



May 15, 2017

Mark. D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, Massachusetts 02210

Re: Docket Number D.P.U. 17-103

Dear Mr. Marini,

Please find attached the comments of Anbaric Development Partners on the draft Request of Proposals for Long-Term Contracts for Offshore Wind Energy Projects dated May 5, 2017. Anbaric Development Partners is an independent developer of electric transmission systems. We have a long and successful track record of developing transmission projects and recently received significant financial backing from the Ontario Teachers' Pension Plan.

Our comments focus on the role that independent transmission developers can play in helping to lower the overall cost of transmission by providing more robust competition for the 1600 MW Expandable Transmission Proposal category of the RFP. This category (which exceeds the Eligible Proposal Size) is clearly intended to serve not just the bidders required to respond, but other future developers of generation as well.

Since the restructuring of our energy markets, the separation of generation and transmission has consistently delivered the best prices for consumers. Allowing only generation developers to propose transmission systems would be a step backwards for ratepayers. It only makes sense to allow independent transmission developers, who have no affiliation with a particular wind project, to propose offshore transmission that will be open to all current and future generators.

At this early stage in the development of an offshore industry in Massachusetts it would be a short-sighted policy decision to designate a market design that limits creation of an offshore transmission system to just three eligible bidders. Ratepayers would be much better served by a competitive process that allows independent transmission developers to bid in building such critical infrastructure.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Krapels", is written over a light blue horizontal line.

Edward Krapels
CEO

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Joint Petition of Fitchburg Gas and Electric Light Company d/b/a)
Unitil, Massachusetts Electric Company and Nantucket Electric)
Company d/b/a National Grid, and NSTAR Electric Company and)
Western Massachusetts Electric Company, each d/b/a Eversource) D.P.U. 17-103
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.)

**COMMENTS OF
ANBARIC DEVELOPMENT PARTNERS, LLC**

On May 1, 2017, the Electric Distribution Companies (“EDCs”) filed a proposed Request for Proposals (“RFP”) with the Department of Public Utilities (“Department”). The EDCs filed a revised RFP on May 5, 2017. This matter has been docketed as D.P.U. 17-103. Pursuant to the May 1, 2017 Notice of Filing and Request for Comments, Anbaric Development Partners, LLC (“Anbaric”) submits the following Comments. These Comments set forth the legal basis for structuring the proposed procurement for offshore wind energy generation to solicit competitive bids for the transmission necessary to enable offshore wind generation to be procured at the lowest cost in the long run. These Comments further propose a framework for a competitive solicitation of the necessary transmission within the RFP.

I. INTRODUCTION

In order to enable the Commonwealth to achieve its greenhouse gas emission reduction requirements under the *Global Warming Solutions Act*, St. 2008, c. 298 (“GWSA”), the Legislature enacted the *Energy Diversity Act*, St. 2016, c. 188 (“Act”). As originally conceived, the legislation was intended procure large scale clean energy generation, primarily large scale

hydroelectric generation. The original drafts of the legislation would have procured 18,900,000 MWh of hydroelectric generation. The Legislature, as well as the Executive Office of Energy and Environmental Affairs (“EEA”) viewed this level of clean energy procurement as necessary to meet the GWSA mandates for 2020 and 2050, as well the interim 10-year targets, which are still to be determined. The final legislation opted to diversify the energy procurement, by reducing the hydroelectric generation procurement in half, and replacing it with procurements for 1,600 MW of offshore wind generation by June 30, 2027 under Section 83C. Thus, ensuring the development of the entire 1,600 MW contemplated will be vital to meeting the GWSA mandates.

Section 83C was modeled after the language that became Section 83D. Section 83D, in turn, was modeled after the previous procurements under Sections 83 and 83A, with the exception that the cost of transmission necessary to deliver the generation to load was *required* to be included in the bid.¹ The potential hydroelectric generation resources to be procured under Section 83D are located in geographically diverse areas. Moreover, the transmission paths for these resources would traverse service territories of incumbents, who could have an advantage over competitors because they have site control over existing rights of way.

