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Via Hand Delivery and Electronic Mail (emma.rodvien@puc.ri.gov)

Emma Rodvien
Coordinator
Energy Facility Siting Board
RI Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Mayflower Wind Energy LLC– Application to Construct Major Energy Facility
Docket No. SB-2022-02

Dear Ms. Rodvien:

Enclosed herewith please find an original and six (6) copies of Mayflower Wind Energy LLC's Joint Pre-Filed Direct Testimony of Daniel Hubbard for filing in the above-entitled matter.

Please feel free to contact me if you have any questions.

Respectfully,



Christian F. Capizzo

CFC:nah
Enclosures

cc: Service List

**Testimony of
Hubbard**

PRE-FILED DIRECT TESTIMONY
OF
DANIEL HUBBARD

1 **I. Introduction**

2 **Q. Mr. Hubbard, please state your name and business address.**

3 A. My name is Daniel Hubbard. My business address is 101 Federal Street, Suite 1900,
4 Boston, MA 02110.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am the Director of External Affairs and General Counsel of Mayflower Wind Energy
7 LLC (Mayflower Wind or Mayflower). Mayflower Wind is a joint venture of Shell New
8 Energies US LLC and OW North America LLC (Ocean Winds).

9 **Q. What are your responsibilities in that role?**

10 A. In my role with Mayflower Wind, I am responsible for the legal and outreach activities of
11 the company, including the development of Mayflower's offshore wind generation project
12 in federal waters (referred to as the Clean Energy Resource) and the necessary transmission
13 connector projects that will deliver energy from the Clean Energy Resource to the regional
14 transmission grid.

15 **Q. Please describe your professional background.**

16 A. I have included my *curriculum vitae* as an addendum to this testimony. See Addendum 1.

17 **Q. Have you previously testified before the Siting Board, the Rhode Island Public
18 Utilities Commission, or any other energy regulatory bodies?**

19 A. No.

20 **Q. Will you be sponsoring any proposed addenda to the testimony?**

21 A. Yes, I am sponsoring the following addenda:

- Addendum 1: *Curriculum Vitae* of Daniel Hubbard
- Addendum 2: Letter from Mayflower Wind to Massachusetts Energy Facilities Siting Board (EFSB) dated November 18, 2022.
- Addendum 3: Mayflower Wind Pleadings cited herein and filed with Massachusetts Department of Public Utilities.
- Addendum 4: Commonwealth Wind Pleadings cited herein and filed with Massachusetts Department of Public Utilities.
- Addendum 5: Approved Motion, Order and Pleadings cited herein from Massachusetts Department of Public Utilities.
- Addendum 6: Commonwealth Wind Appeal to Massachusetts Supreme Court cited herein.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide information to the Rhode Island Energy Facility Siting Board (Siting Board) about the Mayflower Wind offshore wind project and the related transmission connector facilities in response to the “Order to Show Cause” issued by the Siting Board on November 10, 2022 (Show Cause Order) in this proceeding. I will also provide some context to the filings that gave rise to the Show Cause Order in this proceeding.

Q. What filings gave rise to the Show Cause Order?

A. The Show Cause Order was issued after Mayflower Wind made certain filings with the Massachusetts Department of Public Utilities (DPU) in proceedings regarding its power

1 purchase agreements (PPAs). In those filings, Mayflower Wind reacted to a dynamic
2 situation in Massachusetts in which another offshore wind developer, Commonwealth
3 Wind LLC (Commonwealth Wind), moved to suspend the PPA proceedings on the grounds
4 that Commonwealth Wind's project was no longer viable. Mayflower Wind did not
5 provide a copy of those Massachusetts filings to this Siting Board. Mayflower deeply
6 regrets and apologizes for not providing this information to the Siting Board at the time of
7 the PPA filings.

8 **Q. What did Mayflower Wind's Massachusetts filings say?**

9 A. Mayflower Wind requested a short pause in the proceedings for the PPA parties to examine
10 whether changes to the PPAs should be made. Mayflower Wind did not take steps to
11 dismiss its PPAs; it merely argued that, if permitted, a short pause would improve the
12 regulatory process and outcome.

13 **Q. Why did Mayflower Wind not inform the Siting Board about the Massachusetts**
14 **filing?**

15 A. Mayflower Wind did not inform the Siting Board because: (1) Mayflower Wind fully
16 intended to continue development of its Clean Energy Resource and the necessary
17 connector projects; (2) regardless of the status of specific PPAs, Mayflower Wind believes
18 there is a regional need for the SouthCoast Project that is the subject of the application
19 before this Siting Board; (3) the filings were procedural in nature, requesting a short pause
20 in a proceeding for the PPA parties to examine whether changes to the PPAs should be
21 made; and (4) by November 7, 2022, Mayflower had withdrawn its request for a pause in

1 the proceedings and affirmed its commitment to project development. Mayflower Wind
2 understands the importance of coordinating the permitting and approval processes in both
3 Rhode Island and Massachusetts for the SouthCoast Project. Mayflower Wind is
4 committed to keeping the Siting Board and our community partners in Rhode Island abreast
5 of relevant developments regarding the Clean Energy Resource and the SouthCoast Project
6 through appropriate consultation, and to provide copies of relevant Massachusetts filings
7 for informational purposes to the Siting Board.

8 **Q. How is your testimony organized?**

9 A. This Section I is the introduction, which provides biographical details about myself and the
10 purpose of my testimony. Section II provides background on the Clean Energy Resource,
11 its development and the context for my testimony. Sections III and IV address specific
12 questions regarding the status of the Clean Energy Resource and the related transmission
13 connector projects in Rhode Island from the Siting Board's Show Cause Order. Section V
14 is the Conclusion.

15 **II. Background and Context for Testimony**

16 **Q. What is the Clean Energy Resource?**

17 A. The Clean Energy Resource is an offshore wind generation facility currently under
18 development by Mayflower Wind. The Clean Energy Resource is capable of generating
19 an estimated 2,400 megawatts (MW) of renewable clean energy from federal waters on the
20 Outer Continental Shelf in the designated Bureau of Ocean Energy Management
21 Renewable Energy Lease Area OCS-A 0521 (Lease Area). The Lease Area at its closest

1 edge is approximately 51 nautical miles southeast of the Rhode Island coast. Mayflower
2 Wind's Clean Energy Resource encompasses all wind turbine generators, offshore
3 substation platforms, and inter-array cables in federal waters. The Clean Energy Resource
4 is entirely located in federal-jurisdictional waters.

5 **Q. What are the relevant transmission connector projects?**

6 A. In order to bring the renewable clean energy from the Clean Energy Resource to the
7 regional transmission system, Mayflower Wind is planning construction of the
8 transmission connector facilities that will bring the energy to shore and to the existing
9 regional transmission grid. The relevant transmission connector facilities for this
10 proceeding will traverse Rhode Island state waters, making intermediate landfall on
11 Aquidneck Island in Portsmouth, Rhode Island, crossing underground across Portsmouth,
12 exit into Mount Hope Bay and ultimately make landfall and interconnect with the regional
13 transmission grid at Brayton Point in the Town of Somerset, Massachusetts. For the
14 purposes of Mayflower Wind's Application for License to Construct Major Energy
15 Facilities, the "Project" consists of those transmission connector facilities in Rhode Island.
16 The entirety of the transmission connector facilities in Rhode Island and Massachusetts,
17 which make ultimate landfall at Brayton Point, are referred to as the "SouthCoast Project."

18 **Q. Are there active siting proceedings for the Massachusetts portion of the SouthCoast**
19 **Project?**

20 A. Yes. As discussed in more detail below, Mayflower Wind is also actively proceeding with
21 siting the needed Massachusetts-jurisdictional transmission connector facilities for the

1 SouthCoast Project at the Massachusetts EFSB. The Massachusetts siting proceeding for
2 the SouthCoast Project is in Docket Number EFSB22-04/D.P.U. 22-67/68.

3 **Q. Why is the Clean Energy Resource being developed?**

4 A. The Clean Energy Resource is being developed in response to public policy requirements
5 at both the federal and state level related to climate change, clean energy, and offshore
6 wind. The Clean Energy Resource, and the related SouthCoast Project will provide
7 renewable clean energy benefits to the state of Rhode Island and the entire New England
8 region, and will contribute to mitigating the impacts of climate change. The Clean Energy
9 Resource and the related SouthCoast Project will provide economic benefits to Rhode
10 Island including, among others, jobs, spending, submerged lands lease fees for the offshore
11 route in state waters, and potential revenue for the Town of Portsmouth, which is currently
12 in negotiations.

13 **Q. Why is the SouthCoast Project needed?**

14 A. The SouthCoast Project is needed to bring the renewable clean energy generated at the
15 Clean Energy Resource to the New England grid. There is currently no offshore
16 transmission infrastructure that can deliver energy from offshore wind generation into the
17 New England transmission system. As noted above, the need for the Clean Energy
18 Resource and its transmission connector projects is also established by public policy
19 requirements in the region for reduction in greenhouse gas emissions, increase in clean
20 energy supply from offshore wind and the development of the offshore wind industry. The
21 SouthCoast project and the Clean Energy Resource are also needed to enhance grid

1 reliability and energy security. Specifically, this Siting Board has identified in a prior
2 order, that this type of Clean Energy Resource and transmission connector projects, "...will
3 bring important reliability benefits for all consumers in New England who rely on the
4 integrated regional system, including Rhode Islanders. Offshore wind will become a crucial
5 resource not only because of its non-carbon emitting attributes, but because of its ability to
6 provide power during extreme cold winter periods when other renewable resources are not
7 available and traditional fossil-fuel generation resources become constrained.”¹

8 **Q. How does the Rhode Island Siting Board proceeding relate to the overall**
9 **development of the Clean Energy Resource and the SouthCoast Project?**

10 A. The current proceeding before the Rhode Island Siting Board is a critical part of the overall
11 development of the Clean Energy Resource and the SouthCoast Project. The SouthCoast
12 Project crosses through Rhode Island jurisdictional waters and land in order to interconnect
13 to the regional transmission system at Brayton Point. This Siting Board proceeding,
14 therefore, is a key part of the many interdependent multi-state and federal permitting and
15 regulatory review and approval processes that Mayflower Wind is undergoing in order to
16 successfully deliver energy from the Clean Energy Resource to the New England grid to
17 fulfill the regional need.

¹ *In Re: Revolution Wind, LLC Application to Construct a Major Energy Facility*, Rhode Island Energy Facility Siting Board, Docket No. SB2021-01 at 14 (June 23, 2022). In the same order, the Siting Board noted that Rhode Island “and New England ‘face significant short and long-term challenges that may undermine the reliable operation of the bulk electric system.’ This regional benefit and its reliability impact for Rhode Island should not be underestimated, particularly for the winter when natural gas systems are constrained from heating load.”

1 **Q. How are the Mayflower Wind PPAs related to the development of the Clean Energy**
2 **Resource?**

3 A. Mayflower has approved PPAs with the electric distribution companies (EDCs) of
4 Massachusetts for approximately 1,200 MW of its estimated 2,400 MW Clean Energy
5 Resource. The same public policy requirements that establish the need for the Clean
6 Energy Resource itself also establish the need for the PPAs and the process that led to them.
7 Though Mayflower Wind believes that the need standard under the Energy Facilities Siting
8 Act does not require approved PPAs to meet the standard, and that public policy
9 requirements in themselves can demonstrate need for a project, the approved PPAs in this
10 case clearly help demonstrate need for the SouthCoast Project. They also provide a certain
11 long-term revenue stream and a basis for financing the Clean Energy Resource. Through
12 the PPAs, the Clean Energy Resource can be built and thereby substantially reduce
13 greenhouse gas emissions and increase clean energy supply, reliability and energy security
14 for New England.

15 **III. Clarity Regarding PPA Filings**

16 **Q. What are the Mayflower Wind PPA filings at issue here?**

17 A. Mayflower Wind made four total filings in October and November with the DPU, which
18 reviewed the PPAs for both Mayflower Wind and a separate, unrelated offshore wind
19 developer, Commonwealth Wind *See* Addendum 3(a)-(d). Mayflower made two filings in
20 Docket Nos D.P.U. 20-16/20-17/20-18 (Section 83C II Proceeding) and two in D.P.U. 22-
21 70/22-71/22-72 (Section 83C III Proceeding). On October 20, 2022, Commonwealth Wind

1 filed a Motion for a one month suspension of the 83C III Proceedings. *See* Addendum
2 4(a). On October 27, 2022 Mayflower Wind filed an Answer in support of Commonwealth
3 Wind's Motion to suspend. *See* Addendum 3(a). On the same date, in the Section 83C II
4 Proceeding, in which the DPU reviewed amendments to Mayflower Wind's first set of
5 PPAs, Mayflower Wind filed a similar motion to suspend the proceeding. *See* Addendum
6 3(b).

7 Subsequently, on November 7, 2022 after the Commonwealth Wind motion was denied
8 and it became clear that the EDCs were not willing to examine the PPAs in light of current
9 conditions, Mayflower Wind made filings in both dockets to **withdraw** its requests to
10 suspend the proceedings and stating its intent to move forward with the proceedings. *See*
11 Addendum 3(c) and 3(d).

12 **Q: Why did Mayflower Wind request a short pause of the Massachusetts PPA**
13 **Proceedings?**

14 A: Mayflower Wind requested a short pause because of its reasonable concerns about project
15 economics and financeability based on current macroeconomic conditions, primarily rising
16 interest rates and the impact of extraordinary inflation and supply chain disruption on
17 project costs. Mayflower Wind also made these filings in response to what Commonwealth
18 Wind had filed in the Section 83C III Proceeding regarding a potential examination of the
19 PPAs in light of current economic conditions. Mayflower Wind filed a separate answer as
20 a party to the DPU proceeding to provide time for the PPA parties to look at current

1 economics, and to ensure fair treatment of Mayflower Wind in the event of any potential
2 to change to the PPAs through discussions with the EDCs or in the DPU proceeding.

3 **Q. Did Mayflower state in its filings that the Clean Energy Resource is not viable under**
4 **the current PPAs?**

5 A. No. Mayflower did not state that its project could not move forward or be viable without
6 adjustments to the PPAs, but instead expressed reasonable concerns about global
7 economics affecting the costs and financing of its project and a desire for the parties to
8 consider them. Mayflower asked for the same treatment as Commonwealth Wind, which
9 was for a brief pause in the proceedings to allow for further consideration by the PPA
10 parties of the project economics under the PPAs.

11 **Q. What did Mayflower say in the filings regarding project viability?**

12 A. In essence, Mayflower Wind expressed reasonable concerns about the economics and
13 financeability of the Clean Energy Resource in light of current macroeconomic conditions.
14 However, these concerns have not hindered project development efforts across the project
15 and all technical and permitting functions remain underway. These concerns were reflected
16 in the following statements. In the Answer to Commonwealth Wind's Motion for
17 Extension of Time in the Section 83C III Proceeding, Mayflower Wind stated:

1 • “A suspension at this time is needed and appropriate because, under the
2 current PPAs, the resource *may* no longer be economic and financeable
3 without adjustments to the PPAs.” (Emphasis added).²

4 • “...it would be appropriate to pause this proceeding to allow the PPA parties
5 time to discuss the potential amendments to help establish sound economics
6 and financeability of the respective Projects.....”³

7 In the Mayflower Wind Motion to Suspend in the Section 83C II Proceeding, Mayflower
8 Wind stated:

9 • “...this suspension would allow the parties to the PPAs to examine the economic
10 effect of unprecedented commodity price increases...including whether the Clean
11 Energy Resource remains economic and financeable, under the current terms of
12 the PPAs.”⁴

13 • “A one-month suspension would enable the parties to consider potential
14 approaches to help ensure that the Clean Energy Resource is economic and
15 financeable under the PPAs.”⁵

16 • “Mayflower Wind has concerns regarding the economics and financeability of the
17 Clean Energy Resource given the macroeconomic conditions described above.”⁶

² See *Addendum 3(a)*, Mayflower Wind Answer to Commonwealth Wind Motion for One Month Suspension D.P.U. 22-70/22-71/22-72 at 3 (Oct. 27, 2022).

³ *Id.* at 6. [*Addendum 3(a)*]

⁴ See *Addendum 3(b)*, Mayflower Wind, Motion for a One-Month Suspension of the Proceedings under D.P.U. 20-16/20-17/20-18 at 2 (Oct. 27, 2022).

