

# The Commonwealth of Massachusetts

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## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 22-70

December 30, 2022

Petition of NSTAR Electric Company d/b/a Eversource Energy for approval by the Department of Public Utilities of two long-term contracts for procurement of offshore wind energy generation, pursuant to St. 2008, c. 169, § 83, as amended by St. 2016, c. 188, § 12; St. 2021, c. 8 § 91 et seq.; and St. 2021, c. 24, §§ 69, 72; and 220 CMR 23.00.

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D.P.U. 22-71

Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid for approval by the Department of Public Utilities of two long-term contracts for procurement of offshore wind energy generation, pursuant to St. 2008, c. 169, § 83, as amended by St. 2016, c. 188, § 12; St. 2021, c. 8 § 91 et seq.; and St. 2021, c. 24, §§ 69, 72; and 220 CMR 23.00.

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D.P.U. 22-72

Petition of Fitchburg Gas and Electric Light Company, d/b/a Unitil for approval by the Department of Public Utilities of two long-term contracts for procurement of offshore wind energy generation, pursuant to St. 2008, c. 169, § 83, as amended by St. 2016, c. 188, § 12; St. 2021, c. 8 § 91 et seq.; and St. 2021, c. 24, §§ 69, 72; and 220 CMR 23.00.

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APPEARANCES: Danielle C. Winter, Esq.  
Jessica Buno Ralston, Esq.  
Keegan Werlin LLP  
99 High Street, 29th Floor  
Boston, Massachusetts 02110  
FOR: NSTAR ELECTRIC COMPANY  
Petitioner (D.P.U. 22-70)

John K. Habib, Esq.  
Ashley S. Marton, Esq.  
Keegan Werlin LLP  
99 High Street, 29th Floor  
Boston, Massachusetts 02110

-and-

Laura C. Bickel, Esq.  
National Grid USA Service Company, Inc.  
40 Sylvan Road  
Waltham, Massachusetts 02451  
FOR: MASSACHUSETTS ELECTRIC COMPANY  
AND NANTUCKET ELECTRIC COMPANY  
Petitioner (D.P.U. 22-71)

Patrick H. Taylor, Esq.  
Matthew C. Campbell, Esq.  
Unitil Service Corporation  
6 Liberty Lane West  
Hampton, New Hampshire 03842

-and-

William D. Hewitt, Esq.  
Hewitt & Hewitt  
500 U.S. Route 1, Suite 107  
Yarmouth, Maine 04096  
FOR: FITCHBURG GAS AND ELECTRIC LIGHT  
COMPANY  
Petitioner (D.P.U. 22-72)

Maura Healey, Attorney General  
Commonwealth of Massachusetts  
By: Elizabeth L. Mahony  
Jonathan F. Dinerstein  
Assistant Attorneys General  
Office of Ratepayer Advocacy  
One Ashburton Place  
Boston, Massachusetts 02108  
Intervenor

Robert Hoaglund, Esq.  
Ben Dobbs, Esq.  
Colin P. Carroll, Esq.  
100 Cambridge Street, Suite 1020  
Boston, Massachusetts 02114  
FOR: MASSACHUSETTS DEPARTMENT OF  
ENERGY RESOURCES  
Intervenor

Zachary Gerson, Esq.  
Ethan Severance, Esq.  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
FOR: COMMONWEALTH WIND, LLC  
Intervenor

Eric K. Runge, Esq.  
Margaret Czepiel, Esq.  
Day Pitney LLP  
One International Place  
Boston, Massachusetts 02210

-and-

Daniel Hubbard, Esq.  
Mayflower Wind Energy LLC  
101 Federal Street  
Boston, Massachusetts  
FOR: MAYFLOWER WIND ENERGY LLC  
Limited Participant

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## I. INTRODUCTION

On May 25, 2022, NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric”), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid (together “National Grid”); and Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”) (collectively, “Companies”) filed petitions with the Department of Public Utilities (“Department”) pursuant to An Act Relative to Green Communities, St. 2008, c. 169, § 83C (“Section 83C”)<sup>1</sup> and 220 CMR 23.00, each for approval of two long-term power purchase agreements (“PPAs”) to purchase offshore wind energy generation and associated renewable energy certificates (“RECs”).<sup>2</sup> The Department docketed the NSTAR Electric petition as D.P.U. 22-70, the National Grid petition as D.P.U. 22-71, and the Unitil petition as D.P.U. 22-72.

Section 83C requires that the Companies jointly and competitively solicit proposals for offshore wind energy generation and, provided that reasonable proposals have been received, enter into cost-effective long-term contracts. Section 83C(a); 220 CMR 23.00. The Companies

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<sup>1</sup> Section 83C was added to An Act Relative to Green Communities by An Act to Promote Energy Diversity, St. 2016, c. 188, § 12. On August 11, 2022, while the Department’s investigation into the PPAs was ongoing, Governor Charlie Baker signed An Act Driving Clean Energy and Offshore Wind (“2022 Clean Energy Act”) into law, which further amended Section 83C. St. 2022, c. 179, § 61. The Department evaluates the proposed PPAs in accordance with the statutory provisions in effect at the time of the Companies’ filing.

<sup>2</sup> Each PPA incorporates a separate voluntary commitment agreement between the electric distribution company and the developer, and the Companies provided executed copies of the voluntary commitment agreements with their filings (Exh. JU-3). Pursuant to the voluntary commitment agreements, the developers agree to take certain steps in the event a third-party offshore wind developer requests interconnection at and/or delivery service on the developer’s interconnection facilities (Exh. JU-3).

may conduct competitive solicitations through a staggered procurement schedule, provided that the schedule ensures that the Companies contract for offshore wind energy generation equal to approximately 5,600 megawatts (“MW”)<sup>3</sup> of aggregate nameplate capacity by June 30, 2027, and that individual solicitations seek proposals for at least 400 MW of offshore wind energy generation. Section 83C(b); 220 CMR 23.00. The Department must approve a long-term contract before it can become effective. Section 83C(a); 220 CMR 23.03(2).

In these proceedings, the Companies each seek approval of two 20-year PPAs for an apportioned share<sup>4</sup> of energy and RECs executed with offshore wind energy generating resource developers Commonwealth Wind, LLC (“Commonwealth Wind”)<sup>5</sup> and Mayflower Wind Energy LLC (“Mayflower Wind”) (Exh. JU-1, at 8-9, 33).<sup>6</sup> The proposed PPAs are the result of the Companies’ third round of solicitations for offshore wind energy generation pursuant to Section 83C.<sup>7</sup>

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<sup>3</sup> In 2021, the Commonwealth increased the requirement from 1,600 MW to 5,600 MW. St. 2021, c. 24, § 69; St. 2021, c. 8, § 91.

<sup>4</sup> As required by statute, the Companies’ respective apportioned share is based upon the total energy demand from all distribution customers in their service territories, which, in this case, are 53.96 percent for NSTAR Electric, 45.04 percent for National Grid, and 1.00 percent for Unitil (Exh. JU-1, at 9 n.4). Section 83C(g).

<sup>5</sup> Avangrid Renewables LLC owns Commonwealth Wind (Exh. JU-1, at 9 n.3).

<sup>6</sup> Shell New Energies US LLC and Ocean Winds North America LLC own Mayflower Wind (Exh. AG-2-1, Att. B-2).

<sup>7</sup> In 2019, the Department approved the Companies’ first round of PPAs for 800 MW from a facility proposed by Commonwealth Wind’s predecessor, Vineyard Wind LLC. NSTAR Electric Company et al., D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 89 (2019). In 2020, the Department approved the Companies’ second round of PPAs for 804 MW from a facility proposed by Mayflower Wind. NSTAR Electric Company et al., D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 94-95 (2020).

In the proposed Commonwealth Wind PPAs, the Companies will be purchasing 1,200 MW of Commonwealth Wind's proposed 1,232 MW facility, which is located in Bureau of Ocean Energy Management lease area OCS-A 0534 (Exhs. JU-1, at 32-35; JU-3, Commonwealth PPA at 5, 68-70, 90, 156, 158, 240, 242). The combined price for energy and RECs begins at \$47.68 per megawatt hour ("MWh") on a nominal levelized basis and escalates at 2.5 percent each year for 20 years (Exh. JU-1, at 36). The price in year 20 is \$76.22 per MWh (Exh. JU-1, at 36).

In the proposed Mayflower Wind PPAs, the Companies will be purchasing 405 MW of Mayflower Wind's proposed 480 MW facility, which is located in Bureau of Ocean Energy Management lease area OCS-A 0521 (Exhs. JU-1, at 32-35; JU-3, Mayflower PPA at 6, 68-71, 94, 162-165, 188, 251-254). The combined price for energy and RECs is \$76.73 per MWh on a nominal levelized basis and remains fixed for the 20-year term of the PPAs (Exh. JU-1, at 36). The prices for energy and RECs are \$61.38 per MWh and \$15.35 per MWh, respectively (Exh. JU-1, at 36).

