



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-45

May 17, 2019

Joint Petition of Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, NSTAR Electric Company d/b/a Eversource Energy, and the Department of Energy Resources 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.

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I. INTRODUCTION AND PROCEDURAL HISTORY

On March 27, 2019, 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”), NSTAR Electric Company d/b/a Eversource Energy (“Eversource”) (collectively, “Companies”), and the Department of Energy Resources (“DOER”) (together, “Petitioners”), filed a petition with the Department of Public Utilities (“Department”) for approval of a proposed timetable and method for the second solicitation and execution of long-term contracts for offshore wind energy generation resources pursuant to Section 83C of the Green Communities Act, St. 2008, c. 169¹ (“Section 83C”).² The Department docketed this matter as D.P.U. 19-45.

On March 29, 2019, the Department requested comments from interested persons on the proposed timetable and method of solicitation. D.P.U. 19-45, Notice of Filing and Request for Comments (March 29, 2019). On April 11, 2019, the following entities submitted initial comments: (1) the Attorney General of the Commonwealth of Massachusetts (“Attorney General”); (2) Bay State Wind LLC (“Bay State Wind”); (3) the Conservation

¹ Section 83C was added to the Green Communities Act by an Act Relative to Promote Energy Diversity, St. 2016, c. 188, § 12.

² Pursuant to Section 83C(b) and 220 CMR 23.04, the Companies and DOER shall jointly propose a timetable and method for the solicitation and execution of long-term contracts, subject to review and approval by the Department. Although the Petition was filed by the Companies, on March 28, 2019, DOER submitted a letter to the Department confirming that the Petition is a joint filing from DOER and the Companies (March 28, 2019 Letter from DOER to the Department (“DOER Letter”) at 1).

Law Foundation (“CLF”); (4) Equinor Wind US LLC (“Equinor Wind”); (5) FirstLight Power Resources (“FirstLight”); (6) Mayflower Wind Energy LLC (“Mayflower”); (7) the National Wildlife Federation, Environmental League of Massachusetts, Sierra Club, Massachusetts Audubon, Inc., Union of Concerned Scientists, 350 Massachusetts for a Better Future, Clean Water Action, BlueGreen Alliance, Association to Preserve Cape Cod, Acadia Center, and Massachusetts Climate Action Network (together, “Organizations”); (8) PowerOptions, Inc. (“PowerOptions”); (9) RENEW Northeast, Inc. (“RENEW”); (10) Vineyard Wind, LLC (“Vineyard Wind”); and (11) 42 public sector, business, and civic leaders in Southeastern Massachusetts (collectively, “Southeastern Mass”). On April 18, 2019, and April 19, 2019, the following entities submitted reply comments: (1) DOER; (2) Bay State Wind; (3) Vineyard Wind; (4) National Grid; and (5) Eversource and Unitil.³ On April 30, 2019, DOER filed supplemental reply comments.⁴

On April 1, 2019, pursuant to Section 83C(f), the Independent Evaluator submitted its report analyzing the timetable and method of solicitation to the Department (“Independent

³ Eversource and Unitil submitted joint reply comments.

⁴ On May 13, 2019, the Department approved DOER’s Motion to file supplemental reply comments.

Evaluator Report”).⁵ The Petitioners responded to 17 information requests issued by the Department.⁶

II. SUMMARY OF PROPOSED TIMETABLE AND SOLICITATION METHOD

A. Introduction

Pursuant to Section 83C, the Companies must conduct one or more competitive solicitations for offshore wind energy generation⁷ and, provided that reasonable proposals have been received, they must enter into cost-effective long-term contracts for offshore wind energy generation equal to approximately 1,600 megawatts (“MW”) of nameplate capacity by June 30, 2027. See also 220 CMR 23.04. The Companies, in coordination with DOER, shall consult with the Attorney General regarding the choice of solicitation methods. Section 83C(b); 220 CMR 23.04.

⁵ Pursuant to Section 83C(f) and 220 CMR 23.04(6), DOER and the Attorney General shall jointly select an Independent Evaluator that shall, among other things, issue a report to the Department analyzing the timetable and method of solicitation. DOER and the Attorney General selected Peregrine Energy Group, Inc. as the Independent Evaluator for this Section 83C solicitation (Independent Evaluator Report at 1).

⁶ On its own motion, the Department enters into the evidentiary record the Petitioners’ responses to Information Requests DPU 1-1 through DPU 1-14, DPU 2-1 through DPU 2-3, and the Independent Evaluator Report. 220 CMR 1.10(3).

⁷ “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.

The Petitioners maintain that, consistent with Section 83C, they have jointly developed the proposed timetable and method for the solicitation and execution of the long-term contracts for offshore wind energy generation (Petition at 1). In addition, the Petitioners state that they consulted with the Attorney General and the Independent Evaluator to develop a request for proposals (“RFP”) that encompasses the proposed timetable and method of solicitation (Petition at 2).

The Petitioners state that the fundamental purpose of the solicitation is to satisfy the policy directives incorporated in Section 83C and to assist the Commonwealth in meeting the goals of the Global Warming Solution Act, St. 2008, c. 298 (“GWSA”) (Petition at 2). The Petitioners further state that, consistent with Section 83C, the RFP is designed so that the proposals selected for contract negotiations will facilitate the financing of offshore wind energy generation resources in the Commonwealth and be cost-effective to ratepayers over the terms of the contracts (Petition at 2).

This is the second solicitation pursuant to Section 83C and the Petitioners acknowledge that, with the Department’s approval of contracts for 800 MW of offshore wind energy generation as a result of the first solicitation, the Companies have a remaining obligation to procure an additional 800 MW of offshore wind energy generation pursuant to Section 83C (Petition at 1-2, citing Long-Term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C, D.P.U. 18-76 through D.P.U. 18-78 (2019)). The Petitioners maintain that, consistent with Section 83C, the second solicitation will occur within 24 months of the previous solicitation (Petition at 2).

Through this second Section 83C solicitation, the Petitioners state that they seek to procure at least 400 MW of offshore wind energy generation, but will allow proposals from 200 MW up to approximately 800 MW if a larger-scaled proposal is both superior to other proposals and likely to produce significantly more economic net benefits to ratepayers based on the evaluation criteria contained in the RFP (Petition at 3; Attachment A at § 2.2.1.2). The Petitioners state that the precise amount of offshore wind energy generation that the Companies will procure through this solicitation will depend upon an evaluation of the bids submitted and ensuing contract negotiations (Petition at 3).

The Petitioners acknowledge that, pursuant to Section 83C(b), any long-term contracts resulting from this solicitation must include a nominal levelized price per megawatt-hour (“MWh”) that is less than the levelized price per MWh resulting from the first solicitation (Petition at 3). More specifically, the Petitioners state that the nominal levelized price of any proposal under this solicitation must be less than \$84.23 per MWh (Petition, Attachment A at § 2.2.1.4).⁸

Finally, although the proposed solicitation method is substantially similar to the method approved by the Department for use in the first Section 83C solicitation, the Petitioners propose certain changes to the RFP to incorporate experience gained from the first solicitation and to increase flexibility in response to the price cap. Specifically, DOER

⁸ The Petitioners maintain that a nominal levelized price of \$84.23 per MWh is equivalent to the levelized price in the contracts resulting from the first Section 83C solicitation, in 2017 real dollars, of \$64.97 per MWh (Petition, Attachment A at § 2.2.1.4 n.17).

identifies the following changes in the proposed solicitation method as compared to the first Section 83C solicitation: (1) changes to bid and pricing requirements, including the removal of an expandable transmission network (“ETN”) bid requirement and the addition of the open access generator lead line bid requirement; (2) removal of a requirement that if a change in law renders offshore wind energy generation attributes ineligible for the renewable portfolio standard (“RPS”), the long term contract pricing would be the energy-only rate; (3) the inclusion of additional details regarding the economic development evaluation criteria for proposals; (4) the inclusion of additional details about how energy storage will be evaluated; and (5) revisions to Eversource’s and National Grid’s standards of conduct (DOER Letter at 2).⁹ As addressed by commenters, these changes are discussed in greater detail in Section IV.E, below.

B. Proposed Solicitation Method

1. Introduction

A team, consisting of representatives from the Companies and DOER (“Evaluation Team”), will coordinate to issue a joint solicitation, including the RFP and associated forms (Petition at 4). The Evaluation Team, with the assistance of a consultant, will receive and

⁹ In addition, the Independent Evaluator identified the following changes in this solicitation compared to the first Section 83C solicitation: (1) the opportunity for a bidder that cannot economically submit a 400 MW bid because of the price cap to seek a waiver allowing that bidder to submit a different sized bid; (2) the opportunity for a bidder that cannot economically submit a bid with a commitment agreement to seek a waiver to submit its bid without a commitment agreement; and (3) increases in bid fees and required development period security fees (Independent Evaluator Report at 15-17).

evaluate all proposals (Petition at 4-5, Attachment A at § 1.3). Based on the bid evaluation process described below, the Evaluation Team will consider the evaluation results and project rankings to determine projects to be considered for selection (Petition at 4, Attachment A at § 1.4). The Companies will negotiate and execute any final contracts but DOER may monitor the contract negotiations (Petition at 5, Attachment A at § 1.4).

At the conclusion of the solicitation process, the Companies will submit any resulting contracts to the Department for approval (Petition at 5, Attachment A at § 2.7). At this time, pursuant to Section 83C(f), the Independent 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 objective manner (Petition at 3).

Because they have affiliates that may bid in response to the RFP, the Petitioners state that Eversource and National Grid have each executed a Standard of Conduct document¹⁰ (Petition at 4, Attachment A at Apps. F-1, F-2). The Petitioners state that the Standard of Conduct prohibits any discussion of the RFP between Eversource 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 4).

¹⁰ The Petitioners state Unitil has not executed a Standard of Conduct because it does not have an affiliate that will be bidding in response to the RFP (Petition at 4 n.5).

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 requirements¹¹ (“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, reliable offshore wind energy generation with limited risk (“Stage Three”) (Petition at 4, Attachment A at § 2.1). The Evaluation Team will consider the evaluation results and project rankings to determine projects for selection (Petition at 4, Attachment A at § 1.4).

The RFP provides for two eligible bid categories (1) a proposal with a project-specific generator lead line; and (2) a proposal with a project-specific generator lead line with a commitment agreement (Petition, Attachment A at § 2.2.1.3). Additionally, the RFP contains eligibility requirements regarding (1) pricing requirements/allowable forms of pricing, including that the nominal levelized price of any proposal must be less than \$84.23 per MWh; (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 PPAs and bid fees (Petition, Attachment A at § 2.2.1).

¹¹ 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 (Petition, Attachment A at § 2.2.1.1).

In Stage One, the Evaluation Team will evaluate proposals meeting eligibility requirements to determine whether they also comply with threshold requirements (Petition, Attachment A at § 2.2.2).¹² According to the Petitioners, the threshold requirement 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 RFP requirements, or (6) fail to satisfy minimum standards for bidder experience and ability to finance the proposed project (Petition, Attachment A 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 ratepayers (Petition, Attachment A at § 2.3). The Evaluation Team will score proposals on a 100-point scale,

¹² The threshold requirements are the following: (1) site control and related agreements; (2) technical and logistical viability, ability to finance the proposed project; (3) experience; (4) providing enhanced electricity reliability within the Commonwealth; (5) contribution to reducing winter electricity price spikes; (6) avoid line loss and mitigating transmission costs to the extent possible and ensuring that transmission cost overruns, if any, are not borne by ratepayers; (7) adequately demonstrate project viability in a commercially reasonable timeframe; (8) contribution to employment; economic development benefits; (9) utilizing an appropriate tracking system to account and enable for GWSA goals; (10) environmental and related impacts; (11) security requirements; (12) unreasonable balance sheet impacts; (13) facilitate financing of offshore wind energy generation (Petition, Attachment A at § 2.2.2).

with 75 points possible for quantitative factors and 25 points possible for qualitative factors (Petition, Attachment A at § 2.3).