The commercial development of the offshore wind energy areas designated by the Bureau of Ocean Energy Management (“BOEM”) presents an opportunity to optimize the solicitation by coordinating the bids with a competitive transmission solicitation to minimize the total cost of developing the wind areas. Moreover, in contrast to the Section 83D RFP, there are no incumbents holding significant right of way advantages. There is an opportunity for lower cost

¹ The previous Section 83A provided only that “to the extent” that the transmission costs were included in a bid, the contracting parties would be authorized to seek cost recovery through a Federal Energy Regulatory Commission (“FERC”) jurisdictional rate. Thus, the Department never required Class I eligible generation developers to include transmission in their bids.

competitive transmission bids to serve all of the transmission projects at least cost in the long run, because unlike the hydroelectric generation projects, the offshore wind energy projects are all within the same geographic area and there is no existing transmission backbone to limit where new transmission may be located optimally to minimize energy production costs. If the long-term development of transmission is not coordinated, the Commonwealth runs the risk of minimizing the transmission cost only for the first offshore project, and raising the costs for any subsequent project, which would *preclude* any future procurement under Section 83C. This is because Section 83C(b) provides that “the [Department] shall not approve a long-term contract that results from a subsequent solicitation and procurement period if the levelized price per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized price per megawatt hour plus transmission costs that resulted from the previous procurement.”

The proposed RFP requires developers of Offshore Wind Energy Generation to submit bids for two categories of proposals: (1) a “Project Specific Generator Lead Line Proposal” and (2) an “Expandable Transmission Proposal.” Section 2.2.1.3.1, prescribes a “Project Generator Lead Line Proposal” in which the developer must submit at least one bid that includes “delivery facilities comprising generator lead line(s) and all associated facilities” required to deliver that project’s generation to an interconnection with the existing Pool Transmission Facilities (“PTF”), either through an “all-in price schedule” that includes the cost of “such delivery facilities via a power purchase agreement, or separate from the generation through a FERC-accepted OATT, Rate Schedule, or Tariff and Service Agreement. Since this is described as a “Project Generator Lead Line,” Anbaric assumes that it is meant to serve a single generator. Further, the size of that generator lead line is presumed to be equivalent to the “Eligible Proposal Size” prescribed in Section 2.2.1.2 of “no less than 200 MW and no greater than 800 MW.”

The second bid category is prescribed under Section 2.2.1.3.2 as an “Expandable Transmission Proposal” where the generation developer is required to submit at least one bid that includes “a proposal for nondiscriminatory access to Offshore Delivery Facilities that are part of an expandable transmission network” to accommodate interconnection of 1,600 MW of Offshore Wind Energy Generation. This size is far beyond the “Eligible Proposal Size” between 200 MW and 800 MW prescribed in Section 2.2.1.2. In essence, a generation developer is being required to propose the transmission network that will exceed the Eligible Proposal Size of its own project. Further, the RFP’s nondiscriminatory access requirements would prohibit the generation developer from obtaining any preference for transmission of its own output over the transmission facilities that it is proposing. Section 2.2.1.3.2(3). Moreover, the RFP requires the generator to propose an Open Access Transmission Tariff (“OATT”) and provide for a duty to expand the facilities if necessary to accommodate interconnection of other generators. Section 2.2.1.3.2(6).

In sum, the RFP requires the eligible bidder to submit a transmission project and to assume the tariff obligations of a transmission provider. These functions and obligations would be more effectively served by a transmission developer, rather than a generation developer. The RFP would thus better serve ratepayers by allowing transmission developers who have expertise in this area to independently submit transmission proposals in addition to those required of the generation project developers. This is particularly true when the stated intent of the Expandable Transmission Proposal category is “to support the development of the offshore wind energy market by providing current and *future* Offshore Wind Generation developers with expandable, nondiscriminatory, open-access facilities for the efficient delivery of their power” Section 2.2.1.3.2 (emphasis added). Section 2.2.1.3.2 provides that the Expandable Transmission Proposal could be designed and constructed “in partnership with a third-party developer,” but it

does not specify how that proposal by a third-party developer is to be selected or considered. The best way to ensure that the development of an Expandable Transmission Proposal intended to “support the development of the offshore energy market,” which assumes open competition among suppliers, is to allow independent transmission developer with no affiliation or generator interest to propose transmission solutions. That proposal should be selected through a competitive solicitation.

Although Section 83C does not *require* Department approval of a separate transmission contract to support the procured generation, it also does not prohibit the EDCs from conducting a competitive transmission solicitation to be coordinated with the offshore wind generation solicitation. A competitive solicitation for an Expandable Transmission Proposal independent of an Offshore Wind Energy Generation bid can be developed in a manner consistent with Section 83C, as discussed below. Moreover, a competitive solicitation for transmission is now imperative to fulfill the Section 83C RFP mandate for EDCs to include meaningful proposals for Offshore Delivery Facilities.