## II. PROCEDURAL HISTORY

On June 2, 2022, the Attorney General filed notices of intervention in these matters pursuant to G.L. c. 12, § 11E(a). On June 22, 2022, the Department granted the petitions to intervene as a full party submitted in each proceeding by Commonwealth Wind and the Massachusetts Department of Energy Resources ("DOER"). The Department also granted the petition to intervene as a limited participant submitted in each proceeding by Mayflower Wind.



On June 23, 2022, the Department held a joint public hearing and procedural conference for the three dockets.<sup>8</sup>

On August 26, 2022, the Companies and the Attorney General (together, “Stipulating Parties”) filed a joint motion for approval of a stipulation agreement (“Stipulation Agreement”). The Stipulating Parties request that the Department: (1) allow annual remuneration for each of the Companies of 2.25 percent of the annual payments under the PPAs; and (2) determine that the costs of the PPAs, including procurement, contract development and administration costs, plus remuneration, are eligible for cost recovery pursuant to the Companies’ respective long-term clean energy contract cost recovery tariffs (Stipulation Agreement at 3).

In support of their petitions, the Companies sponsored the testimony of:

(1) Jeffery S. Waltman, manager, planning and power supply for Massachusetts, Eversource Energy; (2) Katherine Wilson, manager, long-term clean energy supply, National Grid USA Service Company, Inc; (3) Timothy J. Brennan, director, wholesale markets strategy, National Grid USA Service Company; (4) Lisa S. Glover, senior energy analyst, Unitil Service Corporation; (5) Ellen Lapson, principal, Lapson Advisory, a division of Trade Resources Analytics, LLC; and (6) Robert B. Hevert, senior vice president, chief financial officer and treasurer, Unitil Service Corporation. The Attorney General sponsored the testimony of Vincent Musco, partner, Bates White Economic Consulting. DOER sponsored the testimony of Joanna Troy, director of energy policy, DOER; and Marian Swain, deputy director of policy and planning, DOER. DOER and the Attorney General jointly selected Peregrine Energy Group, Inc.

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<sup>8</sup> The Department held a joint public hearing for these dockets, but these cases are not consolidated and remain separate proceedings.

(“Independent Evaluator”) to provide a report on the solicitation, evaluation, selection, and contract negotiation processes. Section 83C(f); 220 CMR 23.04(6). The Independent Evaluator filed its report with the Department on June 6, 2022 (“IE Report”).<sup>9</sup> The evidentiary record consists of 139 exhibits.<sup>10</sup>

On September 27, 2022, the Companies, the Attorney General, DOER, and Commonwealth Wind each notified the Department that they did not require evidentiary hearings. On October 18, 2022, the Companies, Attorney General, and DOER filed initial briefs. On November 1, 2022, Commonwealth Wind submitted a reply brief, and the Companies and the Attorney General filed letters in lieu of reply briefs.<sup>11</sup>

On October 18, 2022, Commonwealth Wind filed a motion for a one-month suspension of the proceedings, and on November 1, 2022, Commonwealth Wind filed a motion to reopen the evidentiary records in the proceedings to submit an affidavit from Sy Oytan, senior vice president for offshore projects at Avangrid Renewables, LLC. The Department denied Commonwealth Wind’s motions to suspend the proceedings and reopen the records and did not admit the affidavit into evidence. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order

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<sup>9</sup> On its own motion, the Department moves the report submitted by Peregrine Energy Group, Inc. to the Department on June 6, 2022 (“IE Report”) into the records of these proceedings.

<sup>10</sup> The Department admitted the parties’ prefiled testimony, responses to discovery, exhibits, and all corrected, revised, and/or supplemental versions thereof filed with the Department as of October 18, 2022. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order at 2 n.2 (November 4, 2022).

<sup>11</sup> The Department finds that the evidentiary records and briefs in these proceedings provide an adequate basis to address the Companies’ filings without a need for evidentiary hearings.

at 11-13 (November 4, 2022).<sup>12</sup> The Department directed Commonwealth Wind and Mayflower Wind to notify the Department within three business days whether they intended to move forward with their contractual obligations under the PPAs or file a request to dismiss the proceedings. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order at 13 (November 4, 2022).

On November 7, 2022, Mayflower Wind notified the Department that it intended to move forward with its PPAs. On November 9, 2022, the Department granted Commonwealth Wind's request for an extension of time to file its response to the Department's Interlocutory Order (Hearing Officer Ruling at 3). On November 14, 2022, Commonwealth Wind notified the Department that it was not requesting a dismissal of the proceedings. Thirty-two days later, Commonwealth Wind filed a motion to dismiss these proceedings as to the PPAs between Commonwealth Wind and the Companies ("Motion to Dismiss"). On December 23, 2022, Mayflower Wind and the Companies submitted comments in response to the Motion to Dismiss.

### III. MOTION TO DISMISS

#### A. Introduction

Commonwealth Wind moves to dismiss the Companies' petitions pursuant to 220 CMR 1.06(5)(e) as to its PPAs with the Companies on the basis that the PPAs do not meet the statutory requirement that they facilitate the financing of Commonwealth Wind's project (Motion to Dismiss at 1, citing Section 83C(a)). Arguing that its project is no longer

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<sup>12</sup> In this Order, the Department does not consider any portions of Commonwealth Wind's reply brief that rely on the information contained in the affidavit submitted after the records closed. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order at 11 (November 4, 2022).

financeable, Commonwealth Wind claims that it is not possible for the Department to approve the PPAs consistent with Section 83C and, therefore, the Department should dismiss the proceedings (Motion to Dismiss at 1).

B. Positions of the Parties

1. Commonwealth Wind

Commonwealth Wind alleges that there is no substantial record evidence to support a finding that the PPAs will facilitate the financing of its project (Motion to Dismiss at 8).

Commonwealth Wind claims that the statements made in its bid that the project is financeable are no longer applicable (Motion to Dismiss at 8-9 & n.8). Commonwealth Wind argues that the Department should give significant weight to Commonwealth Wind's request to dismiss the proceedings because it is the party most directly impacted by the approval or dismissal of the PPAs (Motion to Dismiss at 9).

Moreover, Commonwealth Wind maintains that after several months of discussions with the parties no realistic path to amending the PPAs has emerged and, therefore, the Department should grant its request for dismissal to promote administrative efficiency and certainty for the next round of solicitations (Motion to Dismiss at 9). Commonwealth Wind asserts that dismissing the Companies' petitions would allow the 1,200 MW that is the subject of the PPAs to be included in the next round of solicitations, which Commonwealth Wind contends is the best path forward to advance the Commonwealth's clean energy and greenhouse gas emissions goals (Motion to Dismiss at 10).

## 2. Mayflower Wind

Mayflower Wind submitted comments on December 23, 2022 taking no position on the Motion to Dismiss and asserts that it remains committed to implementing the Mayflower Wind project consistent with the PPAs (Mayflower Wind Reply Comments at 2). Mayflower Wind states that they agree with certain assertions made by Commonwealth Wind regarding increases in commodity prices, rising interest rates, and supply shortages that it claims challenge Mayflower Wind's economics (Mayflower Wind Reply Comments at 2-3).<sup>13</sup>

## 3. Companies

The Companies argue that Commonwealth Wind negotiated and executed the PPAs and that the Department has conducted a full and fair adjudicatory process to review the PPAs (Companies Reply Comments at 1). The Companies assert that the Department should reject the Motion to Dismiss due to the very late filing of the motion and contend that granting such a motion, at this stage, would significantly undermine the process established to encourage the development of offshore wind projects (Companies Reply Comments at 1).

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<sup>13</sup> Mayflower Wind also requested that the Department allow the parties to discuss these issues before issuing a decision in these proceedings. Consistent with the reasons set forth in the Department's Interlocutory Order, the Department finds that Mayflower Wind has failed to provide good cause for the Department to delay issuing a decision on the PPAs freely entered into by Mayflower Wind. In the event that Mayflower Wind and the Companies agree to amend the PPAs, the Companies may submit such amendments for Department review. See NSTAR Electric Company, D.P.U. 20-16, Motion to Approve Amendments to Mayflower Wind LLC Round II Power Purchase Agreements (May 25, 2022).

