

# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 23-42

August 23, 2023

Joint Petition of the Massachusetts Department of Energy Resources, Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and NSTAR Electric Company d/b/a Eversource Energy for approval of a proposed timetable and method for the solicitation and execution of long-term contracts for offshore wind energy generation, pursuant to Section 83C of An Act Relative to Green Communities, St. 2008, c. 169, as amended.

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## SUMMARY

The Department of Public Utilities (“Department”) approves the Massachusetts Department of Energy Resources’ (“DOER”), in coordination with the electric distribution companies (“Petitioners”), proposed timetable and method for the solicitation and execution of long-term contracts for offshore wind energy generation and finds that they are consistent with the requirements of Section 83C of An Act Relative to Green Communities, as amended. Section 83C(b) requires that the electric distribution companies enter into cost-effective contracts for offshore wind energy generation equal to approximately 5,600 MW of aggregate nameplate capacity no later than June 30, 2027. Through this fourth solicitation, the Petitioners intend to procure at least 400 MW and up to the maximum amount remaining of the statutory requirement of 5,600 MW of offshore wind energy generation under Section 83C, in any event not to exceed 3,600 MW.

The Department declines to increase or decrease the procurement volume, as recommended by several commenters. The Department will review whether the selected bids are in the best interest of ratepayers when the proposed contracts are submitted for review in a subsequent proceeding. The Department declines to modify the procurement schedule, as recommended by the Attorney General because Section 83C allows for DOER, rather than the Department, to develop a staggered procurement schedule, such that any subsequent solicitation shall occur within 24 months of a previous solicitation.

The Department accepts an amendment to the request for proposals (“RFP”) proposed by the Petitioners explicitly stating that a bid or rebid of the same generation project and/or lease area subject to an untermiated power purchase agreement is ineligible. The Department declines to require the Petitioners to allow for limited positive contingent bids. The Petitioners’ plan to adequately communicate any applicable multi-state offshore wind procurements to bidders via a coordination announcement is appropriate. The language in the RFP allowing for negative qualitative points for the bidder experience and project viability criteria will enable the Petitioners to address concerns with the track record of each bidder. The Department will not require the Petitioners to publish the quantitative and qualitative evaluation criteria with the issuance of the RFP. The bid fees and contract security requirements in the instant solicitation as proposed are reasonable and appropriate. The Department supports the inclusion of an indexed price bid in the RFP because it is a valid mechanism to promote project viability and mitigate risk in the current economic environment. The Department further recognizes that the Petitioners sought to define an indexing adjustment cap that reasonably balances the market and development risk with pricing risk, while ultimately providing price certainty to customers within the range of potential adjustment. The Department agrees with the timing of the indexing adjustment as proposed in the RFP and declines to direct further changes based on commenters’ recommendations.

The Department directs the Petitioners to incorporate their proposed amended language regarding an implicit price cap. The Department rejects the request that the form power purchase agreements be subject to public review prior to Department approval. The

solicitation process is designed to evaluate the benefits of proposals with a scheduled commercial operation date before January 1, 2032, and the Department declines to direct the Petitioners to allow bids without such a date. Requiring that generation facilities supported by long-term contracts funded by ratepayers be commercially operational and capable of meeting customer demand by a specific date in the near term is not only reasonable but essential to achieve the Commonwealth's climate policies. The filing represents a reasonable balancing of these interests and demonstrates progress towards achieving the Commonwealth's statutory offshore wind procurement requirement as well as seeking to contract for low-cost offshore wind resources.

## I. INTRODUCTION AND PROCEDURAL HISTORY

On May 2, 2023, the Massachusetts Department of Energy Resources (“DOER”), in coordination with Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid (“National Grid”), and NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric”) (collectively, “Companies” and collectively with DOER “Petitioners”), jointly filed a petition<sup>1</sup> with the Department of Public Utilities (“Department”) for approval of a proposed timetable and method for the fourth solicitation<sup>2</sup> of long-term contracts for offshore wind energy generation<sup>3</sup> resources pursuant to Section 83C of An Act Relative to Green Communities, St. 2008, c. 169 (“Section 83C”), as amended by St. 2016, c. 188, § 12;

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<sup>1</sup> In addition to the Petition, the Petitioners’ May 2, 2023 filing included the proposed request for proposals (“RFP”) with Appendices A through L. On May 2, 2023, DOER filed a correction, which supplemented a corrected Appendix I.

<sup>2</sup> The Companies’ first, second, and third solicitations’ timetables and methods, filed pursuant to Section 83C, were approved in Timetable and Method of Solicitation of Long-Term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C, D.P.U. 17-103 (2017); Timetable and Method of Solicitation and Solicitation Process under Section 83C of the Green Communities Act, D.P.U. 19-45 (2019); and Timetable and Method of Solicitation of Long-term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C, D.P.U. 21-40 (2021), respectively.

<sup>3</sup> “Offshore wind energy generation” is defined in Section 83C as offshore electric generating resources derived from wind that: (1) are Class I Renewable energy generating sources as defined in G.L. c. 25A, § 11F; (2) have a commercial operation date on or after January 1, 2018, which has been verified by DOER; and (3) operate in a designated wind energy area for which an initial federal lease was issued on a competitive basis after January 1, 2012.

St. 2018, c. 227, § 21, St. 2021; c. 8 § 91, St. 2021; c. 24, §§ 69, 72; and St. 2022, c. 179, §§ 60, 61.<sup>4</sup> The Department docketed this matter as D.P.U. 23-42.

On May 10, 2023, the Department requested comments from interested persons on the proposed timetable and method of solicitation. D.P.U. 23-42, Notice of Filing and Request for Comments (May 10, 2023). On May 22, 2023, the following entities submitted initial comments: (1) the Attorney General of the Commonwealth of Massachusetts (“Attorney General”); (2) Shell Energy North America (US), L.P. and Shell New Energies US, LLC (“Shell”); (3) Cypress Creek Renewables (“Cypress Creek”); (4) RENEW Northeast, Inc. (“RENEW”); (5) SouthCoast Wind Energy, LLC (“SouthCoast Wind”); (6) Avangrid Renewables, LLC (“Avangrid”); (7) Beacon Wind, LLC (“Beacon Wind”); (8) FirstLight Power (“FirstLight”); (9) Vineyard Offshore LLC (“Vineyard Offshore”); (10) NextEra Energy Transmission, LLC (“NextEra”); (11) Ørsted Offshore North America (“Ørsted”); (12) Ocean Winds North America (“Ocean Winds”); (13) Save Greater Dowses Beach (“SGDB”); (14) Anbaric Development Partners (“Anbaric”); (15) JERA Americas Inc. (“JERA”); (16) Crowley Maritime Corporation (“Crowley”); and (17) GE Renewable Energy – Offshore Wind (“GE Renewable”). On June 2, 2023, the following entities submitted reply comments: (1) DOER; (2) National Grid; (3) NSTAR Electric; (4) Unitil;<sup>5</sup>

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<sup>4</sup> The Department notes that it is currently in the process of establishing updated regulations, pursuant to St. 2022, c. 179, §§ 60-61.

<sup>5</sup> National Grid, NSTAR Electric, and Unitil submitted joint reply comments. In addition, NSTAR Electric submitted separate reply comments.

(5) RENEW; (6) Beacon Wind; (7) JERA; (8) Shell; (9) Vineyard Offshore; and  
(10) Avangrid.

On May 5, 2023, pursuant to Section 83C(f), the Independent Evaluator submitted its report analyzing the timetable and method of solicitation to the Department (“Independent Evaluator Report”).<sup>6</sup> The Petitioners, the Independent Evaluator, and National Grid responded to nine, eleven, and one information request(s), respectively, issued by the Department.

On June 6, 2023, JERA filed a Motion for Leave to File Surreply Comments (“Motion”) which were made available for all interested parties to review through the Department’s online file room. On June 9, 2023, SGDB filed a response supporting JERA’s Motion (SGDB Response at 1). On June 13, 2023, the Petitioners filed a clarification letter in response to JERA’s Motion. On June 23, 2023, JERA filed a Motion to Supplement the Record. In its Motion, JERA requested that the Department allow submission of information regarding additional capacity factor data from 2016 to present for JERA’s Canal 1 and Canal 2 oil-fired generators. These facilities are discussed in more depth below in Section IV.H.2. As an initial matter, the Department finds that JERA had ample opportunity to provide, and did provide, full comments in this matter within the timeframe outlined in the

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<sup>6</sup> Pursuant to Section 83C(f) and 220 CMR 23.04(6), DOER and the Attorney General jointly select an Independent Evaluator which, among other things, issues a report to the Department analyzing the timetable and method of solicitation conducted pursuant to Section 83C. DOER and the Attorney General selected Power Advisory, LLC, as the Independent Evaluator for this Section 83C solicitation (Independent Evaluator Report at 1).

public notice (i.e., initial comments, and reply comments). The Department considered JERA's timely comments when developing discovery questions. Further, given the unique nature of this Section 83C proceeding, the Department will exercise its broad discretion and accept the surreply comments, as well as the Petitioner's response. The Department finds that the comments provided in JERA's initial, reply, and surreply comments are sufficient for the Department's consideration and obviate the need for the information found in the additional filing.<sup>7</sup> Accordingly, the Department denies JERA's Motion to Supplement the Record.

On its own motion, the Department enters into the evidentiary record the Petitioners' and Independent Evaluator's responses to Information Requests DPU 1-1 through DPU 1-9 filed on June 20, 2023, the Independent Evaluator's responses to Information Requests DPU 2-1 and 2-2 filed on July 15, 2023, National Grid's response to DPU 1-1 filed on July 21, 2023, and the Independent Evaluator Report filed on May 5, 2023. 220 CMR 1.10(3).<sup>8</sup>

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<sup>7</sup> The Town of Sandwich filed comments on July 10, 2023 in response to JERA's Motion to Supplement the Record. These comments were filed well beyond the comment deadline and without the requisite motion for extension of time within which to file comments. 220 CMR 1.02(5). Since the Department denies JERA's motion, the Department does not address the Town of Sandwich's comments in this Order.

<sup>8</sup> Pursuant to 220 CMR 1.10(3), the Department also incorporates by reference the transcript of a hearing held with the Department's Siting Board on July 26, 2023 in a pending matter docketed D.P.U. 22-67/D.P.U. 22-68 (EFSB 22-04).

## II. SUMMARY OF PROPOSED TIMETABLE AND SOLICITATION METHOD

### A. Introduction

Pursuant to Section 83C, as amended by St. 2022, c. 179, § 61 (“Chapter 179”), DOER, in coordination with the Companies, must conduct a competitive solicitation for offshore wind energy generation. Provided that reasonable proposals have been received, the Companies must enter into cost-effective long-term contracts for offshore wind energy generation and associated renewable energy certificates (“RECs”)<sup>9</sup> in an amount consistent with the staggered procurement schedule to be developed by DOER.<sup>10</sup> Accordingly, DOER, in coordination with the Companies, requests that the Department approve the proposed timetable and method for solicitation, and associated proposed request for proposals, marked as Attachment A to the Petition (“RFP”) (Petition at 1; RFP at § 1.1). The Petitioners state that, consistent with the requirements of Section 83C, they have developed the proposed RFP in consultation with the Attorney General and the Independent Evaluator (Petition at 2). The RFP encompasses the timetable and method for solicitation of offshore wind energy generation in accordance with Section 83C (Petition at 2).

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<sup>9</sup> The RFP defines RECs as all of the New England Power Pool (“NEPOOL”) Generation Information System Certificates and environmental benefits associated with New Class I RPS eligible resources (RFP at D).

<sup>10</sup> The staggered procurement schedule shall be developed by DOER and shall specify that any subsequent solicitation shall occur within 24 months of a previous solicitation. Section 83C(b).

Through this fourth solicitation for offshore wind energy generation, the Petitioners state that they seek to procure at least 400 MW and up to the maximum amount remaining of the statutory requirement under Section 83C of 5,600 MW of offshore wind energy generation, in any event not to exceed 3,600 MW<sup>11</sup> (RFP at § 1.1, 2.2.1.2). The Petitioners state that the RFP allows bidders to offer proposals from 200 MW up to 2,400 MW (Petition at 1; RFP at § 2.2.1.2). Although there is no preferred bid size, the Petitioners contend that DOER, in consultation with the Independent Evaluator (collectively, the “Selection Team”), may select any cost-effective project or portfolio of projects that meets the criteria outlined in

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<sup>11</sup> The statutory requirement is a total of 5,600 MW of Offshore Wind Energy Generation. The Companies have each entered into contracts and received Final Regulatory Approval for their load-ratio share of approximately 2,000 MW of Offshore Wind Energy Generation. At the time the instant petition was filed, 1,200 MW of Offshore Wind Energy Generation was pending resolution of Commonwealth Wind’s appeal and its status was uncertain (Petition at 1). On July 13, 2023, the Companies jointly filed with the Department proposed amendments to the PPAs which are the subject of the appeal. The proposed amendments would terminate the PPAs with Commonwealth Wind, in return for which Commonwealth Wind would pay a total of \$48.0 million to the Companies, to be allocated based on load share, for the benefit of their customers. The petition by the Companies to amend the PPAs with Commonwealth Wind is pending before the Department. If approved, the available statutory balance would increase by an additional 1,200 MW. Although nothing has yet been filed with the Department by SouthCoast Wind, there is testimony in a related siting docket, which indicates that SouthCoast Wind is in the process of negotiations with the Companies, likely to result in a similar approach. D.P.U. 22-67/22-68 (EFSB 22-04), Tr. at Vol. 4, 663-666. Should SouthCoast Wind and the Companies file amendments to terminate these PPAs and they are approved by the Department, the maximum amount remaining of the statutory requirement of 5,600 MW under Section 83C MW would increase to 4,800 MW. Any administrative costs that the Companies incur to return ratepayer funds as a result of a contract termination of any offshore wind PPAs should be covered by the termination payment and not charged to the ratepayers at a later time.

the RFP.<sup>12</sup> The Petitioners further argue that the Selection Team is not obligated to select any specific amount of offshore wind energy generation (Petition at 1-2; RFP at § 2.2.1.2).

Finally, although the proposed solicitation method is substantially similar to the method approved by the Department for use in the most recent Section 83C solicitation, the Petitioners propose certain changes to the RFP to incorporate experience gained from past solicitations and in response to public comments and consultations with state agencies. These changes include, but are not limited to: (1) a more comprehensive set of factors to be considered in the Selection Team's qualitative evaluation, including revisions to the Bidder Experience and Project Viability criteria (see RFP at § 2.2.4); (2) removal of the previously included price cap<sup>13</sup>; and (3) an option for bidders to submit an alternative pricing option or "indexed price bid" to account for changes in uncertain economic and market conditions (see RFP at § 2.2.1.5).

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<sup>12</sup> Prior to selection, the "Evaluation Team," made up of DOER, the Companies, the Executive Office of Housing and Economic Development, which has become the Executive Office of Economic Development, and the Independent Evaluator, will conduct an evaluation of the proposals to determine projects to be considered by the Selection Team. The Evaluation Team is discussed further below in Section II.B.1.

<sup>13</sup> The price cap requirement in previous solicitations required the Department only approve a power purchase agreement ("PPA") if the levelized price per MWh, including associated transmission costs, is less than the levelized price per MWh from the previous solicitation. The Legislature eliminated the price cap requirement as part of the amendments to Section 83C in St. 2022, c. 179.

B. Proposed Solicitation Method

1. Introduction

A team consisting of DOER, the Companies, the Executive Office of Housing and Economic Development (“EOHED”),<sup>14</sup> and the Independent Evaluator (“Evaluation Team”) will evaluate proposals received from this solicitation (Petition at 2).<sup>15</sup> Specifically, proposals received will be subject to review by DOER and EOHED in consultation with the Independent Evaluator, and the Companies shall offer technical advice (Petition at 2). Based on the bid evaluation process described below, the Evaluation Team will utilize the evaluation results and project rankings to determine projects to be considered by the Selection Team (Petition at 4).