II. LEGAL CONSIDERATIONS

A. There Has Been No Finding That Transmission-Only Bids Are Prohibited By Section 83D or 83C

It is important to note that the Department has never found that a transmission-only bid is prohibited by, or inconsistent with, Section 83C or 83D. The Department found:

Section 83D includes no *requirement* that the electric distribution companies include a transmission-only bid category. *See* Section 83D. Because the electric distribution companies developed the RFP’s four eligible bid categories *consistent* with the requirements of Section 83D, the Department *declines to require the electric distribution companies to incorporate transmission-only projects as an eligible category in this RFP.*

Order, D.P.U. 17-32 at 30 (2016) (emphasis added).² The ruling merely reflects the Department’s deferential treatment of the EDCs’ proposals in reviewing the RFP filings, as well as its limited scope of review. In every prior case in which the Department has reviewed proposed solicitations, the Department has stated that it is “statutorily limited to a review of the timetable and method for soliciting long-term contracts” *Id.* at 18.

The Department has stated that its review of the proposed RFP at this stage is deferential, because “parties have the opportunity to raise all 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 contained in the resulting PPA(s) *in the context of the adjudication before the Department of individual long-term contracts for renewable energy.*” *Id.* at 19 (emphasis added). However, considering substantive arguments about competitive transmission options by parties³ deferred until that late stage, when offshore wind energy bids have already been selected with bundled transmission, would be too late. If lower cost competitive transmission development is available, the only option would be to reject the selected contracts and start over, which would be inefficient and could be avoided by requiring competitive bidding for the transmission requirements of the offshore wind projects at the outset.

² The commenting parties supporting a transmission-only bid in D.P.U. 17-32 did not provide a substantial statutory analysis to demonstrate how a transmission-only bid is authorized by the Act, but relied only on the Department’s general policy against limiting the scope of a solicitation in order to maximize the opportunity for competitive bids. *See, e.g.* Comments of GridAmerica Holdings, Inc. and Citizens Energy Corp. The rejection of their proposal by the Department does not reflect the validity of the analysis that these Comments propose.

³ If the Department is deferring substantive review of the issue of lower cost competitive transmission options, the Department would also have to consider competitive transmission developers to be substantially and specifically affected by the EDCs’ filing of the contracts.

B. The RFP Should Be Structured to Include a Competitive Solicitation for the Transmission Component of all Generation Bids

Section 83C(a) directs all EDCs to “jointly and competitively solicit proposals for offshore wind energy generation.” The Department’s regulations require:

Proposals for Long-term Contracts shall include *associated transmission costs*; provided that, to the extent that transmission costs are included in a bid, the Department may authorize or require the contracting parties to seek recovery of such transmission costs of the project through federal transmission rates, consistent with policies and tariffs of the Federal Energy Regulatory Commission, to the extent the Department finds such recovery is in the public interest.

220 C.M.R. § 23.05(5) (emphasis added). This regulation carries over almost verbatim the statutory language in Section 83C(d)(4). Note that the regulation and the statute only require a proposal to include the “associated transmission costs.” That is, the requirement could be satisfied by showing a reasonable estimate of the costs of transmission necessary to ensure deliverability of the offshore wind generation. The Act does not require the transmission project itself to be included or bundled with the generation bid. The proviso states only that *if* a transmission project’s costs are included in a bid, the Department may authorize cost recovery through a Federal Energy Regulatory Commission (“FERC”) jurisdictional rate. Because the provision for cost recovery is written as a proviso, which must be read as a narrow exception to a general rule in accordance with the rules of statutory construction,⁴ the statute generally contemplates that a proposal could be made that includes “associated transmission costs” *without* including a specific transmission project.

The most likely arrangement for a bundled transmission and generation bid would be for the transmission developer to enter into a FERC-jurisdictional facilities agreement with the

⁴ “[W]here a provision, general in its language and objects, is followed by a proviso, . . . the proviso is to be strictly construed, as taking no case out of the provision that does not fairly fall within the terms of the proviso, the latter being understood as carving out of the provision only specified exception, within the words as well as within the reason of the former.” *Lexington Edu. Assoc. v. Town of Lexington*, 15 Mass. App. Ct. 749, 753, *rev. den.*, 389 Mass. 1104 (1983) (citing *Op. of the Justices*, 254 Mass. 617, 620 (1926)).

EDC's transmission affiliate to pay for the developer's costs. The transmission affiliate, which is not subject to the Department's jurisdiction, would then allocate the facilities agreement costs to the EDC through its transmission rates. The transmission project's revenues from the facilities agreement (paid by the EDC transmission affiliate) would be subtracted from the cost of the "all in" Department-approved generation bid, leaving only the net cost of the offshore wind generation itself to be passed through distribution rates.

Although the Act is silent as to cost recovery for a project that is not bundled with generation, the same framework would apply, but without a need to offset the generation bid costs, because the generation contract would include only the offshore wind generation costs. The independent transmission developer's costs would be handled through a transmission service agreement with the EDC transmission affiliate, which would pass through those costs to the EDC in transmission rates.

