislation and regulation regarding emissions, renewable energy portfolio and clean energy standards, was assumed in the modeling, but not the results of mandated future procurements. Forecasted Renewable Portfolio Standard (“RPS”) requirements based on the most recently enacted legislation were incorporated into the base case and the modeling.⁴⁴

For this solicitation, Clean Peak Standard compliance was modeled using a simple spreadsheet model. Because bids would be considered Contracted Resources under the Clean Peak Standard regulations, there would be a multiplier of 0.01 (1 percent).⁴⁵ Thus, the impact on the calculation of direct benefits was expected to be small. Indirect Clean Peak Standard impacts were not considered in the evaluation because they were not considered to be reliably quantifiable and meaningful.⁴⁶

One change for this RFP, as previously described, was an increase in the weighting of the qualitative evaluation relative to the quantitative evaluation from 25/75 to 30/70. The Evaluation Team considered whether they should maintain the existing scaling of the quantitative scores or modify them. Under the former system, the bid with the most calculated net benefits received 75 points and the other bids received a lower number of points by subtracting 3 points (from 75) for each \$1.00/MWh that such bid had a levelized net benefit per MWh that is less favorable than that of the top bid. After considering modification of the formula to 2.33 points for each \$1/MWh that the bid is less favorable from the top bid (based on applying the 30/70 ratio), the Evaluation Team decided to stay with the prior formula, except that the top bid in the quantitative evaluation would receive 70 points (rather than 75 points)

[REDACTED]
[REDACTED]

⁴⁴ The Massachusetts RPS Class I requirements (for which offshore wind qualifies) are set forth in 225 CMR 14.00.

⁴⁵ 225 CMR 21.00; <https://www.mass.gov/doc/clean-peak-energy-standard-final-regulation/download>.

⁴⁶ See RFP Section 2.3.1.2.iv. For the same reasons, indirect impacts on the capacity and ancillary services market were not considered in the evaluation. See RFP Section 2.3.1.2.iv.

and the other bids would receive a score by subtracting 3 points for each \$1/MWh that such bid had a quantitative net benefit less than that of the top bid.

Otherwise, the quantitative evaluation framework was similar to that of the framework used in 83C Round 2.

Development of the base case involved making a variety of key assumptions involving fuel costs, load forecasts, RPS and Clean Energy Standard (“CES”) requirements, and imports. The load forecast was based on the ISO New England 2021 CELT (Capacity, Energy, Loads and Transmission) report, with an extrapolated load forecast beyond 2030 (the last year covered in the 2021 CELT report). The assumptions for development of the base case are described more fully in TCR’s 83C Part II Quantitative Evaluation Report (“TCR Report”) which has been filed with the Department.⁴⁷

The detailed quantitative evaluation framework, described in the quantitative evaluation protocol, consisted of a benefit/cost analysis using the ENELYTIX modeling tool with two categories of benefits and costs — (1) direct contract costs and benefits and (b) indirect costs and benefits.

Direct costs of a proposed project would include the bidder’s proposed cost of energy and the proposed cost of RECs. In addition, remuneration of 2.75 percent of contract costs was assumed as a direct cost.⁴⁸ Against these costs, the market value of energy at the delivery point would be calculated on a nodal basis with the project in service. In addition, the avoided cost of RECs/CECs⁴⁹ would be calculated and, as previously indicated, the value of Clean Peak Energy Certificates, both as direct benefits.

The indirect benefits (or costs) associated with a proposal included:

- The impact of changes in LMPs (locational marginal prices) to Massachusetts EDC customers as a result of the proposed project;
- The cost reductions to Massachusetts EDC customers in RPS/CES compliance costs due to reductions in REC/CEC market prices as a result of purchases of RECs/CECs from the proposed project;

⁴⁷ Exhibit JU-4.

⁴⁸ Under 83C(d)(3), the Department may award the EDCs remuneration of up to 2.75 percent of payments “for accepting the financial obligation of the long-term contract.” The Department awarded remuneration of 2.75 percent of PPA contract costs when it approved the PPAs following the 83C Round 1 and Round 2 solicitations. Long Term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C, D.P.U. 20-16 through D.P.U. 20-18 (2020); Order on Motion for Reconsideration D.P.U. 20-16A through D.P.U. 20-18A (2021); Long Term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C D.P.U. 18-76 through D.P.U. 18-78 (2019); Order on Attorney General’s Motion for Reconsideration; Motion for Extension of the Judicial Appeal Period D.P.U. 18-76 through D.P.U. 18-78 (2019).

⁴⁹ CECs are Clean Energy Certificates generated by qualifying facilities to enable EDCs and other retail suppliers to comply with the Massachusetts Clean Energy Standard, 310 CMR 7.75.

- The net value of a proposal's contribution toward meeting GWSA requirements over and above the value of compliance with the RPS and CES;
 - This value was based on simulating the impact on the greenhouse gas ("GHG") inventory that is used by the Massachusetts Department of Environmental Protection ("DEP") (for assessing the Commonwealth's GWSA compliance) to calculate the inventory impact of a proposed project in reductions in metric tons of carbon dioxide equivalent emissions attributed to Massachusetts;
 - The quantity of GHG reductions is then multiplied by the base case emissions rate (GHG/MWh) to obtain a MWh equivalent of GHG emissions reductions;
 - To obtain a *net* contribution to meeting GWSA (and avoid double counting of REC/CEC value), the amount of MWh that qualifies for RECs/CECs and is forecasted to be retired in Massachusetts is subtracted from the MWh-equivalent amount of carbon dioxide emission reductions (or increases);
 - The resulting MWh value is multiplied by the estimated avoided cost per MWh of obtaining incremental clean energy to obtain the total GHG inventory impact;
 - The value used was \$17.76/MWh (2021\$), the median net direct cost without REC/CEC revenues (total costs minus energy revenues) per MWh of qualifying bids calculated in the 83D evaluation and used in the 83C Round 1 and 83C evaluations, adjusted to 2021\$;⁵⁰
 - Impact of extreme winter natural gas prices on PPA market value;
 - The three winter month periods with the highest prices and lowest prices in the 2002-2019 period were applied to a single power year (2029/2030), with the proposed project in place, to assess the relative net impact on PPA market value to very high and very low natural gas prices, which was then averaged over 20 years (based on the term length of PPAs) to calculate an impact on a \$/MWh basis;
 - This was pertinent to 83C(d)(5)(ii)'s criterion that offshore wind energy resources "contribute to reducing winter electricity price spikes."

As in past 83C solicitations, the economic metric by which bids were to be evaluated was real levelized \$/MWh (2021\$). Other financial parameters were a nominal discount rate of 6.82 percent (based on the

⁵⁰ During and after the 83D and 83C Round 1 and Round 2 solicitations, National Grid had expressed concerns regarding the subtraction of the amount of MWh meeting RPS/CES qualifications in the GWSA calculation as well as the basis for the estimated avoided cost calculation. National Grid did not propose an alternate GWSA impact calculation in 83C Round 3 because it did not believe it would be material under the facts and circumstances of this solicitation.

EDC's load-weighted average cost of capital), an assumed inflation rate of 2.0 percent, and a real discount rate of 4.73 percent.

As in 83C Round 2, TCR would develop a common capacity expansion plan for all bids because of the general similarity of bids in terms of contributions to Installed Capacity Requirements and capacity factors. TCR would run its Energy and Ancillary Services model for each individual bid.

c. Qualitative Evaluation Protocol

Under the RFP, a total of 30 points was allocated to the qualitative evaluation component of Stage 2 of the evaluation process. Following the issuance of the RFP, a subgroup of the Evaluation Team began to develop the detailed evaluation framework for the 83C Round 3 qualitative evaluation, to be embodied in a qualitative evaluation protocol. The starting points were the 83C Round 3 RFP and the qualitative evaluation protocol used in the 83C Round 2 solicitation. The objective was to modify the Round 2 protocol for applicability to the Round 3 RFP.

Early on, the focus of the review was to identify the major respects in which the Round 3 RFP differed from the Round 2 RFP in terms of the qualitative criteria listed in RFP Section 2.3.2. These included:

- New subcategories under Economic Benefits to the Commonwealth (now renamed "Economic Benefits to the Commonwealth and Diversity, Equity and Inclusion": (a) a DEI plan that includes, at a minimum, both a Workforce Diversity Plan and a Supplier Diversity Program Plan; and (b) Economic development activities and investments that directly benefit economically distressed areas, environmental justice communities, and/or low-income populations;
- Environmental Impacts: a new subcategory of Environmental Justice impacts and new, more detailed criteria involving environmental and socioeconomic impacts.

Other RFP qualitative evaluation categories, such as Siting, Permitting, Project Schedule and Financing Plan, Energy Storage System Benefits, and Reliability Benefits were generally similar to those in the Round 2 RFP.

In developing the Qualitative Bid Evaluation Protocol for Round 3, certain categories of evaluation criteria from Round 2 were dropped or consolidated into other evaluation criteria categories:

- The Bidder Experience category was dropped because it was not viewed as being a significant distinguishing factor among the small group of potential bidders, who were viewed as having substantial relevant experience;
- The extent to which the Bidder accepted (and did not except to) the form PPAs and Commitment Agreements were consolidated into one category, consistent with the RFP.



Dropping or consolidated these categories assisted in giving more weight to the economic benefit, environmental impact, and low- income ratepayer benefit categories, consistent with Section 2.3 of the RFP.⁵¹

The Evaluation Team developed new evaluation categories and modified other evaluation categories, consistent with the Round 3 RFP:

- The subcategories under environmental impacts were expanded from two to three to include Environmental Justice impacts and the other two categories pertaining to natural resource impacts and socioeconomic impacts were modified to incorporate references to the detailed environmental criteria set forth in RFP Appendix J;
- Four economic benefit subcategories were created to focus separately on (i) employment, (ii) investment, (iii) DEI plan, and (iv) benefits to low-income ratepayers, with the first two subcategories taking into consideration benefits to economically distressed areas, environmental justice communities, and/or low-income populations;
- The two categories pertaining to interconnection status and viability of interconnection were modified to address interconnections encompassed within the Cape Cod Cluster Study process;
- The Critical Path Schedule/Commercial Operation Date Certainty criterion was expanded to include technical and logistical viability considerations.

Upon reaching agreement on the qualitative evaluation protocol categories and the wording of the criteria used for scoring individual bids, the Evaluation Team then addressed the number of maximum (and intermediate points) to be assigned for each of the categories and subcategories used in the evaluation. DOER took the position, based on the wording of Section 2.3 of the RFP and its underlying intent, that the 5-point increase to qualitative factors, from 25 to 30 points, should be reflected in [REDACTED]

[REDACTED] The IE concurred with this approach. After considerable discussion, this was reflected in the point allocation adopted by the Evaluation Team.

The Qualitative Bid Evaluation Protocol, with agreed-upon evaluation criteria and point allocation, was completed prior to the initiation of proposal review and evaluation.

⁵¹ RFP Section 2.3 provides: “The increase from 25 to 30 points for qualitative factors was adopted in this solicitation to increase the evaluation’s emphasis on RFP Sections 2.3.2.1.i, 2.3.2.ii, and 2.3.2.vii.” These sections are Economic Benefits to the Commonwealth and Diversity Equity and Inclusion, Low Income Ratepayers in the Commonwealth, and Environmental and Socioeconomic Impacts from Siting, respectively.

d. Stage 3 Evaluation Protocol

The Evaluation Team developed a Stage 3 evaluation protocol that was similar to that used in the Round 2 RFP but with modifications to reflect, among other things, the increase in the maximum procurement target from 800 MW to 1,600 MW. In Stage 3, the Evaluation Team was empowered to develop portfolios of proposals ranging in size from 400 MW to 1,600 MW and to compare the results of such portfolios to highly ranked individual bids and to undertake sensitivity analyses as may be determined by the Evaluation Team.

Similar to 83C Round 2, the Evaluation Team could consider in Stage 3 a number of specified factors, including:

- Risks associated with project viability of the proposals;
- Any risks, costs or benefits, including economic development benefits, associated with proposals not fully captured in the Stage 2 evaluation;
- Impact on the Commonwealth's policy goals, as directed by the DOER, including GWSA goals.

There were additional considerations added to the category of "impact on the Commonwealth's policy goals:"

- the availability of future generation bids (due to the availability of offshore wind lease areas and/or cost-effective interconnection locations) including the risk that other state offshore wind procurements may reduce the future availability of such offshore wind energy generation projects;
- commercial viability of projects that are supported by previously executed Section 83C contracts and potential impacts of proposals' queue positions; and
- the efficient and cost-effective use of available lease area(s), interconnection point(s), transmission cabling, and other infrastructure required for the production and delivery of the Offshore Wind Energy Generation.

In addition, the Evaluation Team was empowered to "consider the relative merits of a proposal(s) that offers additional benefits, for example economic development benefits including additional in-state manufacturing or investment that has a high degree of credibility or other assurances, and is determined to be cost-beneficial, as compared to other top-ranked proposals."



The Evaluation Team determined that the quantitative, qualitative and Stage 3 evaluation protocols and the base case were effectively complete, subject to further adjustments deemed necessary by the Evaluation Team prior to the receipt of bids.⁵²

4. Submission of Bids

Bids were submitted on the due date of September 16, 2021. Two bidders submitted a total of six proposals: Vineyard Wind submitted [REDACTED] for a Commonwealth Wind project and Mayflower Wind submitted [REDACTED]. All of the proposals had expected commercial operation dates in [REDACTED].

Vineyard Wind proposed the sale of 1,200 MW of energy and RECs to the EDCs from a 1,232 MW project. The energy would be produced from wind turbines in OCS lease area – A 0534, which had been split off from OCS-A 0501, with delivery from transmission cables to a substation in West Barnstable, Cape Cod. Vineyard Wind proposed a backup interconnection point at Acushnet for 405 MW if it was not able to obtain interconnection rights for the full amount to West Barnstable (827 MW would be interconnected at West Barnstable, rather than the full 1,232 MW). The proposed pricing for energy and RECs escalated at 2.5 percent per year, with a total all-in price of \$72.17/MWh over the 20-year contract term on a nominal levelized basis.

[REDACTED]

Shortly after the submission of the Commonwealth Wind bids, Vineyard Wind, owned jointly by affiliates of Copenhagen Infrastructure Partners and Avangrid, Inc., notified the Evaluation Team of a pending ownership change:

“First, Vineyard Wind 1, in lease area OCS-A 0501, will remain a fifty-fifty joint venture of the two companies. Second, Park City Wind, an 800 MW project under contract to the Connecticut EDCs, and the proposed Commonwealth Wind Project, both in lease area OCS-A 0534, will be 100% owned by Avangrid Renewables. Third, OCS-A 0522, the easternmost offshore wind energy area, shall become 100% owned by Copenhagen Infrastructure Partners.⁵³

The proposed transaction has since been completed.⁵⁴ Hence, Avangrid is the indirect owner of the Commonwealth Wind project whose 1,232 MW project was selected by the EDCs and for which PPAs

⁵² The base case was determined to be effectively complete on the due date for bids.

⁵³ Letter dated September 21, 2021, p. 1.

⁵⁴ <https://www.yahoo.com/now/avangrid-renewables-completes-restructuring-agreement-130000078.html>.

totaling 1,200 MW of energy and RECs have been executed (the party to the PPAs is Commonwealth Wind, LLC).

Mayflower’s B2 proposal was for energy and RECs produced from a proposed 480 MW project located in Mayflower’s offshore wind lease area OCS-A 0521, but would allow the EDCs to purchase an amount as low as 389 MW (an 81% proportional entitlement), if necessary, so that the EDCs could select this bid and come within the 1,600 MW procurement target. Proposed pricing for energy and RECs combined was a flat \$76.73/MWh. Delivery would be to Brayton Point in Somerset, Massachusetts via high-voltage direct current (“HVDC”) transmission cable technology, with a limitation of [REDACTED] MW at the point of delivery. The proposal also involved or contemplated moving the delivery point for approximately 800 MW from the existing 83C Round 2 PPAs from Cape Cod to Brayton Point, which would involve amendments to the existing Round 2 PPAs. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mayflower Wind is a joint venture of affiliates of Shell Oil Company and OW North America LLC, which itself is a joint venture of EDP Renovaveis, S.A. and ENGIE S.A.

C. Evaluation of the Bids

The bid evaluation consisted of three components:

- Stage 1 eligibility and threshold evaluation;
- Stage 2 quantitative and qualitative evaluation;
- Stage 3 evaluation.

This section of the report addresses the Evaluation Team’s evaluation of proposals at each stage of the evaluation process.

1. Threshold Evaluation; Evaluation Team Questions to Bidders

The Evaluation Team conducted a preliminary analysis of bids regarding whether they met eligibility and threshold requirements. Also, the Evaluation Team assessed the extent to which clarification was needed or desired for the bids with respect to the threshold evaluation or qualitative evaluation. In addition, TCR and the Evaluation Team assessed whether additional or clarified information was needed to assist TCR in conducting the quantitative evaluation. This led the Evaluation Team to send letters

seeking clarification or additional information from both bidders. This was consistent with the RFP provisions which allowed the Evaluation Team to permit bidders to cure deficiencies in their bids.

During any stage of the process, if the Evaluation Team determines that any proposal is deficient and missing applicable information, the Evaluation Team may, at its discretion, notify the respective bidder, and provide that bidder a reasonable opportunity to cure the deficiency and/or supply the missing information.⁵⁵

One issue raised by the Evaluation Team pertained to the adequacy of bid fees [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵⁶ In response, [REDACTED] paid the required bid fee.

With respect to [REDACTED], the Evaluation Team asked the bidders to confirm that their proposals to build out the full proposed projects beyond the amount of their proposed power sales to the EDCs were not contingent on their ability to sell the incremental amounts under suitable power purchase agreements to third parties. Both bidders provided the requested confirmations. This was important for the quantitative evaluation of the bids.

Also, for [REDACTED], Mayflower was asked about the expected energy deliveries from the Round 2 PPAs, with and without the contemplated amendments associated with shifting the delivery point to Brayton Point, along with expected commercial operation dates. Similarly, these questions were asked in connection with the quantitative evaluation.

Mayflower was also asked what provisions of the Round 2 PPAs it proposed to amend in connection with its [REDACTED]
[REDACTED]. Mayflower was also asked whether its [REDACTED] proposals were conditioned on DPU approval of amendments to the Round 2 PPAs, [REDACTED]
[REDACTED].

The Evaluation Team, after review, did not find that any of the bids failed to satisfy RFP threshold requirements. The evaluation proceeded to Stage 2.

⁵⁵ RFP section 2.1.

⁵⁶ See RFP Sections 1.10 and 2.2.1 3.

2. Stage 2 Quantitative and Qualitative Evaluation

a. Quantitative Evaluation

In implementing the quantitative evaluation framework, the Evaluation Team and TCR, the Evaluation Team's consultant, addressed two types of issues: (a) generic modifications based on perceived shortcomings with the quantitative evaluation protocol; and (b) issues arising from application of the evaluation framework to specific bids.