⁵ *Id.* at 2. [*Addendum 3(b)*]

⁶ *Id.* at 6. [*Addendum 3(b)*]

1 • “....[I]t would be appropriate to pause this proceeding to ...help ensure sound
2 economics and financeability of the Project...”⁷

3 • “No one will benefit from a Department decision concerning PPAs that do not
4 allow the Project to be economic and financeable...”⁸

5 **Q. What is Mayflower Wind doing to move the project forward?**

6 A. Mayflower Wind and its sponsor companies continue to make substantial financial
7 investments and dedicate the time of 75 staff and dozens of consultants to realize the full
8 build-out of the estimated 2,400 MW available in its lease area. In 2023, Mayflower Wind
9 has committed approximately \$100 million in expenditures for project development. These
10 efforts are focused on achieving final investment decision and securing financial close,
11 ultimately leading to project construction. Acquiring essential permits such as approval of
12 its application from this Siting Board are necessary for reaching final investment decision
13 and project construction.

14 **Q. What is the current status of the Massachusetts PPA proceedings for the**
15 **SouthCoast Project?**

16 A. On November 7, 2022, Mayflower Wind withdrew its pleadings, requesting a one-month
17 suspension, in both dockets and affirmed its commitment to the Clean Energy Resource
18 and the SouthCoast Project. *See* Addendum 3(c) and 3(d). For the Section 83C II
19 Proceeding, on December 30, 2022 the DPU gave its stamp of approval to the EDC’s

⁷ *Id.* [Addendum 3(b)]

⁸ *Id.* at 8. [Addendum 3(b)]

1 Motion to Approve the amended PPAs. *See* Addendum 5(a). Notably, in the Motion to
2 Approve, it states that the “Project will remain viable in a commercially reasonable
3 timeframe.”⁹

4 **Q: Does the Section 83C III Order approving the PPAs address project viability?**

5 A: Yes. In the 83C III Proceeding, on December 16, 2022 Commonwealth Wind filed a
6 Motion to Dismiss the proceeding, in which it maintained the position that its Project
7 “cannot be financed and constructed under the current terms of the PPAs.”¹⁰ In response,
8 on December 23, 2022 Mayflower Wind filed an Answer stating that, despite agreeing with
9 Commonwealth Wind’s factual analysis of the macroeconomics underlying
10 Commonwealth Wind’s conclusion, Mayflower Wind “continues to develop the
11 Mayflower Wind Project consistent with the timelines set forth in its PPAs.”¹¹

12 On December 30, 2022 the DPU issued a final order in the 83C III Proceeding (Final
13 Order), denying Commonwealth Wind’s Motion to Dismiss and approving the PPAs. *See*
14 Addendum 5(b). Regarding viability, the DPU stated, “[a]fter review of the record
15 evidence, the Department finds that the proposals selected by the Companies include
16 sufficient information concerning the design, development, financing, and construction of
17 the projects for the Companies to reasonably conclude that the selected projects are viable

⁹ *See Addendum 5(a)* Motion to Approve Amendments to Mayflower Wind 83C Round II Power Purchase Agreements under DPU 20-16/20-17/20-18, at 10 (Approved December 30, 2022).

¹⁰ *See Addendum 4(b)* Motion to Dismiss of Commonwealth Wind, LLC under DPU 22-70/22-71/22-72, at 2 (filed December 16, 2022).

¹¹ *See Addendum 3(e)* Answer of Mayflower Wind Energy to Motion to Dismiss under DPU 22-70/22-71/22-72, at 2 (filed December 23, 2022).

1 and would be completed in a commercially reasonable timeframe.”¹² In the Final Order
2 the DPU recognized that certainty about financing at a relatively early stage of project
3 development is not necessary to meet the applicable statutory standard.¹³

4 **Q: Have there been further proceedings in the Section 83C III docket?**

5 **A:** On January 19, 2023, the last day of the twenty (20) day statutory appeal period,
6 Commonwealth Wind filed an appeal of the Final Order and interlocutory order in the 83C
7 III Proceeding with the Massachusetts Supreme Judicial Court.¹⁴ Commonwealth Wind
8 requested that the final order be set aside and vacated as to the PPAs. Mayflower Wind
9 had no prior knowledge of Commonwealth Wind’s appeal. After learning of the appeal,
10 Mayflower Wind filed a protective Emergency Motion on the grounds that: (1) the appeal
11 and DPU’s underlying Orders directly and materially impact Mayflower Wind and; (2)
12 Mayflower Wind’s interests are not adequately represented by any other party to said
13 proceedings. In its Emergency Motion, Mayflower requested the DPU to: (a) grant
14 Mayflower Wind full participant status in both proceedings, and (b) extend the twenty

¹² See *Addendum 5(b)* Petitions of NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and Fitchburg Gas and Electric Company, d/b/a Unitil for approval by the Department of Public Utilities of two long-term contracts for procurement of offshore wind energy generation pursuant to St. 2008, c. 169 § 83, as amended by St. 2016, c. 188 § 12; St. 2021, c. 8 § 91 et seq.; and St. 2021 c. 24 §§ 69, 72; and 220 CMR 23.00, Final Order, DPU 22-70/22-71/22-72, at 24 (December 30, 2022) (“83C III Final Order”).

¹³ See *Addendum 5(b)* The Final Order states at 20: “The Department consistently has interpreted the language of Section 83C as requiring that the electric distribution companies demonstrate that the long-term contracts will assist with financing the offshore wind energy generating sources, i.e., that the contracts will make financing easier or less difficult. D.P.U. 12-30, at 40, citing D.P.U. 10-54, at 52 n.59; Webster’s Third New International Dictionary 812 (1993). It is not required by statute, therefore, that the Companies demonstrate that the PPAs guarantee that the projects will be financed, as Commonwealth Wind contends. D.P.U. 12-30, at 40, citing D.P.U. 10-54, at 52.”

¹⁴ See *Addendum 6(a)* Petition for Appeal by Commonwealth Wind, LLC filed with the Massachusetts Supreme Judicial Court dated January 29, 2023 under DPU 22-70/22-71/22-72.

(20) day period for filing an appeal of the DPU orders in the dockets for a period of five (5) Business Days after the DPU issues an order or ruling in response to the Emergency Motion.¹⁵ On January 20, 2023, the DPU issued a Memorandum setting a deadline of 5:00 p.m. on Friday January 27, 2023, for parties to submit a written response to Mayflower Wind's Emergency Motion.¹⁶

Q. What is the status of the Massachusetts EFSB proceeding for the SouthCoast Project?

A. The Massachusetts EFSB process is moving forward and the EFSB is aware of the procedural filings at the Massachusetts DPU. On October 11, 2022, the Massachusetts EFSB held a virtual public comment hearing and, subsequently, several parties filed petitions to intervene as a full party or as a limited participant. On November 18, 2022 the Massachusetts EFSB issued a ruling on the interventions, issued the service list for the proceeding and set procedural ground rules. Mayflower Wind expects discovery in that proceeding will commence in February, 2023. On November 18, 2022, Mayflower filed a letter with the Massachusetts EFSB confirming that, despite recent PPA developments and news stories, it was moving forward with its permitting and that the project is viable. *See* Addendum 2. That letter was also filed with this Siting Board on November 23, 2022.

IV. Basis for the Siting Board to Move Forward on Mayflower's Application

¹⁵ *See Addendum 3(f)* Emergency Motion of Mayflower Wind LLC under DPU 20-16/20-17/20-18, 22-70/22-71/22-72 (Filed January 19, 2023).

¹⁶ *See Addendum 5(c)* DPU Memorandum from Hearing Officer Crane, DPU 20-16/20-17/20-18 (Dated January 20, 2023).

1 **Q. Did Mayflower Wind move forward with the PPA approval process after its**
2 **November filings?**

3 A. Yes. Mayflower withdrew its request for a thirty-day stay and moved forward with the
4 PPA approval processes. Mayflower confirmed that it would do so in each of the PPA
5 proceedings in filings on November 7, 2022, with the DPU in the PPA approval dockets.
6 Specifically, Mayflower Wind stated that it “looks forward to approval of the PPA” and
7 that it “intends to move forward with the PPAs.”¹⁷ Mayflower also made its intent clear
8 regarding the PPAs in a letter to the Presiding Officer of the Massachusetts EFSB
9 proceeding for the SouthCoast Project, as well as the Falmouth Project. That letter was
10 filed on November 18, 2022 in the two Massachusetts siting dockets and was filed for
11 informational purposes in this docket on November 23, 2022. Finally, as noted above, both
12 the amended Section 83C II PPAs and the Section 83C III PPAs were approved by the
13 DPU on December 30, 2022. *See Addendum 5(a) and 5(b).*

14 **Q. Are Mayflower’s Clean Energy Resource project and its necessary transmission**
15 **connector projects viable development assets?**

16 A. Yes. Mayflower believes the projects are currently viable development assets. This is
17 consistent with the findings of the Massachusetts DPU. On December 30, 2022, the DPU,
18 without condition or discussion, approved the Motion to Amend the PPAs in the Section
19 83C II Proceeding. *See Addendum 5(a).* That Motion included a statement from the EDCs

¹⁷ *See Addendum 3 (c)* Mayflower Wind, Motion to Withdraw under D.P.U, 20-16/20-17/20-18 at 2 (Nov. 7, 2022); *see also Addendum 3 (d)* Amended Answer in Dockets 22-70/22-71/22-72 filed on November 7, 2022.

1 that the Mayflower Wind offshore wind generation project is “viable within a
2 commercially reasonable timeframe.”¹⁸ The DPU also approved the Section 83C III PPAs
3 and in so doing found that the EDCs had demonstrated that the project is viable within a
4 commercially reasonable timeframe.¹⁹ Mayflower Wind is continuing its project
5 development efforts and committing substantial resources into that development, as
6 described further below. Additionally, development of the Clean Energy Resource and the
7 necessary connector projects is supported by the financial strength and global project
8 development experience of the Mayflower Wind sponsor companies, Shell New Energies
9 and Ocean Winds North America. This financial strength and project experience are also
10 factors that support the overall viability of the project. Mayflower continues to make
11 significant expenditures to secure the project’s success, as noted below.

12 **Q. What Independent Analysis Has Taken Place Regarding the PPAs?**

13 A. Mayflower Wind has requested a third-party consultant to examine the economics of
14 offshore wind projects, such as the Clean Energy Resource, in light of the cost impacts that
15 are affecting offshore wind development. That review is still underway. When completed,
16 the intent of the analysis is to use it in the event of any future discussions with the EDCs
17 or others about the PPAs. As of now, there is no such discussion planned.

18 **Q. Is Mayflower moving forward with project development activities?**

¹⁸ See *Addendum 5(a)* Motion to Approve Amendments to Mayflower Wind 83C Round II Power Purchase Agreements under DPU 20-16/20-17/20-18, at 7 (Approved December 30, 2022).

¹⁹ *Id.* at 10. [*Addendum 5(a)*]

1 A. Yes. As stated earlier, Mayflower continues to diligently pursue development of the Clean
2 Energy Resource in both the regulatory and commercial spheres of activity and
3 commitment. In addition to the state permitting for the Mayflower Wind SouthCoast
4 Project, Mayflower is also moving forward with the federal permitting process. The Bureau
5 of Ocean Energy Management (BOEM) initiated the National Environmental Policy Act
6 (NEPA) process in November of 2021 and is on track to release the Draft Environmental
7 Impact Statement for the project on February 17, 2023. Mayflower also filed a number of
8 federal permitting applications this year including the Incidental Take Request application
9 with the National Marine Fisheries Service, the Outer Continental Shelf Air Permit with
10 the Environmental Protection Agency, as well as the Section 10/Section 404 Individual
11 Permit with the U.S. Army Corps of Engineers. Mayflower Wind has committed to a
12 budget to fund the project development of approximately \$100 million in 2023, and the
13 project has secured lender's counsel and borrower's counsel for securing financing at a
14 cost in excess of \$8 million.

15 **V. Project Development in Challenging Economic Times**

16 **Q. You say that the project is moving forward. Does that mean you have no concerns**
17 **about project economics and financing?**

18 A. Having said that the project is moving forward does not mean that Mayflower has no
19 concerns about project economics and financing. It would be unrealistic and imprudent for
20 Mayflower not to have such concerns and to explore how best to address them in light of
21 current macroeconomic conditions. Senior management of Mayflower Wind has an

1 obligation to its sponsor companies and their shareholders to continue to assess the global
2 economic conditions that could affect this multibillion-dollar project. Therefore,
3 Mayflower is examining and will continue to examine project economics and financing in
4 light of current macroeconomic conditions while at the same time moving the project
5 forward.

6 **Q. Why not delay your siting proceedings until you have final certainty regarding all**
7 **other aspects of the project?**

8 A. That approach would be imprudent and harmful to project development and the realization
9 of the public policy requirements that establish the need for the Clean Energy Resource
10 and its necessary connector projects. Mayflower has a complicated and interrelated set of
11 dozens of federal, state and local approvals, as well as internal and external business
12 approvals and agreements, that must be obtained to bring this important and multibillion-
13 dollar public policy project to realization. To achieve various commercial and regulatory
14 deadlines, Mayflower needs to commence and undertake certain activities, including
15 applications for siting approval in multiple states, to proceed in parallel, in order to meet
16 the aforementioned deadlines and achieve project completion. Furthermore, project
17 investors must have reasonable confidence that connector siting problems will not derail
18 the entire project. Therefore, moving forward with siting the transmission connector
19 project in parallel with other development activities is crucial to the success of the project.

20 **Q. Does this approach to siting serve the public interest and regional need for clean**
21 **renewable energy?**

1 A. Yes. It is important that the Siting Board support moving the process forward on the
2 parallel paths of development that are necessary to successfully bring a project like this to
3 completion. States such as Massachusetts and Rhode Island have committed to the public
4 policy requirements that establish the need for projects such as Mayflower Wind's offshore
5 wind project. Mayflower Wind, therefore, respectfully requests that the Siting Board
6 proceed without further delay to process Mayflower Wind's application, despite the
7 complexity, uncertainty and potential inefficiencies associated with the timing and
8 development of the various elements of the Clean Energy Resource and the SouthCoast
9 Project. Mayflower Wind, in turn, will strive to share materially relevant information with
10 the Siting Board in a timely way as it works to bring the projects in service to the New
11 England region.

12 **V. Conclusion**

13 **Q. Please summarize Mayflower Wind's position.**

14 A. Mayflower Wind is developing the Clean Energy Resource and the necessary connector
15 projects in response to important public policy requirements, which establish the need for
16 the projects. Public policy requirements drive the need for the projects and Mayflower
17 Wind has approved PPAs for the full 1,200 MW to be delivered by the SouthCoast Project.
18 Mayflower Wind is committed to and is diligently moving forward with project
19 development. Mayflower Wind will continue to prudently assess project economics and
20 financing. Mayflower Wind respectfully requests that the Siting Board allow its
21 application to proceed expeditiously despite some of the challenges and commercial

1 uncertainties associated with the development of this complex project in a difficult
2 economic environment.

3 **Q. Does this conclude your testimony?**

4 **A. Yes.**

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	(d) Amended Answer of Mayflower Wind Energy LLC regarding Motion for a One-Month Suspension & Response to Interlocutory Order dated November 7, 2022 under D.P.U. 22-70, 22-71, 22-72
	(e) Answer of Mayflower Wind Energy to Motion to Dismiss dated December 23, 2022 under D.P.U. 22-70, 22-71, 22-72
	(f) Emergency Motion of Mayflower Wind Energy dated January 19, 2023 under D.P.U. 20-16, 20-17, 20-18, 22-70, 22-71, 22-72
Addendum 4:	Commonwealth Wind Pleadings cited herein
	(a) Commonwealth Wind, LLC's Motion for a One-Month Suspension of Proceedings dated October 20, 2022 under D.P.U. 22-70, 22-71, 22-72
	(b) Motion to Dismiss of Commonwealth Wind, LLC dated December 16, 2022 under D.P.U. 22-70, 22-71, 22-72

Addendum 5: Approved Motion, Order and Pleadings cited herein from Massachusetts Department of Public Utilities

- (a) Electric Distribution Companies' Joint Motion to Approve Amendments to Mayflower Wind 83C Round II Power Purchase Agreements approved December 30, 2022 under D.P.U. 20-16, 20-17, 20-18
- (b) Final Order dated December 30, 2022 under D.P.U. 22-70, 22-71, 22-72
- (c) Massachusetts Department of Public Utilities Memorandum from Hearing Officer Crane dated January 20, 2023 under D.P.U. 20-16, 20-17, 20-18

Addendum 6: Commonwealth Wind LLC Appeal to Massachusetts Supreme Court Cited herein

- (a) Petition for Appeal by Commonwealth Wind, LLC filed with Massachusetts Supreme Judicial Court dated January 19, 2023 under D.P.U. 22-70, 22-71, 22-72

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Energy Facility Siting Board.

