

February 25th 2021

Distribution Companies: Fitchburg Gas & Electric Light Company d/b/a Until; Massachusetts Electric Company d/b/a National Grid; Nantucket Electric Company d/b/a National Grid; NSTAR Electric Company d/b/a Eversource Energy and The Massachusetts Department of Energy Resources

Transmitted via email to: MARFP83C@gmail.com

Re: Long-Term Contracts for Offshore Wind Energy Projects: Draft 83C Round 3 RFP

Dear Massachusetts Department of Energy Resources and electric distribution companies operating in Massachusetts:

Thank you for the opportunity to provide stakeholder comments on the Third round draft Request for Proposals (RFP) to solicit bids for long-term energy contracts under the authority granted to DOER under Section 21(a) of Chapter 227 of the Acts of 2018, subject to the required solicitation and procurement process of said Section 83C.

The Conservancy's mission is to conserve the lands and waters on which all life depends. With the support of 32,000 members in Massachusetts and more than one million globally, the Conservancy has protected more than 120 million acres and 5,000 river miles around the world and has more than 150 marine conservation projects. Our work spans more than 70 countries and in every state in the U.S. The Conservancy has been working to conserve, protect, and restore coastal and marine habitats and species for over four decades. We use a science based and pragmatic approach to work collaboratively with natural resource users like farmers, timber harvesters and fishermen to find solutions that are good for both people and nature.

Climate change is the greatest environmental challenge facing humanity in the 21st century, and we are committed to helping reduce global greenhouse gas emissions. This goal cannot be achieved without a rapid transition to a clean energy economy. The Nature Conservancy recognizes that on the Atlantic coast of the United States, offshore wind offers a currently unmatched potential to generate clean, renewable energy nearby to the cities and communities that need it most. We also understand that to achieve our deep decarbonization goals, we will need to deploy significantly more renewable energy than we currently have. The Nature Conservancy believes that offshore wind deployment is critical for setting us on the path toward attaining decarbonization AND that ensuring proper siting, monitoring, mitigation, and environmental protections are in place that will enable projects to be developed in a sustainable manner.

Over the past decade The Nature Conservancy has engaged in state, regional and federal offshore renewable energy activities along the Atlantic coast. Our staff serve on every state-led offshore wind environmental working group along the Atlantic coast, including here in Massachusetts, where we serve on MA EEA's Offshore Wind Habitat Working Group. Around the US, our teams have supported state legislation to reduce greenhouse gas emissions which requires increasing renewable energy generation capacity. In Massachusetts, we advocated for the 2016 Act to Promote Energy Diversity and the 2021

Next Generation Road Map legislation, both of which intend to foster long-term renewable energy contracts. These long-term contracts help states meet clean energy and climate change mitigation goals, and depending on how they are crafted, can also reduce consumer costs, generate jobs, reduce fossil fuel pollution and health impacts in environmental justice communities, and ensure we are protecting our environment. These comments on the Draft 83C III solicitation are intended to improve those additional benefits.

The Nature Conservancy submitted comments on the previous draft 83C II proposal in May of 2017. One key recommendation in those comments was the development of detailed environmental criteria, which we are pleased to see was introduced in Appendix J, which is a significant improvement. The Appendix J criteria prompts the bidders to consider a wide range of environmental and fisheries impacts which ‘may’ be considered. We are particularly appreciative to see the criteria calling for a plan to avoid, minimize, or mitigate adverse impacts, as well as the language about the impacts on environmental justice communities.

While this is a big step forward from the previous RFP we suggest the following changes to Appendix J to meet the environmental standards already included in recent RFPs issued by our neighboring states. We have chosen to frequently reference the language in other recent RFPs to show that the proposed changes are becoming the accepted norm for bidders, not aspirational environmental goals.

Stakeholder engagement: Appendix J asks bidders to demonstrate a “productive relationship with environmental stakeholders”, and later “a plan for timely data sharing with relevant environmental and fisheries stakeholders”. Both of these phrases are passive and unidirectional in nature. We encourage instead using more collaborative language similar to that in Appendix E of the 2020 NYSERDA RFP “Overall approach to incorporating data and stakeholder feedback: This section should describe how the Developer will use research, data, and stakeholder feedback to update the EMP [Environmental Mitigation Plan] and support decision-making throughout the life cycle of the project (preconstruction, surveys, site design, construction, operations, and decommissioning)”.¹ Or similarly in the 2019 Connecticut RFP “includes a plan for ongoing communication with Stakeholders with a reporting schedule specific to the phases of the project, including pre-construction planning and siting, construction, operation, transition, which may include retro-fitting, adapting, or removing facilities, and decommissioning, and sub-phases as necessary;”² Both of these examples describe meaningful communication with stakeholders where information is delivered, input is collected, and a clear path for acting on the input is articulated.