The first generic modification (applying to the evaluation of all bids) was to the winter fuel switching methodology (Attachment C to the Stage 2 Quantitative Evaluation Protocol) which imposes a daily winter period cap on natural gas plants operating on natural gas, simulating the impact of natural gas pipeline constraints. Once the limit is reached, generation is shifted in the modeling to natural gas plants using oil as a fuel and/or to other non-natural gas-based generation. An initial daily burn limit of 929,000 MMBtu/day was derived based on the analysis from 83C Round 2. However, on examination, this produced a significantly higher amount of fuel switching than was expected or appeared reasonable. TCR then recalculated the limit based on running the 83C Round 3 model for four representative years using an approximate target of 11 days of fuel switching per year and an assumption of no increased gas pipeline capacity, resulting in an increased gas cap in most years of 1,200,000 MMBtu/day. The methodology, which was approved by the Evaluation Team, is described in more detail in TCR's Report, especially Appendix C.2 (Protocol Addendum).

Second, the evaluation protocol provides a method for calculating the indirect benefits associated with the reduction of RPS obligation costs accruing to the EDCs' customers resulting from the purchase of RECs under a specific project proposal. That method is based on the difference between the market price of RECs in the base case minus the market price of RECs in the proposal case multiplied by the quantity of Class 1 RECs required to be purchased by the EDCs (minus previously-contracted RECs and RECs to be purchased under the proposal being evaluated). As a result of changes to the RPS regulations enacted since 83C Round 2, which reduced the Alternative Compliance Payment ("ACP") to \$40/MWh,⁵⁷ it was forecast that RPS obligations would be met by a combination of REC purchases and ACP payments, rather than REC purchases alone. This created the situation, not encompassed in the Stage 3 evaluation protocol, that for some years and some amounts in a proposal case, REC purchases could be replacing ACP payments. Accordingly, with the approval of the Evaluation Team, the methodology for calculating indirect RPS/CEC benefits was modified to take into consideration and quantify the difference between ACP payments and REC purchase prices, where applicable. Again, this is more fully explained in Appendix C.2 of TCR's report.

⁵⁷ See 225 CMR 14.08(3)2, <https://www.mass.gov/doc/225-cmr-14-renewable-energy-portfolio-standard-rps-class-i/download>.

The IE was satisfied with both of these generic modifications to the quantitative evaluation protocol.

There were also issues addressed by the Evaluation Team involving the quantitative evaluation of certain Commonwealth Wind and Mayflower Wind bids.

The Commonwealth Wind 1,232 MW bid involved two alternative delivery point scenarios: (a) delivery of the entire 1,232 MW to the proposed West Barnstable delivery point (100% West Barnstable Scenario”); and (b) delivery of 827 MW to West Barnstable with delivery of 405 MW to the proposed Acushnet delivery point (“Acushnet Backup Scenario”). The Acushnet delivery point was a backup if Commonwealth Wind was not able to include its [REDACTED] in the [REDACTED] Cape Cod cluster,

[REDACTED]. The Evaluation Team decided to evaluate both delivery scenarios as part of Commonwealth Wind’s 1,232 MW bid, which was appropriate because the EDCs would have no control over which interconnection/delivery point scenario would be utilized.

The issue was that for the scenario where all 1,232 MW would be delivered to West Barnstable (as proposed by Commonwealth Wind) the Quantitative Evaluation Protocol did not address how such a bid should be evaluated. At a quantitative evaluation team meeting, the Evaluation Team decided to [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

After reconsidering the decision at the IE’s suggestion, the Evaluation Team confirmed its decision on how to conduct the quantitative evaluation of the Commonwealth Wind 1,232 MW proposal. The IE found the decision to be acceptable and appreciated the consideration given to the issue.

The Stage 2 Quantitative Evaluation Protocol includes a provision that any differences in prices or emissions that occur prior to a proposed in-service date of a proposal are not to be considered in the evaluation on the basis that they are to be considered as modeling “noise” and not the result of the proposed project.⁵⁸ However, the Mayflower [REDACTED] were proposing or planning in-service dates for 83 C Round 2 project phases to be delivered to Brayton Point that were later than the in-service dates assumed by the Evaluation Team in the base case that were to be delivered to Cape Cod. Soon after the bids were received, TCR pointed out to the Evaluation Team that the standard evaluation

⁵⁸ Section 6.D.

under the Quantitative Evaluation Protocol did not quantify the indirect impacts (including on energy and REC prices and on GHG contributions) associated with the “delay” caused by the proposal. TCR proposed, and the Evaluation Team agreed, that an adjusted evaluation be used for these bids that would incorporate the indirect impacts occurring prior to the proposed in-service dates of the Mayflower [REDACTED] proposals. TCR would also report the unadjusted results.

When the evaluation was conducted for these bids, the Evaluation Team [REDACTED] [REDACTED]. The IE suggested to the Evaluation Team that it explore the underlying assumption with respect to the adjusted methodology, that the Mayflower proposals were likely to cause a delay in the in-service dates.

The in-service (COD) dates for Mayflower Phase 1 and Phase 2 in the base case were premised on the Guaranteed Commercial Operation Dates in the Round 2 PPAs, as adjusted for the delay in obtaining regulatory approval from the Department based on the operative provisions of the Round 2 PPAs. These CODs were February 2026 for Phase 1 and June 2026 for Phase 2. Mayflower’s [REDACTED] proposals had in-service dates that were approximately [REDACTED] months later. However, Mayflower had indicated in their bid and in response to the Evaluation Team’s letter requests, that the [REDACTED] [REDACTED].⁵⁹ More importantly, Mayflower indicated that the interconnection process [REDACTED] [REDACTED].⁶⁰ Of note, Mayflower had the right under the Round 2 PPAs to extend the Guaranteed Commercial Operation Dates for 24 months by posting additional security.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Mayflower’s proposed or planned interconnection to Brayton Point appeared relatively straightforward by comparison, without the uncertainty associated with the delivery to Cape Cod. In this context, the IE suggested that the Evaluation Team give consideration to using the unadjusted Mayflower results in the evaluation since, [REDACTED]

⁵⁹ See Mayflower response to question 3 in October 12, 2021 letter to the Evaluation Team.

⁶⁰ See Mayflower response to question 4 in October 12, 2021 letter to the Evaluation Team.

[REDACTED]
[REDACTED]

██████████ there may not be any delay caused by the Mayflower ██████████ bids.

The matter was discussed by the Evaluation Team from a number of perspectives. The Evaluation Team decided that the unadjusted (standard) method would be used as the “default” runs to be used in Stage 2 and Stage 3 but the adjusted results would also be provided for the Stage 3 evaluation and could be considered in that process as deemed appropriate by Evaluation Team members (likely, as a sensitivity analysis).

b. Qualitative Evaluation

Following initial meetings primarily focused on whether the bids satisfied threshold requirements, members of the Qualitative Evaluation Committee and the IE reviewed and scored the qualitative aspects of the proposals. Meetings were held to discuss scores, and the basis for scoring, for each project proposal within each evaluation criterion. The Evaluation Team sought and obtained external expert assistance in performing its review. The Qualitative Evaluation Committee was able to ask non-project-specific questions to Massachusetts Clean Energy Center personnel on a conference call to obtain better industry knowledge on certain subjects that were helpful to the qualitative evaluation. The Evaluation Team asked ISO-NE representatives questions pertaining to the interconnection process relative to evaluation of the bids and received informative responses. The Commonwealth’s Executive Office of Housing and Economic Development participated in review of the bids related to economic development benefits.⁶²

With two exceptions, consensus was reached on the evaluation of each of the different project proposals—whether within each category, the proposal should be evaluated as being Superior, Highly Preferable (if applicable), Preferable or Meets Minimum Standards. Toward the end of the qualitative review process, the Qualitative Evaluation Committee addressed the category of ██████████
██████████. With regard to the Mayflower ██████████, Eversource argued strenuously that these bids should receive the minimum score, largely due to perceived regulatory risks associated with amendments to the Round 2 PPAs and associated DPU approval. Specifically, the risks were that the DPU might not grant approval to the amendments to the Round 2 contracts because they were included in the Round 3 bids, the regulatory process would be substantially delayed or that one or more third parties would challenge DPU approval of the amendments in court. The other members of the Evaluation Team did not feel that those considerations were relevant to the particular qualitative score at issue or were at least not significant enough to factor into the scoring. Subsequently, the Evaluation Team agreed that the ██████████ would receive a ██████████ ranking and that the regulatory risk issue would be addressed in Stage 3 of the evaluation process as part of the

⁶² Eversource and Unitil also retained CD Smith to assist them in the qualitative evaluation of bids.

Because the proposal for delivery at West Barnstable, which was part of the Cape Cod Cluster study, was [REDACTED] the Evaluation Team gave [REDACTED]. Since there was one 1,232 MW bid, with two delivery options, which the EDCs would not control, the issue was how to develop a single qualitative score for the bid. The IE had suggested that the Evaluation Team develop a composite score, which presumably would be somewhere in between the scores for the two delivery scenarios. DOER initiated a discussion by which some intermediate value could be derived. However, the Evaluation Team was not comfortable with the composite score approach.⁶⁶

National Grid, Unitil and DOER decided to use the overall qualitative score for the 100% West Barnstable scenario as a proxy for the following reasons:

- (a) West Barnstable is the primary interconnection location proposed by the bidder,
- (b) having a back-up interconnection location is a desirable feature,
- (c) because the [REDACTED]
[REDACTED]
[REDACTED], and
- (d) if used as the proxy for the qualitative score for the 1232 MW bid, the qualitative evaluation of the Backup Delivery Proposal would not add any additional value to the bid [REDACTED]
[REDACTED].

Eversource decided to use the qualitative score for the Backup Delivery Proposal as the proxy, based on the reasoning that the likelihood of Commonwealth Wind being able to secure interconnection for the full 1232 MW through the ISO-NE Cape Cod Cluster study process was low based on information known at the time. Under the circumstances, the IE found the split Stage 2 determinations to be acceptable. There was agreement that the risks and potential benefits and costs associated with the Commonwealth Wind 1232 MW bid should be further considered in Stage Three of the evaluation process, where among other things, the bid would be considered as part of a portfolio.

The [REDACTED] bids scored [REDACTED] than the [REDACTED] bids in terms of economic development benefits, primarily because of agreements [REDACTED] had in place (not

⁶⁶ The Qualitative Evaluation Protocol did not address how the Evaluation Team should score a bid with alternative delivery points, so this was a matter of first impression for the Evaluation Team.

necessarily binding) that would enhance employment opportunities and substantially benefit environmental justice communities.

Overall, the [REDACTED] had the highest qualitative score with the [REDACTED] [REDACTED]. The [REDACTED] MW bid received [REDACTED] [REDACTED].

c. Stage 2 Combined Score

Because of the different qualitative scores for the Commonwealth Wind bids, the Stage 2 rank order [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The Stage 2 evaluations are summarized in Appendix A.1 and Appendix A.2 to the TCR Report.

In preparation for Stage 3, the Evaluation Team developed a number of portfolios with a maximum of approximately 1,600 MW, the procurement target.⁶⁷

d. Eversource Proposal to Disqualify Mayflower [REDACTED] Bids and Mayflower Responses to Evaluation Team Questions

With the Stage 2 evaluation effectively completed and with the Stage 3 evaluation about to be conducted, Eversource circulated a legal memo from two lawyers at Keegan Werlin LLP (“Eversource Memo”), that concluded that the Mayflower [REDACTED] were “improper, non-conforming bids and should be rejected without further review” because they are “contingent upon modification of pre-existing, Department-approved contracts.”⁶⁸ Based on this memo, Eversource took the position at the next day’s Steering Committee meeting that the Mayflower [REDACTED] Bids be rejected without further evaluation. This was only eight days before the scheduled date by which the EDCs would select the winning bidder(s) or failing unanimity, the DOER would make the decision, after consulting with the IE, two days later, based on the schedule. Other members of the Evaluation Team asked for more time to consider the issues raised in the Eversource Memo. This was almost two months after the

⁶⁷ This included [REDACTED] where the maximum procurement would be approximately 1,685 MW, which was 85 MW in excess of the 1,600 MW procurement target, a matter which the Evaluation Team decided needed additional review.

⁶⁸ Memo from Robert N. Werlin, Esq. and Steven Frias, Esq. to James Daly and Kerry Britland (both of Eversource) dated December 5, 2021, p. 1.

Evaluation Team had reviewed the bids for compliance with threshold requirements and had informally determined that no bid violated any threshold requirement.

Without giving more consideration to whether the Eversource Memo was meritorious or not, the Evaluation Team decided to draft questions for Mayflower as to whether any of its bids were contingent on amendment of the Round 2 PPAs. The key question and response was:

Q. If any of your proposals are selected, please explain any conditions or contingencies between the Round 2 contracts and Mayflower’s ability to negotiate, execute and perform under any resulting contracts from the current 83C Round 3 solicitation.

A. None.⁶⁹

Meanwhile, a week after receipt of the Eversource Memo, the IE circulated its assessment to the Evaluation Team. The IE’s assessment, the substance of which is addressed in Section IV.B.4 of this report, was that the Mayflower [REDACTED] bids did not warrant disqualification regardless of whether or not the bids are considered “contingent” on modifying the Round 2 PPAs, because they did not violate any RFP threshold requirement, among other reasons.

3. Stage 3 Evaluation

With a maximum procurement target of 1,600 MW and bids with maximum sales to the EDCs of 1,200 MW, there were opportunities to consider portfolios of bids as well as individual bids in Stage 3 of the evaluation. As part of that evaluation, various scenarios were also considered. The portfolios developed for consideration were as follows:

- Portfolio 1: Commonwealth Wind 1,232 MW bid (1,200 MW EDC purchase) + Mayflower Wind 480 MW B2 bid (400 MW EDC purchase)
 - [REDACTED]
- Portfolio 2: [REDACTED]
- Portfolio 3: [REDACTED]
- Portfolio 4: [REDACTED]
- Portfolio 5: [REDACTED]
- Portfolio 6: [REDACTED]

⁶⁹ Mayflower response 1.b in letter dated December 10, 2021.

Portfolio [REDACTED] was added as a portfolio run to address [REDACTED].

Portfolio 1, [REDACTED] are scenarios of the same combined Commonwealth Wind 1,232 MW and Mayflower B2 bids, with a combined purchase of 1,600 MW.

Portfolio 3 had a combined purchase of [REDACTED] MW. [REDACTED] had combined purchases of approximately 1,685 MW [REDACTED].

The Evaluation Team considered the appropriateness of purchasing approximately 85 MW above the procurement target. After reviewing the portfolio results and a legal memorandum regarding regulatory issues associated with combined purchases above the procurement target, the Evaluation Team decided not to consider the portfolios that would involve significant purchases above the procurement target.

Also considered in Stage 3 were the individual bids from Stage 2, especially the more highly rated [REDACTED] bids.

Portfolio 1 was the highest-ranking portfolio/bid, both under the National Grid/Unitil/DOER and Eversource scoring, [REDACTED]

[REDACTED] Summaries of the Stage 3 portfolio evaluation are in Appendix B.1 and Appendix B.2 to TCR's report.

D. Bid Selection

The RFP target date for bid selection was December 17, 2021. A Steering Committee meeting was held on December 14, 2021 to have a preliminary discussion on bid selection. At the beginning of the meeting, DOER stated its desire to maximize GHG reductions through the procurement to help meet the 2030 GWSA target of 50% emissions reductions. It was also looking at the interaction with existing contracts. At an earlier meeting, DOER had spoken in terms of the benefits of "derisking" the Mayflower Round 2 PPAs (this referred to DOER's view that moving the delivery point from Cape Cod to Brayton Point for the approximate 800 MW contracted in Round 2 in connection with the Mayflower [REDACTED] B2 bid would significantly reduce the interconnection and performance risk associated with the Round 2 PPAs).

The EDCs were then asked to summarize their preliminary thoughts on bid selection. National Grid stated that it favored Portfolio 1—selection of the Commonwealth Wind 1,232 MW bid (1,200 MW purchase) and the Mayflower Wind B2 bid, a 400 MW purchase from a 480 MW project. Unitil stated that its preliminary thinking was in favor of the Commonwealth Wind 1,232 MW bid on a stand-alone



basis. Eversource was non-committal, indicating that it had concerns about viability issues and was still looking at the economic results. At the same meeting, the IE summarized its assessment of the Eversource “contingent bid” memo. No Evaluation Team member asked questions or spoke on that topic.

The Steering Committee adjourned until the following day, when the EDCs would be expected to name their selections. If the EDCs were unanimous, their joint selection would be binding. If they were not unanimous, they would be asked to put their selections, along with the supporting rationale, in writing the following day. DOER would then make the final decision, after consulting with the IE.

At the December 15 Steering Committee meeting, Eversource was asked to state its selection decision. Eversource said it preferred to wait until National Grid and Unitil made their selection decisions. National Grid stated that its selection was Portfolio 1, the Commonwealth Wind 1,232 MW/Mayflower B2 combination. Unitil also stated that Portfolio 1 was its selection. It was indicated that the EDCs had met after the Steering Committee meeting the previous day to see whether they could come to a joint decision on selection.

Eversource then stated that it too was selecting Portfolio 1. Eversource stated that it was willing to support the Mayflower bid but had concerns about delays if the Mayflower agreements were challenged in the regulatory process. Eversource stated that Mayflower had said (in response to an Evaluation Team question) that the Round 3 PPAs were not contingent on amendments to the Round 2 PPA amendments. Therefore, Eversource stated that the Round 3 PPAs would be negotiated and regulatory filings for approval made before there would even be a start to negotiating the Round 2 PPA amendments. These processes were totally separate, Eversource stated.

The IE asked whether, based on reading Mayflower’s bid and responses to earlier and more recent Evaluation Team questions, their responses could be construed to allow negotiations of the Round 3 contract and the Round 2 amendments in parallel as long as they were not conditioned on one another. Eversource stated that it was not their understanding, and that they would “hold Mayflower to it,” i.e., that the agreements must be negotiated separately because Mayflower had stated that there were no conditions or contingencies between the Round 2 PPA amendments and the Round 3 PPAs. National Grid also asked Eversource a similar question about parallel path negotiations not being contingent where the agreements would not be specifically conditioned on the other.

After some discussion, the Evaluation Team discussed the drafting of selection letters and the details of public announcements. The following day, the senior Eversource representative circulated the following email to the Steering Committee and IE:

So we are all very clear on how to proceed. Eversource does not agree to issue the Mayflower letter unless there is agreement among the Evaluation Team that any negotiations (if proposed by Mayflower) to modify Round 2 PPAs do not commence until after the Round 3 PPA with

Mayflower is completed and filed at the DPU. So no parallel negotiations. This is in accordance with the recent responses by Mayflower.⁷⁰

Unitil agreed with Eversource's position. National Grid's response was more nuanced:

Provided the 83C Round 3 negotiations/contracts would not be conditioned or contingent upon the Round 2 contract amendments we expect Mayflower to propose, National Grid does not believe Mayflower responses of December 10th necessarily limit the timing for beginning the consideration of such amendments to after the Round 3 contract filing date. However, as time availability for parallel negotiations may be limited in any case, National Grid can agree with Eversource's position that commencement of negotiations on any Mayflower proposed Round 2 PPA amendments will not begin prior to the filing date of the Round 3 contracts at the MA D.P.U.