The Companies may jointly negotiate contracts, and DOER will have the opportunity to monitor contract negotiations between the Companies and selected bidder(s) (Petition at 4; RFP at § 1.4). Further, each Company intends to enter into a contract with the winning bidder(s) for its apportioned share of the energy and/or RECs being purchased from the bidder’s project (Petition at 2). At the conclusion of the solicitation process, the Companies will, jointly or individually, submit any resulting contracts to the Department for approval (Petition at 2, 4; RFP at § 1.3). At that time, pursuant to Section 83C(f), the Independent

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<sup>14</sup> Governor Healey renamed EOHED as the Executive Office of Economic Development and created a new secretariat called the Executive Office of Housing and Livable Communities.

<sup>15</sup> In contrast to the Selection Team discussed above, the Evaluation Team conducts an evaluation of the proposals.

Evaluator will file a report with the Department summarizing and analyzing the solicitation and the bid selection process, including an assessment of whether all bids were evaluated in a fair and non-discriminatory manner (Petition at 3; RFP at § 1.5).

Because two of the Companies have affiliates that may bid in response to the RFP, NSTAR Electric and National Grid have each executed a Standard of Conduct document<sup>16</sup> (Petition at 3; RFP at § 1.4, Apps. F-1, F-2). The Standard of Conduct documents prohibit any discussion of the RFP among NSTAR Electric and National Grid personnel participating on the Evaluation Team and personnel involved in the preparation of bids on behalf of an affiliate other than discussions that are part of the RFP process (e.g., bidder conferences or formal bidder questions and answers) (Petition at 3-4; RFP at § 1.4).

## 2. Bid Evaluation Process

The Petitioners state that the evaluation of bids will occur in three stages: (1) a review of bids for eligibility and threshold requirements<sup>17</sup> (“Stage One”); (2) a quantitative and qualitative evaluation of bids (“Stage Two”); and (3) a further evaluation of remaining bids using quantitative and qualitative evaluation criteria, as well as certain additional discretionary factors, to ensure the selection of viable projects that provide cost-effective,

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<sup>16</sup> The Petitioners note that Unitil does not have an affiliate that may bid in response to the RFP and therefore has not executed a Standard of Conduct document. If there is a potential that a Unitil affiliate will be a bidder, Unitil will execute a Standard of Conduct document (Petition at 3; RFP at § 1.4).

<sup>17</sup> For example, to be eligible to participate in the solicitation, a bidder must be a developer of offshore wind energy generation or in possession of the development rights to offshore wind energy generation (RFP at § 2.2.1.1).

reliable offshore wind energy generation with limited risk (“Stage Three”) (Petition at 4; RFP at § 1.4, 2.1, 2.4). The Evaluation Team will utilize the evaluation results and project rankings to determine which projects the Selection Team will review (Petition at 4; RFP at § 1.4).

The RFP provides that eligible bids must include: (1) the construction and operation of all associated facilities required for delivery from the offshore wind energy generation facilities directly to the corresponding onshore regional bulk power transmission facilities; and (2) a commitment to negotiate in good faith and use commercially reasonable best efforts to enter into an agreement with any third party offshore wind developer seeking to interconnect with and expand the bidder’s interconnection facilities (RFP at § 2.2.1.3, Appendix G). Additionally, the RFP contains eligibility requirements regarding: (1) pricing requirements/allowable forms of pricing, including the alternative option to submit an indexed price bid which may adjust up to or down 15 percent based on the change in a set of macroeconomic and/or commodity indices to be determined by the RFP Drafting Parties;<sup>18</sup> (2) bidder disclosure of affiliations and affiliate relationships; (3) a contract term between 15 and 20 years; (4) capacity requirements; (5) interconnection and delivery requirements; and (6) proposal completeness, including proposed changes to the form purchase power agreements (“PPAs”) and bid fees (RFP at § 2.2.1).

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<sup>18</sup> The RFP Drafting Parties are DOER, the Companies, and the Attorney General. The Independent Evaluator reviews the process by which the RFP Drafting Parties developed the draft RFP (Independent Evaluator Report at 2).

In Stage One, the Evaluation Team will evaluate proposals meeting eligibility requirements to determine whether they also comply with threshold requirements (RFP at § 2.2).<sup>19</sup> According to the Petitioners, the threshold requirements evaluation is intended to screen out proposals that: (1) are insufficiently mature from a project development perspective; (2) lack technical viability; (3) impose unacceptable balance sheet impacts on the Companies; (4) do not satisfy the minimum requirements set forth in Section 83C; (5) are not in compliance with the RFP requirements; or (6) fail to satisfy minimum standards for bidder experience and ability to finance the proposed project (RFP at § 2.2.2).

In Stage Two, the Evaluation Team will subject remaining proposals to quantitative and qualitative analyses that evaluate the costs and benefits of each proposal as a mechanism to procure reliable renewable energy on a long-term basis to the benefit of ratepayers (RFP at § 2.3). The Evaluation Team will score proposals on a 100-point scale, with 70 points possible for quantitative factors and 30 points possible for qualitative factors (RFP at § 2.3).

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<sup>19</sup> The threshold requirements require a bidder to demonstrate: (1) site control and provide related agreements; (2) technical and logistical viability; (3) ability to finance the proposed project; (4) bidder experience; (5) proposal will provide enhanced electricity reliability within the Commonwealth; (6) proposal will contribute to reducing winter electricity price spikes; (7) proposal will avoid line loss and mitigate transmission costs to the extent possible and ensure that transmission cost overruns, if any, are not borne by ratepayers; (8) project viability in a commercially reasonable timeframe; (9) contribution to employment; (10) economic development benefits; (11) utilization of an appropriate tracking system to account and enable for GWSA goals; (12) an environmental and fisheries mitigation plan; (13) benefits to environmental justice populations and low-income ratepayers in the Commonwealth; (14) diversity, equity, and inclusion; (15) security requirements; (16) no unreasonable balance sheet impacts; and (17) facilitate financing of offshore wind energy generation (RFP at § 2.2.2).

The 30 points for qualitative factors comprise 15 points for economic development and project impact criteria and 15 points for bidder experience and project viability criteria (RFP at § 2.3).

During the Stage Two quantitative analysis, the Evaluation Team will evaluate proposals based on their direct and indirect economic and environmental costs and benefits to ratepayers (RFP at § 2.2.3).<sup>20</sup> Direct contract price costs and benefits include, but are not limited to, the following: (1) offshore wind energy generation on a mark-to-market comparison of the price for any eligible offshore wind energy generation under a contract to projected market prices at the delivery point with the project in-service; (2) a comparison of the price of any renewable portfolio standard (“RPS”) Class I eligible RECs under a contract to (a) the projected avoided cost of RECs with the project not in-service if the RECs are to be used for RPS and clean energy standard compliance by the Companies or Massachusetts retail electric suppliers, and (b) projected REC prices with the project in-service if the Companies plan to sell RECs in excess of their compliance obligations; (3) the value attributable to the ability of offshore wind energy generation resources to produce and supply clean peak energy certificates (“CPECs”) if the Evaluation Team is able to reliably and meaningfully quantify such value; and (4) the direct benefits of any applicable energy storage system (RFP at § 2.2.3.1).

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<sup>20</sup> For purposes of comparing bids of different sizes, the Evaluation Team may determine an estimate of avoided costs of offshore wind energy generation that might be procured in the future for proposals that are less than the maximum amount remaining of the statutory requirement under Section 83C (RFP at § 2.3.3.3).

Additional economic and environmental costs and benefits that the Evaluation Team may take into consideration in Stage Two include, but are not limited to, the following:

(1) impacts of changes in the locational marginal price paid by ratepayers in the Commonwealth, taking into consideration contracts the Companies have already executed; (2) the impact on RPS and/or clean energy standard compliance costs paid by ratepayers in the Commonwealth; (3) additional impacts, if any, from the proposal on the Commonwealth's greenhouse gas emissions rates and overall ability to meet Global Warming Solutions Act ("GWSA") requirements to be evaluated using the Evaluation Team's proxy value for their contribution to GWSA requirements; (4) indirect impacts, if any, on retail ratepayers resulting from the capacity or ancillary services market prices with the proposed project in service (if and to the extent the Evaluation Team determines such impacts are reliably quantifiable); (5) the impact on contribution to reducing winter electricity price spikes; (6) any indirect impacts on retail ratepayers from CPEC market prices (if and to the extent the Evaluation Team determines such impacts are reliably quantifiable and meaningful) with the proposed project in service; and (7) indirect impacts from additional project capacity under agreement for contract to third-party off-takers (e.g., businesses, nonprofit organizations, municipalities or municipal aggregations) (RFP at § 2.2.3.2).<sup>21</sup>

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<sup>21</sup> The Evaluation Team plans to estimate and use the real levelized dollars per megawatt-hour (\$/MWh) of proposals as the Stage Two quantitative evaluation metric, but it may determine another metric prior to its evaluation of the bids (RFP at § 2.2.3.3).

During the Stage Two qualitative analysis, the Evaluation Team will evaluate proposals based on factors identified in Section 83C, as well as factors the Evaluation Team considers important (RFP at § 2.2.4). As previously noted, the Evaluation Team will allocate up to 15 points to economic development and project impact criteria, which include the following factors: (1) demonstrated economic benefits to the Commonwealth, including quality, high-demand jobs; (2) demonstrated direct benefits to low-income ratepayers; (3) commitment to diversity, equity, and inclusion, including employment and procurement/contracting opportunities for minorities, women, veterans, LGBT, and persons with disabilities; and (4) environmental and socioeconomic impacts from siting, including the Fisheries Mitigation Plan, and Environmental Justice impacts (RFP at § 2.2.4). The Evaluation Team will also allocate up to 15 points to bidder experience and project viability criteria, which include the following factors: (1) experience and track record of the bidder; (2) siting, permitting, project schedule, and financing plan; (3) firm delivery and energy storage system benefits; (4) reliability benefits; (5) additional long-term contracts with third parties; and (6) benefits, costs, and contract risk (RFP at § 2.2.4). The assessment of qualitative points for the bidder experience and project viability criteria may include both positive and/or negative points, including up to ten negative points in total, and may result in a score above, at, or below zero (RFP at § 2.2.4).<sup>22</sup> The Evaluation Team will determine

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<sup>22</sup> Experience and track record of the bidder includes an evaluation of the bidder's track record in developing similar projects, including consideration of any project that has been delayed, failed, substantively amended, defaulted under, withdrawn, agreed to

which proposals proceed to Stage Three following the Stage Two evaluation based on the following considerations: (1) the rank order of the proposals at the end of the Stage Two evaluation; (2) the cost effectiveness of the proposals based on the Stage Two quantitative and qualitative evaluation; and (3) the total MW quantities of the proposal(s), relative to the procurement target (RFP at § 2.2.4).

Finally, in Stage Three, the Evaluation Team will consider remaining proposals based on the Stage Two quantitative and qualitative evaluation criteria and, at its discretion, the following factors: (1) past experience with the bidder and its affiliates in offshore wind solicitations, track record of the bidder in successfully executing projects similar to the proposal, and credibility of bidder to perform according to proposal specifications; (2) the degree to which the proposal maximizes the use of and includes the contractual commitment to share federal or state tax credits, subsidies, or grants or other incentives; (3) possible portfolio effects; (4) overall impact of the proposal on the Commonwealth's policy goals, as directed by DOER, including GWSA goals and economic development; (5) any risks associated with project viability; (6) a comparison to a reasonable range of data and analyses on expected offshore wind prices, industry costs, and the anticipated cost impact of future technologies as compared to procuring offshore wind in this solicitation; (7) minimization and mitigation of ratepayer bill impacts; (8) sensitivity analyses to evaluate how the benefits of the project or portfolio change based on applying different ranges of reasonable assumptions;

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termination, or otherwise did not proceed, including prior long-term contracts (RFP at § 2.2.4.5).

(9) sensitivity and other analysis to evaluate the impact to net benefits and cost-effectiveness from applying any proposed indexing adjustment to project pricing; (10) forecasting assessment of the risk or benefit to Massachusetts ratepayers from any proposed indexing adjustment; (11) assessment of the impact of any proposed indexing adjustment to project viability; (12) consideration of benefits to Massachusetts of a selection decision made in coordination with other New England states' procurement should there be a coordination announcement; (13) any benefits, cost, or risks to customers that may not have been fully captured in the Stage Two evaluation; and (14) any other considerations, as appropriate, to ensure selection of the proposal(s) that provide the greatest impact and value consistent with the stated objectives and requirements of Section 83C (RFP at § 2.4). The Evaluation Team will consider the relative merits of a proposal(s) that offers additional benefits, for example economic development benefits including additional manufacturing or innovation, as compared to other top-ranked proposals (RFP at § 2.4).

C. Proposed Timetable

After securing Department approval of the proposed timetable and method of solicitation, the Petitioners state that they will promptly issue the RFP to a wide range of potentially interested parties (Petition at 5). The Evaluation Team will subsequently conduct a bidders' conference,<sup>23</sup> allow potential bidders the opportunity to submit written questions

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<sup>23</sup> The Petitioners intend to hold a bidders' conference approximately two weeks following approval of the RFP and after the final RFP is issued (Exh. DPU-Petitioners 1-3).

regarding the RFP, and post responses to any questions on a dedicated website (Petition at 5; RFP at § 3.2). The table below sets forth the proposed timetable for the solicitation process (Petition at 7; RFP at § 3.1).

<b>Event</b>	<b>Anticipated Date</b>
Issue RFP	TBD <sup>24</sup>
Bidders Conference	TBD
Deadline for Submission of Questions	TBD
Due Date for Submission of Confidential and Public Proposals	January 31, 2024
Selection of Projects/Commence Negotiations	June 12, 2024
Execute Contracts and Memorandum of Understanding (“MOU”) <sup>25</sup> with DOER	August 14, 2024
Submit Contracts for Department Approval	September 18, 2024

### III. INDEPENDENT EVALUATOR REPORT

#### A. Introduction

As noted above, Section 83C(f) requires the Independent Evaluator to submit a report to the Department analyzing the proposed timetable and method of solicitation. The report must also include recommendations, if any, for improving the process. In accordance with this requirement, the Independent Evaluator analyzed the proposed timetable and method for the fourth solicitation of offshore wind energy generation pursuant to Section 83C(f) and

<sup>24</sup> The Petitioners state that this date will be after the issuance of a final Department Order approving the RFP and will be determined at the discretion of the RFP Drafting Parties (Petition at 5).

<sup>25</sup> Section 2.2.1.12 of the RFP includes a form economic development MOU with DOER and MassCEC. As part of their bid proposals, bidders must submit marked versions of the form MOU showing any specific proposed changes to the form MOU (RFP § 2.2.1.12).

submitted its report to the Department on May 5, 2023 (Independent Evaluator Report at ES-1-2).

The Independent Evaluator focused on the following issues when analyzing the proposed timetable and solicitation method: (1) the reasonableness of the procurement target, the minimum and maximum bid size, and the proposed schedule; (2) the fairness of the RFP terms, including, but not limited to: (a) transparency in the evaluation process, (b) coordination with other states, (c) proposed contract repricing provision, (d) contingent bids, (e) experience and track record of the bidder, (f) bid fees, (g) non-delivery disincentive, (h) indexed price bid, (i) development period security requirements, and (j) optional bids to known transmission upgrades; and (3) a review of the form PPAs (Independent Evaluator Report at 8, 12, 21).

#### B. Report Conclusions

The Independent Evaluator concludes that the proposed solicitation design satisfies the statutory standards for an open, fair, and transparent solicitation that is not unduly influenced by affiliates (Independent Evaluator Report at 23). The Independent Evaluator supports the RFP procurement target, allowable bid sizes and schedule (Independent Evaluator Report at 23). Based on its participation in the RFP drafting process and the dialogue among the RFP Drafting Parties, in which the Independent Evaluator participated, the Independent Evaluator reports that the terms and conditions of the RFP are fair and represent a reasonable balancing of interests (Independent Evaluator Report at 23). In addition, the Independent Evaluator opines that the RFP process is designed to promote transparency and fairness

(Independent Evaluator Report at 28). The Department identifies additional conclusions from the Independent Evaluator on specific issues, as applicable, in sections below and addresses the Independent Evaluator's recommendations for improving future Section 83C procurements below.