Dated: January 27, 2023



Christian F. Capizzo

Docket No. SB-2022-02 – Mayflower Wind Energy LLC’s Application for a License to Construct Major Energy Facilities (Portsmouth, RI)

Service List – Updated January 23, 2023

Name/Address	E-mail	Phone/FAX
File an original and hard copies with EFSB: Emma Rodvien, Coordinator Energy Facility Siting Board 89 Jefferson Boulevard Warwick, RI 02888	Emma.Rodvien@puc.ri.gov ;	401-780-2173
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	Margaret.l.hogan@dpuc.ri.gov ;	

Office of Energy Resources (OER)	Christopher.Kearns@energy.ri.gov ;	
Nancy Lavin (Providence Business News)	Lavin@pbn.com ;	
Desautel Law	marisa@desautelesq.com ;	
	mdewey@desautelesq.com ;	

Curriculum Vitae of Daniel Hubbard

Daniel Hubbard

Professional Experience:

Mayflower Wind Energy LLC, Seconded from Ocean Winds, (February 2020- Present)

Director of External Affairs and General Counsel

Duties, Accomplishments and Related Skills:

- Serve as Project Director in charge of team driving all public affairs, legislative engagement, and government relations for all state and federal matters affecting project.
- Coordinate efforts across two distinct geographies for planned interconnection of project output in accordance with ISO-NE standards.
- Represent company at federal and state industry advocacy groups advancing interconnection and offshore interests of project and future project development opportunities.
- Chief Legal Officer overseeing strategy and legal review of federal, state, and local permitting in consultation with Permitting Director.
- Oversee legal review of all commercial agreements, procurement processes and contracting related to onshore and offshore work developing 2400MW wind project.
- Serve as compliance and ethics lead for joint venture ensuring strict adherence to corporate and sponsor anti-bribery and corruption standards across all project activities.
- Legal lead for bid development and negotiation of power purchase agreements and offtake contracts for energy supply to New England grid.
- Direct work flows of internal legal professionals and all specialized external law firms in support of project objectives across jurisdictions.

United States Coast Guard, First Coast Guard District, (March 2013 – February 2020)

Chief of Maritime Energy, Marine Planning & Regulations

Duties, Accomplishments and Related Skills:

- Coast Guard energy program mission manager representing federal agency through development, siting and permitting of offshore renewable energy projects and LNG/LPG from the U.S./ Canadian border to the Port of New York/ New Jersey including nation's first offshore wind farm and marine hydrokinetic projects.
- Branch Chief for dynamic maritime professionals and five sector waterway staffs evaluating all marine regulations in New England and New York Harbor.
- Represent DHS on state task forces and as cooperating agency in NEPA process with USACE, BOEM and FERC evaluating impacts of renewable energy technologies to navigational safety and security.
- Recognized nationally as subject matter expert on offshore regulatory processes and lead permitting agencies function directing DHS actions and setting national precedence.
- Designed and led industry sector specific workshops for addressing navigational concerns related to wind farm siting. Working closely with diverse maritime transportation equities, brokered resolution to disputes and instilling strategic relationships to formalize industry and government collaboration.
- Led workgroups with national impact creating policy on cases of first impression such as the Atlantic Coast Port Access Route Study and Quality Action Team for safe navigation around structures. Workgroups resulted in technical white papers used to develop policy and national guidance.
- Energy advisor to District Commander, Flag Officers and Senior Staff providing analysis of gas and electric markets and strategy for regional energy systems, natural gas and petroleum derivatives supply in support of statutory missions. Championed first ever data sharing agreement with Department of Energy utilizing fuel stocks to prioritize allocation of limited ice-breaking fleet through highly politicized and publicized heating seasons in New England facilitating over 7.9 million barrels of home heating oil movements across region.
- Serve as Coast Guard single point of contact with state energy agencies and regional independent service operators ISO-NE and NYISO facilitating communication during emergencies.
- Represent the USCG and DHS on Northeast Regional Ocean Council and Northeast Regional Planning Body (RPB) through coastal marine spatial planning efforts as directed by National Ocean Council executive order. Leading regulatory working group focused on efficiency across ocean governance.

United States Coast Guard (CGHQ/ CGA/ CGD1) (September 2005-Present)
Military Attorney [Reserve and Active Duty]

Duties, Accomplishments and Related Skills:

- Waterside Security Division Officer for Port Security Unit 301 overseeing training, management, and operations for marine security in deployable special forces unit based on Cape Cod.
- Chief Knowledge Management Officer for Coast Guard Judge Advocate General Corps serving as knowledge leader to 300 attorneys and 80 support staff. Developed and implemented knowledge sharing strategy across 16 field offices and Headquarters Legal Program elements. Initiated firm-wide cultural shift by developing strategic relationships and inspiring others to champion knowledge management in their local offices.
- Leveraged technologies and integrated systems to launch a first of its kind knowledge sharing platform for Coast Guard legal practices based on industry standards. Efforts resulted in identification, cataloging and sharing of over 16K legal determinations which have standardized and improved delivery of high-quality legal services across spectrum of Coast Guard legal missions. Created successful knowledge sharing community in Jive platform which amplified and highlighted individual talents allowing expert identification and access to targeted experience.
- Waterways Analysis Attorney representing agency in all matters related to waterway safety and security assessments for highly sensitive thoroughfares supporting movement of regional petrochemical supply. Provided organization wide legal support to senior executive decision makers on matters of national significance. Integrated efforts of adverse parties during risk assessment process leading to collaboration and new partnerships across government, industry and stakeholders.
- Championed adaptation of small boat platform for integration into winter ice breaking fleet by performing field analysis of performance at unit level and interpreting into tactics, techniques, and procedures supported by policy.
- Physical Disability Evaluation System attorney, servicing 150+ clients at all stages of MEB and DES. Achieved remarkable outcomes for clients resulting in over \$39 million in financial benefit and conversion of 23 severance packages into lifelong annuity payments and healthcare.
- Obtained specialized expertise attending CLE Army OSC training in June 2016 as well as VA rating class in January of 2017.
- Authored first ever personal qualification standards for Physical Disability Attorney position and wrote Commandant Instruction for Special Victims' Counsel Program.
- Served as Assistant Staff Judge Advocate at Coast Guard Academy, frequently filling in as Deputy and Staff Judge Advocate, providing legal support across all CGA divisions and directly advising Flag Officer on legal and ethics functions. Authored recoupment instruction as well as served as architect for establishment of CGA Grants Office.
- Deployed as Legal Services Team-3 leader post Hurricane Sandy, directing personnel support and legal assistance to affected members across Long Island, New York City and New Jersey. Created legal services 24-hour hotline and aided over 60 military clients with legal needs.
- Prepared First Coast Guard District Commander's administrative response pursuant to 33 CFR 127 for Liquefied Natural Gas (LNG) proposals. (WEAVER'S COVE LNG SHORE SIDE AND OFFSHORE BERTH)
- Served as Recorder for three contested administrative separations boards related to alcohol and performance unsuitability.
- Project manager on Freedom of Information Act litigation. (CAPE WIND/WEAVER'S COVE LNG/ DOWN EAST LNG/ F/V Patriot)
- Created first ever LNG Knowledge Management System four years ahead of SharePoint service wide implementation (Innovation Expo'08)
- Deployed to BP DEEPWATER HORIZON oil spill as part of a litigation preparation team imbedded with incident commanders preserving key issues for litigation.

Booz Allen Hamilton (March 2011 – March 2013)
Maritime Energy Specialist, Associate

Duties, Accomplishments and Related Skills:

- Coauthored the International Port Security (IPS) Program handbook including sections on preparation for country visits as well as a comprehensive legal compendium surveying international law and implementing domestic law to indoctrinate new IPS attorneys.
- Led First Coast Guard District on coastal marine spatial planning initiatives. Created regulatory matrix

detailing gaps in the regulatory scheme for offshore development across entire federal government highlighting the permitting challenges developers face. This research has been referenced by the National Academy of Sciences (Transportation Research Board) and was included in their final report.

- Designed and hosted workshop focused on facilitating regulatory efficiency under Coastal Marine Spatial Planning objective from the National Ocean Policy. (Workshop attracted 30+ attendees from DOI/DOE/USCG/NOAA/USACE/ JCS/NAVY)
- Authored statutory justification of Coast Guard Counter Drug Mission Analysis Report. This involved digesting several international treaties, federal statutes and scholarly works in short order, then synthesizing them into a coherent statement explaining the mandate to perform the counter drug mission during appropriations.
- Completed task with First Coast Guard District employing a custom designed system to improve management of electronic information subject to e-discovery, FOIA and production in administrative records. The system allows large document projects to be processed in a vastly more efficient manner saving labor costs and staff time. System was successfully employed in a joint project between the First District and CGHQ to prepare for litigation surrounding the Coast Guard's involvement in the permitting of Cape Wind in Nantucket Sound.
- Developed new business on-site and throughout market capitalizing on strategic relationships and knowledge of maritime energy sector to increase presence in other DHS locations.

Hubbard Law Office (April 2008 – March 2011)

Owner/ Principal

Duties, Accomplishments and Related Skills:

- Zealously represented a diverse client base in real estate transactions, personal injury cases, contract negotiation, small business formation and consultation, consumer protection, debt collection, labor disputes, and family law. Clients include businesses with international interests as well as local professionals and individuals.

Education and Training:

Massachusetts School of Law (2007)
Relevant Coursework: Admiralty Law &
 International Law

University of Hartford (Hartt School) (Cum Laude 2003)
Major: Music **Minor:** English

ICS 200 (2006)
 ICS 700 (2006)
 ICS 800 (2006)
 ICS 300 (2013)
 ICS 400 (2013)
 ABS Academy LNG as Marine Fuel (2013)
 NGA LNG 101 (2015)

FEMA Emergency Law (2015)
 USCG Operations Law (2015)
 Leadership and Management School (LAMS)
 Reserve Officer Candidate School (ROCI)
 Senior Leadership Principles and Skills Class (SLPS)
 SharePoint for Power End Users
 VA and OSC Disability Law Training

Relevant Qualifications:

Admitted to Massachusetts Bar 2007- Present
 Qualified Legal Officer (USCG)
 Qualified Contingency Lawyer (USCG)
 Active Secret Security Clearance

Qualified Waterways Management Officer (USCG)
 Qualified Towing Vessel Inspector (USCG)
 Qualified Expeditionary Warfare Officer (USCG)

Additional Information:

Military Awards: Recipient of (2) Coast Guard Commendation Medal, (8) Coast Guard Achievement Medal with "O" distinguishing device, (2) Commandant of the United States Coast Guard Letters of Commendation Ribbon Bars, (2) Meritorious Team Commendation Citations, (1) Special Operations Ribbon, (2) Humanitarian Service Medal, (1) Meritorious Unit, (1) Good Conduct Medal, Reserve Enlisted Person of the Year, (2006).

Letter from Mayflower Wind to Massachusetts Energy Facilities Siting Board (EFSB)



BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK PROVIDENCE WASHINGTON, DC

ERIC K. RUNGE

Attorney at Law

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Boston, MA 02110

T: (617) 345-4735 F: (617) 206-9350

ekrunge@daypitney.com

November 18, 2022

Via Electronic Filing

Robert Shea, Esq.
Presiding Officer
Energy Facilities Siting Board
One South Station, 5th Floor
Boston, MA 02110

RE: *Mayflower Wind Energy LLC*, EFSB 22-04/D.P.U. 22-67/22-68; EFSB
21-03/D.P.U. 21-142/21-143

Dear Presiding Officer Shea:

In recent weeks, there have been developments and media speculations regarding the status of the offshore wind energy projects off the coast of Massachusetts. As the proponent of one such project, Mayflower Wind Energy LLC (Mayflower Wind) is providing this letter to the Energy Facilities Siting Board (EFSB) to: (i) correct any misconceptions, (ii) provide assurances as to Mayflower Wind's intent to continue to develop the Mayflower Wind Clean Energy Resource¹ and its necessary transmission connector projects to completion,² and (iii) to affirm its commitment to the ongoing siting processes in both Massachusetts and Rhode Island.

By way of background, in Massachusetts Department of Public Utilities (Department) Docket Nos. D.P.U. 22-70/22-71/22-72, the Department is currently determining whether to approve the long-term power purchase agreements (PPAs) between Commonwealth Wind, LLC (Commonwealth Wind) and the Electric Distribution Companies (EDCs) and, separately,

¹ The Clean Energy Resource is Mayflower Wind's offshore wind energy generation resource located in federal waters that Mayflower Wind intends to develop to its maximum capacity, currently estimated at 2,400 MW.

² The Clean Energy Resource will require two transmission connector projects. One is the SouthCoast Project interconnecting at Brayton Point in Somerset, Massachusetts (and with jurisdictional elements in both Massachusetts and Rhode Island), and the other is the project that Mayflower Wind currently is proposing to interconnect in Falmouth, Massachusetts.

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Mayflower Wind and the EDCs.³ The PPAs in these dockets were entered into pursuant to Section 83C of *An Act Relative to Green Communities*, St. 2008, c. 169, as amended by St. 2016, c. 188 § 12, St. 2021, c. 8 § 91 (Section 83C III).

In these dockets, on October 20, 2022, Commonwealth Wind filed a Motion for a one month suspension in the proceedings (Motion to Stay). In the Motion to Stay, Commonwealth Wind argued that a pause in the proceedings was necessary in order for the parties to the PPAs to “examine the effect of unprecedented commodity price increases, interest rate hikes, and supply shortages on the overall viability of Commonwealth Wind’s offshore wind generation project.”⁴ In the Motion to Stay, Commonwealth Wind specifically stated that its “Project is no longer viable and would not be able to move forward.”⁵

On October 27, Mayflower Wind filed an Answer in support of Commonwealth Wind’s Motion to Stay. In this Answer, Mayflower Wind supported a suspension of the proceedings in order to assess and potentially address the impact of the current global economic conditions and to ensure that the offshore wind projects (which are among the few first-mover offshore wind projects in the region) are economic and financeable. Mayflower Wind did not state that its Clean Energy Resource or its necessary transmission connector projects were not viable, but raised reasonable concerns about the economics of the projects in light of extraordinary inflation and supply chain issues affecting the offshore wind industry, and expressed a desire for the parties to the PPAs to examine those concerns.

On November 4, the Department issued an order denying both the Motion to Stay and the Motion to Reopen. Subsequently, on November 7, Mayflower Wind filed an amended Answer to withdraw its support for pausing the proceedings. In this amended Answer, Mayflower Wind stated unequivocally that it “intends to move forward with the PPAs” and intends to provide the EDCs and the Department “with detailed third-party analysis demonstrating challenges to financeability, with the goal of finding solutions that provide value to the rate payers.”⁶

³ The initial petitions for approval of the PPAs were filed by NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil on May 25, 2022. As of the weeks leading up to the Motion to Stay discussed herein, the DPU had cancelled the evidentiary hearings that had been scheduled for the week of October 3 and set the deadline for initial briefs of October 18, 2022. *See* Hearing Officer Memorandum under D.P.U. 22-7-/22-71/22-72 (Sept. 28, 2022).

⁴ Commonwealth Wind, LLC’s Motion for a One-Month Suspension of Proceedings under D.P.U. 22-70/22-71/22-72 at 2 (Oct. 20, 2022).

⁵ *Id.* at 3.

⁶ Amended Answer of Mayflower Wind Energy LLC Regarding Motion For A One-Month Suspension & Response to Interlocutory Order under D.P.U. 22-70/22-71/22-72 at 2 (Nov. 7, 2022).

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On October 27, 2022, in the 83C II amendment proceedings in Docket Nos. D.P.U. 20-16/20-17/20-18, Mayflower Wind filed a Motion for a one-month suspension of those proceedings for the same reasons as for the 83C III proceedings.⁷ On November 7, Mayflower Wind withdrew this motion, providing the same statements affirming that it intends to move forward with the approval process and will provide a third-party analysis demonstrating the economic challenges to project financeability in order to find a solution that provides value to rate payers. Again, in these pleadings Mayflower Wind *did not* assert that its projects were not viable, but instead raised reasonable concerns about their economics in light of current conditions.

The pleadings filed in these proceedings have garnered attention from the media and have caused regulators to raise some concerns about the viability of the Mayflower Wind Clean Energy Resource and its related transmission connector projects. In response to these concerns, Mayflower Wind would like to formally correct any misconceptions about the viability of these projects and Mayflower Wind's intent to develop them by stating clearly that:

- (1) The Clean Energy Resource is viable and progressing in its development despite challenges caused by extraordinary global macroeconomic conditions;⁸
- (2) Mayflower Wind is fully committed to the development and permitting of its Clean Energy Resource and its necessary transmission connector projects; and
- (3) Mayflower Wind is moving forward with approval of its PPAs in both the 83C II and 83C III proceedings.

Mayflower Wind understands the importance of its Clean Energy Resource and the necessary transmission connector projects to meeting the need established by the public policy requirements and the clean energy and energy security needs of Massachusetts and the region. Mayflower Wind remains fully committed to helping to meet those needs with its projects.

⁷ Currently, the Department is examining whether to approve amended versions of the PPAs entered into between Mayflower Wind and the EDCs pursuant to Section 83C II.