During the Stage Two quantitative analysis, the Evaluation Team will evaluate proposals on their direct and indirect economic and environmental costs and benefits (Petition, Attachment A at § 2.3.1). 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 RPS Class I eligible renewable energy certificates (“RECs”) under a contract to (a) the avoided cost 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 RECs are to be sold; and (3) the direct benefits of any applicable energy storage system (Petition, Attachment A at § 2.3.1.1).

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 locational marginal price paid by ratepayers in the Commonwealth and/or impact on production costs; (2) for proposals greater than 400 MW, the opportunity costs and benefits of procuring greater than 400 MW in this solicitation as compared to the anticipated costs and benefits of procuring the installed capacity through a future solicitation; (3) additional impacts, if any, from the proposal on the Commonwealth’s greenhouse gas

emissions rates and overall ability to meet GWSA requirements as evaluated using a proxy value for their contribution to GWSA requirements, as determined by the Evaluation Team; and (4) indirect impacts, if any, and to the extent the Evaluation Team determines such impacts are reliably quantifiable, for retail ratepayers on the capacity or ancillary services market prices with the proposed project in service (Petition, Attachment A at § 2.3.1.2).

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, including the following: (1) economic benefits to the Commonwealth; (2) demonstrated direct benefits to low-income ratepayers; (3) whether a bidder agrees to execute a commitment agreement (described above); (4) siting, permitting, project schedule, and financing plan; (5) energy storage system benefits; (6) reliability benefits; (7) benefits, costs, and contract risk; and (8) environmental impacts from project siting (Petition, Attachment A at § 2.3.2).

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) possible portfolio effects; (2) the overall impact of proposals on the Commonwealth's policy goals, including GWSA goals; (3) any risks associated with project viability; (4) expected offshore wind prices, industry costs, and the anticipated cost impact of future technology; (5) ratepayer bill impacts; (6) any benefits, costs, or risks to customers not fully captured in the Stage Two evaluation; and (7) any other considerations, as appropriate,

to ensure selection of proposal(s) that provide the greatest impact and value consistent with the objectives of Section 83C (Petition, Attachment A 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, allow potential bidders the opportunity to submit written questions regarding the RFP, and post responses to any questions on a dedicated website (Petition at 5, Attachment A at § 3.2). The table below sets forth the proposed timetable for the solicitation process (Petition at 5, Attachment A at § 3.1).

Event	Anticipated Date	Elapsed Time
Issue RFP	May 17, 2019	Day 0
Bidders Conference	May 30, 2019	Day 13
Deadline for Submission of Questions	June 6, 2019	Day 20
Due Date for Confidential Proposal Submissions	August 9, 2019	Day 84
Due Date for Public Proposal Submissions	August 16, 2019	Day 91
Selection of Projects for Negotiation	November 8, 2019	Day 175
Negotiate and Execute Contracts	December 13, 2019	Day 210
Submit Contracts for Department Approval	January 10, 2020	Day 238

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, such report to include recommendations, if any, for improving the process. Consistent with this requirement, the Independent Evaluator analyzed the proposed timetable and method for the second solicitation of offshore wind energy generation pursuant to Section 83C and submitted its report to the Department (Independent Evaluator Report at 2).

According to the Independent Evaluator, the Evaluation Team, in consultation with the Attorney General, focused on the following issues when developing the proposed timetable and solicitation method: (1) how to build on and improve the RFP based on lessons learned from the first Section 83C solicitation; (2) how to define the price cap required by Section 83C(b) and how to assure that the terms and conditions of the second RFP will be fair to prospective bidders in light of this price cap, while incorporating improvements from the first Section 83C solicitation; and (3) how to structure the solicitation and timetable such that it would (a) provide the Evaluation Team sufficient time to develop the RFP and evaluate bids and (b) give bidders sufficient time to develop responsive proposals for projects that would have a reasonable opportunity to qualify for the business energy investment tax credit (“ITC”), qualification for which expires at the end of 2019 (Independent Evaluator Report at 2-3).

The Independent Evaluator states that much of its focus was to ensure that the structure of the RFP does not impose greater burdens on bidders as compared to those from the first Section 83C RFP and resulting contracts that set the price cap for this solicitation (Independent Evaluator Report at 3). The Independent Evaluator contends that this is particularly important because the price in the Department-approved contracts from the first Section 83C solicitation is very competitive relative to what is known about other offshore wind contract pricing in the region, the phase out of the ITC, and the limited number of prospective bidders for the upcoming solicitation (Independent Evaluator Report at 3).

Having analyzed the proposed timetable and method of solicitation, the Independent Evaluator concludes that, with the exception of National Grid's proposed use of a "regulatory out" clause in its form power purchase agreement ("PPA") (discussed below), it satisfies the statutory standard for an open, fair and transparent solicitation that does not unduly favor affiliates (Independent Evaluator Report at 3, 30).

B. National Grid "Regulatory Out" Clause

1. Introduction

The Independent Evaluator identified the possibility that National Grid would seek to include a "regulatory out" clause in its form PPA to be circulated to bidders with the RFP¹³ (Independent Evaluator Report at 20). As described further below, the Independent

¹³ In response to discovery, National Grid confirmed that it intends to add a "regulatory out" clause to its form PPA (Exh. DPU 1-1). Conversely, Eversource and Unitil confirmed that they will not include "regulatory out" clauses in their form PPAs (Exh. DPU 1-4; April 1, 2019 Letter from Eversource to the Department).

Evaluator asserts that inclusion of such “regulatory out” language in the form PPA would have harmful effects on the solicitation process (Independent Evaluator Report at 3, 20). To prevent any such harm, the Independent Evaluator recommends that the Department direct National Grid not to include a “regulatory out” clause in either its form PPA or in any executed PPAs submitted to the Department following the conclusion of this solicitation (Independent Evaluator Report at 3, 25).

By way of background, the Independent Evaluator states that on February 4, 2019, National Grid circulated a summary of provisions it would like to add to its form PPA, including a “regulatory out” clause providing that “upon a disallowance of recovery of the costs of the PPA in rates, [National Grid] may suspend or terminate the PPA” (Independent Evaluator Report at 20). The Independent Evaluator states that it raised its concerns regarding the use of a “regulatory out” clause to National Grid on two separate occasions but, nonetheless, National Grid expressed a clear intention to include such a clause in its form PPA (Independent Evaluator Report at 20).

The Independent Evaluator raises several concerns about National Grid’s proposed use of a “regulatory out” clause. First, the Independent Evaluator states that use of a “regulatory out” clause places the full risk of regulatory disallowance entirely on project developers (Independent Evaluator Report at 22). The Independent Evaluator states that this shifting of risk can create financing issues, particularly with regard to project lenders who will rely on the revenue stream from the PPAs to support project financing (Independent Evaluator Report at 22). In this regard, the Independent Evaluator notes that the foundational purpose of

Section 83C is to facilitate the financing of offshore wind energy generation resources in Massachusetts and contends that use of a “regulatory out” clause could frustrate this purpose by creating obstacles to cost-effective financing (Independent Evaluator Report at 22).

Next, the Independent Evaluator maintains that, because of the Section 83C-mandated price cap, it would be unfair to allow National Grid to use a “regulatory out” clause in this solicitation where one was not used in the solicitation of bids in the first Section 83C solicitation or in the resulting contracts (Independent Evaluator Report at 23). On this basis, the Independent Evaluator contends that use of a “regulatory out” in this solicitation could discourage bidders, which is of particular concern given the relatively limited number of potential bidders (Independent Evaluator Report at 23).

The Independent Evaluator also states that use of a “regulatory out” clause could discourage developers from making the expenditures necessary to qualify for the ITC based on bid selection as opposed to a signed contract (Independent Evaluator Report at 23). More specifically, the Independent Evaluator contends that if a developer intends to propose exceptions to the “regulatory out” clause as part of contract negotiations, it would not know whether National Grid would be willing to accept those exceptions at the time of bid selection (Independent Evaluator Report at 23). Given the time pending phase out of the ITC, the Independent Evaluator states that use of a “regulatory out” clause in the form PPA could discourage bidder participation (Independent Evaluator Report at 23).

The Independent Evaluator asserts that use of a “regulatory out” clause is “extremely unusual” in long-term contract solicitations, especially those designed to facilitate the

financing of renewable energy projects (Independent Evaluator Report at 21). In particular, The Independent Evaluator maintains that, over the past 15 to 20 years, it has not seen “regulatory out” clauses used for competitive solicitations in any of the states and Canadian provinces in which it has professional experience (Independent Evaluator Report at 21). Further, the Independent Evaluator cites Delaware and Maryland as examples of jurisdictions where public service commissions have rejected the use of “regulatory out” clauses in long-term contracts because they could harm the financing of projects, discourage bidders, and increase project financing costs (Independent Evaluator Report at 21, citing Maryland PSC Order No. 85501, Case No. 9214, at 2-4, 6 (2013); Delaware PSC Order No. 7066, Case No. 06-241, at 34-35 (2006)).

In addition, the Independent Evaluator states that “regulatory out” clauses have not been used in any of the Massachusetts long-term contract solicitations conducted pursuant to Sections 83, 83A, 83C, or 83D of the Green Communities Act, St. 2008, c. 169 (Independent Evaluator Report at 21). Although it acknowledges that there were certain company-specific differences in the form PPAs used in those prior solicitations, the Independent Evaluator asserts that these company-specific differences were not material (Independent Evaluator Report at 24). The Independent Evaluator maintains that the PPAs used in those prior Massachusetts solicitations did not contain provisions that were substantially at odds with industry practice and which might cause bidders to increase their bid prices, or might deter them from bidding (Independent Evaluator Report at 24).

With regard to National Grid's argument that a "regulatory out" clause is necessary to protect the company from the risk that an unforeseeable future regulatory or legislative act would impact cost recovery, the Independent Evaluator asserts that, in Massachusetts, this risk is remote due to the strong legal, policy, and regulatory environment (Independent Evaluator Report at 22). Further, the Independent Evaluator states that, prior to incurring any liabilities under the PPAs, National Grid will obtain Department approval of the PPAs, which includes approval for cost recovery (Independent Evaluator Report at 21).

Further, the Independent Evaluator is not persuaded that National Grid's inclusion of a "regulatory out" clause in its PPAs in a Rhode Island offshore wind procurement justifies its use in the instant solicitation (Independent Evaluator Report at 24). In this regard, the Independent Evaluator asserts that the "regulatory out" language in the Rhode Island solicitation was not part of the bid solicitation and was first introduced by National Grid at the contract negotiation stage (Independent Evaluator Report at 24). The Independent Evaluator states that there is no way to know what, if any, any tradeoffs were made to accommodate the "regulatory out" language during the contract negotiation stage (Independent Evaluator Report at 24). The Independent Evaluator also maintains that there are fundamental differences between the regulatory environments in Rhode Island and Massachusetts as well as unknowable information concerning approaches to financing in Rhode Island that render a direct comparison inappropriate (Independent Evaluator Report at 24). Importantly, the Independent Evaluator notes that the price for the Rhode Island

solicitation is substantially higher than the price cap that must be applied in the second Massachusetts Section 83C solicitation (Independent Evaluator Report at 24).

Acknowledging that the Department did not consider the Companies' form PPAs during previous timetable and method of solicitation proceedings, the Independent Evaluator asserts that National Grid's proposed use of a "regulatory out" clause is an exceptional situation that must be addressed by the Department in this proceeding due to the critical impact it could have on the fairness and outcome of the solicitation process (Independent Evaluator Report at 25). Consequently, the Independent Evaluator requests that the Department direct National Grid not to use a "regulatory out" in the form PPAs in this solicitation and not to negotiate the inclusion of a "regulatory out" in the PPAs to be executed pursuant to this RFP (Independent Evaluator Report at 25).