C. Standard of Review

The Department's procedural rules authorize a party to move for dismissal as to all issues or any issue in a case any time after a party files an initial pleading. 220 CMR 1.06(5)(e).<sup>14</sup> The Department may order dismissal by motion of a party or upon its own motion if the Department concludes as a matter of law that the Department has neither the authority nor the discretion to grant the relief requested, that the filing itself is patently deficient in form or a nullity in substance, or that the non-moving party has otherwise failed to state a claim upon which relief can be granted. See, e.g., Massachusetts Electric Company v. Department of Public Utilities, 383 Mass. 675, 678-681 (1981) (upholding Department's dismissal of filing as patently defective); Bay State Gas Company, D.P.U. 10-133, at 2-5 (2011) (filing patently defective); Abbey Province, LLC, D.T.E./D.P.U. 06-72, at 10-15 (2007) (lack of jurisdiction); Massachusetts Oilheat Council, Inc./Massachusetts Alliance for Fair Competition, D.T.E. 00-57, at 8, 9, 11, 13 (2001) (no legal basis to investigate thus failed to state a claim upon which relief could be granted); Allco Renewable Energy Limited, D.P.U. 11-23/D.P.U. 11-24/D.P.U. 11-25, at 10-14 (2011) (failed to state a claim upon which relief could be granted). In determining whether to order dismissal, the Department reviews whether a party, in its initial pleading, provided factual allegations sufficient to raise a right to relief above the speculative level based on the assumption that the allegations in the initial pleading were true.

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<sup>14</sup> Procedures for dismissal and summary judgment properly can be applied by an administrative agency where the pleadings and filings conclusively show that the absence of a hearing could not affect the decision. Massachusetts Outdoor Advertising Council v. Outdoor Advertising Board, 9 Mass. App. Ct. 775, 783-786 (1980); Hess and Clark, Division of Rhodia, Inc. v. Food and Drug Administration, 495 F.2d 975, 985 (D.C. Cir. 1974).

D.P.U. 11-23/D.P.U. 11-24/D.P.U. 11-25, at 8-9 & n.5, 10-15 (2011); see also Iannacchino v. Ford Motor Company, 451 Mass. 623, 636 (2008).

D. Analysis and Findings

Commonwealth Wind's Motion to Dismiss does not demonstrate that the Companies failed to provide factual allegations sufficient to raise a right to relief above the speculative level. As discussed below, the Companies have submitted testimony and supporting documentation on the issue of whether the PPAs facilitate financing Commonwealth Wind's proposal in accordance with Section 83C (see Section V.C.3, below). Accordingly, the Department finds that Commonwealth Wind has failed to establish that the Companies could prove no set of facts to justify review of the PPAs. Therefore, we deny Commonwealth Wind's Motion to Dismiss.<sup>15</sup>

IV. SOLICITATION PROCESS

A. Introduction

The Companies and DOER issued a request for proposals ("RFP")<sup>16</sup> to approximately 488 individuals and entities with an interest in developing renewable energy projects and published the RFP on a dedicated website (Exhs. JU-1, at 18; WP Support Tab A). Prior to the

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<sup>15</sup> The Department notes that it previously set a deadline for any motion to dismiss by Commonwealth Wind in order to avoid the unnecessary use of resources that could be dedicated to other important matters pending before the Department (Interlocutory Order at 13). Commonwealth Wind choose not to submit such a motion and the Department has since conducted a full analysis of the PPAs as set forth in this Order. The Department also notes that to our knowledge Commonwealth Wind has not sought to terminate its obligations under the PPAs.

<sup>16</sup> On May 5, 2021, the Department approved the timetable and method of solicitation and execution developed by the Companies and DOER for the third solicitation of offshore wind energy generation. Fitchburg Gas and Electric Light Company et al., D.P.U. 21-40, at 80 (2021).

submission deadline, the Companies held a conference for prospective bidders and answered questions about the RFP (Exh. JU-1, at 19). Thereafter, the Companies received six different proposals, all of them submitted by either Commonwealth Wind or Mayflower Wind (Exh. JU-1, at 19). An evaluation team scored the six proposals on a 100-point scale, with a maximum of 70 points for quantitative factors and 30 points for qualitative factors, and a selection team determined the winning proposals (Exhs. JU-1, at 23, 27-28; JU-2, at 10-11, 36).

The Companies state that during the RFP solicitation phase, ISO New England was in the process of undertaking a two-phase study to evaluate the potential transmission impacts of a group of energy generation projects seeking to interconnect to the transmission system serving Cape Cod (Exh. JU-1, at 21). The Companies explain that ISO New England identified interconnection constraints on the interconnection capacity available to bidders seeking to interconnect their wind energy generation projects on Cape Cod (Exh. JU-1, at 21). To address the interconnection limitations and the strategies bidders used to adapt to these limitations, the evaluation team modified the base case methodology and conducted additional sensitivity and scenario analyses (Exh. JU 1, at 22).

The evaluation team added each proposal's quantitative and qualitative points and ranked the proposals from high to low according to a proposal's total score (Exhs. JU-1, at 31; JU-4, at 20). The evaluation team also modeled portfolios of proposals that ranged from 1,280 MW to 1,685 MW of offshore wind energy generation to understand whether the selection of a portfolio of proposals would provide greater benefits to customers than a single proposal alone (Exh. JU-1, at 31). Ultimately, the selection team unanimously agreed to select a portfolio of the 1,200 MW proposal by Commonwealth Wind and the 405 MW proposal by Mayflower Wind



because that portfolio had the highest combined quantitative and qualitative score compared to other portfolios and the individual proposals (Exh. JU-1, at 32-33).

The Attorney General states that the solicitation process included effective practices to keep the solicitation fair and open (Exh. AG-VM-1, at 11). The Attorney General recommends that in future solicitations the evaluation team should conduct sensitivity analyses for load growth, natural gas prices, and environmental policy (Exh. AG-VM-1, at 17-18).

The Independent Evaluator states that it was closely involved in the entire solicitation process up to and including the selection of the winning proposals and had access to all necessary information and data to perform its monitoring, oversight, and reporting duties (Exh. IE Report at 73). The Independent Evaluator concludes that “all bids were evaluated in a fair and objective manner’ through the conduct of an ‘open, fair, and transparent solicitation process that was not unduly influenced by an affiliated company’” and that the winning portfolio was fairly selected (Exh. IE Report at 73-74, citing Section 83C(f)). The Independent Evaluator also provides recommendations for future solicitations, which include the development of rules or guidance in the RFP on: (1) the inclusion of amendments to existing PPAs in a proposal; (2) how an electric company with a potential conflict of interest could participate in the bid evaluation and selection process; and (3) the timeliness of responses to concerns raised during evaluation (Exh. IE Report at 71-73).<sup>17</sup>

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<sup>17</sup> None of the parties addressed the Independent Evaluator’s recommendations about future solicitations on brief.

B. Positions of the Parties

1. Attorney General

The Attorney General contends that the PPAs were the product of a competitive solicitation, include the input of stakeholders, and allow for Department review and approval (Attorney General Brief at 6). The Attorney General asserts that the Department should conduct sensitivity analyses for load growth, natural gas prices, and environmental policy in future solicitations (Attorney General Brief at 12). The Attorney General claims that the recommended sensitivity analyses would provide useful information as to the sensitivity of the calculated net benefits and ratepayer cost impact to certain assumptions (Attorney General Brief at 12).

2. DOER

DOER maintains that the solicitation process was open, fair, objective, transparent consistent with the RFP, and not unduly influenced by an affiliated company (DOER Brief at 12). DOER further claims that the winning proposal was selected in a reasonable manner (DOER Brief at 12).

3. Companies

The Companies asserts that the PPAs are the result of a comprehensive, non-discriminatory solicitation process (Companies Brief at 17). The Companies argue that the solicitation process satisfies all criteria for approval (Company Brief at 17).

C. Analysis and Findings

In evaluating the competitiveness of a solicitation process, the Department considers whether the process was open, fair, and transparent. Section 83C(f);

D.P.U. 20-16/D.P.U. 20-17D.P.U. 20-18, at 27; D.P.U. 07-64-A, at 60-61 (noting the

“Department’s fundamental interest in open, competitive, and transparent procurement

processes”); Boston Gas Company/Colonial Gas Company/Essex Gas Company, D.T.E. 04-9, at 10 (2004) (RFP is acceptable if the process was open, fair, and transparent). For the Department to find that the solicitation process was fair and transparent, the Companies must demonstrate that they: (1) clearly described the evaluation process to each potential bidder; (2) provided the evaluation criteria in the RFP; and (3) provided an opportunity for bidders to request clarification of the evaluation criteria and the RFP process.

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 21-22; D.P.U. 07-64-A at 60-61 n.21, citing D.T.E. 04-9, at 10.

The Companies disseminated the statewide RFP to a group of approximately 488 entities with an interest in developing renewable energy projects based on a list developed with DOER and published the RFP on a designated website (Exhs. JU-1, at 18; WP Support Tab A). Given the broad dissemination of the solicitation to potential bidders, the Department finds that the solicitation was open. In addition, the RFP clearly identifies the criteria that the Companies use in each step of the proposal evaluation process (Exhs. JU-1, at 20; JU-2). Further, potential bidders were provided opportunities to obtain clarification about the RFP at a conference and submit written questions prior to submitting proposals (Exh. JU-1, at 19). Accordingly, the Department finds that the solicitation process was fair and transparent.

The Department also considers whether the Companies evaluated and selected winning proposals in a reasonable manner, based on the criteria set forth in the RFP.