Selection letters were then issued to Commonwealth Wind and Mayflower Wind. The letter to Mayflower Wind did not address the EDCs' approach regarding negotiation of the Round 3 PPAs and Round 2 PPA amendments.

IV. Analysis of Solicitation, Bid Evaluation, and Selection Process

In this section of the report, we review the fairness and objectivity of the bid evaluation framework and the evaluation and selection of bids. We do this in the context of the 83C criteria of an "open, fair and transparent solicitation and bid selection process that is not unduly influenced by an affiliated company" and the FERC *Edgar-Allegheny* principles.

A. Fairness of the Bid Evaluation Framework

An important part of the RFP process is the evaluation framework that is described in the RFP and the detailed evaluation framework that is developed to implement the provisions of the RFP. Under the *Edgar-Allegheny* principles, there are two guidelines that are of particular applicability to this part of the solicitation process—product definition and evaluation.

In *Allegheny*, FERC stated with respect to the "product definition" guideline:

The product or products sought through the RFP should be defined in a manner that is clear and nondiscriminatory. The RFP should state all relevant aspects of the product or products sought.

⁷⁰ To be more precise, this email appeared to be directed to the Selection Team, the EDCs, rather than the Evaluation Team, which includes DOER. Because the EDCs acted unanimously, DOER's only role in selection was an advisory one.

An RFP should not be written to exclude products that can appropriately fill the issuing company's objectives. This is particularly important if such exclusions tend to favor affiliates.⁷¹

Another of the four *Allegheny* criteria is:

Evaluation: evaluation criteria should be standardized and applied equally. . . .

To fulfill the evaluation principle, RFPs should clearly specify the price and nonprice criteria under which the bids are evaluated.⁷²

In this section of the report, the evaluation framework set forth in the RFP and the detailed evaluation framework developed after the RFP was issued will be analyzed in terms of (a) fairness and non-discrimination toward different types of bids and non-favoritism toward affiliates and (b) whether the detailed evaluation framework fairly implemented the more general provisions of the RFP.

In our Independent Evaluator Report on the Proposed Timetable and Method of Solicitation and Solicitation Process Under Section 83C of the Green Communities Act—Round 3 (March 15, 2021) in D.P.U. 21-40 ("83C Round 3 RFP Design Report"), the IE reviewed the specificity and fairness of the products solicited in the RFP and the general evaluation criteria for the evaluation of bids set forth in the RFP. Key issues were the RFP provisions regarding allowable bids, with allowable bids ranging from 200 MW to 1,600 MW, the maximum procurement target of 1,600 MW, the price cap to be applied based on the 83C legislation and the results of the Round 2 solicitation, the fairness of the RFP terms, the suitability of certain provisions proposed for the pro forma PPAs, and the proposed RFP schedule.

Unlike the first two 83C rounds, there was no required 400 MW bid. A new requirement was added: bidders were required to conduct an additional deliverability constraint analysis pursuant to the provisions of RFP Section 2.2.1.8.1 and Appendix I. Another—the minimum REC price as a proportion of the total price bid—was increased from 5 percent to 20 percent. Other than that, the minimum requirements for a bid (eligibility, threshold, and other minimum requirements) in Stage 1 of the 83C Round 3 evaluation process, were unchanged from 83C Round 2.

There were several changes to the Stage 2 evaluation criteria from Round 2:

- The quantitative evaluation framework was revised to incorporate the value of Clean Peak Energy Credits, due to the passage of the Clean Peak Standard since the last solicitation;
- The qualitative evaluation framework was modified in several respects:

⁷¹ 108 FERC ¶ 61,082 (2004) at 8.

⁷² 108 FERC ¶ 61,082 (2004) at 7, 8.

- The economic benefits category was revised to include evaluation of a bidder supplied DEI plan, that would include both a Workforce Diversity Plan and a Supplier Diversity Program Plan;
- More detailed environmental and socioeconomic impact criteria, including Environmental Justice Impacts;
- The weighting given to the qualitative evaluation was increased from 25 out of 100 points to 30 out of 100 points.

The Stage 3 evaluation criteria were relatively unchanged.

In our 83C Round 3 RFP Design Report, the IE opined that the proposed structure and terms and conditions of the RFP were fair and the RFP does not unduly favor Distribution Company affiliates.⁷³ The IE's conclusion in this report is unchanged.

The Evaluation Team devoted considerable time and effort to develop a detailed evaluation framework pursuant to the more general provisions set forth in the RFP. The Evaluation Team used the evaluation protocol and base case used in the second 83C solicitation as a starting point and made revisions to address the evaluation required under the third round 83C RFP.

In order to compare different sized bids, the proposal case would be based on 1,600 MW of offshore wind generation, the maximum bid size—either (a) a proposed 1,600 MW bid or (b) a combination of the proposed quantity for a bid less than 1,600 MW in size and a proxy tranche (or tranches) such that the total would equal 1,600 MW. The base case does not assume any Offshore Wind Energy generation to be procured from this solicitation or any subsequent solicitations. No additional transmission upgrades associated with proxy units were assumed. Any potential constraints in transmission are avoided, to the extent possible, by distributing the incremental energy across regional load centers.

The cost of the proxy unit(s) were determined to be the same as that of the bid unit(s) minus \$.01/MWh. The generation profile and capacity factors associated with the proxy units were based on representative offshore wind energy generation units. These were changes from the prior rounds where the cost and capacity factors for proxy generation was based on the lowest cost bid minus \$.01/MWh. The Evaluation Team made this modification to provide a leveled cost for the proxy generation that was essentially equivalent to that of the bid generation, which would facilitate a more realistic comparison in the Stage 3 evaluation.⁷⁴

⁷³ 83C Round 3 RFP Design Report at 18-20.

⁷⁴ The \$.01/MWh reduction from the bid price for the cost of the proxy generation was based on the 83C price cap, which requires that a bid in a future solicitation be "less than" the cost of a winning bid incorporated in a PPA.



As indicated previously, the Evaluation Team addressed a special situation or situations that could arise with respect to bids seeking to deliver to Cape Cod interconnection points. The Base Case assumed that all existing EDC contracts are modeled at the POI listed in their respective contracts, accounting for known updates from the EDCs, project developers, and ISO-NE. Therefore, the entire approximately 800 MW from the 83C Round 2 contracts was modeled at the Falmouth 345 kV bus. However, due to the ongoing ISO-NE first Cape Cod Cluster Study process, certain potential bids could have priority to interconnection capacity ahead of the 83C Round 2 contract generation. If a bid with priority interconnection capacity is large enough in size such that the holder of the Round 2 PPAs could not utilize the full approximate 800 MW interconnection capacity using its queue position in the first Cape Cod cluster, then the amount of the shortfall (in such interconnection capacity) would be removed from the Falmouth 345 kV location and spread across all load centers in Southeastern Massachusetts (SEMA) and Rhode Island (RI). The Evaluation Team agreed that this would allow for a reasonable evaluation given the particular context. The IE concurred and concurs in the reasonableness of this approach to address what in effect could be a mismatch between base case assumptions and interconnection priorities with respect to Cape Cod points of interconnection.

Application of the Clean Peak Standard (“CPS”) to the quantitative evaluation was new to this solicitation. Because of the CPS rule that limited awarding Clean Peak Energy Certificates (“CPECs”) to contracted generation of 1 CPEC for every 100 MWh produced,⁷⁵ the value of CPECs for bid generation was expected to be small. In addition, there were significant issues in modeling the CPEC market, which is limited to Massachusetts. Accordingly, CPECs were valued based on the published ACPs for CPECs to be used in the direct benefit analysis. Indirect impacts on CPEC market prices were not included in the indirect benefit analysis because they were not viewed as being reliably quantifiable. Similarly, the indirect impacts on capacity values and ancillary service benefits were also not included in the quantitative evaluation, as in the past 83C solicitations, for the same reason.

The Evaluation Team considered whether to change the allocation method of quantitative points from that used in Round 2 based on the increase in the qualitative weighting in the RFP from 25 out of 100 points to 30 out of 100 points. One alternative was to maintain the same method from Round 2, with the maximum number of quantitative points, in this case, 70 points. The bid with the most net benefits in levelized \$/MWh would receive 70 points, and other the points for other bids would be calculated by subtracting 3 points for each \$1.00/levelized net benefit per MWh that the bid was less favorable than that of the top bid. The other alternative considered was to change the “subtractor” from 3 to 2.33 for each \$1.00/MWh that the bid in question was less than the top bid. The basis for that approach was that the prior 75/25 quantitative/qualitative ratio was 3 to 1, while the 70/30 ratio is 2.33 to 1.0. Adjusting the ratio in this manner would have given even more weight to the qualitative evaluation than was already involved in increasing the maximum qualitative points from 25 to 30. The Evaluation Team decided to use the first alternative based on its judgment that an additional increase in the qualitative

⁷⁵ 225 CMR 21.05(6)(e).

weighting and a decrease in the effect of the quantitative evaluation was not warranted. The IE's view is that this is a matter of judgment for the Evaluation Team and that its decision was a reasonable one.

The IE also found the changes made to the quantitative evaluation framework after the bids were submitted to be reasonable. One simply involved a correction to the calculation of indirect RPS/CES impacts to take into consideration that a proposal case could result in Class I RECs being purchased instead of ACPs being paid. The other involved changing the winter fuel switching methodology to provide a more reasonable amount of winter fuel switching frequencies in the analysis. Neither change would be expected to have a significant impact on how bids would be evaluated against each other in the quantitative evaluation.

In general, the IE found the measures of direct benefits and costs and indirect benefits and costs as well as the modeling approach and predetermined scaling methodology described in the quantitative evaluation protocol to be appropriate for this solicitation and consistent with the terms of the RFP. Additionally, the IE found that the base case developed for use in the evaluation to be fair and reasonable and not preferential to any EDC affiliate or discriminatory toward any bidder.

The IE found the detailed qualitative evaluation framework—which addressed indicia of project viability, such as commercial operation date certainty, interconnection status and viability, site status, permitting and environmental and socioeconomic impacts from siting (including Environmental Justice impacts), as well as economic benefits to the Commonwealth (including a DEI plan)—to be reasonably based on the provisions of the RFP, and consistent with the statutory intent of 83C. The Evaluation Team members spent considerable time to reach consensus, which they were successful in doing in defining the different qualitative evaluation categories and describing the scoring categories within each evaluation category—Superior, Highly Preferable (for some evaluation categories), Preferable, and Meets Minimum Standards. In addition, the Evaluation Team was able to agree on the maximum assignment of points to each evaluation category as well as the assignment of intermediate scores. The IE found the Evaluation Team's qualitative evaluation framework to be fair, not preferential to any EDC affiliate and not discriminatory toward any bidder.

The Stage 3 evaluation protocol followed the RFP provisions applicable to Stage 3 and was similar to that of the second 83C solicitation. A significant change from the second solicitation was an expansion of consideration of policy goals, to be directed by DOER, which included, in addition to GWSA goals: the availability of future generation bids (due to the availability of offshore wind lease areas and/or cost-effective interconnection locations and competition from procurements from other states); commercial viability of projects that are supported by previously executed Section 83C contracts and potential impacts of proposals' queue positions; and the efficient and cost-effective use of available lease area(s), interconnection point(s), and transmission cabling associated with the production and delivery of the Offshore Wind Energy Generation.



The resulting evaluation framework was standardized for application to all proposals and potential portfolios of proposals and, in the IE's opinion, was fair and objective toward all proposals and not unduly influenced by the fact that a potential bidder was an affiliate of an EDC.

Despite the Evaluation Team's best efforts, there were bids with characteristics that were not anticipated and involved efforts of the Evaluation Team to determine how to evaluate these bids. These matters are addressed in the next section of this report.

B. Fairness of the Bid Evaluation and Selection Process

1. Threshold Evaluation

Following the receipt of bids, the Qualitative Evaluation Committee reviewed the bids to determine whether there was any failure to meet eligibility and threshold requirements.

As indicated previously, there were only two bidders and six bids in this solicitation. In this context, the IE cautioned the Evaluation Team that it would need to be very clear that a proposal did not meet threshold requirements in order for a bid to be disqualified. This was the same guidance that the IE gave in the two prior 83C solicitations.⁷⁶

The Evaluation Team, with the IE's input, posed a number of clarification questions to bidders, with questions to one bidder regarding their compliance with bid fee requirements for proposals with proposed alternate points of interconnection (RFP sections 1.10 and 2.2.1.3). After reviewing the bidder responses (which included submission of the additional bid fee), the Evaluation Team informally determined that no threshold RFP requirements had been violated. The IE concurred.

At the end of the Stage 2 evaluation and the beginning of the Stage 3 evaluation, Eversource, based on a legal memo it provided, asserted that the Mayflower [REDACTED] bids should be disqualified as "improper contingent bids." This was more than 11 weeks after the bids were submitted and approximately two months after the threshold requirement assessment was conducted. To address the Eversource effort and the resulting impacts, we address the effect on the fairness of the solicitation process later in this section of the report.

⁷⁶ See Independent Evaluation Report on the Solicitation, Evaluation, and Bid Selection Process Under Section 83C of the Green Communities Act, D.P.U. 18-76/18-77/18-78 (Aug. 3, 2018) ("83C Round 1 IE Report") at 38, <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9685209>, and Independent Evaluation Report on the Solicitation, Evaluation, and Bid Selection Process Under Section 83C of the Green Communities Act—Round 2, D.P.U. 20-16/20-17/20-18 (Feb.14, 2020) ("83C Round 2 IE Report") at 48. <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/11824751>.

2. Stage 2 Evaluation

Key to evaluation and bid selection is whether the evaluation framework was properly followed and applied, with any departures appropriately justified, in the evaluation of specific proposals and done so fairly and objectively and on a non-preferential and non-discriminatory basis. This applies for the quantitative analysis, the qualitative evaluation, the Stage 3 evaluation process, and bid selection.

Of the six bids submitted by the two bidders, [REDACTED] of the bids raised special issues not anticipated in the evaluation protocols and required special treatment by the Evaluation Team. The Commonwealth Wind 1,232 MW bid raised issues for the quantitative evaluation, the qualitative evaluation, and the Stage 3 evaluation.

The Acushnet Backup (827 MW to be delivered to West Barnstable and 405 MW to be delivered to Acushnet) was straightforward in terms of how it would be evaluated under the Quantitative Evaluation Protocol. [REDACTED]

[REDACTED] The evaluation protocol called for evaluating that part of the bid for delivery to West Barnstable, [REDACTED]

[REDACTED] The other 405 MW to be delivered to Acushnet via a separate transmission cable would be evaluated at the Acushnet POI ([REDACTED]).

The issue arose with respect to the additional [REDACTED] 405 MW at West Barnstable [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Under these circumstances, the Quantitative Evaluation Protocol did not address how to evaluate the bid.

The Evaluation Team decided to evaluate the Acushnet Backup scenario (which was straightforward under the Quantitative Evaluation Protocol) in Stage 2 [REDACTED]
[REDACTED]. In Stage 3 portfolio evaluations, the 100% West Barnstable alternative would be evaluated with the Mayflower [REDACTED] B2 bid since they would or could involve Mayflower moving its Round 2 contracts from Cape Cod to Brayton Point. The IE found this approach acceptable.⁷⁷

⁷⁷The issue with the 100% West Barnstable scenario in the Stage 2 evaluation was that it would create [REDACTED] MW to be delivered to Cape Cod under the first Cape Cod Cluster, which has a total capacity of approximately 1,200 MW. While [REDACTED]

The qualitative evaluation of the Commonwealth Wind 1,232 MW bid also presented challenges for the Evaluation Team. Because most of the qualitative evaluation criteria involved characteristics pertaining to the proposed transmission delivery systems, the Evaluation Team decided to evaluate separately the 100% West Barnstable scenario and the Acushnet Backup scenario. Since the West Barnstable POI was [REDACTED] in terms of the interconnection process, permitting, and environmental assessment than the Acushnet POI, the Evaluation Team evaluated the 100% West Barnstable scenario as being [REDACTED] to the Acushnet Backup. The question was how to assign a single qualitative score to the 1,232 MW bid given that there were two interconnection scenarios where the decision regarding which one to pursue was outside the control of the EDCs. As previously indicated, the Evaluation Team was not comfortable in assigning a composite score for the 1,232 MW bid. Instead, National Grid, DOER and Unitil assigned the [REDACTED] 100% West Barnstable scenario score as a proxy for the 1,232 MW bid, primarily because they believed that it better reflected the qualitative attributes and risks associated with Commonwealth Wind’s interconnection plan, including having a backup plan.

Eversource preferred to use the qualitative score for the Acushnet Backup scenario as the proxy, based on the reasoning that the likelihood [REDACTED] being able to secure interconnection for the full 1232 MW in the ISO-NE First Cape Cod Cluster Study was low based on information known at the time.

The IE thought there was a reasonable basis for both perspectives and given the differences in opinion, the IE accepted the split determinations of the Evaluation Team for the qualitative score for this bid.⁷⁸

As indicated previously, there were also challenges associated with quantitative evaluation of certain of the Mayflower bids.⁷⁹ The Quantitative Evaluation Protocol did not specifically address proposals or plans to amend previously-entered PPAs, with different delivery points and with later CODs than assumed based on the contractual provisions of the existing PPAs.

TCR proposed to evaluate these bids by [REDACTED], as identified in the Quantitative Evaluation Protocol. (To eliminate modeling “noise” in the evaluation, the Quantitative Evaluation Protocol called for excluding results prior to the proposed COD of a proposal.)

[REDACTED] (a possible approach suggested by the IE), the Evaluation Team was not satisfied with the credibility of that approach.

With regard to the Stage 3 evaluation, evaluation of the Commonwealth Wind 1232 MW/Mayflower 400 MW portfolios is most sensible because the Mayflower proposal or plan called for moving the delivery point of the Round 2 PPAs from Falmouth/Bourne to Brayton Point,

[REDACTED]
[REDACTED]
[REDACTED]

⁷⁸ The IE’s only other practical alternative was to ask the Evaluation Team to give the matter more consideration, but this alternative seemed highly unlikely to be fruitful and there was limited time remaining to complete the evaluation under the schedule set forth in the RFP.

⁷⁹ See Section III.C.2.a of this report.

Rather, TCR proposed to start the analysis based on the [REDACTED]. This would reflect the delay associated with the Mayflower proposals. TCR indicated that it would provide results both with and without the adjustment for delay. The Evaluation Team approved that approach.