2. National Grid Response

National Grid argues that the Department has generally avoided "predetermining or limiting the consideration of proposed contracts or evaluation models" (National Grid Reply Comments at 6, citing 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)). Further, National Grid contends that the Department does not require that the Companies make form PPAs available for review and comment during timetable and method of solicitation proceedings because bidders may propose revisions to form PPAs when submitting bids and parties may raise relevant substantive issues regarding the resulting PPAs during the subsequent contract review proceedings (National Grid Reply Comments at 6).

Therefore, National Grid argues that the Department should defer addressing the merits of any termination clause, including a “regulatory out,” until the Department reviews the executed PPAs (National Grid Reply Comments at 6).

National Grid argues that it intends to pursue the inclusion of a “regulatory out” in order to protect itself, its shareholders, and its ratepayers against the risk of a future disallowance of costs incurred under a PPA (National Grid Reply Comments at 7). National Grid contends that the scale of the contracts that could result from this solicitation, combined with the company’s existing long-term contract commitments, render it vulnerable to an unfavorable legislative or regulatory change (National Grid Reply Comments at 7). In particular, National Grid argues that requiring it to bear the risk of a disallowance of cost recovery could cause a credit degradation that would increase the company’s borrowing costs (National Grid Reply Comments at 7). Asserting that it will affect all aspects of its Massachusetts operations, National Grid argues that any increase in borrowing costs would cost ratepayers more than any increase in bid costs as a result of the use of a “regulatory out” clause (National Grid Reply Comments at 7).

National Grid argues that it has historically negotiated terms to protect itself against adverse changes of law in its long-term contracts for renewable energy generation (National Grid Reply Comments at 8). If a change in law occurs, National Grid argues that these cited provisions in those contracts allow it to pursue amendments to the PPAs to avoid or mitigate those risks, and the contract counterparty is obligated to execute the amendments if they do not impact the contract price (National Grid Reply Comments at 8). National Grid argues

that it also has negotiated terms to provide each party the right to suspend performance of the agreement without liability as a result of a future change in law or an adverse determination by a court or regulatory entity (National Grid Reply Comments at 9). National Grid argues that its use of a “regulatory out” clause in its form PPA in the instant solicitation is an appropriate continuation of these efforts, and the Department should not preclude National Grid from negotiating appropriate provisions to protect it from potential contractual risks (National Grid Reply Comments at 9).

3. Summary of Additional Comments

Several commenters support the Independent Evaluator’s request for National Grid to remove the “regulatory out” language from its form PPA (Bay State Wind Comments at 6; CLF Comments at 3-4; Organizations Comments at 7-8; PowerOptions Comments at 9; Vineyard Wind Comments at 12-13). Bay State Wind, CLF, and the Organizations argue that a “regulatory out” clause would pose challenges to submitting bids under the price cap (Bay State Wind Comments at 6; CLF Comments at 4; Organizations Comments at 7). The Organizations maintain that a “regulatory out” clause is likely to increase developers’ lending costs that, in turn, will increase cost to ratepayers in the form of higher bid prices (Organizations Comments at 7-8).

DOER argues that, consistent with previous practice, bidders will have an opportunity to review and mark up form PPAs when they submit their bids (DOER Reply Comments at 11). DOER maintains that any bidder selected through the evaluation process will have the opportunity to negotiate PPA terms, including a “regulatory out,” during the contract

negotiation phase (DOER Reply Comments at 11-12). Similarly, Eversource and Unitil maintain that the Department should defer addressing the merits of a “regulatory out” until contracts are filed with the Department (Eversource and Unitil Reply Comments at 7-8).

4. Analysis and Findings

Pursuant to Section 83C(f), the Independent Evaluator jointly selected by DOER and the Attorney General must issue a report to the Department analyzing the timetable and method of solicitation in order 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).

While Eversource and Unitil do not intend to have a “regulatory out” provision in their form PPAs, National Grid has included a “regulatory out” in its form PPA (Exhs. DPU 1-1; DPU 1-4; April 1, 2019 Letter from Eversource to the Department). In its statutorily mandated oversight role in the instant matter, the Independent Evaluator has identified National Grid’s proposed use of a “regulatory out” clause in its form PPA as a provision that, in its opinion, “would create substantial uncertainty and put a cloud over the solicitation process” (Independent Evaluator Report at 3, 20-25, 30-31). The Independent Evaluator recommends that the Department direct National Grid (1) not to use “regulatory out” provisions in the form PPAs in this solicitation and (2) not to negotiate the inclusion of such provisions in the PPAs to be executed pursuant to this RFP (Independent Evaluator Report at 25, 31).

The Companies and DOER request that the Department defer addressing the merits of National Grid's use of "regulatory out" provision until the review of any PPAs to be executed pursuant to this solicitation (DOER Reply Comments at 11-12; Eversource and Unitil Reply Comments at 7-8; National Grid Reply Comments at 6). The Independent Evaluator, however, characterizes National Grid's proposal as an "exceptional situation" that needs to be addressed in the instant proceeding due to the "likely critical impacts on the solicitation process" (Independent Evaluator Report at 25).

As the Companies and DOER correctly note, in previous timetable and method of solicitation reviews, the Department has avoided predetermining issues related to contracts or evaluation models, finding that these issues are better addressed in contract review proceedings. D.P.U. 17-103, at 15-16; Timetable and Method for Solicitation of Long-Term Contracts for Clean Energy Generation, D.P.U. 17-32, at 18-19 (2017); 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). Nonetheless, the Department has required modifications to proposed timetables and methods of solicitation where they concerned factors that could impact the timing and level of benefits to ratepayers from the PPAs. D.P.U. 17-103, at 24-26 (directing the Companies and DOER to shorten the bid evaluation period to provide bidders more time to qualify for the 2018 ITC); Timetable and Method for Solicitation of Long-Term Contracts for Renewable Energy, D.P.U. 13-57, at 18-20 (2013) (directing the Companies and DOER to shorten the bid review period to provide greater certainty for a winning bidder to qualify for the 2013 ITC or production tax credit). Due to

the magnitude of the concerns raised by the Independent Evaluator and their significant potential to negatively impact the solicitation process, the Department is persuaded that it is appropriate to address National Grid's proposed use of a "regulatory out" provision in the instant proceeding.

Use of a "regulatory out" clause in a long-term contract solicitation is a matter of first impression for the Department. Such clauses have never been used in long-term renewable energy contract solicitation in Massachusetts. Further, in the Independent Evaluator's experience, "regulatory out" clauses are "extremely unusual in competitive bidding processes for long-term PPAs in recent years, especially those designed to facilitate the financing of renewable energy projects" (Independent Evaluator Report at 21).

National Grid argues that, given the scale of the potential contracts from this solicitation combined with its existing long-term contract commitments, a "regulatory out" clause is essential to protect the company, its shareholders, and its ratepayers from the risk of a future disallowance of PPA costs (National Grid Reply Comments at 7). Absent such protection, National Grid argues that it could suffer a credit degradation, which would increase its borrowing costs to the detriment of ratepayers (National Grid Reply Comments at 7). National Grid maintains that it has historically negotiated contract terms to protect it against risks from changes in law, and its use of a "regulatory out" clause here is an appropriate continuation of these efforts (National Grid Reply Comments at 8-9).

As National Grid acknowledges, the risk of an unforeseeable future regulatory or legislative act that would impact cost recovery is remote (Exh. DPU 1-2, at 2). Further, as

the Independent Evaluator correctly notes, this risk is remote due to the clear language in Section 83C and the strong legal and regulatory environment in Massachusetts supporting contract cost recovery (Independent Evaluator Report at 22). The Department is not persuaded that a “regulatory out” clause is necessary to protect National Grid from this risk.

National Grid’s arguments regarding the necessity of a “regulatory out” clause are undercut by Eversource’s and Unitil’s tacit acknowledgment that it is not needed in the instant solicitation, despite facing very similar contract and change of law risks (see Exh. DPU 1-4; April 1, 2019 Letter from Eversource to the Department). Moreover, National Grid did not seek to include a “regulatory out” clause in the PPAs resulting from the first Section 83C solicitation or the solicitation conducted pursuant to Section 83D (See Independent Evaluator Report at 24-25).¹⁴

In addition, the Department is not persuaded that, absent a “regulatory out” clause, National Grid will experience higher borrowing costs (see National Grid Reply Comments at 7). Section 83C already contains provisions that operate to insulate a company from a credit downgrade that would increase borrowing costs to the detriment of ratepayers. In particular, Section 83C(d) provides for an annual remuneration of up to 2.75 percent of the annual payments under the contract “to compensate the company for accepting the financial obligation of the long-term contract.” In addition, pursuant to Section 83C(c), a company

¹⁴ The form PPAs used in first Section 83C and Section 83D solicitations are available at: <https://macleanenergy.com/83c/83c-documents/> and <https://macleanenergy.com/83d/83d-documents/>, respectively. On both sites, the form PPAs are referred to as “draft PPAs”).

may decline to pursue a proposal if it would place an “unreasonable burden” on the company’s balance sheet.

Because a “regulatory out” clause places the full risk of regulatory disallowance on project developers, this would likely make financing more difficult and more expensive, particularly where lenders rely on the revenue stream from the PPAs to support project financing (Independent Evaluator Report at 22). The Department finds that such an outcome would be inconsistent with the fundamental purpose of Section 83C, which is to facilitate the financing of offshore wind energy generation resources in Massachusetts.

In addition, allowing National Grid to use a “regulatory out” clause could cause bidders to increase their bid prices or deter them from bidding (Independent Evaluator Report at 23-24). Because of the price-cap and the pending expiration of the ITC, use of a “regulatory out” clause in the instant case could threaten the viability of the solicitation. Such an outcome would raise issues regarding the fairness and competitiveness of the solicitation. Further, because this is a joint solicitation, National Grid’s use of a “regulatory out” clause has the potential to increase costs (in the form of higher bid prices) for the ratepayers of all three Companies.

For the reasons discussed above, the Department finds it necessary and appropriate to adopt the recommendations of the Independent Evaluator regarding the “regulatory out.” Accordingly, the Department directs National Grid not to include a “regulatory out” provision in the form PPA in this solicitation. Further, National Grid, Eversource, and

Unitil shall not include a “regulatory out” provision in the PPAs to be executed pursuant to this RFP.

This is an exceptional circumstance, and the Department’s findings here do not represent a broadening of the scope of our review of the timetable and method of solicitation of long-term contracts. In particular, consistent with past practice, the Department will not require the Companies to make form PPAs available for comment during timetable and method of solicitation review proceedings. See D.P.U. 17-103, at 58; D.P.U. 17-32, at 42; Timetable and Method for Solicitation of Long-Term Contracts for Renewable Energy, D.P.U. 15-84, at 56 (2015). Nonetheless, the Department relies on the Independent Evaluator, in its statutory oversight role, to bring issues to our attention that have the potential to significantly impact the solicitation process. Therefore, each company shall make its form PPA available to the Independent Evaluator for its review under Section 83C(f) and also make its form PPA available to the other companies. Finally, 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 different¹⁵ from the other companies’ form PPAs, that company shall notify the Evaluation Team and the Independent Evaluator of these terms. This notification will provide the Evaluation Team

¹⁵ The Department recognizes that it is appropriate to accord the Companies a certain level of flexibility to negotiate reasonable contract terms that may vary between them. However, given the joint solicitation process, we expect the Companies will make reasonable efforts to avoid material differences in the form PPAs, and we expect that material differences will be rare.

and the Independent Evaluator with an opportunity to weigh those changes' potential to adversely affect the solicitation process.