⁸ At the request of the Rhode Island Energy Facility Siting Board in Docket No. SB-2022-02, Mayflower Wind intends to provide testimony in that proceeding that its Clean Energy Resource is viable and its development is progressing.



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Please do not hesitate to contact the undersigned should you have any questions about the contents of this letter. Please include this letter in the EFSB and Department dockets listed above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric K. Runge', written in a cursive style.

Eric K. Runge

cc: Service Lists
Andrew Green, EFSB
Joan Evans, EFSB
Wayne Wang, EFSB
Geneen Bartley, EFSB
Mark Marini, DPU

**COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD**

Petition of Mayflower Wind Energy LLC Pursuant to G.L. c. 164 § 69J for Approval to Construct and Operate Transmission Facilities in Massachusetts for the Delivery of Energy from an Offshore Wind Energy Generation Resource Located in Federal Waters to the Regional Transmission System at Brayton Point in the Town of Somerset, Massachusetts.

EFSB 22-04

Petition of Mayflower Wind Energy LLC Pursuant to G.L. c. 40A, § 3 for Exemptions from the Operation of the Town of Somerset Zoning Bylaw for the Construction and Operation of New Transmission Facilities for the Delivery of Energy from an Offshore Wind Energy Generation Resource Located in Federal Waters to the Regional Transmission System at Brayton Point in the Town of Somerset, Massachusetts.

D.P.U. 22-68

Petition of Mayflower Wind Energy LLC)
Pursuant to G.L. c. 164 § 72 for Authority to)
Construct and Operate New Transmission Facilities)
in Massachusetts for the Delivery of Energy from)
an Offshore Wind Energy Generation Resource)
Located in Federal Waters to the Regional)
Transmission System at Brayton Point in the Town)
of Somerset, Massachusetts.)

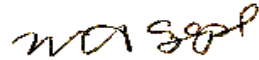
D.P.U. 22-67

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by e-mail the following document filed on behalf of Mayflower Wind Energy LLC (Mayflower Wind) upon the parties on the official service list in this proceeding and in accordance with the requirements of 980 CMR 1.03(4):

1. Letter from Mayflower Wind to Presiding Officer Shea.

Dated this 18th day of November, 2022.



Margaret Czepiel, Esq.
Day Pitney LLP
555 11th Street
Washington, DC 20004
mczepiel@daypitney.com
(202) 218-3906

**Mayflower Wind Pleadings cited herein and filed with Massachusetts Department of
Public Utilities**

Answer of Mayflower Wind Energy LLC in Support of Motion for a One-Month Suspension
dated October 27, 2022 under D.P.U. 22-70, 22-71, 22-72

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petition of NSTAR Electric Company d/b/a
Eversource Energy for Approval of Proposed 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; St. 2021, c. 8 §§
91 *et. seq.*

D.P.U. 22-70

Petition of Massachusetts Electric Company and
Nantucket Electric Company d/b/a National Grid
for Approval of Proposed 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; St. 2021, c. 8 §§ 91 *et. seq.*

D.P.U. 22-71

Petition Fitchburg Gas and Electric Light Company)
d/b/a Unitil for Approval of Proposed 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; St. 2021, c. 8 §§ 91 *et. seq.*)

D.P.U. 22-72

**ANSWER OF MAYFLOWER WIND ENERGY LLC
IN SUPPORT OF MOTION FOR A ONE-MONTH SUSPENSION**

Pursuant to 220 CMR 1.04(5)(c), Mayflower Wind Energy LLC (Mayflower Wind) hereby files this Answer in Support of the Motion for a One-Month Suspension of Proceedings filed on October 20, 2022 by Commonwealth Wind, LLC (Commonwealth Wind) (the Motion). Mayflower Wind agrees with Commonwealth Wind that a one-month suspension of the above-captioned proceedings with regard to the review of the power purchase agreements (PPAs) between the Petitioners and both Commonwealth Wind and Mayflower Wind (together, Offshore

Wind Developers) is needed to address the impact of current extraordinary global economic conditions on the PPAs and is consistent with Section 83C.¹ Mayflower Wind requests that the Department of Public Utilities (Department) grant the Motion for a one-month suspension to allow all PPA parties time to explore potential adjustments to their respective PPAs to take into account these conditions.

As set forth below and in the Motion, a one-month suspension would allow the PPA parties time to work together to consider highly relevant developments that have occurred since the Offshore Wind Developers submitted their respective bids into the Section 83C III solicitation in September 2021, the parties signed the PPAs in April 2022 and the EDCs filed the PPAs in May 2022. The suspension would allow the PPA parties to examine the economic impact of unprecedented commodity price increases, interest rate hikes, and supply shortages on the respective projects of the Offshore Wind Developers (the Commonwealth Wind Project and the Mayflower Wind Project, collectively, the Projects) and on the related PPAs.

A one month suspension would enable the parties to consider potential approaches to help ensure these offshore wind projects are economic and financeable under the PPAs. That assurance is especially important in this case, because the Projects are among the few first-mover offshore wind projects in the region. As such, they are critically important Projects to the advancement of the Commonwealth's public policy requirements. These requirements include, among others, substantial reductions in greenhouse gas emissions, significant increase in clean energy supply from offshore wind, and development of the offshore wind industry as an important driver of the Massachusetts economy. Approaches to be explored by the PPA parties

¹ Green Communities Act, St. 2008 c. 169 § 83C, as amended by *An Act to Promote Energy Diversity*, St. 2016 c. 188, *An Act to Advance Clean Energy*, St. 2018 c. 227, *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy*, St. 2021 c. 8, and *An Act Driving Clean Energy and Offshore Wind*, St. 2022 c. 179.

during the suspension could include cost saving measures, any applicable federal tax incentives under the newly enacted Inflation Reduction Act,² and an appropriate increase in the PPA prices to help establish sound economics and financeability for the individual Projects.

Mayflower Wind also proposes to use the suspension to determine whether additional time, beyond the period requested in the Motion, is needed to resolve the appropriate path forward for the PPAs. Mayflower Wind proposes that the PPA parties, individually or collectively, file a status report before the expiration of the thirty day suspension of the proceeding and specify whether further suspension of the proceeding would be appropriate to allow the PPA parties additional time to discuss potential solutions to identified issues.

A suspension at this time is needed and appropriate because, under the current PPAs, the resource may no longer be economic and financeable without adjustments to the PPAs. A pause now to examine and address the economics and financeability of the Projects under the PPAs would be consistent with Section 83C(a), which states that the purpose of Section 83C is to “facilitate the financing of offshore wind energy generation resources.” A one-month delay would be appropriate because it would give the parties an opportunity to evaluate the current situation facing the Projects and potentially agree in concept upon changes to the PPAs, or other measures, that could help ensure sound economics and financeability for the Projects, consistent with Section 83C, in light of the global inflation and supply chain issues that have only increased and accelerated since the submission of bids for the PPAs, and the execution and filing of the PPAs.³

² Pub. L. No. 117-169, 136 Stat. 1818, signed into law on August 16, 2022.

³ Mayflower Wind believes that a similar pause in the Section 83C II PPA amendment approval proceeding in Docket Nos. DPU 20-16, 20-17 and 20-18 may also be appropriate for the same reasons as discussed herein. A request for such a suspension is the subject of a similar motion from Mayflower Wind in that consolidated proceeding.

A suspension in this proceeding is also appropriate as a matter of administrative efficiency. It would allow the parties an opportunity to assess recent macroeconomic developments in the global economy and supply chain and ensure that the record before the Department reflects current realities. It would be inefficient and unproductive to continue with briefing and deliberations on the PPAs in this proceeding without fully considering the effect of these recent developments on the PPAs under review and whether, in light of the circumstances, amendments to the PPAs are necessary and in the public interest. Otherwise, this process could run its course culminating with a decision on the PPAs, only to have amendments to the as-approved PPAs filed later, triggering an additional adjudicative process.

I. BACKGROUND

On May 25, 2022, the Electric Distribution Companies (EDCs) filed petitions with the Department seeking approval of long-term contracts to purchase offshore wind energy generation with Mayflower Wind and Commonwealth Wind pursuant to Section 83C. The petitions were docketed as D.P.U. 22-70, D.P.U. 22-71, and D.P.U. 22-72. Mayflower Wind petitioned to participate as a limited participant on June 16, 2022; the Department granted that petition on June 22, 2022. On October 20, 2022, Commonwealth Wind filed the Motion seeking a one-month suspension in these proceedings.

II. ANSWER

Mayflower Wind supports the Motion for a one-month suspension of the proceedings, subject to the filing of a status report from the PPA parties, filed individually or collectively, before the expiration of that month indicating whether additional time may be needed to appropriately address the issues described herein.

Pursuant to 220 CMR 1.06(5)(b), the Presiding Officer has discretion to allow for a delay in the conduct of an adjudicatory proceeding. Such delay is necessary in this case in the interest

of efficiency and in the interest of carrying out both the purpose of Section 83C and the public policy requirements of Massachusetts regarding climate change, clean energy and offshore wind.

As described in Commonwealth Wind's motion, recent global commodity price increases, prolonged supply chain constraints, persistent inflation and sudden increases in interests rates have sharply increased the expected cost of constructing the Projects. It is appropriate for the PPA parties to examine now the current economics and financeability of the respective Projects and seek to establish a sound basis for them to move forward. Consequently, in addition to supporting this motion in this proceeding, and for the same reasons, Mayflower Wind today also filed its own motion for a pause in the Section 83C II PPA amendment approval proceeding in dockets D.P.U. 20-16, 20-17 and 20-18.

As stated by Commonwealth Wind, a short delay in the these proceedings "would give the parties critical time to assess the significance of changed global economic circumstances and put all parties and the Department in the best position to fully incorporate these realities into the record and their decision-making processes so as to deliver the best outcome for the Commonwealth and its ratepayers."⁴ Additionally, the recently-passed Inflation Reduction Act (IRA) may provide tax incentives to the Projects that could provide savings for Massachusetts customers.⁵ Accordingly, Mayflower Wind agrees that the PPA parties should examine the economics and financeability of the respective Projects and any opportunities to incorporate federal tax or other benefits into the analysis.

A pause in the proceedings in this case would be appropriate and consistent with Section 83C. The purpose of Section 83C is to facilitate the financing of offshore wind energy

⁴ Commonwealth Wind, LLC's Motion for a One-Month Suspension of the Proceedings under D.P.U. 22-70/22-71/22-72 at 6 (October 20, 2022).

⁵ Pub. L. No. 117-169, 136 Stat. 1818 (2022).

generation resources. Therefore, it would be appropriate to pause this proceeding to allow the PPA parties time to discuss the potential for amendments to the PPAs to help establish sound economics and financeability of the respective Projects, in light of extraordinary economic conditions and the passage of the IRA, and thereby carry out the purpose of Section 83C. Additionally, given current supply chain issues, the PPA parties should also consider whether adjustments to existing milestones in the PPAs are necessary or otherwise appropriate.

Mayflower Wind remains fully committed to its Project and to its related transmission connector projects. Mayflower Wind is committed to having its Project help meet the Commonwealth's important public policy requirements regarding clean energy, climate change, energy security and economic advancement in a cost-effective manner for the benefit of the Commonwealth and the region. The need for the Clean Energy Resource is more evident than ever, given legislative requirements and the need for a diverse and secure energy supply from local clean energy resources.⁶ Failure to appropriately address deficiencies in the PPAs and recognize the impact of the extraordinary macroeconomic conditions that have developed recently, will only be counter to successfully moving the offshore wind industry and its substantial benefits forward for Massachusetts and the region.

⁶ Massachusetts has indicated a strong public policy in favor of diversifying its energy supply to include the reliable energy produced by offshore wind, as well as the economic advancement of the offshore wind industry and the reduction of greenhouse gases by replacing carbon emitting resources with zero-emission resources like offshore wind. *See e.g., Global Warming Solutions Act*, St. 2008 c. 298, *the Green Communities Act*, St. 2008 c. 169, *An Act to Promote Energy Diversity*, St. 2016 c. 188, *An Act to Advance Clean Energy*, St. 2018 c. 227, *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy*, St. 2021 c. 8, *An Act Driving Clean Energy and Offshore Wind*, St. 2022 c. 179. As has been reported by ISO-NE and governmental authorities, offshore wind facilities in New England can help to reduce power costs and reduce stress on the grid during times of extreme winter weather. *See e.g.,* ISO New England, 2019 Economic Study: Offshore Wind Integration (2020) https://www.iso-ne.com/static-assets/documents/2022/07/2021_ncsp_pjm_nyiso_iso_ne_final.pdf; ISO New England System Planning Department, High-Level Assessment of Potential Impacts of Offshore Wind Additions to the New England Power System During the 2017-2018 Cold Spell (2018) https://www.iso-ne.com/static-assets/documents/2018/12/2018_iso-ne_offshore_wind_assessment_mass_cec_production_estimates_12_17_2018_public.pdf.

Finally, Mayflower Wind agrees that a suspension in the proceedings will aid in administrative efficiency and will prevent the Department, the EDCs, and all other parties to these proceedings from wasting precious resources reviewing PPAs that would have to subsequently be amended. Absent time for the PPA parties to assess the significance of these developments to the PPAs and the ability of the PPAs to advance the purposes of Section 83C, the Department will not be in the best position possible to evaluate the PPAs realistically under applicable law. No one will benefit from a Department decision concerning PPAs that does not allow the Projects to be economic and financeable and carry out the purpose of Section 83C and the public policy requirements of the Commonwealth related to clean energy, climate change and offshore wind. Mayflower Wind remains committed to working with all parties in this proceeding to minimize the impact of this delay and negotiate further in good faith.

III. CONCLUSION

For the reasons set forth herein, Mayflower Wind supports Commonwealth Wind's Motion for a one-month suspension in the proceedings for the benefit of all parties. Mayflower Wind recommends that this suspension be subject to the filing, individually or collectively, of a status report before the expiration of that month indicating whether additional time may be needed to appropriately address the issues described in the Motion, and respectfully requests that the Department suspend the entire proceeding, including the review of the Mayflower Wind PPAs.

Respectfully submitted,

MAYFLOWER WIND ENERGY LLC

By its attorney,

/s/ Daniel Hubbard

Daniel Hubbard, Esq.

Mayflower Wind Energy LLC

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Dated: October 27, 2022

Motion of Mayflower Wind Energy LLC for a One Month Suspension in the Proceedings
dated October 27, 2022 under D.P.U. 20-16, 20-17, 20-18

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petition of NSTAR Electric Company d/b/a)
Eversource Energy for Approval of Proposed)
Long Term Contracts for Offshore Wind) D.P.U. 20-16
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)

Petition of Massachusetts Electric Company)
and Nantucket Electric Company d/b/a)
National Grid for Approval of Proposed Long) D.P.U. 20-17
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)

Petition of Fitchburg Gas and Electric Light)
 Company d/b/a Unitil for Approval of)
 Proposed Long Term Contracts for Offshore) D.P.U. 20-18
 Wind Energy Generation Pursuant to Section)
 83C of An Act Relative to Green)
 Communities, St. 2008, c. 168, as amended by)
 St. 2016, c. 188, §12)

**MOTION OF MAYFLOWER WIND ENERGY LLC
FOR A ONE MONTH SUSPENSION IN THE PROCEEDINGS**

Pursuant to 220 C.M.R. §§ 1.02(5) and 1.04(5), Mayflower Wind Energy LLC (“Mayflower Wind”) hereby moves the Department of Public Utilities (“Department”) to suspend proceedings in the above-captioned dockets with regard to the review of amendments to the long-term power purchase agreements (the “PPAs”) between the Petitioners (“Petitioners” or

“EDCs”) and Mayflower Wind for thirty days with the potential to extend that pause, as described further below.

As set forth herein, a one-month suspension would allow the parties time to consider highly relevant developments that have occurred since the initial Department approval of the PPAs, and since the EDCs negotiated, executed and filed the amended PPAs in the above-captioned proceedings in May, 2022. Specifically, this suspension would allow the parties to the PPAs to examine the economic effect of unprecedented commodity price increases and other inflationary impacts, interest rate hikes, and supply shortages on the PPAs and on the Mayflower Wind offshore wind generation project (the “Clean Energy Resource” or the “Project”), including whether the Clean Energy Resource remains economic and financeable, under the current terms of the PPAs.

A one month suspension would enable the parties to consider potential approaches to help ensure that the Clean Energy Resource is economic and financeable under the PPAs. That assurance is especially important in this case, because the Mayflower Wind Project is one of the few first-mover offshore wind projects in the region. As such it is a critically important project for advancing the Commonwealth’s public policy requirements. These requirements include, among others, substantial reductions in greenhouse gas emissions, significant increase in clean energy supply from offshore wind, and development of the offshore wind industry as an important driver of the Massachusetts economy. Approaches to be explored by the PPA parties during the suspension could include cost saving measures, any applicable tax incentives under the newly enacted Inflation Reduction Act (IRA),¹ and an appropriate increase in the PPA prices to help establish sound economics and financeability for the Clean Energy Resource.