Subsequently, when TCR produced the adjusted and unadjusted results, the impact of the “delay” was higher than many involved in the evaluation expected. Upon further review of the Mayflower proposal and responses to questions from the Evaluation Team, there was concern that the interconnection issues Mayflower was experiencing with the Cape Cod cluster process might cause at least similar delays compared to those associated with the proposal or plan to move the delivery point for the Round 2 PPAs to Brayton Point. [REDACTED]

Moreover, Mayflower had the right under the Round 2 PPAs to delay the CODs for 24 months (upon positing additional security). The Evaluation Team decided to use the standard metrics as the default in the Stage 2 and Stage 3 evaluation but decided to also include for the Stage 3 evaluation the results with the adjusted metrics.⁸¹ The IE was comfortable with that approach.

With regard to the qualitative evaluation, the Evaluation Team members disagreed in their evaluation regarding the [REDACTED] associated with the Mayflower [REDACTED] B2 bids.

[REDACTED] Other Evaluation Team members and the IE were skeptical and did not agree with Eversource’s assessment. This led to a compromise where Eversource agreed with the majority’s qualitative score, but the Evaluation Team agreed that this assessment did not include the regulatory risk issue associated with the Round 2 PPAs and that that matter would be addressed in Stage 3 of the evaluation. The IE concurred with this resolution, acknowledging that the Stage 3 evaluation protocol allowed for

⁸¹ This reflected a desire to include the adjusted results as a sensitivity analysis and may also have reflected a difference of opinion on the matter among Evaluation Team members.

consideration of “Any risks, costs, or benefits to the Commonwealth’s customers that have not been fully captured in the Stage 2 evaluation.”⁸²

3. Stage 3 Evaluation and Selection

The Stage 3 evaluation consisted primarily of the preparation and assessment of different portfolios, as well as consideration of individual bids, that would result in portfolios and individual bids of up to 1,600 MW of EDC purchases. In addition, two portfolios representing bids of approximately 1,680 MW were also included for evaluation. At least one Evaluation Team member was not comfortable in making selections above the 1,600 MW procurement target (as may be adjusted slightly by up to one-half of the nameplate capacity of the bidders’ expected wind turbine size).⁸³ While another Evaluation Team member was willing to consider procuring a larger amount (and provided a legal memo to the Evaluation Team for its consideration on the topic), the larger sized portfolios did not evaluate as well as the 1,600 MW portfolio of the Commonwealth Wind 1,232 MW bid and the Mayflower B2 bid. Moreover, the analysis in Stage 3 allowed for consideration of different scenarios and different potential outcomes (for example, whether Commonwealth Wind would use the 100% West Barnstable interconnection route or the Acushnet Backup, and whether or not the Mayflower B/B2 bids would likely cause a delay (in reality) relative to the delivery of 800 MW under the Round 2 PPAs by switching the delivery point from Cape Cod to Brayton Point.

Moreover, DOER stated that it was important from its perspective that the 2030 goal of 50 percent reduction in GHG emissions be met and that it wanted to maximize the amount of GWSA reductions arising from this procurement, which may involve selecting a portfolio. DOER had also stated that its policy objectives would be advanced by “derisking” the Mayflower Round 2 projects.

Another benefit from selecting the Commonwealth Wind 1,232 MW bid and the Mayflower B2 bid as a portfolio was that [REDACTED]

[REDACTED]. If that were to eventuate, the viability of the Commonwealth Wind 1,232 MW bid would be enhanced and environmental impacts would be mitigated, since Commonwealth Wind would only have to build one transmission cabling system to an onshore interconnection point, rather than two (with the backup option [REDACTED]).

⁸² Stage 3 Evaluation Protocol, Section 4.g.

⁸³ See RFP Section 2.2.1.2 n. 14. The RFP allows individual proposals to exceed 1,600 MW by an amount not more than one-half of the nameplate capacity of the expected wind turbine size proposed by the bidder. Hence, a portfolio may exceed 1600 MW where the maximum contracted EDC purchases for individual bids selected are not more than one-half of the nameplate capacity of the expected wind turbine size proposed by the bidder.

While there were some difficult evaluation issues and it appeared that the Evaluation Team members had different perspectives, it is the IE's opinion that overall the evaluation of bids and the selection of the winning bids was fair and objective and consistent with the provisions and intent of the 83C Round 3 RFP and the evaluation protocols designed to implement the RFP.

The IE, however, had and has reservations about aspects of the process that led up to and included the EDCs' decision to condition their negotiations with Mayflower Wind to not negotiating the Round 2 PPA amendments before the negotiations for the Round 3 PPAs were completed.

4. Reservations Regarding Fairness of Certain Aspects of the Process

The IE's statutory role under 83C is to ensure that all bids are fairly evaluated and to provide in a report to the Department following execution of contracts "that summarizes and analyzes the solicitation and bid selection process" and provides "the independent evaluator's assessment of whether *all* bids were evaluated in a fair and objective manner." (emphasis added)⁸⁴ As indicated previously, the IE had concerns, which it expressed during the evaluation and selection process, regarding the evaluation of the Mayflower [REDACTED] bids and Eversource's role in the process. As indicated previously, a week before the scheduled selection date, Eversource sought to disqualify the Mayflower [REDACTED] bids based on a legal memo that concluded that the Mayflower bids were non-conforming bids because they were contingent on modification of existing Department-approved contracts. If accepted, this would have resulted in the disqualification of [REDACTED] of the six bids and [REDACTED] the six portfolios under consideration. Eversource's affiliate, Bay State Wind, did not bid in this solicitation, but is a potential bidder in a future solicitation. This presented multiple issues:

1. The effort sought to throw out bids that were found earlier in the process, albeit informally, to have satisfied the RFP's threshold requirements;
2. The effort sought to severely limit competition in the RFP and was in alignment with the competitive interests of Eversource's affiliate;
3. The issue was not raised earlier in the process, when it should have been raised, giving little time for the Evaluation Team and the IE to evaluate the matter.

Given the foregoing, the IE reviewed the memo to assess whether Eversource's claim that the Mayflower bids were improper and non-conforming was meritorious. While the IE typically views many decisions in the evaluation and selection process based on a standard of reasonableness (even if the IE disagrees with the decision), the IE will take a very close look at efforts to disqualify or exclude bids,

⁸⁴ Section 83C of An Act Relative to Green Communities, St. 2008 c. 169 as amended by St. 2016 c. 188 § as further amended by Section 91 of Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap of Massachusetts Climate Policy and Sections 69 and 72 of Chapter 24 of the Acts of 2021 ("Section 83C" or "83C"). The IE's responsibilities are set forth in Section 83C(f).

especially when it is done at the behest of an Evaluation Team member that has an affiliate that would benefit by the elimination of a competitor. As FERC has stated in the *Allegheny* case:

An RFP should not be written to exclude products that can appropriately fill the issuing company's objectives. This is particularly important if such exclusions tend to favor affiliates.⁸⁵

This applies even more where the RFP did not exclude the bids in question and the Evaluation Team member whose competitive affiliate would benefit from such exclusion sought to do so after the fact, i.e., after bid submittal in the absence of any prohibition in the RFP.⁸⁶

Eversource did not point to any clear Department (or other) precedent on the issue under consideration or any provision of the 83C statute or the RFP that was clearly relevant. The issue was essentially one of first impression. So the question, as we understood it was, "what would the DPU do" (and, potentially, a

⁸⁵ *Allegheny Electric Supply, LLC*, 108 FERC ¶ 61,082, at 8 (2004).

⁸⁶ There were several reasons for the IE's concerns about Eversource's actions that went beyond the merits of its arguments:

- The nature of the memo and the manner in which Eversource sought to advance its position:
 - The memo was not written as an evenhanded assessment evaluating the pros and cons of the matter at hand; to the IE, it read as an advocacy piece;
 - This was especially surprising where the Eversource representatives asserted that they were simply concerned about managing a regulatory risk.
- Potential adverse impacts on Eversource's competitive affiliate, Bay State Wind:
 - Mayflower's use of the same interconnection point as Bay State Wind planned to use (Brayton Point) could make it more difficult for Bay State Wind to develop and permit their project, and could make their project evaluate less beneficially in a future solicitation because of potential lower LMPs due to prior contracts with Mayflower Wind;
 - After bid selection, the IE became aware of reporting (from 2019) that indicated possible constraints in permitting two sets of offshore wind transmission lines connecting to Brayton Point (the article references Anbaric, predecessor-in-interest to Mayflower, and Orsted, predecessor-in-interest to Bay State Wind). See <https://ecori.org/2019-6-17-offshore-wind-projects-growing-fast/>;
 - The more MW selected in this solicitation could lessen the opportunities for Bay State Wind in future solicitations;
- Eversource's past history of favoring an affiliate or acting in a manner that would improve an affiliate's future prospects:
 - In the 83D RFP process, the IE identified a variety of situations where the Eversource Evaluation Team took positions more favorable to its affiliate, at least initially, than other members of the Evaluation Team. Independent Evaluator Report on the Solicitation, Evaluation, Bid Selection and Contract Negotiation Process under Section 83D of the Green Communities Act (July 24, 2018, Revised August 7, 2018 ("83D IE Report")), pp. 27-28 and 35-36, <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9696829>;
 - In 83C Round 1, Eversource was the only Evaluation Team member that favored the lower-ranked 400 MW Vineyard Wind bid instead of the top-ranked 800 MW Vineyard Wind bid that was ultimately selected by DOER. 83C Round 1 IE Report, pp. 26-29.

Of historical note, the favoring of an affiliate over other generators by one of Eversource's predecessor companies, decades ago, led the FERC to enunciate standards to prevent affiliate abuse in the seminal case of *Boston Edison Electric Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991).

court on appeal). The IE did not view the conclusions of the memo as being supported by the evaluation behind it. Moreover, the IE's view was that it would be highly unlikely that the Department would override the provisions of the RFP that were applicable—the threshold requirements (including minimum and eligibility requirements)—and not approve the Mayflower [REDACTED] B2 bid because the proposal included or involved amendments to the Mayflower Round 2 PPAs.

First, the RFP had undergone a stakeholder comment and public comment process and its issuance had been approved by the Department. As indicated previously, in all three 83C solicitations, the IE has given guidance to the Evaluation Team that it would need to be very clear that a proposal did not meet threshold requirements for a bid to be disqualified. There would be an even heavier burden where a party seeks to disqualify a bid based on a rationale that is not supported by any specific requirement or condition set forth in the RFP, as was the case here.

While Eversource referenced (a) the RFP rules against bidders changing their bids during the RFP process (Section 3.5) and (b) Department precedent disapproving winners of solicitations where the resulting contracts were materially different from what was bid in that particular solicitation, a bid that involves an amendment to an existing contract is not the same thing as materially changing a bid during the same solicitation process. The bidding rules apply, by their terms, to making material changes to a bid from what was submitted and not to proposed amendments to existing contracts. Bids should not be disqualified absent a clear violation of RFP threshold requirements.

Another argument was that because the RFP did not specifically allow a bid that was contingent on amending an existing contract, such a bid was inconsistent with the bids being sought and should be disqualified. In making this argument, Eversource cited Cataldo Ambulance Service, Inc. v. City of Chelsea, 43 Mass. App. Ct. 26-27, 30 (1997), but that case was overturned on appeal by the Supreme Judicial Court in Cataldo Ambulance Service, Inc. v. City of Chelsea, 426 Mass. 383 (1998). While the Appeals Court found that the bid in question deviated from the bid specifications (by providing a higher level of ambulance services than sought in the RFP) and was thereby determined to be unresponsive, the Supreme Judicial Court, in overruling that decision, found that the bid did not violate any of the minimum bid specifications and was, therefore, properly considered and selected by the bid issuer. The situation is similar here in that the Mayflower [REDACTED] bids complied with the RFP's threshold requirements and the fact that they may have included provisions that were not anticipated by the bid issuer should not result in disqualification.⁸⁷

⁸⁷ It is not uncommon in competitive solicitations for bids to have features that were not anticipated. For example, in 83C Round 2, Mayflower Wind proposed an Investment Tax Credit ("ITC") price adjustment provision that would provide for a lower price if Congress amended the ITC and Mayflower qualified for a higher percentage ITC than available under then-current law. This feature was incorporated into the resulting PPAs because it was viewed as being beneficial to the EDCs and their customers.



The primary objectives of competitive bidding is to obtain the most favorable contracts consistent with the objectives of the RFP while ensuring fair competition.⁸⁸ In this context, key objectives are the ability to help achieve the Commonwealth’s offshore wind generation and climate change mitigation goals at a reasonable cost to customers. Our view was that the Department would weigh these considerations significantly. Moreover, as indicated previously, the IE’s assessment was that the Mayflower bids were evaluated fairly against the other bids, taking into consideration the change in delivery points and the potential for delayed CODs because of the interconnection issues faced by Mayflower Wind on Cape Cod.

In this regard, the underlying reason for the change of delivery points appeared to be due to the limitations on interconnection capacity for Mayflower Wind under the first Cape Cod Cluster Study process and the [REDACTED]. This also appeared to be the driving force in Commonwealth Wind’s decision embodied in its 1,232 MW bid, to seek an alternative point of delivery if it could not interconnect the full amount through the [REDACTED] Cape Cod Cluster study process [REDACTED]. It was also consistent with what the Evaluation Team agreed to include in the Stage 3 Evaluation Protocol as a factor for consideration—“commercial viability of projects that are supported by previously executed Section 83C contracts.”⁸⁹ DOER had stated multiple times that the Mayflower [REDACTED] bids would help “derisk” the existing contracts. The IE concurs with that assessment.

Importantly, we believe the Department would look at these matters in the context of the impacts on compliance with the Commonwealth’s climate goals, cost impacts on customers, and in recognition of the difficulties large clean energy projects have had and will likely continue to have in being permitted, financed, and constructed.⁹⁰

Large-scale competitive clean energy solicitations, especially for offshore wind, will play a large role in helping to meet the Commonwealth’s climate targets. Yet, at the same time, each of the large projects selected to help drive the greening of the grid have run into substantial problems driven by external factors. The NECEC project, after having obtained all of its required permits in Maine, faced a Maine

⁸⁸ “[C]ompetitive bidding serves a dual purpose of obtaining the most favorable contract while ensuring fair competition. . . .” Cataldo Ambulance Service, Inc. v. City of Chelsea, 426 Mass. 383, 389 (1998).

⁸⁹ Stage 3 Evaluation Protocol Section 4.d.

⁹⁰ We also would expect that the IE’s views on solicitation process issues would be taken into consideration.

statewide referendum on the project, which it lost, and is now appealing its constitutionality.⁹¹ This has delayed the project, and its future is in doubt. The 83C Round 1 Vineyard Wind 800 MW project has faced substantial delays due to a decision by the Bureau of Ocean Energy Management (“BOEM”) to assess the cumulative impacts of multiple potential wind projects before finally receiving BOEM approval. In light of the substantial delays and other issues, the EDCs have negotiated deferrals in milestone dates in the contracts for both projects as well as other changes.⁹² In the case of Vineyard Wind, the EDCs negotiated a two-year deferral in project milestone dates; the Department approved the contract amendments with a stamp approval.⁹³ As indicated previously, Mayflower Wind has run into constraints associated with the interconnection process and is seeking a solution similar to the approach Commonwealth Wind has taken dealing with essentially the same external challenges.⁹⁴

Moreover, the IE did not see the Mayflower [REDACTED] Bids as involving substantial problems regarding the administration and implementation of the RFP process and ensuing regulatory processes. Mayflower sought to amend existing contracts with the same purchasers and both the proposal in the instant solicitation and the amendment to the existing contracts will go before the same regulatory agency, the Department. This would not appear to us to be especially difficult, given the circumstances and the Department’s recent history in granting approvals to contract amendments that would facilitate a clean energy project’s ability to be realized in a cost-effective manner.

The decision by the Department would not necessarily be precedential for future solicitations. The 83C solicitation process allows for changing the bidding rules and criteria for each new solicitation, with ample opportunity for comment by interested parties and full review by the Department. The Round 3 solicitation was silent on bids involving or being contingent on amending existing PPAs. The IE

⁹¹ <https://www.newscentermaine.com/article/tech/science/environment/whats-next-for-the-cmp-corridor-court-legal-battle-environment-issues-grid/97-631ab1e6-d948-4153-990b-bad6aeb95f90>. This followed the failure of Northern Pass, an Eversource affiliate and the initial 83D RFP winner, to obtain required approvals in New Hampshire, which then led to the selection and contracting with NECEC.

⁹² See, e.g., the notices of amendments filed by the EDCs in DPU Docket Nos. 18-64, 18-65 and 18-66 on July 7, 2020 and September 17, 2021.

⁹³ December 2, 2021, Docket Nos. 18-76, 18-77, and 18-78.

⁹⁴ Mayflower has sought to do so in a manner that will not create any price increases associated with the Round 2 amendments. Its pricing for the Round 3 PPA was competitive, below the applicable price cap. With legislative proposals for removing or modifying the price cap for future solicitations, the impact of not approving the Round 2 amendments could likely result in project failure and re-contracting at higher prices, perhaps involving hundreds of millions of additional dollars to be paid by EDC customers, while risking compliance with the Commonwealth’s climate goals. Moreover, the Round 2 PPA amendments that the EDCs have negotiated with Mayflower “locks in” the lower price available under those contracts associated with Mayflower Wind’s qualification for the 30 percent Investment Tax Credit—\$70.26/MWh—compared to the base price of \$77.76/MWh.



recommends that the RFP drafting team address the matter when it develops the RFP for the next solicitation.⁹⁵

Prior to the circulation of the Eversource memo, the IE understood that Eversource's position was that the Evaluation Team should be concerned that a third party might challenge the amendments to the Mayflower Round 2 PPAs, and perhaps the Round 3 PPAs. Essentially, this was presented as an effort to shield the procurement process from a potential regulatory risk. With the circulation of the memo a week before selection, the shield appeared to be converted to a sword—an effort to disqualify certain of the Mayflower bids. The IE found this troubling, especially given the potential beneficial competitive impact disqualification could have on Eversource's affiliate, Bay State Wind, in a future solicitation.

However, before the Evaluation Team conducted a review of the merits of the Eversource memo, it was decided to ask Mayflower whether in fact any of its bids were “contingent” on amending the Round 2 PPAs. At the time, the date for scheduled selection was a week away. Several days later, Mayflower stated that there were no conditions or contingencies between the Round 2 contract amendments and executing and performing on the Round 3 contracts.