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 21-22; NSTAR Electric Company et al., D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 22 (2019). After screening projects for threshold requirements, the evaluation team conducted a quantitative evaluation of the proposals based on

each proposal's costs,<sup>18</sup> direct benefits,<sup>19</sup> and indirect benefits<sup>20</sup> using the core measurement of levelized net benefit-per MWh, expressed in 2021 dollars (Exh. JU-1, at 24, 27). The evaluation team compared the costs and benefits using a model to simulate the operation of New England wholesale markets for energy, ancillary services, and RECs for a base case and each proposal, and scored the results on a 70-point scale (Exhs. JU-1, at 27; JU-4 at 12, 24).<sup>21</sup>

With respect to qualitative factors, the evaluation team scored each proposal on a 30-point scale (Exhs. JU-1, at 28-30; WP Support Tab D). The evaluation team considered statutory and regulatory requirements to identify the projects that were likely to be constructed and provide benefits, while also supplying a cost-effective means of delivering offshore wind energy generation (Exh. JU-1, at 28-29). The qualitative factors considered by the evaluation team included: (1) economic benefits to the Commonwealth and diversity, equity and inclusion; (2) benefits to low-income ratepayers in the Commonwealth; (3) siting, permitting, project schedule, and financing plan; (4) energy storage system benefits; (5) reliability benefits;

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<sup>18</sup> The direct costs of each proposal include the direct costs of energy, RECs, and remuneration (Exhs. JU-4 at 9, 35-37; JU-1, at 25).

<sup>19</sup> The direct benefits of each proposal include the estimated direct benefits of energy, RECs, clean energy certificates, and clean peak energy certificates (Exhs. JU-1, at 25-26; JU-4, at 9).

<sup>20</sup> For each project, the evaluation team estimated the indirect benefit of energy, RECs, clean energy certificates, Global Warming Solutions Act compliance, and winter price mitigation (Exh. JU-1, at 26).

<sup>21</sup> The base case represents a forecast of the New England energy grid without any of the Section 83C III offshore wind projects (i.e., the proposals received in response to the RFP) (Exh. JU-4 at 12, Apps. E and F). The base case is inclusive of all statutory requirements and regulations in effect as of June 15, 2021 (Exh. JU-4 at 83, 111-113).

(6) benefits, costs, and contract risk; and (7) environmental impacts from siting (Exhs. JU-1, at 28-29; JU-2, at 38-42).

The evaluation team combined the quantitative and qualitative scores to rank the proposals based on total points (Exh. JU-1, at 31). Finally, the evaluation team modeled portfolios of proposals that ranged from 1,280 MW to 1,685 MW of offshore wind energy by combining proposals from different bidders to understand whether the selection of a portfolio of proposals would provide greater benefits to ratepayers than a single proposal would (Exh. JU-1, at 31).

Based on our review, the Department finds that the quantitative and qualitative evaluations followed the criteria provided in the RFP (Exhs. JU-1, at 23-31; JU-2, at 28-35). Further, the Department finds that the Companies appropriately considered the interconnection limitations on Cape Cod identified by ISO New England in the bid evaluation process (Exh. JU-1, at 21-22). Accordingly, the Department finds that the Companies selected the winning proposal in a reasonable manner, consistent with the criteria set forth in the RFP.

Lastly, the Department notes that the 2022 Clean Energy Act changed DOER's role for the next development of the timetable and method of solicitations of long-term contracts pursuant to Section 83C. St. 2022, c. 179, § 61. The amendments provide that DOER shall propose the timetable and method of solicitations in coordination with the Companies, rather than the Companies and DOER jointly proposing the timetable and method of solicitations. St. 2022, c. 179, § 61. In addition, the amendments authorize DOER, in consultation with an independent evaluator, to issue a final, binding determination of the winning bid. St. 2022, c. 179, § 61. Given these statutory changes, the Department will not predetermine which

recommendations for future RFPs, if any, should be incorporated into the next proposal for the timetable and method of solicitations of long-term contracts. Rather, the Department will consider the parties' reasons for why they choose to adopt or decline to adopt said recommendations in our review of the next petition for approval of the timetable and method of solicitations for long-term contracts. The Department expects that DOER will work collaboratively with the Companies, the Attorney General, and other stakeholders, as it has in the past, to consider process improvements when drafting the RFPs for future solicitations.

V. SECTION 83C RESOURCE CRITERIA

A. Introduction

As discussed above, the Companies have agreed to purchase a total of 1,605 MW of energy and associated RECs from two offshore wind energy generating resources, including 1,200 MW from Commonwealth Wind's 1,232 MW facility and 405 MW from Mayflower Wind's proposed 480 MW facility (Exh. JU-1, at 33). The PPAs each have a delivery term of 20 years from the facilities' commercial operation dates ("CODs"), which are November 1, 2027 for the Commonwealth Wind project and March 30, 2028 for the Mayflower Wind project (Exh. JU-1, at 33). The Companies state that the offshore wind energy generating resources to be developed by Commonwealth Wind and Mayflower Wind pursuant to the PPAs comply with the requirements of Section 83C and the Department's regulations (Exh. JU-1, at 37-45).

B. Positions of the Parties

Commonwealth Wind argues that its project can no longer be financed under the terms of the PPAs because of changes in the global economy and that the PPAs do not meet the requirements of Section 83 and are contrary to the public interest (Commonwealth Wind Reply

Brief at 3, 10-14). Commonwealth Wind asserts that the bid submission statements are insufficient to demonstrate that the PPAs facilitate the financing of Commonwealth's proposal (Commonwealth Reply Brief at 10). Specifically, Commonwealth Wind maintains that the mere existence of a PPA is not sufficient to secure financing unless the PPAs provide financial terms that are acceptable to potential financing partners (Commonwealth Reply Brief at 10).

The Attorney General, DOER, and the Companies maintain that the PPAs facilitate the financing of the Commonwealth Wind and Mayflower Wind projects and that the projects are eligible offshore wind energy generating resources that meet the criteria set forth in Section 83C and the Department's regulations (Attorney General Brief at 5-7; DOER Brief at 6, 8-10, Companies Brief at 17-25). All of these parties contend that the Department should approve the PPAs (Attorney General Brief at 3; DOER Brief at 10; Companies Brief at 28).

### C. Analysis and Findings

#### 1. Introduction

The Department's review of long-term offshore wind energy contracts ensures that the Companies, which are subject to the Department's supervisory authority under G.L. c. 164, § 76, have complied with the relevant laws and that the interests of the ratepayers, who fund the contracts, are appropriately protected. The Companies must demonstrate that an offshore wind energy resource they have contracted with meets the criteria set forth in Section 83C. First, the Companies must demonstrate that the offshore wind energy generating resource: (1) has a COD, as verified by DOER, of January 1, 2018 or later; (2) qualifies as a Class I renewable energy generating resource, as defined by G.L. c. 25A, § 11F; and (3) operates in a designated wind energy area for which an initial federal lease was issued on a competitive basis after January 1,

2012. Section 83C; 220 CMR 23.02. In addition, the Companies must demonstrate that the PPAs facilitate the financing of the offshore wind energy resource. Section 83C(a); 220 CMR 23.01(1). An electric distribution company need not demonstrate that the long-term contract is necessary to secure project financing, only that it will assist in securing project financing. NSTAR Electric Company, D.P.U. 12-30, at 40 (2012); Massachusetts Electric Company/Nantucket Electric Company, D.P.U. 10-54, at 52 (2010). Further, Section 83C and the Department's regulations require that the offshore wind energy generating resource for a selected proposal meet the following criteria: (1) provide enhanced electricity reliability; (2) contribute to reducing winter electricity price spikes; (3) avoid line loss and mitigates transmission costs to the extent possible, while ensuring that transmission cost overruns, if any, are not borne by ratepayers; (4) adequately demonstrate project viability in a commercially reasonable timeframe; (5) allow offshore wind energy generation resources to be paired with energy storage systems; (6) mitigate environmental impacts, where possible; and (7) where feasible, create and foster employment and economic development in Massachusetts. Section 83C(d)(5); 220 CMR 23.05(1).

## 2. Eligibility

The Commonwealth Wind and Mayflower Wind projects have CODs of November 1, 2027 and March 30, 2028, respectively (Exhs. JU-1, at 33, 40; JU-3, Commonwealth PPAs at 5, 90, 107, 178; JU-3, Mayflower PPAs at 6, 21, 94, 111, 188). Pursuant to the PPAs, the developers must meet the CODs, or they will be subject to certain penalties, including delay damages and the potential for contract termination (Exhs. JU-1, at 40; DPU 2-14; DPU 2-15). In addition, the record demonstrates that the projects, if constructed, will qualify as RPS Class I



renewable energy generating sources (Exhs. JU-1, at 37, JU-2 at 24; JU-3, Commonwealth PPAs at 5; JU-3, Mayflower PPAs at 6). Finally, the Department finds that the Companies have demonstrated that the facilities will operate in a designated wind energy area for which a federal lease was issued on a competitive basis after January 1, 2012 (Exhs. JU-1, at 38; JU-2, at 30; JU-3, Commonwealth PPAs at 46; JU-3, Mayflower PPAs at 47). Accordingly, the Department finds that the Companies have demonstrated that the Commonwealth Wind and Mayflower Wind projects each meet the threshold eligibility criteria for offshore wind energy generating resources under Section 83C and 220 CMR 23.02.

