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June 23, 2022

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

Re: NSTAR Electric Company d/b/a Eversource Energy Response to Independent Evaluator Report - D.P.U. 22-70

Dear Mr. Marini:

On May 7, 2021, the Electric Distribution Companies (“EDCs”),¹ in coordination with the Department of Energy Resources (“DOER”), issued a third request for proposals (“RFP”) to solicit long-term contracts for offshore wind energy generation and associated renewable energy certificates (“RECs”), consistent with the requirements of Section 83C of An Act Relative to Green Communities (“Section 83C”).² On May 25, 2022, the EDCs filed their respective Power Purchase Agreements (“PPAs”) and Voluntary Commitment Agreements executed with Commonwealth Wind and Mayflower Wind (“Round 3 PPAs”), with the Massachusetts Department of Public Utilities (the “Department”) for review and approval.^{3,4}

For the reasons set forth herein, Eversource (or the “Company”) contests certain representations made by the Independent Evaluator (“IE”) in the IE Report submitted to the Department on June 6, 2022, in the above-referenced proceeding. This letter sets forth additional facts pertinent to the Department’s consideration of the IE Report and proposed Section 83C, Round 3 PPAs, in that regard.

¹ The Electric Distribution Companies or “EDCs” are NSTAR Electric Company d/b/a Eversource Energy (“Eversource”), Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”) and Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid (“National Grid”).

² The full citation for this provision is Section 83C of An Act Relative to Green Communities, St. 2008, c. 169, as amended by 10 St. 2016, c. 188, § 12, St. 2021, c. 8, § 91 et. seq. and St. 2021, c. 24, §§ 69 and 72, 11.

³ A complete description of the bids, the evaluation and the PPAs is set forth in the joint testimony, Exhibit JU-1, filed by Eversource, National Grid and Unitil in D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72.

⁴ On May 25, 2022, the EDCs filed with the Department for its review and approval a joint motion, joint testimony and supporting exhibits regarding certain amendments, including provisions to change its interconnection point and extend the commercial operation date by 15 to 18 months, as well as locking in the energy price commensurate with a 30 percent Investment Tax Credit (“ITC”), to the Round 2 PPAs approved by the Department in D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18.

A. Background

Following receipt of the Round 3 PPA bids, the EDCs, along with the DOER and the IE, conducted evaluation and joint scoring of the bids. Ultimately, the EDCs unanimously selected the top-rated portfolio of the Commonwealth Wind 1,200 MW proposal, plus the Mayflower Wind 400 MW B2 proposal. The EDCs submitted executed Round 3 PPAs to the Department for review and approval on May 25, 2022. Immediately following the conclusion of contract negotiations and the execution of the Round 3 PPAs, the EDCs commenced negotiations with Mayflower Wind on certain amendments to the Mayflower Wind LLC Round 2 Power Purchase Agreements (“Round 2 PPAs”).⁵

On June 6, 2022, the IE submitted both a confidential and redacted “IE Report” on the solicitation, evaluation, bid selection and contract negotiation process to the pending docket on the Round 3 PPAs. The IE determined that “[t]he 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” (IE Report at 4). Additionally, the IE stated that “[t]he 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” (*id.*).

However, in rendering these findings, the IE Report states that the IE had reservations regarding the EDCs’ decision, at “Eversource’s urging,” to: (1) negotiate the Round 3 PPAs separately from the proposed amendment of the Round 2 PPAs; and (2) to commence the Round 2 PPA negotiation after negotiations on the Round 3 PPAs were concluded and the PPAs executed (*id.*). Specifically, the IE Report details certain concerns expressed by the IE in relation to positions taken by Eversource during the course of the Round 3 bid evaluation and Round 3 PPA negotiations regarding Mayflower’s apparent commingling of issues relating to Round 2 and Round 3 PPA negotiations (*see, e.g.,* IE Report at 31-35, 37-38, 46-55, 68-70). Notwithstanding these reservations, the IE Report confirms that the IE was able to review the Round 2 PPA amendments and to reach a determination that there is no reason to believe that the amendments were not fairly negotiated, thereby mooting any concerns regarding the sequencing of negotiations undertaken by the EDCs (*id.* at 5, 71).

By this letter, Eversource is providing the Department with information to correct certain inaccuracies in the IE Report regarding the Mayflower bid issues and to provide context for positions the Company took during the evaluation of the Round 3 PPA bids and the negotiation of the resulting PPAs, as well as its position regarding the negotiation timeline of the Round 2

⁵ Mayflower Wind requested that the EDCs support certain amendments to the Round 2 PPAs, previously approved by the Department on November 5, 2020.