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 second 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. D.P.U. 17-103, at 15-16; D.P.U. 17-32, at 18-19; D.P.U. 15-84, at 22; D.P.U. 09-77, at 22, citing D.P.U. 08-88-A at 10. 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 the following topics: (1) the solicitation timetable; (2) the calculation and application of the price cap; (3) bid evaluation protocols; (4) environmental evaluation; (5) affiliate relationships and standards of conduct; (5) minimum bid fees and contract security; (6) the required commitment agreement requirement; (7) RECs; (8) issues implicating the ISO-New England Inc. ("ISO-NE")

forward capacity market; (9) third-party interconnection studies; (10) size of resources eligible to bid; (11) the disclosure of remuneration proposals; and (12) accelerated commercial operation deadlines for bidders.

B. Solicitation Timetable

1. Introduction

Pursuant to the proposed timetable, the Companies and DOER intend to issue the RFP by May 17, 2019 (Petition, Attachment A at § 3.1). Confidential bid submissions are due by August 9, 2019 (or 84 days after RFP issuance) (Petition, Attachment A at § 3.1). The Evaluation Team will select projects for negotiation by November 8, 2019 (or 175 days after RFP issuance) and the Companies will negotiate and execute contracts by December 13, 2019 (or 210 days after RFP issuance). Finally, the Companies will submit contracts to the Department for review and approval by January 10, 2020 (or 238 days after RFP issuance) (Petition, Attachment A at § 3.1).

2. Summary of Comments

Commenters generally agree with the proposed timetable and recommend that the Department approve this schedule so that bidders have a reasonable opportunity to take advantage of the ITC, which expires at the end of the year (CLF Comments at 6-7; Organizations Comments at 6-7; Vineyard Wind Comments at 13). RENEW argues, however, that the period between confidential bid submission and the selection of projects for negotiation (“bid evaluation period”) should be shortened from 90 days to 60 days, in order to ensure that ratepayers can benefit from project developers’ access to the ITC (RENEW

Comments at 8). Conversely, the Companies and DOER argue that it would be unreasonable to shorten the bid evaluation period from 90 days to 60 days (Eversource and Unitil Reply Comments at 18-19; National Grid Reply Comments at 35; DOER Reply Comments at 2). The Companies contend that a 90-day bid evaluation period is required to complete a thorough evaluation of the bids and note that the proposed evaluation period is significantly shorter than the 154-day bid evaluation period ultimately required to complete the first Section 83C solicitation (Eversource and Unitil Reply Comments at 18-19; National Grid Reply Comments at 35, citing D.P.U. 17-103, Notice of Extended Selection Date (April 23, 2018)).

3. Analysis and Findings

DOER and the Companies have proposed to employ a solicitation timetable that is considerably shorter than the timetable used in the first Section 83C solicitation (Petition at 5, Attachment A at § 3.1; D.P.U. 17-103, at 26). This shorter timetable leverages the experience gained from the previous Section 83C solicitation, and it is designed to allow bidders a reasonable opportunity to qualify for the ITC, which expires at the end of the year (see Independent Evaluator Report at 9-10; DOER Letter at 1-2).

Consistent with the recommendations of the Companies and DOER, the Department finds that a 90-day period will allow the Evaluation Team sufficient time to properly evaluate bids (see Eversource and Unitil Reply Comments at 18-19; National Grid Reply Comments at 35). A reduction of the bid evaluation period to 60-days, as recommended by RENEW,

could impede the ability of the Evaluation Team to complete the detailed analysis necessary as part of the bid evaluation process.

After review, the Department finds that the proposed timetable adequately balances the time required for thorough development and evaluation of proposals with the end-of-year deadlines for projects to qualify for the ITC and the related cost savings to ratepayers (Petition at 5, Attachment A at § 3.1). Accordingly, the Department approves the proposed timetable for the instant solicitation.

C. Price Cap

1. Introduction

Section 83C(b) provides that the Department may not approve a PPA resulting from a subsequent solicitation if the levelized price per MWh, plus associated transmission costs, is greater than or equal to the levelized price per MWh plus transmission costs that resulted from the previous procurement. To satisfy this requirement, the RFP requires that the nominal levelized price of any bid must be less than \$84.23 per MWh (Petition, Attachment A at § 2.2.1.4(i)(a)).

Several commenters claim that application of the price cap raises fairness issues and that a \$84.23 per MWh price cap may limit the potential success of the second Section 83C solicitation (Bay State Wind Comments at 2; Equinor Comments at 2; Mayflower Wind Comments at 3; Vineyard Wind Comments at 2-4). In addition, commenters request clarification of several issues regarding the calculation and application of the price cap (Bay State Wind Comments at 1-2, 6; Equinor Comments at 1-2; Mayflower Wind Comments

at 3; RENEW Comments at 7; Vineyard Wind Comments at 2-4). Finally, certain commenters seek clarification of how DOER and the Companies will account for any future amendment to Section 83C that may eliminate the price cap (Bay State Wind Comments at 1-2, 6; Equinor Comments at 1-2; Mayflower Wind Comments at 3; Vineyard Wind Comments at 2-4).

2. Summary of Comments

Bay State Wind, Equinor, Mayflower Wind, and Vineyard Wind argue that application of the Section 83C price cap may limit the potential for a successful second Section 83C solicitation. In particular, these commenters maintain that application of the price cap (1) creates an arbitrary restriction that fails to take into account differences between the first and second Section 83C procurements (e.g., access to the ITC, proximity of lease areas to shore, water depth within lease areas, grid interconnections) and (2) possibly undermines the competitiveness of the RFP because the price cap is based on a bid that incorporated the now-expired 2017 through 2018 ITC¹⁶ (Bay State Wind Comments at 2; Equinor Comments at 2; Mayflower Wind Comments at 3; Vineyard Wind Comments at 2-4). Bay State Wind argues that it is inappropriate to hold bidders in the second Section 83C solicitation to a price cap based on the first Section 83C solicitation, where the obligations and related risks of the solicitations may be different (Bay State Wind Comments

¹⁶ Bay State Wind maintains that the contract price in the first Section 83C solicitation reflects an ITC of 24 percent for 2017 and 18 percent for 2018. Bay State Wind further maintains that the ITC for 2019, if available, is only twelve percent (Bay State Wind Comments at 2).

at 1-2). Equinor maintains that the Department should take steps to ensure that the application of the price cap does not hamper the solicitation process (Equinor Comments at 2). Finally, FirstLight asserts that application of the price cap will likely preclude any bids pairing significant energy storage (FirstLight Comments at 3-4).

Equinor, Mayflower Wind, and Vineyard Wind request that the Department direct DOER and the Companies to (1) explain how they derived the price cap, (2) explain why the price cap is expressed as a nominal levelized price per MWh, and (3) release the Certification, Project and Pricing Data form (“CPPD”)¹⁷ for review and comment before the RFP is finalized (Equinor Comments at 2; Mayflower Wind Comments at 3; Vineyard Wind Comments at 3-4). In addition, Bay State Wind and RENEW request that the Companies and DOER clarify whether the price cap applies to an energy-only bid, a REC-only option or a bid that includes both energy and RECs (Bay State Wind Comments at 6; RENEW Comments at 7). Finally, Vineyard Wind and Mayflower Wind maintain that the RFP should include language that would automatically eliminate the price cap in the event legislation eliminating the price restriction is passed before final bids have been submitted (Vineyard Wind at 4; Mayflower Wind at 3).

DOER and the Companies argue that the RFP is fully consistent with Section 83C and, in particular, that the language of Section 83C(b) does not allow for adjustment in the price cap calculation to account for changes in the ITC or other factors (DOER Reply

¹⁷ The CPPD will be used to compare bid prices in the instant solicitation with the price cap (Petition, Attachment A at § 2.2.1.4 n.18).

Comments at 10-11; Eversource and Unitil Reply Comments at 7-9; National Grid Reply Comments at 10-11). In response to discovery, the Companies made available via the solicitation's website¹⁸ information showing the method that was used to calculate the price cap as well as a template that will be used to calculate the levelized nominal price of each proposal, consistent with the form that will be included in the final CPPD (Eversource and Unitil Reply Comments at 7-8; National Grid Reply Comments at 11-12). The Companies and DOER contend that any further questions about the price cap may be addressed at the bidders' conference or through responses to written questions, as specified in the RFP (DOER Reply Comments at 5; Eversource and Unitil Reply Comments at 8-9; National Grid Reply Comments at 10-11).

DOER argues that changes to the RFP are not required to account for any future legislative change that would eliminate the price cap, because the RFP already contains language that permits adjustment to any requirement, term or condition at any time up to the final award (DOER Reply Comments at 11, citing Petition, Attachment A at § 3.6). The Companies assert that any amendment to Section 83C(b) that involves the elimination of the price cap will be addressed prior to or during the solicitation process (Eversource and Unitil Reply Comments at 9; National Grid Reply Comments at 11). The Companies maintain, however, that any change in law that amends or removes the price cap after bids are received

¹⁸ The Companies maintain a website dedicated to the second Section 83C solicitation on which they make available pertinent information, including form PPAs, stakeholder comments, and public versions of bids. The website is available at: <https://macleanenergy.com/83c-ii/>.

will represent a fundamental change in the threshold requirements of the solicitation (Exh. DPU 2-1). In that case, the Companies maintain that bidders would require an opportunity to formulate proposals under any new pricing rules and, therefore, the Evaluation Team may need to consider whether to terminate the solicitation and reissue an amended RFP (Exh. DPU 2-1).

3. Analysis and Findings

If a staggered procurement schedule is used, Section 83C 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 [MWh], plus associated transmission costs, is greater than or equal to the levelized price per [MWh] plus transmission costs that resulted from the previous procurement.” Section 83C(b); 220 CMR 23.04(5). Certain commenters raise issues with respect to the fairness of applying this price cap to the instant solicitation given perceived differences in the obligations and related risks of the first and second Section 83C solicitation (Bay State Wind Comments at 2; Equinor Comments at 2; Mayflower Wind Comments at 3; Vineyard Wind Comments at 2-4)). However, because this is the second Section 83C solicitation for offshore wind energy generation, barring any future statutory change, the plain language of Section 83C(b) requires that any contract resulting from this solicitation must result in a levelized price per MWh that is less than the levelized price per MWh in PPAs that resulted from the first solicitation. Section 83C(b); 220 CMR 23.04(5).

As noted above, DOER and the Companies calculated the levelized nominal price of the PPAs from the previous Section 83C procurement at \$84.23 per MWh (Petition,

Attachment A at § 2.2.1.4). Commenters request clarification of several price cap-related issues, including the following: (1) how the \$84.23 per MWh price cap was calculated and why it was calculated as a nominal price; (2) how the nominal levelized price of bids in the instant solicitation will be calculated; and (3) whether the price cap also will be applied to REC-only bids (Bay State Wind Comments at 1-2, 6; Equinor Comments at 1-2; Mayflower Wind Comments at 3; RENEW Comments at 7; Vineyard Wind Comments at 2-4).

First, Section 83C(b) does not specify whether the price cap should be calculated in nominal or real dollars. The Independent Evaluator opines that use of a nominal price is reasonable as it will not change with different proposed commercial operation dates (Independent Evaluator Report at 16). Similarly, the Department finds that the decision to use a nominal price for the price cap rather than the real price is reasonable because this value will remain constant even if commercial operation dates change. In addition, we are persuaded by the Companies' assertion that a nominal price is more commonly used and understood by industry stakeholders (Exh. DPU 1-9; see also Eversource and Unitil Reply Comments at-7-8; National Grid Reply Comments at 10-11).