### 3. Facilitation of Financing

After review, we disagree with Commonwealth Wind's argument that the record does not support a finding that the PPAs "facilitate the financing" of Commonwealth Wind's proposal. The Department consistently has interpreted the language of Section 83C as requiring that the electric distribution companies demonstrate that the long-term contracts will assist with financing the offshore wind energy generating sources, i.e., that the contracts will make financing easier or less difficult. D.P.U. 12-30, at 40, citing D.P.U. 10-54, at 52 n.59; Webster's Third New International Dictionary 812 (1993). It is not required by statute, therefore, that the Companies demonstrate that the PPAs guarantee that the projects will be financed, as Commonwealth Wind contends. D.P.U. 12-30, at 40, citing D.P.U. 10-54, at 52.<sup>22</sup>

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<sup>22</sup> The Department's interpretation of the statutory provision regarding financing is consistent with the grammatical structure of the text. Section 83C(a) states: "To facilitate the financing of offshore wind energy generation resources in the commonwealth, every distribution company shall, in coordination with the department of energy resources, jointly and competitively solicit proposals for offshore wind energy generation; and provided that reasonable proposals have been received, shall enter into

The record evidence includes detailed testimony from the developers and supporting documentation that demonstrate PPAs with creditworthy counterparties, such as the Companies, are an integral consideration to equity investors and lenders and assist with obtaining financing on favorable terms (Exhs. JU-1, at 45; AG 2-1, Atts. A-2 at 72, B-2 at 82).

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 28; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 29.

Further, the Department finds that Commonwealth Wind has not timely produced any evidence to rebut the factual allegations presented by the Companies.<sup>23</sup> Based on the above-cited

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cost-effective long-term contracts.” The first clause of the statutory provision, “to facilitate the financing of offshore wind energy generation resources in the commonwealth,” is a prefatory clause that announces the purpose of the statute; the prefatory clause does not limit the following operative clauses directing the Companies to solicit proposals and enter into reasonable contracts. See District of Columbia v. Heller, 554 U.S. 570, 577-578 (2008) (discussing the statutory construction of prefatory clauses).

Moreover, the Department’s interpretation that Section 83C requires only that the PPAs assist with financing and not guarantee financing is consistent with Section 83C’s allowance for proposals to be coordinated with other New England states. Section 83C(b); Wheatley V. Massachusetts Insurers Insolvency Fund, 456 Mass. 594, 601 (2010) (a “statute must be viewed as a whole”). For example, Section 83C expressly contemplates that the Companies may enter into PPAs for a portion of the energy to be produced by a facility as part of a coordinated proposal with entities from other states contracting for the remaining products. Section 83C(b). In such a hypothetical, it could not be said that the Companies’ PPAs for a portion of the facilities’ output would guarantee its financing, but the Companies’ PPAs would reasonably assist with the financing of the offshore wind energy resource.

<sup>23</sup> As the Department discussed in its Interlocutory Order, Commonwealth Wind made a decision to not disclose its concerns about the financeability of its project to the Department while the record was open. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order at 8-9 (November 4, 2022). Nevertheless, the Department stresses that our decision herein would not differ had Commonwealth Wind’s affidavit been admitted into the record. The affidavit merely contains conclusory statements by Commonwealth Wind that its proposal is no longer viable due to global economic circumstances; and, therefore, would not constitute clear and convincing evidence sufficient to rebut the record evidence produced by the Companies. Although the

evidence, the Department finds that the PPAs will facilitate the financing of the Commonwealth Wind and Mayflower Wind projects.

4. Enhanced Reliability

The projects will interconnect and deliver energy into the New England regional interconnected system (Exhs. JU-1 at 35-36; JU-2 at 21; JU-3, Commonwealth PPAs; JU-3, Mayflower PPAs).<sup>24</sup> As we have said about other renewable energy facilities, the projects' interconnection will help to bolster the reliability of the system as a whole and, thereby, contribute to system resource adequacy and system security support.

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18 at 31; D.P.U. 18-76/D.P.U. 18-77D.P.U. 18-78, at 31.

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Department will not opine on what would constitute clear and convincing evidence of Commonwealth Wind's allegations, we note that the affidavit alludes to third-party analyses and net present value calculations that Commonwealth Wind has not offered to the Department, nor has Commonwealth Wind presented any evidence from potential investors or lenders supporting the statements that the project cannot be financed.

Ultimately, in this proceeding Commonwealth Wind has requested that the Department delay, dismiss, or reject PPAs that Commonwealth Wind freely negotiated based on no more than its own self-interested, conclusory statements. In so doing, Commonwealth Wind fails to acknowledge the potential serious harm to ratepayers that would result. Not only would ratepayers lose the opportunity to realize the PPAs' benefits, but the precedent set would open the door for future winning bidders to back out of their agreements based on information gleaned about the other bids during the Department's review and submit more advantageous bids in the next round at the expense of ratepayers. The protection of ratepayers' interests demands that the Department require clear and convincing evidence that a decision that presents such risks is required as a matter of law. In the seven months since the PPAs were filed, Commonwealth Wind has provided no such evidence to the Department.

<sup>24</sup> The Commonwealth Wind PPAs include the possibility of one or two delivery points for the output of its project, *i.e.*, West Barnstable, Massachusetts or a combination of West Barnstable and Acushnet, Massachusetts (Exh. JU-1, at 36). The Mayflower Wind PPAs include the possibility of a single delivery point at Brayton Point in Somerset, Massachusetts (Exh. JU-1, at 35).

In addition, the projects will mitigate natural gas demand in the region and reduce threats to grid reliability caused by pipeline constraints, a key policy concern of ISO New England (Exh. JU-1, at 37). For these reasons, the Department finds that the projects will enhance electricity reliability.

5. Reduced Winter Electricity Price Spikes

To determine whether a renewable energy resource will reduce winter electricity price spikes, the Department evaluates a project's output and capacity factor at the electric system's peak. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 33; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 32-33; D.P.U. 10-54, at 198. As part of that review, we consider the evaluation team's calculation of the estimated reduction in exposure to extreme energy prices when the project is in service (Exhs. JU-2, at 33; JU-4 at 10). Further, the record indicates that the projects will add relatively high and stable winter capacity factor offshore wind generation to the region, thereby increasing resources available to address demand spikes and reducing reliance on fossil fuel generation during high periods of natural gas demand (Exh. JU-1, at 38). Based on our review of the projects' generation characteristics, the Department finds that the projects are likely to produce power during winter peak times and contribute to the reduction of winter electricity price spikes (Exhs. JU-1, at 38; JU-4 at 16).

6. Avoided Line Loss, Mitigated Transmission Costs, Protection from Transmission Cost Overruns

The PPAs provide for the projects to deliver and sell energy and RECs on a fixed price schedule as measured at the onshore delivery point (Exhs. JU-1, at 39; AG 2-18; DPU 1-10). The Department finds that the structure of the PPAs ensure that line loss risk and transmission

costs are borne by the projects and that any transmission cost overruns will not be borne by ratepayers (Exh. JU-1, at 39).

7. Project Viability in a Commercially Reasonable Timeframe

The Companies' RFP requires bidders to demonstrate the proposal can be developed, financed, and constructed within a commercially reasonable timeframe (Exh. JU-2, at 34). Further, pursuant to the RFP requirements, bidders must demonstrate that the proposal includes sufficient time for necessary permits, regulatory approvals, other commitments, project financing, completion of design work, equipment procurement, and construction to complete the project consistent with the proposed COD (Exh. JU-2, at 33). Moreover, the Companies require bidders to provide critical milestones in their markup of the form PPAs that are consistent with their proposal and reasonably achievable (Exh. JU-2, at 33).

After review of the record evidence, the Department finds that the proposals selected by the Companies include sufficient information concerning the design, development, financing, and construction of the projects for the Companies to reasonably conclude that the selected projects are viable and would be completed in a commercially reasonable timeframe (Exhs. JU-1, at 40; AG 2-1, Atts. A-2, B-2). In addition, the Companies' PPAs include critical milestones to support the achievement of the projects within the proposed CODs and require the developers to post financial security related to their obligations to develop the projects, meet the critical milestones, and deliver energy and RECs throughout the term of the PPAs (Exhs. JU-1, at 40; JU-3, Commonwealth PPA; JU-3, Mayflower PPA). Further, the Companies' PPAs include additional critical milestones which will provide an earlier indication of schedule

progress and limit project viability risk (Exh. JU-1, at 40).<sup>25</sup> Based on the record evidence, the Department finds that the Companies have demonstrated that the projects are viable and will be completed in a commercially reasonable timeframe.