PPA Amendments.⁶ Significantly, Eversource shared that context with the other EDCs, the DOER and the IE throughout the evaluation and negotiation process, but this context does not appear in the IE Report. The IE's decision to exclude this relevant, contextual background in the IE Report, such as by providing the memo submitted by the Company to the other EDCs, the DOER and the IE to the Department, or providing a fair discussion thereof,⁷ or alternatively, by including a complete recitation of the facts surrounding Eversource's position on the sequencing of the Round 2 PPA negotiations (IE Report at 48-55), deprives the Department of the complete set of facts surrounding the Round 3 PPA solicitation. This letter is intended to provide the Department with additional facts pertinent to its review of the Round 3 PPAs.

B. Omitted Contextual Information

The Company *wholly rejects* the unsupported statements in the IE Report, as well as statements made by the IE in written memos and during numerous Round 3 EDC/DOER Evaluation Team and Steering Team meetings, as well as other communications with Eversource personnel, that certain positions taken by Eversource during the course of the Round 3 PPA solicitation were intended to advance the interests of its affiliate, Bay State Wind.⁸ The IE Report substantially and improperly underrates Eversource's valid concern for the integrity of the competitive process mandated by Section 83C for the protection of customers paying for the long-term contractual obligations.

As an initial matter, the IE Report does not provide an accurate depiction of the Company's concerns that gave rise to the December 5, 2021 Eversource legal memorandum referenced in the IE Report (IE Report at 34-36). Contrary to the characterization included in the IE Report that Eversource delivered a legal memorandum on its concerns late in the process, Eversource voiced concerns to the other EDCs, the DOER and the IE in meetings *well in*

⁶ This letter does not respond to all of the contentions put forth by the IE in the IE Report regarding the IE's perspective on Eversource's conduct and motivations during the Round 3 PPA solicitation and negotiations. Silence by the Company with respect to any of the statements made or positions taken in the IE Report should not be construed as agreement with or assent to those statements or positions. The Company welcomes the opportunity to provide the Department with additional information during the course of the D.P.U. 22-70 proceeding.

⁷ For example, the IE Report's discussion of Cataldo Ambulance Service, Inc. v. City of Chelsea, 426 Mass. 383 (1998)(IE Report at 50) fails to discuss the totality of the Supreme Judicial Court ("SJC") decision. The Eversource memo cited the Appeals Court decision in Ambulance Service for the principle that "[e]ven outside of the statutory framework ... general principles of fairness obligate solicitors of competitive bids to consider only those bids that conform to the specifications issued." Cataldo Ambulance Service, Inc. v. City of Chelsea, 43 Mass. App. Ct. 26-27, 30 (1997). The Company did not rely on Ambulance Service for the specific facts of that case. The SJC did not indicate in its decision that the Appeals Court assertion quoted above was incorrect. In fact, the SJC stated that: "[w]e agree with the Appeals Court that, as a general proposition, whether pursuant to a procurement statute or in the interest of fairness, 'solicitors of competitive bids [are obligated] to consider only those bids that conform to the specifications issued.'" Cataldo Ambulance Serv., Inc. v. Chelsea, supra at 30." Cataldo Ambulance Service, Inc. v. City of Chelsea, 426 Mass. 383, 388-389(1998). The SJC disagreed with the Appeals Court regarding whether the city applied this principle correctly in the case. See id., at 388-389.

advance of submitting a written memorandum to memorialize the legal and competitive concerns, raising the issue as early as October 2021 in the EDC/DOER evaluation process. For example, Eversource referenced concerns in the development of the second round of questions the EDC/DOER Evaluation Team submitted to Mayflower Wind on October 12, 2021.⁹

At the time the Company circulated its Memorandum, the EDCs and DOER had twice followed up with Mayflower Wind (by letters dated September 30, 2021 and October 12, 2021, respectively) on the question of whether or not the Mayflower Wind bids were *contingent upon* making amendments to the already executed and approved Round 2 PPAs. As the responses to these questions are confidential, the Company is providing both the questions and the responses in Attachment A [Confidential] to this letter. As described in the Memorandum, the terms of the Mayflower Wind bid and associated responses indicated that the Round 3 PPA bids were not in conformance with the Round 3 RFP, given that the bids appeared to be contingent on making amendments to the Round 2 PPAs. As detailed in the Memorandum, the RFP described what types of contingent bids were permitted and, conversely, did not authorize a contingent bid contemplating amendments to other PPAs already executed with the EDCs.