If the transmission project is bundled with a generation proposal, the Department may only "authorize or require" the contracting parties "seek recovery" through a FERC rate. In reality, the Department's legislatively granted authorization to "seek recovery" through FERC transmission is unnecessary, because the Department does not have jurisdiction to deny recovery of a valid FERC filed rate. Only FERC may approve the rate. Although unbundled transmission and generation contracts would be independent of each other, the Department could still maintain control of the transaction by making approval of the offshore wind generation contracts conditional upon the generators interconnecting with the selected independent transmission project's facilities at the approved delivery points.

Thus, consistent with Section 83C, the construction of the "Offshore Delivery Facilities" as part of an Expandable Transmission Proposal contemplated in Section 2.2.1.3.2 of the

proposed RFP can be unbundled from the Offshore Wind Energy Generation bidder and should be put out for a competitive bid. The solicitation would in essence be a two-part solicitation. The first part would be a competitive solicitation for transmission projects to establish the “associated transmission costs” of various Offshore Wind Energy Generation projects. The solicitation should request bids for Offshore Delivery Facilities to be constructed between the on-shore interconnection with the existing PTF and various delivery points offshore. The delivery points should be designed to minimize the total cost of transmission development necessary to enable the development of the entire 1,600 MW Offshore Wind Energy Generation contemplated. The EDCs could select the transmission project(s) that meet the long term cost minimization/wind development maximization goals of the Act.

The second part would require bidders for Offshore Wind Energy Generation to submit bids based on the established “associated transmission costs,” using the selected Offshore Delivery Facilities project(s). In the context of an Expandable Transmission solution, the “associated transmission cost” of an Offshore Wind Energy Generation project should be evaluated based on the proportion of that project’s expected utilization of the new transmission, because future solicitations will result in projects that will also use the shared facilities. A bundled bid in the form contemplated by Section 2.2.1.3.1 of the proposed RFP could still be an option, but standalone costs of that alternative would have to be compared with the proportional share of the cost of the unbundled proposals.

III. POLICY GROUNDS FOR COMPETITIVE TRANSMISSION BIDS

The policy decision by the New England states to restructure the electric industry to separate distribution, transmission, and generation functions was predicated on the fact that the role of independent power producers in the markets was increasing and that competition to

develop generation supply would ultimately yield benefits to consumers. Although the legislative actions to direct the market to procure clean energy, in some respects, represents a market intervention, the competitive solicitation requirement affirmed the principle that competition generally benefits consumers. The Legislature certainly did not intent to re-integrate transmission and generation.

Moreover, both the Attorney General and the Department have consistently supported competitive transmission development as a means to control and minimize costs. The Department, along with the Connecticut Public Utilities Regulatory Authority and the Rhode Island Public Utilities Commission, have stated in regards to ISO New England Inc.'s Order No. 1000 compliance filing:

The underlying premise of Order No. 1000 is that increased competition will result in more innovative solutions and ultimately lower cost solutions to regional transmission system needs. Anticompetitive provisions, such as the [Right of First Refusal], stifle innovation as well as competition, and impede new entry that into the market for regional transmission solutions.⁵

Similarly, the Attorney General stated:

The lack of competition in the planning, selection, building, and ownership of such new facilities and upgrades most probably affects the New England market as well, in the sense that anticompetitive behavior results in higher project costs, higher transmission costs, and ultimately, higher rates to ratepayers.⁶

In response to these comments, FERC found that “[t]his lack of competition harms customers by discouraging new entrants from submitting proposals that may be a more efficient or cost-

⁵ *ISO New England Inc., et al.*, Notice of Intervention and Protest of the Southern New England States at 30, FERC Docket Nos. ER13-193-000/ER13-196-000 (filed Dec. 10, 2012), *available at* <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13129462>

⁶ *ISO New England Inc., et al.*, Massachusetts Attorney General's Motion to Intervene, Partial Protest, and Comment at 12, FERC Docket Nos. ER13-193-000/ER13-196-000, *available at* <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13129429>

effective solution to a region’s needs.”⁷ Although this finding was in the context of regional transmission planning to support public policy projects, the principle that competition should be required for transmission development is just as applicable to any solicitation under Section 83C.