#### 8. Energy Storage

The Companies' RFP allows for the pairing of energy storage systems with offshore wind energy generation resources (Exhs. JU-1, at 44; JU-2, at 21). The two selected proposals did not include pairing with specific energy storage systems; however, both developers expressed support for potential applications that incorporate energy storage in the future (Exhs. JU-1, at 44; AG 2-1, Atts. A-2, at 71, B-2, at 80). Accordingly, the Department finds that the PPAs allow for the offshore wind energy generating resource to be paired with energy storage systems as required under Section 83C.

#### 9. Mitigation of Environmental Impacts

The record demonstrates that Commonwealth Wind and Mayflower Wind have submitted construction and operation plans to the Bureau of Ocean Energy Management that detail how the developers have sited, planned, and designed their projects to mitigate environmental impacts (Exhs. JU-1, at 42; AG 2-1, Atts. A-2, at 135, B-2, at 140). Further, the Department finds that the Companies selected proposals from developers with substantial experience concerning the environmental impacts of their proposed projects and that the proposals include detailed documentation of the developers' environmental permitting efforts, stakeholder engagements, fisheries mitigation plans, environmental mitigation plans, environmental justice impacts

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<sup>25</sup> All milestones are subject to time extensions of up to a total of two years if the Developers provide additional security (Exhs. JU-1, at 40; DPU 2-14; DPU 2-15).

assessments, and community engagements (Exhs. JU-1, at 42; AG 2-1, Atts. A-2, at 135-157, B-2, at 140-240). After review, the Department finds that the projects mitigate any environmental impacts, where possible.

#### 10. Employment Benefits and Economic Development

The Companies consider a broad range of employment and economic development benefits in the qualitative scoring of the proposals (Exhs. JU-2, at 34; WP Support Tab C at 20). Proposals must also include factual support for employment and economic development projections and reflect any commitments with governmental and nongovernmental entities (Exh. JU-1, at 34).

After review, the Department finds that the Companies selected proposals with significant estimated employment benefits and economic development opportunities for the Commonwealth (Exhs. JU-1, at 40-41; AG 2-1, at Atts. A-2, at 300-317, A-15, B-2, at 384-421, B-25). For example, the Commonwealth Wind proposal includes commitments to develop offshore wind supply chains in Massachusetts, including: (1) the development of a subsea cable manufacturing facility in Somerset, Massachusetts; and (2) a redevelopment of Salem Harbor to support wind turbine marshalling (Exh. JU-1, at 41). Similarly, Mayflower Wind's proposal includes commitments to support economic development, workforce training, and low-income ratepayers, as well as wind industry development initiatives (Exh. JU-1, at 41). While the Department recognizes that estimates of employment potential contain uncertainties and actual benefits could differ from projections, there is no dispute that the construction and operational phases of the projects will result in additional employment (Exh. JU-1, at 40-41). As with additional employment, any measures of financial benefit to the economy are only estimates, but

the construction and long-term operation of the projects will, however, undoubtedly result in economic benefit for the Commonwealth (Exh. JU-1, at 40-41). Accordingly, the Department finds that the projects will create and foster employment and economic development in the regional economy.

In addition, the proposals by Commonwealth Wind and Mayflower Wind include approximately \$77 million in financial commitments to third parties to fund purported economic development projects, as memorialized in separate memoranda of understanding with the third parties and DOER (Exh. JU-1, at 40-41). While these economic development agreements are part of the bidders' overall project costs and, therefore, reflected in the resulting PPA prices for energy and RECs, the Companies are not parties to these agreements, the agreements are not a part of the PPAs, and neither the Companies nor DOER are requesting that the Department approve or enforce these agreements (Exhs. JU-1, at 41-42; DPU 3-10; DPU-DOER 2-11).<sup>26</sup> Further, these economic development agreements are a part of the highest-scored proposals, which included energy and REC prices below the statutory cap, and the agreements are consistent with the guidance in the RFP (Exhs. JU-1, at 32; JU-2, at 34; IE Report at 73-74).

The Department is concerned, however, that the parties and stakeholders could adopt an overly broad interpretation of the requirement that projects foster economic development that may result in higher costs to ratepayers. This is particularly a concern given the serious economic impact that the COVID-19 pandemic, supply chain disruptions, and rising energy costs

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<sup>26</sup> The agreements between DOER and the developers are legally binding, and DOER may pursue legal action pursuant to the agreements if the developers fail to meet their obligations therein (Exh. DPU-DOER 2-10).



have had on ratepayers in the recent past. Aside from the qualification that resources must foster economic development only “where feasible” and the requirement that long-term contracts be cost effective, Section 83C does not define “create and foster economic development.” As discussed in Section VII, below, however, petitions for approval of PPAs filed pursuant to Section 83C must include sufficient information for the Department to determine the PPAs are in the public interest.<sup>27</sup> To demonstrate that costs borne by ratepayers for economic development proposals are in the public interest, the Department will consider how the economic development proposals relate to the construction, operation, or maintenance of the offshore wind energy generating resource that is the subject of the PPAs and whether the benefits to ratepayers of the economic development proposals outweigh the costs.<sup>28</sup>

## VI. COST EFFECTIVENESS

### A. Introduction

The Department must take into consideration both the potential costs and benefits of the PPAs and approve a long-term contract under Section 83C only upon finding that it is a cost-effective mechanism for procuring reliable renewable energy on a long-term basis.

Section 83C; 220 CMR 23.05(1). In D.P.U. 10-54, the Department first considered an

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<sup>27</sup> The Department notes that some of the entities and uses of funding pursuant to the economic development agreements are redacted, not sufficiently described, or unrelated to the actual development of the offshore wind projects (*e.g.*, Exhs. JU-1, at 43 (describing funding for construction of affordable housing); DOER-2a; DOER-3).

<sup>28</sup> As discussed above, the next solicitation for offshore wind energy generation resources will be governed by the 2022 Clean Energy Act’s amendments to Section 83C, which require the Department to promulgate new regulations. St. 2022, c. 179, § 61. Therefore, the Department may consider appropriate standards for costs associated with economic development to be recovered from ratepayers in that forthcoming rulemaking proceeding.

appropriate standard for evaluating the cost-effectiveness of a long-term contract for renewable energy pursuant to Section 83. The Department determined that it would:

consider in our cost-effectiveness analysis all costs and benefits associated with [a proposed contract], including the non-price benefits that are difficult to quantify, and including costs and benefits of complying with existing and reasonably anticipated future federal and state environmental requirements . . . . In reviewing [the] benefits and costs of [a proposed contract] . . . our focus is on the benefits and costs that accrue to [the company proposing the contract] and its customers.

D.P.U. 10-54, at 71.

Likewise, Section 83C requires the Department to ensure that long-term contracts are cost-effective to electric ratepayers over the term of the contract, taking into consideration the potential economic and environmental benefits to ratepayers. Section 83C(d)(iii), (e); 220 CMR 23.05(1). Accordingly, the Department will evaluate the cost-effectiveness of each PPA based on the costs and benefits that such PPAs provide.

## B. Positions of the Parties

### 1. Attorney General

The Attorney General argues that the PPAs are a cost-effective mechanism for procuring beneficial, reliable renewable energy on a long-term basis (Attorney General Brief at 6-7). The Attorney General asserts that the PPAs appear to provide Class I renewable generation resources at below-market costs (Attorney General Brief at 7, citing Exh. JU-1, at 39). As support, the Attorney General cites the Companies' analysis that the winning portfolio of projects had a levelized positive net direct benefit of \$38.66 per MWh (Attorney General Brief at 7, citing Exh. JU-4, at 26-28). Lastly, the Attorney General argues that, as compared to the other project portfolios, the selected Commonwealth Wind and Mayflower Wind portfolio received the

highest combined quantitative and qualitative score (Attorney General Brief at 7, citing Exh. JU-4, at 26-28).

2. DOER

DOER argues that the PPAs are cost-effective and result from a competitive procurement process (DOER Brief at 7). DOER asserts that the Commonwealth Wind and Mayflower Wind projects had the highest levelized net benefit of all proposals and portfolios evaluated (DOER Brief at 7, citing Exhs. JU-1, JU-4). DOER maintains that the forecasted direct benefits of the contracts exceed the costs and that, over the term of the contracts, ratepayers will receive an average of \$0.006 per kilowatt-hour (“kWh”) in direct savings (DOER Brief at 7). DOER further contends that, when indirect benefits are included, the contracts will result in a levelized net benefit of \$0.039 per kWh (DOER Brief at 7-8). In total, DOER asserts that the contracts are expected to provide approximately \$1.28 billion in total net direct benefits (DOER Brief at 8). DOER recognizes that any long-term contracts present inherent risks but asserts that the PPAs will reduce price volatility to ratepayers given that they represent a 20-year fixed price agreement for renewable energy (DOER Brief at 8).

