

February 25, 2021

Dear Commissioner Woodcock,

The Environmental League of Massachusetts (“ELM”) appreciates the opportunity to comment on the Draft Request for Proposals for Long-Term Contracts for Offshore Wind Energy Projects (the “Draft RFP”) issued by the Massachusetts Distribution

Companies (“Companies”) and Massachusetts Department of Energy Resources (“DOER”). ELM is pleased to see this important step to develop offshore wind, which will deliver considerable environmental and economic benefits to the Commonwealth. The solicitation is expected to result in a capital investment worth billions of dollars. The project will secure Massachusetts’ status among the leading states in the offshore wind industry. ELM appreciates that the Draft RFP for the largest renewable energy project in the

Commonwealth’s history refers to minority economic participation and economic justice. Promoting economic justice in this solicitation helps ensure that the enormous economic benefits of offshore wind will be shared by all Bay Staters, regardless of background. ELM urges DOER and the Companies to go further and include more detailed and rigorous language in the final RFP. Specifically, we recommend that DOER:

- (1) require bidders to submit detailed plans and information regarding economic diversity in their initial responses, stated in measurable goals and dollar amounts. Submittal of such plans should be a threshold for eligibility in Stage 1 and Stage 2;
- (2) clarify how DOER and the Companies will factor bidders’ responses regarding economic inclusion in their review of solicitations, and increase the weight given to this portion of the RFP responses; and
- (3) explain the policies and procedures that DOER will implement to (a) require ongoing reporting by bidders, and (b) enable DOER’s monitoring and enforcement of bidders’ stated commitments.

These additional measures are all consistent with the Commonwealth’s stated goals to promote economic and environmental justice. The 2016 Act to Promote Energy Diversity requires the Department of Public Utilities (“DPU”) to evaluate the effects of potential offshore wind long-term contracts on employment and economic opportunities. Chapter 188, of the Acts of 2016, § 83C(d)(xi) (Generation proposals must “create and foster employment and economic development in the commonwealth.”). DPU’s regulations mirror this legislation. 220 C.M.R. § 23.05(1)(a)8.

Similarly, Executive Order 552 requires state agencies—including EOEEA—to take environmental justice into account when making decisions. In particular, EO 552 requires state agencies to “identif[y]...economic development opportunities, environmental benefits, and

other discretionary funding programs that do, or appropriately should, consider the needs of an Environmental Justice Population in the award process.”¹

The Commonwealth’s updated 2017 Environmental Justice Policy also reiterates that “environmental justice shall be an integral consideration...in the implementation of all [Energy and Environmental Affairs] programs, including...energy efficiency and renewable energy generation,” and establishes as a priority “[f]acilitating local residents’ connection with governmental, labor union, community college or other training opportunities in environmental fields”.²

The Draft RFP is the next step in one of the most significant programs in DOER’s portfolio. To comply with its own commitments to environmental justice, the Commonwealth must seize this moment to provide equitable opportunities in the offshore wind industry.

I. Bidders Should Include Specific Diversity & Inclusion Plans in Their Initial Submittals.

ELM strongly urges DOER and the Companies to explicitly foreground racial, economic, and environmental justice in the final RFP. The current Draft RFP language, while helpful to the goals of economic diversity, suggests that respondents may be permitted to wait until after submitting bids to begin considering how their projects will provide benefits to a broad, diverse population of Massachusetts businesses and residents. This gives the impression that DOER and the Companies do not intend to significantly weight diversity and inclusion plans in their initial evaluation of proposals, and may only require bidders to provide this information later, upon request.

Instead, we urge that the final RFP include an explicit requirement that respondents provide proposals with goals expressed in relation to the total dollar amount of anticipated spending, for:

- i. the utilization of minority business enterprises as:
 - a. contractors in the design of the offshore wind energy generation and transmission resources;
 - b. contractors in the construction of the offshore wind energy generation and transmission resources; and
 - c. vendors in the provision of goods and services procured by the offshore wind developer; and
- ii. the hiring of members of socially or economically disadvantaged communities as employees in the design, construction, and operation of offshore wind generation and transmission resources.

In addition, respondents should provide data regarding the diversity of their executive leadership, management teams, joint venture partners, and investors.

Breaking down economic diversity goals in this way has several benefits:

First, respondents must think as critically and strategically about how they meet this important goal as they would any other business goal.

Second, respondents can consider the entire life cycle of offshore wind, promoting opportunities in a variety of fields and at different levels of experience and income. This is an important component of establishing a diverse and inclusive industry over the long run. Today's trainee may be the owner of a subcontracting vendor on the next project, the CEO of the respondent on the one after that, and a leader in the industry for years to come.

Third, requiring specific, measurable goals puts Massachusetts on similar footing with renewable energy procurement in other states. Other Atlantic states are moving rapidly to develop offshore wind and prioritize equity.

In New Jersey, offshore wind developers must address, among other specific criteria:³

- “incremental investments in infrastructure, supply chain, workforce development..., and the associated economic benefits for the State”;
- “the Applicant’s plan to include diversity and inclusion initiatives as part of the training programs and hiring practices”; and
- “Planned in-State spending that will support environmental justice communities by providing jobs, grants, training programs, or environmental benefit projects..., along with an explanation of the nexus between the spending and the Application.”

Maryland has adopted a similar approach to promoting minority participation in its offshore wind industry, by both statute and regulation. In the summer of 2020, the Maryland legislature revised its statute authorizing offshore wind development to codify certain rules promoting minority participation, including:

- Requiring “[t]o the extent practicable...applicants for a proposed offshore wind project [to] comply with [Maryland’s] Minority Business Enterprise Program”;
- Directing Maryland’s state MBE promotion office to develop a plan, in consultation with the Attorney General and the industry applicant that ensures that each phase of the OSW project meets minority participation goals.⁴

In addition, the Maryland Public Service Commission has issued regulations promoting participation by both minority labor and capital. Offshore wind developers seeking private investment must also “solicit and interview a reasonable number of minority investors,” Md.