¹ Pub. L. No. 117-169, 136 Stat. 1818, signed into law on August 16, 2022.

Mayflower Wind proposes to use the suspension to also determine whether additional time, beyond the period requested in this motion, is needed to resolve the appropriate path forward for the PPAs. Mayflower Wind commits to file a status report before the expiration of the thirty day suspension of the proceeding, and in the report to specify whether a further suspension of this proceeding would be appropriate to allow the PPA parties additional time to discuss potential solutions to identified issues.

A suspension at this time is needed and appropriate because, under the current PPAs, the Clean Energy Resource may no longer be economic and financeable without adjustments to the PPAs. A suspension now to examine and address the economics and financeability of the Clean Energy Resource under the PPAs would be consistent with Section 83C(a), which states that the purpose of Section 83C is to “facilitate the financing of offshore wind energy generation resources.”² A one-month delay would be appropriate because it would give the parties an opportunity to evaluate the current situation facing the Clean Energy Resource and potentially agree in concept upon changes to the PPAs, or other measures, that could help ensure the economics and financeability of the Clean Energy Resource, consistent with Section 83C, in light of the global inflation and supply chain issues that have only increased and accelerated since the execution and filing of the amended PPAs.

A suspension of this proceeding is also appropriate as a matter of administrative efficiency. It would allow the parties an opportunity to assess recent developments in the global economy and supply chain and ensure that the record before the Department reflects current realities. It would be inefficient and unproductive to continue with briefing and deliberations on the amended PPAs in this proceeding without fully considering the effect of these recent

² Green Communities Act, St. 2008 c. 169 § 83C.

macroeconomic developments on the PPAs under review and whether, in light of the circumstances, amendments to the PPAs are necessary and in the public interest. Otherwise, this process could run its course, culminating with a decision on the PPAs, only to have *further* amendments to the PPAs filed later, triggering a third adjudicative process.

Mayflower Wind has previously raised the issues addressed in this Motion with all other parties, and requested the parties' assent to pausing this proceeding with regard to the PPAs, but has not yet received that assent. Those discussions will continue and Mayflower Wind commits to diligently pursue good faith negotiations during the course of a pause in this proceeding.

I. PROCEDURAL BACKGROUND

On February 10, 2020, pursuant to Section 83C, the EDCs originally filed a Petition with the Department seeking approval of long-term contracts to purchase offshore wind energy generation with Mayflower Wind. The Department docketed the Petition in separate dockets for each EDC, Docket Nos. D.P.U. 20-16, D.P.U. 20-17 and D.P.U. 20-18. The agreements were entered into pursuant to a solicitation run by the Massachusetts Department of Energy Resources (DOER) in coordination with the EDCs pursuant to Section 83C II in 2019.³ On October 30, 2019, Mayflower Wind was announced as the winning bidder by the EDCs and on January 14, 2020, Mayflower Wind and the EDCs executed the final 83C II PPAs. After the PPAs were filed at the Department, an adjudicatory proceeding took place, which included discovery and testimony from DOER, the Massachusetts Office of the Attorney General (AGO) and the Department.⁴ An evidentiary hearing was conducted on July 27 and 28, 2020 and several parties

³ The 83C II solicitation was brought about by the passage of *An Act to Promote Energy Diversity*, St. 2016 c. 188.

⁴ Mayflower Wind intervened as a limited participant in the docket on March 6, 2020, which was accepted by the Department on March 20, 2020.

filed initial and reply briefs. On November 5, 2020, the Department issued an order approving the 83C II PPAs.

After approval of the 83C II PPAs, largely due to transmission and interconnection constraints on Cape Cod identified by ISO New England Inc., Mayflower Wind determined that the delivery point in the 83C II PPAs needed to move from Cape Cod to Brayton Point in Somerset, Massachusetts. The change in delivery point allows Mayflower Wind to take advantage of robust transmission infrastructure that exists at Brayton Point, which will allow for timely and feasible interconnection.

Due to this change and other amendments to the PPAs, the EDCs, pursuant to Section 83C, the EDCs filed a motion with the Department seeking approval of amendments to long-term contracts to purchase offshore wind energy generation with Mayflower Wind on May 25, 2022 in the same Department dockets (Docket Nos. D.P.U. 20-16, D.P.U. 20-17 and D.P.U. 20-18 (Motion to Amend)). Mayflower Wind, already a limited participant to the proceeding, filed comments in support of the Motion to Amend on June 14, 2022. On June 29, 2022, the Department established a deadline of July 14 for filing comments in response to the Motion to Amend; comments were received by DOER and the AGO. The proceeding is currently in the discovery phase.

II. STANDARD OF REVIEW

The Presiding Officer has discretion to establish and amend a procedural schedule in the interest of efficiently and fully developing the record necessary in an adjudicatory proceeding, including by extending applicable time limits. *See* 220 C.M.R. § 1.06(5)(b); *see also* 220 C.M.R. § 1.02(5) (regarding extensions of time).

III. ARGUMENT

The Department should suspend proceedings in the above-captioned dockets with regard to the review of the PPAs for thirty days, subject to Mayflower Wind filing a status report, individually or with other parties, before the expiration of thirty days from the date this motion is granted and indicating whether additional time may be needed to appropriately address the issues described above.

As has been publicly reported in recent weeks, global commodity price increases, in part due to ongoing war in Ukraine, sharp and sudden increases in interest rates, prolonged supply chain constraints, and persistent inflation have significantly increased the expected cost of constructing the Clean Energy Resource.⁵ On October 20, 2022, Commonwealth Wind Energy LLC moved for a similar suspension of the Section 83C III PPA approval proceeding in D.P.U. 22-70, 22-71 and 22-72. Today, Mayflower Wind filed its response in support of that motion.

Mayflower Wind has concerns regarding the economics and financeability of the Clean Energy Resource given the macroeconomic conditions described above. As stated above, the purpose of Section 83C is to facilitate the financing of offshore wind energy generation resources. Therefore, it would be appropriate to pause this proceeding to: (i) allow the PPA parties time to discuss the potential for further amendments to the PPAs; (ii) help ensure sound economics and financeability of the Project, consistent with the purpose of Section 83C; and (iii) help meet the important public policy requirements of the Commonwealth related to clean energy, climate change and offshore wind. Additionally, given current supply chain issues, the

⁵ For instance, the issue was noted in the Boston Globe on September 22, 2022. *See* John Chesto, *Supply Chain Issues slow Development of Major Mass. Offshore Wind Farm*, available at: <https://www.bostonglobe.com/2022/09/22/business/supply-chain-issues-slow-development-major-mass-offshore-wind-farm/>.

PPA parties should also consider whether adjustments to existing milestones in the PPAs are necessary or otherwise appropriate.

Mayflower Wind remains fully committed to the Clean Energy Resource and to its related transmission connector projects. Mayflower Wind is committed to having its Project help meet the important public policy requirements described above in a cost-effective manner for the benefit of the Commonwealth and the region. The need for the Clean Energy Resource is more evident than ever, given legislative requirements and the need for a diverse and secure energy supply from local clean energy resources.⁶ Failure to appropriately address deficiencies in the PPAs and recognize the impact of the extraordinary macroeconomic conditions that have developed recently will only be counter to successfully moving the offshore wind industry and its substantial benefits forward for Massachusetts and the region.

A short suspension of this proceeding would give the PPA parties needed time to assess the significance of changed global economic conditions. It would also put all parties and the Department in the best position to fully incorporate these realities into the record and their decision-making processes so as to deliver the best outcome for the Commonwealth and customers. Absent time for the PPA parties to assess the significance of these developments to

⁶ Massachusetts has indicated a strong public policy in favor of diversifying its energy supply to include the reliable energy produced by offshore wind, as well as the economic advancement of the offshore wind industry and the reduction of greenhouse gases by replacing carbon emitting resources with zero-emission resources like offshore wind. *See e.g., Global Warming Solutions Act*, St. 2008 c. 298, *the Green Communities Act*, St. 2008 c. 169, *An Act to Promote Energy Diversity*, St. 2016 c. 188, *An Act to Advance Clean Energy*, St. 2018 c. 227, *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy*, St. 2021 c. 8, *An Act Driving Clean Energy and Offshore Wind*, St. 2022 c. 179. As has been reported by ISO-NE and governmental authorities, offshore wind facilities in New England can help to reduce power costs and reduce stress on the grid during times of extreme winter weather. *See e.g.,* ISO New England, 2019 Economic Study: Offshore Wind Integration (2020) https://www.iso-ne.com/static-assets/documents/2022/07/2021_ncsp_pjm_nyiso_iso_ne_final.pdf; ISO New England System Planning Department, High-Level Assessment of Potential Impacts of Offshore Wind Additions to the New England Power System During the 2017-2018 Cold Spell (2018) https://www.iso-ne.com/static-assets/documents/2018/12/2018_iso-ne_offshore_wind_assessment_mass_cec_production_estimates_12_17_2018_public.pdf.

the PPAs and the ability of the PPAs to advance the purposes of Section 83C, parties in this proceeding will present evidence and file briefs on facts and issues not well connected to the PPAs under current macroeconomic conditions. The Department will not be in the best position possible to evaluate the PPAs realistically under applicable law. No one will benefit from a Department decision concerning PPAs that do not allow the Project to be economic and financeable and carry out the purpose of Section 83C and the public policy requirements of the Commonwealth related to clean energy, climate change and offshore wind.

Mayflower Wind's purpose in pursuing this Motion is to advance the Project in an expeditious, transparent and ultimately successful manner, not to cause undue delay. Mayflower Wind is committed to work with the EDCs to examine the PPAs in light of the extraordinary macroeconomic conditions, make any appropriate adjustments consistent with Section 83C, and minimize the impact of any delays.

Consistent with the Department's Standard Ground Rules, Mayflower Wind has consulted with all other parties to these proceedings regarding this Motion. No other party expressed support for this motion during those consultations.

IV. CONCLUSION

For the reasons set forth above Mayflower Wind respectfully requests that the Department suspend proceedings in the above-captioned dockets with regard to review of the amended PPAs for thirty days from the date of an order granting this motion, subject to Mayflower Wind filing a status report before the expiration of the thirty days and indicating whether additional time may be needed to appropriately address the issues described above, and make such further findings and issue such further directives as may be necessary to grant the relief requested herein.

Respectfully submitted,

MAYFLOWER WIND ENERGY LLC

By its attorney,

/s/ Daniel Hubbard

Daniel Hubbard, Esq.

Mayflower Wind Energy LLC

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Dated: October 27, 2022

Mayflower Wind Energy LLC Withdrawal of Motion for a One Month Suspension in the
Proceedings dated November 7, 2022 under D.P.U. 20-16, 20-17, 2018

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

_____)	
Petition of NSTAR Electric Company d/b/a)	
Eversource Energy for Approval of Proposed)	
Long Term Contracts for Offshore Wind)	D.P.U. 20-16
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)	
_____)	

_____)	
Petition of Massachusetts Electric Company)	
and Nantucket Electric Company d/b/a)	
National Grid for Approval of Proposed Long)	D.P.U. 20-17
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)	
_____)	

_____)	
Petition of Fitchburg Gas and Electric Light)	
Company d/b/a Unitil for Approval of)	
Proposed Long Term Contracts for Offshore)	D.P.U. 20-18
Wind Energy Generation Pursuant to Section)	
83C of An Act Relative to Green)	
Communities, St. 2008, c. 168, as amended by)	
St. 2016, c. 188, §12)	
_____)	

**WITHDRAWAL OF MOTION
FOR A ONE MONTH SUSPENSION IN THE PROCEEDINGS**

Please take notice that through its attorney Mayflower Wind Energy LLC (“Mayflower”) hereby withdraws its motion requesting the Department of Public Utilities (“Department”) to temporarily suspend the above captioned proceedings submitted to the Hearing Officer on October 27th, 2022.

When the long-term power purchase agreements (“PPA”) were originally submitted for approval and again for amendment, they represented financeable projects, but as indicated in the proceedings before the Department, significant changes in global supply and macroeconomics have come in to play.¹ This has been evidenced in recent days throughout the press and in multiple states beyond Massachusetts.

Lastly, Mayflower looks forward to approval of the PPA amendments and will seek to resolve with the Petitioners and the Commonwealth the issues discussed above, beginning by providing Petitioners and the Department with detailed third-party analysis demonstrating challenges to financeability, with the goal of finding solutions that provide value to the rate payers.²

Respectfully submitted,

MAYFLOWER WIND ENERGY LLC

By its attorney,

/s/ Daniel Hubbard
Daniel Hubbard, Esq.
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101 Federal Street
Boston, Mass. 02110
daniel.hubbard@mayflowerwind.com

Dated: November 7, 2022

¹ Collectively referencing D.P.U. 20-16, 20-17, 20-18 and 22-70, 22-71, 22-72

² While a separate proceeding, Mayflower takes instruction in this notice from the Hearing Officer’s Interlocutory Order Dated November 4th, 2022, related to its PPAs awarded under the 83CIII process and D.P.U. dockets 22-70, 22-71, 22-72.

Amended Answer of Mayflower Wind Energy LLC regarding Motion for a One-Month
Suspension & Response to Interlocutory Order
dated November 7, 2022 under D.P.U. 22-70, 22-71, 22-72

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petition of NSTAR Electric Company d/b/a
Eversource Energy for Approval of Proposed 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; St. 2021, c. 8 §§
91 *et. seq.*

D.P.U. 22-70

Petition of Massachusetts Electric Company and
Nantucket Electric Company d/b/a National Grid
for Approval of Proposed 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; St. 2021, c. 8 §§ 91 *et. seq.*

D.P.U. 22-71

Petition Fitchburg Gas and Electric Light Company)
d/b/a Unitil for Approval of Proposed 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; St. 2021, c. 8 §§ 91 *et. seq.*)

D.P.U. 22-72

**AMENDED ANSWER OF MAYFLOWER WIND ENERGY LLC
REGARDING MOTION FOR A ONE-MONTH SUSPENSION & RESPONSE TO
INTERLOCUTORY ORDER**

I. AMENDMENT OF ANSWER

Mayflower Wind Energy LLC (Mayflower Wind) hereby amends its Answer filed October 27, 2022, in Support of the Motion for a One-Month Suspension of Proceedings filed on October 20, 2022, by Commonwealth Wind, LLC (Commonwealth Wind) (the Motion). Mayflower Wind agrees with Commonwealth Wind that the power purchase agreements (PPAs) between the Petitioners and both Commonwealth Wind and Mayflower Wind (together, Offshore

Wind Developers) are under the impact of current extraordinary global economic conditions. However, Mayflower Wind hereby withdraws support of the Motion for a one-month suspension in the above captioned proceedings.

II. RESPONSE TO INTERLOCUTORY ORDER

As directed by the Hearing Officer, Mayflower herein notifies the Department of Public Utilities and the Petitioners in the above captioned matters it intends to move forward with the PPAs. Lastly, Mayflower will seek to resolve with the Petitioners and the Commonwealth the issues discussed above, beginning by providing Petitioners and the Department with detailed third-party analysis demonstrating challenges to financeability, with the goal of finding solutions that provide value to the rate payers.¹

Respectfully submitted,

MAYFLOWER WIND ENERGY LLC

By its attorney,

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Daniel Hubbard, Esq.
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101 Federal Street
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daniel.hubbard@mayflowerwind.com

Dated: November 7, 2022

¹ See Interlocutory Order dated November 4, 2022, III.B. at page 12.

Answer of Mayflower Wind Energy to Motion to Dismiss dated December 23, 2022
under D.P.U. 22-70, 22-71, 22-72

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petitions of NSTAR Electric Company d/b/a)	
Eversource Energy, Massachusetts Electric)	
Company and Nantucket Electric Company d/b/a/)	
National Grid, and Fitchburg Gas and Electric)	D.P.U. 22-70
Company, d/b/a Unitil for Approval of Proposed)	D.P.U. 22-71
Long-Term Contracts for Clean Energy Projects)	D.P.U. 22-72
Pursuant to Section 83C of An Act Relative to Green)	
Communities, St. 2008, c. 169, as amended by St.)	
2016, c. 188, § 12; St. 2021, c. 8, §§ 91, <i>et. seq.</i>)	
)	

**ANSWER OF MAYFLOWER WIND ENERGY
TO MOTION TO DISMISS**

Pursuant to 220 CMR 1.04(5)(c), Mayflower Wind Energy LLC (“Mayflower Wind”) hereby files this Answer to the Motion to Dismiss filed on December 16, 2022 by Commonwealth Wind, LLC (“Commonwealth Wind”) in the above-referenced proceedings (the “Motion”).

