

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 21-40

May 5, 2021

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, and § 21 of the Act to Advance Clean Energy, Chapter 227 of the Acts of 2018.

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I. INTRODUCTION AND PROCEDURAL HISTORY

On March 10, 2021, 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”), and NSTAR Electric Company d/b/a Eversource Energy (“Eversource”) (collectively, “Companies”), and the Department of Energy Resources (“DOER”) (together, “Petitioners”), filed a petition¹ with the Department of Public Utilities (“Department”) for approval of a proposed timetable and method for the third solicitation² and execution of long-term contracts for offshore wind energy generation³ resources pursuant to Section 83C of the Green Communities Act, St. 2008, c. 169, as amended by St. 2016, c.

¹ In addition to the Petition, the Petitioners’ March 10, 2021 filing included the proposed request for proposals (“RFP”) with Appendices A through K.

² The Companies’ first and second solicitations’ timetables and methods, filed pursuant to Section 83C, were approved in Timetable and Method of Solicitation of Long-Term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C, D.P.U. 17-103 (2017) and Timetable and Method of Solicitation and Solicitation Process under Section 83C of the Green Communities Act, D.P.U. 19-45 (2019), respectively.

³ “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.

188, § 12 (“Section 83C”), and § 21 of Chapter 227 of the Acts of 2018 (“2018 Act”).^{4, 5}

The Department docketed this matter as D.P.U. 21-40.

On March 16, 2021, the Department requested comments from interested persons on the proposed timetable and method of solicitation. D.P.U. 21-40, Notice of Filing and Request for Comments (March 16, 2021). On March 26, 2021, 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) Associated Industries of Massachusetts (“AIM”); (4) Massachusetts Committee of New England for Offshore Wind (“NE4OSW”); (5) Patricia A. Haddad, State Representative, Michael J. Rodrigues, State Senator, and David T. Vieira, State Representative (together “the

⁴ Pursuant to Section 83C(b) and 220 CMR 23.04, the Companies and DOER jointly propose a timetable and method for the solicitation and execution of long-term contracts pursuant to Section 83C, subject to review and approval by the Department. Although the Petition was filed by the Companies, on March 10, 2021, DOER submitted a letter to the Department confirming that the Petition is a joint filing from DOER and the Companies (March 11, 2021 Letter from DOER to the Department (“DOER Letter”) at 1).

⁵ The 2018 Act authorized DOER to investigate the necessity, benefits and costs of requiring the Companies to jointly and competitively conduct offshore wind generation solicitations and procurements of up to an additional 1,600 MW under Section 83C by 2035. Section 21(b) of the Clean Energy Act required DOER to evaluate previous solicitation and procurement processes and recommend any necessary process improvements to the General Court. DOER’s Offshore Wind Study was published on May 31, 2019 and by letter on that same date DOER advised the General Court that it recommended and would require the Companies to proceed with an additional 1,600 MW of offshore wind generation solicitations with a goal of selecting a cost-effective project or projects in 2022. As required by Section 21(b) of the 2018 Act, this solicitation is to be conducted pursuant to the solicitation and procurement processes, criteria and requirements of 83C. This petition is filed pursuant to the above.

Legislators”); (6) Mayflower Wind Energy LLC (“Mayflower”); (7) Environmental League of Massachusetts (“ELM”); (8) RENEW Northeast, Inc. (“RENEW”); and (9) Vineyard Wind, LLC (“Vineyard Wind”). On April 2, 2021, the following entities submitted reply comments: (1) DOER; (2) Vineyard Wind; (3) National Grid; (4) Eversource; (5) Unitil; and (6) 49 public sector, business, and civic leaders in Southeastern Massachusetts (collectively, “Southeastern Mass”).⁶ Specifically, National Grid, Eversource and Unitil submitted joint reply comments. In addition, National Grid and Eversource each submitted separate reply comments, and Eversource and Unitil submitted additional joint reply comments.

On March 15, 2021, pursuant to Section 83C(f), the Independent Evaluator submitted its report analyzing the timetable and method of solicitation to the Department (“Independent Evaluator Report”).⁷ The Petitioners and the Independent Evaluator responded to 15 information requests issued by the Department.⁸

⁶ The Northeast Clean Energy Council (“NECEC”) filed initial comments on April 23, 2021. These comments were filed well beyond the comment deadline and without the requisite motion for extension of time within which to file comments. 220 CMR 1.02(5). Therefore, NECEC’s comments will not be considered in this docket.

⁷ Pursuant to Section 83C(f) and 220 CMR 23.04(6), DOER and the Attorney General jointly select an Independent Evaluator which, among other things, issues a report to the Department analyzing the timetable and method of solicitation conducted pursuant to Section 83C. DOER and the Attorney General selected Peregrine Energy Group, Inc. as the Independent Evaluator for this Section 83C solicitation (Independent Evaluator Report at 1).

⁸ On its own motion, the Department enters into the evidentiary record the Petitioners’ and Independent Evaluator’s responses to Information Requests DPU 1-1 through

II. SUMMARY OF PROPOSED TIMETABLE AND SOLICITATION METHOD

A. Introduction

As authorized by the 2018 Act, DOER investigated the necessity, benefits and costs of requiring the Companies to jointly and competitively conduct offshore wind generation solicitations and procurements of up to an additional 1,600 megawatts (“MW”) under Section 83C by 2035.⁹ DOER concluded and advised the General Court that it recommended and would require the Companies to proceed with an additional 1,600 MW of offshore wind generation solicitations with a goal of selecting a cost-effective project or projects in 2022 (Petition at 5). As required by § 21(b) of the 2018 Act, this solicitation is to be conducted in accordance with the solicitation and procurement processes, criteria and requirements of Section 83C. Pursuant to Section 83C and the 2018 Act, the Companies must conduct an additional competitive solicitation for offshore wind energy generation and, provided that reasonable proposals have been received, they must enter into cost-effective long-term contracts for offshore wind energy generation up to approximately 1,600 MW of nameplate

DPU 1-15 filed on April 9, 2021, and the Independent Evaluator Report filed on March 15, 2021. 220 CMR 1.10(3).

⁹ On March 26, 2021, Governor Baker signed comprehensive climate change legislation codifying the Commonwealth’s commitment to achieve Net Zero emissions in 2050. An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy, Chapter 8, § 8(b) of the Acts of 2021. Among other provisions the law establishes new interim goals for emissions reductions and allows the Commonwealth to procure an additional 2,400 MW of offshore wind energy by 2027. Chapter 8, § 91 of the Acts of 2021. The new law takes effect on June 24, 2021 and hence is not applicable to this docket. However, the Department’s standard of review of offshore wind procurements remains unchanged under the new law.

capacity by December 31, 2035. See also 220 CMR 23.04. The Companies, in coordination with DOER, must consult with the Attorney General regarding the choice of solicitation methods. Section 83C(b); 220 CMR 23.04.

The Petitioners maintain that, consistent with the requirements of Section 83C and pursuant to § 21 of the Clean Energy Act, 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 5). 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 5).

The Petitioners state that the fundamental purpose of the solicitation is to satisfy the policy directives incorporated in Section 83C, as continued and expanded in accordance with § 21 of the Clean Energy Act, and to assist the Commonwealth in meeting the goals of the Global Warming Solution Act, St. 2008, c. 298 (“GWSA”) (Petition at 5). 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).

Through this third solicitation, the Petitioners state that they seek to procure at least 200 MW of offshore wind energy generation, but will allow proposals up to approximately 1,600 MW and associated renewable energy certificates (“RECs”) and environmental

attributes (Petition at 5; Exh. RFP at § 2.2.1.2).¹⁰ 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 5).

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 price per MWh resulting from the last solicitation (Petition at 9). More specifically, Eversource and Unitil state that the nominal levelized price of any proposal under this solicitation must be less than \$77.76 per MWh (Exh. RFP at § 2.2.1.4).¹¹ National Grid proposes a further pricing requirement be added to the RFP which would require bidders to submit a bid with a nominal levelized price that is less than \$70.26 per MWh, and commit to that additional price, in the event the project from the prior procurement achieves a 30 percent federal business energy investment tax credit (“ITC”)¹² upon its Commercial Operation Date (“COD”) (Exh. RFP at § 2.2.1.4).

¹⁰ The RFP defines RECs as all of the New England Power Pool (“NEPOOL”) Generation Information System Certificates and environmental benefits associated with New Class I RPS eligible resources (Exh. RFP at C).

¹¹ Eversource and Unitil maintain that a nominal levelized price of \$77.76 per MWh is equivalent to the levelized price in the contracts resulting from the last Section 83C solicitation, in 2019 real dollars, of \$58.47 per MWh (RFP at § 2.2.1.4 n.19).

¹² The ITC is a financial incentive established by the federal government, through the Internal Revenue Service, that applies to specific energy technologies and sectors. The ITC has been amended a number of times, most recently through The Taxpayer Certainty and Disaster Tax Relief Act of 2020, signed into law on December 2020, which extended the phase of out this tax credit for certain technologies including

Finally, although the proposed solicitation method is substantially similar to the method approved by the Department for use in the most recent Section 83C solicitation, the Petitioners propose certain changes to the RFP to incorporate experience gained from past solicitations and in response to public comments and consultations with state agencies. Specifically, DOER identifies the following changes in the proposed solicitation method as compared to the first two Section 83C solicitations: (1) changes to bid and pricing requirements; (2) the inclusion of a requirement for bidders to submit a diversity, equity and inclusion plan; (3) the inclusion of more specific criteria pertaining to impacts on the environment and Environmental Justice (“EJ”) populations; (4) an increase from 25 to 30 points for qualitative factors to be considered in the evaluation process; and (5) revisions to the Companies’ standards of conduct (DOER Letter at 2-3). As addressed by commenters and the Independent Evaluator, these changes are discussed in greater detail in Sections III.B and IV.A, 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

offshore wind. This law provides a 30 percent tax credit for offshore wind facilities in inland navigable waters or coastal waters of the United States for which construction commences prior to 2026. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 of The Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (2020).

(Petition at 5; RFP at § 1.3). The Evaluation Team, with the assistance of the Companies' consultant, will receive and evaluate all proposals (Petition at 6; Exh. RFP 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 6; Exh. RFP at § 1.4). The Companies will negotiate and execute any final contracts, but DOER may monitor the contract negotiations (Petition at 6; Exh. RFP at § 1.4).

At the conclusion of the solicitation process, the Companies will submit any resulting contracts to the Department for approval (Petition at 7; Exh. RFP at § 1.3, 2.7). At that 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 8; Exh. RFP at § 1.3).

Because the Companies 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 document¹³ (Petition at 9; Exh. RFP at § 1.4, Apps. F-1, F-2). The Petitioners affirm that these Standard of Conduct documents prohibit any discussion of the RFP between Eversource and National Grid personnel participating on the Evaluation Team and personnel involved in

¹³ The Petitioners note that 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 9 n.4; RFP at § 1.4 n.11).

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 9; Exh. RFP at § 1.4).

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 requirements¹⁴ (“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 6; Exh. RFP at § 1.4, 2.1). The Evaluation Team will consider the evaluation results and project rankings to determine projects for selection (Petition at 6, RFP at § 1.4).

The RFP provides that eligible bids must include: (1) the construction and operation of all associated facilities required for delivery from the offshore wind energy generation facilities directly to the corresponding onshore regional bulk power transmission facilities; and (2) a commitment to negotiate in good faith and use commercially reasonable best efforts to enter into an agreement with any third party offshore wind developer seeking to interconnect with and expand the bidder’s interconnection facilities (Exh. RFP at § 2.2.1.3,

¹⁴ 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 (RFP at § 2.2.1.1).

Appendix G). 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 the nominal levelized price resulting from the previous Section 83C procurement; (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 purchase power agreements (“PPAs”) and bid fees (Exh. RFP at § 2.2.1).

In Stage One, the Evaluation Team will evaluate proposals meeting eligibility requirements to determine whether they also comply with threshold requirements (Exh. RFP at § 2.2.2).¹⁵ 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

¹⁵ 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 GHG emission reductions; (10) environmental and related impacts; (11) security requirements; (12) unreasonable balance sheet impacts; and (13) facilitate financing of offshore wind energy generation (RFP at § 2.2.2).

in compliance with RFP requirements; or (6) fail to satisfy minimum standards for bidder experience and ability to finance the proposed project (Exh. RFP 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 of ratepayers (Exh. RFP at § 2.3). The Evaluation Team will score proposals on a 100-point scale, with 70 points possible for quantitative factors and 30 points possible for qualitative factors (Exh. RFP at § 2.3).

During the Stage Two quantitative analysis, the Evaluation Team will evaluate proposals based on their direct and additional indirect economic and environmental costs and benefits (Exh. RFP at § 2.3.1).¹⁶ 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 renewable portfolio standard (“RPS”) Class I eligible RECs under a contract to (a) the projected avoided cost of RECs 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

¹⁶ For purposes of comparing bids of different sizes, the Evaluation Team may determine an estimate of avoided costs of offshore wind energy generation that might be procured in the future for proposals that are less than 1,600 MW in size (RFP at § 2.3.1.3).