#### IV. ISSUES RAISED BY COMMENTERS

##### A. Introduction

Pursuant to Section 83C(b) and 220 CMR 23.04(2), the scope of this proceeding is limited to a review of the timetable and method for the fourth solicitation of long-term wind energy generation contracts under Section 83C. In prior timetable and method of solicitation review proceedings, the Department has sought to avoid predetermining or limiting the consideration of proposed contracts or evaluation model. Timetable and Method of Solicitation of Long-Term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C, D.P.U. 17-103, at 15-16 (2017); Timetable and Method for Solicitation of Long-Term Contracts for Clean Energy Generation, D.P.U. 17-32, at 18-19 (2017); Timetable and Method for Solicitation of Long-Term Contracts for Renewable Energy, D.P.U. 15-84, at 22 (2015); Fitchburg Gas and Electric Light Company et al., D.P.U. 09-77, at 22 (2009), citing Long-Term Contracts for Renewable Energy, D.P.U. 08-88-A at 10 (2009). Instead, the Department has found that the appropriate venue for parties to raise relevant substantive issues with respect to the evaluation of proposed projects, to all phases of contract development and negotiation, and to the specific terms and conditions in the resulting PPA(s), is in the adjudication before the Department of individual

long-term contracts. D.P.U. 17-103, at 16; D.P.U. 17-32, at 18-19; D.P.U. 15-84, at 21; D.P.U. 09-77, at 22; D.P.U. 08-88-A at 10.

In the instant proceeding, commenters raised issues concerning a range of topics, including: (1) the solicitation timetable; (2) the procurement size and frequency; (3) bid evaluation protocols; (4) bid fees and development period security; (5) contract pricing, including the alternative indexed pricing option and REC pricing requirements; (6) eligibility; (7) interconnection; (8) commercial operation date; (9) energy storage systems; and (10) issues pertinent to the form PPAs.

## B. Solicitation Timetable

### 1. Introduction

The Petitioners intend to issue the RFP following a final Order from the Department approving the RFP (Petition at 5; RFP at § 3.1). The Petitioners state that the exact RFP issuance date will be determined at the discretion of the RFP Drafting Parties (Petition at 5; RFP at § 3.1). As part of the proposed solicitation timetable, the Petitioners provide anticipated dates for other events, including dates for the submission of proposals and selection of projects (Petition at 5; RFP at § 3.1).

### 2. Summary of Comments

Several commenters request that the Department accelerate the RFP schedule (Avangrid Comments at 3; Crowley Comments at 1-2; GE Renewable Comments at 2). Avangrid suggests that the provisional schedule is too extended to allow bidders to secure meaningful supply chain commitments and deliver related price-certainty benefits, and that

the provisional schedule will fail to motivate companies to achieve commercial operation by 2030 (Avangrid Comments at 3-4). Avangrid and GE Renewable request that the Department establish an earlier schedule for the solicitation, with due dates for submission of proposals and the announcement of selected projects occurring in November 2023 and February 2024, respectively (Avangrid Comments at 4; GE Renewable Comments at 2). In addition, Avangrid requests that the timelines between coordinated transmission upgrades and offshore wind solicitations be separated (Avangrid Comments at 5). Crowley recommends that the procurement schedule be shortened and that contract awards be made by December 2023 (Crowley Comments at 2). Vineyard Offshore disagrees with the modifications to the solicitation timetable proposed by Avangrid, GE Renewable, and Crowley (Vineyard Offshore Reply Comments at 5). Vineyard Offshore expresses support for the solicitation timetable as proposed by DOER and the Companies in the RFP (Vineyard Offshore Comments at 7).

In response to comments requesting an earlier schedule made by Avangrid, Crowley, and GE Renewable, the Petitioners submit that the proposed RFP schedule balances timing constraints and provides additional time for bidders to develop proposals in a time of market uncertainty (Petitioners Reply Comments at 8).

### 3. Analysis and Findings

As identified in the Independent Evaluator's report, the proposed procurement schedule departs from those approved in previous solicitations (Independent Evaluator Report at 11). For the fourth solicitation, the revised procurement schedule reflects two primary

considerations: (1) delaying the bid submittal date to provide additional time for inflationary pressures to subside and for the supply chain dislocations to heal; and (2) providing additional time for the evaluation of proposals given the increased complexity of the evaluation process (e.g., indexed price bid) (Independent Evaluator Report at 11). The procurement schedule further allows for the proposal submission deadline to be extended if the U.S. Treasury Department provides guidance related to investment tax credit eligibility after December 1, 2031, and before January 31, 2024 (Independent Evaluator Report at 12).

After review, the Department finds that the proposed timetable appropriately balances the Commonwealth's policy objective to procure additional offshore wind generation in a timely manner while also providing sufficient time for bidders to develop competitive proposals amidst market uncertainty. Accordingly, the Department declines to instruct the Petitioners to make changes to the proposed solicitation timetable and approves the proposed timetable for the instant solicitation.

### C. Procurement Size and Frequency

#### 1. Introduction

The Petitioners intend to procure at least 400 MW and up to the maximum amount remaining of the statutory requirement of 5,600 MW of offshore wind energy generation under Section 83C (Petition at 1; RFP at § 1.1, 2.2.1.2).<sup>26</sup>

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<sup>26</sup> As noted above, the current amount remaining under the 5,600 MW statutory limit is 3,600 MW. The amount may increase in the event Commonwealth Wind and SouthCoast Winder terminate their previously approved offshore wind contracts.

## 2. Summary of Comments

Several commenters support the solicitation procurement volume identified in the RFP (i.e., at least 400 MW, not to exceed 3,600 MW) (Avangrid Reply Comments at 5; Beacon Wind Reply Comments at 1; Crowley Comments at 1; GE Renewable Comments at 2; SouthCoast Wind Comments at 3; Vineyard Offshore Comments at 3). Vineyard Offshore and Ocean Winds recommend further increasing the procurement volume (Ocean Winds Comments at 3; Vineyard Offshore Comments at 3). Considering the uncertainty surrounding existing Section 83C contracts and their potential termination, Vineyard Offshore recommends that DOER and the Companies retain the discretion in the RFP to increase the procurement volume by an additional 1,200 MW (Vineyard Offshore Comments at 3). Ocean Winds recommends increasing the maximum amount sought in the procurement, reasoning that this will enable the full array of bidders as supply rises to meet demand (Ocean Winds Comments at 3).

The Attorney General expresses concern that the proposed procurement size will lead to inflated costs for ratepayers (Attorney General Comments at 3). In support of her argument, the Attorney General identifies several factors likely to increase the costs of the solicitation (e.g., the possibility of failure in previous offshore wind procurements, uncertain global economic conditions, the lack of a price cap for the instant solicitation, and limitations related to offshore wind interconnection and transmission infrastructure) (Attorney General Comments at 3-4). The Attorney General suggests that the proposed RFP procurement size of up to 3,600 MW overcompensates for the potential 2,400 MW lost through

non-performance of previously contracted PPAs (Attorney General Comments at 7-8). The Attorney General reasons that if the combined price for energy and RECs that will be bid and approved in connection with the instant RFP is more than the combined price approved in connection with PPAs from earlier rounds, ratepayers will pay more for the same quantity of offshore wind generation (Attorney General Comments at 7-8). The Attorney General therefore recommends a small procurement cap of 1,600 MW, which she suggests would keep the Commonwealth on pace to achieve its offshore wind targets without unduly burdening ratepayers (Attorney General Comments at 3-4). In addition, the Attorney General recommends that future Section 83C solicitations be conducted more frequently (i.e., 12 to 18 months apart, rather than 24 months) with smaller amounts of generation procured in any single solicitation (Attorney General Comments at 3-4).

The Petitioners maintain that the procurement size in the RFP is reasonable and provides flexibility to the Selection Team to identify a cost-effective project or set of projects that delivers benefits to the Companies' customers and the Commonwealth (Petitioners Reply Comments at 3). The Petitioners state that the Selection Team is not obligated to select any specific amount, including up to the maximum allowed under the RFP (Petitioners Reply Comments at 3). The Petitioners assert that the evaluation framework and flexibility to select the procurement volume address cost concerns through the Selection Team's evaluation and weighing of potential bids' costs and contributions to the Commonwealth's greenhouse gas emission reduction targets (Petitioners Reply Comments at 3-4).

### 3. Analysis and Findings

Section 83C(b) requires that the Companies enter into cost-effective contracts for offshore wind energy generation equal to approximately 5,600 MW of aggregate nameplate capacity no later than June 30, 2027. Through this fourth solicitation, the Petitioners intend to procure at least 400 MW and up to the maximum amount remaining of the statutory requirement of 5,600 MW of offshore wind energy generation under Section 83C. Further, the Selection Team may select any cost-effective project or portfolio of projects that meets the criteria outlined in the RFP. The Selection Team, however, is not obligated to select any specific amount. The Department declines to modify (*i.e.*, increase or decrease) the procurement volume as recommended by several commenters. Instead, the Department finds that it is appropriate that the Selection Team have the discretion and flexibility to determine the precise amount of offshore wind energy generation to be procured through this solicitation based on the criteria outline in the RFP and their evaluation of the bids submitted (Petition at 1-2; RFP at § 1.1, 2.2.1.2).<sup>27</sup> The Department will review whether the selected bids are in the best interest of ratepayers when the proposed contracts are submitted for review. The Attorney General and other stakeholders may raise arguments about whether the costs of the contracts are reasonable at that time.

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<sup>27</sup> Section 83C provides that the Department shall consider both the potential costs and benefits of such contracts and shall approve a contract only upon a finding that it is in the public interest and is a cost-effective mechanism for procuring beneficial, reliable offshore wind energy generation on a long-term basis.

Along with a smaller procurement target, the Attorney General recommends that future Section 83C solicitations be conducted more frequently (i.e., 12 to 18 months apart, rather than 24 months) (Attorney General Comments at 3-4). As expressed by the Independent Evaluator, the Department also recognizes that smaller, more frequent procurements may serve as a potential hedge against inflationary pressures, supply chain issues and uncertainty around previous Section 83C solicitations than a single solicitation with a large procurement target (Exh. DPU-IE 1-6). On balance, however, the Department finds that the procurement target outlined in the RFP represents a reasonable balancing of these interests and demonstrates progress towards achieving the Commonwealth's statutory offshore wind procurement requirement as well as seeking to contract for low-cost offshore wind resources. The Department declines to adopt the Attorney General's recommendation for more frequent solicitations. Section 83C allows for DOER, rather than the Department, to develop a staggered procurement schedule, such that any subsequent solicitation shall occur within 24 months of a previous solicitation.

D. Stage One Bid Evaluation

1. Introduction

In Stage One of the bid evaluation process, the Evaluation Team will ensure that proposed projects meet eligibility and threshold requirements (RFP § 2.1). Among other things, in Stage One the Evaluation Team determines the eligibility of the bidder and of the bid itself (RFP §§ 2.2.1.1, 2.2.1.2, 2.2.1.3).

2. Eligibility and Competitiveness

a. Introduction

The RFP states that bidders submitting multiple proposals must specify whether any of their proposals are negatively contingent upon any of their other proposals (RFP § 2.2.1.2). Further, bids cannot be contingent on prior approved long-term contracts (RFP § 2.2.1.2).

b. Summary of Comments

Multiple commenters requested changes or additions to the RFP's definition of an eligible bidder in Section 2.2.1.2. Clarification was sought concerning bidders with generation and/or lease areas currently under contract at the time bids are due under the fourth RFP and regarding the possibility of a non-delivery disincentive in future RFPs.

The Attorney General requests that the Department direct the Petitioners to include a non-delivery disincentive provision in the RFP, arguing that this would put bidders on notice that successful bidders will be precluded from offering their site in a future 83C solicitation if, after a successful bidder's signed PPA is approved by the Department, the bidder defaults on its obligations to develop the site (Attorney General Comments at 17). The Attorney General proposes a "cooling off" period, arguing it could protect consumers by disincentivizing offshore wind developers from breaching their PPAs, while also protecting the integrity of the solicitation process (Attorney General Comments at 17).

Avangrid suggests that the RFP should avoid excluding potential bidders, including those bidders who are party to pre-existing non-economic PPAs that have not yet been terminated (Avangrid Comments at 3). Specifically, Avangrid requests the Petitioners

remove or amend Section 2.2.1.2, arguing that it contains ambiguous language that could lead to the exclusion of all bids that include project components associated with pre-existing PPAs (Avangrid Comments at 9). SouthCoast Wind joins Avangrid in recommending that the Petitioners avoid imposing punitive measures throughout the evaluation process (SouthCoast Wind Comments at 10-11).

Conversely, SGDB suggests that the Petitioners should strengthen the Section 2.2.2.4 provision to disqualify from bidding any bidder involved with a previously approved Section 83C project that has failed or defaulted (SGDB Comments at 2). Alternatively, if the Petitioners decline to amend the final RFP to disqualify such bidders, SGDB requests the Department identify specific penalties for failure to deliver or otherwise default on approved projects (SGDB Comments at 2).

In response to Avangrid's comments, the Petitioners clarify that they do not intend to exclude certain bidders from participating in the instant solicitation, but instead intend to exclude bids with generation and/or lease areas currently under contract at the time bids are due under the fourth Section 83C solicitation (Petitioners Reply Comments at 5). To ensure the RFP is clear, the Petitioners propose an amendment to the second paragraph of Section 2.2.1.2 to provide explicit language that a bid or rebid of the same generation project and/or lease area subject to an unterminated PPA is ineligible (Petitioners Reply Comments at 7). The Petitioners clarify that the language in Section 2.2.1.2 does not prevent a potential bidder from submitting bids that use excess transmission capacity on project components that are subject to an unterminated contract (Petitioners Reply Comments at 5-6). Finally, the

Petitioners assert that the contingency and eligibility language contained in Section 2.2.1.2 is critical to incentivize contract performance, and they therefore request that the Department decline to eliminate the applicable RFP terms (Petitioners Reply Comments at 7).

c. Analysis and Findings

The Department concurs with the Petitioners and agrees that contracted-for projects should be considered ineligible bids. Permitting otherwise would create a precedent that accepts contract non-performance. The Petitioners propose an amendment to the second paragraph of Section 2.2.1.2 to provide language explicitly stating that a bid or rebid of the same generation project and/or lease area subject to an unterminated PPA is ineligible. The Independent Evaluator supports the amendment to Section 2.2.1.2 proposed by the Petitioners and agrees that the amendment will help clarify what will be deemed an eligible bid (Exh. DPU-IE 1-9). The Department accepts the amendment proposed by the Petitioners to Section 2.2.1.2 and encourages the Petitioners to consider including a non-delivery disincentive in future rounds of procurement in the event problems with terminating contracts for offshore wind continue.

3. Contingent Bids

a. Introduction

The RFP includes a requirement that eligible bidders submitting multiple alternative proposals must specify whether any of their proposals are negatively contingent upon any of their other proposals (i.e., eligible bidders must specify whether acceptance of a certain proposal or proposals will preclude the Companies from accepting some other proposal(s))

submitted by the same eligible bidder) (RFP at § 2.2.1.2). Bidders may not submit proposals that are positively contingent on circumstances outside the acceptance of a proposal in this solicitation (e.g., proposals accepted in solicitations in other states) (RFP at § 2.2.1.2).

b. Summary of Comments

RENEW requests that DOER amend the RFP to authorize bidders to submit limited positive contingent bids in association with simultaneous procurements of other New England states, reasoning that limited positive contingent bids could enable bidders to scale economies and offer lower prices into this solicitation (RENEW Comments at 4). Ørsted requests that DOER provide an explicit definition in Section 2.2.1.2 of the RFP of positively and negatively contingent (Ørsted Comments at 2-3).

In response, the Petitioners assert that Section 2.2.1.2 of the RFP provides the adequate protection of allowing flexibility to prospective bidders, while balancing the need to conduct an evaluation based on a known set of parameters (Petitioners Reply Comments at 25). They note that allowing contingencies based on the acceptance or rejection of a bid in another state would deny the Evaluation Team the requisite knowledge to assess the potential benefits from the bid submitted in response to the RFP (Petitioners Reply Comments at 25). Moreover, they assert that it could undermine the selection of a project with the greatest benefits by artificially tying project viability to an action beyond the control of the Evaluation Team (Petitioners Reply Comments at 25-26).

c. Analysis and Findings

Commenters request that the Petitioners amend Section 2.2.1.2 to allow for limited positive contingent bids associated with simultaneous procurements in other New England states. The Department accepts the Petitioners' argument that they need to balance flexibility with the need to evaluate bids based on a known set of parameters. Accordingly, the Department declines to require the Petitioners to allow for limited positive contingent bids.