Next, after review, the Department finds that the DOER and the Companies appropriately calculated the price cap consistent with Section 83C(b) (Exhs. DPU 1-9; DPU 2-2). In particular, to calculate the price cap, the Companies and DOER appropriately did not adjust for inflation and also used the same load-weighted average cost of capital that was used in the first Section 83C solicitation to arrive at the nominal levelized price per MWh (Exh. DPU 2-2; see also Eversource and Unitil Reply Comments at 7-8; National Grid Reply

Comments at 10-11). The Department further finds that the Companies and DOER have provided sufficient information to clarify how the nominal levelized price of bids in the instant solicitation will be calculated (Exh. DPU 2-2).

In response to commenters' request for clarification, the Department finds that DOER's and the Companies' proposal to apply the price cap to all bid categories (including proposals for the sale of RECs only and the sale of energy and RECs) is reasonable and consistent with Section 83C (Petition, Attachment A at § 2.2.1.4, see also Independent Evaluator Report at 18; Eversource and Unitil Reply Comments at 6, 8; National Grid Reply Comments at 10, 30). The Department notes that bidders will have the opportunity to ask additional questions related to the application of the price cap during both the bidders' conference and the question and answer period specified in the RFP (see Petition, Attachment A at § 3.2).

Finally, the Department finds that no change to the RFP is required at this time to address potential future legislative amendments to Section 83C(b). As DOER notes, the RFP contains a provisions that allows the Companies, at any time up to final award, to "alter, amend, withdraw and/or cancel any requirement, term or condition of this RFP" (DOER Reply Comments at 11, citing Petition, Attachment A at § 3.6). Further, it is not possible, at this time, to determine the full effect of any potential, future change in law related to the price cap (Exh. DPU 2-1). Therefore, in the event that a change in law occurs that affects this solicitation, DOER and the Companies, with input from the Independent Evaluator, shall develop and implement an appropriate response designed to ensure that the existing

solicitation process continues in a fair, transparent, competitive, and non-discriminatory manner. The Petitioners shall, without delay after any such change in law, file a report with the Department describing such response. The Department will then review the response.

Alternately, to the extent that DOER and the Companies, with input from the Independent Evaluator, determine that it is necessary to terminate the instant solicitation and issue a revised RFP as result of such change in law, the Petitioners shall file a revised timetable and method of solicitation for Department review pursuant to Section 83C(b) (see Exh. DPU 2-1). Review by the Department will be limited to any changes to the timetable and method of solicitation required by such change in law.

D. Bid Evaluation Process

1. Introduction

Commenters request that the Petitioners make various changes to the bid evaluation process (Attorney General Comments at 4-14; Bay State Wind Comments at 4-5; CLF Comments at 7-11; Organizations Comments at 7-8; RENEW Comments at 6; Southeastern Mass Comments at 1). Comments related to the bid evaluation process fall into three categories: (1) proposed changes to the quantitative and qualitative evaluation protocols; (2) requests for disclosure of bid evaluation protocols; and (3) the evaluation of environmental impacts.

2. Changes to Bid Evaluation Protocols

a. Introduction

The Petitioners state that they intend to finalize the bid evaluation protocols before bidders submit bids (DOER Reply Comments at 6; Eversource and Unitil Reply Comments at 4; National Grid Reply Comments at 4). The Attorney General and Southeastern Mass request that the Department direct the Petitioners to make certain changes to the evaluation protocols before the RFP is finalized (Attorney General Comments at 4-14; Southeastern Mass Comments at 1).

b. Summary of Comments

The Attorney General argues that it is appropriate for the Department to consider changes to the bid evaluation process in this timetable and method of solicitation proceeding in order to act on lessons learned from the first Section 83C and Section 83D solicitations (Attorney General Comments at 3-4). In this regard, the Attorney General recommends that the Department require the following changes to the bid evaluation process: (1) develop consistent scaling across quantitative and qualitative scoring; (2) award points for firm commitments for economic development; (3) find proposals greater than 400 MW will provide significantly more net benefits than smaller proposals; (4) prioritize in Stage 3, highly ranked projects from Stage 2; and (5) make public the qualitative bid factors to ensure a fair evaluation of environmental benefits (Attorney General Comments at 4).

Similarly, Southeastern Mass recommends the Department require the Companies and DOER to change the bid evaluation process to (1) establish a specific scoring weight for

economic benefits and (2) require bidder commitments to provide long-term economic benefits to southeastern Massachusetts (Southeastern Mass Comments at 1-2). Southeastern Mass maintains that these changes are necessary to send a clear signal to offshore wind energy developers that Massachusetts seeks investment on a scale that will anchor the offshore wind industry in southeastern Massachusetts and prevent other states from winning these investments (Southeastern Mass Comments at 1-2).

Finally, FirstLight recommends that scoring process be changed to allow developers to earn additional consideration for bids paired with storage. To earn this proposed scoring incentive, FirstLight recommends that paired bids meet a minimum size to provide benefits to ratepayers (FirstLight Comments at 3).

The Petitioners argue that the Department should reject the commenters' proposed changes to the bid evaluation process (DOER Reply Comments at 5-8; Eversource and Unitil Reply Comments at 3-5; National Grid Reply Comments at 3-5). The Petitioners argue that Attorney General's recommendations in this regard are outside the established scope of the Department's review in this timeline and method of solicitation proceeding (Eversource and Unitil Reply Comments at 3-4; National Grid Reply Comments at 3-4). DOER contends that the Petitioners can consider the Attorney General's recommendations regarding scaling of the quantitative and qualitative scores when they finalize the evaluation protocols before bidders submit bids (DOER Reply Comments at 6). The Companies maintain that details concerning the appropriate method to evaluate proposed projects should be left to the reasoned

determination of the Evaluation Team (Eversource and Unitil Reply Comments at 4; National Grid Reply Comments at 4).

With respect to the Attorney General's and Southeastern Mass' recommendations regarding the evaluation of economic development benefits, DOER asserts that the Petitioners have already included additional details in the RFP requiring bidders to provide information regarding offshore wind industry development, local supply chain data, and offshore wind industry job creation, where feasible (DOER Reply Comments at 7-8). DOER does not support the Attorney General's recommendation to award qualitative economic development points only to proposals that include at least one firm commitment (DOER Reply Comments at 7). Instead, DOER maintains that the RFP provides clear direction to bidders regarding economic development benefits and allows the Evaluation Team reasonable flexibility to weight each bid's benefits in this regard (DOER Reply Comments at 8). Finally, DOER argues that the Evaluation Team intends to develop specific evaluation protocols regarding economic development prior to bid submission (DOER Reply Comments at 6).

c. Analysis and Finding

The Attorney General recommends a number of changes to the bid evaluation process to capture, what she asserts, are lessons learned from the prior Section 83C and Section 83D proceedings (Attorney General Comments at 4). The Attorney General and Southeastern Mass recommend additional changes to the evaluation process with respect to the criteria and scoring of economic development benefits (Attorney General Comments at 8-9; Southeastern Mass Comments at 1-2). FirstLight recommends changes to the bid evaluation process to

provide an incentive for bids that are paired with storage (FirstLight Comments at 3-4).

Conversely, the Petitioners maintain that each of these recommended changes is beyond the scope of the proceeding (DOER Reply Comments at 7-8; Eversource and Unitil Reply Comments at 3; National Grid Reply Comments at 4).

The Independent Evaluator has opined that the structure of the RFP, including its treatment of bid evaluation criteria and the evaluation process, is fair (Independent Evaluator Report at 20). In addition, the Department has previously found that issues concerning bid evaluation criteria are beyond the scope of a review of the timetable and method for solicitation of long-term contracts. D.P.U. 17-103, at 48-49. At the time the Department reviews the contracts resulting from this procurement, the Companies will bear the burden of demonstrating that the solicitation process was fair, transparent, competitive, and nondiscriminatory pursuant to Section 83C. D.P.U. 17-103, at 49. Any party to that contract review proceeding will have the opportunity to raise relevant substantive issues with respect to the evaluation of proposed projects. D.P.U. 17-103, at 49-50. For these reasons, the Department finds that consideration of the recommended changes to the bid evaluation process described above is beyond the scope of the instant proceeding.

Notwithstanding our finding above, DOER indicates that the Evaluation Team may consider the Attorney General's recommendation to change the scaling for the quantitative and qualitative scoring before it finalizes the evaluation protocol, and the Department encourages such consideration (see DOER Reply Comments at 6). The Department also notes that the RFP in the instant solicitation includes additional description of the evaluation

criteria for economic development benefits as compared to the first Section 83C solicitation (DOER Reply Comments at 7). At the time the Department reviews the executed contracts resulting from this solicitation, any party to those proceedings will have the opportunity to raise relevant substantive issues with respect to the evaluation of proposed projects.

D.P.U. 17-103, at 48-49. D.P.U. 17-32, at 65; D.P.U. 15-84, at 34.

3. Disclosure of Bid Evaluation Protocols

a. Introduction

As noted above, the Petitioners maintain that they expect to finalize the bid evaluation protocols after the Department completes its review of the timetable and method of solicitation but prior to opening bids submitted in response to the RFP (DOER Reply Comments at 6; Eversource and Unitil Reply Comments at 4; National Grid Reply Comments at 4; Exh. DPU 1-8). Alternately, the Attorney General, Bay State Wind, and RENEW recommend that the Department direct the Petitioners to publish the bid evaluation criteria and protocols when they issue the RFP (Attorney General Comments at 12-13; Bay State Wind Comments at 4-5; RENEW Comments at 6).

b. Summary of Comments

The Attorney General argues that the Department should require the Companies to publish the bid evaluation protocols together with the release of the RFP, although she acknowledges that the Department has not previously required such disclosure (Attorney General Comments at 12). The Attorney General contends that contemporaneous publication of the bid evaluation protocols and the RFP is necessary in this solicitation because, given the

price cap, the qualitative factors and score may be a deciding factor in selecting the winning bidder (Attorney General Comments at 12). In particular, the Attorney General maintains that bidders should have advanced notice of the relative importance of the qualitative factors to allow them to tailor their bids to focus on those factors that are most important to the Commonwealth (Attorney General Comments at 13). The Attorney General asserts that a failure to make the bid evaluation protocols more transparent may prevent bids from meeting the stated goals of the solicitation (Attorney General Comments at 13). Finally, the Attorney General argues that withholding this information contradicts the goals of Section 83C, which requires an open, fair, and transparent solicitation process (Attorney General Comments at 13).

Bay State Wind contends that the allocation of points for both the quantitative and qualitative bid evaluations should be included in the RFP to achieve greater fairness (Bay State Wind at 4-5). With respect to the quantitative scoring metrics, Bay State Wind argues that, in light of the price cap, direct contract costs and benefits should be explained in detail and bidders must receive meaningful insight into the quantitative evaluation criteria that the Evaluation Team will apply to the winning bid (Bay State Wind Comments at 4-5).

With respect to qualitative scoring, Bay State Wind claims that the reasons the Department decided not to include the qualitative scoring construct in the RFP for the first Section 83C RFP (i.e., time pressure to develop evaluation protocols, need to mitigate gaming concerns) do not apply to this solicitation (Bay State Wind Comments at 4-5, citing D.P.U. 18-76 through D.P.U. 18-78, Independent Evaluator Report at 32). Finally, Bay

State Wind and RENEW recommend that the Petitioners should disclose in the RFP how energy storage will be evaluated (Bay State Wind Comments at 5; RENEW Comments at 6).

The Petitioners maintain that they will develop a detailed evaluation protocol that explains each evaluation category, the gradation of points in each category and describes how a project could earn a superior, preferable, or minimum standard score during the contract review stage (Exh. DPU 1-8, at 2). In addition, the Petitioners maintain that the Evaluation Team will quantify all direct and indirect benefits of storage projects based upon technology and manner in which the storage solution will operate (Exhs. DPU 1-10, DPU 1-11).