In that Motion, Commonwealth Wind requested that the Department of Public Utilities (“Department”) dismiss the above-referenced proceedings as to the power purchase agreements (“PPAs”) between Commonwealth Wind and each of the Massachusetts electric distribution companies (“EDCs”) in connection with the offshore wind generation facility being developed by Commonwealth Wind (the “Commonwealth Wind Project”). In support of its Motion, Commonwealth Wind stated that the PPAs to which it is a party do not meet the fundamental statutory threshold set forth in Section 83C(a),¹ which requires that the PPAs “facilitate the financing of offshore wind generation.” Motion at 2.

¹ Section 83C of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188 §12, St. 2021, c. 8, § 91 et seq., St. 2021, c. 24, §§ 69 and 72, and St. 2022, c. 179, § 61 (“Section 83C”).

Mayflower Wind recognizes the importance to the Commonwealth of the clean energy that the project that Mayflower Wind is developing (the “Mayflower Wind Project”) will generate. This energy will assist the Commonwealth in reaching its climate goals and increasing energy security and resilience, while protecting the rate payers. Mayflower Wind is committed to working as a collaborative partner with all of the parties to this proceeding to help achieve the climate change priorities of the Commonwealth. To this end, Mayflower Wind continues to develop the Mayflower Wind Project consistent with the timelines set forth in its PPAs.

Notwithstanding the firm commitment expressed above, Mayflower Wind respectfully must nonetheless agree with much of the factual analysis underlying Commonwealth Wind’s conclusion, especially as Mayflower is subject to these same facts, pressures and realities.

In its Answer in Support of Motion for a One-Month Suspension filed by Mayflower Wind in these proceedings on October 27, 2022 (the “Answer in Support”), Mayflower Wind stated that current extraordinary global economic conditions, including unexpected and significant commodity price increases and supply shortages, have materially increased the expected cost of financing and constructing the Mayflower Wind Project. These unprecedented global economic conditions could not have been reasonably foreseen by Mayflower Wind (or, for that matter, any other party to these proceedings), and impose significant economic hardship on the Mayflower Wind Project. Furthermore, the project and tax equity financing required for the delivery of Mayflower Wind Project, along with the cost of such financing, has changed dramatically and unexpectedly as interest rates have risen sharply, presenting significant challenges to the Mayflower Wind Project’s economics. Mayflower Wind is diligently working to develop and provide to the Department a detailed third-party analysis on the impact of these

unforeseen events on the financeability on the Mayflower Wind Project, as Mayflower Wind committed to do in its earlier filings with the Department.

Mayflower Wind notes that Commonwealth Wind's Motion to Dismiss has materially disrupted the Section 83C procurement process, and therefore altered the underlying assumptions on which Mayflower relied when it made its two successful Section 83C bids.² Accordingly, Mayflower Wind respectfully requests that the Department allow time for coordinated meaningful discussion among all interested parties, before making a final decision on the Mayflower Wind PPAs.

Respectfully submitted,

Mayflower Wind Energy LLC

By its attorney,



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Dated: December 23, 2022

² Mayflower Wind also requests that the DPU take notice of the proceedings in Dockets 20-16, 20-17 and 20-17, which relate to the PPAs for Mayflower Wind's "83CII" project PPAs. Those PPAs are pending approval of amendments, the most significant of which is reassignment of the point of interconnection to Brayton Point. This reassignment will link Mayflower Wind's "83CII project" (and its related PPAs) with the Mayflower Wind Project (and its related PPAs that are the subject of this proceeding), and allow the harmonized delivery of 1200 MW of clean energy to the Commonwealth on a cost effective and timely basis.

Emergency Motion of Mayflower Wind Energy dated January 19, 2023
under D.P.U. 20-16, 20-17, 20-18, 22-70, 22-71, 22-72

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

)	
Petitions of NSTAR Electric Company d/b/a)	
Eversource Energy, Massachusetts Electric)	
Company and Nantucket Electric Company d/b/a/)	D,P.U 20-16
National Grid, and Fitchburg Gas and Electric)	D.P.U, 20-17
Company, d/b/a Unitil for Approval of Proposed)	D.P.U. 20-18
Long-Term Contracts for Clean Energy Projects)	D.P.U. 22-70
Pursuant to Section 83C of An Act Relative to Green)	D.P.U. 22-71
Communities, St. 2008, c. 169, as amended by St.)	D.P.U. 22-72
2016, c. 188, § 12; St. 2021, c. 8, §§ 91, <i>et. seq.</i>)	
)	

EMERGENCY MOTION OF MAYFLOWER WIND ENERGY

Pursuant to 220 CMR 1.11(12), Mayflower Wind Energy LLC (“Mayflower Wind”) hereby files this Emergency Motion in the above-referenced proceedings.

On December 30, 2022, the Department issued separate Orders in DPU 20-16/17/18 and DPU 22-70/18/19 in which the Department approved Power Purchase Agreements (“PPAs”) to which Mayflower Wind is a party. Mayflower Wind previously was granted limited participant status in both proceedings,

On December 23, 2022, Mayflower Wind filed an Answer in all of the above dockets, in which Mayflower Wind identified concerns related to the financeability of each of Mayflower Wind’s generation projects. Mayflower Wind also noted the inter-relationship between the two proceedings, stating that the amendments proposed by Mayflower Wind were intended to enable the interconnection of a “single 1200 MW project” to Brayton Point.

Earlier today, Commonwealth Wind LLC filed a Notice of Appeal in DPU 22-70/71/72. That appeal, as well as each of the Department’s underlying Orders, directly and materially impact Mayflower Wind.

Because Mayflower Wind's interests are not adequately represented by any other party to these proceedings, Mayflower Wind respectfully requests that (a) the Department grant Mayflower Wind full participant status in both proceedings, and (b) extend the 20-day period for filing an appeal of the Department's Orders in each of the above-referenced dockets for a period a five (5) Business Days after the Department issues an order or ruling in response to this Emergency Motion.

Respectfully submitted,

Mayflower Wind Energy LLC

By its attorney,



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Dated: January 19, 2023

Commonwealth Wind Pleadings cited herein

Commonwealth Wind, LLC's Motion for a One-Month Suspension of Proceedings
dated October 20, 2022 under D.P.U. 22-70, 22-71, 22-72

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petition of NSTAR Electric Company d/b/a
Eversource Energy for Approval of Proposed
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; St. 2021, c. 8 §§ 91 *et. seq.*

Petition of Massachusetts Electric Company
and Nantucket Electric Company d/b/a National
Grid for Approval of Proposed 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; St. 2021, c. 8
§§ 91 *et. seq.*

Petition Fitchburg Gas and Electric Light
Company d/b/a Unitil for Approval of Proposed
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; St. 2021, c. 8 §§ 91 *et. seq.*

**COMMONWEALTH WIND, LLC'S
MOTION FOR A ONE-MONTH SUSPENSION OF PROCEEDINGS**

Pursuant to 220 C.M.R. §§ 1.02(5) and 1.04(5), Commonwealth Wind, LLC

(“Commonwealth Wind”) hereby moves that the Department of Public Utilities (“Department”) suspend proceedings in the above-captioned dockets with regard to the review of contracts between the Petitioners (“Petitioners” or “EDCs”) and Commonwealth Wind (the “PPAs”) for one month and requests that the Hearing Officer issue a ruling accordingly. As set forth below, a one-month suspension of these

proceedings would allow the parties to consider highly relevant developments that have occurred since Commonwealth Wind bid into the third solicitation under Section 83C¹ in September of 2021, the PPAs were signed in April of 2022, and the EDCs filed the PPAs in these dockets in May of 2022. In particular, this suspension would allow the parties to examine the effect of unprecedented commodity price increases, interest rate hikes, and supply shortages on the overall viability of Commonwealth Wind's offshore wind generation project that is the subject of the PPAs (the "Project"), including whether it remains economic and whether it can be financed under the current terms of the PPAs. A one-month suspension would also enable the parties to consider potential approaches to restore the Project's viability – including cost saving measures, tax incentives under the newly enacted Inflation Reduction Act, an increase in the PPA prices, and improvements to Project efficiencies – and to determine whether additional time, beyond the period requested in this Motion, is needed to resolve the appropriate path forward or provide a complete record.

An immediate suspension is crucial because, under the current PPAs, the Project is no longer viable and would not be able to move forward. *See* Section 83C(a) (stating that the purpose of Section 83C is to "facilitate the financing of offshore wind energy generation resources"). A one-month suspension would give the parties an opportunity to evaluate the current situation facing the Project and potentially agree upon changes to the PPAs, along with other measures, that could allow the Project to return to viability.

¹ More specifically, Section 83C of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12, St. 2021, c. 8, § 91 *et seq.*, St. 2021, c. 24, §§ 69 and 72, and St. 2022, c. 179, §§ 61 and 62 ("Section 83C").

During this suspension, Commonwealth Wind is committed to working with the parties to identify the scope of the challenges faced by the Project and all feasible levers for overcoming those challenges to deliver the most beneficial and cost-effective solution to the Commonwealth of Massachusetts. A suspension would also allow the parties an opportunity to assess recent developments and ensure that the record before the Department reflects current realities by supplementing the record as necessary. It would be inefficient and unproductive to continue with briefing and deliberations on the PPAs in this proceeding without fully considering the effect of recent developments on the PPAs under review and whether, in light of those developments, amendments to the PPAs are necessary and in the public interest.

Commonwealth Wind recognizes that it is filing this Motion during the briefing period. Commonwealth Wind has discussed the issues addressed in this Motion with the other parties over the last month.

I. PROCEDURAL BACKGROUND

Pursuant to Section 83C, the EDCs filed petitions with the Department seeking approval of long-term contracts to purchase offshore wind energy generation with Mayflower Wind LLC (“Mayflower”) and Commonwealth Wind on May 25, 2022. The Department docketed the petitions as D.P.U. 22-70, D.P.U. 22-71, and D.P.U. 22-72. Commonwealth Wind petitioned to intervene as a full party on June 16, 2022; the Department granted that petition on June 22, 2022.

On August 2, 2022, the Department established a joint procedural schedule for all three dockets that set a deadline for filing initial briefs of October 24, 2022 and a deadline for filing reply briefs of November 7, 2022. On September 28, 2022, the

Hearing Officer amended the procedural schedule, finding that evidentiary hearings were unnecessary and accelerating the briefing schedule such that initial briefs were due by October 18, 2022 and reply briefs are now due by November 1, 2022.

II. STANDARD OF REVIEW

The Hearing Officer has discretion to establish and amend a procedural schedule in the interest of efficiently and fully developing the record necessary in an adjudicatory proceeding, including by extending applicable time limits. *See* 220 C.M.R. § 1.06(5)(b); *see also* 220 C.M.R. § 1.02(5) (regarding extensions of time).

III. ARGUMENT

The Department should suspend proceedings in the above-captioned dockets with regard to the review of the PPAs for one month, and the Hearing Officer should issue a ruling granting this Motion and establishing the one-month suspension period. As has been publicly reported in recent weeks, global commodity price increases, in part due to ongoing war in Ukraine, sharp and sudden increases in interest rates, prolonged supply chain constraints, and persistent inflation have significantly increased the expected cost of constructing the Project.² As a result, the Project is no longer viable and would not be able to move forward absent amendments to the PPAs. *See* Section 83C(a) (stating that the purpose of Section 83C is to “facilitate the financing of offshore wind energy generation resources”).

² For instance, the issue was noted in the Boston Globe on September 22, 2022. *See* John Chesto, *Supply Chain Issues slow Development of Major Mass. Offshore Wind Farm*, available at: <https://www.bostonglobe.com/2022/09/22/business/supply-chain-issues-slow-development-major-mass-offshore-wind-farm/>. Commonwealth Wind requests that the Department take official notice that these public statements have been made. *See* 220 C.M.R. § 1.10(2).

In addition, on August 16, 2022, President Biden signed the Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818 (the “IRA”). The IRA includes provisions that may affect and change the availability of tax credits to Commonwealth Wind in connection with the Project. The relevance of the IRA has only briefly been addressed in the record. *See* Exh. AG-5-1. Although the IRA benefits to the Project are not fully known at this time and not anticipated to make the Project economic absent other changes to the PPAs, Commonwealth Wind believes there may be potential opportunities to share benefits associated with the IRA with ratepayers and would be willing to explore those opportunities with stakeholders.

Commonwealth Wind remains fully committed to the Project and to delivering cost-effective renewable energy from the Project to the residents and businesses of Massachusetts in a manner that advances the purposes of Section 83C and the Commonwealth’s energy and climate policies. Indeed, the Project is more important than ever given the global, national, and state imperative to diversify our electric generating portfolio and the key role that the Project will play in meeting the Commonwealth’s ambitious climate and clean energy goals, and in creating jobs and economic development. Despite economic headwinds, the Project remains positioned to provide substantial benefits to the Commonwealth and its ratepayers. Even with a short delay to these proceedings, the Project, with its expected commercial operation date in 2028, can greatly help the Commonwealth in meeting its 2030 greenhouse gas emission limit of 50% below 1990 levels. *See* G.L. c. 21N, § 4 (as amended by An Act Creating a Next

Generation Roadmap for Massachusetts Climate Policy, St. 2021, c. 8); *see also* Massachusetts Clean Energy and Climate Plan for 2025 and 2030, June 30, 2022.³

Moreover, during the requested one-month suspension, Commonwealth Wind expects to demonstrate to the parties that the Project, even with a modest increase in the PPA price needed to achieve viability, will continue to be cost-effective, to reduce ratepayer bills, and to insulate ratepayers from the kinds of price spikes the Commonwealth is currently experiencing due to natural gas cost increases. Commonwealth Wind has been diligently exploring all options for improving Project efficiencies as mitigation for changed economic conditions and to ensure that Massachusetts and its ratepayers will receive the most cost-effective and beneficial offshore wind generation possible. Commonwealth Wind is prepared to explain these efforts, and how they, in tandem with modest PPA price increases, can deliver the best possible value for Massachusetts. These discussions will take time and necessitate the brief pause requested in this Motion. They are also likely to elucidate information that should be placed into the record before the Department renders a final decision on the PPAs.

In summary, granting this Motion would give the parties critical time to assess the significance of changed global economic circumstances and put all parties and the Department in the best position to fully incorporate these realities into the record and their decision-making processes so as to deliver the best outcome for the Commonwealth and its ratepayers. Absent time for the parties to assess the significance of these

³ The Massachusetts Clean Energy and Climate Plan for 2025 and 2030 is available at <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download>.

developments to the PPAs and the ability of the PPAs to advance the purposes of Section 83C, the parties will brief issues disconnected from current conditions, and the Department will not have a record that puts it in the best position possible to evaluate the feasibility of the PPAs under applicable law. No one benefits from a Department decision concerning PPAs that do not allow the Project to move ahead.

Commonwealth Wind's purpose in pursuing this Motion is to advance the Project in an expeditious, transparent and ultimately successful manner, not to cause delay. Commonwealth Wind remains committed to working with the EDCs to keep the PPAs on track to obtain approval and to minimize the impact of any delays on that process.

Consistent with the Department's Standard Ground Rules, Commonwealth Wind has consulted with all other parties to these proceedings and with Mayflower regarding the filing of this Motion. Mayflower does not oppose this Motion.

IV. CONCLUSION

For the reasons set forth above Commonwealth Wind respectfully requests that the Department suspend proceedings in the above-captioned dockets with regard to review of the PPAs for one month, that the Hearing Officer issue a ruling granting this Motion and establishing the one-month suspension period, and that the Department and the Hearing Officer make such further findings and issue such further directives as may be necessary to grant the relief requested herein.

Respectfully submitted,

**COMMONWEALTH WIND,
LLC**

By its attorneys,

A handwritten signature in blue ink, appearing to read "Zachary Gerson", is written over a light blue circular stamp.

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Dated: October 20, 2022

Motion to Dismiss of Commonwealth Wind, LLC dated December 16, 2022
under D.P.U. 22-70, 22-71, 22-72

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

) Petition of NSTAR Electric Company d/b/a) Eversource Energy for Approval of Proposed 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; St. 2021, c. 8 §§) 91 <i>et. seq.</i>))	D.P.U. 22-70
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) Petition of Massachusetts Electric Company and) Nantucket Electric Company d/b/a National Grid) for Approval of Proposed 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; St. 2021, c. 8 §§ 91 <i>et. seq.</i>))	D.P.U. 22-71
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) Petition of Fitchburg Gas and Electric Light) Company d/b/a Unitil for Approval of Proposed) 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; St. 2021, c. 8 §§) 91 <i>et. seq.</i>))	D.P.U. 22-72
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MOTION TO DISMISS OF COMMONWEALTH WIND, LLC

Pursuant to 220 C.M.R. § 1.06(5)(e) and the Interlocutory Order on Commonwealth Wind LLC’s Motion for a One-Month Suspension of the Proceedings, issued by the Department of Public Utilities (“Department”) on November 4, 2022, Commonwealth Wind, LLC (“Commonwealth Wind”) hereby moves that the Department dismiss the above-captioned proceedings as to the power purchase agreements (“PPAs”) between Commonwealth Wind and

the Massachusetts electric distribution companies (“EDCs”) in connection with the offshore wind generation facility being developed by Commonwealth Wind (the “Project”).