4. Multi-State Procurement

a. Introduction

In Section 1.1.1, the RFP describes how DOER would announce a potential future solicitation undertaken by the Commonwealth in coordination with other states. DOER may issue a coordination announcement following RFP issuance indicating if there are other New England state procurements with which DOER plans to coordinate regarding this solicitation. If the planned coordination with other states would have implications for bid development for this solicitation, a coordination announcement will be issued with sufficient time prior to the proposal submission deadline for bidders to incorporate the planned coordination into bid development (RFP § 1.1.1).

b. Summary of Comments

Commenters requested clarification of the timeline and evaluation of bids if a multi-state procurement is announced prior to this solicitation's bid deadline. In addition, commenters questioned how bids would be evaluated given the prohibition on bids contingent on the solicitations of other states. Ørsted and Beacon Wind suggest that bidders would need

as much notice as possible to modify their bids to account for a coordinated procurement (Ørsted Comments at 1; Beacon Wind Reply Comments at 3). Beacon Wind joins Ørsted's proposal that the Petitioners provide a minimum of 90 days' notice prior to the bid deadline (Ørsted Comments at 1; Beacon Wind Reply Comments at 3). Beacon Wind and Vineyard Offshore request clarification on how coordinated procurement, as contemplated by Section 1.1.1 of the RFP, would operate. Specifically, Beacon Wind and Vineyard Offshore question whether all participating states would accept bids through a single solicitation (Beacon Wind Comments at 4-5; Vineyard Offshore Comments at 7).

Vineyard Offshore requests further clarification on the evaluation process and criteria for a multi-state procurement, specifically given contingency complications from overlapping bids, and whether a coordinated, rather than joint, solicitation would include a joint bid submission deadline and a process for bidders to propose one or more projects into each state's solicitation (Vineyard Offshore Comments at 7).

The Petitioners clarify that DOER and the Companies will consult with other states to determine if the participation of, and coordination with, those states would augment Massachusetts' energy goals by increasing the viability of potential projects that may attempt to bid into several offshore wind solicitations. The Petitioners also assert that as other states develop their offshore wind solicitations, DOER and the Companies will consult with those states to develop and issue a public coordination announcement, if applicable (Petitioners Reply Comments at 17-18). Such an announcement would define the impact any other state's participation would have on bid development (Petitioners Reply Comments at 17-18).

c. Analysis and Finding

The Department finds that the Petitioners plan to adequately communicate any applicable multi-state offshore wind procurements to bidders via a coordination announcement is appropriate. The Department further finds that this announcement, as proposed by the Petitioners, would provide bidders with sufficient information regarding project allocation, division of economic development commitments, and further information on project selection to incorporate into their bids. The Department declines to require the Petitioners to provide any further information before such a procurement is announced.

E. Stage Two Bid Evaluation

1. Introduction

In Stage Two of bid evaluation, the Evaluation Team will review proposals based on specified quantitative and qualitative criteria (RFP at § 2.1). Commenters request that the Petitioners modify and clarify various parts of the bid evaluation process (Beacon Wind Comments at 4-5; Beacon Wind Reply Comments at 3; Ørsted Comments at 1; Vineyard Offshore Comments at 7). Comments related to the bid evaluation process fall into two categories: (1) requests for changes to and clarification of the qualitative portion of the bid evaluation process; and (2) requests for clarification of the quantitative portion of the bid evaluation process.

2. Qualitative Evaluation

a. Introduction

In Section 2.2.4, the RFP describes the criteria used in the qualitative evaluation of bids. The qualitative evaluation will allocate up to 30 total points as part of the Stage Two

Evaluation, of which up to 15 points will be allocated to bidder experience and project viability criteria and up to 15 points will be allocated to economic development and project impact criteria. The assessment of qualitative points for the bidder experience and project viability criteria may include both positive and/or negative points, up to ten negative points in total, and may result in a score above and/or below zero (RFP § 2.2.4). Commenters requested changes to and clarification of the qualitative portion of the bid evaluation process.

b. Independent Evaluator

The Independent Evaluator supports the proposed bidder experience criteria “in the current economic climate and in light of heightened risk of bidder non-performance” (Independent Evaluator Report at 19). The Independent Evaluator supports the additional transparency around qualitative evaluation criteria provided in this RFP. The Independent Evaluator also agrees with concerns raised by the Petitioners around potential gamesmanship by prospective bidders if further details regarding the qualitative evaluation process were divulged (Independent Evaluator Report at 13; Exh. DPU-IE 1-4).

c. Summary of Comments

Avangrid requests that the potential application of negative points found in Section 2.2.4 be removed from the RFP arguing that it creates the potential for unfair application (Avangrid Comments at 16). Avangrid suggests that the language of Section 2.2.4.1 of the RFP does not preclude DOER from considering the economic benefits associated with commitments made in previous bids. Avangrid warns that ignoring those economic benefits would result in sub-optimal selections that fail to attain the maximum

benefits possible from the Section 83C solicitation process (Avangrid Reply Comments at 8). Avangrid further requests additional guidance on how economic benefit scoring will distinguish benefit claims resulting from past Section 83C awards from those made in response to the fourth Section 83C solicitation and asks to confirm that the qualitative scoring framework for economic benefits is flexible and not exclusionary of commitments initially made prior to Section 83C solicitations. Avangrid recommends that all bids be evaluated on the incremental economic benefits they would create if they were selected in the present solicitation (Avangrid Reply Comments at 8-9).

RENEW suggests that while the new RFP scoring system provides greater information on the weighting of non-price criteria, the Petitioners should provide additional details on the weighting of this and all qualitative evaluation criteria so that bidders are able to align their proposals with public policy objectives (RENEW Comments at 3). RENEW proposes that weighting criteria be made fully available through public disclosure, arguing that no evidence has been presented that such a disclosure would lead to bid manipulation (RENEW Comments at 3).

Shell recommends that the Department remove the negative scoring included in the bidder experience and project viability portion of the qualitative evaluation (Shell Comments at 7-8). Shell reasons that negative scoring in the context of bidder “non-performance” or bidder “past performance” would be a double penalty for those exercising contractual rights for valid reasons and that bidder non-performance will be subject to contracts governing the relationship between the counterparties (Shell Comments at 8). Moreover, Shell argues that

punitive scoring could disqualify or disadvantage bidders with viable projects who have encountered difficulties beyond their control, while benefiting bidders with less viable projects that have less experience (Shell Comments at 8).

SouthCoast Wind recommends that the Stage Two evaluation and scoring methodology focus on the deliverability of the projects proposed and avoid imposing punitive measures in the process (SouthCoast Wind Comments at 10-11).

Ørsted suggests that DOER change specific language found in Section 2.2.4.3 regarding a requirement to “include descriptions of the subcontracting, vendor, investor, and ancillary (operational) business opportunities that will be provided by diverse businesses if the bidder is awarded Long Term Contracts” (Ørsted Comments at 5). Specifically, Ørsted suggests changing “will be provided” to “identify suitable scopes for MA XBEs based on research, local engagement, and with clear targets” or similar (Ørsted Comments at 5).<sup>28</sup> Ørsted argues it is difficult to know which scopes will be utilized at bid submission, as contracting for the project will not begin until after a bid is chosen (Ørsted Comments at 5). Ørsted requests clarification regarding the weighting of economic impacts during the evaluation, and specifically requests a definition for “economically distressed,” referenced in Appendix A to the RFP in Section 13.2 (Ørsted Comments at 5).

Ocean Winds suggests that emphasis on the “bidder experience” evaluation criteria, including the ability to assign projects negative scores, could inadvertently limit the number

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<sup>28</sup> The term “XBE” refers to business enterprises owned by minorities, women, veterans, or disabled persons.

of bidders in this fourth Section 83C solicitation resulting in a less competitive process (Ocean Winds Comments at 2). Ocean Winds suggests that projects that have made earnest effort to perform under the current unprecedented circumstances should not be penalized in a new procurement process, specifically if, as Ocean Winds suggests, they have paid for the privilege of terminating a contract prior to bid submission in this procurement round.

Oceans Winds submits that such projects should be afforded a full, fair, and unpenalized opportunity to bid in the new procurement (Ocean Winds Comments at 3).

Beacon Wind requests clarification on how the scoring elements contained in Sections 2.3 and 2.2.4 of the RFP fit within the 30 points assigned to the qualitative evaluation (Beacon Wind Comments at 4). Beacon Wind also requests more detail on the Petitioners' assignment of points relative to Massachusetts' priorities in terms of the location, type, and size of in-state economic development and manufacturing, as outlined in Section 2.2.2.14. Finally, Beacon Wind requests that the Petitioners make known whether they prefer investments in existing infrastructure or new initiatives (Beacon Wind Comments at 5).

Vineyard Offshore requests clarification on how economic benefit scoring will distinguish claims resulting from past Section 83C awards from those made in response to the fourth Section 83C solicitation, as well as clarification on whether benefits from port development and investments made prior to July 1, 2022, are subject to a similar distinction (Vineyard Offshore Comments at 5). Vineyard Offshore suggests that the practice of allowing currently contracted projects that are re-bid to receive favorable scoring from commitments made under past RFP awards could disproportionately benefit defaulting parties

and requests clarification on the penalties outlined in Section 2.2.1.12 of the RFP (Vineyard Offshore Comments at 5). Specifically, Vineyard Offshore requests further information on additional provisions in the form MOU that could include financial penalties for failure to realize economic benefit commitments (Vineyard Offshore Comments at 5).

SGDB requests that the reference to “opposition” in Section 2.2.4.6 be further clarified and suggests that bidders should be required to identify known individuals and groups who have indicated opposition to aspects of offshore wind energy proposals approved in prior Section 83C rounds (SGDB Comments at 2).

The Petitioners respond that their objective was to balance competing concerns in developing the qualitative evaluation detailed in Section 2.2.4 of the RFP (Petitioners Reply Comments at 23). They contend that providing qualitative scoring details in the RFP will cause gamesmanship in the selection and presentation of qualitative aspects of proposals (Petitioners Reply Comments at 23). They note that, despite these concerns, they are providing greater transparency from prior rounds on how qualitative considerations, including economic development criteria, would be weighed (Petitioners Reply Comments at 23). The Petitioners note that the Stage Two qualitative evaluation builds on the requirements of Section 83C and the Stage One threshold and eligibility requirements and argue that there are criteria in place to ensure that bidders adequately demonstrate how their plans would avoid and mitigate environmental, socioeconomic, and community impacts (Petitioners Reply Comments at 23-24). The Petitioners therefore maintain that the Department should not impose additional requirements for these criteria (Petitioners Reply Comments at 23-24).

Regarding the potential application of negative points as part of the bidder experience and project viability criteria, the Petitioners request the Department maintain Section 2.2.4 of the RFP as proposed given the significant risk to ratepayers should non-performance continue to plague the Section 83C procurement process (Petitioners Reply Comments at 25).

The Petitioners note that the economic commitments made to Massachusetts as part of the instant solicitation are intended to be new and incremental commitments associated with the proposed project bid into the current solicitation (Petitioners Reply Comments at 24). Moreover, the Petitioners assert that because those commitments will be memorialized in a binding agreement with DOER and the Massachusetts Clean Energy Center following the template provided in the form MOU, prior projects that have been memorialized in active and binding agreements cannot receive preferential scoring in this solicitation (Petitioners Reply Comments at 24). The Petitioners contend that Section 2.2.4.1 provides that preference will be given in the qualitative evaluation to any direct and reasonably certain commitments made on or after July 1, 2022, to capital investment within Massachusetts, and therefore commitments made prior to that date will not receive preference (Petitioners Reply Comments at 24-25). The Petitioners argue that in looking at Section 2.2.4 of the RFP, the Department should consider the above positions as well as the assurance that qualitative evaluations will be conducted in a consistent and equitable manner (Petitioners Reply Comments at 24-25).

d. Analysis and Findings

Although several commenters oppose the inclusion of potential negative points, the Independent Evaluator supports the bidder experience criteria as proposed. The Petitioners request the Department maintain Section 2.2.4 of the RFP as proposed given the significant risk to ratepayers in the event non-performance continues to plague the Section 83C procurement process. The Department has considered the Independent Evaluator's determination that negative points for bidder experience may address the heightened risk of contract non-performance. The Department finds that the language in Section 2.2.4 of the RFP allowing for negative qualitative points for the bidder experience and project viability criteria will enable the Petitioners to address concerns with the track record of each bidder as part of the Stage Two evaluation. Accordingly, the Department declines to direct the Petitioners to make any changes to Section 2.2.4 regarding the potential assignment of negative bidder experience points.

In response to commenters, the Petitioners clarified that the economic commitments made to the Commonwealth as part of the round four Section 83C solicitation are intended to be new and incremental commitments associated with the proposed project bid into the instant solicitation (Petitioners Reply Comments at 24). The Petitioners further clarified that commitments made in past projects cannot receive preferential scoring in the instant solicitation (Petitioners Reply Comments at 24). The Department finds there is adequate clarification and declines to direct further changes to Section 2.2.4.1. The Department reminds the Petitioners that they have the burden to demonstrate that costs borne by

ratepayers for economic development proposals are in the public interest. As discussed in NSTAR Electric Company d/b/a Eversource Energy et. al., D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, at 28-30 (2022), the Department will consider how any economic development proposals relate to the construction, operation, or maintenance of the offshore wind energy generating resource that is the subject of PPAs and whether the benefits to ratepayers of the economic development proposals, as opposed to the general public, outweigh the costs.

Several commenters posed additional questions about the qualitative evaluation process and requested more details on how the criteria would be scored. In response, the Petitioners stated their concerns about gamesmanship of the bidding process if more details are given and noted that this RFP includes greater transparency as to how qualitative considerations will be weighed compared to prior rounds of solicitation, especially concerning economic development criteria (Petitioners Reply Comments at 23). The Independent Evaluator supports the additional transparency provided in this RFP and seconded the Petitioners' concerns around potential gamesmanship by prospective bidders (Exh. DPU-Independent Evaluator 1-4). The Department finds that the language in Section 2.3 of the RFP provides bidders with an adequate explanation of the priorities of the qualitative evaluation. The Department further finds that disclosing additional information on the scoring of the qualitative factors is not necessary. Accordingly, we find that the RFP provides the appropriate amount of transparency as to the priorities of the Commonwealth for bidders to provide the best product offering and consistent with precedent, the Department will not

require the Petitioners to publish the quantitative and qualitative evaluation criteria with the issuance of the RFP. D.P.U. 17-103, at 51-52; D.P.U. 17-32, at 62-65; Timetable and Method of Solicitation and Solicitation Process under Section 83C of the Green Communities Act, D.P.U. 19-45, at 46-47 (2019); and Timetable and Method of Solicitation of Long term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C, D.P.U. 21-40, at 62 (2021).

3. Quantitative Evaluation

a. Introduction

Section 2.2.3 of the RFP describes the criteria used in the quantitative evaluation of bids. Proposals will be evaluated on their direct and indirect economic and environmental costs and benefits to ratepayers (RFP at §2.2.3). Proposals will be scored with up to 70 points for quantitative factors (RFP at §2.3). As part of the quantitative evaluation, the offshore wind energy generation production and delivery profile provided by the bidder will be evaluated for reasonableness (RFP § 2.2.3.3).

b. Summary of Comments

Ørsted requests the Department instruct DOER to provide additional details on how the offshore wind energy generation production profiles will be evaluated (Ørsted Comments at 4). Ørsted argues that cumulative wake impacts, i.e., how a wind farm could cause production decreases on other wind farms, should be included in the Evaluation Team's consideration of reasonableness (Ørsted Comments at 4-5). Moreover, Ørsted requests that DOER require bidders to provide details on the validation of the wake model(s) they use

against real production from operational wind farms, noting the importance of bidders using a realistic build out of neighboring offshore wind projects in the vicinity of the proposed project (Ørsted Comments at 4-5). Ørsted reasons that because wake losses can extend for many miles, it is important that a sufficient geographical area is considered and that there is a reasonable evaluation of the future build out (Ørsted Comments at 4-5).

c. Analysis and Findings

The Department finds that the description of the quantitative analysis of bids, including an evaluation of the reasonableness of production/delivery profile provided by the bidder, provides bidders with sufficient guidance for drafting a competitive bid.