However, consistent with Department precedent, the Petitioners argue that they should not be required to publish information regarding the numerical weighting of bid evaluation criteria and other evaluation protocols with the RFP (DOER Reply Comments at 7; Eversource and Unitil Reply Comments at 5-6; National Grid Reply Comments at 5, citing D.P.U. 17-32, at 62-65). Instead, the Petitioners argue that it is appropriate to disclose the evaluation protocols when they submit executed contracts to the Department for review (DOER Reply Comments at 6; Eversource and Unitil Reply Comments at 4; National Grid Reply Comments at 4; Exh. DPU 1-8).

The Companies maintain that advanced disclosure of these evaluation details may result in inappropriate manipulation of bids and prevent a robust and competitive solicitation (Eversource and Unitil Reply Comments at 5-6; National Grid Reply Comments at 5).

DOER and the Companies argue that all parties will have a full opportunity during the contract review proceedings to evaluate whether the evaluation process was fair, transparent,

reasonable, competitive, non-discriminatory and otherwise consistent with Department precedent (DOER Reply Comments at 7; Eversource and Unitil Reply Comments at 5-6; National Grid Reply Comments at 5).

c. Analysis and Finding

In previous timetable and method of solicitation review proceedings, in order to prevent the manipulation of bids, the Department has declined to require the Petitioners to disclose the numerical weighting of the evaluation criteria and publish the evaluation protocols together with the issuance of the RFP. D.P.U. 17-103, at 51-52; D.P.U. 17-32, at 62-65. Nothing in the instant solicitation, including the presence of the price cap, causes us to reach a different conclusion here. Accordingly, 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.

During the contract review proceedings, the Companies will bear the burden of demonstrating that the evaluation protocols were developed and implemented in a manner that is fair, transparent, competitive, and non-discriminatory. D.P.U. 17-103, at 51-52; D.P.U. 17-32, at 65. In this regard, the Companies will be required to provide full and complete documentation of how the Evaluation Team calculated the quantitative and qualitative scores for each proposal.¹⁹ The Companies shall include a narrative that explains

¹⁹ For example, the Companies must document how the Evaluation Team evaluated energy storage, including an identification of the relevant quantitative and qualitative

how the Evaluation Team scored each factor that comprises the qualitative score for each bid (see Exh DPU 1-8, at 2). Finally, during the contract review proceeding, the Department expects that the Petitioners will provide an updated qualitative evaluation protocol that explains each category within the qualitative score, the gradation of points in each category, and the description of how a project could earn a superior, preferable or minimum standard score (Exh. DPU 1-8, at 2).

4. Evaluation of Environmental Impacts

a. Introduction

Pursuant to the RFP, a bidder must demonstrate, where possible, that a proposed project mitigates any environmental impacts. In addition, a bidder must show, through a fisheries mitigation plan, its proposed approach to avoid, minimize, and mitigate impacts on the commercial fishing industry (Petition, Attachment A at § 2.2.2.10). Commenters offered recommendations regarding the evaluation criteria for and mitigation of environmental impacts (CLF Comments at 7-11; Organizations Comments at 7-8).

b. Summary of Comments

CLF and the Organizations recommend that the Petitioners amend the evaluation process to include a mechanism that, at the threshold evaluation stage, gives preference to proposals with strong commitments to environmental-impact mitigation (CLF Comments at 7-8; Organizations Comments at 7). In this regard, CLF and the Organizations contend

evaluation protocols, how they evaluated these factors, and a narrative explaining how they arrived at the energy storage scores for each bid.

that the RFP should require proposals to (1) identify all relevant stakeholders to mitigate any significant impacts to these stakeholders;²⁰ (2) provide a thorough environmental characterization of the project site and cable routes; (3) include precautionary measures to avoid, minimize, and mitigate the impacts of increased noise and vessel traffic on the North American right whale; (4) provide a preliminary environmental assessment of the project area, including turbine areas and transmission corridors, based on the best scientific data available, comprehensive databases, and the project proponent's own data; and (5) provide added weight in the evaluation process and strong protections for the North Atlantic right whale (CLF Comments at 8-11; Organizations Comments at 7-8). In addition, Southeastern Mass recommends that bidders be required to provide more detail on commercial fishing requirements, including commitments to address turbine adjacency and alignment, the configuration and width of transit lanes, and mitigation plans that provide for lost business opportunity and support for innovation in the fishing industry (Southeastern Mass Comments at 3, citing Petition, Attachment A at § 2.3.2.viii).

Vineyard Wind argues that the preliminary environmental assessment the RFP requires is sufficient and, therefore, it does not support amending the environmental mitigation requirements in the RFP (Vineyard Wind Reply Comments at 2-8). Instead,

²⁰ CLF and the Organizations identify stakeholders as those who are active in the area (e.g., commercial and recreational fishermen, shipping companies, recreational boaters, wildlife watchers, tribes, utilities, research institutes), those who live in adjacent communities, and any other interested parties (CLF Comments at 8; Organizations Comments at 7).

Vineyard Wind asserts that the management of fishing interests is best accomplished through existing federal and state permitting processes, as well the Companies' outreach efforts as described in a fisheries communications plan (Vineyard Wind Reply Comments at 5-6).

While Vineyard Wind agrees with CLF and the Organizations that an offshore wind project should not move forward without a thorough environmental characterization of the proposed project site and cable routes, a detailed plan to mitigate environmental impacts, and strong protections for North American right whale, it disagrees with their recommended changes the evaluation process. Vineyard Wind argues that the proposed changes (1) duplicate environmental assessments mandated by the state and federal permitting processes, (2) force design considerations early in the project development process and limit bidder flexibility to adopt cost effective mitigation measures, (3) will increase contract costs without commensurate benefit, and (4) are not required to meet the objectives of Section 83C (Vineyard Wind Reply Comments at 5-7).

The Companies argue that the Department should not approve CLF's recommendations to assign more weight to environmental criteria because they are outside the scope of the Department's review of the timetable and method for solicitation (Eversource and Unitil Reply Comments at 4-5; National Grid Reply Comments at 4-5). In this regard, the Companies argue the Department must balance the goal of ensuring nondiscriminatory treatment of all potential resource options and providing the Companies with discretion to implement a flexible bid evaluation process (Eversource and Unitil Reply Comments at 4-5; National Grid Reply Comments at 4-5).

c. Analysis and Finding

CLF, the Organizations, and Southeastern Mass recommend certain changes to the qualitative evaluation criteria to provide preference to proposals with strong commitments to stakeholder engagement, environmental impact mitigation, and support for the fishing industry (CLF Comments at 7-8; Organizations Comments at 7; Southeastern Mass Comments at 3). 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. Instead, the Department may address these issues during the contract review proceedings. Accordingly, the Department declines to adopt the commenters' proposed changes to the qualitative evaluation criteria. D.P.U. 17-103, at 49-52.

E. Standards of Conduct

1. Summary of Comments

PowerOptions recommends that the Petitioners revise the RFP to prohibit bids from entities with a financial relationship with one of the Companies (PowerOptions Comments at 4-5). Alternately, PowerOptions argues that the Department should prevent an affiliated distribution company from receiving remuneration under the contracts (PowerOptions Comments at 4-5).

To address what she views as an ambiguity in the updated Standards of Conduct, the Attorney General argues that the Department should clarify that the compliance officers for Eversource and National Grid have an affirmative duty to report any evidence or report of

suspected or potential violations, not just confirmed violations, of the Standards of Conduct to the Independent Evaluator (Attorney General Comments at 13-14). The Attorney General further argues that this affirmative duty to report suspected or potential violations should apply to any persons serving on the Evaluation Team, personnel involved in the preparation of bids on behalf of an affiliate, or as a common supervisor (Attorney General Comments at 13-14).

Bay State Wind argues that the Department should reject PowerOptions' recommendation limiting affiliate relationships as they ignore the substantial enhancements to the Standards of Conduct that have been implemented in this solicitation (Bay State Wind Reply Comments at 3-5). Similarly, the Companies argue that the Department should reject the Attorney General's recommended changes to the Standards of Conduct as they are unnecessary given the enhancements to the Standards of Conduct that already have been implemented in this solicitation, including several new reporting requirements and an obligation for all participants to certify knowledge of and a commitment to comply with the standards (Eversource and Unitil Reply Comments at 18; National Grid Reply Comments at 34). In addition, Eversource and National Grid maintain that their revised Standards of Conduct represent the product of negotiations with the Independent Evaluator to strengthen protections against improper communications or exchanges of information with affiliated bidders, while maintaining a manageable process (Eversource and Unitil Reply Comments at 16-17; National Grid Reply Comments at 34).

2. Analysis and Finding

In its report to the Department analyzing the timetable and method for this second Section 83C solicitation, the Independent Evaluator determined that the Standards of Conduct to be employed by Eversource and National Grid are stronger than those used in the previous Sections 83C and Section 83D solicitations (Independent Evaluator Report at 26-28).²¹ In addition, according to the Independent Evaluator, the Federal Energy Regulatory Commission (“FERC”) has developed a set of principles, referred to as the Edgar-Allegheny²² principles, that provide transparency guidelines for conduct of parties in situations where regulated

²¹ The Independent Evaluator identified the following updates to the Standards of Conduct: (1) eliminating the use of subject matter experts; (2) adding the role of a “common supervisor”; (3) not allowing any transfers from the Evaluation Team in the Section 83D and previous Section 83C solicitations to the Bid Team in the instant Section 83C solicitation; (4) prohibiting the transfer of confidential information from an Evaluation Team member to anyone not on the Evaluation Team or a common supervisor, and a bid team member to anyone not on the bid team or a common supervisor; (5) Evaluation Team members may not treat a bid from an affiliate in a preferential manner or discriminate in their treatment of any other bid; (6) maintaining the confidentiality of information, including confidential information from the initial Section 83D and Section 83C solicitations in the instant solicitation; (7) referring to the Standards of Conduct as standards and not guidelines; (8) requiring training for all individuals subject to the Standards of Conduct; (9) certifying individual compliance with the Standards of Conduct at the end of the solicitation process; (10) at the request of the Independent Evaluator, the designated compliance officer for the company shall report to the Independent Evaluator on compliance to the Standards of Conduct; and (10) if the compliance officer becomes aware of any Standard of Conduct violation, the compliance officer will inform the Independent Evaluator of the violation with a plan to cure or mitigate the violation to prevent reoccurrence (Independent Evaluator Report at 26-28).

²² See Boston Edison Electric Co. Re: Edgar Electric Energy Co., 55 FERC ¶ 61,382 (1991); Allegheny Electric Supply Company, LLC, 108 FERC ¶ 61,082 (2004).

utilities evaluate bids from their own affiliates²³ (Independent Evaluator Report at 11). The Independent Evaluator has determined that the amended Standards of Conduct meet the Edgar-Allegheny transparency principle for the disclosure of affiliate relationships (Independent Evaluator Report at 25-28).

In the Independent Evaluator's opinion, it was important to provide stronger Standards of Conduct protections in this RFP because, unlike most large-scale competitive procurements where a utility affiliate bidder typically has its own employees, Eversource's bid affiliate does not have its own employees and relies on employees from Eversource's energy services affiliate (Independent Evaluator Report at 28). The Independent Evaluator states that this structure creates more opportunities for the unauthorized transfer of confidential information (Independent Evaluator Report at 28).