Companies plan to sell RECs surplus to their compliance obligations; (3) the value attributable to the ability of offshore wind energy generation resources to produce and supply clean peak energy certificates (“CPECs”) if the Evaluation Team is able to reliably and meaningfully quantify such value; and (4) the direct benefits of any applicable energy storage system (Exh. RFP 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, taking into consideration contracts the Companies have already executed;
- (2) the impact on RPS and/or clean energy standard compliance costs paid by ratepayers in the Commonwealth;
- (3) additional impacts, if any, from the proposal on the Commonwealth’s greenhouse gas emissions rates and overall ability to meet GHG emission reduction requirements to be evaluated using the Evaluation Team’s proxy value for their contribution to GHG emission reduction requirements;
- (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;
- (5) the impact on contributing to reducing winter electricity price spikes; and
- (6) indirect impacts for retail ratepayers on CPEC market prices, if any and to the extent the Evaluation Team determines

such impacts are reliably quantifiable and meaningful, with the proposed project in service (Exh. RFP at § 2.3.1.2).¹⁷

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) demonstrated ability and commitment to create and foster short- and long-term employment and economic development in the Commonwealth, where feasible, and a commitment to diversity, equity and inclusion; (2) demonstrated direct benefits to low-income ratepayers; (3) siting, permitting, project schedule, and financing plan; (4) energy storage system benefits; (5) reliability benefits; (6) benefits, costs, and contract risk; and (7) environmental and socioeconomic impacts from project siting (Exh. RFP at § 2.3.2). The Evaluation Team will determine which proposals proceed to Stage Three following the Stage Two evaluation based on the following considerations: (1) the rank order of the proposals at the end of the Stage Two evaluation; (2) the cost effectiveness of the proposals based on the Stage Two quantitative and qualitative evaluation; and (3) the total MW quantities of the proposal(s), relative to the procurement target (Exh. RFP 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

¹⁷ The Evaluation Team plans to estimate and use the real levelized dollars per megawatt-hour (\$/MWh) of proposals as the Stage Two quantitative evaluation metric, but it may determine to use another metric prior to its evaluation of the bids (RFP at § 2.3.1.3).

following factors: (1) possible portfolio effects; (2) the overall impact of proposals on the Commonwealth's policy goals, including GHG emissions reductions and economic development; (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 (Exh. RFP at § 2.4). The Evaluation Team will consider the relative merits of a proposal(s) that offers additional benefits, for example economic development benefits including additional manufacturing or innovation, as compared to other top-ranked proposals (Exh. RFP at § 2.4)

C. Proposed Timetable

Event	Anticipated Date
Issue RFP	May 7, 2021
Bidders Conference	May 18, 2021
Deadline for Submission of Questions	May 25, 2021

Due Date for Confidential Proposal Submissions	September 16, 2021
Due Date for Public Proposal Submissions	September 23, 2021
Selection of Projects for Negotiation	December 17, 2021
Negotiate and Execute Contracts	March 28, 2022
Submit Contracts for Department Approval	April 27, 2022

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 7). 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 7; Exh. RFP at § 3.2). The table below sets forth the proposed timetable for the solicitation process (Petition at 7; Exh. RFP at § 3.1).

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. The report must also include recommendations, if any, for improving the process. In accordance with this requirement, the Independent Evaluator analyzed the proposed timetable and method for the third solicitation of offshore wind energy generation pursuant to Section 83C and the 2018 Act and submitted its report to the Department on March 15, 2021 (Independent Evaluator Report at 2).

The Independent Evaluator focused on the following issues when analyzing the proposed timetable and solicitation method: (1) the reasonableness of the procurement target,

the allowable bid size, and the proposed schedule; (2) the price cap to be used for the third solicitation; (3) the fairness of the RFP's terms and conditions; (4) issues arising out of the Independent Evaluator's review of the Companies' form PPAs; and (5) process matters, including the transparency of the solicitation process, utility standards of conduct, independent oversight of the solicitation process, and disclosure of utility affiliates (Independent Evaluator Report at 2-3, 27-30).

Having analyzed the proposed timetable and method of solicitation, the Independent Evaluator concludes that, with the exception of the National Grid proposed price cap and certain form PPA provisions (as discussed below), the Petitioners' proposal satisfies the statutory standard for an open, fair and transparent solicitation that does not unduly favor affiliates (Independent Evaluator Report at 3, 30-31).

B. National Grid Alternative Proposed Price Cap

1. Introduction

Section 83C(b) and 220 CMR 23.04(5) provide 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 implement this requirement the RFP provides that the nominal levelized price of any proposal must be less than the value specified in § 2.2.1.4i.a., (the "price cap") (Petition at 10, RFP 15). The Independent Evaluator reports that the Evaluation Team could not reach consensus on the levelized price per MWh plus transmission costs resulting from the previous procurement and

therefore was unable to reach consensus on the value of the price cap for this solicitation (Petition at 9; Independent Evaluator Report at 6, 15). The majority of the Evaluation Team, including DOER, Eversource, and Unitil, maintain that the price cap should be \$77.76 per MWh, which is equal to the winning bid from Mayflower Wind in the second solicitation (the “majority approach”) (Independent Evaluator Report at 6, 14). National Grid, however, proposes to set the price cap initially at \$77.76 per MWh and then reduce the cap to \$70.26 per MWh based on the adjusted price under the Mayflower Wind PPAs should Mayflower Wind qualify for the 30 percent federal ITC upon its COD (the “alternative price cap approach”) (Petition at 10; Independent Evaluator Report at 6, 15-16). The RFP includes both the majority approach and the alternative approach to setting the price cap in § 2.2.1.4i.a (Exh. RFP at § 2.2.1.4i.a).

The Independent Evaluator requests the Department resolve this matter in this order so that a single approach will apply to all proposals by bidders to all three Companies (Independent Evaluator Report at 6, 16). The Independent Evaluator states that the majority approach is more reasonable than the proposed alternative price cap approach taking into consideration the wording of Section 83C, the underlying purposes of the statute, and the impact on the solicitation process (Independent Evaluator Report at 16-17). The Independent Evaluator maintains that the Department approved the Mayflower PPAs based on the \$77.76 per MWh price (Independent Evaluator Report at 16). The Independent Evaluator acknowledges that there is a reasonable expectation that Mayflower will qualify for the 30 percent federal ITC and achieve commercial operation, but opines that it is unlikely to do so

by the time the Department would make a decision on the PPAs arising from this third solicitation RFP and therefore the price is very likely to be \$77.76 per MWh at the issuance of this RFP (Independent Evaluator Report at 17).

The Independent Evaluator also highlights several policy and practical concerns with the alternative price cap approach (Independent Evaluator Report at 17). First, the Independent Evaluator notes that Massachusetts is competing with three other states, none of which have price caps in their solicitation processes, for the same offshore wind projects in the Massachusetts and Rhode Island Lease Areas.¹⁸ The Independent Evaluator cautions that imposing a lower than necessary and contingent price cap could cause one or more of the small set of potential bidders to refrain from participating in the RFP and thus impair the competitiveness of the third solicitation (Independent Evaluator Report at 17). Next, the Independent Evaluator cites comments of offshore wind developers to support its concern that the uncertainty of the contract price could be problematic for project financing, which would be contrary to the fundamental objective of Section 83C— facilitating financing of offshore wind projects (Independent Evaluator Report at 17). The Independent Evaluator also concludes that the Evaluation Team will be challenged to evaluate two sets of prices, one of

¹⁸ The “Massachusetts and Rhode Island lease areas” refers to the collection of federal leases that the Bureau of Ocean Energy Management issued for the joint region offshore Massachusetts and Rhode Island. In his report, the Independent Evaluator provides a summary of the existing offtake agreements that apply to these lease areas (see Independent Evaluator Report at App. B). In addition to Massachusetts, there is potential for Rhode Island, Connecticut, and New York to compete for soliciting the remaining offshore wind resources available in these lease areas.

which is dependent on the uncertain future ITC status of the Mayflower Wind project (Independent Evaluator Report at 17). Additionally, the Independent Evaluator expresses concern that the alternative price cap approach could incent competing bidders, perhaps affiliated with one or more members of the Evaluation Team, to delay or defeat Mayflower Wind in its development efforts, in order to prevent triggering the lower price cap (Independent Evaluator Report at 17). The Independent Evaluator also observes that the Mayflower Wind PPA prices were lower than the Vineyard Wind prices from Round 1, indicating that price caps may not even be necessary to achieve lower prices (Independent Evaluator Report at 17). Finally, the Independent Evaluator cautions that conditioning the price cap based on Mayflower Wind's development success with respect to the ITC and commercial operation of its project may create a competitive informational advantage for Mayflower Wind (Independent Evaluator Report at 17, n.34).

2. National Grid Response

National Grid argues that per the PPAs with Mayflower Wind the price will not actually be set until the project's COD and further, the price will depend on the level of the ITC that the project obtains (National Grid Reply Comments at 1-2).¹⁹ National Grid maintains that \$77.76 per MWh should be the price cap only if Mayflower obtains a 12

¹⁹ National Grid argues that under the Mayflower PPA the price that "resulted from the previous procurement" is embodied in Section 5.1 and a schedule in Exhibit D rather than a single number, with the final price to be selected from this schedule at the project's COD, based on the level of ITC Mayflower Wind obtains (National Grid Reply Comments at 5).

percent ITC, but emphasizes that Mayflower Wind has publicly confirmed that it is nearly certain to obtain a 30 percent ITC resulting in a levelized price per megawatt hour of \$70.26 per MWh (National Grid Reply Comments at 2).²⁰ National Grid asserts that its proposed approach covers both the likely and unlikely pricing scenarios, while the majority approach covers only what National Grid describes as the “unlikely scenario,” in which Mayflower Wind fails to obtain the 30 percent ITC (National Grid Reply Comments at 3, 12).

National Grid further argues that its approach reliably preserves the legality of the results of this RFP, because it prevents a scenario where the Department ultimately approves a PPA resulting from this solicitation priced above \$70.26 per MWh, yet the Mayflower PPA price is \$70.26 per MWh (National Grid Reply Comments at 3, 12). National Grid maintains that such an outcome would violate Section 83C(b) and open this third offshore wind solicitation to legal challenges by disappointed bidders and other entities opposed to wind power (National Grid Reply Comments at 3, 22-24).

National Grid contends that its alternative price cap approach will preserve hundreds of millions of dollars in additional benefits for its customers and will not disadvantage bidders because they too will likely be eligible for the 30 percent ITC (National Grid Reply Comments at 3, 13-14).²¹ National Grid defends its approach from charges that it introduces

²⁰ National Grid asserts that \$77.76 per MWh is a more “speculative” price than \$70.26 per MWh, which is far more likely to be the Mayflower Wind PPA price at the project’s COD (National Grid Reply Comments at 18).

²¹ National Grid argues that the Massachusetts legislature included the price cap provision in Section 83C(b) so that as offshore wind development costs drop over time developers would share these savings with the Commonwealth’s electricity customers

complexity and uncertainty for bidders by emphasizing that: (1) it gives fair warning to bidders at the beginning of the RFP process that a price at or above \$70.26 per MWh may be unacceptable; (2) “large, sophisticated companies” will not find the alternate price cap approach overly complicated; (3) such bidders are accustomed to similar bidding arrangements; and (4) potential bidders can avoid the complexity of developing a bid with two prices by submitting a bid with a single price below \$70.26 per MWh (National Grid Reply Comments at 12, 15-18). In response to assertions that the alternative price cap approach will inhibit project financing, National Grid contends that prospective lenders and investors would expect a fixed revenue stream of no less than a bid that satisfies the \$70.26 per MWh price cap and would focus on whether this price provides them an acceptable return, even while understanding the possibility of higher revenues if a bid satisfying the \$77.76 per MWh cap were to apply (National Grid Reply Comments at 20).

3. Summary of Additional Comments

Aside from National Grid, all commenters on this matter support the majority approach to set the price cap at \$77.76 per MWh. DOER, Eversource, and Unitil assert that in NSTAR Electric Company et al., D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18 (2020) the Department approved PPAs providing for \$77.76 per MWh on a nominal levelized basis for the purchase of energy and RECs (Exh. DPU 1-11, at 1, 2; DOER Reply Comments at 3;

and stresses that the legislature left the price cap provisions intact in the recent amendments to Section 83C, rather than suspending, modifying, or relaxing them as they did in 2018 (National Grid Reply Comments at 18).

Eversource and Unitil Joint Reply Comments at 2). DOER, Eversource, and Unitil emphasize that in that docket the Evaluation Team evaluated the Mayflower Wind bid of \$77.76 per MWh and explain that the Department's findings in support of its decision to approve the Mayflower Wind PPAs reference net benefits to ratepayers that the Evaluation Team estimated based exclusively on Mayflower Wind's bid price of \$77.76 per MWh (Exh. DPU 1-11, at 2). On that basis they assert that \$77.76 per MWh is the price "resulting from the previous procurement" (Exh. DPU 1-11, at 2).

Eversource and Unitil argue that the applicability of the \$70.26 per MWh price is entirely within the control of Mayflower Wind and therefore, until it actually achieves a 30 percent ITC for its project, there is no basis to conclude that the lower price was the "result of the previous procurement." (Eversource and Unitil Joint Reply Comments at 2).