Accordingly, the Department will not require Petitioners to make changes to Section 2.3.3.

F. Bid Fees and Development Period Security

1. Introduction

The RFP contains a minimum non-refundable bid fee of \$600,000, which will be used to offset the Companies' and DOER's costs for the evaluation of proposals and oversight of the process by the Independent Evaluator<sup>29</sup> (RFP at § 1.10). The minimum bid fee covers one price offer; bidders must pay an additional non-refundable fee of \$25,000 for each additional price offer, including any alternative indexed price bid (RFP at § 1.10). The fee for an additional price offer applies only for variations in pricing for the same project. For all other cases, an additional bid fee of \$50,000 is required (RFP at § 1.10).

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<sup>29</sup> The minimum bid fee in the third Section 83C solicitation was \$500,000 (D.P.U. 21-40, RFP at § 1.10).

The RFP requires development period security (“contract security”) of \$80,000 per MW<sup>30</sup> (RFP at § 2.2.1.4). If the bidder or its affiliate has previously defaulted on or terminated a PPA prior to commercial operation, contract security of \$120,000 per MW is required (RFP at § 2.2.1.4; Independent Evaluator Report at 19). In the event that a project is developed in phases and under separate contracts, bidders must provide additional contract security of \$75,000 per MW at the start of commercial operations of the first phase of the project and remain in place until all phases are complete (RFP at § 2.2.1.4). The entire amount of security must be provided at the time of contract execution;<sup>31</sup> security will be returned if the Department does not approve the long-term contract, so long as Bidder supports regulatory approval of the long-term contract (RFP at § 2.2.1.4).

## 2. Independent Evaluator

The Independent Evaluator reviewed the changes to bid fees and contract security from the previous solicitation to the instant RFP (Independent Evaluator Report at 15, 19). Regarding the minimum bid fee, the Independent Evaluator opines that the \$600,000 fee represents a reasonable compromise among the parties and reduces the risk of under recovering evaluation expenses as well as the risk of limiting bidder participation (Independent Evaluator Report at 15). In the opinion of the Independent Evaluator, bid fees

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<sup>30</sup> Contract security in the third Section 83C solicitation was \$40,000 per MW (D.P.U. 21-40, RFP at § 2.2.2.11).

<sup>31</sup> In the third Section 83C solicitation, 50 percent was due at the time of contract execution and the remaining 50 percent upon regulatory approval of the long-term contract (D.P.U. 21-40, RFP at § 2.2.2.11).

should be increased if evaluation costs exceed the bid fees in future solicitations and the conditions that lead to the shortfall can reasonably be expected to reoccur (Exh. DPU-IE 1-1).

In addition, the Independent Evaluator states that the higher contract security amount and the requirement that the entire amount be provided at the time of contract execution is attributable to the greater apparent project development risks in the current project development environment (Independent Evaluator Report at 20). The Independent Evaluator notes that while increasing the security requirements will likely result in a modest increase in required bid prices, such a doubling of the security is appropriate in light of the increased risks associated with contract performance (Independent Evaluator Report at 20).

### 3. Summary of Comments

Several commenters suggest that the increase in contract security from the previous solicitation is unnecessary (Avangrid Comments at 11-15; SouthCoast Wind Comments at 8-9; RENEW Comments at 5). SouthCoast Wind suggests that increased security requirements, especially during the construction phase, are unnecessary and punitive and may create higher bid prices rather than afford greater assurance of contract delivery (SouthCoast Wind Comments at 8-9). Avangrid argues that Section 2.2.2.14 of the RFP is unfair and discriminatory because it is not drafted in a way that reflects any increased risk of default and lacks the specificity needed to avoid manipulation (Avangrid Comments at 7). Avangrid recommends that the Department require the Petitioners to remove the differentiated security requirements from the RFP (Avangrid Comments at 16). Avangrid further contends that the

Petitioners did not adequately define the term “affiliate” in Section 2.2.2.14 and that it creates uncertainty regarding the scope of or circumstances surrounding a default or termination (Avangrid Comments at 12). RENEW contends that requiring development period security in a lump sum, rather than phased between execution and regulatory approval, does not reduce contract risk and could result in higher bids from across the industry (RENEW Comments at 5). RENEW argues that this requirement will adversely affect the competitiveness of the Massachusetts solicitation relative to other states, and as an alternative, suggests that execution of PPAs with marketable terms addressing inflation and commodity volatility is a better method for mitigating risk to ratepayers (RENEW Comments at 5).

The Attorney General suggests that the security penalty of \$120,000 per MW under contract development imposed on a party for non-performance on an existing contract fails to adequately address the consequences caused by a bidder that willingly breaches its signed PPAs (Attorney General Comments at 18-19). The Attorney General suggests the Department adopt a cooling off period (Attorney General Comments at 17). Regarding bid fees and the evaluation process, the Attorney General recommends that the total cost of the technical consultant and other evaluation costs be disclosed to provide transparency of the process (Attorney General Comments at 14). The Attorney General contends that ratepayers should not be required to cover any deficit and to remedy this potential scenario she recommends that: (1) the minimum bid fee for each project be increased to \$750,000; (2) the Companies be required to provide an accounting of the costs incurred for the

evaluation as part of their submission of the long-term contracts for Department approval; (3) any unused bid fees be returned to the bidders; and (4) if the costs to evaluate the bid projects exceed the total amount of bid fees collected, then the bid fee requirement in future solicitations will be adjusted accordingly (Attorney General Comments at 14).

In response to several commenters, the Petitioners note that they aimed to balance competing concerns in developing the contract security requirements contained in Section 2.2.2.14 of the RFP (Petitioners Reply Comments at 27). Due to changes to the global economy and the greater risks associated with contract performance, the Petitioners consider it necessary to build robust protections into the solicitation and procurement process (Petitioners Reply Comments at 28). The Petitioners assert that the level of contract security required in Section 2.2.2.14 of the RFP, including additional security if a bidder or its affiliate has previously defaulted or terminated a PPA before commercial operation, provides a reasonable incentive to bidders to honor their signed PPAs (Petitioners Reply Comments at 29). Responding to the Attorney General's recommendation to increase bid fees, the Petitioners request that the Department not direct any change to the bid fees included in the RFP (Petitioners Reply Comments at 30, citing Independent Evaluator Report at 15). Additionally, the Petitioners state that customers have been responsible for covering bid evaluation costs that were not covered by bid fees and the increased bid fees for this solicitation balance the anticipated evaluation costs (Petitioners Reply Comments at 30).

#### 4. Analysis and Findings

The Department has reviewed the bid fees and contract security requirements in the instant solicitation and finds that these elements as proposed are reasonable and appropriate. In particular, the Department finds that the increase in the minimum bid fee from the previous Section 83C solicitation more appropriately reflects the costs of evaluating bids (Exh. DPU-IE 1-1). In the event the evaluation costs exceed the bid fees received, the Department agrees with the Petitioners' proposal to assess whether further increases are necessary for future procurements, while accounting for the potential risks of limiting bidder participation (Exh. DPU-Petitioners 1-1). In addition, the Department finds that the increase in contract security from the previous Section 83C solicitation is warranted. Although the increase in the contract security requirements could result in modestly increased bid prices, the Department finds the increase appropriate due to the increased risks associated with contract performance.

#### G. Contract Pricing Provisions

##### 1. Introduction

The RFP allows bidders to submit an alternative pricing option or "indexed price bid," which will be subject to an indexing adjustment (RFP at § 2.2.1.5). The indexed price bid proposal may only include changes to the project price and cannot alter other aspects of the proposal (RFP at § 2.2.1.5). The indexed price bid is a fixed \$/MWh price for energy and RECs that will allow the bidder to construct and operate the project as proposed under the bidder's central set of assumptions about project costs (RFP at § 2.2.1.5). The indexed

price bid may be the same each year or change by a defined rate or amount over time (RFP at § 2.2.1.5).

An indexing adjustment will be applied to increase or decrease the indexed price bid by up to 15 percent based on the change in a set of macroeconomic and/or commodity indices (the “composite set of indices”), which will be determined by the RFP Drafting Parties (RFP at § 2.2.1.5). The change in price due to the indexing adjustment will be limited to 15 percent; that is, it will be neither increased nor decreased by more than 15 percent, even if a larger adjustment is indicated by the composite set of indices (RFP at § 2.2.1.5; DPU-Petitioners 1-2). The indexing adjustment will occur one year following an Order from the Department approving the long-term contracts resulting from this solicitation (RFP at § 2.2.1.5).

In addition, the RFP requires that prices for offshore wind energy generation and RECs conform to several pricing requirements (RFP at § 2.2.1.4). The RFP specifies that proposals include separate prices for offshore wind energy generation and RECs (RFP at § 2.2.1.4.e). In particular, the RFP stipulates that pricing for RECs as a percentage of the total proposed pricing of both offshore wind energy generation and RECs must be no less than 35 percent, subject to a maximum of \$40/REC, for each contract year of a project proposal (RFP at § 2.2.1.4.e). Several commenters refer to this provision as an implicit or de facto price cap (see Section IV.F.3.a below).

2. Alternative Indexed Pricing Option

a. Independent Evaluator

The Independent Evaluator is highly supportive of including an option for an indexed price bid in the RFP (Independent Evaluator Report at 18). The Independent Evaluator opines that an indexing adjustment represents an opportunity to enhance project viability and help reduce the risk premia that bidders include in their price proposals to mitigate the risk and uncertainty associated with project capital costs (Independent Evaluator Report at 18). Furthermore, the Independent Evaluator states that the 15 percent cap on the indexing adjustment will allow the cost-effectiveness of proposals to be assessed assuming that the maximum indexing adjustment is applied (Independent Evaluator Report at 18). The Independent Evaluator opines that this should help address concerns that approved PPAs ultimately are not cost-effective after the indexing adjustment is applied (Independent Evaluator Report at 18).

b. Summary of Comments

The Attorney General recommends that if the Department approves the alternative indexed pricing option, the Department should: (1) direct the Petitioners to modify the alternative to incorporate an asymmetrical deadband to the indexing adjustment; and (2) clarify the timing of the indexing adjustment (Attorney General Comments at 15-16). The Attorney General requests that the asymmetrical deadband be structured so that the indexed price bid will not be subject to an indexing adjustment if the increase in the set of macroeconomic and/or commodity indices is less than or equal to five percent (Attorney

General Comments at 15). The Attorney General recommends that the Petitioners consider the Bureau of Ocean Energy Management (“BOEM”) Construction and Operations (“COP”) approval as the event that triggers when the indexing adjustment occurs (Attorney General Comments at 16). The Attorney General notes that the COP is a detailed plan for the construction and commercial operation of a wind energy project and that the New York State Energy Research and Development Authority (“NYSERDA”) chose the COP approval date for its own indexing mechanism because it is a major permitting milestone that precedes the final investment decision (Attorney General Comments at 16).

Commenters express general support for the alternative indexed pricing option (Avangrid Comments at 2; Beacon Wind Comments at 3; Ocean Wind Comments at 2; RENEW Comments at 4; Shell Comments at 2; SouthCoast Wind Comments at 7). Several commenters request additional process for the development of the proposed price indexation mechanism and composite set of indices (Avangrid Comments at 3, 17; Beacon Wind Comments at 3; RENEW Comments at 4; Shell Comments at 2; SouthCoast Wind Comments at 7; Vineyard Offshore Comments at 6). Avangrid requests that the Petitioners confer with stakeholders about the proposed price indexation mechanism prior to finalizing the solicitation (Avangrid Comments at 3, 17). Beacon Wind recommends that DOER solicit and incorporate feedback from developers to inform the composite set of indices (Beacon Wind Comments at 3). Beacon Wind suggests the Petitioners should file the composite set of indices for Department approval (Beacon Wind Comments at 3). RENEW recommends that before the Petitioners make an informational filing to the Department, both the formula and

details on indexing should be reviewed by a stakeholder working group that includes the eligible bidders (RENEW Comments at 4). Shell recommends a public comment period and thorough developer and supply chain engagement to ensure the indexation formula addresses the risks the projects face (Shell Comments at 2). SouthCoast Wind urges that there be a public comment period as well as thorough developer and supply chain engagement to ensure that the formula adequately addresses the risks the projects face (SouthCoast Wind Comments at 7). SouthCoast Wind requests that a clear and transparent formula be provided, and further requests the exact source of the commodity and interest rate forecast used in the formula (SouthCoast Wind Comments at 7). Vineyard Offshore recommends that the composite set of indices be developed in consultation with eligible bidders as well as the Companies, the Attorney General, and the Independent Evaluator (Vineyard Offshore Comments at 6).

Commenters propose various modifications to the indexing adjustment mechanism (Avangrid Reply Comments at 7; Beacon Wind Comments at 3; Ocean Wind Comments at 2; RENEW Reply Comments at 3; Shell Comments at 2-3; SouthCoast Wind Comments at 7; Vineyard Offshore Comments at 7). Avangrid recommends that the Department reject the Attorney General's proposal for an asymmetrical deadband (Avangrid Reply Comments at 7). Avangrid expresses concern that an asymmetric price adjustment would have the opposite effect of protecting electricity consumers and would shift additional risk to developers by increasing the base price and the upside price increase potential (Avangrid Reply Comments at 7). Beacon Wind recommends that the indexation mechanism account for all changes in

costs without limit (Beacon Wind Comments at 3). Ocean Wind recommends that the indexation mechanism should also consider interest rates (Ocean Wind Comments at 2). RENEW expresses concern that the 15 percent cap and the Attorney General's asymmetrical deadband could limit any price adjustment to only a fraction of the cost changes (RENEW Reply Comments at 3). Shell contends that the cap limits its effectiveness and the benefits to customers if there is a significant improvement in market conditions (Shell Comments at 2-3). SouthCoast Wind also recommends that the plus or minus 15 percent maximum adjustment be removed, reasoning that this cap is too low for ensuring that projects remain viable (SouthCoast Wind Comments at 7). Vineyard Offshore recommends that bidders be allowed to assign their own weighting to each index to help align them with project-specific costs (Vineyard Offshore Comments at 7).

Several commenters propose modifications to the timing of the indexing adjustment (Avangrid Reply Comments at 7; Beacon Wind Comments at 3-4; Ørsted Comments at 4; RENEW Comments at 4; Shell Comments at 2; SouthCoast Wind Comments at 7; Vineyard Offshore Comments at 6). Avangrid suggests that the indexing adjustment should not apply earlier than financial close for the project and cautions against using the COP approval date (Avangrid Reply Comments at 7). Beacon Wind recommends that the timing of the adjustment should be aligned with project specific schedules and suggests using the COP approval date, rather than the long-term contract approval date, to mitigate the risk of potential cost changes (Beacon Wind Comments at 3-4). Ørsted contends that one year of inflation protection is insufficient for protecting developers and ratepayers because most

contracting for offshore wind projects occurs more than one year after PPA approval (Ørsted Comments at 4). Ørsted recommends a one-time adjustment which would take place at the commercial operations date following completion of all procurement and construction activities (Ørsted Comments at 4). Ørsted further recommends adoption of ongoing inflation protection and suggests linking the PPA price to the Consumer Price Index with annual adjustments over the duration of the contract (Ørsted Comments at 4). RENEW suggests that the price be adjusted at the time that BOEM approves a COP (RENEW Comments at 4). Shell recommends that the price adjustment cover the period from two months prior to bid submission through financial close (Shell Comments at 2). SouthCoast Wind proposes that the indexing adjustment mechanism be aligned with standard industry practice, in which indexation adjustments occur at financial close but that developers should be afforded the right in the PPA to initiate earlier adjustments if necessary (SouthCoast Wind Comments at 7). Vineyard Offshore recommends that the adjustment date for any inflation or commodity adjustments be the financial close milestone date because the financial close date is the date on which the project will fix costs with its suppliers (Vineyard Offshore Comments at 6).