During the selection process, Eversource insisted, based on Mayflower's statement that the Round 3 contracts were not contingent on the Round 2 PPA amendments, that they be treated as totally separate. This meant, according to Eversource, that the EDCs should negotiate and conclude the Round 3 PPAs and file for approval with the Department before they would even start negotiations of the Round 2 PPA amendments. The other EDCs agreed (National Grid with some reservations). Clearly, Eversource, the company with a conflict of interest or the appearance of one, was the driving force regarding the approach for negotiating contracts with Mayflower, a matter of concern for the IE. With no certainty regarding whether Eversource and the other EDCs would acknowledge, or act in accordance with, an obligation to fairly, and in good faith, negotiate the Round 2 amendments (with respect to Mayflower's proposal or plan) and no opportunity for DOER and IE to monitor of the contract negotiations, the Eversource approach posed, in the IE's view, a major risk for execution of the Round 2 PPA amendments, while the Mayflower bids had been evaluated as including (or contemplating) the shift of delivery points for the Round 2 PPAs from Cape Cod to Brayton Point. A related risk with the negotiation approach was that it might be very difficult as a business matter for Mayflower to go forward and sign the Round 3 PPAs without having any assurance that they would be able to successfully negotiate and execute the Round 2 PPA amendments.

As previously suggested, the EDCs took the position that the Round 2 PPA amendment negotiations were outside of the Round 3 83C process. They stated that the negotiation of amendments to existing 83C contracts do not require any IE participation or contract monitoring by DOER or the IE, and, hence, they are not required here because Round 3 and the Round 2 amendments are totally separate. The IE

⁹⁵ See Section VII of this report.



agrees that IE participation and DOER/IE contract negotiation monitoring is not required for stand-alone negotiations to amend existing 83C PPAs (unless, perhaps, the Department decides otherwise). But it is the IE's view that it is an open question where, as here, the amendments to existing 83C contracts arose out of a bid in an 83C solicitation. We believe this is also an issue of first impression for the Department.

The IE consulted with DOER several times on this point. DOER agreed with the EDCs' position and stated that it would not be monitoring the Mayflower Round 2 PPA negotiations. The IE notes that Section 1.4 of the RFP states that "DOER will have the opportunity to monitor negotiations;" it is not required to monitor them. The IE's role is to monitor contract negotiations at DOER's request. With DOER not monitoring the Round 2 PPA amendment negotiations and not asking the IE to do so, the IE acknowledged that it would not be monitoring these negotiations.

Without being able to monitor the contract negotiations for the Round 2 PPAs, the IE would be unable to ascertain directly whether the EDCs were negotiating fairly and in good faith other than what could be presumed from seeing the results of the negotiations, which could be (a) concluded amendments consistent with what had been included in Mayflower's bid and responses to Evaluation Team letter requests or (b) failed or substantially delayed negotiations. We address these matters further in the contract monitoring part of this report, Section VI.

Finally, we note that the questions to Mayflower regarding the contingency between the Round 3 PPAs and the Round 2 amendments were posed the week before planned bid selection. The process would have been better had the matter been raised earlier in the process by Eversource, which would have given the Evaluation Team more time to deliberate on the matter regarding the underlying issues raised and to decide whether and how to pose questions to Mayflower on the subject.

As previously indicated, both the IE and National Grid understood Mayflower's responses as being compatible (or not being incompatible) with a parallel negotiation approach that could result in contracts that did not condition the effectiveness of the Round 2 PPA amendments on the execution of (and Department approval for) the Round 3 PPAs (and visa versa). (Moreover, it is also possible that may have been Mayflower Wind's understanding as well.)⁹⁶ However, despite other views, Eversource insisted on its proposed initial negotiation position (albeit, later, slightly modified) as being required by Mayflower's response to the Evaluation Team's questions.

For the reasons stated in this subsection of the report, the IE had significant concerns with the fairness of the solicitation process as it applied to the initial conditions on negotiations with Mayflower Wind and the events leading up to it. However, we note that those concerns have been effectively mooted by the execution of the Round 3 PPAs and especially the Round 2 PPA amendments, which with the limitations noted in this report, appear to be reasonably consistent with Mayflower's B2 proposal or

⁹⁶ See Section VII of this report.

plan and the IE has no reason to believe the amendments were not fairly negotiated.⁹⁷ Taking this into consideration, it is the IE's opinion that the evaluation of bids and the selection of the winning bids were fair and objective and consistent with the provisions and intent of the 83C Round 3 RFP and the evaluation protocols designed to implement the RFP.

C. Process Issues: Transparency and Independent Oversight; Disclosure of Affiliate Relationships

1. Transparency

According to the *Edgar-Allegheny* principles, transparency is the free flow of information to all prospective and actual bidders. No party, particularly an affiliate, should have an informational advantage in any part of the solicitation process. Transparency also means that the RFP and all relevant information should be released to all potential bidders at the same time. All aspects of the competitive solicitation should be widely publicized. Also, to compete effectively, all bidders should have equal access to data relevant to the RFP and such information should be made available to all bidders at the same time. Transparency is also an objective from the standpoint of the public.

The Distribution Companies and DOER took a variety of steps to comply with the transparency principle. The Evaluation Team created and maintained a publicly available website (<https://macleanenergy.com>) which contained all relevant documents for prospective bidders, which were made available to them at the same time. The website contained the following types of information relevant to 83C Round 3:

- 83C Round 3 documents
 - RFP
 - Bidder response forms, including CPPD form
 - Form PPAs (Eversource/Unitil and Natural Grid versions)
 - Standards of Conduct (Eversource and National Grid versions)
 - EDC Evaluation Team and Bid Team members
 - Department order approving RFP for issuance
 - Stakeholder comments to EDCs prior to Distribution Company filing draft RFP with the Department for approval
- RFP timeline
- Bidder conference presentation

⁹⁷ *Id.*

- Evaluation Team responses to bidder questions
- Public versions of submitted bids
- Various posts regarding the progress of the 83C RFP process, such as bid selection.

The Distribution Companies and DOER acted to make the RFP known to a wide group of stakeholders. Before submitting the proposed RFP to the Department for approval, DOER and the EDCs posted a draft RFP for comment and requested input from stakeholders on certain questions important to the design of the RFP and evaluation of bids and posted the responses of more than a dozen commenting parties. DOER and the EDCs made modifications to the draft RFP as they deemed appropriate in consideration of the comments submitted. The resulting proposed RFP was then vetted with the Department, which allowed for additional participation by interested parties. Following the Department's approval of the issuance of the RFP, the Distribution Companies notified an extensive list of prospective bidders and interested parties regarding the launch of the RFP, as they had in past solicitations. Finally, the reports issued by the Independent Evaluator, including the report previously submitted on RFP design and this report regarding the bid evaluation and selection process, facilitate the transparency of the process.

In addition, the Distribution Companies which had the potential or expectation of receiving affiliate bids—Eversource and National Grid—had developed Standards of Conduct designed to ensure that affiliates have no competitive advantage for gaining access to information that is not available to third-party bidders.⁹⁸ This is primarily done through each utility company designating members to be on the Evaluation Team on behalf of the Distribution Company or on the Bid Team, working on behalf of an affiliate-bidder. No individual shall be a member of both teams, and no individual may change from one team to the other during the solicitation process. The names of members of the Evaluation Team and Bid Team for both Eversource and National Grid were posted on the RFP website.⁹⁹ All team members were required to sign an agreement acknowledging that they would be bound by the Standard of Conduct.

There were a number of changes to the Standards of Conduct from Round 2, which are summarized in the IE's RFP Design Report dated March 15, 2021 in D.P.U. 21-40 (pp. 28-29). The Department accepted the Standards of Conduct without modification (D..P.U. 21-40 at 44).

During the process of evaluation of the bids, the IE became aware of an apparent violation of the Standard of Conduct by Eversource.¹⁰⁰ However, the Eversource official responsible for oversight of the Standard

⁹⁸ The National Grid Standard of Conduct is Appendix F-1 to the RFP. The Eversource Standard of Conduct is Appendix F-2. They are substantially similar.

⁹⁹ Unitil did not have an affiliate which could have been a bidder in the RFP, and, hence, there was no need to develop a Standard of Conduct. The names of the Unitil members of the Evaluation Team were posted on the RFP website.

¹⁰⁰ Eversource had asked two outside counsel to prepare a legal memo regarding whether Mayflower bids involving an amendment to existing contracts approved by the Department were at odds with the RFP procurement framework. In order to do that work, Eversource provided

of Conduct concluded that the mistakes made were innocent ones, were quickly mitigated, and did not affect the integrity of the RFP process. The IE concurred and concurs in that assessment.

While the main purpose of the Standards of Conduct is to prevent the transfer of confidential information between Evaluation Team members and Bid Team members, the Standards of Conduct also have a provision requiring Evaluation Team members to treat bids in a non-preferential/non-discriminatory basis. The applicable Eversource language is “Eversource Evaluation Team members shall not treat the bid or proposal of an Eversource Competitive Energy Affiliate (including any bid or proposal in which an Eversource Competitive Affiliate is participating) in a preferential manner or treat any other bid in a discriminatory manner.”¹⁰¹ The obligation to act in a non-discriminatory manner with respect to any bid applies to all bids, regardless of whether an Eversource competitive affiliate has submitted a bid in the solicitation.

The IE relies very heavily on the provisions of the Standard of Conduct that are designed to prevent communication of confidential information between the Bid Team and Evaluation Team and the implementation of those provisions through the company’s chief compliance officer. The IE relies less heavily on the company’s affirmation that the Evaluation Team has complied with the non-discrimination provisions. First, discrimination in the treatment of bids is a matter of opinion. While the IE does not usually have direct access to information regarding compliance with the Standard of Conduct provisions regarding separation of the Bid Teams and Evaluation Teams and non-dissemination of confidential information between them, the IE can observe directly the participation of an EDC’s Evaluation Team (and its members), which the IE can use to draw inferences and conclusions. So it is not necessarily incompatible for a company to state that there has been full compliance with the Standard of Conduct and for the IE to suggest or even conclude that the EDC, or the Evaluation Team at the EDC’s urging, has treated a bid in an unfair or discriminatory manner. Moreover, the Standard of Conduct addresses only the participation of the EDC, while the IE’s assessments are ultimately on the evaluation conducted by the Evaluation Team and bid selection decisions made by the EDCs collectively or absent unanimity, by DOER. After all, under 83C, it is the IE’s responsibility to provide its “assessment of whether all bids were evaluated in a fair and objective manner.”¹⁰²

that counsel with confidential bid information (albeit, of a very limited nature). Eversource did not, as it should have, added these persons to the Evaluation Team roster and have them review and sign the Eversource 83C Round 3 Standard of Conduct. However, once this issue was pointed out by the IE, the two lawyers were promptly added to the Eversource Evaluation Team roster posted on the 83C Round 3 public website and they signed the Eversource 83C Round 3 Standard of Conduct. One other Eversource employee who was copied on the memo did not actually review it, so she was not placed on the Eversource Evaluation Team roster posted on the website. In addition, when the Eversource employee circulated the legal memo to the Evaluation Team, he mistakenly copied lawyers from the Attorney General’s Office, who were part of the group copied on emails of the RFP drafting team, but not that of the Evaluation Team. This did not result in an actual breach of confidentiality because the AGO lawyers deleted the email/memo without reviewing it.

¹⁰¹ Eversource Standard of Conduct (Effective Nov. 18, 2020) Section 5.3, Appendix F-2 to RFP.

¹⁰² 83C(f). The purpose of the IE’s role under 83C(f) is “[t]o ensure an open, fair, and transparent solicitation and bid selection process that is not unduly influenced by an affiliated company . . .” The IE may consider the potential influence of the competitive interests of an EDC’s

After bid selection and execution of the Round 3 PPAs had been completed, the IE asked Eversource and National Grid to state in writing whether they had complied with the Standards of Conduct. They both responded affirmatively; Eversource in its response identified its technical non-compliance summarized above but indicated that this was quickly mitigated and that there was no impact on the result. The IE also asked these companies to provide an update regarding Standard of Conduct compliance following execution of the Mayflower Round 2 PPA amendments (which, from the EDCs' perspective, would likely be viewed as voluntary given their view that the Round 3 process ended with the execution of the Round 3 PPAs).¹⁰³ Eversource declined to provide the requested update after execution of the Round 2 PPA amendments as not being required or warranted. Given the ongoing confidentiality and no-conduit obligations under the Eversource Standard of Conduct, as Eversource pointed out, Eversource's declining to provide the requested update is not material, in the IE's opinion.¹⁰⁴

During the pendency of the RFP, the Evaluation Team did not provide the detailed evaluation framework or a summary of it to prospective bidders or the public. This is a common practice in the implementation of complex solicitations, such as 83C and 83D, and has been the Distribution Companies' practice in past solicitations. The rationale behind the practice is to encourage prospective bidders to put their best proposal forward rather than to facilitate potential "gaming" of the evaluation system. The Department has approved this practice over several solicitations, including this one.¹⁰⁵

However, to facilitate transparency, the Department stated that the EDCs should provide the following in the proceeding to review the PPAs resulting from this solicitation:

- Full and complete documentation of how the Evaluation Team calculated the quantitative and qualitative scores for each proposal;
- A narrative that explains how the Evaluation Team scored each factor that comprises the qualitative score for each bid; and

affiliate on EDC actions or decisions, regardless of whether such affiliate is a bidder in the current solicitation. Aside from this solicitation, the IE expressed concern at several points in 83C Round 2 solicitation that Eversource not treat a particular bid or the selected bidder with undue discrimination, both where Bay State Wind was an active bidder in the same solicitation and afterward in the contract negotiation process where Bay State was no longer an active bidder but only a potential bidder in a future solicitation. See 83C Round 2 IE Final Report pp. 30, 54-55.

¹⁰³ The IE asked for the updates because the Mayflower Round 2 PPA amendments arose out of Mayflower's bid in Round 3 and may be viewed as part of the 83C Round 3 solicitation process.

¹⁰⁴ Similarly, National Grid (which does not have an offshore wind developer affiliate) did not provide a specific response concerning the requested update, but it's not doing so is not material, in the IE's opinion.

¹⁰⁵ See D.P.U. 21-40 Order Approving RFP Issuance at 56-63.



- A qualitative evaluation protocol that explains each category within the qualitative score, the gradation of points in each category, and the description of how a project could earn a superior, preferable or minimum standard score.

With regard to these requirements, the Evaluation Team developed a qualitative evaluation protocol for this RFP and, in conjunction with scoring the bids for each qualitative factor, developed documentation for scoring each bid qualitatively, including a narrative that explains how the Evaluation Team developed a score for each bid and for each qualitative factor. The IE reviewed the documentation during the period of the qualitative evaluation and found it generally satisfactory.

From the IE's perspective, there were some weaknesses with respect to transparency during the selection process. It appeared that much of the deliberation involving the EDCs deciding to jointly select Portfolio 1 took place at an EDC-only call to which they did not invite DOER and the IE. However, under 83C and the informal rules of practice of the Evaluation Team, they were not required to do so. Moreover, the EDCs stated their selection decisions with some supporting rationale and the agreed initial conditions on negotiations at a Steering Committee meeting or in emails where all participants, including the IE, were copied.

Another weakness was the limited documentation put together at the time to support the EDCs' unanimous selection decision. Section 5 of the Stage 3 Evaluation Protocol called for the Evaluation Team to "develop documentation that clearly describes and articulates the factors and analyses considered during the Stage 3 process, to the extent that they may have contributed to the final selection." While there was not a document explicitly stating the basis for the EDCs' selection decision, there was ample documentation regarding the quantitative and qualitative evaluation of the portfolios and bids (prepared by TCR for the Evaluation Team) and, in the IE's opinion, sufficient supporting information previously considered regarding the Mayflower "contingent bid" issue. From a transparency perspective, the process would have been stronger had the EDCs not made a unanimous selection and the matter went to DOER for a selection decision. DOER likely would have embodied its selection decision in a memorandum that stated the basis for its decision, as it had in past solicitations where it had made the final decision (after consulting with the IE).¹⁰⁶

Compliance with the transparency principle is typically assessed in the context of procurement objectives requirements and exigencies. With the qualifications stated above, in the IE's opinion, the Distribution Companies and DOER implemented the RFP process in a manner that was sufficiently open and that satisfies the transparency principle.

¹⁰⁶ See 83D IE Report at 32-33; 83C Round 1 Report at 28.

2. Independent Oversight

The *Edgar-Allegheny* oversight principle provides that effective oversight of competitive solicitations can be accomplished by using an independent third-party with respect to the design and implementation of the competitive solicitation process. Ensuring that the third-party is independent and granting it at the outset oversight responsibility will help to ensure that the process will be conducted fairly throughout the process and will also minimize perceptions of affiliate abuse. 83C requires the appointment of an independent evaluator—selected jointly by DOER and the AGO—to monitor and report on the solicitation process and to provide its independent assessment of whether all bids were evaluated in a fair and objective manner.

The 83C solicitation process contains numerous provisions for the independent oversight of the process. During the 83C RFP design phase, the process was subject not only to the independent oversight by the IE but also involved participation by DOER and the AGO. Importantly, the proposed RFP was the product of an agreement between three different Distribution Companies and DOER, and was subject to the Department's review and approval, after allowing comments by interested parties. Thereafter, DOER was a member of the Evaluation Team with the Distribution Companies and was intimately involved in developing the detailed evaluation framework, evaluating bids, and advised on bid selection, with the IE actively involved in oversight of the entire process.¹⁰⁷ The IE, as well as DOER, had the opportunity to monitor contract negotiations between the Distribution Companies and the winning bidders, with the limitation, previously noted, that this did not extend to the negotiation of the Mayflower Wind Round 2 PPA amendments.

Solicitation processes have different strengths and weaknesses with respect to the oversight principle (as well as other considerations). One key strength was that the IE was involved from the beginning of the RFP design process through development of the detailed evaluation framework, then bid evaluation, bid selection, and, finally in monitoring the contract negotiations (with the limitations noted). The IE was provided all of the information available to the Evaluation Team related to the solicitation, evaluation and selection process, as required by 83C(f). The key weakness related to limitations after the bid selection process and with respect to monitoring the Mayflower Wind Round 2 PPA negotiations. That was based on the EDCs' and DOER's position that the Round 2 PPA amendment negotiations are beyond the scope of this 83C Round 3 solicitation. Moreover, as previously indicated, DOER monitoring of contract negotiations is not required under the terms of the RFP; nor is IE monitoring of contract negotiations where DOER does not request the IE to perform this function. Finally, the IE has had the opportunity to review the Round 2 PPA amendments against the information submitted by Mayflower Wind in this procurement process, the original Round 2 PPAs and the Round 3

¹⁰⁷ DOER was assisted by the consulting firm Levitan & Associates, Inc.

PPAs. Based on the foregoing, the IE concludes that the independent oversight in this solicitation has been sufficient under the circumstances.

3. Disclosure of Affiliate Relationships

The IE had, as a team member, a forensic accountant,¹⁰⁸ Meaden & Moore, that reviewed the bids and concluded that neither bidder failed to properly disclose any affiliated relationships.