Eversource and Unitil state that the \$70.26 per MWh price provided for in Exhibit D to the Mayflower Wind PPA is conditional and not final (Eversource and Unitil Joint Reply Comments at 2). DOER, Eversource, and Unitil contend that the ultimate outcome of Mayflower Wind's actions to achieve commercial operation and obtain the ITC is not "a result of the procurement"; rather, the "result of the procurement" is the price that Mayflower Wind bid into the process, and that served as the basis for evaluation, selection and approval (i.e., \$77.76 per MWh) (Exh. DPU 1-11, at 3).²² DOER, Eversource, and

²² "To qualify for the ITC, an offshore wind project must have reached commercial operation and the ITC percentage is determined by the year in which construction began prior to that operation. As a result, the ITC value will *never* be a 'result of the procurement,' as established by the plain terms of Section 83C." (Exh. DPU 1-11, at 4).

Unitil argue that requiring bidders to assume the risk that the Mayflower project qualifies for the 30 percent ITC could call into question whether this solicitation is “[o]pen, fair and transparent...” as required by Section 83C(f) because the terms of the solicitation would be subject to Mayflower Wind’s success in obtaining the ITC, which is beyond the control of any bidder (Exh. DPU 1-11, at 4-5).

DOER, Eversource, and Unitil further argue that they do not interpret Section 83C(b) to suggest the legislature intended to create a price cap based on possible adjustments to the final project cost, coming years after a solicitation and procurement process is conducted (Exh. DPU 1-11, at 5). They further argue that if legislators had intended for changes in ITC values and project development costs to be considered in setting the price cap then they would have drafted Section 83C(b) to say so (Exh. DPU 1-11, at 4). DOER, Eversource, and Unitil caution that adopting a price cap that fluctuates after Department review of the prior procurement would likely create an unacceptable level of risk for bidders who may elect to opt-out of this bid or another future solicitation as there would be no way for them to mitigate or eliminate that risk (Exh. DPU 1-11, at 5). Such a result would frustrate the intent of Section 83C(a), which is to facilitate the financing of offshore wind energy generation resources in the Commonwealth (Exh. DPU 1-11, at 5).²³

²³ DOER, Eversource, and Unitil point out that the previous solicitation addressed the applicability of the ITC to the price cap by stating that the Companies considered “whether to adjust the price to beat based on the reduction of the ITC likely to be available as a result of this RFP compared to the higher level of ITC likely to be available to Vineyard Wind in the first 83C solicitation” and the Evaluation Team and

DOER, Eversource, and Unitil raise additional concerns with a price cap mechanism that requires bidders to offer bids that are dependent on actions a competitor may or may not take in the future (DOER Comments at 3, Eversource and Unitil Joint Reply Comments at 2, Exh. DPU 1-11, at 4-5). First, they argue that there is the potential that this action could be perceived as favoring Mayflower Wind. Second, they argue that this requirement may reduce the bidder pool or number of bids. Lastly, they argue that because the price cap will not be known until the Mayflower Wind project achieves COD, which is not expected until September 2025 at the earliest, the alternative price cap could cause bidders to include an additional risk premium in their bids, thus frustrating the Section 83C goal to finance offshore wind resources on a cost-effective basis for customers (Eversource and Unitil Joint Reply Comments at 2-3; Exh. DPU 1-11 at 5;). In response to National Grid's claim that the uncertainty surrounding the use of the \$70.26 per MWh as the price cap could be addressed by requiring bidders to offer two prices, DOER, Eversource, and Unitil claim this would violate Section 83C(b) which specifically calls for a single price cap set at "the levelized price per MWh plus transmission costs that resulted from the previous procurement" (Exh. DPU 1-11, at 5). Additionally, DOER, Eversource, and Unitil challenge National Grid's argument that unless the price cap is set at \$70.26 per MWh,

the Independent Evaluator concluded that "an ITC adjustment to the price cap was not permissible under the statute since 83C did not provide for any adjustments." Timetable and Method of Solicitation and Solicitation Process under Section 83C of the Green Communities Act, D.P.U. 19-45 (2019), Independent Evaluator Report, at 16-17.

customers face the loss of hundreds of millions of dollars. DOER, Eversource, and Unitil respond that regardless of the price cap, the fact that one offshore wind developer has already priced offshore wind energy at \$70.26 based on the ITC being at 30 percent in 2025 will likely spur offshore wind developers to offer a similar level of discount to win the bid (Exh. DPU 1-11, at 6).

Bay State Wind, Vineyard Wind, and RENEW also oppose the alternative price cap approach and agree that the majority approach appropriately sets the price cap at \$77.76 per MWh, which is the price that resulted from the previous procurement (Bay State Wind Comments at 3; Vineyard Wind Comments at 4; RENEW Comments at 3). Bay State Wind and Vineyard Wind contend that the National Grid alternative price cap will complicate and undermine this solicitation (Bay State Wind Comments at 2; Vineyard Wind comments at 5). Bay State Wind argues that given the changing nature of Federal tax incentives for renewable energy, the likelihood of Mayflower Wind qualifying for the applicable ITC should not be taken for granted (Bay State Wind Comments at 3). Vineyard Wind points out that there is no guarantee the Mayflower Wind project will go into service on a timeline that facilitates the development, financing, and construction of any project selected under this RFP, so that Mayflower Wind-specific delays introduce additional risk to bidders competing for a PPA in this solicitation (Vineyard Wind comments at 5). Bay State Wind also cautions that that the alternative price cap approach could favor Mayflower Wind and its affiliates due to their better-informed position regarding Mayflower Wind's tax-credit strategy and its consequent effects on the prior PPA pricing (Bay State Wind Comments at 3).

Bay State Wind and RENEW further caution that the alternative price cap approach would expose bidders to the risk that their own ability to qualify for a tax-credit could not align with Mayflower Wind's, creating an "unhedgeable" risk that would drive up project financing costs (Bay State Wind Comments at 3; RENEW Comments at 4). Vineyard Wind claims that requiring bidders to provide multiple prices to account for potential future price reductions in a previously awarded project creates significant project financing risk, emphasizing that lenders and tax equity investors will not be comfortable committing to a project that lacks a stable revenue stream (Vineyard Wind comments at 5).

RENEW also challenges the rationale for the alternative price cap approach. RENEW argues that in a competitive environment to secure a PPA, each developer is motivated to offer its lowest bid and not seek to bid a potentially uncompetitive price just below a \$77.76 per MWh cap (RENEW Comments at 3). In this environment, if a bidder can offer a profitable bid below \$70.26 per MWh it will do so, if not, setting the cap at \$70.26 per MWh will not result in a bid below that level (RENEW Comments at 3-4).

4. Analysis and Findings

The Independent Evaluator recommends that the Department approve a single price cap applicable to all bid proposals rather than the alternative price cap approach (Independent Evaluator Report at 6, 16). The Independent Evaluator states: "having a known price cap, and one that doesn't change based on the ability of a third party to successfully qualify for the 30 percent ITC and achieve commercial operation, was viewed as important in facilitating the project financing of the bidders in this solicitation, a fundamental objective of 83C."

(Independent Evaluator Report at 15). The Independent Evaluator contends that it is important for bidders to know what the price cap is and it is critical that one set of bidding rules apply to all (Independent Evaluator Report at 16).

The Department is persuaded by the Independent Evaluator's recommendation and reasoning to accept the majority approach and finds that \$77.76 per MWh appropriately complies with Section 83C(b) and 220 CMR 23.04(5). The Department is inclined to agree that the majority approach avoids imposing a lower than necessary and contingent price cap and ensures competition in the forthcoming solicitation, while the National Grid alternative has the potential undermine project financing, which would be contrary to a fundamental objective of Section 83C. Further, the Department agrees that National Grid's alternative could provide competing bidders with an incentive to hinder Mayflower Wind's development efforts to prevent triggering a lower price cap, and also includes the challenge to create a framework that would enable evaluation of two sets of prices. In D.P.U. 20-16/20-17/20-18, the Department approved the Mayflower Wind PPAs, which provide for the price of purchased energy and RECs. The Mayflower Wind PPA provides for a fixed price of \$77.76 per MWh, with a price adjustment mechanism by which the price would decrease if the Mayflower Wind project were able to qualify for and obtain an ITC greater than 12 percent when it reached COD. D.P.U. 20-16/20-17/20-18, at 6.

Recently, Mayflower Wind has publicly indicated that it expects to be eligible to secure an ITC of 30 percent should its project reach commercial operation (National Grid Comments at 2). A mere expectation of a possible future event, however, is an insufficient

basis on which to determine if or when Mayflower Wind may be able to trigger the price adjustment mechanism set forth in its PPA. Thus, if the Petitioners are successful in this solicitation and bring executed contracts to the Department for approval, in accordance with the proposed timeline, we cannot know what that future price will be in effect under the Mayflower Wind PPAs. The applicability of the \$70.26 per MWh price is contingent on Mayflower Wind's ability to secure a 30 percent ITC and bring its project into commercial operation. The Department finds that the alternative price cap approach requires bidders to bid below \$70.26, which is a contingent price and therefore introduces significant uncertainty and risk into the solicitation process.

Section 83 requires the Companies to solicit offshore wind contracts on a certain procurement schedule and submit the selected contract for review and approval by the Department. The Department may only approve the PPA if the 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). However, as discussed by all the commenters, the timeline for procurements does not align with the timeline for commercial operation (i.e., the Department will need to review a subsequent PPA prior to the commercial operation of the previously approved project). Accordingly, the Department must be able to compare the prices contained in bids based on information known at the time of the Department's review of the PPA. For these reasons, the Department agrees with DOER, Eversource and Unitil's interpretation of Section 83C, that the "result of the procurement" is the price that Mayflower Wind bid into the process,

and that served as the basis for evaluation, selection and the Department's approval.

National Grid argues that its proposed alternative price cap approach covers multiple ultimate pricing scenarios, as well as provides assurance that the subsequent procurement is less than the actual final cost of the prior procurement. However, Section 83C(b) requires the Department to approve a PPA with a single price cap, not two: "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". If the Legislature intended that the Department review multiple possible prices or a price when a project became operational to be the standard for the price cap (i.e., taking into account ITC), rather than the price that "resulted from the previous procurement," Section 83C(b) would have been drafted accordingly. Therefore, the Department finds that the price that resulted from the previous procurement should be the price reviewed during the Department's approval of the PPA.

Further, the Department notes that adopting the alternative price cap approach will likely result in significant complexity and uncertainty. National Grid asserts that its proposed approach does not introduce complexity and uncertainty for bidders, arguing that it gives fair warning to bidders that a price at or above \$70.26 per MWh may be unacceptable. National Grid also asserts that "large, sophisticated companies" will not find the alternate price cap proposal overly complicated because they are accustomed to similar bidding arrangements, and can avoid the complexity of developing a bid with two prices by submitting a single price below \$70.26 per MWh. All other commenters, including the Independent Evaluator,

disagree with this opinion and caution that the National Grid alternative proposal would introduce significant complexity and uncertainty to the solicitation process. National Grid also opines that its approach will not deter project financing because prospective investors would expect a fixed revenue stream based on the \$70.26 per MWh price cap and would focus on whether this price provides them an acceptable return. The Department finds this claim counterintuitive and unpersuasive. We agree with all other commenters and the Independent Evaluator that the alternative price cap approach has the potential to increase project financing risk and cost resulting in higher bid prices.

The Department's Order in D.P.U. 20-16/20-17/20-18 provides clear guidance in assessing which price the Department reviewed in the prior PPA, and should consider as the price cap for this solicitation. In those dockets, the Department: (1) noted that the Evaluation Team conducted a quantitative assessment of Mayflower Wind's bid to sell energy and RECs equal to a levelized price of \$77.76 per MWh; (2) found that the Mayflower Wind PPAs, exclusive of remuneration, result in \$2.272 billion (nominal) of net benefits to ratepayers; and (3) found that the Mayflower Wind PPAs with a nominal levelized price of \$77.76 per MWh satisfied the requirement for approval specified in Section 83C and 220 CMR 23.04; and (4) that the PPAs were a cost-effective mechanism for procuring reliable renewable energy on a long-term basis. D.P.U. 20-16/17/18 at 6, 50, 53.

Therefore based on the above, the Department finds that a nominal levelized price of \$77.76 per MWh is the appropriate value for the price cap in this solicitation and that the Petitioners should use the majority approach set forth in § 2.2.1.4i.a of the RFP.

C. National Grid PPA Specific Proposals

1. Introduction

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. Timetable and Method of Solicitation and Solicitation Process under Section 83C of the Green Communities Act, D.P.U. 19-45, at 27 (2019). In addition, 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 different from the other companies' form PPAs, that company shall notify the Evaluation Team and the Independent Evaluator of these terms.²⁴ The Department has found that this notification provides the Evaluation Team and the Independent Evaluator with an opportunity to weigh those changes' potential to adversely affect the solicitation process. D.P.U. 19-45, at 27-28.

²⁴ The Department has previously recognized that it was appropriate to afford 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. D.P.U. 19-45, at 27, n.15.

In its report, the Independent Evaluator identified the following provisions specific to National Grid's form PPA²⁵ as materially different from those of the other companies:

(1) the good faith negotiations regarding REC rights agreement; (2) the proposed price adjustment provision if the ITC increases above the 30 percent level; and (3) the event of default provision for failure to satisfy high operating limit standard (Independent Evaluator Report at 20-26).

2. Good Faith Negotiations Regarding REC Rights Agreement

a. Introduction

The Independent Evaluator identified a PPA provision proposed by National Grid that would provide it with an option to require a seller to negotiate in good faith, prior to the end of the PPA contract term, a separate agreement to provide National Grid, at its option, first rights to procure RECs at market value for one or more one-year terms (Independent Evaluator Report at 21-22). The provision would also allow National Grid a right of first refusal should the seller find a different buyer for RECs (Independent Evaluator Report at 21-22).