After review, the Department finds that the revisions to the Standards of Conduct will create additional transparency with regard to the treatment of affiliate bids, thereby strengthening the competitiveness of the instant solicitation. Therefore, the Department finds

²³ According to the Edgar-Allegheny principles, transparency requires the free flow of information to all parties and no party, especially a potential affiliate bidder, should have an informational advantage in any part of the solicitation process. Further, all bidders should have equal access to data relevant to the RFP and all information should be made available to all bidders at the same time (Independent Evaluator Report at 25). When there is a competitive procurements, under the Edgar-Allegheny principles, FERC requires assurances that: (1) the process was designed and implemented without undue preference for the affiliate; (2) the analysis of the bids or responses did not favor the affiliate, particularly with respect to evaluation of non-price factors; and (3) selection was based on some reasonable combination of price and non-price factors (Independent Evaluator Report at 11).

that it is not necessary to adopt PowerOptions' recommends regarding bids from affiliated entities.²⁴

Additionally, in response to the Attorney General's request, the Department finds that the revised Standards of Conducts' affirmative duty of the compliance officers to disclose violations to the Independent Evaluator applies to all violations (Attorney General Comments at 13-14). Accordingly, we find that compliance officers are required to disclose to the Independent Evaluator all reasonably suspected violations and all confirmed violations of these standards (Attorney General Comments at 13-14). The Department finds that this clarification is appropriate to ensure that the revised Standards of Conduct provide the strong protection identified as important in this solicitation by the Independent Evaluator (see Independent Evaluator Report at 28).

F. Bid Fees and Contract Security

1. Introduction

The RFP contains a minimum non-refundable bid fee of \$500,000, which will be used to offset the cost of the evaluation of proposals and oversight by the Independent Evaluator.²⁵ (Petition, Attachment A at § 1.10). The minimum bid fee covers one price offer; bidders

²⁴ PowerOptions' recommendations regarding affiliated companies and remuneration are beyond the scope of this proceeding. Instead, the Department will consider arguments regarding remuneration and affiliates in the context of an applicable long-term contract review proceeding.

²⁵ The minimum bid fee in the first Section 83C solicitation was \$300,000. D.P.U. 17-103, Petition, Attachment A at § 1.10 (April 28, 2017).

must pay an additional \$25,000 for each additional price offer that is a variation in pricing for the same project²⁶ (Petition, Attachment A at § 1.10). Finally, if there are changes to any physical aspect of a project (e.g., changes in to project size, technology type(s), energy storage system, production/delivery profile, in-service date, or delivery location) bidders must pay an additional flat bid fee of \$50,000 (Petition, Attachment A at § 1.10).

The RFP requires contract security of \$40,000 per MW²⁷ (Petition, Attachment A at §§ 1.10, 2.2.2.11). In the event that a project is developed in phases and under separate contracts, bidders must provide additional contract security of \$37,500 per MW at the start of commercial operations of the first project phase (Petition, Attachment A at §§ 1.10, 2.2.2.11).

The Independent Evaluator reviewed the changes to the bid fees contract security between the first and second Section 83C solicitations (Independent Evaluator Report at 17). Regarding the minimum bid fee, the Independent Evaluator opined that the \$200,000 increase from the previous Section 83C solicitation does not impose an unreasonable burden on bidders because the higher fee is offset by the removal of the ETN requirement and replacement with the commitment agreement which reduces bidder effort and cost in preparing a bid (Independent Evaluator Report at 17). The Independent Evaluator described

²⁶ For all other cases, a new bid fee is required (Petition, Attachment A at § 1.10).

²⁷ Contract security in the first Section 83C solicitation was \$20,000 per MW. D.P.U. 17-103, Petition, Attachment A at § 2.2.2.11.

the change in bid fees as a “small amount in terms of the scale of costs involved in building a 400-800 MW offshore wind project” (Independent Evaluator Report at 17).

In addition, the Independent Evaluator opined that the increase in contract security between the first and second Section 83C solicitations is reasonable in consideration of the general increase in required development security in renewable energy solicitations nationwide, offset by the elimination of the threshold requirement in the first Section 83C solicitation that required bidders to assume RPS change-in-law risk, a change that reduces bidder risk in the instant solicitation relative to the first solicitation (Independent Evaluator Report at 17-18). The Independent Evaluator describes the impact of the change in contract security as “very small compared to the scale of the projects and their revenue requirements” (Independent Evaluator Report at 18).

2. Summary of Comments

Several commenters identify concerns with the increase in bid fees and contract security (Bay State Wind Comments at 6; Mayflower Wind Comments at 1-2, 4; RENEW Comments at 5-6; Vineyard Wind Comments at 5-10). Commenters argue that these fees should not be increased from the previous solicitation because of the statutory price cap (Bay State Wind Comments at 6; RENEW Comments at 5-6; Vineyard Wind Comments at 9). Mayflower Wind and Vineyard Wind assert that the minimum bid and contract security requirements in Massachusetts are higher than competitive procurements for renewable energy in other states (Mayflower Wind Comments at 2; Vineyard Wind Comments at 6, 10). Mayflower Wind argues that, given experience from the first Section 83C solicitation

and the removal of the ETN requirement, the minimum bid fees in this second Section 83C solicitation should be lower than in the first solicitation (Mayflower Wind Comments at 1-2). Mayflower Wind further asserts that the increase in contract security may create a barrier to entry for new projects (Mayflower Wind Comments at 4).

DOER contends that the minimum bid fees for the first Section 83C solicitation did not cover the costs of the Independent Evaluator or the consultants hired by DOER (DOER Reply Comments at 8). DOER maintains that the bid fees for the instant solicitation are based on the actual costs associated with the solicitation and evaluation process (DOER Reply Comments at 8). DOER argues that the bid fees are reasonable and appropriate, and they are not a barrier to competition (DOER Reply Comments at 9).

The Companies argue that the minimum bid fees are reasonable (Eversource and Unitil Reply Comments at 10; National Grid Reply Comments at 11). In particular, the Companies contend that bid fees in prior solicitations did not fully offset costs for the Independent Evaluator and DOER consultants (Eversource and Unitil Reply Comments at 10; National Grid Reply Comments at 11-12). The Companies maintain that fee proposal in the instant solicitation is consistent with cost causation principles because it will ensure that the bidders, that caused the costs, pay for the costs of the solicitation (Eversource and Unitil Reply Comments at 11; National Grid Reply Comments at 12).

The Companies argue that contract security levels in Massachusetts have not changed over time, despite inflation and increased contract risks (Eversource and Unitil Reply Comments at 11-12; National Grid Reply Comments at 12-13). The Companies argue that

the contract security level in the instant solicitation provides an appropriate, but modest, incentive for development that will be refunded to the developer in the absence of penalties (Eversource and Unitil Reply Comments at 12; National Grid Reply Comments at 13).

3. Analysis and Findings

Non-refundable bid fees are used to offset the costs related to the evaluation of proposals and oversight the Independent Evaluator. Refundable contract security is posted by a winning bidder to ensure that sufficient funds are available to cover any contract penalties. The Petitioners propose to increase bid fees and contract security in the instant solicitation to align these items more closely with actual costs and industry norms, respectively (DOER Reply Comments at 8-9; Eversource and Unitil Reply Comments at 9-10; National Grid Reply Comments at 11-13). Certain commenters argue that the increases in the bid fees and contract security requirements are not justified and are inappropriate given the required application of the statutory price cap in the instant solicitation (Bay State Wind Comments at 6; RENEW Comments at 5-6; Vineyard Wind Comments at 9).

As described above, the Independent Evaluator has reviewed the proposed changes to the bid fees contract security between the first and second Section 83C solicitations, with particular consideration of whether the changes would impose significant net burdens on prospective bidders, thereby raising fairness issues given the price cap (Independent Evaluator Report at 17). The Independent Evaluator concluded that the proposed changes in bid fees and contract security requirements were reasonable and would not impose significant net burdens on bidders (Independent Evaluator Report at 17-18).

The Department has reviewed the proposed bid fees and contract security requirements in the instant solicitation and, for the reasons cited by the Independent Evaluator, we find that these changes are reasonable. In particular, the Department finds that the increase in the minimum bid fee from the previous Section 83C solicitation (1) appropriately reflects the costs of evaluating bids, (2) does not impose an unreasonable burden on bidders because the higher fee is offset by a change in bid requirements that reduces bidder effort and cost in preparing bids as compared to the first Section 83C solicitation, and (3) is small relative the costs of an offshore wind project (Independent Evaluator Report at 17; DOER Reply Comments at 8-9). In addition, the Department finds that the increase in contract security from the previous Section 83C solicitation (1) appropriately reflects the general increase in required development security in renewable energy competitive solicitations, (2) does not impose an unreasonable burden on bidders because the higher amount is offset by the removal of a requirement that reduces bidder risk as compared to the first Section 83C solicitation; and (3) is small as compared to the scale of the projects (Independent Evaluator Report at 17-18).

G. Commitment Agreement

1. Introduction

Bidders are required to submit a commitment agreement together with any project-specific generator lead line proposal (Petition, Attachment A at § 2.2.1.3.2; App.

G).²⁸ The commitment agreement in the instant solicitation replaces the ETN requirement in the first Section 83C solicitation (Independent Evaluator Report at 10). Where a bidder is unable to submit a bid with a commitment agreement that complies with the price cap, the bidder may certify its inability to meet this requirement (Petition, Attachment A at § 2.2.1.3, App. H).

2. Summary of Comments

Several commenters recommend eliminating the required commitment agreement (Bay State Wind Comments at 4; Mayflower Wind Comments at 3; Vineyard Wind Comments at 11). Bay State Wind argues that a commitment agreement is only relevant if a bidder overbuilds transmission in anticipation of demand from future projects (Bay State Wind Comments at 2-3). Vineyard Wind maintains that once project-specific transmission facilities are built, expanding these facilities is impossible or cost prohibitive (Vineyard Wind Comments at 11-12). Instead of a commitment agreement, Mayflower Wind recommends that the Petitioners allow bidders to independently structure transmission agreements, as necessary (Mayflower Wind Comments at 3). RENEW asserts that stakeholders require

²⁸ With a commitment agreement, the bidder agrees that, if a future third-party offshore wind developer requests interconnection service on the bidder's interconnection customer interconnection facilities ("ICIF"), the bidder will negotiate in good faith and use commercially reasonable best efforts to enter into an agreement with the third-party offshore wind developer regarding interconnection to and expansion of such ICIF in order to accommodate the third-party offshore wind developer's interconnection request (Petition, Attachment A at § 2.2.1.3.2, App. G). If such efforts fail to result in a voluntary agreement, the bidder is relieved of any further obligations to accommodate the third-party developer (Petition, Attachment A at App. G).

more time to fully understand the implications of the commitment agreement (RENEW Comments at 3). Finally, certain commenters suggest that the commitment agreement could potentially conflict with Order No. 807, 150 FERC ¶ 61,211 (2015) (“FERC Order No. 807”)²⁹ (Bay State Wind Comments at 3-4; RENEW Comments at 2-4).

DOER argues that the commitment agreement is less complex than the ETN requirement it replaced from the first Section 83C solicitation (DOER Reply Comments at 9). DOER maintains that the commitment agreement should not require a bidder to waive any rights under FERC Order No. 807 (DOER Reply Comments at 10). Further, regarding the concerns raised by certain commenters, DOER asserts that bidders may certify their inability to comply with the price cap as a result of the commitment agreement (DOER Reply Comments at 10).

In response to arguments raised by the Companies, DOER argues that the commitment agreement is appropriately within the scope of the instant timetable and method of solicitation proceeding insofar as it may impact the competitiveness of the solicitation and the submission of cost-effective bids (DOER Supplemental Reply Comments at 2). Upon reviewing the commitment agreement issue, DOER submits that the Department may (1) decide to take no action and approve the solicitation method as proposed or (2) make the

²⁹ FERC Order No. 807 grants a blanket waiver from Open Access Transmission Tariff requirements to public utilities that would only be subject to those requirements because of their ownership, control or operation of ICIF. Third parties seeking to obtain access to ICIF may follow the procedures under Federal Power Act, 16 U.S.C. 824 Sections 210, 211, and 212, which allows contractual flexibility with respect to access solutions. FERC Order No. 807.

commitment agreement an optional bid proposal to ensure the method of solicitation is competitive, as required by Section 83C (DOER Supplemental Reply Comments at 3).