V. Monitoring the Contract Negotiation Process

After bid selection, DOER requested that the IE monitor the contract negotiations between the EDCs and the two selected bidders (but not extending to the Mayflower Round 2 PPA amendment negotiations). The IE monitored the negotiations and reviewed them from several perspectives:

- Were the resulting products of the negotiations (the PPAs with the EDCs) reasonably consistent with and no less advantageous from an EDC customer standpoint than the bids submitted (such that the contracts as negotiated would be consistent with the bids as evaluated)?
- Were the resulting products of the negotiations—the PPAs—conforming with the requirements of the RFP?
- Did the EDCs negotiate in good faith and treat the winning bidder fairly?
- Was there any evidence of undue discrimination against any bidder because the company is not an affiliate of any of the EDCs?

Since neither selected bidder was an affiliate of any of the EDCs, there was no issue of preferential treatment toward an affiliated counterparty in the contract negotiations.

Following the section of this report on monitoring of contract negotiations, the IE addresses several potential improvements in the procurement process for upcoming solicitations.

These matters are addressed in Sections VI and VII of this report.

VI. Contract Negotiations and Power Purchase Agreements

As indicated previously, the IE monitored the EDC contract negotiations with both Commonwealth Wind and with Mayflower, although the negotiations with Mayflower covered only the Round 3 PPAs and not the amendments to the Round 2 PPAs. From a process standpoint, the ground rules applicable to the

¹⁰⁸ The use of a forensic accountant for this purpose was required, or at least encouraged, in the DOER RFQ for independent evaluator services.

IE's ability to review the emails and contracts drafts circulated between the EDCs and the selected bidders were much improved from the last solicitation. The EDCs made the emails and contract drafts circulated between the parties available on a sharefile site and left them on the site for the period up to the date of the IE's filing of this report. This was pursuant to an agreement entered into by the IE and the EDCs in response to a Department information request.¹⁰⁹ In D.P.U. 21-40, The Department had asked about the concerns raised in the 83C Round 2 IE Report regarding the IE's access to such contract drafts and emails, where such access had only been allowed through an in-person review of documents in a Boston office. The IE appreciates that the Department raised this issue and that the EDCs were agreeable to a solution that worked well for all participants, including the DOER, which also had the same access through the sharefile site. There were also weekly meetings with the EDCs' lawyers (and EDC business representatives on request), DOER and the IE, where the IE and DOER could raise any matters of concern and provide feedback to the EDCs on an ongoing basis. The IE found this process to be satisfactory. Most of the matters raised in these calls pertained to whether the contract terms proposed were consistent with the bids submitted, were within the scope of the bidder's PPA exceptions, and were in compliance with RFP requirements.

Commonwealth Wind Negotiations

Some of the contract issues negotiated with Commonwealth Wind were to incorporate various aspects of their proposal, some of which were non-standard. Commonwealth Wind proposed to construct a 1,232 MW nameplate capacity facility and sell 1,200 MW to the EDCs and 32 MW to third parties. Contractually, this translated to the EDCs having a collective proportional entitlement to 97.4 percent of the energy and RECs produced by a proposed 1,232 MW facility, with a collective Contract Maximum Amount of 1,200 MWh per hour.¹¹⁰ In order to achieve Commercial Operation, the facility would need to construct at least 1,109 MW (90 percent of 1,232 MW).

Commonwealth Wind had proposed to deliver all of the products to West Barnstable but had the option to deliver 827 MW to West Barnstable and 405 MW to Acushnet. The PPA provides a timeframe for Commonwealth Wind to determine whether it will use West Barnstable as the sole Delivery Point or use the split West Barnstable/Acushnet Delivery Points.¹¹¹ Commonwealth Wind has until June 1, 2023 to make that decision. If Commonwealth Wind were to select the dual delivery points, there will be a Contract Maximum Amount for each Delivery Point.¹¹²

¹⁰⁹ See the IE's Response to Information Request 1-2, D.P.U. 21-40 (April 9, 2021).

¹¹⁰ See PPA Sections 3.4, 4.1(a), definitions of Buyer's Percentage Entitlement and Contract Maximum Amount, and Exhibit A. There are slight adjustments if the Facility as constructed is more than 1,232 MW in size. PPA Section 3.3(C).

¹¹¹ PPA Section 3.1(a)(viii).

¹¹² PPA Exhibit A.



Commonwealth Wind wanted the ability to post cash as security in the event of a letter of credit default for a short period of time while it sought to provide a replacement letter of credit. Section 2.2.2.11 of the RFP requires that security must be in the form of a letter of credit. In a discussion with the EDCs, the IE opined that for the limited purpose sought by Commonwealth Wind and for a limited time period, posting cash as security as a stopgap measure would not violate the requirements of the RFP as long as the PPA required the Seller to promptly replace the cash with a letter of credit. The EDCs and Commonwealth Wind negotiated language that would allow cash as security under limited letter of credit default circumstances.¹¹³

Another issue involved the Seller’s ability to [REDACTED] of its obligation to maintain RPS, CES, and Clean Peak Energy Standard eligibility. The parties agreed on [REDACTED] that was mutually satisfactory.¹¹⁴

Commonwealth Wind sought the ability to achieve the Commercial Operation Date, and, hence, its rights to payment, as long as the network upgrades required under its interconnection agreement(s) were completed, but completion of any additional upgrades required to satisfy the Capacity Capability Interconnection Standard (“CCIS”) would not be required to achieve COD.¹¹⁵ This raised several issues.

The form PPAs provided that all network upgrades, including those required to satisfy CCIS requirements, be completed as a condition of the seller’s Facility achieving COD. RFP section 2.2.1.7 requires that “Each proposal must include a commitment to interconnect to the ISO-NE PTF at a Capacity Capability Interconnection Standard (“CCIS”) equivalent level.” However, the RFP does not require that the network upgrades required to comply with the CCIS standard be completed in order to achieve COD.

In the negotiations, the EDCs stated [REDACTED]
[REDACTED]
[REDACTED].

Commonwealth Wind argued [REDACTED]
[REDACTED]
[REDACTED]. The parties ultimately agreed as follows:

¹¹³ PPA Section 9.2(b).

¹¹⁴ PPA Sections 9.2(j)-(l).

¹¹⁵ These additional network upgrades could be required as the result of the seller participating in ISO-NE’s Forward Capacity Auction Qualification process, which it is required to do pursuant to Section 3.7 of the PPA (and Section 2.2.17 of the RFP).

- While any additional CCIS network upgrades would not be required to declare COD, Commonwealth Wind would need to (a) comply with all applicable ISO-NE developer requirements regarding CCIS network upgrades and (b) post additional security if required CCIS network upgrades were not completed;
- The additional security would be the higher of (a) [REDACTED] and (b) the outstanding cost of the CCIS network upgrades not yet in place (“CCIS Network Upgrade Security”);
- In the event that the network upgrades were not completed within [REDACTED], Commonwealth Wind would be in default under the PPA and would be obligated to pay the amount of the CCIS Network Upgrade Security as liquidated damages.¹¹⁶

These provisions were significantly stronger from the EDC perspective than those negotiated with Vineyard Wind in 83C Round 1.¹¹⁷

As part of its proposal, Commonwealth Wind committed to (a) pursue a number of wind industry development initiatives, (b) fund a variety of direct economic investment initiatives, and (c) fund additional initiatives that support diversity, equity and inclusion. These commitments were embodied in an Offshore Wind Development and Reporting Agreement between Commonwealth Wind and DOER dated April 8, 2022 (the “Commonwealth Wind Agreement”) that was executed in connection with Commonwealth Wind’s execution of PPAs with the EDCs.

The two most prominent wind industry development initiatives are:

¹¹⁶ See PPA Sections 3.4(b)(i), 3.7(b), and 9.2(d). The EDCs would also have the rights of suspension of performance and contract termination. PPA Section 9.3.

¹¹⁷ There are three PPAs that the EDCs executed with Commonwealth Wind: each EDC has executed a PPA for their proportionate share of energy and RECs from the Commonwealth Wind project, subject to their respective Contract Maximum Amounts. The National Grid PPA provisions are different from those in the Eversource and Unitil PPAs in the following material respects: as in PPAs from prior solicitations, (a) the National Grid PPA (Exhibit D) has a specified Price for the combination of Energy and RECs (and a formula for allocating the Price between Energy and RECs) and a specified Adjusted Price (without RECs under the conditions specified) and (b) the provisions relating to Security (Article 6) are different. The former differences are due to accounting reasons and the latter differences are due to different company practices. Substantively, these provisions are not materially different among the EDCs, in the IE’s opinion.

The National Grid PPA also contains a provision (not in the Eversource and Unitil PPAs) that creates an event of default if the Mayflower facility fails to achieve an average Real-Time High Operating Limit (as defined in ISO New England rules) of at least 50 percent for two consecutive Contract Years (with Force Majeure, Catastrophic Failure and Reliability Curtailment exceptions). See National Grid PPA Sections 4.9 and 9.2(m). The Real-Time High Operating Limit is in effect the available capacity in any operating hour. These provisions were in the National Grid pro forma PPA for Round 3 and are similar to those in the Mayflower Wind Round 2 PPAs. The IE has previously found these provisions to be non-objectionable and the Department has found these provisions to be reasonable and not material or inappropriate in the context of differences with the other EDCs’s pro forma PPA provisions. See D.P.U. Order 21-40 Approving RFP Issuance at 39-40.



- Development by the Prysmian Group of a subsea cable manufacturing facility at Brayton Point, which is expected to employ an average of 185 full-time employees (“FTEs”) to operate the facility;
- Construction of a wind turbine generator marshalling port in Salem, Massachusetts, in partnership with Crowley Wind Services and the City of Salem.

[REDACTED]

In addition, Commonwealth Wind has committed to fund \$26.5 million in a dozen direct economic investment initiatives. These include funding for several initiatives as part of the company’s Supplier Diversity Program Plan and Workforce Diversity Plan, funding for education programs, clean energy technology and environmental conservation commitments, and a low-income ratepayer benefit initiative named “Southcoast Saves Energy.” Commonwealth Wind also committed to fund \$8.5 million in additional initiatives to support diversity, equity, and inclusion. Finally, Commonwealth Wind committed to a reporting regime with DOER with respect to the commitments made in the Commonwealth Wind Agreement. In the IE’s opinion, the Commonwealth Wind Agreement incorporates the company’s commitments of this kind that were made in its bid.¹¹⁸

With respect to the Commitment Agreement, the modifications to the final Commitment Agreement from the pro forma version were minimal (Commonwealth Wind signed a Commitment Agreement with each EDC).

All in all, the IE found that the contracts that resulted from the negotiation process were generally consistent with Commonwealth Wind’s bid and no less adverse to the EDCs than the bid and associated contract exceptions submitted by Commonwealth Wind and, in many cases, were more favorable to the EDCs and their customers.

Commonwealth Wind is not an affiliate of any of the EDCs. Hence, there was no issue of any undue preference given to an affiliated counterparty in the negotiations. Nor was any such undue preference provided to Commonwealth Wind.

The IE also monitored the negotiations and reviewed the contracts with respect to whether the contracts or any provision thereof violated any threshold requirement of the RFP and whether the contracts were fairly negotiated. The Commonwealth Wind PPAs did not violate any RFP threshold

¹¹⁸ The IE was not asked by DOER to monitor the negotiations with the selected bidders regarding the bidders’ agreements to incorporate their economic development initiative commitments. The IE reviewed the final agreements.

requirement. Moreover, the EDCs, in the IE's opinion, fairly negotiated the terms of the Commonwealth Wind PPAs consistent with the requirements of the RFP.

Mayflower Round 3 PPA Negotiations

The Mayflower negotiations had several major issues from the IE's perspective. The first involved

However, the bid that was selected, the B2 bid, was for a 480 MW project of which the EDCs could purchase a proportional entitlement that could be as low as 81 percent of the total, equivalent to 389 MW. The EDCs selected approximately 400 MW for purchase out of the 480 MW project. Because Mayflower, the 400 MW under discussion became 405 MW—the closest number taking into consideration turbines.

The evaluation that had been conducted was based on an assumed purchase of 400 MW from a 480 MW project. There were substantial indirect benefits associated with the additional 80 MW that would be injected into the ISO-NE grid but not purchased by the EDCs, for which there would be no incremental EDC cost. The additional benefits related to lower wholesale energy costs that would be purchased by the EDCs and passed on to the EDCs' customers in retail rates, lower REC costs and the value of lower GHG emissions. The additional indirect benefits greatly outweighed a much lower reduction in revenues to be obtained by the EDCs for the sale of energy at the delivery point due to slightly reduced LMPs. The EDCs quantified the value of those net additional benefits, which were in excess of \$.

After negotiations, Mayflower and the EDCs agreed to an expected facility size of 480 MW, with the EDCs purchasing a collective 84 percent proportional entitlement, with a collective maximum contract amount of 405 MW. Mayflower would need to construct 432 MW (90 percent of 480 MW) in accordance with PPA terms to achieve commercial operation, which would result in Mayflower's right to receive contract payments. This was in accord with their bid. Mayflower would presumably sell the remaining 75 MW to a third party under a separate PPA.

When the MWs from the Round 2 PPAs are taken into consideration, assuming that these contracts would be amended as Mayflower Wind was proposing, the total nameplate wind turbine capacity would be MW with a maximum delivery to Brayton Point of MW at any point in time. The difference between the nameplate capacity of the wind turbines and the MW limitation at the delivery point represents electrical losses and may take into consideration that for most of the time the wind turbines will not be delivering at full output due to less-than-optimal wind speeds and a variety of other loss factors.

Mayflower also sought the ability to build up to MW. subject to the same MW delivery point limitation at Brayton Point. This represented the potential of an incremental MW of wind turbine generator capacity that could be built under the Round 3 PPAs. This would mean that over the course of



a year the project would deliver at a higher capacity factor than without the additional wind turbines. The EDCs were [REDACTED]

[REDACTED]. The EDCs and Mayflower Wind were unable to develop a methodology that would accomplish those objectives in the timeframe desired to complete the Round 3 PPAs. Hence, they agreed that if Mayflower decided that it wanted to build wind turbines in excess of [REDACTED] MW, Mayflower Wind would notify the EDCs within a specified timeframe (the second quarter of 2023) and the parties would negotiate an allocation methodology consistent with the principles set forth in the Facility Size Increase Protocol, which is Exhibit H to the Round 3 PPAs. [REDACTED]

¹¹⁹

There were a number of allocation, ISO New England energy settlement, metering and related issues of a technical nature associated with having three facilities, one of which (the Round 3 facility, or the “Facility”) would have the EDCs buying a proportional entitlement of energy and RECs produced by that facility, that required addressing in this agreement. Also, the potential for an increase of the total project size from [REDACTED] MW to up to [REDACTED] MW had to be considered. The EDCs negotiated PPA provisions that would: (a) require Mayflower to register Buyer as one of the asset owners on the ISO-NE Generation Registration Asset Form (“GARF”) for the Facility rather than using Internal Bilateral Transactions (“IBTs”), with the Buyer’s percentage entitlement for energy based on the Delivery Point Ratio multiplied by the energy produced from the entire project, (b) define the Delivery Point Ratio based on [REDACTED], and (c) define the EDCs’ purchase rights as the Buyer’s Percentage Entitlement multiplied by the Delivery Point Ratio.¹²⁰ The purpose of using GARF was to simplify the work of the EDCs in administering the PPAs (as opposed to using IBTs).¹²¹ The purpose of defining the Delivery Point Ratio based primarily on the proposed nominal contract capacities in the different Mayflower Wind PPAs (including the Round 2 PPA amendments, if applicable) was to avoid the potential for Mayflower Wind to build or produce proportionately more under the Round 3 PPAs which would have a higher price than the price for energy and RECs under the Round 2 PPAs (assuming that

¹¹⁹ The Mayflower Wind option to install additional wind turbines for the project, subject to [REDACTED] was not evaluated quantitatively. However, based on the analysis done on assessing the value of 80 MW incremental capacity that would be built but not purchased (summarized earlier) it seems highly likely that if Mayflower Wind were to build up to an additional [REDACTED] MW of wind turbines [REDACTED], there would be significant additional net benefits accruing to the EDCs and their customers.

¹²⁰ See PPA Section 4.2(a) and definitions of “Buyer’s Percentage Entitlement” and “Delivery Point Ratio.”

¹²¹ The Commonwealth Wind PPAs also included provisions for the use of GARF. See Section 4.2(a). Similarly, the National Grid PPA with Mayflower was different from the Eversource and Unitil PPAs with Mayflower in the same ways as the National Grid PPA with Commonwealth Wind was different from the Eversource and Unitil PPAs with Commonwealth Wind.

Department approves the amendments to the Round 2 PPAs or, if not, Mayflower is entitled to the 30 percent Investment Tax Credit for the Phase I and Phase II facilities).

Generally, the EDCs aimed to draft the Mayflower Round 3 PPAs so that they (a) would “fit” with the Round 2 PPAs, as they might be amended to change the delivery point to Brayton Point, or (b) could operate as stand-alone agreements if such Round 2 amendments were not executed, or if they were executed, did not obtain Department approval.¹²²

During the early part of the negotiations, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Eversource’s representative responded [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Later on, the EDCs emailed to Mayflower that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] To the IE’s knowledge, Mayflower and the EDCs signed the Round 3 PPAs without having commenced negotiations on the Round 2 amendments.

During the “side sessions” with the EDCs and DOER, the IE noted [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹²² Use of the Round 3 PPA contract provisions related to use of GARF and the Delivery Point Ratio created a need to include conforming provisions in the Round 2 PPA amendments, assuming such amendments would be executed, as they subsequently were.

[REDACTED]

The IE recalled its prior concerns raised during bid selection (with National Grid expressing similar concerns) that “not conditioned or contingent” could mean negotiations in parallel with the agreements not conditioned or contingent on each other (with the Round 2 amendments not being contingent on Department approvals for the Round 3 PPAs and the Round 3 PPAs not being contingent on Department approvals for the Round 2 amendments).

As part of its proposal, Mayflower committed to expend \$42,410,000 in direct economic investment initiatives, including \$27 million for workforce and supply chain initiatives through the creation of the Mayflower Fund in partnership with the SouthCoast Community Foundation, \$6 million for the National Offshore Wind Initiative at Bristol Community College, \$2 million in scholarships for the Massachusetts Maritime Academy, and \$2.5 million for Buzzards Bay Habitat for Humanity for various initiatives to benefit low-income ratepayers. In addition, Mayflower committed to several offshore wind industry development initiatives in Massachusetts, including (a) leasing office space in Fall River on a long-term basis, (b) establishing an operations and maintenance and service operation vessel base in Fall River, and (c) developing and building a crew transfer vessel in Somerset through a multi-party memorandum of understanding. The Offshore Wind Development and Reporting Agreement between Mayflower Wind and DOER dated April 8, 2022 (“Mayflower Wind Agreement”) incorporates Mayflower’s commitments made in its bid. The Mayflower Wind Agreement also contains reporting requirements regarding DEI and Environmental Justice Impacts and the implementation of Mayflower Wind’s direct economic investment initiatives and wind industry development initiatives.