The Independent Evaluator notes that, in its experience, the proposed provision is uncommon in competitive solicitations for long-term PPAs (Independent Evaluator Report at 22). The Independent Evaluator asserts that the provision may cause a developer to bid a

²⁵ In his report, the Independent Evaluator also identified provisions regarding a change in accounting standards affecting the buyer. Since that provision applies to all of the Companies, the Department addresses this provision separately.

higher price than it otherwise would, creating a fairness issue for bidders constrained by a price cap (Independent Evaluator Report at 22). The Independent Evaluator also expresses fairness concerns to ratepayers of Eversource and Unitil, whom it contends may experience somewhat higher PPA prices as a result of the provision (Independent Evaluator Report at 22-23). Although the Independent Evaluator agrees that National Grid's intended purpose to keep RECs in the region after the expiration of the PPA term and thus provide potential benefits to its ratepayers, is legitimate, the Independent Evaluator recommends deleting the provision or modifying the right of first refusal right to apply only if the seller acted to sell RECs out of New England (Independent Evaluator Report at 24). The Independent Evaluator states that the Department, in its decision, should consider the comments of affected prospective bidders and other stakeholders (Independent Evaluator Report at 24).

b. National Grid Comments

National Grid argues that the Department should approve the good faith negotiations provision regarding REC rights in its form PPA (National Grid Reply Comments at 24). National Grid contends that the provision is a not a "right of first refusal" as characterized by the Independent Evaluator, Vineyard Wind, and RENEW, and the provision does not prohibit a seller's ability to secure alternative offtake options or bind the seller to the offer of the buyer (Exh. DPU 1-4). Rather, National Grid argues that the provision is a request that the seller negotiate in good faith to allow National Grid the right to buy RECs at their market price (National Grid Reply Comments at 25).

National Grid states that it considered the concerns of the Independent Evaluator and other stakeholders during the RFP drafting process (Exh. DPU 1-4). However, National Grid opposes the Independent Evaluator's proposal that its negotiation rights be limited to sales outside of New England because doing so would require it to continually monitor REC transactions for possible manipulation (National Grid Reply Comments at 26). National Grid also opposes the Independent Evaluator's suggestion that any post-PPA REC purchases be limited to a defined term because it runs contrary to the Company's goal of providing environmental benefits to its customers who are financing the long-term investment in offshore wind generation (National Grid Reply Comments at 26). Finally, National Grid argues that the appropriate time to address this provision is during the PPA contract negotiations and not before a counterparty to the PPA has been selected (National Grid Reply Comments at 26).

c. Summary of Additional Comments

Eversource, Unitil, and RENEW oppose National Grid's proposed provision. Eversource and Unitil contend that the provision would be inconsistent with the Section 83C solicitation requirements, would not enhance cost-effective procurement of offshore wind resources, and would result in higher PPA prices across all of the Companies (Eversource and Unitil Joint Reply Comments at 3-4). Should the Department allow this provision in National Grid's PPA, Eversource and Unitil argue that bidders should offer separate prices to Eversource and Unitil so that their customers do not subsidize any potential price premium

that is a result of National Grid's provision (Joint Eversource and Unitil Reply Comments at 3-4).

RENEW also argues that the National Grid's proposed provision will increase costs to consumers and should be rejected (RENEW Comments at 6). RENEW also contends that the provision would block bidders from competitive offtake options following the PPA term, increasing both risk and bidders' price proposals. In the absence of the proposed provision, RENEW argues that National Grid would still be eligible to purchase RECs after the PPA term (RENEW Comments at 6). Vineyard Wind goes further and argues that the provision constitutes a material change from the prior Section 83C solicitations and requests the opportunity to review the form PPA documents in their entirety (Vineyard Wind Comments at 11).

d. Analysis and Findings

After review and consideration of the comments, the Department finds that National Grid's good faith negotiations provision does introduce material differences between the Companies' form PPAs. Although the Department has recognized that the Companies are afforded flexibility to negotiate reasonable contract terms that may vary among them, in this instance we do not view the difference as appropriate. D.P.U. 19-45, at 27, n.15. The Department finds National Grid's reasoning for such provision reasonable, but we remain concerned that such difference could result in higher prices in the solicitation. The Department therefore directs National Grid to remove the good faith negotiations provision from its form PPA. Should National Grid propose modifications to the provision that address

the concerns raised by the Independent Evaluator, the Department would reconsider this issue in future solicitations.

3. ITC Indexed Pricing

a. Introduction

The Independent Evaluator also identified a provision in Exhibit D of National Grid's form PPA that states if a seller qualifies for the ITC at a level greater than 30 percent, the PPA price would be reduced based on a method to be provided by the buyer in its proposal (Independent Evaluator Report at 24-25). The Independent Evaluator notes that the provision is similar to a pricing provision in the Mayflower Wind PPAs, which set forth a schedule of reduced prices that would apply if Mayflower Wind were to qualify for the ITC at a level greater than twelve percent and up to 30 percent (Independent Evaluator Report at 25).

The Independent Evaluator expresses uncertainty as to whether this adjustment provision would adversely affect the solicitation process. Further, the Independent Evaluator does not see value in the provision and views the prospect of the ITC being increased above 30 percent as highly speculative (Independent Evaluator Report at 25). The Independent Evaluator states that the provision is outside the scope of industry practice, would require bidders to submit a price-adjustment proposal specific to National Grid, and does not adhere to the Department's stated expectation that material differences in form PPAs between the Companies should be rare (Independent Evaluator Report at 25). For these reasons, the Independent Evaluator believes that the solicitation process would be improved if the

Department directs National Grid to remove the ITC-indexed pricing provision from its form PPA (Independent Evaluator Report at 25).

b. National Grid Comments

National Grid argues that the Department should approve the ITC-indexed pricing provision in its form PPA (National Grid Reply Comments at 26). For several reasons, National Grid disagrees with the Independent Evaluator that the solicitation would be improved if the provision were removed. First, to the Independent Evaluator's argument that an increase in the ITC is remote, National Grid contends that its provision provides potentially significant savings to customers without any corresponding cost (National Grid Reply Comments at 27-28). Second, to the Independent Evaluator's claim that the ITC-indexed pricing provision is outside the scope of industry practice, National Grid responds that the provision is nearly identical to a similar provision incorporated into the Mayflower Wind PPAs approved in D.P.U. 20-16/20-17/20-18 (National Grid Reply Comments at 28; Exh. DPU 1-5). National Grid acknowledges that its provision may require bidders to submit a separate National Grid price-adjustment proposal but that any inconvenience is offset by the potential benefits to its customers (National Grid Reply Comments at 29; Exh. DPU 1-5). Additionally, National Grid contends that the Companies' form PPAs have differed in the past without issue (Exh. DPU 1-5). Finally, National Grid disagrees that the provision might encourage bidders to shift risk onto the Companies by requiring an upward price adjustment if they fail to qualify for the ITC at the 30 percent

level, something National Grid describes as “very remote” (National Grid Reply Comments at 29-30).

c. Summary of Additional Comments

Eversource, Unitil, and RENEW oppose the proposed ITC-indexed provision. Eversource and Unitil argue that the Companies have not generally included “price reopeners” in prior solicitations because they remove pricing certainty and transfer project risk to customers (Joint Eversource and Unitil Reply Comments at 3). Furthermore, Eversource and Unitil contend that the provision complicates the evaluation process and comparison of projects with varying levels of price firmness (Joint Eversource and Unitil Reply Comments at 3). RENEW argues that the ITC-indexed pricing adjustment is unnecessary as Congress is unlikely to enact changes to the ITC after recently extending the provision through 2035 (RENEW Comments at 7-8). In light of the Independent Evaluator’s inability to determine adverse impacts of this provision to the solicitation process, Vineyard Wind contends that there is a need for bidders to review and comment on the form PPAs (Vineyard Wind Comments at 11).

d. Analysis and Findings

After review and consideration of the comments, the Department rejects National Grid’s ITC-indexed pricing proposal. The Department understands National Grid’s rationale for including this provision, but we note that the Independent Evaluator deems this provision to be outside the scope of industry practice. The Department also recognizes that this provision may introduce pricing uncertainty for bidders and has the potential to complicate

the evaluation process by requiring bidders to submit separate pricing proposals for National Grid. Although the Department has recognized that the Companies are afforded flexibility to negotiate reasonable contract terms that may vary among them, we reiterate our expectation that differences in material terms of the PPAs will be rare and in this instance we do not view the difference as appropriate. D.P.U. 19-45, at 27, n.15. The Department therefore directs National Grid to remove the ITC-indexed provision from its form PPA.

4. Event of Default Provision for Failure to Satisfy High Operating Limit Standard

a. Introduction

Finally, the Independent Evaluator identified provisions in the National Grid form PPAs that create an event of default if a facility fails to achieve an average Real-Time High Operating Limit (as defined in the Independent Operator New England (“ISO-NE”) rules) of at least 50 percent for two consecutive contract years, with force majeure, catastrophic failure and reliability curtailment exceptions (Independent Evaluator Report at 25 citing National Grid Form PPA Sections 4.9 and 9.2(m)). The Independent Evaluator notes that the provisions are based on the Mayflower Wind PPAs and replace similar energy delivery provisions from National Grid’s form PPAs in the Section 83C Round 2 solicitation (Independent Evaluator Report at 25-26). The Independent Evaluator views the provisions as serving a legitimate purpose and does not object to their inclusion in the National Grid form PPAs (Independent Evaluator Report at 26). No entity, including National Grid, commented on this issue.

b. Analysis and Findings

The Department has reviewed the proposed default provision requirements and agrees with the Independent Evaluator that the provisions serve a legitimate purpose and replace similar provisions from National Grid's form PPAs in prior solicitations. Therefore, the Department finds that the requirements are reasonable and does not view differences between the Companies regarding this provision as material or inappropriate.

D. Change in Accounting Standards Provision

1. Introduction

Section 19.7(a) of the Companies' form PPAs requires the seller to accept the terms of a contract amendment by the buyer (i.e., the Companies) if there is a change in accounting standards that would result in adverse balance sheet or creditworthiness impacts on the buyer (provided that the contract amendment does not alter the price paid or the purchase and sale obligations of the parties under the PPA) (Independent Evaluator Report at 26). In its report, the Independent Evaluator identified this provision as unusual and representing a potential financing issue for developers (Independent Evaluator Report at 26-27). The Independent Evaluator acknowledges that these form PPA provisions were included in past solicitations and therefore may not adversely or materially impact the instant solicitation. However, it is the Independent Evaluator's opinion that modifications to these provisions could materially improve the solicitation process (Independent Evaluator Report at 26-27).

2. DOER Response

DOER agrees with the Independent Evaluator that the Companies should consider revisions to Section 19.7(a) (Exh. DPU 1-3). However, DOER recognizes that the Companies have discretion to change their form PPAs and asserts that the Companies should determine any changes to this section (Exh. DPU 1-3). Pursuant to Section 1.4 of the RFP, DOER acknowledges its role in monitoring contract negotiations but contends that the Companies and winning bidder are ultimately the parties that agree to final PPA terms, citing to § 2.2.1.9 of the RFP that provides bidders the opportunity to propose and negotiate changes to Section 19.7(a) (Exh. DPU 1-3).

3. Companies Response

The Companies disagree that Section 19.7(a) should be modified. The Companies state that the provision has been included in the form PPAs of all recent large renewable energy solicitations without issue (Exh. DPU 1-10). The Companies argue that the Section 19.7(a) provisions are reasonable and consistent with Section 83C requirements and contend that the provisions protect the Companies against adverse balance sheet or creditworthiness impacts due to changes in law or accounting standards (Exh. DPU 1-10). The Companies state that they are willing to further discuss the provision with selected bidders, but that they disagree with the Independent Evaluator's suggestion to revise Section 19.7(a) to "move closer to industry standards." The Companies contend that there is no single set of industry standards to compare the Section 19.7(a) provisions (Exh. DPU 1-10).

4. Analysis and Findings

In his report the Independent Evaluator recommended modifications to the accounting standards provisions in Section 19.7(a) of the Companies' form PPAs. However, the Independent Evaluator acknowledged that these provisions were included in past solicitations and therefore may not adversely or materially impact the instant solicitation (Independent Evaluator Report at 26-27).

After review, the Department finds that the existing accounting standards provisions are reasonable and allow for a competitive solicitation. Additionally, the Department concurs with the Companies' approach to further discuss these provisions with selected bidders as applicable (Exh. DPU 1-10). Although we decline to direct changes to Section 19.7(a), the Department finds that further inquiry into the accounting standards provision may provide value to future solicitations. In response to the Companies' contention that there is no single set of industry accounting standards, the Department finds that it would be useful if the Independent Evaluator worked with the Companies to propose or recommend modifications that it considers more aligned with industry standards.

E. Standards of Conduct

1. Introduction

The Independent Evaluator's Report notes two differences between the Eversource and National Grid standards of conduct documents: (1) National Grid's standard of conduct requires a "cooling off" period of three years for any person switching between the Bid and Evaluation Teams while the Eversource standard of conduct terminates at the conclusion of

the solicitation process, execution of all power purchase agreements or termination of the solicitation; and (2) except for people switching between the Bid and Evaluation Teams, National Grid's confidentiality obligation for the communication of confidential information by Evaluation Team members and Common Supervisors extends for five years while the Eversource standard of conduct confidentiality obligation does not expire (RFP, App. F-1, at 7; App. F-2, at 8-9; Independent Evaluator's Report at 29, n.63; Exhs. DPU 1-1, DPU 1-7).