Eversource and Unitil argue that given the concern raised by bidders, eliminating the commitment agreement may remove a perceived barrier to least-cost bids (Eversource and Unitil Reply Comments at 13). Therefore, while they view the commitment agreement requirement as reasonable, Eversource and Unitil contend that it may be advisable for the Department to make it optional (Eversource and Unitil Reply Comments at 14).

Conversely, National Grid maintains that the Department should retain the required commitment agreement, arguing that such agreement only requires a bidder to engage in good faith negotiations, provides important benefits to customers, reduces potential obstruction in the future, and does not affect the FERC Order No. 807 five-year safe harbor rights³⁰ (National Grid Reply Comments at 14, 17, 18). Further, if the inclusion of the commitment agreement prevents a bidder from submitting a bid under the price cap, National Grid submits that the bidder is protected under the certification process described in RFP (National Grid Reply Comments at 23, citing Petition, Attachment A at §§ 2.2.1.2, 2.2.1.3).

3. Analysis and Findings

After review of the RFP and consideration of the comments received, the Department is persuaded that a required commitment agreement is a reasonable approach, where

³⁰ For the initial five-year period, a bidder, as an ICIF owner, does not have to demonstrate specific plans or milestones to use the facilities' capacity. FERC Order No. 807.

applicable, for future transmission arrangements (Petition, Attachment A at §§ 2.2.1.2, 2.2.1.3). The commitment agreement requires bidders to negotiate in good faith and use commercially reasonable best efforts to arrive at voluntary agreements with third-party developers, but it does not obligate them to enter into such agreements (Petition, Attachment A at § 2.2.1.2). Importantly, bidders that are unable to submit a commitment agreement bid that complies with the price cap may certify their inability to do so (Petition, Attachment A at § 2.2.1.2). This certification option alleviates commenters' concerns that a required commitment agreement may be a barrier to least-cost bids.

Use of a required commitment agreement should encourage a thoughtful planning process that may reduce future transmission costs and development conflicts. Accordingly, for the reasons discussed above, the Department approves the solicitation method, as proposed, including the required commitment agreement (Petition, Attachment A at §§ 2.2.1.2, 2.2.1.3).

H. Other Issues

1. Introduction

Commenters made various requests for clarification of or changes to the proposed solicitation method, including the following: (1) the treatment of RECs; (2) a required capacity supply obligation; (3) a required third-party interconnection study; (4) the minimum size of the procurement; (5) disclosure of estimated remuneration; and (6) accelerated commercial operation deadlines. The Department addresses each of these issues below.

2. Treatment of RECs

a. Summary of Comments

Bay State Wind and PowerOptions oppose National Grid's expressed intent to solicit proposals to purchase RECs for the duration of the project's life (Bay State Wind Comments at 7; PowerOptions Comments at 8). PowerOptions argues that National Grid's proposal is ambiguous, may result in a subsidy of basic service customers by competitive supply customers, and is not an efficient use of ratepayer dollars (PowerOptions Comments at 8-9).

The Companies state that the RFP provides bidders with the option of bidding to sell all RECs over the course of a project's life (Eversource and Unitil Reply Comments at 15; National Grid Reply Comments at 31, citing Petition, Attachment A at § 2.2.1.4(i)(h)). Eversource and Unitil state that, while purchasing lifetime RECs is a bid alternative consistent with the RFP, they have no intention of purchasing RECs for the life of a project (Eversource and Unitil Reply Comments at 15-16). National Grid, however, argues that there is potential value in capturing REC benefits for customers for the life of the project and intends to evaluate the potential net benefits of doing so (National Grid Reply Comments at 31).

b. Analysis and Findings

In reviewing the method for solicitation, the Department seeks to avoid limiting the consideration of proposed contracts or evaluation models. D.P.U. 17-32, at 18. Inclusion of varied bid options in a solicitation method may yield a robust range of proposals for the consideration of the Evaluation Team, potentially resulting in greater benefits to ratepayers. For these reasons, the Department will not require any revisions to Section 2.2.1.4(i)(h) of the RFP. Instead, parties may raise relevant issues regarding the purchase of lifetime RECs during a contract review proceeding.

3. Capacity Supply Obligation

a. Summary of Comments

PowerOptions argues that bidders should be required to attempt to obtain a capacity supply obligation in the forward capacity market to contribute toward GWSA greenhouse gas emissions reduction goals and deliver greater customer benefits (PowerOptions Comments at 5, 7). In response, the Companies argue that a project has a financial incentive to participate in the forward capacity market even without a contractual obligation and, therefore, the Department should reject PowerOptions' recommendation (Eversource and Unitil Reply Comments at 16; National Grid Reply Comments at 32).

b. Analysis and Findings

In D.P.U. 18-76 through D.P.U. 18-78, at 80, the Department found that there is a financial incentive for a project developer to offer capacity into the wholesale market absent an explicit contract obligation to do so. The Department further found that imposing

requirement related to obtaining a capacity supply obligation creates potential financing risks because the forward capacity market may change in unanticipated ways. D.P.U. 18-76 through D.P.U. 18-78, at 80. For these reasons, the Department will not amend solicitation method to require bidders to take steps to obtain a capacity supply obligation.

4. Third-Party Interconnection Study

a. Summary of Comments

Mayflower Wind argues that the required third-party study pursuant to the network capability interconnection standard (“NCIS”) is not necessary because it is duplicative of a ISO-NE interconnection study that will be needed to meet the requirements of Section 2.2.1.7 of the RFP (Mayflower Wind Comments at 4). The Companies disagree, and they argue that the third-party NCIS study will allow the Evaluation Team to assess the reasonableness and validity of bidders’ cost estimates and construction timeline (Eversource and Unitil Reply Comments at 16-17; National Grid Reply Comments at 32-33).

b. Analysis and Findings

The Department has found that project viability is an important element of the bid evaluation process. D.P.U. 15-84, at 50. In this regard, a project that can meet the NCIS has a higher likelihood of viability.

The Department agrees with the Petitioners’ determination that a third-party NCIS study is necessary to evaluate the reasonableness of cost estimates and construction timelines (see Eversource and Unitil Reply Comments at 16-17; National Grid Reply Comments

at 32-33). Accordingly, we decline to adopt Mayflower Wind's request to remove the required third-party NCIS study.

5. Minimum Procurement Size

a. Summary of Comments

Certain commenters make recommendations regarding the size of the procurement in this solicitation (Organizations Comments at 6; RENEW Comments at 7-8). RENEW argues that, under the plain language of Section 83C, the Department should ensure that individual bid proposals are for no less than 400 MW (RENEW Comments at 7-8). The Organizations urge the Department to require the Companies to procure at least 800 MW through this solicitation to maintain the Commonwealth's position as an offshore wind industry leader (Organizations Comments at 6). No other commenter addressed this issue.

b. Analysis and Findings

Section 83C requires the Companies to enter into long-term contracts for offshore wind energy generation equal to approximately 1,600 MW of aggregate nameplate capacity. In addition, individual solicitations may seek proposals for no less than 400 MW of aggregate nameplate capacity of offshore wind energy generation resources. Section 83C(b).

Section 83C allows for staggered solicitations with the possibility of the Companies' executing multiple PPAs, for multiple projects, over multiple solicitations that, in the aggregate, total 1,600 MW. Contrary to RENEW's assertion regarding the plain language of Section 83C(b), a reasonable interpretation of the statute would allow bids that include

proposals for multiple projects of less than 400 MW each, so long as the aggregate total capacity in a bid is no less than 400 MW.

As described in Section II.B, above, through this second Section 83C solicitation, the Petitioners intend to procure at least 400 MW of offshore wind energy generation, but will allow proposals up to approximately 800 MW if a larger-scaled proposal is both superior to other proposals and likely to produce significantly more economic net benefits to ratepayers based on the evaluation criteria contained in the RFP (Petition at 3; Attachment A at § 2.2.1.2). The Department declines to require the Companies to procure at least 800 MW through this solicitation, as recommended by the Organizations. Instead, the Department finds that it is appropriate that the precise amount of offshore wind energy generation to be procured through this solicitation should be determined based on an evaluation of the bids submitted and ensuing contract negotiations (Petition at 3).

6. Disclosure of Remuneration Costs

a. Summary of Comments

The Attorney General argues that the Companies should be required to disclose the estimated cost of remuneration in any petitions for approval of the long-term contracts resulting from this solicitation (Attorney General Comments at 14). The Attorney General contends that the Department has previously found inconsistencies in the application of remuneration in the analyses of the costs of long-term contracts (Attorney General Comments at 14, citing Three State RFP, D.P.U. 17-117 through D.P.U. 17-120, at 63 (2018)). The Attorney General maintains that incorporating this change would improve the reporting and

analyses of remuneration through a clear disclosure of the maximum total cost of remuneration (Attorney General Comments at 14). No other commenter addressed this issue.

b. Analysis and Findings

The Companies have the burden to demonstrate that their requests for remuneration are appropriate and in the public interest. D.P.U. 18-76 through D.P.U. 18-78, at 67. The Department acts upon the Companies' remuneration requests at the time that the long-term contracts are presented to the Department for review and approval. Section 83C; 220 CMR 23.07.

In D.P.U. 17-117 through D.P.U. 17-120, at 63, the Department found that remuneration is a component of a long-term contract's comprehensive cost to ratepayers. To eliminate any inconsistencies with regard to remuneration costs in the Companies' analyses of contract costs, the Department directed the Companies, in future contract review proceedings, to include remuneration costs in all analyses that relate to contract costs or cost effectiveness. D.P.U. 17-117 through D.P.U. 17-120, at 63. As our findings in D.P.U. 17-117 through D.P.U. 17-120 already encompass the Attorney General's request for disclosure of the estimated cost of remuneration in contract review filings, the Department need not make any additional findings here.

7. Accelerated Commercial Operation Date

a. Summary of Comments

The Organizations argue that the Department should require bids submitted in this solicitation to include a commercial operation date of 2024, rather than 2027 (Organizations

Comments at 6). The Organizations contend that this accelerated deadline would help maintain Massachusetts' leadership in offshore wind and clean energy development (Organizations Comments at 6).

b. Analysis and Findings

Section 83C is silent regarding commercial operation date and, instead, requires the Companies to enter into contracts for offshore wind energy generation equal to approximately 1,600 MW of aggregate nameplate capacity not later than June 30, 2027. Section 83C(b). The evaluation process includes consideration of risks and advantages of proposals that include different, accelerated commercial operation dates with a scheduled commercial operation deadline of January 1, 2027³¹ (Petition, Attachment A at §§ 2.2.2.7, 2.3.1.3, 2.3.2).

The Department finds that the solicitation process is designed to appropriately evaluate the benefits of proposals with varying commercial operation dates no later than January 1, 2027. Accordingly, the Department declines to adopt the Organizations' recommendation to require bids submitted in this solicitation to include a commercial operation date of 2024.

V. CONCLUSION

After review, the Department finds that the proposed timetable and method for the second solicitation and execution of long-term contracts for offshore wind energy generation

³¹ For example, the RFP allows proposals that include multiple phased projects, with varying commercial operation dates, totaling 800 MW (Petition, Attachment A at § 2.2.1.2).

is consistent with the requirements of Section 83C and 220 CMR § 23.00 et seq.

Accordingly, subject to the 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.

VI. ORDER

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

ORDERED: That the petition of Fitchburg Gas and Electric Light Company, d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, NSTAR Electric Company d/b/a Eversource Energy, and the Department of Energy Resources 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 is APPROVED, subject to the directives contained herein; and it is