Code Regs. 20.61.06.02K(3)(a), and offer a “plan demonstrating engagement of small and minority businesses.” Md. Code Regs. 20.61.06.03B(1)(a)(xiv)–(xv).

The recently adopted Virginia Clean Economy Act (“VCEA”) incorporates similar provisions to advance racial, economic, and environmental justice.⁵ The VCEA, which commits the state to procure up to 5,200 MW of OSW, includes several provisions to aid “historically economically disadvantaged communities,” which the act defines as “(i) a community in which a majority of the population are people of color or (ii) a low-income geographic area.” Va. Code Ann. § 56-576. The VCEA requires utilities that construct offshore wind facilities to submit a plan to Virginia’s utilities commission and its diversity and workforce development agencies that describes how the utility will “give priority to the hiring, apprenticeship, and training of veterans..., local workers, and workers from historically economically disadvantaged communities.” *Id.* § 56-585.1:11.D. Further, the VCEA requires that 50% of the revenue generated from any compensatory payments from utilities for failing to meet the act’s Renewable Portfolio Standard will be allocated “to job training programs in historically economically disadvantaged communities.” *Id.* § 56-585.5.D.5.

Massachusetts’ inclusion of similar provisions targeted at expanding the benefits of offshore wind would further the Commonwealth’s expressed commitment to economic justice in procurement and energy policy – and put it on par with these Mid-Atlantic States.

II. DOER Should Clarify How it will Consider Economic Diversity in Reviewing Solicitations.

Requiring specific, measurable goals from respondents is the first step in maintaining economic diversity as an important consideration in the development of offshore wind. What DOER and the Companies do with the submitted plans is equally important.

We urge you to consider Massport’s RFP for the convention center hotel in the Seaport District as a template for this offshore wind solicitation. Boston’s minority communities had largely not benefited from the extensive redevelopment of the Seaport, so Massport leadership committed to prioritizing diversity and inclusion in the solicitation process. The key to this effort was structuring the RFP so that a “comprehensive diversity and inclusion program” counted for 25% in the evaluation of the total proposal, weighted equally to three other factors. This structure encouraged bidders to propose substantial and innovative diversity and inclusion initiatives, with a knowledge of its importance to the RFP’s reviewers. Massport received several impressive and innovative responses to the RFP from development teams that included minority partners and investors.

Similar conditions in this offshore wind RFP would have meaningful effects. Offshore wind developers should be encouraged to include bold targets for workforce training and employment, and to seek capital from minority investors. At a minimum, submittal of a comprehensive plan should be a threshold submittal for Stage I of the evaluation

process so that all respondents are required to share their plans up front. In Stage 2 of the evaluation, we urge DOER to place significant weight on this factor, given the important economic and social goals it furthers. Currently, the Draft RFP suggests that *all* qualitative factors will count for 25% of the Stage 2 evaluation. As noted above, Massport's successful bid model awarded 25% weight for economic justice factors alone. Accordingly, we suggest DOER increase the weight of qualitative factors to 50% of the Stage 2 evaluation, and to assign at least half of the qualitative points to consideration of economic diversity plans, sending a strong message to respondents of the importance of this criterion.

III. DOER Should Require Regular Reporting Regarding Economic Diversity.

DOER must ensure commitments made in the midst of a competitive procurement are upheld. DOER should make clear, up front, that it will be monitoring compliance with those goals throughout the process of designing, constructing, and operating offshore wind infrastructure in response to the solicitation.

At a minimum, we recommend that the Draft RFP explain that winning respondents will be required to make quarterly reports to the DOER and DPU. Reports should include key performance indicators such as: the number of contracts and total dollar amounts contracted with and paid to minority business enterprises; the total number and value of all subcontracts awarded to a minority business; the wages paid to individual workers in those categories; and a comparison of these reports with the goals established in their bid. Where a respondent fails to meet a stated goal, DOER should have processes in place to require an explanation of reasons for that failure, and to adopt corrective actions.

To complement this requirement, DOER should begin now to draft and issue guidance describing the process by which it will (1) publicly review and post such reports, (2) require respondents to submit information to the Department regarding any failure to achieve the goals set by the respondent, (3) identify any good faith efforts that have been undertaken to achieve those goals, (4) provide a plan to bring the dollar amount contracted and spent into compliance with the goals, and (5) enable respondents to embrace new opportunities that emerge later, during the design, construction or operation phases.

The Massachusetts Gaming Commission employed a similar process in the development of Massachusetts' nascent gaming industry. Where gaming licensees were not meeting stated goals, the Gaming Commission was able to better understand potentially unforeseen hurdles to recruitment or training and to work with the licensees to address problems, instead of abandoning goals. We encourage DOER to adopt a similar approach. Like gaming, offshore wind companies are also building a new industry – and will need strong partnerships to make this industry inclusive and diverse.

To assist respondents in setting – and achieving - meaningful goals, we recommend that DOER partner with existing resources and experts in the Commonwealth. Offshore wind developers deserve the full support of the Commonwealth's Supplier Diversity Office, which should be enlisted immediately to help respondents identify potential contractors and

subcontractors. DOER should also help facilitate access to community leaders to accelerate progress on diversity and inclusion goals.

IV. Conclusion

Massachusetts stands at the threshold of an enormous opportunity to set a new bar for equity and economic inclusion in offshore wind. Other states are watching this solicitation closely – and may follow if we have the courage to lead.

Sincerely,

Elizabeth Henry and the Board and Staff of the Environmental League of Massachusetts