2. Summary of Comments

National Grid maintains that it modeled the five-year period of the confidentiality obligation for the sharing of confidential non-public information by Evaluation Team members and Common Supervisors to replicate the Department's practice of allowing five years of protective treatment for certain confidential non-public information from the date of a ruling (Exh. DPU 1-6). National Grid contends that it is their intent to memorialize to Evaluation Team members and Common Supervisors that their obligation not to share confidential non-public information may extend beyond the term of the Standards of Conduct (Exh. DPU 1-6).

Eversource maintains that it does not require an extension of the Standards of Conduct as the confidentiality obligations are expressly continued beyond the solicitation process pursuant to Section 6 of the Standards of Conduct (Exh. RFP at App. F-1; Exh. DPU 1-7).

3. Analysis and Finding

The Independent Evaluator maintains that the Edgar-Allegheny principles²⁶ establish a standard for transparency as the free flow of information whereby no party, particularly a potential affiliate bidder, should have an information advantage in any part of the solicitation process (Independent Evaluator's Report at 27). In this third solicitation, the Independent Evaluator contends that the Companies and DOER have taken positive steps to comply with the transparency principle by soliciting stakeholder comment to the RFP in advance of filing the proposed RFP with the Department (Independent Evaluator Report at 27). While the Independent Evaluator notes several differences between the National Grid and Eversource Standards of Conduct, overall it assesses that the two Standards of Conduct are substantially similar and satisfy the transparency principle, providing important protections for the integrity of the solicitation process (Exh. DPU 1-1). The Department relies on the Independent Evaluator's assessment of the proposed RFP to ensure a fair and transparent solicitation process that is in the best interest of the Commonwealth. Therefore, the Department finds that no changes to either the National Grid or Eversource Standards of Conduct are required as any differences in the Standards of Conduct will not impact the integrity and transparency of the solicitation process.

²⁶ The Edgar-Allegheny principles have been enunciated and applied by the Federal Energy Regulatory Commission in decisions involving transactions between affiliates where one party is a regulated utility. The application of the principles is intended to ensure that there is no undue preference to affiliates and that competitive bidding processes, including the Standards of Conduct, are transparent, open and fair and overseen by an independent third party (Independent Evaluator Report at 10-12).

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 third 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. 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); Timetable and Method for Solicitation of Long-Term Contracts for Clean Energy Generation, D.P.U. 17-32, at 18-19 (2017); Timetable and Method for Solicitation of Long-Term Contracts for Renewable Energy, D.P.U. 15-84, at 22 (2015); 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). 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 including: (4) the solicitation timetable; (2) the bid evaluation process, including issues related to the disclosure of bid

evaluation protocols, and expanding the qualitative evaluation criteria regarding Economic Benefits to the Commonwealth, and Diversity, Equity and Inclusion, and Environmental and Socioeconomic Impacts from Siting; (3) environmental attributes, including treatment of RECs and CPECs; (4) interconnection issues, including the proposed grid deliverability analysis and alternate points of delivery; (5) the calculation and application of the price cap;²⁷ (6) disclosure of the form PPA;²⁸ and (7) electronic bid submission.²⁹

²⁷ The Department addresses this topic in Section III.B. above.

²⁸ Vineyard Wind requests that the Department direct the Companies provide the form PPAs for public review and comment before the RFP is finalized, arguing that it is important for potential bidders to have the opportunity to review the form PPAs given that PPA terms could adversely affect the solicitation process and modifications could improve the process (Vineyard Wind Comments at 11). 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).

²⁹ Section 1.6 of the RFP requires proposals to be “submitted directly to the Evaluation Team at the electronic addresses set for in Appendix H.” Vineyard Wind requests further clarification on the method and process for proposal submission, specifically regarding electronic submission of large files and confidential materials (Vineyard Wind Comments at 14). Vineyard Wind also seeks clarification on how to submit multiple proposals, including proposals that differ in capacity (Vineyard Wind Comments at 15). In response to Vineyard Wind’s comments the Companies provided clarification regarding the method and file size for submitting bids and information regarding multiple bid submissions. The Companies also indicated that further details regarding electronic bid submission will be included when they issue the RFP (Companies Joint Reply Comments at 9-10).

B. Solicitation Timetable

1. Introduction

The Petitioners and DOER intend to issue the RFP by May 7, 2021 with confidential bid submissions due by September 16, 2021 (Petition at 7; Exh. RFP at § 3.1). Several commenters request the Department to delay the RFP release date and/or extend the bidding deadline to allow for further developments in the ISO NE Cape Cod cluster study process.

In the fall of 2020, ISO-NE announced that it was undertaking a cluster study to address requests by nearly three gigawatts of additional offshore wind generation projects for interconnection on Cape Cod (DOER Reply Comments at 8). ISO-NE identified that this level of interest would likely require additional new transmission infrastructure and initiated a Cape Cod Resource Integration Study (“CCRIS”) pursuant to the terms of its tariff (DOER Reply Comments at 8, Companies Joint Reply Comments at 5, National Grid Reply Comments at 31).

In March 2021, ISO-NE published the preliminary results of its CCRIS indicating that only an additional 1,200 MW can be interconnected on the Cape after the addition of the identified Cluster Enabling Transmission Upgrade (“CETU”)³⁰ (Mayflower Wind Comments at 4, DOER Reply Comments at 8, Companies Joint Reply Comments at 5). ISO-NE expects to provide the final results of its CCRIS including cost estimates for the necessary CETU in

³⁰ See ISO-NE First Cape Cod Resource Integration Study Preliminary Results presented to the Planning Advisory Committee (Summary Non-CEII Version), dated March 17, 2021 and available at: [cape_cod_resource_integration_study_march_2021_preliminary_results_summary_non_ceii_version.pdf \(ISO-NE.com\)](https://www.iso-ne.com/regulatory-affairs-external/external-affairs-communications/summary-non-ceii-version.pdf)

May 2021 (DOER Reply Comments at 8, Companies Joint Reply Comments at 5).³¹ ISO-NE will then open the window for projects with eligible queue positions to proceed to a Cluster System Impact Study (“CSIS”) that enables those projects to elect to participate in the CSIS and pay a deposit equal to five percent of the estimated cost of the CETU to secure their place in the study (Companies Joint Reply Comments at 5, National Grid Reply Comments at 31-32). ISO-NE anticipates the deadline for projects to enter the CSIS will be sometime in mid-July, at which point it will identify which queue positions will be included in the CSIS, but ISO-NE has not indicated a timeline for the completion of the CSIS (Companies Joint Reply Comments at 5, National Grid Reply Comments at 32).

2. Summary of Comments

AIM expresses concern that the Cape Cod cluster study process has the potential to impair the competitiveness of this solicitation (AIM Comments at 2). AIM cautions that while the proposed timetable calls for bid submissions on September 16, 2021, after ISO-NE anticipates completing the cluster study, the proposed bid date is likely too late for bidders to incorporate the study results into bids and potential bidders may elect to avoid this solicitation (AIM Comments at 2). AIM maintains that developers need clarity to bid on projects that will not be built for many years, and ratepayers deserve a solicitation process that

³¹ In May 2021, ISO-NE also plans to begin a second CCRIS that will study the interconnection of additional offshore wind interconnections to Cape Cod that will require studying the need for major modifications to the existing (or possibly a new underground) 345 kilovolt right-of-way (DOER Reply Comments at 8, Mayflower Wind Comments at 4-5).

encompasses all options to facilitate low cost, clean energy projects (AIM Comments at 2). AIM urges the Department to carefully consider the potential impact of this situation on the solicitation process and consider delaying the RFP accordingly. Similarly, Mayflower Wind urges the Department to consider delaying this solicitation until such time as the ISO-NE's cluster study process has identified which projects will be included in the CSIS resulting from its initial CCRIS (Mayflower Wind Comments at 6). Mayflower Wind states that ISO-NE has indicated this determination should be made by about August (Mayflower Wind Comments at 6).

State Senator Michael Rodrigues, State Representative Patricia Haddad, and State Representative David Vieira also express concern that the Cape Cod cluster study introduces unanticipated competition for the interconnection and delivery offshore wind generation (Legislators Comments at 1). The Legislators request that the Department revise the timetable to delay issuance of the RFP until the cluster study process is "satisfactorily resolved" (Legislators Comments at 2).

National Grid is not opposed to the Department postponing the RFP bid submission date for 8-12 weeks to allow bidders to incorporate the Cape Cod cluster study results fully into their bids (National Grid Reply Comments at 33, Petitioners' Joint Reply Comments at 6). National Grid contends that given the rapidly changing competitive environment and transmission system issues that have emerged nearly in parallel with the development of the RFP, the cluster study results may be especially helpful in providing clarification and reducing uncertainty for bidders, and in so doing, improving the RFP process (National Grid

Reply Comments at 30-31). National Grid anticipates that the study will be key to clarifying the magnitude of anticipated Cape Cod transmission limitations, the upgrades ISO-NE identifies to address them, the cost of such upgrades, and the identity of the potential offshore wind bidders who will remain in the interconnection process (National Grid Reply Comments at 31). National Grid also argues that this information should allow prospective bidders to gain significant information about the availability of various interconnection points and the likely cost of using each, which should allow bidders to provide more realistic siting, permitting, and construction plans, project schedules, and project costs in their bids, as well as allow them to reduce any risk premiums built into their prices (National Grid Reply Comments at 31).

National Grid asserts that the RFP timetable can be “fine tuned” to align with the cluster study process (National Grid Reply Comments at 32). National Grid argues that both the estimated cost of the CETU and the certainty on queue positions eligible to utilize the next 1,200 MW of interconnections on the Cape expected at the Cluster Entry Deadline in mid-July could do nothing but help one or more bidders better decide on the number, capacity, and/or prices of proposals they might be able to submit for this solicitation (Exh. DPU 1-14, at 2). National Grid argues that a delay in the bid submission date of 8-12 weeks should be enough to allow bidders to make full use of this information in their bids and that this additional information and certainty can only enhance competitiveness of this

solicitation³² (National Grid Reply Comments at 32, Petitioners' Joint Reply Comments at 6, Exh. DPU 1-14, at 2).

DOER, Eversource, Unitil, and Vineyard Wind oppose revising the proposed timetable. DOER argues that the RFP solicitation schedule appropriately balances the importance of procuring additional offshore wind generation in a timely manner for the benefit of the Commonwealth while also providing sufficient time for bidders to develop competitive proposals (DOER Reply Comments at 7). DOER points out that ISO-NE plans to finalize the initial CCRIS and the cost estimates for the CETU in May 2021, while the proposed RFP schedule defines the Due Date for Submission of Confidential Proposals more than three months later on September 16, 2021 (DOER Reply Comments at 8-9). DOER highlights that bidders who are concerned that final determinations of the network upgrades and other interconnection features by ISO-NE may not be complete by the time of bidding could identify such costs through relevant studies and analyses performed by a bidder or their consultants in order to approximate the ISO-NE interconnection process (DOER Reply Comments at 9). Further, DOER emphasizes that the RFP includes requirements and flexibility for bidders who may have interconnection concerns, specifically citing the

³² National Grid also maintains that interconnection has been one of the most complex and challenging areas in the Sections 83A, 83D, and 83C RFP evaluations and expresses concern that pushing ahead without allowing bidders and the Evaluation Team to take account of ISO-NE's ongoing analysis on the emerging interconnection situation on Cape Cod could lead to a false start to this solicitation process, and/or unnecessarily high bid prices (National Grid Reply Comments at 33).

provision allowing bidders to submit bids with alternate point(s) of interconnection and delivery (DOER Reply Comments at 9). Finally, acknowledging bidder concerns regarding uncertainty of the ISO-NE interconnection queue, DOER point out that the RFP states: “[p]roposals are strongly encouraged to include a scenario analysis in their studies that shows how changes in the project interconnection queue could impact their interconnection costs using the current ISO interconnection rules” (DOER Reply Comments at 9, citing RFP at § 2.2.1.8).

Eversource and Unitil emphasize that while ISO-NE has announced its anticipated timeline for completing the initial CCRIS, it does not have a strict requirement to complete the CSIS at any time, and the timeline is dependent on both complex modeling efforts and the actions of participants in the cluster study (Companies Joint Reply Comments at 5). Like DOER, Eversource and Unitil highlight that § 2.2.1.8 of the RFP specifically allows bidders to submit third-party interconnection studies and studies of alternate interconnection scenarios to help deal with this uncertainty and to avoid disadvantaging any bidders based on the status of their interconnection (Companies Joint Reply Comments at 6). Eversource and Unitil note that there has always been uncertainty in ISO-NE interconnection study timelines, and to date, the Petitioners have not considered delaying a procurement at the request of bidders based on their expected study timeline (Companies Joint Reply Comments at 6).³³

³³ Eversource and Unitil highlight that the Section 83D solicitation was not delayed due to uncertainty from a pending interconnection process revision, but instead allowed the flexibility to evaluate bidders under different plausible scenarios (Companies Joint Reply Comments at 6).