As further described in the Memorandum, Eversource determined that allowing non-conforming contingent bids would impermissibly impair the transparent and competitive basis of the Section 83C Round 3 solicitation, as well as future solicitations under Section 83C, by setting a precedent that would create two classes of bidders: (1) bidders who would be able to utilize previously negotiated and approved PPAs to bolster their bids being evaluated by the EDC/DOER Evaluation Team, or to otherwise utilize the solicitation process to leverage changes to existing agreements; and (2) bidders without approved PPAs. Creating these two classes of bidders ensured that certain bidders would always be at a *competitive disadvantage*, which is wholly contrary to the open, fair, and transparent competitive solicitation mandated by Section 83C for the protection of customers.¹⁰

⁹ In the IE's December 13, 2021 response to the memorandum, the IE states that “[f]or some time, Eversource has raised the issue of the existence and significance of a legal/regulatory risk involving Mayflower Wind's [bids] due to the fact that to effectuate these bids as proposed would involve amendments to existing power purchase agreements (“PPAs”) that Mayflower Wind entered into with the Massachusetts Electric Distribution Companies (“EDCs”) as part of the 83C Round 2 solicitation process” (December 13, 2021 IE Memo at 1)(emphasis added).

¹⁰ Following the distribution of the Memorandum, the EDC/DOER Evaluation Team determined that it was necessary to ask further questions to Mayflower in an effort to obtain a definitive answer as to whether the bids were contingent on modifications to its Round 2 PPAs. This third round of questions was issued on December 8, 2021. On December 10, 2021, Mayflower Wind submitted its responses (see Attachment A Confidential). Based on the December 10, 2021 responses, the EDC/DOER Evaluation Team continued to evaluate these bids, along with the other bids received in response to the Section 83C Round 3 RFP. The December 10, 2021 responses also formed the basis for Eversource's determination that the Round 3 PPA negotiations and the Round 2 PPA Amendment negotiations had to remain completely separate to ensure that the fair, open and transparent nature of the Section 83C Round 3 PPA negotiation was not impermissibly impinged upon.

C. Mischaracterizations by the IE and IE Report

There are several mischaracterizations and misrepresentations regarding the sequence of events and discussions pertaining to Eversource's concerns on the competitive integrity of a process whereby the Round 3 PPA bidder submits a bid contingent upon amendment of a Round 2 PPA, already executed and approved by the Department in a prior solicitation.

For example, in a March 31, 2022 email communication to the EDCs and DOER, the IE stated that, based on a *2019 news article*, there was "a stronger conflict of interest/appearance of a conflict with respect to Eversource" as it related to the Company's conduct and positions during the Section 83C Round 3 solicitation. The IE based this conclusion on the three-year old news article's reference to Bay State Wind's intent to interconnect at Brayton Point in Somerset, Massachusetts, where Mayflower Wind also intended to interconnect.

As Eversource pointed out in a subsequent meeting with the IE and counsel for the other EDCs, Somerset is located in National Grid's service territory and National Grid, not Eversource, would make the determination about future interconnections. The Eversource Evaluation Team has no input or influence whatsoever on that decision, nor is there any allegation that the Eversource Evaluation Team could in any way exert influence over that process (nor would it). The IE did not have a response to these facts, but nevertheless persisted in asserting, without any corroboration, that the Eversource Evaluation Team was attempting to benefit its affiliate (IE Report at 32).

The IE Report also failed to address the fact that, based on the ISO-NE System Impact Study for QP837, which includes Bay State Wind's QP 618 in its base case, the 1,200 MW Mayflower Wind project interconnecting at Brayton Point, "will not cause any significant adverse impact on the reliability or operating characteristics" of the ISO-NE transmission system, as long as \$42.25 million worth of system upgrades are performed (Siemens PTI, System Impact Study Report for QP 837 ETU Project, Report Number R151-20 Rev. 2 (May 2021) at 11-3). This statement means that, even with Bay State Wind's earlier-queued project also injecting at Brayton Point, all 1,200 MW of Mayflower Wind's project could interconnect there, as well.

Moreover, the IE Report states that the Eversource Evaluation Team "[m]ight not be acting in a neutral, unbiased manner with regard to the Mayflower bids and that this might reflect an alignment between the Eversource Evaluation Team and the competitive interests of its affiliate, Bay State Wind" (IE Report at 32). However, the IE has not substantiated these statements -- and cannot -- because no such "alignment" exists. The Eversource Evaluation Team's positions and decisions in the Section 83C Round 3 solicitation and negotiations, as well as all solicitations and negotiations conducted pursuant to Section 83C, are entirely motivated by the need to protect the interests of customers consistent with the mandates of Section 83C, which is accomplished through a fair and transparent, competitive bid solicitation process.