In response to comments, the Petitioners state that the proposed alternative indexed pricing option is not intended to provide an opportunity for bidders to shift all or most market and development risk to customers (Petitioners Reply Comments at 14). Although the draft RFP does not define the indices that will be used for alternative pricing options, the Petitioners' proposed mechanism will cap any price adjustment at plus or minus 15 percent

(Petitioners Reply Comments at 14). The Petitioners propose that any adjustment occur one year following the date of a final Order from the Department approving the long-term contracts (Petitioners Reply Comments at 14). The Petitioners assert that this date should be the same for all potential bidders so that it cannot be influenced or gamed by the selected developers (Petitioners Reply Comments at 14). Additionally, the Petitioners state that DOER, the Companies, and the Independent Evaluator will work with an independent consultant who will review the initial comments and may request additional comments if necessary (Petitioners Reply Comments at 15).

c. Analysis and Findings

The Department has preliminarily reviewed the alternative indexed pricing option in the RFP, including the 15 percent cap on the adjustment (RFP at § 2.2.1.5). The Department supports the Independent Evaluator's conclusion that the inclusion of an indexed price bid in the RFP is a valid mechanism to promote project viability and mitigate risk in the current economic environment. The Department further recognizes that the Petitioners sought to define an indexing adjustment cap that reasonably balances the market and development risk with pricing risk, while ultimately providing price certainty to customers within the range of potential adjustment (Exh. DPU-Petitioners 1-2).<sup>32</sup> As evidenced by the current market and policy circumstances across the offshore wind industry, the Department finds that the alternative indexed pricing option is appropriate and necessary for the success

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<sup>32</sup> In proposing the cap of 15 percent, the Petitioners consulted the NYSERDA and the New Jersey Board of Public Utilities (Exh. DPU-Petitioners 1-2).

of this fourth Section 83C procurement. The Department has concerns with the potential impacts that the Attorney General's recommendation to include an asymmetrical deadband as part of the indexing adjustment may have on bidding. As identified by the Independent Evaluator, an asymmetrical deadband could create incentives for bidders to embed the cost of the deadband in their pricing, therefore resulting in higher contract pricing (Exh. DPU-IE 1-2). In the event bidders embed a five percent increase into their contract prices and the indexing adjustment yields a greater than five percent increase, ratepayers would be at risk for paying for the deadband twice under the Attorney General's proposal (Exh. DPU-IE 1-2). The Department finds the 15 percent cap to be an appropriate and balanced approach. The Department, therefore, declines to require the Petitioners to adopt the Attorney General's recommendation for an asymmetrical deadband.

The Petitioners propose application of the indexing adjustment one year following the date of a final Order from the Department approving the long-term contracts resulting from the solicitation (RFP at § 2.2.1.5). Several commenters express concern with this date and recommend alternative timeframes (*i.e.*, BOEM COP approval date or at or near financial close). These commenters contend their alternative dates would offer more robust pricing protection against inflation, a notion that the Independent Evaluator recognizes as well (Exh. DPU-IE 1-3). The Department acknowledges this concern; however, we also share the Independent Evaluator's concern that in lowering the risks to developers, there will be greater risks to ratepayers (Exh. DPU-IE 1-3). In addition, the Department supports the RFP proposal for purposes of consistency in the evaluation process. For example, the Independent

Evaluator raises the concern that using the BOEM COP approval date will require the Evaluation Team to make assumptions that may apply unequally to bidders' proposals, thus biasing the evaluation process (Exh. DPU-IE 1-3). Accordingly, the Department agrees with the timing of the indexing adjustment as proposed in the RFP and declines to direct further changes based on commenters' recommendations.

Following issuance of the RFP, DOER will coordinate with the Companies, Attorney General, and the Independent Evaluator to initiate a process to establish the composite set of indices to be used for the indexing adjustment (RFP at § 2.2.1.5). In addition, DOER will retain an independent consultant<sup>33</sup> to assist with the development of the indexing adjustment mechanism, as well as review comments received through this proceeding (Petitioners Reply Comments at 14-15; RFP at § 2.2.1.5). The Petitioners intend to submit an informational filing before the Department describing the finalized indexing adjustment mechanism (RFP at § 2.2.1.5). The Department finds that this proposal is appropriate and will review the informational filing.

### 3. REC Pricing Requirements

#### a. Summary of Comments

Several commenters request clarification of the RFP REC pricing requirements and whether the provisions impose an implicit price cap (Ørsted Comments at 3; RENEW Reply

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<sup>33</sup> The Independent Evaluator endorses the retention of an independent consultant to provide an opportunity to ensure that the composite set of indices properly reflects changes in the capital costs of an offshore wind project (Independent Evaluator Report at 18).

Comments at 2; Shell Comments at 4; SouthCoast Wind Comments at 6; Vineyard Offshore Comments at 4). Regardless of an interpretation of the REC pricing provisions, commenters generally oppose a price cap and recommend it be modified or removed for several reasons (Avangrid Reply Comments at 10; Beacon Wind Comments at 2; Ørsted Comments at 3; SouthCoast Wind Comments at 6; Vineyard Offshore Reply Comments at 3).

In response to the comments regarding the REC pricing requirements, the Petitioners clarify that they did not intend to create an implicit or de facto price cap in Section 2.2.1.4.i.e (Petitioners Reply Comments at 11). Rather, the Petitioners intended to ensure that adequate value would be assigned to the RECs associated with any proposal, while also ensuring that ratepayers do not pay more for RECs than they would otherwise using the current alternative compliance payment (Petitioners Reply Comments at 11). For clarification, the Petitioners propose an amendment to Section 2.2.1.4.i.e (Petitioners Reply Comments at 11).

b. Analysis and Findings

To effectively address the concerns raised by commenters concerning an implicit price cap, the Petitioners propose to amend Section 2.2.1.4.i.e. Specifically, the Petitioners propose to add the following language to the existing language in Section 2.2.1.4.e:

“Proposals that include REC prices at the maximum of \$40/REC, in any given contract year, can have RECs as a percentage of the total proposed pricing of both offshore wind energy generation and RECs less than 35 percent only in any contract year when the REC price is at the maximum” (Petitioners Reply Comments at 11). The Department is satisfied with the

proposed amendment as it effectively addresses the concerns raised by the commenters. In addition, the Independent Evaluator supports the proposed amendment to Section 2.2.1.4.i.e to eliminate the potential for an implicit price cap (Exh. DPU-IE 2-1). The Department directs the Petitioners to incorporate the proposed amendment prior to issuance of the RFP.

#### H. Interconnection Issues

##### 1. Introduction

The RFP requires that all proposals include a commitment to interconnect to the Independent System Operator of New England (“ISO-NE”) Pool Transmission Facilities at a level equivalent to the Capacity Capability Interconnection Standard, as defined by ISO-NE (RFP at § 2.2.1.3, 2.2.1.8, 2.2.1.9).<sup>34</sup> Section 2.2.1.10 of the RFP allows for optional bids to known transmission upgrades related to the U.S. Department of Energy’s (“DOE”) Grid Innovation Program (“GIP”). Section 2.2.1.9 of the RFP, which defines interconnection and delivery requirements, requires that the amount paid for under the PPA(s) will be reduced to reflect any costs related to offshore delivery facilities, network upgrades, and/or the interconnection of the project to the transmission system of the interconnecting utility that are

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<sup>34</sup> The ISO-NE defines Capacity Capability Interconnection Standard to mean the criteria required to permit the Interconnection Customer to interconnect a Generating Facility seeking Capacity Network Resource Interconnection Service or an Elective Transmission Upgrade seeking Capacity Network Import Interconnection Service in a manner that avoids any significant adverse effect on the reliability, stability, and operability of the New England Transmission System. ISO-NE Open Access Transmission Tariff, Sch. 22 at 7, [https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect\\_2/sch22/sch\\_22\\_lgip.pdf](https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect_2/sch22/sch_22_lgip.pdf) (last visited August 14, 2023).

collected under the ISO-NE tariff or ISO-NE rules or under any tariff or other cost recovery mechanism and that would have been paid by the bidder.

2. RFP Interconnection Standard

a. Independent Evaluator

The Independent Evaluator supports the RFP requirement that eligible bids interconnect to the ISO-NE Pool Transmission Facilities at a level equivalent to the Capacity Capability Interconnection Service standard (Exh. DPU-IE 2-2). The Independent Evaluator states that the RFP interconnection standard promotes transparency in the evaluation of proposals and furthers the objectives of Section 83C (Exh. DPU-IE 2-2). The Independent Evaluator expresses concerns that allowing an alternative interconnection standard in the RFP could reduce the fairness and transparency of the evaluation process (Exh. DPU-IE 2-2). In addition, the Independent Evaluator contends that allowing proposals to interconnect at the Network Resource Interconnection Service standard does not necessarily ensure that the proposal will enhance “electricity reliability,” a requirement under Section 83C (Exh. DPU-IE 2-2).<sup>35</sup> For these reasons, the Independent Evaluator does not support the Network

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<sup>35</sup> Network Resource Interconnection Service enables participation in energy markets, but not the capacity market. In contrast, Capacity Network Resource Interconnection Service, which meets the Capacity Capability Interconnection Standard, enables participation in energy and capacity markets. ISO-NE Interconnection Process Presentation at 29, <https://www.iso-ne.com/static-assets/documents/2023/02/20230216-interconnection-process-presentation.pdf> (last visited August 16, 2023).

Resource Interconnection Service Surplus Interconnection Service as an interconnection standard in the instant solicitation.

b. Summary of Comments

In its initial comments, JERA suggests that Canal Thermal Power Station (“Canal Station”), consisting of two oil-fired units (“Canal 1” and “Canal 2”) and a new, dual-fuel peaking plant (“Canal 3”), totaling 1,479 MW of interconnection capacity, could provide 1,149 MW of Surplus Interconnection Service (“SIS”)<sup>36</sup> to an offshore wind project approximately 99 percent of the time (JERA Comments at 4). JERA contends that the ability of its Canal 1 and 2 units to provide SIS uniquely positions it to assist an offshore wind project to meet the criteria for approval of Section 83C long-term contracts (JERA Comments at 5). Specifically, JERA asserts that SIS from its Canal Station is likely the only interconnection option available that requires no known network upgrades, which could lessen transmission costs, aid in avoiding environmental impacts, and enhance a proposed project’s viability (JERA Comments at 5-6). JERA contends that the draft RFP may preclude the option of SIS and requests the Department mandate SIS as an acceptable interconnection

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<sup>36</sup> The ISO-NE defines Surplus Interconnection Service to mean a form of Interconnection Service that allows an Interconnection Customer to use any Unused Capability of Interconnection Service established in an Interconnection Agreement for an existing Generating Facility that has achieved Commercial Operation, such that if Surplus Interconnection Service is utilized the total amount of Interconnection Service at the same Point of Interconnection would remain the same. ISO-NE Open Access Transmission Tariff, Sch. 22 at 20, [https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect\\_2/sch22/sch\\_22\\_lgip.pdf](https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect_2/sch22/sch_22_lgip.pdf) (last visited August 14, 2023).

alternative option under the RFP (JERA Comments at 6, 10). To enact its recommendation for including SIS in the RFP, JERA submits proposed redline changes to the draft RFP (JERA Comments at 10, Att. A). JERA further contends that restricting SIS to Capacity Network Resource Interconnection Service, as suggested by the Petitioners, eliminates the option of extending its 1,149 MW of existing interconnection capacity for new offshore wind projects (JERA Surreply Comments at 2). JERA asserts that the only way its Canal Station units can supply 1,149 MW of SIS at the Capacity Network Resource Interconnection Service available to an offshore wind bidder would be to exit the ISO-NE Forward Capacity Market and retire its existing generation units (JERA Surreply Comments at 2).

In response to JERA, the Petitioners assert that interconnection customers are permitted to request SIS for both Network Resource Interconnection Service and Capacity Network Resource Interconnection Service (Petitioners Reply Comments at 20). The Petitioners contend that the draft RFP does not preclude bidders from utilizing SIS (Petitioners Reply Comments at 20). The Petitioners encourage bidders to use SIS to obtain Capacity Network Resource Interconnection Service (Petitioners Reply Comment at 20). The Petitioners clarify and argue, however, that the RFP should not be modified in response to JERA's comments (Petitioners' June 13, 2023 Clarification Letter at 1). The Petitioners assert that capacity level interconnection has been the standard for the RFP in previous solicitations and there is no basis to modify it for this RFP (Petitioners' June 13, 2023 Clarification Letter at 1). The Petitioners argue that allowing Network Resource SIS as an interconnection alternative could be problematic because it would reduce an offshore wind

project's ability to mitigate winter price spikes as required in Section 83C (Petitioners' June 13, 2023 Clarification Letter at 1-2).

c. Analysis and Findings

Section 83C authorizes the Department to approve the timetable and method for solicitations of long-term contracts for offshore wind energy generation. In carrying out its authority under Section 83C to approve the timetable and method, the Department has consistently granted DOER and the Companies discretion to implement RFP terms and provisions in line with statutory requirements (see D.P.U. 21-40, at 76). In this instance, the Department is not persuaded that JERA's request for the RFP to include an alternative interconnection standard warrants us to revisit that precedent.

The Department observes that capacity level interconnection has been the standard adopted in all previous offshore wind solicitations to date. The Department is concerned that including an alternative, non-capacity equivalent interconnection option (i.e., SIS Network Resource Interconnection Service) may reduce an offshore wind generator's ability to mitigate winter price spikes as required under Section 83C, as suggested by the Petitioners. In addition, the Department is concerned that due to potential congestion impacts, the existing modeling may not adequately capture the differences in energy delivery by proposals under the full set of system conditions likely to be experienced, thus adversely affecting the fairness and transparency of the evaluation process, as noted by the Independent Evaluator (Exh. DPU-IE 2-2). The Department also acknowledges that this issue may benefit from a more robust exchange of information outside of this proceeding based on the discrepancies raised

by JERA and the Petitioners. Therefore, the Department declines to adopt JERA's proposed revisions to the RFP method of solicitation.

Although we decline to consider JERA's recommendation, the Department acknowledges that due to the limited existence of available interconnection points, the capacity at Canal Station may provide an opportunity to affordably interconnect future offshore wind projects, and minimize environmental and greenhouse gas emissions impacts associated with construction of new transmission. Accordingly, the Department suggests that the Petitioners consider conferring with offshore wind stakeholders to gauge potential interest in alternatives, like the proposed, as an interconnection point. The Department further suggests the Petitioners assess whether there are any practical and ready-to-implement options to incorporate an alternative interconnection standard into the evaluation process, while maintaining fairness, transparency, and compliance with Section 83C requirements.

3. Transmission Upgrade Alternative/GIP

a. Summary of Comments

The Attorney General notes that at present, due to the interconnection limitations, the Commonwealth is not readily able to accept more than 2,000 MW of offshore wind generation in the foreseeable future (Attorney General Comments at 11). The Attorney General recommends that the Commonwealth create a defined plan for offshore wind transmission interconnection before pursuing large volumes of offshore wind generation resources (Attorney General Comments at 11-12).

SouthCoast Wind and RENEW support the proposed transmission upgrades submitted to GIP for federal funding (SouthCoast Wind Comments at 8; RENEW Comments at 5). SouthCoast Wind and Vineyard Offshore, however, caution that the execution of transmission upgrades can have a large impact on an offshore wind project's planned commercial operation date ("COD") that it is beyond the control of developers (SouthCoast Wind Comments at 4-5; Vineyard Offshore Reply Comments at 6). Vineyard Offshore specifically argues the proposal could result in a COD beyond 2030-2031 (Vineyard Offshore Reply Comments at 6). Additionally, SouthCoast Wind requests a procurement without a required COD due to the potential for impacts beyond the control of developers (SouthCoast Comments at 4-5, 8).

NextEra suggests that the RFP should not limit the consideration of transmission designs to those that have received DOE funding because cost-effective transmission solutions are possible without DOE funding (NextEra Comments at 2). NextEra suggests that the following phrase be added to Section 2.2.1.10: "If any projects submitted by DOER to the GIP are selected for a funding award by the U.S. DOE, or if a project is not selected for funding by U.S. DOE, but DOER determines the project is a preferred transmission design to integrate offshore wind, DOER will issue a second Notice to Bidders at least 60 days prior to the bid submission deadline with further details about the awarded projects to allow Bidders to integrate the project into a potential GIP Alternative Bid" (NextEra Comments at 2).