IV. PROPOSED FRAMEWORK FOR A COMPETITIVE SOLICITATION OF THE NECESSARY TRANSMISSION

Anbaric proposes modifications to the RFP that will permit any transmission developer to submit competitive bids to develop Offshore Delivery Facilities that will enable the development of the full amount of Offshore Wind Generation contemplated by the Act at least cost in the long run. Anbaric proposes enabling a “Third-Party Developer” to submit bids alone to develop Offshore Delivery Facilities from any appropriate point of interconnection with PTF facilities onshore to offshore collection points. For purposes of the proposed language, Anbaric assumes that the distance from the collection point(s) to the onshore substation is fifty miles, but this distance or the locations of the offshore collection points can be determined by the EDCs, if necessary, in a manner that minimizes the total distance of new transmission needed to support the development of the entire BOEM-managed wind lease area. Similarly, the distance of the generator collection cables to the high side of the generator transformer is assumed to be up to thirty miles, but this distance can also be modified according to the location of the designated collection point.

⁷ *ISO New England Inc., et al.*, Order on Compliance Filings, 143 FERC ¶ 61,150 at P 187 (2013), available at <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13262159>

Thus, Anbaric proposes the following edits to the proposed RFP:

- Under the Definitions section

add a new definition:

“Third-Party Developer” means the developer of an “Offshore Delivery Facility” that may submit an Expandable Transmission Proposal consistent with Section 2.2.1.3.2. with or without an Offshore Wind Developer.

modify

“Offshore Delivery Facilities” means transmission or interconnection facilities constructed by an Offshore Wind Developer or Third-Party Developer to transport Energy from Offshore Wind Energy Generation facilities to existing onshore ISO-NE Pool Transmission Facilities (“PTF”), and which are proposed in a separate bid component from the Offshore Wind Energy Generation component of the bid. Offshore Delivery Facilities include those facilities proposed under section 2.2.1.3.1 (2) (Project Specific Generator Lead Line Proposal with cost recovery under a FERC rate schedule) and section 2.2.1.3.2 (Expandable Transmission Facilities) of this RFP.

- Modify Section 2.2.1.1 (Eligible Bidder) as follows:

An eligible bidder is the developer of Offshore Wind Energy Generation, or is in possession of the development rights to Offshore Wind Energy Generation, or is a Third-Party Developer.

- Add to the end of Section 2.2.1.3 (Eligible Bid Categories):

An eligible bidder proposing to develop Offshore Delivery Facilities may submit an Expandable Transmission Bid consistent with Section 2.2.1.3.2 and shall submit pricing conforming to Section 2.2.1.4.ii

- Modify Section 2.2.1.3.2 to read as follows:

In addition to Project Specific Generator Lead Line Proposal bid component, as described in Subsection 2.2.1.3.1, above, each proposal to sell Offshore Wind Energy Generation and/or associated RECs pursuant to a Long-Term Contract must also include a proposal for nondiscriminatory access to Offshore Delivery Facilities that are part of an expandable transmission network, to be designed and constructed by the Offshore Wind Energy Generation bidder or Third-Party Developer, either alone, in combination with other bidders, or in partnership with a ~~third-party developer~~ Third-Party Developer, to deliver Offshore Wind Energy Generation to the corresponding onshore ISO-NE PTF system facilities (“Expandable Transmission Proposal”).

- Add the following subsection (7) to Section 2.2.1.3.2:

(7) Transmission lines needed to transmit the offshore energy should be assumed to be 50 miles long.

- Modify Section 2.2.1.4.ii as follows:

Pricing for Offshore Delivery Facilities components of proposals, ~~as part of a bid,~~ must conform to the following pricing requirements:

- Modify Section 2.2.1.4.ii.a as follows:

a. The cost of generator-related facilities, such as low-voltage collector cables up to the high side of the generator transformers up to an assumed 30 miles, must be recovered under the PPA rather than any FERC-jurisdictional OATT, tariff, or rate schedule.

- Modify Section 2.2.1.4.ii.c, by inserting a new subsection (c):

c. The price of transmission lines that are part of the Offshore Delivery Facilities should be shown separately as dollars per mile.

d. Fixed prices are encouraged for Offshore Delivery Facilities components and pricing. Cost of service is allowed for Offshore Delivery Facilities pricing proposals; however, all such proposals must include significant cost containment features (examples of such features include, fixed price components, cost overrun restrictions, or other cost bandwidth provisions). Bids that limit ratepayer risk to a greater degree will be viewed more favorably.

V. CONCLUSION

Anbaric appreciates the opportunity to comment on the EDCs' proposed RFP and urges the Department require the RFP to include provisions to enable the competitive transmission development industry to participate fully in the Section 83C solicitation. A competitive solicitation for the transmission requirements of the eligible Offshore Wind Generation will minimize those transmission costs and facilitate the procurement of the full 1,600 MW of Offshore Wind Generation mandated by the Act at least cost to customers in the long run.

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