In fact, to the contrary, the IE's written response to the Memorandum circulated on December 13, 2021, as well as a subsequent response circulated on January 18, 2022 and the statements made in the IE Report, do not provide any reassurance that the IE was impartially evaluating either Eversource's actions, or the objectively reasonable and valid concerns raised by Eversource regarding the integrity of the competitive process. As noted, Eversource's fundamental concern was that allowing contingent bids would impermissibly create two classes of bidders, with one class having a distinct advantage over the other, where parties with existing contracts could exploit the solicitation process by linking proposals to modifications to those contracts. This differentiation would irreparably impair the open, fair, and transparent nature of the competitive solicitations to be conducted under Section 83C and supported by customers over the long term.

Instead of offering a substantive response to the points raised in the Company's Memorandum, or better yet supporting Eversource and the EDCs in their efforts to affirmatively protect the fair, open and transparent nature of the Section 83C Round 3 solicitation process, the IE chose to question Eversource's motivations and assert that Eversource's concerns were based on advocacy for affiliate projects. The IE inexplicably reached this conclusion despite the fact that Bay State Wind had not submitted a bid in response to the Section 83C Round 3 RFP. Instead, the IE memo stated that "Bay State Wind's competitive interests could be adversely affected by more MWs being selected and built, which could lessen the chances of Bay State Wind in future solicitations." This statement ignores the truism that whether there are more or less MWs available in potential future solicitations is an issue that affects *all* potential bidders *equally* regardless of whether the bidder may be affiliated with an EDC. This premise does not reasonably and objectively lead to a conclusion that the Eversource Evaluation Team members were attempting to benefit an affiliate, nor could it do so. Despite this faulty premise, the IE continues to voice this meritless contention publicly, inappropriately attempting to damage the Company's reputation and betraying a lack of impartiality toward Eversource.

Notably, the IE stated in a written memo submitted to Eversource, the other EDCs and the DOER during the course of the Section 83C Round 3 solicitation that it was not "alleging or even suggesting" that there have been improper communications between Eversource's Evaluation and Bid Teams. In addition, the IE Report correctly notes that Bay State Wind did not submit a bid or bids in the Section 83C Round 3 solicitation (IE Report at 4). Further, due to the strict separation required by the Eversource Standard of Conduct ("SOC"), the Eversource Evaluation Team has no input or information regarding whether Bay State Wind will submit bids in future solicitations.¹¹ Yet, these facts do not stop the IE from making disparaging, baseless and

¹¹ Eversource has a robust SOC in place for the Section 83C Round 3 solicitation. The IE signed off on the Eversource SOC on February 2, 2021 and stated in its March 15, 2021 report to the Department, that "[t]he Standards of Conduct satisfies the transparency principle, in the IE's opinion, and provides important protections for the integrity of the solicitation process." D.P.U. 21-40, IE Report at 31. Pursuant to the terms of the SOC, Eversource has two "teams:" an Eversource Evaluation Team and an Eversource Bid Team that are each represented by separate legal counsel. These teams are kept separate through specific internal Company protocols around confidentiality, information access, badging of team members, non-discrimination against non-affiliates and non-preferential treatment of affiliates in the bid process.

gratuitous remarks in the IE Report that should be squarely rejected by the Department.


D. Conclusion

Eversource does not offer this information to cast doubt on the Section 83C Round 3 solicitation or PPAs. Eversource is fully committed to the long-term contracting initiative and is certain that its actions and decisions, as well as the actions and decisions of the other EDCs, were undertaken for the sole intent to conduct the solicitation and negotiations consistent with the requirements of Section 83C in order to both secure the intended benefits for customers of the Round 3 PPAs, and protect customers from future costs that have the potential to arise from a bid solicitation process that is not fully competitive. The IE ultimately concluded as much in its Report (IE Report at 73-74).

Instead, the Company offers the information set forth herein to provide the Department with a complete set of facts and the surrounding context, and to dispel any contentions by or inference from the IE that the Company acted in any manner improperly. As noted above, the Company stands ready to provide the Department with any additional information that will assist it in its review of the Eversource Section 83C Round 3 PPAs and its conduct throughout the solicitation process, selection of winning proposals, or negotiation of the resulting PPAs.

Please contact me with any questions you may have. Thank you for your attention to this matter.

Sincerely,


Danielle C. Winter, Esq.

cc: Alice Davey, Esq., Hearing Officer
Kevin Crane, Esq., Hearing Officer
D.P.U. 22-70 Service List