Shell suggests that Section 2.2.1.10, which allows for alternative pricing for a single potential known transmission upgrade, takes a limited view of future transmission upgrades considering the many efforts underway, reasoning that failure to allow successful projects to accommodate future coordinated transmission solutions could affect savings opportunities potential to lower environmental impacts (Shell Comments at 5-6). Shell suggests that the Department should instruct the Petitioners to include provisions in the resulting PPAs that contemplate adjustments to the PPA price related to significant changes in interconnection costs (Shell Comments at 6).

RENEW suggests that the terms for reflecting state-funded transmission upgrades in the PPA should be subject to public review prior to the Department's approval of the PPA (RENEW Comments at 6-7).

If awarded GIP funding, Ørsted requests that DOER provide as much information as possible to bidders regarding any changes to necessary upgrades, design changes at the point of interconnection, or other alterations affecting the bidders' interconnection solutions to accurately price the benefits of the GIP funding (Ørsted Comments at 2). Ørsted also requests 90, rather than 60, days of notice to bidders if any GIP projects submitted by DOER are selected for funding, to allow sufficient time to adjust bids and go through governance (Ørsted Comments at 2).

Anbaric suggests that it is in the public interest to preserve the ability for selected projects to utilize separate transmission and argues that transmission construction should precede wind generation construction (Anbaric Comments at 2). Anbaric suggests, however,

that while transmission should be constructed in advance of generation, solicitations for transmission and generation can occur simultaneously (Anbaric Comments at 2-3). In support of this argument, Anbaric points to Maine, which recently oversaw an integrated transmission and generation solicitation in under one year and selected a transmission line and wind farm from different bidders (Anbaric Comments at 2-3). Anbaric suggests that a similar strategy could be adopted in Massachusetts, reasoning that it would facilitate integration of a Section 83C solicitation with the Commonwealth's efforts to develop independent offshore wind transmission with other New England states (Anbaric Comments at 2-3).

SGDB requests that in the event Massachusetts submits a full application for GIP, all bidders be required to submit a GIP alternative, notwithstanding uncertainty of federal funding (SGDB Comments at 1). SGDB suggest that the GIP incentivizes the "planned approach" to ocean energy transmission and believes that the fourth Section 83C solicitation should emphasize the importance and urgency of this technology (SGDB Comments at 1).

In response to comments, the Companies and DOER assert that Section 2.2.1.10 of the proposed RFP permits bidders to utilize independently procured transmission (Petitioners Reply Comments at 16). The Petitioners note that should any transmission project receive a grant from DOE, Section 2.2.1.10 allows for, but does not require, bidders to submit a bid using that project to interconnect (Petitioners Reply Comments at 16). The Petitioners clarify that the 60-day notice period provided for developing a modified bid to utilize upgrades developed through the GIP was intended as a minimum, and that bidders will likely be

afforded more time than that based on DOE's intended timeline (Petitioners Reply Comments at 16).

b. Analysis and Findings

Commenters offered arguments and suggestions related to regional transmission planning. The Department acknowledges that coordinated regional transmission planning may play an important role in enabling the interconnection of offshore wind generation in the future. The Department agrees with the Petitioners' assertion that Section 2.2.1.10 permits bidders to use independently procured transmission. The inclusion of future coordinated transmission projects, however, is outside the scope of this proceeding. The Department encourages the Petitioners to consider any such projects when drafting RFPs for future rounds of solicitation.

Commenters suggest that the terms for reflecting state-funded transmission upgrades in the PPA should be subject to public review prior to the Department's approval of the PPA. In D.P.U. 19-45, at 27, the Department established the requirement that the Companies make their form PPA available to the Independent Evaluator for its review under Section 83C(f) and make their form PPA available to the other companies. The Department is not persuaded that there is a need to expand the requirement now. Therefore, the Department rejects the request that the form PPAs be subject to public review prior to Department approval.

Commenters offer various degrees of support for Section 2.2.1.10 of the RFP allowing for optional bids to known transmission upgrades related to the DOE's GIP.

Commenters suggest modification to the planned notice proposal offered by Petitioners, as well as modifications to COD requirements. The Petitioners clarify that the 60-day notice period provided for developing a modified bid to utilize upgrades developed through the GIP was intended as a minimum, and that bidders will likely be afforded more time.

The Department recognizes the significant effect that DOER's submission to the GIP<sup>37</sup> will have on the availability of transmission for offshore wind generation. The Department also recognizes that utilizing coordinated offshore transmission may create uncertainty for bidders regarding a proposed project's COD. However, the Department finds that the solicitation process is designed to evaluate the benefits of proposals with a scheduled COD before January 1, 2032 and declines to direct the Petitioners to allow bids without a COD (RFP at § 2.2.1.3). The Petitioners have clarified that there will be a 60-day notice period, at a minimum, if the DOER submission to the GIP is funded. The Department finds this notice sufficient to allow time for bidders to modify their bids. Finally, the Department finds it reasonable that Section 2.2.1.10 allows for, but does not require, bidders to submit an GIP alternative bid.

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<sup>37</sup> DOER submitted an application to the GIP for the Cleaner Grid New England Project in partnership with Eversource and National Grid. The project enables interconnection for approximately 3,600 MW of offshore wind generation by increasing the grid's hosting capacity by approximately 2,400 MW in the Brayton Point area and at least 1,200 MW on the South Coast. <https://www.mass.gov/news/healey-driscoll-administration-to-compete-for-up-to-250-million-in-federal-grants-for-clean-energy-infrastructure> (Last visited on August 16, 2023).

4. Alternative Collection Arrangement

a. Independent Evaluator

The Independent Evaluator states that the Companies developed the alternative collection agreement and, as a result, are best positioned to respond regarding how the agreement may impact developer bids (Exh. DPU-IE 1-7). Nevertheless, the Independent Evaluator suggests that an alternative collection arrangement is unlikely to impact developer bids to the RFP but will protect ratepayers if a bidder assumes that it would be responsible for interconnection or network upgrade costs and these costs are ultimately recovered through the ISO-NE transmission tariff (Exh. DPU-IE 1-7). In such an instance, the alternative collection agreement will ensure that the bidder's reduced cost responsibility for these facilities is reflected in a contract price reduction (Exh. DPU-IE 1-7).

b. Summary of Comments

Shell requests the removal of a sentence in Section 2.2.1.9 that allows for price reductions for transmission upgrade costs collected through an "alternative collection arrangement" (Shell Comments at 3). Shell suggests that this provision could limit the number of developers that participate in the procurement and fail to attract the most competitive offerings for customers (Shell Comments at 3). Shell suggests that this risk creates uncertainty about the amount by which PPA pricing may be adjusted in the future, the process by which the PPA price would be adjusted, and when PPA pricing would be adjusted (Shell Comments at 3-4).

The Petitioners state that the term “alternative collection arrangement” in Section 2.2.1.9 is intentionally broad to allow for a PPA price reduction for any alternative mechanism that may reallocate costs related to offshore delivery facilities, network upgrades, and/or interconnection of the project to the transmission system that was assumed as inclusive in the formulation of the bid price (Exh. DPU-Petitioners 1-5). The Petitioners argue that it would be prudent for bidders to have a full understanding of costs related to offshore delivery facilities and/or interconnection of the project to the transmission system, as the PPA price reduction is limited in scope to those costs (Exh. DPU-Petitioners 1-5). Further, in the event of a cost reallocation as a result of a tariff change, rule change, or the application of another alternative collection arrangement, bidders should be aware that costs they are no longer required to incur will not be included in any PPA price, to avoid double-recovery of costs (Exh. DPU-Petitioners 1-5).

c. Analysis and Findings

The Department recognizes the need to prevent double-recovery of costs in the event of a new tariff, rule change, or other change in the way these costs are collected. The Department agrees with the Independent Evaluator that the proposed change to Section 2.2.1.9 protects ratepayers without a substantial impact to successful bidders. For these reasons, the Department declines to direct the Petitioners to remove the reference to an “alternative collection agreement” in Section 2.2.1.9.

I. Commercial Operation Date

1. Introduction and Summary of Comments

The RFP requires that all proposals must provide for a scheduled commercial operation date before January 1, 2032 (RFP at § 2.2.1.3). Several commenters suggest revisions to the RFP COD requirement (Ocean Winds Comments at 3; Ørsted Comments at 1; SouthCoast Wind Comments at 3-4; Vineyard Offshore Comments at 6-7). Ocean Winds recommends the Petitioners modify the RFP to encourage projects to aim for the earliest COD possible without a specific COD requirement (Ocean Wind Comments at 3). Vineyard Offshore recommends that the RFP provide flexibility for later CODs, including an extended COD backstop as a means to improve project viability and pricing outcomes (Vineyard Offshore Comments at 6-7). Ørsted suggests that the Petitioners consider extending the COD by at least one year, reasoning that such a timeframe is needed to accommodate factors beyond the control of developers, such as supply chain constraints, grid upgrade construction timing, and federal permitting (Ørsted Comments at 1). SouthCoast Wind opposes the guaranteed COD requirement and strongly recommends that the Petitioners not set a required COD for this solicitation (SouthCoast Wind Comments at 3). As an alternative, SouthCoast Wind suggests that the Evaluation Team should award higher viability scores for projects with advanced permitting, grid interconnection, and procurement of long-lead time items, including high voltage direct current transmission systems (SouthCoast Wind Comments at 3-4).

The Petitioners acknowledge that long-lead times to procure electrical equipment are typical, along with long permitting timetables (Petitioners Reply Comments at 9). The Petitioners assert that they have accounted for these challenges through the January 1, 2032 COD, which is eight years after bids are due (Petitioners Reply Comments at 9). In further support of the RFP COD, the Petitioners mention that previously approved Section 83C contracts have included provisions for developers to extend the COD for their projects, with commensurate compensation to customers (Petitioners Reply Comments at 9). Finally, the Petitioners argue that the RFP COD represents a fair balancing of development challenges with the need for the Commonwealth to realize the economic and environmental benefits of operational offshore wind projects in the shortest reasonable timeframe (Petitioners Reply Comments at 9-10).

## 2. Analysis and Findings

Section 83C is silent regarding COD and, instead, requires the Companies to enter into contracts for offshore wind energy generation equal to approximately 5,600 MW of aggregate nameplate capacity not later than June 30, 2027. Section 83C(b). The evaluation process assesses the credibility of the proposed COD and ability of bidder to demonstrate that the project is more likely than not to come online by the date that is projected within the proposal, as evidenced by documents filed by the bidder showing various project milestones (RFP at § 2.2.4.6). The Department finds that the solicitation process is designed to appropriately evaluate the benefits of proposals with a scheduled COD before January 1, 2032 (RFP at § 2.2.1.3). Further, the Department is mindful of the Commonwealth's overall

energy and climate objectives. As the Commonwealth pursues accelerated electrification of our transportation and heating sectors, emissions-free generation must be developed to serve the growing electric load, particularly during winter when other renewable generation capacity may be less robust. Requiring that generation facilities supported by long-term contracts funded by ratepayers be commercially operational and capable of meeting customer demand by a specific date in the near term is not only reasonable but essential to achieve the Commonwealth's climate policies. Accordingly, the Department declines to adopt recommendations for alternative COD proposals.

J. Energy Storage Systems

1. Introduction

Section 83C eligibility criteria require that DOER give preference to proposals that demonstrate benefits associated with any proposed pairing with energy storage systems, which could include new and/or existing mid-duration and/or long-duration energy storage systems. Pursuant to the RFP, proposals may pair offshore wind energy generation with energy storage systems that increase the benefits of the offshore wind project (RFP at § 2.2.1.3, 2.2.1.4). These benefits are evaluated and included in the bid scores in both the quantitative and qualitative evaluations of Stage Two (RFP at § 2.2.3, 2.2.4).

2. Summary of Comments

Several commenters propose various recommendations to the energy storage system requirements included in the RFP (Beacon Wind Comments at 5; Cypress Creek Comments at 2-4; FirstLight Comments at 3-4; RENEW Reply Comments at 4; SouthCoast Wind

Comments at 5-6). Beacon Wind requests clarification as to whether Section 2.2.1.3 of the RFP limits bidder proposals for energy storage systems and associated costs to co-located storage resources, or whether additional resources could qualify (Beacon Wind Comments at 5). Cypress Creek recommends that the Department expand the eligibility and conformance requirements for actual products, including separate capacity-based pricing for energy storage components on a dollar per kilowatt-month basis (Cypress Creek Comments at 3). In addition, Cypress Creek recommends that principles of tolling agreements be applied to the energy system component to promote ideal operational behavior, as well as greater cost efficiency and reductions in greenhouse gas emissions (Cypress Creek Comments at 3-4). To enhance the role of storage in the RFP, FirstLight identifies several recommendations for the Department's consideration: (1) add terms to Section 2.2.1.4 that would permit generators to sell the energy they produce when market prices are negative to buyers other than the Companies; (2) clarify the pricing provision to allow for storage pairing as a means of avoiding financial penalties; and (3) clarify the way energy storage capacity would be counted relative to the size of the overall procurement to avoid counting paired storage against the minimum size limitation of the RFP (FirstLight Comments at 3-4).

SouthCoast Wind recommends expanding the definition of which products are eligible and conforming to improve the consideration of storage in the RFP (SouthCoast Wind Comments at 5-6). Rather than combine the revenues relating to storage into the existing form PPA, SouthCoast Wind suggests that energy storage revenues should be part of a separate and distinct energy storage agreement with an energy storage developer (SouthCoast Wind

Comments at 5-6). To increase the supply of CPECs and reduce consumer costs, RENEW recommends that the Department enable bidders to: (1) own CPECs generated by qualified energy storage systems paired with offshore wind; (2) operate the paired system to achieve Clean Peak Energy Standard requirements; and (3) avoid negative pricing by storing offshore wind energy (RENEW Reply Comments at 4).

### 3. Analysis and Findings

The Department has reviewed the RFP requirements for energy storage systems and the preference for proposals that demonstrate benefits. Consistent with Section 83C requirements, the Department finds that the RFP provides bidders the flexibility to submit a bid with a paired energy storage system (RFP at § 2.2.3, 2.2.4; Exh. DPU-Petitioners 1-4). The Department declines, however, to require any modifications to the RFP based on the recommendations from commenters, as the Department has previously found that requests for changes to evaluation criteria, regardless of the subject matter, are outside of the scope of a timetable and method of solicitation review proceeding. D.P.U. 21-40, at 67; D.P.U. 19-45, at 50; D.P.U. 17-103, at 49-52. Instead, the Department may address these issues during the contract review proceedings. As previously stated by the Department, full and complete documentation of how the Evaluation Team calculated the quantitative and qualitative scores for each proposal is required. D.P.U. 19-45, at 46.<sup>38</sup>

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<sup>38</sup> The Companies must document how the Evaluation Team evaluated energy storage, including an identification of the relevant quantitative and qualitative evaluation protocols, how they evaluated these factors, and a narrative explaining how they

K. Form PPA Issues

1. Introduction

The Department requires each of the Companies to make its form PPA available to the Independent Evaluator for its review under Section 83C(f) and make its form PPA available to the other distribution companies. D.P.U. 19-45 at 27. Where a company, during the development of a timetable and method of solicitation, seeks to include terms in its form PPA that expand the threshold requirements of an RFP or are otherwise materially different from the other companies' form PPAs, that company shall notify the Evaluation Team and the Independent Evaluator of these terms. D.P.U. 19-45, at 27.

2. National Grid REC Pricing

a. Independent Evaluator

In its report, the Independent Evaluator states that a National Grid provision that would give it the right to continue to purchase RECs for one-year terms after the end of the contract term at the prevailing market price could be viewed as materially different from other companies' form PPAs (Independent Evaluator Report at 22). With the RECs to be priced at the prevailing market price, the Independent Evaluator opines that the provision represents a reasonable balancing of the interests of the supplier that will seek to sell these RECs to other prospective buyers and the buyer that seeks to be able to secure a supply of RECs to meet potential customer supply obligations (Independent Evaluator Report at 22).