With regard to the criteria that bidders demonstrate the “extent to which the project avoids, minimizes, and mitigates potential impacts of the project to cultural resources and viewsheds from the Massachusetts shoreline, including through thoughtful siting and engagement with local stakeholders,” we urge you to specifically require demonstrated productive engagement with tribal nations.

For nearly a decade the Commonwealth has periodically convened experts on both its Habitat and Fisheries Working Groups on Offshore Wind Energy. Over that time the role of similar groups in

¹ NYSERDA ORECRFP20-1 2020 RFP Appendix E, Section 1.2 available at: <https://www.nyserda.ny.gov/All-Programs/Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2020-Solicitation>

² CT DEEP RFP for Offshore Wind Facilities 08.16.19, Section 11.7.iii available at: [http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/ccf12ec6cdf19ca7852584580072434d/\\$FILE/2019.08.16_Final.OSW.RFP.pdf](http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/ccf12ec6cdf19ca7852584580072434d/$FILE/2019.08.16_Final.OSW.RFP.pdf)

neighboring states have evolved to in some instances provide specific recommendations on RFPs,³ and in other cases develop best practices documents, mitigation plans, and convene conferences.⁴ This RFP should describe specific ways to engage these working groups as part of the stakeholder process, and bidders should also commit to participating fully in collaborative venues such as the Habitat and Fisheries Working Groups.

Environmental Justice

We are pleased to see criteria in Appendix J that encourage bidders to describe plans to reduce environmental burdens and negative impacts on Environmental Justice communities, and targeted outreach with community organizations. This outreach could be strengthened by ensuring that accommodations are provided to enable more robust participation by residents through supporting and offering translation, compensation, convenient locations and flexible hours. Bidders could be further encouraged to not only reduce the negative impacts, but accentuate the positives, as described in the NJ 2020 RFP, “planned in-State spending that will support environmental justice communities by providing jobs, grants, training programs, or environmental benefit projects to address historical and cumulative impacts in economically disadvantaged communities.”⁵ Reducing fossil fuel use could also lead to “reduced energy burden, avoided health costs, added climate resiliency, avoided environmental costs.”⁶

Ocean Planning: Massachusetts has long been a recognized leader in ocean planning in the Northeast and across the nation. Appendix J should champion the value of that work by including criteria for developers similar to the 2019 CT RFP which asks bidders to “include a detailed description of how the project would be consistent with all applicable marine spatial plans including but not limited to the New York Ocean Action Plan, the Rhode Island Ocean SAMP, the Massachusetts Ocean Plan, and the Northeast Regional Ocean Plan.”⁷ The Massachusetts Ocean Plan has detailed descriptions of Special Sensitive and Unique habitats in the Commonwealth’s waters, and the NE Regional Ocean Plan has excellent recommendations on stakeholder engagement and data use in particular. Bidders should describe and reference the accepted spatial data hosted on the Northeast Ocean Data Portal.⁸

Specificity on Mitigation Hierarchy: Appendix J includes strong language about employing the mitigation hierarchy of avoid, minimize, and mitigate, but provides few environmental specifics to address. For example, the noise caused by foundation installation is one of the most significant impacts in the BOEM DEISs that have been released to date, and this noise impact is called out specifically in both the NY and CT RFPs for additional detail. NY goes as far as saying “Proposals that use of acoustically “quiet” foundation design or foundation installation technology solutions that reduce acoustic stress to sensitive marine life may receive higher Project Viability scores.”⁹ While CT requires bidders “Include a plan to employ Best Management Practices to avoid exposure of marine mammals to sound at

³ CT DEEP 2019 RFP Section 1.3.3

⁴ <https://www.nyetwg.com/e-twg-activities>

⁵ New Jersey Offshore Wind Solicitation #2, Solicitation Guidance Document, September 2020, Section 3.8 available at: <http://njoffshorewind.com/solicitation-documents/Final-Solicitation-Guidance-Document-with-attachments.pdf>

⁶ NYSERDA 2020 RFP Section 3.2.8

⁷ CT DEEP 2019 RFP Section 11.6.ii

⁸ <https://www.northeastoceandata.org/>

⁹ NYSERDA 2020 RFP Section 3.2.9

levels that will cause injury and behavioral changes as informed by the latest acoustical guidance”¹⁰ The EEA Habitat and Fisheries Working Groups for Offshore Wind should be consulted and be offered the opportunity to provide specific recommendations for additional areas where specific detail could be requested of the bidders.