3. Companies

The Companies maintain that the prices set in the PPAs were established through an open and robust competitive bid process (Companies Brief at 19). The Companies assert that, over the 20-year term of the contracts, an estimated \$1.28 billion in below-market costs will accrue to electric ratepayers when accounting for the difference between direct costs and the forecast of direct benefits (Companies Brief at 20). Since the PPAs provide both below-market costs and

qualitative benefits to customers, the Companies argue that the PPAs are cost-effective (Companies Brief at 20).

C. Analysis and Findings

As described in Section IV, above, the Companies evaluate the costs and benefits of the proposals to select the winning proposal (Exh. JU-4, at 5). The Companies employ a computer model to forecast the value of energy and environmental attributes under the base case and each proposal case (Exh. JU-4, at 12). These forecasts form the basis for the evaluation team's assessment of the benefits associated with the individual proposals. Therefore, to determine whether the Companies' estimates of quantifiable net benefits are reasonable, the Department must evaluate whether the price forecast and the market revenue estimates derived from the forecast are reasonable. D.P.U. 10-54, at 108. To do so, the Department must determine whether the forecast is a reasonable projection of energy and REC prices. D.P.U. 10-54, at 108.

The Companies apply an energy market production cost and system expansion optimization model to develop their market forecast of energy and REC prices, including analysis of: (1) demand requirements; (2) capacity expansion; (3) pricing for fuel, emissions, and RECs; (4) transmission topology; and (5) load forecasts (Exh. JU-4, at 11-15).<sup>29</sup> As the Department previously has found, this type of analysis is valid for evaluating the benefits of

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<sup>29</sup> The computer model contained assumptions about various energy market factors, including: (1) generating unit capacity additions; (2) transmission; (3) load forecast; (4) installed capacity requirements; (5) RPS requirements; (6) CES and carbon emissions caps; (7) emissions allowance prices; (8) generating unit retirements; (9) generating unit operational characteristics; and (10) fuel prices (Exh. JU-4, at 11-15). The Department has reviewed the various assumptions underlying the model and finds them to be reasonable.

energy from PPAs for renewable generation. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 49; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 46. In addition, this method is consistent with the approach described in the RFP and employed in previous reviews of long-term contracts (Exh. JU-2, at 9-13, 36-38). D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 49; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 46. Accordingly, because the energy and REC market price forecasts the Companies use to evaluate the proposals rely upon well-established and appropriate methods, the Department finds that such forecasts result in reasonable market revenue estimates for these products.

For the Department to determine that the PPAs are cost-effective over the life of the proposed contracts, the Department must compare the estimated costs and benefits of the PPAs. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 50; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 46-47. The Companies estimate the cost of energy and RECs under each contract by multiplying the projected quantity of delivered products by the contractually specified schedule of energy and REC prices, taking into consideration that the PPAs provide for fixed prices over the contract terms (Exhs. JU-1, at 24; JU-4, at 9). Based on the forecasted market prices of energy and RECs and estimated production of the facilities, the Companies estimate that the total cost of the PPAs, exclusive of remuneration, will be below the estimated market value of energy and RECs over the term of the contracts by a value of \$1.28 billion (Exhs. JU-1, at 39; DPU 1-7, Att. A).

To determine whether a contract is a cost-effective mechanism for procuring reliable renewable energy on a long-term basis, the Department also considers whether additional qualitative benefits will accrue to the Companies' ratepayers over the term of each PPA.

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 51; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 47.

Many qualitative benefits have been identified as accruing to ratepayers over the term of the proposed contracts, including benefits related to reliability, acceptance of commitment agreements, environmental impacts, employment, and economic development (Exh. JU-2, at 38-42). The Commonwealth Wind and Mayflower Wind portfolio received a competitive combined qualitative score when compared against other proposals and portfolios (Exh. JU-4, App. B at 26, 28).<sup>30</sup>

Based on the discussion above, the Department finds that the Companies have demonstrated that the PPAs are likely to provide significant net benefits to ratepayers (Exh. JU-1, at 39). In particular, the Companies have shown that the aggregate cost for energy and RECs under the PPAs, exclusive of remuneration, are less than the forecasted market prices for energy and RECs by \$1.28 billion over the life of the contracts (Exhs. JU-1, at 39; DPU 1-7, Att. A; DPU 2-2). The Companies' analysis also shows that inclusive of remuneration the PPAs result in a levelized net direct benefit of \$6.26 per MWh (Exhs. JU-4, at 26, 28; DPU 1-7, Att. B).<sup>31</sup> The Department further finds that significant qualitative benefits will flow to ratepayers under the PPAs (Exh. JU-1, at 34, 37, 40-42). Accordingly, after taking into consideration both the potential costs and benefits of the PPAs, the Department finds that the

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<sup>30</sup> As discussed in Section IV, above, when accounting for the combined quantitative and qualitative score, the selected portfolio ranked highest among all proposals and portfolios (Exh. JU-4, App. B, at 26, 28).

<sup>31</sup> The Companies calculated the levelized net direct benefit including their initially proposed remuneration rate of 2.75 percent. As discussed in Section VIII, below, the Companies adjusted their requested remuneration rate from 2.75 percent to 2.25 percent, which increases the estimated benefit to ratepayers.

Commonwealth Wind PPA and the Mayflower Wind PPA are each cost-effective mechanisms for procuring reliable renewable energy on a long-term basis. Section 83C; 220 CMR 23.05(1).

## VII. PUBLIC INTEREST

### A. Introduction

The public interest constitutes an overarching consideration in the Department's fulfillment of its regulatory and ratemaking duties. D.P.U. 10-54, at 27, citing Attorney General v. Department of Telecommunications & Energy, 438 Mass. 256, 268 (2002); see also Wolf v. Department of Public Utilities, 407 Mass 363, 369 (1990) (the "mission of the [Department] is to regulate in the public interest"). The Department reviews the public interest of long-term contracts for renewable energy based on the specific facts and circumstances relevant to each proposed contract. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 53; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 48-49.

### B. Positions of the Parties

#### 1. Attorney General

The Attorney General asserts that the proposed PPAs are in the public interest (Attorney General Brief at 8). Further, the Attorney General contends that the PPAs result in bill impacts that are acceptable based on a 20-year projection of costs and emission levels (Attorney General Brief at 8). The Attorney General also maintains that the PPAs: (1) protect ratepayers from cost overruns, delays, or underperformance; (2) limit permitting, construction, and interconnection risks from the developer; (3) require the projects to qualify as a Class I Renewable Resource and a Clean Peak Resource as well as maintain that classification going forward while meeting minimum capacity requirements; (4) require developers to post development and operating

period security, which provides liquid capital for the distribution companies to access in the event of a default; and (5) provide numerous protections against regulatory actions, changes in law or accounting standards, and adverse determinations by courts and/or regulatory bodies, which may require termination payments (Attorney General Brief at 8).

The Attorney General also claims that the projects may qualify for significant expanded tax credits enacted after the Companies negotiated the PPAs (Attorney General Brief at 10). The Attorney General asserts that the PPAs did not include a provision that was included in prior PPAs for developers to pursue in good faith and pass-through additional incentives (Attorney General Brief at 10). Further, she contends that the Department should require the Companies to explore an addendum to the PPAs that provides a price adjustment based on additional tax benefits for which the projects might qualify (Attorney General Brief at 11).

For future PPAs, the Attorney General argues that the Department should require that the Companies include provisions to ensure any federal tax incentives created after a PPA is executed benefit ratepayers (Attorney General Brief at 11). In addition, the Attorney General claims that the Companies should include cross-default provisions in future PPAs (Attorney General Brief at 12, citing Exh. AG-VM-1, at 20-21). The Attorney General asserts that a cross-default provision would provide that a default on a previous PPA would also be a default event on a more recent PPA (Attorney General Brief at 12). The Attorney General maintains that a cross-default provision would prevent a supplier with multiple, separate PPAs from selectively defaulting on a PPA with the least favorable terms to the supplier (Attorney General Brief at 12).



## 2. DOER

DOER asserts that the Department should find that the PPAs are in the public interest as (1) the selection of the 1,605 MW portfolio of Commonwealth Wind and Mayflower Wind bids was the result of a fair, reasonable, and transparent bid evaluation process consistent with the RFP; (2) the distribution companies entered into PPAs with the bidders whose proposals received the highest portfolio score and rank among all proposals evaluated and (3) have pricing terms that are reasonable for offshore wind energy generation (DOER Brief at 10-11). Additionally, DOER contends that as the PPAs are projected to provide direct savings to ratepayers, the proposed PPAs are advantageous to customers, meet the Department's public interest standard, and should be approved (DOER Brief at 13).

## 3. Companies

The Companies argue that the PPAs are in the public interest because they fulfill the Section 83C requirements (Companies Brief at 16-17, 28). Further, the Companies contend that the PPAs were executed under a comprehensive and non-discriminatory solicitation and satisfy all applicable criteria for approval (Companies Brief at 17).