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arrived at the energy storage scores for each bid. D.P.U. 19-45, at 46-47 n.19. In the instant proceeding, the Department's previous findings apply to the Petitioners.

b. Company Position

National Grid states that the REC pricing provision is substantially similar to the provision proposed by the company in D.P.U. 21-40, with the exception that the provision in D.P.U. 21-40 contemplated additional good faith negotiations regarding the option to purchase RECs (Exh. DPU-National Grid 1-1 at 1). National Grid posits that it included the provision in the fourth Section 83C solicitation form PPA to conform to the statutory language governing long-term contracts for renewable energy in the Commonwealth that was updated in 2022 (Exh. DPU-National Grid 1-1 at 1). National Grid contends that the revised statutory language contemplates the Company's ability to purchase RECs following the expiration of the term of the PPA for purchases of energy and RECs (Exh. DPU-National Grid 1-1 at 1). National Grid argues the revised statutory language does not limit those purchases to instances in which the RECs would otherwise be sold outside of New England, as suggested by the previous Independent Evaluator in D.P.U. 21-40 (Exh. DPU-National Grid 1-1 at 1-2). While National Grid acknowledges the previous Independent Evaluator's concerns that the provision was "very uncommon" and could "reduce the perceived value of a bidder's potential revenues after the end of the bid contract term" by requiring "the seller to sell energy and other products separately," the Company argues that the project owner's concerns must be balanced against the concerns of the Company, its customers, and the interest of the Commonwealth (Exh. DPU-National Grid 1-1 at 2). National Grid contends that its provision allows it to obtain RECs at a price that is inherently fair to the project's owner and is consistent with

Chapter 179 (Exh. DPU-National Grid 1-1 at 2). Therefore, National Grid argues its provision achieves a balance in the interests of the Commonwealth, the Company, and its customers (Exh. DPU-National Grid 1-1 at 1-2).

c. Analysis and Findings

After review and consideration of this issue, the Department finds that National Grid's REC pricing provision introduces material differences between the Companies' form PPAs. Although the Department has recognized that the Companies are afforded flexibility to negotiate reasonable contract terms that may vary among them, in this instance we do not view National Grid's REC pricing provision as appropriate. D.P.U. 21-40, at 35; D.P.U. 19-45, at 27 n.15. The Department acknowledges that while the current Independent Evaluator is satisfied with the REC pricing provision, we are not persuaded that National Grid has sufficiently addressed the concerns raised by the previous Independent Evaluator. D.P.U. 21-40, at 32-33. In fact, National Grid acknowledges that the proposed provision is substantially similar to the provision that the Department disallowed in D.P.U. 21-40 (Exh. DPU-National Grid-1-1). The Department remains concerned that such a difference could result in higher prices in the solicitation. National Grid notes that revised language to Section 83C from Chapter 179 specifically contemplates the Company's ability to purchase RECs following the expiration of the term of the PPA for purchases of energy and RECs (Exh. DPU-National Grid 1-1).<sup>39</sup> The Department does not dispute this contention. As

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<sup>39</sup> Although the Department acknowledges the revised Section 83C language related to Chapter 179, we note that the denial of National Grid's REC pricing provision in

noted above, the Department has recognized that the Companies are afforded flexibility to negotiate reasonable contract terms that may vary among them. D.P.U. 21-40, at 35; D.P.U. 19-45, at 27 n.15. Given the Department's finding that the difference in form PPA is not appropriate, we direct National Grid to remove the provision from its form PPA. In the event National Grid proposes modifications to, and produces adequate support for, the provision in a subsequent solicitation, the Department could be inclined to reconsider this issue.

3. Other Form PPA Recommendations

a. Summary of Comments

Several commenters suggest changes to the form PPAs associated with this solicitation. Avangrid requests that the form PPAs be made available for review and comment before the Department approves the method of solicitation and timetable in case there are unfair provisions that discriminate among potential bidders (Avangrid Comments at 3, 16-17). RENEW suggests that the form PPA terms regarding state-funded transmission upgrades should be subject to public review prior to Department approval of a PPA, arguing that such review could reduce the stakes of the negotiation phase by addressing issues in advance (RENEW Comments at 6-7). Beacon Wind requests that the forthcoming form PPAs exclude severe penalties and include appropriate mitigations for delays that are beyond

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D.P.U. 21-40 was not predicated on the question of whether or not the Company may propose terms and conditions for RECs that exceed the term of generation under the contract.

the control of developers (Beacon Wind Comments at 5). Beacon Wind also states that the ISO-NE is in the process of evaluating its tariff which includes a 1,200 MW single-point injection limit (Beacon Wind Comments at 4). Beacon Wind requests that the Department encourage the Petitioners to include flexibility in the form PPAs to increase the capacity of the selected project to accommodate possible changes in ISO-NE policy (Beacon Wind Comments at 4). Finally, Anbaric expresses support for a new mechanism in the form PPAs identified by the Independent Evaluator that will reduce the amount paid for transmission costs if the costs of the upgrades are regionalized (Anbaric Comments at 5).

In response to Avangrid and Beacon Wind, the Petitioners note that the Companies have complied with the Department's directive to provide the form PPA to the Independent Evaluator (Petitioners Reply Comments at 31). The Petitioners highlight that the Independent Evaluator provided extensive comments on the form PPA in its report (Petitioners Reply Comments at 31, citing Independent Evaluator Report at 21-22). The Petitioners assert that providing the form PPA to potential bidders in the proceeding could afford bidders multiple opportunities to negotiate deals that are favorable to them (Petitioners Reply Comments at 31). The Petitioners request that the Department decline to require the Companies to provide the form PPAs to any developer at this stage of solicitation because the Department will review the terms of any PPA adopted in separate adjudicatory proceedings, and the consideration of substantive terms is outside the scope of this proceeding (Petitioners Reply Comments at 31-32).

b. Analysis and Findings

In D.P.U. 19-45, at 27, the Department established the requirement that the Companies make their form PPA available to the Independent Evaluator for its review under Section 83C(f) and make their form PPA available to the other companies. The Department finds there is no need to expand the requirement at this time. Therefore, the Department rejects Avangrid's request that the form PPAs be made more widely available for review and comment before the Department's approval of the timetable and method of solicitation.

In addition, Beacon Wind requests that the forthcoming form PPAs avoid penalties, include exclusions to allow for delays where appropriate, and accommodate possible changes in ISO-NE policy (Beacon Wind Comments at 5). The Department finds that the solicitation process appropriately addresses and accounts for Beacon Wind's recommendations and the PPAs themselves will be subject to review by the Department. Therefore, the Department declines to adopt them.

L. Miscellaneous

1. Introduction

In addition to the issues summarized above, commenters made various requests for clarification of or changes to the proposed solicitation method (Anbaric Comments at 4; NextEra Comments at 2; Ørsted Comments at 2-4; SGDB Comments at 1-2; Shell Comments at 9; SouthCoast Wind Comments at 3).

## 2. Summary of Comments

To promote Section 2.2.1.10 (Optional Bids to Known Transmission Upgrades), Anbaric recommends the Department instruct that the Petitioners establish a provision that requires bidders to utilize separate transmission subject to contractual adjustment (Anbaric Comments at 4).

NextEra requests that the Petitioners amend Section 2.2.1.11 to include a form Transmission Service Agreement (NextEra Comments at 2).

Ørsted requests the RFP require bidders to submit descriptions of their contingency method rather than their quantitative contingency related to Section 2.2.2.3 (Ability to Finance the Proposed Project), (Ørsted Comments at 2). Ørsted contends that understanding the actions a bidder takes to ensure that a project is viable is more important than comparing absolute contingency levels across projects (Ørsted Comments at 2). In addition, Ørsted requests that DOER and the Department provide a definition of “cost effective” in Section 2.2.1.3 (Ørsted Comments at 3). Ørsted also suggests that DOER remove the requirement of a copy of leases, easements, and other agreements in Section 2.2.2.1.iv and Appendix 6.2.v, recommending that an affidavit that the agreements are complete be considered adequate (Ørsted Comments at 4).

SGDB suggests that the draft RFP does not do an adequate job of asking bidders how onshore delivery of power produced by offshore wind can be transmitted to shore with minimum impact on coastal zone environments, wildlife habitat, and human health and safety (SGDB Comments at 1). SGDB suggests that the RFP should, at a minimum, require

bidders to include a plan for offshore electricity export that utilizes existing grid-proximate facilities and high-voltage infrastructure in coastal locations that are more appropriate than those identified in the previous round of proposals (SGDB Comments at 1). SGDB argues that coastal zone areas that are covered by historic and legal protection should be rejected as inappropriate for construction of high-voltage infrastructure and suggests that a central indicator of suitability should be whether the location is protected under Article 97 of the Massachusetts Constitution (SGDB Comments at 1-2). SGDB requests that the concept of “opposition” referenced in Section 2.2.4.6 be expanded and clarified to identify known individuals and groups, without discrimination as to “official standing,” who have indicated opposition to parts of offshore wind energy proposals approved in previous rounds (SGDB Comments at 2). SGDB suggests that bidders should: (1) describe the duration, extent, and nature of known opposition; and (2) offer a plan to address how future opposition can be anticipated and avoided (SGDB Comments at 2).

Shell suggests the Department establish a voluntary REC program for offshore wind resources (Shell Comments at 9).

SouthCoast Wind suggests that the difference between a “proposal” and “project,” as written in Section 2.2.1.2, paragraph four, is ambiguous and that in practice this difference has important implications (SouthCoast Wind Comments at 3).

The Petitioners did not respond to these recommendations from Anbaric, NextEra, Ørsted, SGDB, Shell, and SouthCoast Wind.

### 3. Analysis and Findings

The Department finds that consideration of the recommended changes described above is beyond the scope of the instant proceeding. Pursuant to Section 83C(b) and 220 CMR 23.04(2), the scope of this proceeding is limited to a review of the timetable and method for the fourth solicitation of long-term wind energy generation contracts under Section 83C. The Department notes that following issuance of the instant Order, the Petitioners will hold a bidders conference for prospective bidders and interested persons. The purpose of the conference is to provide the opportunity to clarify aspects of the RFP. The Department encourages interested stakeholders to participate in this opportunity.

## V. FUTURE SOLICITATIONS

### A. Introduction

Pursuant to Section 83C(f), the Independent Evaluator must issue a report to the Department analyzing the timetable and method of solicitation to “ensure an open, fair and transparent solicitation and bid selection process that is not unduly influenced by an affiliated company.” Such report shall include the Independent Evaluator’s recommendations, if any, for improving the process. Section 83C(f); 220 CMR 23.04(6).

### B. Independent Evaluator Report Recommendations

To improve future Section 83C procurements, the Independent Evaluator offers the following recommendations: (1) the RFP Drafting Parties make available a draft RFP for public comment; (2) the RFP Drafting Parties continue to seek ways to enhance the transparency of the evaluation process to better enable bidders to assess tradeoffs among

various elements of their proposals so as to deliver the greatest value to ratepayers; and (3) consideration of a provision such as the non-delivery disincentive that precludes successful bidders from participating in the subsequent procurement if they fail to perform<sup>40</sup> (Independent Evaluator Report at 23).

C. Analysis and Findings

The Department relies upon the Independent Evaluator, in its statutory oversight role, to bring issues, including recommended changes for future solicitations, to our attention that have the potential to significantly impact the solicitation process. As identified above, the Independent Evaluator identified three recommendations for future procurements. The Department addresses each recommendation below.

The Independent Evaluator recommends that the RFP Drafting Parties make available a draft RFP for public comment (Independent Evaluator Report at 23). As identified in its report, the Independent Evaluator notes that in the previous Section 83C procurement a draft of the RFP was issued along with a request for public comments (Independent Evaluator Report at 3). For this procurement, there was not an opportunity for public input on the entirety of the draft RFP due to scheduling constraints posed by seeking to issue the RFP within two years of the previous RFP, as required by statute (Independent Evaluator Report

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<sup>40</sup> The Independent Evaluator also acknowledges the deliberate efforts that were made in the formulation of instant RFP terms to strengthen the incentives for contract performance and to better allow the Evaluation Team to assess the risk of non-performance (Independent Evaluator Report at 23).

at 3).<sup>41</sup> Instead, the RFP Drafting Parties solicited comments from stakeholders on some of the most salient issues for the solicitation (Independent Evaluator Report at 3).<sup>42</sup> The Department agrees with the Independent Evaluator that providing opportunities for public comment are helpful to ensure that the RFP and procurement process properly balances the multi-faceted objectives of the procurement and considers the perspectives of stakeholders on how these objectives should be balanced (Independent Evaluator Report at 3). In the absence of unforeseeable time constraints preceding the next solicitation, the Department anticipates that the RFP Drafting Parties will make available in its entirety the draft RFP for comment prior to the submission of the draft RFP to the Department.

The Independent Evaluator also recommends continued enhancements to the transparency of the evaluation process to better enable bidders to assess tradeoffs among various elements of their proposals in order to deliver the greatest value to ratepayers (Independent Evaluator Report at 23). Beginning with the first Section 83C solicitation to the

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<sup>41</sup> The Independent Evaluator understands that formal work by the RFP Drafting Parties for the instant solicitation was delayed because DOER had to conduct a second procurement for the services of the Independent Evaluator (Independent Evaluator Report at 3 n.7).

<sup>42</sup> Comments were requested on the appropriate procurement size, procurement schedule, and commercial operation date; transmission issues including how to integrate the fourth procurement with ongoing regional transmission initiatives and the value of a “mesh-ready” transmission requirement; inflation, supply chain, and macroeconomic factors including how the solicitation should account for these factors as well as the appropriateness of the inflation adjustment provision in NYSERDA’s RFP; opportunities for federal funding; economic development, workforce, and diversity, equity and inclusion; environmental justice; and environmental and fisheries impacts (Independent Evaluator Report at 3).

present, the Department recognizes that the RFP Drafting Parties have sought incremental improvements to the evaluation process before each subsequent solicitation. The Department anticipates that the RFP Drafting Parties will continue to seek out further enhancements, as appropriate, to improve the transparency of the evaluation process.

Finally, the Independent Evaluator recommends further consideration of a provision, such as a non-delivery disincentive, that precludes successful bidders from participating in the subsequent procurement if they fail to perform (Independent Evaluator Report at 23).<sup>43</sup> Although it is the Department's expectation that the proposed changes included in the draft RFP could mitigate the need for any such provision in the future, the Department nevertheless recognizes the potential reasonableness of the recommendation, as stated above in Section IV.D.2.c. Should future circumstances require such a provision for the success of a subsequent procurement(s), the Department expects that any exclusionary rules would appropriately balance the needs of the Commonwealth's clean energy goals and the competitiveness of the procurement.

## VI. CONCLUSION

After review, the Department finds that the proposed timetable and method for the fourth solicitation and execution of long-term contracts for offshore wind energy generation is consistent with the requirements of Section 83C, as amended. Accordingly, subject to the

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<sup>43</sup> The Independent Evaluator does not question the decision to exclude a non-delivery disincentive type provision in the instant solicitation (Independent Evaluator Report at 16).

directives contained in this Order, the Department approves the Petitioners' proposed timetable and method for the solicitation and execution of long-term contracts for offshore wind energy generation.

As noted above, the Department is working on updates to its regulations to reflect the Chapter 179 revisions to Section 83C. The Department expects that the Petitioners in issuing the RFP and entering into any selected PPA will comply with Section 83C, and the forthcoming regulations memorializing the Chapter 179 revisions.

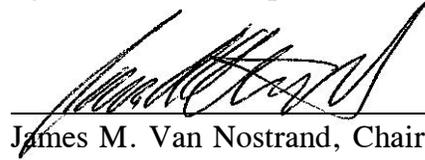
VII. ORDER

Accordingly, after due notice, opportunity for comment, and consideration, it is

ORDERED: That the petition of the Department of Energy Resources, filed in coordination with Fitchburg Gas and Electric Light Company, d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and NSTAR Electric Company d/b/a Eversource Energy for approval of a proposed timetable and method for the solicitation and execution of long-term contracts for offshore wind energy generation pursuant to Section 83C of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12; St. 2018, c. 227, § 21(a); St. 2021, c. 24, §69; and St. 2022, c. 179, §60-61, is APPROVED, subject to the directives contained herein; and it is

FURTHER ORDERED: That the Department of Energy Resources, Fitchburg Gas and Electric Light Company, d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and NSTAR Electric Company d/b/a Eversource Energy shall comply with all other directives contained in this Order.

By Order of the Department,



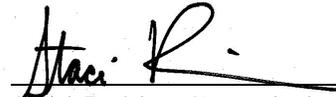
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James M. Van Nostrand, Chair



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Cecile M. Fraser, Commissioner



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Staci Rubin, 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.