All in all, the IE found that the Mayflower Round 3 PPAs that resulted from the negotiation process were consistent with Mayflower’s bid with respect to the Round 3 PPAs and were no less adverse to the EDCs than the proposals and associated contract exceptions submitted by Mayflower and, in many cases, were more favorable to the EDCs and their customers. Mayflower signed the Commitment Agreement without any changes from the EDCs’ pro forma Commitment Agreement.

Mayflower is not an affiliate of any of the EDCs. Hence, there was no issue of any undue preference given to an affiliated counterparty in the negotiations. Nor was any such undue preference provided to Mayflower Wind.

The IE also monitored the negotiations and reviewed the contracts with respect to whether the contracts or any provision thereof violated any threshold requirement of the RFP. The Mayflower Wind PPAs did not violate any RFP threshold requirement.

However, the IE has reservations, previously expressed in this report, regarding the EDCs’ negotiation approach that did not allow contract negotiations for the Round 2 PPAs to commence until after the

Round 3 PPAs were executed. It put enormous pressure on Mayflower Wind from a business perspective to take the risk that the Round 2 amendments would not be successfully negotiated. This was not at all a standard business practice. From a policy perspective, the result could have been, if the Round 2 PPA amendments were not successfully concluded, two separate projects with separate delivery points, both with significant viability challenges, rather than related projects with a single delivery point, with substantially enhanced prospects for successful development, financing, construction, and operation.

Mayflower Wind 83C Round 2 PPA Amendments

As indicated previously, the EDCs did successfully negotiate amendments to the Mayflower Wind Round 2 PPAs. Although the IE did not have the opportunity of monitoring those contract negotiations, the IE has reviewed the amendments as well as the EDCs' joint testimony in support of obtaining the Department's approval of those amendments in D.P.U. 20-16 through D.P.U. 20-18. The IE compared the proposed Round 2 PPA amendments to Mayflower's B2 proposal in Round 3, the resulting Round 3 contracts, statements made by Mayflower in its Round 3 bid and in response to Evaluation Team information requests in Round 3, and the assumptions used in Round 3 in the evaluation of the B2 bid. The purpose of this assessment was to ascertain the general consistency of the Round 2 PPA amendments with Mayflower's B2 proposal or plan submitted in 83C Round 3. The Round 2 PPA amendments incorporate the following elements, which are generally consistent with the Round 3 B2 proposal or plan:

- The Delivery Point for the 83C Round 2 Phase 1 (408 MW) and Phase 2 (396 MW) Facilities has been moved to Brayton Point;
- The Guaranteed Commercial Operation Dates for Phase 1 and Phase 2 have been deferred approximately 18 months (taking into consideration previously-allowed contractual extensions) to September 1, 2027 and December 1, 2027, respectively;
- The Investment Tax Credit price adjustment provision has been removed; the price has been reduced to \$70.26/MWh, which was the applicable price based on Mayflower's qualification for the 30 percent Investment Tax Credit under the Round 2 PPAs ([REDACTED]).

There are a number of changes that were made to the Round 2 PPAs to make them consistent with the Round 3 PPAs, including, for example, the provisions pertaining to allocating energy among the different phases, including the addition of the definition of Delivery Point Ratio, and incorporating certain interim critical milestones (prior to COD) from the Round 3 PPAs. These provisions are sensible because they take into account that the Round 2 PPAs, as amended, are essentially dealing with different phases of the same overall project as the Round 3 PPAs, with a single delivery point.

In connection with moving back the Guaranteed Commercial Operation Date by approximately 18 months, Mayflower was required to post additional Development Period Security equal to an additional

\$15/MWh multiplied by the Contract Maximum Amount (approximately, \$12 million). This is equivalent to the additional Development Period Security of obtaining three six-month extensions of the critical milestones under the original Round 2 PPAs. At the same time, Mayflower retains the ability to obtain additional extensions of the critical milestone dates by posting additional security.

It appears that the EDCs sought the additional \$12 million in Development Period Security on the basis that (a) that is what the contract requires of a Seller to obtain an 18-month extension of the critical milestone dates, including the Guaranteed Commercial Operation Date, and (b) the additional security would provide additional assurance of performance. While this appears not to be something proposed by Mayflower, the requirement of additional security in the amount set forth in the amendments appears reasonable and is supported by logic.

Based on the review of the applicable documents, it appears that the Mayflower Round 2 PPA amendments are reasonably consistent with Mayflower's B2 proposal/plan and the evaluation of that proposal/plan performed by the Evaluation Team. In addition, it appears that the Round 2 PPAs "fit in" with the provisions of the Round 3 PPAs, which was one of the design objectives of the EDCs in negotiating the Round 3 PPAs. While the IE did not have the opportunity to monitor the Round 2 PPA amendment negotiations, as previously noted, the review that the IE was able to conduct does not provide any reason to believe that the EDCs unfairly negotiated the Round 2 PPA amendments.

With respect to the Mayflower Round 3 PPAs, taking into consideration the concerns expressed and the fact that those concerns have been largely mooted by the successful conclusion of the Round 2 PPA amendments, it is the IE's opinion that the EDCs for the most part fairly negotiated the terms of these consistent with the requirements of the RFP.

VII. Recommended Process Improvements for Future 83C Solicitations

When the RFP is developed during the next solicitation, the RFP drafting team should address whether it is permissible for a bidder to include in its bid any amendments to existing PPAs and, if permissible, what are the acceptable parameters for such amendments.¹²³ As is apparent from our assessment of this solicitation, the absence of any rules or guidance in the RFP led to significant issues affecting bid evaluation, bid selection, and contract negotiations and, potentially, regulatory review. The RFP drafting

¹²³ While it could be argued that it would be more appropriate to make this and other recommendations at the time of the next solicitation, there is no assurance that Peregrine will be the IE for the next solicitation. Peregrine is making recommendations for process improvements based on its experience in multiple solicitations to provide the Department, the EDCs, DOER, and interested parties the benefit of its "lessons learned."

team's proposed resolution will then be subject to opportunity for comment by interested parties and full review by the Department. The IE does not have an opinion at this time how this matter should be addressed in the next RFP.

Another matter we have addressed in several reports involves potential or actual conflicts of interests that one or more EDCs may have, either when they have an affiliate bidding in an RFP process or where they have an affiliate who has not bid, as in this solicitation, but the EDC affiliate's prospects in a future solicitation may be adversely affected if an unaffiliated bidder is selected in the current solicitation. In the next solicitation, the RFP drafting team should endeavor to formulate guidelines regarding how an EDC with a potential conflict of interest could participate in the bid evaluation and selection process in a manner that would enhance the objectivity of the process while minimizing appearances of bias or other impropriety. For example, such an EDC would not have any veto power in any evaluation decision and would recuse itself regarding bid selection decisions (but could make selection recommendations). We note that in 83C Round 1 there was an effort on the part of the IE to incorporate similar (but not identical) provisions in the standards of conduct for the purpose of mitigating the effects of actual or potential conflicts of interest.¹²⁴ The effort, however, was unsuccessful, and any future effort would run the risk of not achieving consensus among the Evaluation Team, although the Department could order modifications to future standards of conduct or other RFP documents.

We also note that Governor Baker has proposed, and the Senate has passed, bills in the Legislature that would make DOER responsible for bid selection, with the EDCs participating in the evaluation; DOER would also have the last word in drafting the RFP that would be submitted for DPU approval.¹²⁵ A bill passed by the House of Representatives would have a selection committee composed of DOER, the IE, the Secretary of the Housing and Economic Development, an individual appointed by the House Speaker, and an individual appointed by the Senate President.¹²⁶ While care needs to be given as to who will be responsible for bid selection, under all of these bills the EDCs would no longer be responsible for bid selection and DOER would have the final word on a proposed RFP. In the IE's opinion, given the experience of the 83D and three 83C solicitations, this would be a substantial process improvement.

Another issue that should be addressed for the next solicitation process is the timeliness by which Evaluation Team members may raise issues for consideration by the Evaluation Team. These matters should be addressed in evaluation protocols for the next solicitation, rather than in the RFP itself. For

¹²⁴ See 83C Round 1 IE Report at 18-19. This effort followed a proposal by Eversource to withdraw from the bid evaluation and selection process where an affiliate was a bidder. The proposal was not accepted by the Evaluation Team because it appeared to run counter to the provisions of the RFP pertaining to bid evaluation and selection. *Id.*

¹²⁵ See H 4204, Section 3 and S. 2842, Section 50.

¹²⁶ H 4524, Section 20.

example, threshold issues with respect to a bid should be raised at the beginning of the process—Stage 1—when such issues should be considered by the Evaluation Team. There may be times when new information becomes available later in the process or when further evaluation raises an issue not previously or adequately considered, but Evaluation Team members should make every reasonable effort to raise any such issues in a timely manner and provide other Evaluation Team members and the IE sufficient time to review the particular matter. The same considerations apply to the Stage 3 evaluation with respect to any risks, costs, or benefits not fully captured in the Stage 2 evaluation.

The IE believes that independent monitoring of contract negotiations is an important part of the solicitation process. The process changes for this solicitation, which provided the IE and DOER online access to contract drafts and emails between the EDCs and selected bidders, were substantial improvements and should be continued.

We also believe that having an IE team with extensive industry experience and expertise in oversight over procurement processes, including contract negotiations, adds substantial value in assuring that the negotiations are being fairly conducted and that the resulting contracts are in accord with the successful party's bid, the terms of the RFP, and the evaluation and selection process.¹²⁷

VIII. Conclusions

In this report, Peregrine, the Independent Evaluator for the 83C Round 3 solicitation, has summarized and analyzed the entire solicitation, bid evaluation, selection, and contract negotiation process which resulted in the execution, and filing for Department approval, of power purchase agreements between (a) the EDCs and Commonwealth Wind and (b) the EDCs and Mayflower Wind. These agreements are the result of a competitive bidding process for energy and RECs for up to approximately 1,600 MW of qualifying proposed offshore wind generation, as defined in 83C and the 83C Round 3 RFP. The Independent Evaluator has also reviewed the amendments to the Mayflower Wind 83C Round 2 PPAs, which arose out of Mayflower Wind's bid in the 83C Round 3 solicitation. The Independent Evaluator has been closely involved in the entire solicitation process up to and including the selection of the winning bids and has had access to all information and data related to the associated competitive solicitation and bid selection process during this period necessary for the IE to perform its monitoring, oversight, and reporting functions, as more fully described in this report.

It is the IE's conclusion that, in the phraseology of 83C, "all bids were evaluated in a fair and objective manner" through the conduct of an "open, fair and transparent solicitation and bid selection process that [was] not unduly influenced by an affiliated company," and that (a) the Commonwealth Wind 1,232

¹²⁷ In this regard, the Department relied, in part, on the IE's assessment of RFP requirements, contract negotiations and resulting contract provisions in the decision finding that the Hydro-Quebec/Central Maine Power contracts were consistent with the 83D RFP's requirements regarding incremental hydroelectric generation. [Order Approving Long-Term Contracts](#), D.P.U. 18-64 et seq. (2019) at 58-63.

MW bid from which the EDCs will purchase energy and RECs from approximately 1,200 MW from that project and (b) the Mayflower Wind 480 MW B2 bid from which the EDCs will purchase energy and RECs from approximately 405 MW of that project were fairly selected as the winning bids.

The Mayflower B2 bid also involved or contemplated amendments to the existing 83C Round 2 PPAs, which called for moving the point of interconnection from Falmouth/Bourne to Brayton Point (and deferred Guaranteed Commercial Operation Dates). Based on Mayflower Wind responses to Evaluation Team information requests, the EDCs treated the amendments as being separate from the Round 3 solicitation process and negotiated these amendments (which have been filed for approval in separate Department dockets), following the successful completion of the PPAs for the 480 MW facility, which they have filed for approval in the 83C Round 3 dockets. As discussed in this report, the IE had and has substantial concerns regarding this approach as well as the process that led to this approach, driven by Eversource's contentions, raised very late in the evaluation process, that this separate treatment was necessary to avoid the Mayflower B2 bid as being considered improper for being contingent on successful negotiation of the Round 2 amendments.

As a result of the EDCs' approach, the IE did not have the opportunity to monitor the negotiations for the Round 2 amendments, as the IE would have if the amendment negotiation process was treated as part of the Round 3 solicitation process. Nevertheless, the IE has had the opportunity to review the PPA amendments and based on the IE's review of Mayflower's B2 bid, responses to Evaluation Team questions in the Round 3 solicitation process, knowledge from having monitored both the original 83C Round 2 and 83C Round 3 PPA contract negotiations, and its review of the 83C Round 2 and 83C Round 3 PPAs, and it appears that the amendments are consistent with Mayflower's B2 proposal or plan, conform, where applicable, with provisions in the 83C Round 3 PPAs and do not violate any provisions of the 83C Round 3 RFP. While recognizing the IE's inability to monitor the Round 2 PPA amendment negotiations, the IE has no reason to believe that the amendments to the Round 2 PPAs were unfairly negotiated based on the review that the IE was able to conduct.

At DOER's request, Peregrine monitored the contract negotiations for the Round 3 PPAs between (a) the EDCs and Commonwealth Wind and (b) the negotiations between the EDCs and Mayflower Wind regarding the proposed 480 MW facility. It is Peregrine's assessment that overall the EDCs fairly negotiated the contracts that have been submitted for the Department's approval, that the negotiated terms are at least as favorable as those included in the respective bids, and that the resulting contracts satisfy the requirements of the 83C Round 3 RFP.

Finally, in this report, Peregrine has made several specific recommendations for process improvements for future 83C solicitations that are intended to address some of the challenges faced in the Round 3 solicitation.



Appendix A - Qualifications and Relevant Experience of the Peregrine Independent Evaluator Team

The Independent Evaluator for the 83C Round 3 RFP has been Peregrine Energy Group, Inc. (“Peregrine”) as the contracting party to the Massachusetts Department of Energy Resources (“DOER”), with four subcontractors--New Energy Opportunities, Inc. (“NEO”), Merrimack Energy Group, Inc. (“Merrimack”), Power Consulting Services, LLC, and Meaden & Moore, LLP (Meaden & Moore). The key individuals for the project team are:

- Paul Gromer, CEO of Peregrine
- Barry Sheingold, President of NEO
- Wayne Oliver, President of Merrimack
- David Andrus, Principal of Power Consulting Services, LLC
- Patrick Kelleher, Partner, Investigative Accounting Group, Meaden & Moore

This is the same team that served as Independent Evaluator for the first two 83C solicitations and the 83D solicitation pursuant to the Energy Diversity Act.

Overall, Paul Gromer has been responsible for management of the Independent Evaluator team, with Barry Sheingold serving as project lead for the 83C Round 3 solicitation, Wayne Oliver as supporting consultant, David Andrus as transmission consultant, and Patrick Kelleher advising on affiliate relationships.

Mr. Gromer, CEO of Peregrine, is an attorney and former Massachusetts Commissioner of Energy Resources. He has led Peregrine in providing consulting and related services in the renewable energy, energy efficiency, and competitive retail energy fields over the past 25 years.

Barry Sheingold and Wayne Oliver have collaborated as IEs or consultants on more than a dozen other clean and alternative energy solicitations for long-term contracts, including:

- Southern California Edison Aliso Canyon Energy Storage RFO (2016)
- Southern California Edison Renewable Portfolio Standard solicitations for long-term contracts—4 solicitations (2009, 2013, 2014, 2015);
- NV Energy Emission Reduction and Capacity Replacement Renewable Energy RFPs—3 solicitations (2014, 2015 and 2016);
- Southern California Edison Company Request for Offers for Combined Heat and Power—3 solicitations (2012, 2013, 2014);
- PacifiCorp Request for Proposals for Renewable Electric Resources (2008);



- Delmarva Power solicitation for long-term contracts, which resulted in the first long-term PPA for an offshore wind project in the United States (2006-08).

In addition, NEO and Merrimack Energy have advised Massachusetts state agencies relating to the development and implementation of competitive procurement processes for long-term contracts to facilitate financing of renewable energy projects.

- Massachusetts Utilities Long-Term Contracting Requirements for Renewable Resources under Section 83 of the Green Communities Act (2009-2010);
- Massachusetts Technology Collaborative RFP for Purchase and Option Agreements for Renewable Energy Certificates (2003-05).

Over the past 18 years, Mr. Sheingold has served as IE or provided consulting assistance in the clean energy field, with a specialty in power procurement. Mr. Sheingold served as DOER's principal consultant with respect to DOER's role in the design and implementation of two prior RFPs for long-term renewable energy contracts under Section 83A of the Green Communities Act ("GCA") and was the project lead on a study prepared on behalf of DOER for the Massachusetts legislature on the long-term contracting solicitation processes under Section 83 of the GCA. He has advised the New York State Energy Research and Development Authority regarding various rounds of its long-term contracting program for renewable energy attributes and related procurement matters. He has also provided consulting advice to the New Jersey Board of Public Utilities regarding regulations to implement the Offshore Wind Economic Development Act (2010) and advised the Rhode Island Office of Energy Resources on the commercial and economic evaluation of bids submitted pursuant to its 2008 offshore wind RFP. Mr. Sheingold has performed an independent evaluator function for renewable energy RFPs in Oklahoma and Hawaii. He has submitted testimony or other assessments on a variety of renewable energy projects and utility procurement-related matters in a number of states and provinces. Mr. Sheingold has a broad electric industry background. Prior to founding NEO, Mr. Sheingold served in a business or legal role for an electric utility company, a power marketer, a power plant developer, and the Federal Energy Regulatory Commission.

Wayne Oliver, President of Merrimack, has served as IE or similar role on over 100 competitive procurement assignments dating back to 1989. His experience in this role has included RFPs for renewable resources, conventional generation options, energy storage projects and demand response and demand-side management resources. Mr. Oliver has reviewed and evaluated thousands of power supply proposals covering all types of technologies, fuel types, and financing and contractual structures. His experience includes acting as independent consultant for Hydro Quebec's calls for tenders for wind and biomass resources, consultant to Hawaiian Electric Company on RFP design and power procurement, independent evaluator for Pacific Gas and Electric Company competitive solicitations, and independent monitor for a variety of Arizona Public Service Company, El Paso Electric Company, and Entergy Corporation competitive solicitations.



David Andrus is a Vermont-based transmission consultant with over 30 years' experience. Mr. Andrus previously led a national transmission planning and analysis practice that provided consulting services in the areas of asset valuation, condition assessment, due diligence and owners engineer reviews, renewable energy integration analyses, interconnection/delivery/congestion studies, and market rules evaluations.

Patrick Kelleher is a partner in Meaden & Moore's Investigative Accounting Group and is in the firm's Boston office. The Investigative Accounting Group provides insurance services, forensic accounting, fraud evaluations examination assessment, measurement of economic damage and litigation support services among other things. As part of its responsibilities, the Investigative Accounting Group conducts forensic affiliate investigations between different business organization entities.