Eversource and Unitil caution that delaying the RFP may provide advantageous information to certain bidders, but may also disadvantage other bidders (Companies Joint Reply Comments at 6). Finally, they recognize that the initiation of the CSIS will provide bidders with certainty on the queue positions included in the initial CCRIS, but argue this information will not have a material impact on the competitiveness of this solicitation because there will likely be no significant updates with regards to solutions for integrating more offshore wind on Cape Cod beyond what the bidders currently know from the preliminary results of the CCRIS (Companies Joint Reply Comments at 6; Exh. DPU 1-14, at 2).

Vineyard Wind fully supports the proposed timetable for the third Section 83C solicitation and agrees with the Petitioners that the “proposed schedule sets out a fair process for bidders” (Vineyard Wind Reply Comments at 2).

3. Analysis and Findings

The Department finds that the proposed solicitation schedule reasonably accommodates bidder uncertainty regarding the ISO-NE Cape Cod cluster study and approves the proposed RFP timetable. While the Department acknowledges that the cluster study results are unlikely to be known by the September 16, 2021 proposed bid submission date, we note that ISO-NE plans to finalize the initial CCRIS along with the cost estimates for the CETU in May 2021, thus providing bidders important cost information to inform their bids three months in advance of the bid date. The Department also notes that the RFP offers opportunities for bidders to address uncertainty in interconnection status and flexibility to accommodate interconnection risk. Section 2.2.1.8 of the RFP allows bidders to submit

third-party interconnection studies and studies of alternate interconnection scenarios to help deal with interconnection uncertainty and to avoid disadvantaging any bidders based on the status of their interconnection. The RFP specifically states: “[p]roposals are strongly encouraged to include a scenario analysis in their studies that shows how changes in the project interconnection queue could impact their interconnection costs using the current ISO interconnection rules” (Exh. RFP at § 2.2.1.8). Further, as addressed in Section IV.E.3, below, § 2.2.1.8.1 of the RFP requires bidders to submit a deliverability constraint analysis to support the Evaluation Team’s evaluation of transmission issues and allows bidders to conduct the analysis as an individual study or include it as a scenario in a broader interconnection study (Exh. RFP at Appendix I). Finally, as explained in Section IV.E.4, below, the RFP offers bidders flexibility to designate alternative delivery points to accommodate interconnection risk.

Although, Eversource and Unitil acknowledge that ISO-NE’s CSIS will provide bidders with certainty on the queue positions included in the cluster study, they argue this information will not have a material impact on the competitiveness of this solicitation because there will likely be no significant updates regarding to solutions for integrating more offshore wind on the Cape beyond what the bidders currently know from the preliminary results of the CCRIS (Companies Joint Reply Comments at 6; Exh. DPU 1-14, at 2). Eversource and Unitil also point out that while ISO-NE has announced its anticipated timeline for completing the initial CCRIS, it does not have a strict deadline by which to complete the CSIS and thus its timeline is dependent on both complex modeling efforts and the actions of participants in

the cluster (Companies Joint Reply Comments at 5). The Department understands that the ISO-NE cluster study timeline is not set in stone, and agrees that it will not be able to align, with certainty, the RFP timetable with the public availability of relevant additional interconnection information.

After review, the Department finds that the proposed timetable appropriately balances the Commonwealth's policy objective to procure additional offshore wind generation in a timely manner while also providing sufficient time for bidders to develop competitive proposals. Accordingly, the Department declines to instruct the Petitioners to delay the RFP release or extend the bid submission date and approves the proposed timetable for the instant solicitation.

C. Bid Evaluation Process

1. Introduction

Commenters request that the Petitioners make various changes to the bid evaluation process (Attorney General Comments at 3-6; DOER Reply Comments at 4-7; Environmental League of Massachusetts Comments at 1-2; New England for Offshore Wind Comments at 4-8; Renew Comments at 5; Southeastern Massachusetts Comments at 1-4; Vineyard Wind Comments at 10-13). Comments related to the bid evaluation process fall into two categories: (1) requests for disclosure of bid evaluation protocols; and (2) expanding requirements for two qualitative evaluation factors: Economic Benefits to the Commonwealth, and Diversity, Equity and Inclusion, and Environmental and Socioeconomic Impacts from Siting.

2. Disclosure of Bid Evaluation Protocols

a. Introduction

The Petitioners and DOER made several notable changes to the qualitative evaluation protocol section in this RFP. First, the RFP increases the points allocated to the qualitative evaluation score from 25 to 30 points out of 100 (Exh. RFP at § 2.3). Second, the RFP includes additional requirements to three of the qualitative evaluation factors: Economic Benefits to the Commonwealth and Diversity, Equity, and Inclusion; Low Income Ratepayers in the Commonwealth; and Environmental and Socioeconomic Impacts from Siting (RFP § 2.3.2 i, 2.3.2.ii, and 2.3.2.vii).³⁴

Consistent with past solicitations, the Petitioners and DOER intend to develop the evaluation protocols and specific qualitative scoring criteria for each category after they issue the RFP and prior to opening bids (Exh. DPU 1-8; DOER Reply Comments at 4-5).³⁵ Several commenters recommend that the Department direct the Petitioners to publish the bid evaluation criteria and protocols when they issue the RFP to enhance transparency (Attorney

³⁴ The expanded qualitative evaluation factors require bidders to provide the following information in their bid proposals: (1) The Economic Benefits to the Commonwealth and Diversity, Equity and Inclusion factor requires specifying commitments to economic activity as well as a diversity, equity and inclusion plan that includes a workforce diversity plan; (2) the Low Income Ratepayers in the Commonwealth factor requires demonstrating direct benefits to low-income ratepayers; and (3) the Environmental and Socioeconomic Impacts from Siting factor requires providing environmental impacts, fishing impacts and environmental justice impacts (RFP at § 2.3.2.i, 2.3.2.ii and 2.3.2.vii).

³⁵ DOER recommends disclosing in the RFP the qualitative points that will be assigned to three specific qualitative factors (DOER Reply Comment at 5).

General Comments at 3-7; RENEW Comments at 5; Southeastern Massachusetts Comments at 2; Vineyard Wind Comments at 10-11).

b. Summary of Comments

The Attorney General recommends that the Department direct the Companies to disclose their bid evaluation protocols, including the relative values of the qualitative factors used to evaluate bids, or at a minimum publish the percentage of maximum points possible for RFP Sections 2.3.2.i, 2.3.2. ii and 2.3.2.vii relative to other qualitative evaluation criteria (Attorney General Comments at 3, 6). The Attorney General and Southeastern Mass argue that the improvements that the Petitioners made to the RFP may not be fully realized because bidders preparing proposals do not know how these priorities rank against competing qualitative evaluation metrics (Attorney General Comments at 3-4; Southeastern Mass Reply Comments at 2).³⁶ These commenters maintain that even though the Department has previously hesitated to release the evaluation protocols due to concerns of bid manipulation, providing more transparency of the protocol would enable bidders to ensure that their bids meet the goals of the RFP by expressly stating that the motivation for the increase in qualitative points from 25 to 30 reflects greater emphasis on three qualitative evaluation sections – economic development, Low Income Ratepayers in the Commonwealth, and Environmental and Socioeconomic Impacts from Siting (Attorney General Comments at 5;

³⁶ The Attorney General contends these improvements include commitments to diversity, equity, and inclusion, use of and investment in port facilities and infrastructure, and economic development activities and investments that directly benefit economically distressed areas (Attorney General Comments at 3-4).

Southeastern Mass Reply Comments at 2). The Attorney General also opines that keeping the qualitative evaluation protocol confidential contradicts the goals of the Green Communities Act, which requires the Companies, the Department, and bidders to undertake an “open, fair and transparent solicitation and bid selection process.” Further, she argues that changes to the RFP, including modified division of quantitative or qualitative points and added emphasis on certain criteria with expectations for firm commitment agreements, necessitate more transparency (Attorney General Comments at 5-6).

RENEW asserts that the Petitioners should include the details on the weighting of all criteria, as this will allow developers to tailor their proposals to place more emphasis on the policy objectives having greater importance (Renew Comments at 5). RENEW claims that neither the Independent Evaluator, nor the Companies have provided any support for the proposition that disclosure of the criteria will lead to bid manipulation (Renew Comments at 5).

Vineyard Wind contends that the Department should consider directing the Companies to provide a breakdown of available points in order for the qualitative evaluation factors to be clear and transparent about the goals and priorities for this third solicitation (Vineyard Wind Comments at 10-11). Vineyard Wind maintains that this greater clarity would allow potential bidders to better tailor their proposals to meet the goals and priorities (Vineyard Wind Comments at 11). They further argue that precedent for additional guidance on the qualitative evaluation criteria exists in other state-led offshore wind solicitations, including the most recent New York offshore wind solicitation (Vineyard Wind Comments at 10-11).

Given the overall increase in qualitative points in this solicitation from 25 to 30 possible points out of 100, DOER asserts that it supports providing some transparency and additional clarity on the percentage of qualitative points that will be allocated to the economic development, low-income ratepayer benefits, and environmental/socioeconomic siting impacts qualitative factors (DOER Reply Comments at 5). DOER further recommends that the RFP should specifically allocate 50 percent of the total qualitative points, or 15 points, to Sections 2.3.2.1, 2.3.2.ii and 2.3.2.vii. DOER, however, recommends that the RFP should not disclose the specific point allocations for the remaining qualitative criterion, as accelerating the disclosure of specific point allocations to the RFP may allow bidders to manipulate their bids to focus on specific categories of points rather than bid a combined overall best value project for the Commonwealth (DOER Reply Comments at 4-6)

The Petitioners argue that the Department should reject recommended changes to provide more information on the details of the evaluation protocol, as giving bidders advanced access to the evaluation “answer key” will not produce a robust and competitive solicitation (Companies Joint Reply Comments at 3). Further the Petitioners maintain that the Department has rejected previous requests for more transparency on the numerical weighting of the evaluation criteria as well as requests for publishing the qualitative evaluation protocol in the final RFP (Companies Joint Reply Comments at 3). The Companies contend that the Department has ruled that the Companies bear the burden of demonstrating that they developed and implemented the solicitation method, including the evaluation criteria, in a manner that was fair, competitive and non-discriminatory (Companies

Joint Reply Comments at 3). The Companies argue that disclosing numerical weighting of the evaluation criteria and the evaluation protocol details would enable bidders to game their bids to earn artificially high scores, and cause bidders to tailor their bids in inappropriate ways (Companies Joint Reply Comments at 3). They also argue that it would better serve bidders and ratepayers if bidders submit to the Companies and DOER the bids that they believe reflect their best product offering (Companies Joint Reply Comments at 3).

Regarding DOER's recommendation that the RFP should specifically designate that 50 percent of the qualitative evaluation points be allocated to Sections 2.3.2.1.i, 2.3.2.1.ii, and 2.3.2.1.vii, the Companies object to any revisions to the RFP to explicitly identify qualitative point allocations as the RFP already makes it clear to bidders that additional emphasis will be placed on the evaluation factors in Sections 2.3.2.i, 2.3.2.ii and 2.3.2.vii (Exh. DPU 1-8).

c. Analysis and Finding

In this third solicitation RFP, we note that the Petitioners have made several changes to the qualitative bid evaluation process and qualitative evaluation factors from the last solicitation RFP (Exh. RFP at § 2.3). D.P.U. 20-16/20-17/20-18, Exh. JU-2, at 34, 37-39. The Companies have increased the qualitative evaluation score from 25 to 30 points out of 100 (Exh. RFP at § 2.3). In addition, the Companies have added several requirements to three of the qualitative evaluation factors: economic development and diversity, equity, and inclusion plans; low-income ratepayer benefits; and environmental/socioeconomic siting impacts (Exh. RFP at § 2.3.2.i, 2.3.2.ii, 2.3.2.vii). In the RFP, the Evaluation Team states that it adopted the increase from 25 to 30 points for qualitative factors in this solicitation in

order to increase the emphasis on Sections 2.3.2.i, 2.3.2.ii, and 2.3.2.vii of the RFP (RFP § 2.3.2.I, 2.3.2.ii,2.3.2.vii; DOER Reply Comments at 5; Exh. DPU 1-8).

The Attorney General, Environmental League of Massachusetts, RENEW, Southeastern Mass and Vineyard Wind all recommend the Department direct the Companies to disclose the relative value of all of the qualitative factors to provide bidders transparency on the priorities of the RFP (Attorney General Comments at 3-6; RENEW Comments at 5; Southeastern Mass Reply Comments at 2; Vineyard Wind Comments at 10-11). The Petitioners, however, oppose making any revisions to the RFP to include additional information on the relative value of the qualitative factors, contending that the language in the RFP already makes it clear to bidders that the Evaluation Team will place additional emphasis on the factors in Sections 2.3.2.i, 2.3.2.ii, and 2.3.2.vii (DPU 1-8). DOER supports transparency of the qualitative factors, and specifically recommends the Evaluation Team explicitly allocate 50 percent (15 out of 30 points) of the total qualitative score to Sections 2.3.2.i, 2.3.2.ii, and 2.3.2.vii in order to provide more transparency. However, DOER also argues that the RFP should not disclose where the Evaluation Team will allocate the remaining qualitative points (DOER Reply Comments at 4-6).