The PPAs do not meet the fundamental statutory threshold that they must “facilitate the financing of offshore wind energy generation.” Section 83C(a).¹ Unfortunately, despite diligent efforts by Commonwealth Wind to find a path forward for the Project under the PPAs that did not necessitate dismissing these proceedings, the PPAs remain unable to meet this threshold requirement, and it does not appear that there is a viable pathway that would allow that threshold to be met. Approving the PPAs would therefore not advance the purposes of Section 83C because the Project cannot be financed and constructed under the current terms of the PPAs.

Because it is not possible for the Department to approve the PPAs consistent with the statutory requirements, the Department should dismiss this proceeding as to the PPAs. The best path forward to advance the purposes of Section 83C and the Commonwealth’s clean energy goals is for the offshore wind energy generation capacity currently included in the PPAs to be procured in the next solicitation under Section 83C. Commonwealth Wind would bid into that solicitation and offer Massachusetts a project with cost-effective pricing, a superior timeline for completion, and exceptional economic development opportunities.

I. BACKGROUND

Commonwealth Wind previously advised the Department and the parties that, due to changes in economic conditions that were outside of Commonwealth Wind’s control, the Project could not move forward under the current PPAs without amendments. *See, e.g.* Commonwealth Wind Motion to Suspend at 2, 4; Commonwealth Wind Reply Brief at 3, 8-9. Commonwealth Wind sought a suspension of these proceedings in order for the parties to consider options that

¹ Section 83C of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188 §12, St. 2021, c. 8, § 91 et seq., St. 2021, c. 24, §§ 69 and 72, and St. 2022, c. 179, § 61 (“Section 83C”).

might return the Project to economic viability and allow the Commonwealth and its ratepayers to benefit from the cost-effective wind generation the Project is still able to provide. *See, e.g.* Commonwealth Wind Motion to Suspend at 1-3, 6; Commonwealth Wind Reply Brief at 3, 15-16.

In its November 4 Interlocutory Order, the Department determined that suspending the present proceedings to allow the parties to evaluate options for amending the PPAs would not be procedurally efficient. *See* Interlocutory Order at 7-8. The Department expressed doubt that renegotiation was the appropriate path forward. *Id.* at 6. And the Department specifically noted that amending pricing provisions in the PPAs would raise legal questions “that have not previously been presented to the Department.” *Id.* at 7, 12. Instead, the Department directed Commonwealth Wind to notify the Department and the EDCs within three business days whether the proceeding should progress or be dismissed with the possibility of a future filing.² *Id.* at 13. In rendering its decision, the Department stressed the importance of administrative efficiency and certainty regarding the contracts. *Id.*

Following the Interlocutory Order, Commonwealth Wind attempted negotiation and worked diligently and urgently with the parties to find an alternative to dismissing these proceedings. Key stakeholders expressed a preference that Commonwealth Wind not request dismissal at that time, but rather continue to discuss other options. Although a final resolution was not found, those efforts yielded sufficient results that Commonwealth Wind was encouraged enough to request that the proceeding should continue rather than to request immediate dismissal. As a result, Commonwealth Wind filed a notice that the proceedings should not be

² On November 8, 2022, Commonwealth Wind requested a two-business-day extension to file its response to the Department’s Interlocutory Order. On November 9, 2022, the Hearing Officer granted that extension.

dismissed at that time, but restated that the PPAs would need to be amended for the Project to be economically viable. *See* Notice of Commonwealth Wind, LLC Pursuant to the Department's November 4 Interlocutory Order, Nov. 14, 2022.

Since filing that Notice on November 14, Commonwealth Wind has attempted to work urgently and in good faith with the parties to identify a realistic path forward for the Project under the PPAs. However, as the Department noted in its Interlocutory Order, the EDCs have stated that they do not intend to renegotiate the PPAs. Interlocutory Order at 5. Commonwealth Wind attempted to engage the EDCs in discussions following the Interlocutory Order, but they declined to meet or confer at this time to discuss solutions. Although Commonwealth Wind has had discussions with the other parties in this proceeding, unfortunately, at this point, there has been no progress with the EDCs, and there does not appear to be a viable path that would allow the Project to move forward under the PPAs. As a result – and considering the importance of administrative efficiency and certainty regarding these PPAs, which the Department stressed in its Interlocutory Order – Commonwealth Wind can no longer support the continuation of these proceedings. The Project cannot be financed and built under the current PPAs, and these proceedings should be dismissed as to the PPAs for the reasons described in Commonwealth Wind's Prior Submissions³ and below.

II. STANDARD OF REVIEW

The Department's regulations provide that "[a] party may move at any time after the submission of an initial filing for dismissal or summary judgment as to all issues or any issue in the case." 220 C.M.R. § 1.06(5)(e). "The Department may order dismissal by motion of a party

³ "Prior Submissions" refers to Commonwealth Wind's Motion for a One-Month suspension (Oct. 20, 2022), Commonwealth Wind's Reply Brief (Nov. 1, 2022), and Commonwealth Wind's Limited Motion to Reopen the Evidentiary Record (Nov. 1, 2022).

or upon its own motion if the Department concludes as a matter of law that the Department has neither the authority nor the discretion to grant the relief requested, that the filing itself is patently deficient in form or a nullity in substance, or that the non-moving party has otherwise failed to state a claim upon which relief can be granted.” *Town of Russell*, D.P.U. 10-50, at 4 (Dec. 28, 2012); *accord Bay State Gas Co.*, D.P.U. 19-GSEP-05, at 7-8 (April 30, 2020).

III. ARGUMENT

At this juncture, the best option for advancing the purposes of Section 83C and the Commonwealth’s broader clean energy and emission reduction policies is to dismiss this proceeding as to the PPAs such that the offshore wind energy generation provided for in the PPAs can be procured in the next solicitation under Section 83C. No interest is advanced by approving PPAs that cannot and will not lead to the development of offshore wind energy generation; instead, the Commonwealth should conduct a robust fourth solicitation under Section 83C as soon as possible.⁴ In addition to being required by Section 83C, a dismissal eliminates concerns that other paths forward might raise novel legal issues related to renegotiation of the PPAs. Dismissal is the most administratively efficient option, and provides the greatest certainty for the Commonwealth’s solicitation process under Section 83C. Commonwealth Wind will then have an opportunity in the fourth Section 83C solicitation to demonstrate to the Department, the Commonwealth, and other parties that the Project remains the most promising and price competitive offshore wind project in the region and is best positioned to help the Commonwealth achieve its clean energy goals.

⁴ Subsequent solicitations under Section 83C must occur within 24 months of a previous solicitation. Section 83C(b). The third solicitation under Section 83C was issued on May 7, 2021. Exh. JU-1 at 11, 14. A fourth solicitation must, therefore, be issued by May 7, 2023.

Section 83C requires dismissal. To be approved under Section 83C, power purchase agreements must “facilitate the financing of offshore wind energy generation.” Section 83C(a); *accord* 220 C.M.R. § 23.01(1); *NSTAR Electric Co./Massachusetts Electric Co./Fitchburg Gas and Electric Light Co.*, D.P.U. 20-16/20- 17/20-18, at 23 (2020) (“As a threshold matter, the Department must find that the proposed contracts facilitate the financing of an eligible offshore wind energy generating resource.”); *see also* Commonwealth Wind Reply Brief at 5, 8.⁵ The PPAs do not meet this threshold and must be dismissed. Moreover, because the PPAs will not facilitate the financing of the Project, they will also not deliver the specific statutorily required benefits and will not meet the statutory criteria set forth in Section 83C(e)(1)(v) and restated at 220 C.M.R. § 23.05(1). The inability of the PPAs to meet these requirements is another reason why these proceedings must be dismissed.⁶ *See* Commonwealth Wind Reply Brief at 11-12.

When Commonwealth Wind bid into the third solicitation under Section 83C in September of 2021, its bid price was supported by then current and reasonably anticipated future economic conditions. Many of those economic conditions remained stable at the time the PPAs were signed, in early April of 2022. However, since that time, the global economy has changed both dramatically and swiftly in ways that could not have been managed or predicted by Commonwealth Wind. Among other factors, the prolonged war in Ukraine has unsettled markets and increased costs for many products, inflation has been persistent, interest rates have increased in a manner unprecedented in recent times, commodity prices have risen sharply, and

⁵ This threshold requirement is central to the purposes of Section 83C. It appears in the first words of Section 83C itself and in the first words of the Department’s implementing regulations. *See* Section 83C(a); 220 C.M.R. § 23.01(1). The reason the Legislature enacted and has continued to amend Section 83C is to facilitate financing of offshore wind generation projects so that they can be built and deliver associated benefits. *See* Commonwealth Wind Reply Brief at 7-8, 10-11.

⁶ Among others, these criteria include a requirement that PPAs be with Projects that “Adequately demonstrate project viability in a commercially reasonable timeframe.” Section 83C(e)(1)(v)(F).

supply shortages and supply-chain constraints once thought to be temporary remain pervasive. In particular, input costs for offshore wind projects have risen in an unprecedented manner, as reflected in recent announcements from major turbine suppliers that – contrary to historic trends – prices for turbines will rise significantly going forward.⁷ Those changes have dramatically upended the Project’s cost assumptions, rendering the PPAs uneconomic and insufficient to support financing. Simply put, it is now far more expensive to construct the Project than could have been reasonably foreseen even earlier this year.

When it filed its Notice on November 14, Commonwealth Wind was hopeful that a pathway to viability could be identified with cooperation among the parties and stakeholders. Some stakeholders had expressed a desire to continue discussions, and Commonwealth Wind was motivated to work expeditiously towards a solution. Since filing its Notice on November 14, Commonwealth Wind has continued to engage the parties and search for pathways that would make it possible for the PPAs to facilitate the financing of the Project. Unfortunately, the EDCs have declined to meet at this time to discuss solutions, no pathway has been identified, and the realities described above and identified in Commonwealth Wind’s Reply Brief and in the Affidavit of Sy Oytan, which was filed on November 1, 2022, remain true, unaddressed, and without any identified path to resolution:

- Global economic conditions have changed dramatically since the Project was bid. *See* Affidavit of Sy Oytan at ¶¶ 4-6.

⁷ See, e.g., Alex Blackburne, *Struggling wind giants lift turbine prices as ‘last resort’ to fight inflation*, S&P Global Market Intelligence, Aug. 22, 2022 (“Vestas Wind Systems A/S, Siemens Gamesa Renewable Energy SA and Nordex SE have hiked the price of their turbines to long-term highs in 2022. Siemens Gamesa's onshore machines are up 41% year over year in the second quarter . . . and market-leader Vestas is up 22% . . .”), available at <https://www.spglobal.com/marketintelligence/en/news-insights/blog/data-stories-three-steps-to-assess-carbon-reduction-performance>.

- As a result, the PPAs are uneconomic and insufficient to support financing. *See* Affidavit of Sy Oytan at ¶¶ 9-10.

Given these realities, approving the PPAs will not facilitate the financing of the Project. *See* Commonwealth Wind Reply Brief at 9-11. The statutory requirements of Section 83C cannot be met, and the appropriate action is to dismiss these proceedings.

It is critical that the Department consider the undisputed economic realities described above in rendering any decision on the PPAs, and particularly in determining whether the PPAs will “facilitate the financing of offshore wind energy generation” as required by Section 83C. Both the Project and the successful progress of procurements under Section 83C are crucial to achieving Massachusetts’ greenhouse gas emission limits. *See generally*, G.L. c. 21N, §§ 3, 3A, 4; Massachusetts Clean Energy and Climate Plan for 2025 and 2030, at iv, xiv, 3-5, 27, 62-65, 69-72, June 30, 2022, available at <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download> (noting that Massachusetts’s Clean Energy and Climate Plan is “anchored by” offshore wind development that is expected to be in operation by 2030).

Rendering a decision that will directly bear on the advancement of the Project and the path of future Section 83C procurements requires careful consideration of a full, complete, and current record. This is especially true as the region faces sharply increasing energy costs this winter. The Department should consider the evidence that Commonwealth Wind, as the party that would need to finance the Project and the party that is the source of the other information on these issues in the record, has offered.⁸ There is no substantial evidence in the record supporting a finding that the PPAs will facilitate financing.

⁸ In the Interlocutory Order, the Department determined not to admit Mr. Oytan’s affidavit into the record for the purposes of evaluating Commonwealth Wind’s Motion to Stay. *See* Interlocutory Order at 11-12. Instead, the Department directed Commonwealth Wind to either allow the proceedings to move forward or file a request to dismiss. *Id.* at 13. The evidence in the Oytan Affidavit is not contested and represents the only current evidence on

Moreover, Commonwealth Wind, as the “Seller” under the PPAs, has a unique and central interest in whether the PPAs are approved and whether the contracts meet the requirements of Section 83C. Commonwealth Wind is the party that would be most directly impacted by approval or dismissal of the PPAs. As the developer of the Project, Commonwealth Wind has an interest in seeing the Project move forward; that is Commonwealth Wind’s business. However, Commonwealth Wind is also the party that would bear the immediate obligations and consequences of approved PPAs. For instance, DPU approval of the PPAs would put into effect contractual obligations for Commonwealth Wind to meet critical milestones and construct an offshore wind facility. *See, e.g.*, Exh. JU-3 (Commonwealth) at § 3. Moreover, Massachusetts and its ratepayers will not get the benefits associated with the PPAs unless Commonwealth Wind performs. Because it is uniquely and substantially affected by whether the PPAs are approved and because its performance under the PPAs is critical to attaining any benefits for the Commonwealth or ratepayers, the Department should give significant weight to Commonwealth Wind’s request to dismiss this proceeding.

Even if Section 83C did not require dismissal, dismissing these proceedings as to the PPAs would be the right course of action because it provides the administrative efficiency and certainty the Department sought in the Interlocutory Order. *See* Interlocutory Order at 13. The current PPAs are not viable and would not lead to development of the Project. After several months of discussions with the parties, no realistic path to amending the PPAs has emerged, and

these critical threshold statutory issues available to the Department. Commonwealth Wind renews its request that the Department consider the evidence presented in the Oytan Affidavit for the purposes of this Motion to Dismiss. Even if the Department does not do so, Commonwealth Wind – *the Project’s proponent* – has now clearly and repeatedly stated that the Project is not economically viable under the PPAs in present economic circumstances and that the PPAs will not facilitate the financing of the Project. The only evidence offered that the PPAs will facilitate the financing of the Project are taken from statements that Commonwealth Wind made when it submitted its bid, but which Commonwealth Wind now withdraws as no longer applicable. *See* Commonwealth Wind Reply Brief at 10-11.

as the Department noted, even if it did, it would result in significant delay, might raise novel legal questions, and would require future Department proceedings. *Id.* at 7-8.

Dismissal also gives certainty to all stakeholders on the path forward: the Commonwealth can proceed with the next solicitation under Section 83C without worry that the PPAs (and the associated 1,200 MW of nameplate capacity) remain in limbo. To that end, Commonwealth Wind urges the Department to dismiss this proceeding now so that the Department of Energy Resources can include the 1,200 MW that is the subject of the PPAs in the next Section 83C solicitation. Doing so best positions Massachusetts to advance the purposes of Section 83C and achieve its clean energy goals and greenhouse gas emission limits, including meeting the 2030 targets, for which Massachusetts has assumed the deployment of at least 3.2 gigawatts of offshore wind energy generation. *See, e.g.*, Massachusetts Clean Energy and Climate Plan for 2025 and 2030, at iv, 24, 64, June 30, 2022, available at <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download>; *see also* G.L. c. 21N, §§ 3, 3A, 4; G.L. c. 25 § 1A (“In discharging its responsibilities under this chapter and chapter 164, the department shall, with respect to itself and the entities it regulates, prioritize safety, security, reliability of service, affordability, equity and reductions in greenhouse gas emissions to meet statewide greenhouse gas emission limits and sublimits established pursuant to chapter 21N.”).

Finally, Commonwealth Wind remains committed to the Project, which it firmly believes is the most cost-effective source of offshore wind energy generation for Massachusetts and can provide unparalleled benefits to Massachusetts and its ratepayers. Commonwealth Wind is committed to continuing the development of the Project following dismissal of this proceeding. Commonwealth Wind will take all reasonable steps to keep the Project on its current development timeline through the next Section 83C solicitation so that, if selected, the Project

remains poised to contribute to the Commonwealth's critical 2030 emission reduction requirements.