### C. Analysis and Findings

To determine whether the PPAs are in the public interest, the Department considers the following criteria: (1) whether the pricing terms in the contracts are reasonable for offshore wind generation resources; (2) whether other, lower cost Section 83C-eligible resources were available to the Companies and, if so, whether the benefits of the proposed contracts justify any higher costs; (3) whether the Companies' decision to enter into contracts of this size was reasonable; and (4) whether the bill impacts of the contracts are reasonable in light of the

benefits of the contracts. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 53-54, 56-60; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 48-49, 52-56; D.P.U. 10-54, at 217-283.

The Companies procured the PPAs through an open, fair, and transparent competitive solicitation process (see Section IV.C, above). The record further shows that the Companies selected the portfolio of proposals that received the highest combined quantitative and qualitative score and rank among all the portfolios of proposals evaluated (Exhs. JU-1, at 30, 32, 45; JU-4, at 26). Therefore, the Department finds that the pricing terms in the PPAs are reasonable for offshore wind energy resources. NSTAR Electric Company, D.P.U. 12-98, at 25 (2013) (a properly conducted competitive solicitation provides a direct comparison of the costs and benefits of alternative resources, as well as some assurance that the price is not too high for a given resource); New England Gas Company, D.P.U. 10-114, at 221 (2011) (a competitive bidding and qualification process provides an objective benchmark for analyzing the reasonableness of price). After review, the Department finds that the Companies provided sufficient justifications for their decision to select the portfolio of projects that received the highest combined quantitative and qualitative score (Exh. JU-1, at 29, 31-32; JU-4; WP Support Tab C; WP Support Tab D).

With regard to the reasonableness of the Companies' decision to enter into contracts of this size, the Companies have demonstrated that the selected portfolio, which consists of 1,605 MW of offshore wind energy, is superior to the other portfolios of proposals and produces more economic net benefits to ratepayers (Exhs. JU-1, at 31-33; JU-4, exhibit B). In addition, Section 83C requires that the Companies enter into cost-effective long-term contracts equal to 5,600 MW of aggregate nameplate capacity not later than June 30, 2027. Section 83C(b). The

Companies had procured a total of 1,604 MW of offshore wind energy in their first and second rounds of solicitations. D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 89; D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 94-95. Accordingly, the Department finds that the Companies' decision to enter into PPAs for 1,605 MW of nameplate capacity was reasonable and consistent with the requirements of Section 83C.

The Department has also reviewed the Companies estimated bill impacts (Exhs. JU-1, at 48-49; JU-5). In particular, the Companies provide bill impacts for each rate class and for a range of different consumption levels within each rate class (Exh. JU-5). Based on the current market environment, the Companies project that the PPAs will result in overall net bill savings for ratepayers over the life of the contracts (Exh. JU-5). After review, the Department finds that the bill impacts of the PPAs are reasonable given the benefits of the contracts.

With respect to the potential tax incentives enacted after the PPAs were negotiated, the Companies explain that Mayflower Wind offered to make an adjustment for an increased federal investment tax credit during the negotiation of the second round PPA, and a similar provision was not included in the third round because neither developer included a similar adjustment to their bids (Exh. AG 5-2). The Department finds that the Companies' explanation is reasonable. Further, the Department has found that the Companies conducted a fair, open, and transparent competitive solicitation process and that the resulting PPAs are cost effective (see Section IV.C; Section VI.C, above). Therefore, the Department will not require the Companies to explore amendments to adjust the price of the PPAs, but the Department encourages the Companies and DOER to consider changes to the RFP or form PPAs for future procurements that allow the benefits of federal tax incentives enacted between the execution of a PPA and the project's COD

to benefit ratepayers. In addition, the Department encourages the Companies to consider the potential benefits or drawbacks of including of cross-default provisions in future PPAs, including whether cross-default provisions could promote or hinder the purpose of Section 83C.

In conclusion, through the use of a fair, open and transparent competitive solicitation process, the Companies have demonstrated that: (1) the pricing terms in the PPAs are reasonable for offshore wind energy generation resources; and (2) there was no higher ranking portfolio of proposals of Section 83C-eligible resources available to the Companies. In addition, the Department finds that it was reasonable for the Companies to contract for 1,605 MW of offshore wind energy generation based on the competitiveness of the bid, the level of economic net benefit to ratepayers, and the requirements of Section 83C. Finally, the Department finds that the estimated bill impacts of the PPAs are reasonable in light of the benefits of the contracts. For these reasons, the Department finds that the PPAs are in the public interest.

#### VIII. MOTION FOR APPROVAL OF STIPULATION AGREEMENT

##### A. Introduction

As discussed above, the Stipulating Parties propose to adjust the Companies' initially requested remuneration rate from 2.75 percent of the annual payments under the PPAs to 2.25 percent of the annual payments under the PPAs (Stipulation Agreement at 3; Exh. JU-1, at 45). The Stipulating Parties maintain that the 2022 Clean Energy Act requires the Department to promulgate regulations for future solicitations that "provide for an annual remuneration for the contracting distribution company equal to 2.25 per cent [sic] of the annual payments under the contract" (Stipulation Agreement at 3, citing St. 2022, c. 179, § 61). The Stipulating Parties assert that, notwithstanding the requirement for the Department to promulgate regulations, the

statutory provision applies to the PPAs and should be acted upon by the Department at the time of the approval of the PPAs (Stipulating Agreement at 3). The Stipulating Parties also request that the Department determine that the costs of the PPAs, including procurement, contract development and administrations costs, plus remuneration, are eligible for cost recovery pursuant to the Companies' respective long-term clean energy contract cost recovery tariffs (Stipulating Agreement at 4).

B. Standard of Review

In assessing the reasonableness of an offer of settlement,<sup>32</sup> the Department reviews all available information to ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Boston Edison Company, D.P.U. 92-130-D at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. D.P.U. 95-104, at 15; D.P.U. 88-28/88-48/89-100, at 9.

C. Analysis and Findings

The Department has reviewed the Stipulating Parties' proposal to adjust the remuneration rate to 2.25 percent of the annual payments under the PPAs. The proposal to lower the proposed remuneration rate will benefit ratepayers and is consistent with the 2022 Clean Energy Act's amendment to Section 83C. Thus, the Department concludes that the proposed remuneration

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<sup>32</sup> The stipulations are in the nature of offers of settlement.

rate of 2.25 percent is consistent with both applicable law and the public interest and that approval of the adjustment results in a just and reasonable outcome. In addition, based on the findings in this Order, the Department determines that the costs of the PPAs, including procurement, contract development and administrations costs, plus remuneration at a rate of 2.25 percent of the annual payments under the PPAs, are eligible for cost recovery pursuant to the Companies' respective long-term clean energy contract cost recovery tariffs. The Department shall review the Companies' respective proposed long-term renewable energy contract adjustment filings to ensure that the proposed rates to be charged or credited to customers in connection with these PPAs are consistent with the requirements of Section 83C, the Department's regulations, the Companies' approved long-term renewable energy contract adjustment tariffs, and the directives of this Order. Section 83C(i); 220 CMR 23.06; NSTAR Electric Company, M.D.P.U. No. 69C; Massachusetts Electric Company/Nantucket Electric Company, M.D.P.U. No. 1361; Fitchburg Gas and Electric Light Company, M.D.P.U. No. 317.

IX. ORDER

Accordingly, after review and consideration, it is


ORDERED: That the power purchase agreements between NSTAR Electric Company and Commonwealth Wind, LLC and NSTAR Electric Company and Mayflower Wind Energy LLC for offshore wind energy generation and renewable energy certificates filed on May 25, 2022, pursuant to Section 83C and 220 CMR 23.00, are APPROVED; and it is


FURTHER ORDERED: That the power purchase agreements between Massachusetts Electric Company and Nantucket Electric Company and Commonwealth Wind, LLC and Massachusetts Electric Company and Nantucket Electric Company and Mayflower Wind Energy LLC for offshore wind energy generation and renewable energy certificates filed on May 25, 2022, pursuant to Section 83C and 220 CMR 23.00, are APPROVED; and it is

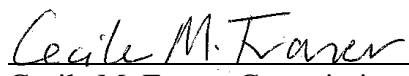
FURTHER ORDERED: That the power purchase agreements between Fitchburg Gas and Electric Light Company and Commonwealth Wind, LLC and Fitchburg Gas and Electric Light Company and Mayflower Wind Energy LLC for offshore wind energy generation and renewable energy certificates filed on May 25, 2022, pursuant to Section 83C and 220 CMR 23.00, are APPROVED; and it is

FURTHER ORDERED: That NSTAR Electric Company, Massachusetts Electric Company and Nantucket Electric Company, and Fitchburg Gas and Electric Light Company shall comply with all other directives contained in the Order.

By Order of the Department,

  
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Matthew H. Nelson, Chair

  
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Robert E. Hayden, Commissioner

  
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Cecile M. Fraser, Commissioner



An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.