In previous timetable and method of solicitation review proceedings, 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 in order to prevent the manipulation of bids. D.P.U. 17-103, at 51-52; D.P.U. 17-32, at 62-65; D.P.U. 19-45, at 46-47. The Independent Evaluator acknowledges in its report that the most

significant differences in the evaluation framework for this RFP pertain to changes in the qualitative evaluation criteria, specifically the maximum number of points for the qualitative evaluation increasing from 25 to 30 to reflect the increased emphasis on Economic Benefits to the Commonwealth, and Diversity, Equity and Inclusion, benefits to low-income ratepayers, and environmental and socioeconomic impacts (Independent Evaluator's Report at 18). The Independent Evaluator concludes that the RFP design is fair and does not unduly favor Distribution Company affiliates and that the plan for implementation of the bid evaluation and selection process satisfied the transparency principle (Independent Evaluator Report at 30-31).

We concur with the Companies' assessment that the additional language that DOER and the Companies negotiated in § 2.3 of the RFP already provides bidders with advanced notice on the priorities of the qualitative evaluation and that disclosing additional information on the points attributed to the qualitative factors is not necessary. Therefore, we find that the RFP provides the appropriate amount of transparency as to the priorities of the Commonwealth for bidders to provide the best product offering. 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; and D.P.U. 19-45, at 46-47.

During the contract review proceedings, the Companies will bear the burden of demonstrating that they developed and implemented the evaluation protocols 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; D.P.U. 19-45, at 46-47. In this regard, the Companies will need to provide full and complete documentation of how the Evaluation Team calculated the quantitative and qualitative scores for each proposal. The Companies shall include a narrative that explains how the Evaluation Team scored each factor that comprises the qualitative score for each bid. Finally, during the contract review proceeding, the Department expects 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.

3. Expansion of Qualitative Evaluation Factors

a. Introduction

The RFP's Economic Benefits to the Commonwealth and Diversity, Equity, and Inclusion qualitative factor requires bidders provide direct, specific, and measurable employment and contracting benefits for their project as well as a diversity, equity and inclusion plan that includes a Workforce Diversity Plan and a Supplier Diversity Program (Exh. RFP at § 2.3.2.i). The RFP's Environmental and Socioeconomic Impacts from Siting qualitative factor requires bidders provide the environmental impacts, fishing impacts and environmental justice impacts for their project (Exh. RFP at § 2.3.2.vii). Several commenters offered recommendations to expand the evaluation criteria for these two qualitative evaluation factors (Environmental League of Massachusetts at 1-2; New England for Offshore Wind at 4-8; Southeastern Mass at 1-4; and Vineyard Wind at 13).

b. Summary of Comments

The Environmental League of Massachusetts recommends that the Department direct the Petitioners to modify the RFP by: (1) putting greater and clear emphasis on diversity, equity and inclusion goals in the qualitative proposal criteria by increasing the 30 percent weight on qualitative factors to 50 percent and allocate a weight of 25 percent to diversity equity and inclusion goals; (2) strengthening language on page 32 of the RFP by requiring bidders to make diversity and inclusion commitments by specifying a specific percentage of jobs, supplier contracts, and investment opportunities will go to minorities, women, veterans, LGBT persons and people with disabilities; and (3) splitting § 2.3.2 of the RFP, “Economic Benefits to the Commonwealth and Diversity, Equity and Inclusion” into separate subsections to clarify for bidders that preparing meaningful plans for workforce diversity, supplier diversity and investor diversity is an important part of a successful bid alongside general economic growth (Environmental League of Massachusetts Comments at 1-2).

New England for Offshore Wind recommends that the Department direct the Petitioners to modify the RFP to require bidders to submit proposals that include explicit baseline requirements for minority economic participation, high-quality employment and work product, community benefits and local supply chain, research and education, environmental socioeconomic impact criteria and environmental justice (New England for Offshore Wind Comments at 4-8).

Southeastern Mass fears that the southeastern Massachusetts region will be unsuccessful in this bid selection process unless the Petitioners disclose how they will score

economic benefits as developers (Southeastern Mass Reply Comments at 1-2). Southeastern Mass further argues that economic benefits in bid proposals should detail specific long-term investments that show how the industry will create roots in the Southeastern Massachusetts region (Southeastern Mass Reply Comments at 2-4). Southeastern Mass recommends that the Evaluation Team grant higher scores for proposals that commit to a specific dollar amount of proposed investments, designate the number and quality of permanent jobs created, and attract other private capital to the industry cluster region (Southeastern Mass Reply Comments at 2-4). Southeastern Mass also recommends that the economics benefit qualitative evaluation criteria should require more specific commitments from developers (Southeastern Mass Reply Comments at 2-4).

Vineyard Wind recommends the Department direct the Petitioners to modify the RFP to use more flexible language in the economic development criteria § 2.3.2.i, in order to encourage potential bidders to develop initiatives that serve a broader range of traditionally underserved populations in the Commonwealth and better align with similar efforts in other state-led offshore wind solicitations (Vineyard Wind Comments at 13). Absent more flexible language, Vineyard Wind recommends at a minimum that § 2.3.2.i. explicitly reference federally and state recognized tribes (Vineyard Wind Comments at 13).

The Companies oppose any requirement by the Department that they further revise § 2.3.2.i, the diversity, equity and inclusion section of the RFP (Companies Joint Reply Comments at 4). The Companies claim that they developed § 2.3.2.i after receiving comments from public stakeholders and with input from DOER and the Attorney General,

and the RFP reflects an appropriate increased focus on the diversity, equity and inclusion issues as compared to prior solicitations (Companies Joint Reply Comments at 4).

DOER maintains that § 2.3.2.i broadly frames the RFP's description of economic development criteria and does not preclude bidders from proposing alternative types of economic benefit commitments beyond those it explicitly lists (DOER Reply Comments at 7). DOER contends that by not restricting economic benefits to an exclusive list, the RFP allows bidders flexibility to propose alternative types of economic development investments, including ones that benefit federally and state recognized tribes (DOER Reply Comments at 7).

c. Analysis and Finding

The Environmental League of Massachusetts, New England for Offshore Wind, Southeastern Mass, and Vineyard Wind all recommend expanding the requirements of two of the qualitative factors in the bid qualitative assessment, the Economic Benefits to the Commonwealth and Diversity, Equity and Inclusion factor, and the Environmental and Socioeconomic Impacts from Siting factor (Environmental League of Massachusetts at 1-2; New England for Offshore Wind at 4-8; Southeastern Mass at 1-4; and Vineyard Wind at 13). The Companies maintain that with input from DOER and the Attorney General, as well as helpful comments from public stakeholders, they developed and expanded the Economic Benefits to the Commonwealth and Diversity, Equity and Inclusion qualitative factor and that the RFP already reflects an appropriate increased focus on these issues as compared to prior solicitations (Companies Joint Reply Comments at 4). The Independent

Evaluator commended the Petitioners on soliciting comments from stakeholders on a draft of the RFP as a process enhancement and improvement to the quality of the RFP (Independent Evaluator's Report at 31).

The Department acknowledges the enhancements the Petitioners made to the qualitative evaluation section of the RFP in this solicitation and specifically to § 2.3.2.i, 2.3.2.ii and 2.3.2.vii. The Department approves of the process the Petitioners used to engage stakeholder input on the draft RFP in order to enhance the quality of developers' bid proposals. Given the opportunity stakeholders have had to provide comments to the Petitioners to influence the RFP that is now before the Department, we find that no further revisions to the qualitative evaluation criteria are appropriate (Independent Evaluator's Report at 31). We find that the requests for any additional changes to the qualitative evaluation criteria are outside the scope of a timetable and method of solicitation proceeding and that stakeholders have had the opportunity to provide input on the RFP. The Department may address any additional changes to the requirements of qualitative evaluation factors during the contract review proceedings. Accordingly, the Department declines to adopt the commenter's proposed changes to the qualitative evaluation criteria. D.P.U. 17-103, at 49-52; D.P.U. 19-45, at 50.

D. Environmental Attributes

1. Introduction

Section 2.2.1.4.i.e of the RFP contains REC price allocation requirements that obligate REC pricing as a percentage of the total proposed contract price (i.e., energy plus

RECs) to be no less than 20 percent. The Petitioners have increased the minimum REC price allocation from five percent included in the previous solicitation in order to reflect a more commercially reasonable allocation (Independent Evaluator Report at 19). In addition to RECs, the RFP includes provisions on CPECs³⁷ in Sections 2.3.1.1(iii) and 2.3.1.2(vi). These sections explain that the Evaluation Team will incorporate CPECs into direct and indirect impacts should such impacts be reliably quantifiable and meaningful.

As in the second 83C procurement, the Independent Evaluator has reviewed whether the terms and conditions of this solicitation are fair to prospective bidders in light of the price cap resulting from the prior solicitation.³⁸ The Independent Evaluator's approach is to ascertain whether on a net overall basis the current solicitation process will impose significant net burdens on bidders compared to what bidders faced in the prior RFP, while taking into consideration the PPAs that will arise from the procurement (Independent Evaluator Report at 19). In the Independent Evaluator's opinion, the increase in REC price allocation from five to 20 percent should not adversely impact bidders in a material way, primarily because, under the form PPAs, sellers are not at risk of RPS law changes, which may impact REC prices, so long as they use commercially reasonable efforts to comply with the changes

³⁷ In the RFP, a CPEC is defined as a credit received for each MWh of energy or energy reserves at NEPOOL GIS that is adjusted by the applicable CPEC Multipliers provided during a Seasonal Peak Period that represents a compliance mechanism as defined in the regulations (Exh. RFP at A).

³⁸ The Independent Evaluator's Report does not specifically address CPECs.

(Independent Evaluator Report at 20). The Independent Evaluator views these terms and conditions, and those of the RFP as being fair, and not preferential to any company affiliate.

2. REC Pricing Requirements

a. Summary of Comments

Vineyard Wind recommends that the Department direct the Companies to retain the five percent REC Pricing Threshold in § 2.2.1.4.i.e of the RFP, in line with prior Section 83C solicitations (Vineyard Wind Comments at 7-8). Vineyard Wind argues that the change in this provision could adversely impact bidders' ability to deliver cost-effective financing to the detriment of ratepayers. Vineyard Wind contends that lenders and tax equity investors may decide to mitigate real and perceived risks that could impact the amount, timing, cost, and availability of financing options (Vineyard Wind Comments at 7-8).

The Companies argue that the Department should retain the 20 percent REC pricing allocation, as the revised requirements are consistent with current market conditions (Companies Joint Reply Comments at 6). In support of their position to increase the REC pricing allocation from the previous Section 83C RFP, the Companies refer to the Independent Evaluator's Report, which states that the current risk allocation provisions in the form PPAs protect the seller's contracted REC price so long as the seller uses commercially reasonable efforts to comply with any change in RPS law (Companies Joint Reply Comments at 6-7, citing Independent Evaluator Report at 20). The Companies also state that the risk allocation provision to address possible changes in RPS law was revised in the form PPAs for the previous Section 83C RFP and Mayflower Wind accepted this provision in the executed

Mayflower Wind PPAs (Companies Joint Reply Comments at 7). Therefore, the Companies argue that Vineyard Wind's suggestion that the REC price requirement will impact project financing is misplaced (Companies Joint Reply Comments at 7).

The Petitioners contend that it is reasonable to revisit the REC price allocation since wholesale energy and REC prices are variable (Exh. DPU 1-15). Because the total contract price should be more important to bidders than the individual prices for energy and RECs, the Evaluation Team does not anticipate that the change from five percent to 20 percent will have a material impact on bidders (Exh. DPU 1-15). Furthermore, the Petitioners argue that more up-to-date REC pricing protects customers by incenting bidders to fulfill contractual duties as a Class 1 facility (Exh. DPU 1-15). If the provision is left unchanged at five percent, the Petitioners contend that bidders have less incentive to maintain their facility as a Class 1 facility (Exh. DPU 1-15).

b. Analysis and Findings

The Companies propose that the RFP include a 20 percent REC price allocation floor. Vineyard Wind argues that the price ratio should remain at five percent, the allocation under the previous 83C solicitations, or otherwise risk bidders' ability to deliver cost-effective financing.

As described above, the Independent Evaluator has reviewed the proposed changes to increase the minimum REC price allocation and concluded that the increase in the REC price allocation from five percent to 20 percent should not adversely impact bidders (Independent Evaluator Report at 20). The Independent Evaluator also identified protections under the

form PPAs that insulate sellers from REC price risks due to RPS changes so long as they use commercially reasonable efforts to comply with the RPS (Independent Evaluator Report at 20).

The Department has reviewed the proposed REC price allocation and, for the reasons cited by the Independent Evaluator, we find that it is reasonable. The Department finds that the revised 20 percent REC pricing allocation floor more accurately reflects current market conditions (Companies Joint Reply Comments at 6). In addition, the Department agrees with the Petitioners' claims in response to information request DPU 1-15, namely that: (1) it is reasonable to revisit the REC price allocation because wholesale energy and REC prices are variable; (2) the total contract price is likely to be more important to bidders than the individual prices for energy and RECs; and (3) up-to-date REC pricing protects customers by incentivizing bidders to fulfill contractual duties as a Class 1 facility. For these reasons, we reject Vineyard Wind's contention that the revised REC price allocation should remain at five percent. The Department agrees that the PPAs will support cost-effective financing and accordingly, approves the 20 percent REC price allocation floor.

