



THE COMMONWEALTH OF MASSACHUSETTS
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September 15, 2023

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

Re: *NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 20-16*
Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National
Grid, D.P.U. 20-17
Fitchburg Gas and Electric Light Company d/b/a Unitil, D.P.U. 20-18

NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 22-70
Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National
Grid, D.P.U. 22-71
Fitchburg Gas and Electric Light Company d/b/a Unitil, D.P.U. 22-72

Dear Secretary Marini:

On February 10, 2020, NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil, (collectively, the “EDCs”) filed petitions with the Department of Public Utilities (the “Department”) for approval of power purchase agreements (“PPAs”) with offshore wind developer SouthCoast Wind Energy LLC f/k/a Mayflower Wind Energy LLC (“SouthCoast Wind”)¹ for approximately 800 MW of offshore wind generation capacity (the “2020 PPAs”). These petitions were docketed as D.P.U. 20-16, 20-17, and 20-18. The Department issued a final order approving the 2020 PPAs on November 5, 2020.

On May 25, 2022, the EDCs filed petitions with the Department for approval of PPAs with SouthCoast Wind for an additional 405 MW of offshore wind generation capacity (the “2022

¹ On February 1, 2023, Mayflower Wind notified the Department that it had been formally renamed “SouthCoast Wind Energy LLC.”

PPAs”).² These petitions were docketed as D.P.U. 22-70, 22-71, and 22-72. The Department issued a final order approving the 2022 PPAs on December 30, 2022.

On August 29, 2023, the EDCs filed proposed amendments to both the 2020 and 2022 PPAs with SouthCoast Wind seeking Department approval to terminate each of the PPAs (the “Amendments”). In response to the Hearing Officer’s Memorandum, dated August 31, 2023, the Attorney General’s Office (the “AGO”) offers the following comments on the proposed Amendments.

The AGO has been and continues to be a steadfast supporter of the Commonwealth’s commitment to decarbonize energy generation, including through development of a prolific offshore wind market. *See generally*, D.P.U. 22-70/-71/-72, AGO In. Br. (Oct. 18, 2022).³ Indeed, the AGO expressly supported each of the proposed Section 83C PPAs, including the subject PPAs with SouthCoast Wind, which the EDCs now seek to terminate. *Id.*, at 9; *see also* Section 83C 1, D.P.U. 18-76/-77/-78, AGO In. Br. (2019); Section 83C 2, D.P.U. 20-16/-17/-18, AGO In. Br. (2020).

In conjunction with its commitment to fostering the Commonwealth’s decarbonization efforts, as the Commonwealth’s ratepayer advocate,⁴ the AGO is also focused on and committed to mitigating the cost impacts to ratepayers of the clean energy transition. While the AGO believed appropriate ratepayer protections had been built into the terms of both the 2020 and 2022 PPAs to balance these interests, those Department-approved protections proved to be illusory as SouthCoast Wind determined that \$60 million “Termination Payments” are a preferred business approach to performing on its contractual obligations.⁵ If approved, the proposed SouthCoast Wind Amendments, coupled with Department’s stamp-approved terminations of the

² Also on May 25, 2022, the EDCs requested Department approval of the PPAs with offshore wind developer, Commonwealth Wind LLC (“Commonwealth Wind”), to develop 1,200 MW of offshore wind generation capacity. The Department approved those PPAs on December 30, 2022. Subsequently, on August 23, 2023, the Department stamp-approved the termination of the PPAs between the EDCs and Commonwealth Wind.

³ As previously stated in the AGO’s response to the EDCs similar proposal to terminate the Commonwealth Wind PPAs, the AGO believes that well-designed offshore wind projects can provide enormous environmental and economic benefits to the Commonwealth, as well as enhanced electric reliability through diversification of the Commonwealth’s generation portfolio. AGO In. Br. (Oct. 18, 2022), at 6. As Massachusetts endeavors to meet its climate-change goals and emission-reduction mandates, the AGO expects offshore wind generation to be a critical component of renewable energy generation, particularly as other generating facilities are phased out and retired.

⁴ G.L. c. 12, § 11E(a).

⁵ By the terms of the subject PPAs, SouthCoast Wind assumed permitting, construction, interconnection, and other risks inherent in the development of offshore wind generation. *See* AGO In. Br., at 9.

Commonwealth Wind PPAs—will effectively terminate all 2020 and 2022 PPAs—and will represent a significant shift of the risks associated with building offshore wind facilities from private developers to ratepayers. As a result, in future solicitations, including the 83C Round 4 solicitation underway,⁶ ratepayers will be asked to pay for what are very likely to be significantly more expensive PPAs, with no commensurate benefits to compensate ratepayers for the increased costs and risks they must shoulder.⁷

In an effort to avoid a repeat of the circumstances leading to these PPA terminations, the AGO recently recommended that the Department establish more robust safeguards in future 83C solicitations to: (1) send a clear deterrent message to potential developers that failing to perform on valid contracts is unacceptable; and (2) better protect ratepayers.⁸ *See generally*, D.P.U. 23-42, AGO In. Cmts. In its recent Order approving the 83C Round 4 RFP, the Department declined to adopt the AGO’s recommendations. D.P.U. 23-42 (Aug. 23, 2023).

The AGO continues to acknowledge and appreciate the challenges posed by these proposed Amendments to the PPAs in the context of the Commonwealth’s commitment to decarbonize energy generation. Indeed, it is precisely because of these challenges that it is imperative that the Department and other stakeholders take concrete steps to ensure that ratepayers are protected to the greatest extent possible from cost overruns and risks associated with developing offshore wind energy generation here in the Commonwealth.

Thank you for your attention to this matter.

⁶ *See* D.P.U. 23-42.

⁷ The New York Public Service Commission is currently considering petitions to amend (but not terminate) contracts for many existing renewable energy projects in that state, including offshore wind development projects. In that context, the New York State Energy Research and Development Authority recently reported that, on average, offshore wind developers are seeking a 48% increase in their contract prices. *See* Ethan Howland, *As Ørsted, others seek up to 71% hike in clean energy contract prices, NYSEERDA warns of rate increases* (Aug. 31, 2023), available at <https://www.utilitydive.com/news/new-york-clean-energy-contracts-change-prices-orsted-equinor-nyserda-psc/692415/#:~:text=from%20your%20inbox,-.As%20%C3%98rsted%2C%20others%20seek%20up%20to%2071%25%20hike%20in%20clean,according%20to%20a%20state%20agency>. As a result, New York could increase residential electric rates by approximately 4 percent. *Id.*; *see also* Bruce Mohl, *Healey launches offshore wind procurement at risky time* (Sept. 1, 2023), available at <https://commonwealthmagazine.org/energy/healey-launches-offshore-wind-procurement-at-risky-time/>.

⁸ Specifically, the AGO recently advocated for more ratepayer protections to be incorporated into the Section 83C 4 solicitation, including: increasing the bid fee; increasing the development period security for each PPA; instituting an asymmetrical deadband relating to the Indexing Adjustment; and establishing a stringent non-delivery disincentive. *See generally*, D.P.U. 23-42, AGO In. Cmts.

Sincerely,

/s/ Jacquelyn K. Bihrlé

Jacquelyn K. Bihrlé

Matthew E. Saunders

Assistant Attorneys General

cc: Mary Alice Davey, Hearing Officer
Kevin Crane, Hearing Officer
Service Lists

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

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Fitchburg Gas and Electric Light Company d/b/a Unitil)))	D.P.U. 22-72

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 15th day of September, 2023.

/s/ Jacquelyn K. Bihrlé
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