Appendix B - Key Provisions of Proposed 83C Round 3 RFP Summarized

RFP Characteristics/ RFP Section	Summary/Description
<p>Eligible Bidder</p> <p>Section 2.2.1</p>	<p>An Eligible Bidder has development rights to Offshore Wind Energy Generation (under 83C, a provider of electricity from an offshore wind energy project to be located on the Outer Continental Shelf, and for which no turbine is located within 10 miles of any inhabited area, and whose rights are in a designated wind energy area for which an initial federal lease was issued on a competitive basis after January 1, 2012).</p>
<p>Procurement Target and Eligible Bid Size</p> <p>Sections 1.1 and 2.2.1.2</p>	<p>The Distribution Companies are seeking to procure at least 400 MW and up to 1,600 MW of Offshore Wind Energy Generation.</p> <p>Proposals may range from 200 MW to a nominal 1,600 MW in size.</p>
<p>Eligible Bids</p> <p>Sections 2.2.1.2 and 2.2.1.3</p>	<p>All proposals must provide for a scheduled commercial operation date before January 1, 2030.</p> <p>Pricing must be pursuant to a Power Purchase Agreement (“PPA”) under which all of the generation costs and costs to deliver energy from the offshore wind energy project to an onshore point of interconnection are recovered. Proposals must be compliant with the pricing requirements of Section 2.2.1.4.</p> <p>Proposals may pair Offshore Wind Energy Generation with Energy Storage Systems.</p> <p>In addition to entering into a PPA, a winning bidder must enter into a Commitment Agreement (the form Commitment Agreement is Appendix G). The Commitment Agreement includes a commitment that, in the event future third-Party offshore wind developers request interconnection service on the bidder’s Interconnection Customer Interconnection Facilities (“ICIF”) (all facilities and equipment located between bidder’s Offshore Wind Energy Generation facilities collector system step-up transformers and the point of change of</p>

	<p>ownership at the onshore interconnection), bidder will negotiate in good faith and use commercially reasonable best efforts to enter into a Voluntary Agreement with such developers regarding interconnection to and expansion of such ICIF to accommodate such developer’s request. “Voluntary Agreement” is defined with reference to FERC Order No. 807 (see RFP Section 2.2.1.3, n. 18).</p>
<p>Contract term; Phases</p> <p>Sections 2.2.1.2 and 2.2.1.6</p>	<p>The contract term is 15 to 20 years, as defined in 83C.</p> <p>Bidders may submit proposed projects in up to four phases for a 1,600 MW proposal, with the potential for separate contracts for each phase. In general, an 800 MW proposal may not consist of more than two phases. Examples of allowable phasing are provided in Appendix K.</p>
<p>Capacity, Interconnection, and Delivery Requirements; Deliverability Study</p> <p>Sections 2.2.1.7, 2.2.1.8, and 2.2.1.8.1</p>	<p>The Distribution Companies will not purchase capacity under long-term contracts.</p> <p>However, each project must include a commitment to interconnect to an ISO New England Pool Transmission Facility (“PTF”) at a Capacity Capability Interconnection Standard (“CCIS”)-equivalent level. While bidders are not required to participate in the Forward Capacity Auction and obtain Capacity Supply Obligations, a bidder’s proposal must include a commitment to complete the Forward Capacity Auction Qualification (“FCAQ”) process, and the bidder must complete any upgrades identified in the FCAQ process to interconnect at a level equivalent to CCIS. Bidders are responsible for all costs arising out of qualification in the FCAQ process and interconnecting to the PTF at both the Network Capability Interconnection Standard (“NCIS”) and a CCIS-equivalent level. The delivery profile submitted by the bidder should reflect any projected constraints or curtailments, if any (after inclusion of any network upgrades associated with the application of the NCIS and CCIS-equivalent interconnection standards). If a bidder desires to reduce further any constraints or curtailments, it must identify the network upgrades (for which it would have cost responsibility), estimated costs to achieve the result, and the delivery profile associated with the proposed level of network upgrades. The bidder is responsible for demonstrating that the proposed point of delivery into ISO-NE, along with the proposed interconnection and transmission</p>

	<p>upgrades, is sufficient to ensure full delivery of the proposal’s energy generation and delivery profile.</p> <p>In addition to the studies and analyses provided showing interconnection capability based on NCIS and CCIS-equivalent levels, bidders must also provide an additional deliverability study described in Appendix I, which is intended to identify potential constraints and is for informational purposes.</p>
<p>Bid fees Section 1.10</p>	<p>The minimum bid fee is \$500,000 and includes one pricing offer. There is an additional \$25,000 bid fee for each additional pricing offer. For different sized project proposals (or proposals with different in-service dates, production profiles or delivery locations), there is an additional \$50,000 bid fee.</p>
<p>Allowable Pricing, Including Price Cap Section 2.2.1.4</p>	<p>Proposals to sell Offshore Wind Energy Generation and/or associated RECs must be priced on a fixed \$/MWh and/or \$/REC basis. Prices may be the same every year or change by a defined rate or amount over time. If bidders are proposing the pairing of an Energy Storage System, any applicable costs must be included in the proposal to sell Offshore Wind Energy Generation and/or RECs and must be on a \$/MWh and \$/REC basis, as applicable.</p> <p>Price Cap: The nominal levelized price of any proposal must be less than \$77.76/MWh (including the cost of energy storage, if applicable).</p> <p>If a bidder is proposing a multi-phased project under multiple contracts (one for each phase), the nominal levelized price per MWh must be the same across all phases.</p> <p>For bids proposing both Offshore Wind Energy Generation and RECs, there must be separate pricing for the energy and RECs, and the REC prices must be no less than 20 percent of the total of the energy and REC prices for each contract year.</p> <p>Proposals for RECs only must be priced in \$/REC.</p> <p>Under the terms of the PPA, in the event that the Locational Marginal Price (“LMP”) for the Clean Energy at delivery point is less than \$0.00 per MWh in any hour, then the Buyer will purchase the Delivered Energy and/or RECs at the contract rate and Seller shall credit to Buyer, on the appropriate monthly invoice, an amount equal to the product of (i) such Energy Delivered in each such hour; and (ii) the absolute value of the hourly LMP at such Delivery Point.</p>

Other threshold requirements

Sections 2.2.2 through 2.2.2.10, and 2.2.1.12 through 2.2.2.13

The bidder must demonstrate that it has a federal lease issued on a competitive basis after January 1, 2012 for an Offshore Wind Energy Generation site that is located on the Outer Continental Shelf and for which no turbine is located within 10 miles of any inhabited area. Further, the bidder must demonstrate that it has a valid lease, or option to lease, for marine terminal facilities necessary for staging and deployment of major project components to the project site. The bidder must also detail the proposed interconnection site and both the offshore and onshore route, describe what rights the bidder has to both, and provide a detailed plan and timeline for the acquisition of any additional necessary rights. The bidder may identify alternative routes to the proposed delivery point. For each route, the bidder must: (i) specifically describe the portions of the transmission route and interconnection facilities for which the bidder has acquired sufficient rights to locate its Offshore Delivery Facilities (transmission or interconnection facilities to transport energy from Offshore Wind Energy Generation facilities to existing onshore ISO-NE Pool Transmission Facilities), and (ii) provide a reasonable and achievable detailed plan (with a timeline) to acquire sufficient rights to the remainder of the necessary Offshore Delivery Facility locations. Required information and documentation is specified in RFP Section 2.2.2.1.

The bidder must demonstrate the technical and financial viability of its proposed project. The bidder must demonstrate the logistical viability of the project through a construction plan covering the necessary specialized equipment (e.g., vessels), applicable maritime law (e.g., the Jones Act), and local port facilities to complete project deployment.

The bidder must demonstrate that it has sufficient relevant experience and expertise to successfully develop, finance, construct and operate the proposed project.

The bidder must show that the proposed project will “provide enhanced electricity reliability within the commonwealth,” as required by 83C.

The bidder must demonstrate that the proposed project will contribute to a reduction in winter electricity price spikes.

The bidder must demonstrate its approach to avoiding line loss. The 83C requirement that any transmission cost overruns are not borne on ratepayers can be satisfied by submitting a compliant bid.



	<p>The bidder must demonstrate that it can develop, finance, and construct its proposed project within a commercially reasonable timeframe.</p> <p>The bidder must demonstrate that, where feasible, its proposed project will create additional employment and economic development in the Commonwealth. Bidders proposing economic development benefits with specific commitments (such as grants) for which agreements are not in place at the time of bid submittal will be required to negotiate and execute contractual commitments with the applicable entity or entities before execution of PPAs with the Distribution Companies.</p> <p>The bidder must demonstrate that it will utilize an appropriate tracking system to account for the delivery of Offshore Wind Energy Generation.</p> <p>The bidder must demonstrate that its proposed project, where feasible, will mitigate any environmental impacts and include a fisheries mitigation plan.</p> <p>A Distribution Company may decline to pursue a proposal if the proposal’s terms and conditions would result in a contract obligation that places an unreasonable burden on the Distribution Company’s balance sheet.</p> <p>The bidder must demonstrate that long-term contracts with the Distribution Companies will facilitate the financing of its proposed project. The bidder may specify how a long-term contract would permit it to finance a project that would otherwise not be financeable or assist it in financing of its proposed project.</p>
<p>Security Section 2.2.2.11</p>	<p>For a PPA, the required level of contract security is \$40,000 multiplied by the maximum allowable energy delivery in MWh per hour (\$16 million for 400 MW), with 50% due on contract execution and the remaining 50% due after regulatory approval.</p> <p>If a project is being developed in phases and under separate contracts, additional security equal to \$37,500/MW per contract shall be required to secure the completion of both phases to be provided at commercial operation of the first phase of the project.</p>
<p>Proposal evaluation - Stage Two Section 2.3</p>	<p>Proposals that meet threshold requirements (Stage One evaluation) will be subject to a quantitative and qualitative evaluation in Stage Two. Stage Two scoring will be based on a 100-point scale, with up to 70 points for quantitative factors and up to 30 points for qualitative factors. The increase in maximum points for the qualitative evaluation from 25 to 30 (relative to past solicitations)</p>

	<p>was to increase the emphasis on the following qualitative evaluation factors: Economic Benefits to the Commonwealth and Diversity Equity and Inclusion; Benefits to Low-Income Ratepayers in the Commonwealth; and Environmental and Socioeconomic Impacts.,</p> <p>The results of the analysis will be a relative ranking and scoring of proposals.</p>
<p>Quantitative Evaluation</p> <p>Section 2.3.1</p>	<p>Proposals will be evaluated on their direct and indirect economic and environmental costs and benefits based on a combination of their direct contract price cost and benefits and other costs and benefits to retail customers.</p> <p>Direct costs are the costs to be paid by the Distribution Companies for energy and RECs under a proposed PPA. Direct benefits of energy will be evaluated based on the projected market prices of energy at the delivery point with the project in-service. The direct benefits of RECs are the avoided cost, with the project not in-service, if the RECs are to be used for RPS and Clean Energy Standard compliance by the Distribution Companies or Massachusetts retail electric suppliers, and their projected market prices with the project in-service if the RECs are projected to be sold. In addition, proposals will be evaluated on the value of their ability to produce and supply Clean Peak Energy Certificates (“CPECs”) if such value is reliably quantifiable and meaningful.</p> <p>The direct benefits of any applicable Energy Storage System will be evaluated in accordance with the foregoing.</p> <p>Other benefits and costs may include but not be limited to:</p> <ol style="list-style-type: none"> 1. The impacts of changes in LMP paid by ratepayers in the Commonwealth, taking into consideration contracts already executed by the Distribution Companies; 2. The impact on RPS and/or Clean Energy Standard compliance costs paid by ratepayers in the Commonwealth; 3. Additional impacts, if any, from the proposal on the Commonwealth’s GHG emission rates and overall ability to meet GWSA requirements will be evaluated using an economic proxy value for their contribution to meeting GWSA requirements, as determined by the Evaluation Team; 4. The impact on contributing to reducing winter electricity price spikes; 5. Indirect impacts for retail ratepayers on CPEC market prices, if any, to the extent the Evaluation Team determines such impacts are reliably quantifiable and meaningful, with the proposed project in service.

	<p>The evaluation process will include an evaluation of benefits using the outputs from an electric market simulation model or models.</p> <p>The quantitative evaluation will use as the quantitative evaluation metric real levelized dollars per megawatt-hour (\$/MWh) or other metric to be determined by the Evaluation Team prior to the evaluation of bids. For purposes of computing net present value, a discount factor consisting of the weighted average value of the Distribution Companies’ cost of capital will be used. For purposes of comparing bids of different sizes, the Evaluation Team may consider an estimate of avoided costs of Offshore Wind Energy Generation for proposals that are less than 1,600 MW in size.</p>
<p>Qualitative Evaluation</p> <p>Section 2.3.2</p>	<p>The qualitative evaluation will consist of factors mandated by 83C as well as other factors considered important by the Evaluation Team. These include:</p> <ol style="list-style-type: none"> 1. Economic Benefits to the Commonwealth and Diversity, Equity and Inclusion (“DEI”) <ol style="list-style-type: none"> a. Demonstrated ability and commitment to create and foster employment and economic development in the Commonwealth, where feasible, and a commitment to diversity, equity and inclusion, including employment and procurement/contracting opportunities, for minority, women, veterans, LGBT, and persons with disabilities. <ol style="list-style-type: none"> i. Employment and contracting benefits associated with the proposed project; ii. A DEI plan that includes, at a minimum, both a Workforce Diversity Plan and a Supplier Diversity Program Plan; iii. Specific commitments to economic activity, which may include investment in supply chain improvements to support the offshore wind industry, investment in workforce development to support the offshore wind industry, utilization and investment in port facilities and infrastructure, offshore wind-related research, and investments that directly benefit economically distressed areas, economic justice communities, and/or low-income populations;

	<ol style="list-style-type: none"> 2. Demonstrated benefits to low-income ratepayers in the Commonwealth without adding cost; benefits may include projects that reduce energy burden for low-income ratepayers through energy efficiency or renewable energy upgrades or direct funding of rate relief through grant programs or other means; 3. Credibility of the plan to obtain permit approvals and of the project schedule and construction plan; credibility and status of proposed financing plan; extent to which the project scope, including interconnection upgrades and costs are known or estimates are reasonable; 4. Extent to which the proposed project is to be paired with a storage system that demonstrates reliability and/or operational benefits; 5. Extent to which the project provides enhanced reliability within the Commonwealth, including but not limited to providing benefits to the forward capacity market; 6. Extent to which the bidder accepts provisions of the form PPAs and form Commitment Agreement or shifts risks to the Distribution Companies and their ratepayers; any additional benefit, cost, or risk identified by Evaluation Team that is determined to be reasonably likely to occur but is not reasonably quantifiable; 7. Extent to which a bidder demonstrates that its proposed project avoids, minimizes, or mitigates, to the maximum extent practicable, impacts on (a) the environment, (b) the commercial and recreational fishing industries, and (c) Environmental Justice populations. Further detail on the environmental and socioeconomic criteria to be considered in the qualitative evaluation are in Appendix J. <p>Following the Stage Two Evaluation, the Evaluation Team will determine which proposals proceed to the Stage Three 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 MW quantities of the proposal(s), relative to the procurement target.</p>
<p>Stage Three Evaluation</p>	<p>In Stage Three the Evaluation Team will evaluate the remaining proposals based on the Stage Two evaluation criteria and, at their discretion, the following additional factors:</p>

<p>Section 2.4</p>	<ol style="list-style-type: none"> 1. Possible portfolio effects; 2. Overall impact on the Commonwealth’s policy goals, as directed by the DOER, including GWSA goals and economic development; 3. Risks associated with project viability of the proposals; 4. A comparison to a reasonable range of data and analyses on expected offshore wind prices, industry costs, and the anticipated cost impact of future technologies; 5. Ratepayer bill impacts; 6. Any benefits, costs, or risks to customers that may not have been fully captured in the Stage Two evaluation; and 7. Any other considerations, as appropriate, to ensure selection of the proposal(s) which provide the greatest impact and value consistent with the stated objectives and requirements of Section 83C, as set forth in this RFP. <p>The Evaluation Team will consider the relative merits of proposals that offer additional benefits, such as economic development benefits, including additional manufacturing or innovation, as compared to other top-ranked proposals. Under Section 83C, if the Distribution Companies are unable to agree on the selection of proposals among themselves, then the DOER in consultation with the Independent Evaluator shall make the final binding determination of the winning bid(s).</p>
<p>Contracting Process; Regulatory Approvals</p> <p>Sections 2.5, 2.6, and 2.7</p>	<p>The Distribution Companies will negotiate to contract with selected bidder(s) based on their load ratio share. The Distribution Companies intend to submit any long-term contract for DPU regulatory approval following execution of long-term contracts; DPU regulatory approval is required for the contract to become effective. Any FERC-jurisdictional rate schedule or tariff or agreement agreed upon by the Distribution Companies will be filed with FERC under the Federal Power Act, which must be accepted by FERC before becoming effective.</p>
<p>RFP Schedule</p> <p>Section 3.1</p>	<p>The proposed schedule has the following anticipated dates (which are subject to change):</p> <ol style="list-style-type: none"> 1. Issue RFP – 5/7/2021 2. Bidders’ conference – 5/318/2021

	<ol style="list-style-type: none"> 3. Deadline for bidder submission of questions—5/25/2021 4. Confidential Proposals Due – 9/16/2021 5. Public Proposals Due – 9/23/2021 6. Selection of projects for negotiation – 12/17/2021 7. Finalize contract negotiations – 3/28/2022 8. Submit contracts for DPU approval – 4/27/2022
<p>Role of the Independent Evaluator</p> <p>Section 1.5</p>	<p>The role of the Independent Evaluator is described in Section 1.5 of the proposed RFP.</p>
<p>Bidder Certification</p> <p>Section 1.8</p>	<p>Each bidder is required to certify, with submission of its proposal, that, <i>inter alia</i>, it has no knowledge of confidential information associated with development of this RFP and, except as disclosed in relevant portions of its response, the bidder is not an affiliate of any Distribution Company and no Distribution Company has a financial or other affiliate interest in the bidder or the bidder’s proposed project.</p>
<p>Information Required of Bidders</p> <p>Appendix A</p>	<p>The RFP contains a Bidder Response Package (Appendix A) which contains information requests for bidders; each bidder will provide its responses as part of its proposal</p>
<p>Forms of Power Purchase Agreements</p> <p>Appendix B</p> <p>Other Appendices</p>	<p>Appendix B contains the following:</p> <ol style="list-style-type: none"> 1. Appendix B-1 Form of PPA for Offshore Wind Energy Generation and RECs (National Grid) 2. Appendix B-2 Form of PPA for Offshore Wind Energy Generation and RECs (Eversource and Unitil) <p>NOTE: RFP appendices C through G and I through K are attached to the RFP, but are not summarized in this summary of RFP provisions.</p>