3. Clean Peak Energy Certificates

a. Summary of Comments

Although RENEW supports § 2.3.1.1 of the RFP, which states that the Evaluation Team will evaluate proposals for supplying CPECs, RENEW argues that the RFP should clarify that bidders have no obligation to generate CPECs, whether set at a minimum or fixed amount (RENEW Comments at 5). RENEW further contends that the RFP should authorize

contingent bids for paired systems (i.e., offshore wind generation with Qualified Energy Storage Systems) in the procurement to increase the supply of CPECs and reduce consumer costs (RENEW Comments at 5). Relatedly, Vineyard Wind seeks further clarification as to how the Evaluation Team will (1) quantify the value of a proposal's ability to produce and supply CPECs, and (2) determine if such value is reliably quantifiable and meaningful (Vineyard Wind Comments at 9). Vineyard Wind requests explicit clarification on whether CPECs are considered "Environmental Attributes" as defined in the RFP and Form PPAs (Vineyard Wind Comments at 9).

In response to RENEW and Vineyard Wind, the Companies state that the RFP defines "Environmental Attributes," to include CPECs, citing both the defined term on page B of the RFP and 310 CMR 7.75 (Companies Joint Reply Comments at 7-8). The Companies assert that, consistent with past solicitations and precedent, they will not provide further details on the quantitative evaluation protocol or assumptions, including those related to CPECs (Companies Joint Reply Comments at 7-8). The Companies further state that they do not seek to incorporate RENEW's request to revise the paired energy storage bid eligibility provision (Companies Joint Reply Comments at 7-8). The Companies emphasize that these issues are beyond the scope of this proceeding ((Companies Joint Reply Comments at 7-8, citing D.P.U. 19-45, at 42).

b. Analysis and Findings

The Department has reviewed the RFP requirements for supplying CPECs. The Department confirms that CPECs are Environmental Attributes as defined in the RFP and the

RFP defines bidder obligations to supply Environmental Attributes (Companies Joint Reply Comments at 7-8). Further, the Department finds that § 2.2.1.3 of the RFP provides bidders the flexibility to submit a bid with a paired energy storage system (Companies Joint Reply Comments at 7-8). The Department declines to address other recommendations from RENEW and Vineyard Wind, as 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. D.P.U. 19-45, at 50; D.P.U. 17-103, at 49-52.

E. Interconnection Issues

1. Introduction

Some commenters also raised issues related to interconnection elements of the RFP. Two commenters, Massachusetts Legislators and Mayflower Wind, seek to revise the RFP's eligibility requirements to address the ISO-NE Cape Cod cluster study process (see Section IV.B, above). Additionally, Section 2.2.1.8.1 and Appendix I of the RFP require bidders to submit a deliverability constraint analysis with their bids. The Petitioners added this requirement to the RFP to identify potential energy deliverability constraints to help inform the Evaluation Team's quantitative evaluation, including its understanding of general transmission issues (Exh. RFP at § 2.2.1.8.1). Appendix I clarifies that bidders may provide the analysis as an individual study or include it as a scenario in a broader interconnection

study and specifies a set of assumptions bidders are to use in preparing the analysis (Exh. RFP at Appendix I). RENEW commented on this issue.

Section 2.2.1.3 of the RFP states: “[a] proposal in which there will be a single point of interconnection and delivery will be considered a single bid”. Similarly, a bid in which there will be two points of interconnection and delivery, with a specified allocation of energy delivered to each point of interconnection, will also be considered a single bid for evaluation purposes (Exh. RFP at § 2.2.1.3). If a bid has an alternate point(s) of interconnection and delivery, the alternate interconnection/delivery proposal will be considered a separate bid for evaluation purposes, which will require an additional bid fee pursuant to Section 1.10. The RFP does not define “alternate point(s) of interconnection and delivery”. Vineyard Wind commented on this issue.

2. Queue Position

a. Summary of Comments

The Legislators assert that the Commonwealth has an interest in ensuring that no “speculative developer” puts a project with a Section 83C-approved PPA at risk by purchasing limited remaining Cape Cod transmission capacity (Legislators Comments at 2). The Legislators further caution that such behavior would lead to reduced competition and increased cost in this solicitation and urge the Department to direct the Evaluation Team to “disfavor” bids from developers that have submitted ISO-NE interconnection queue positions for interconnection in Massachusetts to support bids to sell offshore wind energy in other

states if such queue positions compete with or displace projects with PPAs approved pursuant to Section 83C (Legislators Comments at 1-2).

While acknowledging that the Section 83C process runs independently from ISO-NE's interconnection queue process and the Department cannot change ISO-NE's tariff or processes, Mayflower Wind similarly cautions that competing Cape Cod interconnection queue positions have the potential to drive up development costs and impair the competitiveness of this solicitation (Mayflower Wind Comments at 3-5). Mayflower Wind therefore requests that the Department instruct the Petitioners to revise the site control requirements in RFP § 2.2.2.1 to require bidders to: (1) clearly specify the ISO-NE queue position that will connect to the regional grid and which lease area it serves; (2) confirm energy will be generated at the federal lease area specified; and (3) demonstrate the bidder had site control of the federal lease area at the time it filed for interconnection (Mayflower Wind Comments at 5). Mayflower Wind maintains that these revisions will have the effect of linking interconnection requests in the ISO-NE queue with lease areas that in fact have capacity to deliver to the Commonwealth (Mayflower Wind Comments at 5). Mayflower Wind contends that this would "discourage projects from continuing to occupy alternate queue positions tied to lease areas with already feasible interconnection solutions and inadequate remaining production ability, thus freeing up interconnection capacity and promoting a competitive environment for more projects in the spirit of Section 83C" (Mayflower Wind Comments at 5-6).

b. Analysis and Findings

Section 83C authorizes the Department to approve the timetable and method for solicitations of long-term contracts for offshore wind energy generation. In Section IV.B, above, the Department addresses comments asking the Department to revise the proposed timetable to accommodate bidder uncertainty associated with ISO-NE's Cape Cod cluster study. Here, the Legislators and Mayflower Wind address the method of solicitation by asking the Department either to condition a bidder's eligibility to participate in this solicitation or to circumscribe the Evaluation Team's evaluation of bids based on the bidder's queue position or participation in the ISO-NE's cluster study. In carrying out its authority under Section 83C to approve the timetable and method for solicitations of long-term contracts for offshore wind energy generation, the Department has consistently granted DOER and the Companies discretion to implement RFP terms and provisions in line with statutory requirements. The Department is not persuaded that the Legislators' and Mayflower Wind's concerns with the cluster study warrant us to revisit that precedent. As addressed in Section IV.B, above, the RFP provides the Evaluation Team and bidders appropriate mechanisms to evaluate and mitigate interconnection queue uncertainty. Further, the Department observes that the site control requirements of the RFP largely follow those the DOER and the Petitioners adopted in the previous successful offshore wind solicitations. The Department finds that interconnection status is a typical bid evaluation risk that the Evaluation Team is well equipped to address, and therefore, the Department declines to adopt the Legislators' and Mayflower Wind's proposed revisions to the RFP method of solicitation.

3. Deliverability Constraint Analysis

a. Summary of Comments

RENEW questions the value of the deliverability constraint analysis because it requires a level of curtailment analysis beyond what ISO-NE provides in interconnection studies (RENEW Comments at 7). RENEW also suggests that when bidders develop studies to assess curtailment risks their projects might face when operational they may not use consistent assumptions, thus limiting the comparative value of the studies (RENEW Comments at 7). On this basis RENEW recommends that the deliverability constraint analysis be an optional, not a required bid element (RENEW Comments at 7).

DOER and the Companies explain that the Evaluation Team plans to use the deliverability constraint analysis to identify potential additional inputs to the quantitative modeling software that are not captured in its review of other studies or knowledge of the regional transmission system (Exh. DPU 1-13, at 1).³⁹ The Petitioners emphasize that the RFP does not require bidders to identify or construct network upgrades or change other aspects of their bids to address any issues disclosed by the deliverability constraint analysis

³⁹ The Petitioners explain that all Section 83C solicitations use a standard modeling framework that requires the Evaluation Team to select a certain set of constraints on the electric transmission system to monitor equally for all bids (Companies Joint Reply Comments at 11). The Petitioners maintain that the deliverability constraint analysis will help the Evaluation Team to identify potential real-world conditions that are not considered in other required interconnection information; specifically, constraints (i.e., overloaded transmission lines during an associated transmission outage) that occur during high coincident output of the project under study and the multiple offshore wind generation resources that already have state contracts (Exh. DPU 1-13, at 1-2).

(Companies Reply Comments at 11, citing Exh. RFP at § 2.2.1.8). The Petitioners confirm that the Evaluation Team will not use the analysis to evaluate the maturity of a bid's progress in the ISO-NE interconnection process and that the Evaluation Team will include any input identified by any bidder in the model for all bidders (Exh. DPU 1-13 at 1-2). The Petitioners assert that this analysis will result in the Evaluation Team selecting projects with the most net benefits to Massachusetts ratepayers (Companies Joint Reply Comments at 11).

b. Analysis and Findings

The Petitioners added the deliverability constraint analysis as a required bid element to help inform the Evaluation Team's understanding of general transmission issues including potential energy deliverability constraints when it conducts its quantitative evaluation of bids (Exh. RFP at § 2.2.1.8.1). The RFP does not require bidders to identify or construct upgrades or change other aspects of their bids to address any issues disclosed by the deliverability constraint analysis. Rather, the purpose of this analysis is to support the Evaluation Team's objective to select projects with the most net benefits to Massachusetts ratepayers (Companies Joint Reply Comments at 11; Exh. RFP at § 2.2.1.8.1).

Given the increased competition for scarce transmission interconnection capacity in the southeastern Massachusetts region by offshore wind generators, the Department finds that the deliverability constraint analysis is an appropriate tool to support the Evaluations Team's assessment of potential transmission constraints that could impact the deliverability of purchased energy resulting from this solicitation. For this reason, the Department rejects RENEW's request to make this analysis optional for bidders.

4. Alternate Points of Delivery

a. Summary of Comments

Vineyard Wind requests that the Department instruct the Petitioners to revise the RFP to clarify what constitutes “an alternate interconnection/delivery proposal” that would require an additional bid fee (Vineyard Wind Comments at 15). Vineyard Wind specifically seeks clarity on whether, a bid identifies a single “primary” or “preferred” interconnection point, but also indicates that one or more alternate interconnection points are under consideration, each of those alternate points be subject to an additional bid fee (Vineyard Wind Comments at 15).

The Petitioners explain that the relevant section of § 2.2.1.3 is a result of their conversations with ISO-NE during the drafting of the RFP regarding the Cape Cod cluster process and is intended to ensure bidders have the flexibility to deal with interconnection uncertainty. (Companies Joint Reply Comments at 10). The Petitioners propose a revision to § 2.2.1.3 if the Department decides that the RFP should be clarified (Exh. DPU 1-9).⁴⁰

⁴⁰ The Petitioners propose modifying section 2.2.1.3 by replacing “If a bid has an alternate point(s) of interconnection and delivery, the alternate interconnection/delivery proposal will be considered a separate bid for evaluation purposes, which will require an additional bid fee pursuant to Section 1.10.” with the “For a proposal providing an additional unique and independent point(s) of interconnection and delivery as an alternative, such additional alternative will be considered a separate bid which will require an additional bid fee pursuant to Section 1.10.”

b. Analysis and Findings

The Department finds that the language in § 2.2.1.3 implicates bidders' bid fee obligations and therefore represents a material provision in the proposed method of solicitation. For this reason the Department directs the Petitioners to implement the Petitioners' proposed revision to § 2.2.1.3 by replacing the sentence: "If a bid has an alternate point(s) of interconnection and delivery, the alternate interconnection/delivery proposal will be considered a separate bid for evaluation purposes, which will require an additional bid fee pursuant to Section 1.10." with the sentence: "For a proposal providing an additional unique and independent point(s) of interconnection and delivery as an alternative, such additional alternative will be considered a separate bid which will require an additional bid fee pursuant to Section 1.10" (Exh. DPU 1-9).

V. CONCLUSION

After review, the Department finds that the proposed timetable and method for the third solicitation and execution of long-term contracts for offshore wind energy generation is consistent with the requirements of Section 83C and 220 CMR § 23.00 et seq., and § 21 of the Act to Advance Clean Energy, Chapter 227 of the Acts of 2018. 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.

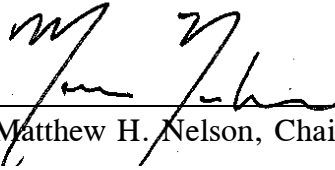
VI. ORDER

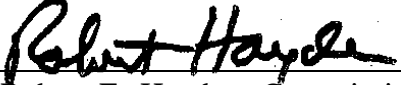
Accordingly, after due notice, opportunity for comment, and consideration, it is

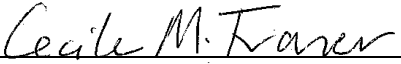
ORDERED: That the petition of Fitchburg Gas and Electric Light Company, d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, NSTAR Electric Company d/b/a Eversource Energy, and the Department of Energy Resources for approval of a proposed timetable and 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, and § 21 of the Act to Advance Clean Energy, Chapter 227 of the Acts of 2018, is APPROVED, subject to the directives contained herein; and it is

FURTHER ORDERED: That 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 shall comply with all other directives contained in this Order.

By Order of the Department,


Matthew H. Nelson, Chair


Robert E. Hayden, Commissioner


Cecile M. Fraser, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.