Compensatory measures should be utilized to achieve a no net loss or net gain goal only after impacts have been avoided and minimized to the maximum extent appropriate and practicable. Compensatory mitigation measures should be utilized to address residual impacts only, not used as a justification to approve projects where impacts should have been avoided or minimized.

Regional Research Commitments: Appendix J asks for a description of bidders commitments to regional research organizations (eg the Responsible Offshore Science Alliance and the Regional Wildlife Science Entity), but we suggest the RFP instead require bidders to commit a minimum of \$10,000 per megawatt of operational installed capacity to the financial and technical support of regional research, as was required in both the 2020 NY RFP¹¹ and in the 2020 NJ RFP.¹² Doing this will not only increase parity among states, it will facilitate the kind of regional research and monitoring that has been universally called for by marine life and fishing interests in MA and beyond, and which has been supported by MA CEC and other MA agencies. Again the Habitat and Fisheries Working Groups for Offshore Wind should be consulted and be offered the opportunity to provide specific recommendations for research priorities.

RFP General

Proposal Review, Process, Scoring and Bidder Selection:

In our 2017 comments The Conservancy also recommended, and continue to recommend that the procurement team engage a technical committee that will provide advice to the procurement team and technical review of the responses to the environmental resource impacts portion of the bids, including qualitative responses. The technical team should include state agency experts from the Office of Coastal Zone Management, the Department of Environmental Protection, and Department of Fish & Game and, where necessary, other topic specific qualified parties with specific expertise on environmental issues, benefits, and impacts. This technical team would provide environmental expertise to the development of the Request for Proposals and scoring system; and evaluation of responses to the RFP.

When developing the scoring system and providing project review, the procurement team and technical committee should ensure that the scoring system incentivizes project proponents to fully consider opportunities to avoid and minimize impacts to the maximum extent appropriate and practicable before compensatory mitigation measures are considered.

We also strongly encourage all non-confidential records and proceedings of the proposal evaluation, scoring, and bidder selection process be made public in a timely fashion.

¹⁰ CT DEEP 2019 RFP Section 11.8.iii.D

¹¹ NYSERDA 2020 RFP Section 2.2.5

¹² NJ RFP 2020, Section 3.0

Multiple Pricing

One challenge with the lack of specificity on environmental criteria in Appendix J is that bidders may be willing to employ more environmentally preferable approaches but choose not to based on cost alone. In CT this problem is addressed by offering bidders the chance to submit multiple price bids for the same project with different components, “Bidders should indicate if variations of any components of the Proposal, for example, elements of the Environmental and Fisheries Mitigation Plan, are offered at a different price.”¹³ The ratepayers of Massachusetts value low energy prices, but also value environmental protection. Using a more transparent pricing scheme could allow decision makers to weigh multiple factors.

Site and Environmental Data Transparency: While we appreciate that Section 2.2.3 i does call for “commitments to data sharing” and appendix J asks for a “Plan for timely data sharing with relevant environmental and fisheries stakeholders” we recommend a more prescriptive approach. The NYSEDRA language is “If awarded a contract, Proposers must agree to make publicly available any information or data and supporting metadata that is developed in furtherance of a Project and relates to environmental characteristics...”¹⁴ and it goes on to specify the development of a Data Availability Plan, discuss sharing of real time marine mammal sightings and detection data, and data hosting requirements. This specificity makes it clear to bidders from the start what the expectations for data sharing are, and creates a collaborative environment for dialog about these important data. In order to constructively learn from these first offshore wind projects, we will need to rapidly evaluate new information and then determine the appropriate adaptive management steps.

Thank you for considering our comments. Please feel free to contact Steve Long, Director of Government Relations (slong@tnc.org) or Chris McGuire, Marine Program Director (cmcguire@tnc.org) with any questions.

Sincerely,



Steve Long
Director of Government Relations

¹³ CT DEEP 2019 RFP Section 2.2.1

¹⁴ NYSERDA 2020 RFP Section 2.2.6