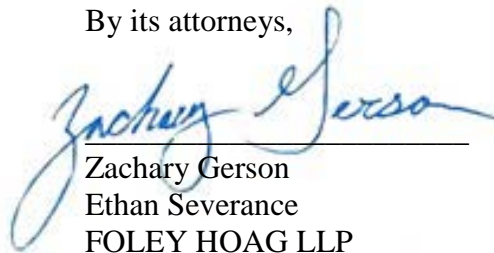
IV. CONCLUSION

For the reasons set forth above, Commonwealth Wind respectfully requests that the Department dismiss these proceedings as to the PPAs between Commonwealth Wind and the EDCs and make such further findings and issue such further directives as may be necessary to grant the relief requested herein.

Respectfully submitted,

COMMONWEALTH WIND, LLC

By its attorneys,



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Dated: December 16, 2022

**Approved Motion, Order and Pleadings cited herein from Massachusetts
Department of Public Utilities**

Electric Distribution Companies' Joint Motion to Approve Amendments
to Mayflower Wind 83C Round II Power Purchase Agreements
approved December 30, 2022 under D.P.U. 20-16, 20-17, 20-18

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**



Petition of NSTAR Electric Company d/b/a)
Eversource Energy for Approval of Proposed)
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)

D.P.U. 20-16

Petition of Massachusetts Electric Company and)
Nantucket Electric Company d/b/a National Grid)
for Approval of Proposed 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)

D.P.U. 20-17

Petition of Fitchburg Gas and Electric Light)
Company d/b/a Unitil for Approval of Proposed)
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)

D.P.U. 20-18

**ELECTRIC DISTRIBUTION COMPANIES' JOINT MOTION TO APPROVE
AMENDMENTS TO MAYFLOWER WIND 83C ROUND II
POWER PURCHASE AGREEMENTS**

NSTAR Electric Company d/b/a Eversource Energy ("Eversource"), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid ("National Grid") and Fitchburg Gas and Electric Light Company d/b/a Unitil ("Unitil") (together, the "Distribution Companies" and each a "Distribution Company"), pursuant to 220 C.M.R. 1.04(5)(a), hereby request an order from the Department of Public Utilities ("Department") approving amendments to the long-term power purchase agreements between each Distribution Company and Mayflower Wind Energy LLC ("Mayflower Wind" or "Mayflower") that were approved previously by the

Department in this proceeding pursuant to the Green Communities Act, St. 2008, c. 169, § 83C (“Section 83C”)¹ and 220 CMR 23.00 *et seq.* (the “Round II PPAs” or “PPAs”).²

As discussed further herein, the Distribution Companies and Mayflower Wind propose to amend the Round II PPAs principally by: (1) moving the point of onshore interconnection and Delivery Point from Bourne to Brayton Point; (2) locking in the contract prices now at the levels corresponding to a 30 percent Federal Investment Tax Credit (“ITC”); (3) extending the Critical Milestones and increasing the Development Period Security accordingly; and (4) adopting a methodology to ensure that energy delivered at the Delivery Point is properly assigned to the Round II PPAs.³ The Round II PPAs, as amended, continue to meet the legal standards of Section 83C and 220 C.M.R. 23.00 and are in the public interest. Accordingly, the Distribution Companies respectfully request Department approval of the PPA Amendments.

I. STATEMENT OF FACTS

A. The Mayflower Round II PPAs as Initially Approved by the Department.

1. On February 10, 2020, the Distribution Companies petitioned the Department, pursuant to Section 83C and 220 C.M.R. 23.00, for approval of the Mayflower Round II PPAs to

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

² The Round II PPAs were submitted as Exhibit JU-3 with the Distribution Companies’ Petition, Joint Testimony and Exhibits filed in this proceeding on February 10, 2020.

³ The proposed amendments to the Round II PPAs (the “PPA Amendments”) are provided in Exhibit JU-AMEND-2. Conformed copies of the Round II PPAs, which incorporate the PPA Amendments in both clean and redline versions, are provided in Exhibits JU-AMEND-3 and JU-AMEND-4, respectively.

purchase Offshore Wind Energy Generation⁴ and associated renewable energy certificates (“RECs”) from a combined approximately 804 MW offshore wind energy generation facility (the “Round II Project”).⁵

2. The Department approved all six Mayflower Round II PPAs by an Order issued in each of the above-captioned proceedings on November 5, 2020. *NSTAR Electric Company, d/b/a Eversource Energy et al.*, D.P.U. 20-16, D.P.U. 20-17, D.P.U. 20-18 (2020) (“D.P.U. 20-16/17/18”).

3. As approved by the Department, the Round II PPAs provide for the delivery of an aggregate 804 MW of Offshore Wind Energy Generation and related RECs with expected commercial operation dates (“COD”) of February 28, 2026 for the first 408 MW (Phase 1⁶) and June 13, 2026 for the second 396 MW (Phase 2).⁷ D.P.U. 20-16/17/18 at 4. The PPAs each have a delivery term of 20 years from their respective COD. *Id.*

4. Under the PPAs, Mayflower Wind is responsible for all costs of supplying energy and RECs to the Distribution Companies, including all costs associated with interconnection of the Round II Project at a point of interconnection on Cape Cod at or near Bourne at ISO-New

⁴ Offshore Wind Energy Generation is defined in 220 C.M.R. 23.02 as:
offshore electric generating resources derived from wind that:

- (a) are Class I renewable energy generating sources as defined in M.G.L. c. 25A, § 11F;
- (b) have a commercial operations date on or after January 1, 2018, which has been verified by the DOER; and
- (c) operate in a designated wind energy area for which an initial federal lease was issued on a competitive basis after January 1, 2012.

⁵ The Department assigned D.P.U. 20-16 to Eversource’s Petition, D.P.U. 20-17 to National Grid’s Petition and D.P.U. 20-18 to Until’s Petition.

⁶ For convenience, the individual project phases are referenced as “Phase 1” or “Phase 2”, as appropriate. Phase 1 and Phase 2, combined, are referenced as the “Round II Project” or the “Project.”

⁷ On July 14, 2021, each Distribution Company provided written notification to Mayflower Wind that Regulatory Approval had been received and that each of the Critical Milestone deadlines had been extended by 180 days pursuant to Section 3.1(e) of the PPAs. The current Critical Milestones referenced in our testimony include that 180 day extension.

England's Capacity Capability Interconnection Standard ("CCIS"). (Joint Test'y⁸ at 8.) The Delivery Point for the PPAs will be confirmed by ISO-New England after the establishment of the pool transmission facility node at a proposed new 345 kV switching station at or near Bourne. (*Id.*)

5. The combined price for energy and RECs for the PPAs is fixed for the 20-year delivery term at \$77.76 per MWh on a nominal levelized basis. (Joint Test'y at 8.) The Distribution Companies negotiated a clause in the PPAs that would allow for a decrease in the contract price if there were to be a change in law affecting the ITC for offshore wind before COD, such that Mayflower Wind would be able to qualify for an ITC in excess of 12 percent of Mayflower Wind's basis. (*Id.*)

B. The Proposed Amendments to the Mayflower Round II PPAs.

6. The PPA Amendments, and the negotiations that led to the amendments, were initiated by a request from Mayflower Wind. (Joint Test'y at 8.) The need to amend the PPAs arises principally from Mayflower Wind's desire to move the onshore interconnection point for its Round II Project from Bourne to Brayton Point. (*Id.*) This change to the interconnection point was raised initially by Mayflower in the proposal it submitted in response to the Distribution Companies' recently concluded Section 83C Round III solicitation that was approved by the Department in D.P.U. 21-40.⁹ (*Id.* at 8-9.) Mayflower's "B2" variation selected by the Distribution Companies in the Section 83 Round III solicitation was for 400 MW of offshore wind

⁸ Joint Testimony of Jeffrey S. Waltman, Katherine Wilson, Timothy J. Brennan and Lisa S. Glover (May 25, 2022), Exhibit JU-AMEND-1 ("Joint Test'y").

⁹ The Distribution Companies have completed that solicitation and, as a result, have entered into additional power purchase agreements with Mayflower Wind and Commonwealth Wind. The Distribution Companies have pending before the Department separate Petitions seeking Department approval of those Section 83C Round III power purchase agreements with Mayflower Wind (the "Round III PPAs") and Commonwealth Wind. *See* D.P.U. 22-70, D.P.U. 22-71, D.P.U. 22-72.

generation (negotiated to 405 MW due to turbine considerations) that will interconnect onshore at Brayton Point.¹⁰ (*Id.* at 9.) Due to limitations on the ability to interconnect both its Round II and Round III projects at Cape Cod, Mayflower has proposed to move the interconnection point for its Round II Project from Cape Cod to Brayton Point and intends to develop common offshore transmission infrastructure to serve its offshore wind facilities, including its Round II and Round III Projects. (*Id.* at 9-10.)

7. Given Mayflower Wind's decision to move the onshore interconnection point and the Delivery Point for its Round II PPAs, it has requested extensions of the Section 3.1(a) Critical Milestones that are included in the Amendments.¹¹ (Joint Test'y at 11.) The Critical Milestones preceding COD are proposed to be extended between seven and 15 months, and the CODs by approximately 18 months. (*Id.*) Specifically, the Phase 1 COD is being extended from February 28, 2016 to September 1, 2027, and the Phase 2 COD is being extended from June 13, 2026 to December 1, 2027. (*Id.*; Exhibit JU-AMEND-2, Tab A, § 2(d); Exhibit JU-AMEND-2, Tab B, § 2(d).)

8. Consistent with Section 3.1(c) of the PPAs,¹² and in recognition of the extensions of the Critical Milestones requested by Mayflower, the Amendments modify Section 6.1(a) of the Eversource/Unitil PPAs and Section 6.2(a) of the National Grid PPAs by increasing the amount of Development Period Security from \$40,000 per MWh/hour of the Contract Maximum Amount to

¹⁰ The Distribution Companies are contracting for 405 MW of Mayflower Wind's larger project offered in the Section 83C Round III solicitation (the "Round III Project").

¹¹ The Distribution Companies are submitting a total of six Amendments in Exhibit JU-AMEND-2 (Phase 1 and Phase 2 Amendments for each of the three Distribution Companies). The Phase 1 and Phase 2 Amendments are substantively identical with regard to the issues addressed in this Motion. For the Department's convenience, citations herein are to the Eversource Phase 1 and Phase 2 Amendments (Exhibit JU-AMEND-2, Tabs A and B, respectively) as exemplar, rather than citing the identical provisions in the other individual Amendments in that Exhibit.

¹² Section 3.1(c) of the PPAs generally allows Mayflower to elect up to four six-month extensions of any Critical Milestone not yet achieved by posting additional Development Period Security.

\$55,000 per MWh/hour of the Contract Maximum Amount. (Joint Test’y at 11; Exhibit JU-AMEND-2, Tab A, § 2(nn); Exhibit JU-AMEND-2, Tab B, § 2(pp).) Mayflower will retain the ability to elect additional extensions of the new Critical Milestones by posting additional security above these modified amounts pursuant to Section 3.1(c) of the PPAs.

9. The Amendments also incorporate a reduction in the contract price, which is commensurate with a 30% ITC. (Joint Test’y at 12; Exhibit JU-AMEND-2, Tab A, § 2(vv); Exhibit JU-AMEND-2, Tab B, § 2(xx).) The price reduction, which is about 9.6 percent, is described below:

Price Element	From	To
Product Price (Combined Energy & REC Price)	\$77.76	\$70.26
Energy Price (Eversource/Unitil only)	\$73.87	\$66.75
REC Price (Eversource/Unitil only)	\$3.89	\$3.51
Adjusted Price (National Grid only)	\$73.87	\$66.75

10. Finally, because the Round II PPAs, as amended, will share a common Delivery Point and metering with Mayflower’s Round III PPAs and sales of energy to third parties, the PPA Amendments include provisions to ensure that the energy received at the Delivery Point (and related RECs) are allocated appropriately. (Joint Test’y at 13.) Among other considerations, the Distribution Companies wanted to avoid creating incentives for Mayflower Wind to “under build” its lower-priced Round II Project and to maximize the capacity of its higher-priced Round III Project. (*Id.*) Thus, the Amendments include provisions, identified during the negotiation of the Mayflower Round III PPAs,¹³ that include Delivery Point Ratio, Facility Size Increase Protocol and the treatment of Test Products while Mayflower’s projects are under development. (Joint Test’y at 14-16; Exhibit JU-AMEND-2, Tab A, §§ 2(b) (Delivery Point Ratio), Annex 5 (Facility

¹³ The PPA Amendments also include various contract modifications to conform the Round II PPAs to terms that were negotiated with Mayflower Wind and included in the Round III PPAs. Conforming the Round II PPAs to the Round III PPAs will promote efficient contract administration for both the Distribution Companies and Mayflower Wind. (Joint Test’y at 16.)

Size Increase Protocol); Exhibit JU-AMEND-2, Tab B, §§ 2(b) (Delivery Point Ratio), 2(l) (Test Products), Annex 5 (Facility Size Increase Protocol).)

11. The amendments are conditioned upon and shall not become effective unless and until receipt of approval from the Department that is final and not subject to appeal or rehearing. (Exhibit JU-AMEND-2, Tab A, § 3 (a); Exhibit JU-AMEND-2, Tab B, § 3(a).)

II. DISCUSSION

A. Standard of Review.

Section 83C authorizes the Department to approve cost-effective long-term contracts for eligible offshore wind energy generation. Section 83C and the Department's regulations, 220 C.M.R. 23.00, set forth specific findings that the Department must make to approve a long-term contract for offshore wind energy generation. Section 83C(d)(5); 220 CMR 23.05. The criteria are:

- (1) Long-term contracts must be with offshore wind energy generation sources that:
 - (a) Are determined by the Department to:
 - (1) Provide enhanced electricity reliability within the Commonwealth of Massachusetts;
 - (2) Contribute to reducing winter electricity price spikes;
 - (3) Be cost-effective to Massachusetts electric ratepayers over the term of the contract;
 - (4) Avoid line loss and mitigate transmission costs to the extent possible and ensure cost overruns are not borne by ratepayers;
 - (5) Adequately demonstrate project viability in a commercially reasonable timeframe;
 - (6) Allow offshore wind energy generation resources to be paired with energy storage systems;
 - (7) Mitigate any environmental impacts, where possible; and
 - (8) Create additional employment and economic

development, where feasible.

- (b) Are a cost-effective mechanism for procuring renewable energy on a long-term basis.

The Department must also determine that any long-term contract under review is cost-effective and in the public interest. D.P.U. 20-16/17/18 at 45-46 (citing Section 83C; 220 C.M.R. 23.05(1).) The Department previously determined that the Mayflower Wind Round II PPAs satisfy each of the above criteria and are in the public interest. *Id.* at 26-60. It is appropriate for the Department to confirm that the Round II PPAs, as amended, will continue to meet the applicable standard of review and remain in the public interest. *See* D.P.U. 18-76, D.P.U. 18-77, DPU 18-78 (Department October 21, 2021 stamp approval of proposed amendments to Vineyard Wind power purchase agreements to extend critical milestones due to permitting delays).

B. The Mayflower Round II PPAs, As Amended, Continue to Satisfy Section 83C and the Department’s Regulations.

The proposed amendments affect four fundamental aspects of the PPA: (1) moving the point of onshore interconnection and Delivery Point from Bourne to Brayton Point; (2) locking in the contract prices now at the levels corresponding to a 30 percent ITC (i.e., the lowest possible price) in the Mayflower PPAs price table; (3) extending the Critical Milestones and increasing the Development Period Security accordingly; and (4) adopting a methodology to ensure that energy delivered at the Delivery Point is properly assigned to the Round II PPAs.

1. The Project Will Continue to Enhance Electric Reliability In Massachusetts.

In its November 5, 2020 Order, the Department found that the Mayflower Round II PPAs would enhance electric reliability in Massachusetts by virtue of the fact that energy is delivered into the Southeastern Massachusetts (“SEMA”) load zone. *See* D.P.U. 20-16/17/18 at 31 (“Because SEMA is part of the New England regional interconnected electric system, an

improvement in reliability in this area of the system will help to bolster the reliability of the system as a whole and, thereby, contribute to system resource adequacy and system security support.”). Moving the project’s onshore interconnection point and PPA Delivery point from Bourne to Brayton Point is simply a shift within the SEMA load zone. (Joint Test’y at 16-17.) As such, the Project will continue to enhance electric reliability notwithstanding moving the interconnection point and Delivery Point within the load zone.

2. The Project Will Continue to Reduce Winter Electricity Price Spikes.

The Department’s November 5, 2020 Order found that that the Project would reduce winter electricity price spikes based on its generation characteristics. *See* D.P.U. 20-16/17/18 at 33 (“Based on our review of the Project’s generation characteristics, the Department finds that it is likely to produce power during winter peak times . . . [and] that the Project will contribute to the reduction of winter electricity price spikes.”). Mayflower’s plan to move the point of interconnection and Delivery Point will not affect the Project’s generation characteristics. (Joint Test’y at 17.) Accordingly, the Project will continue to reduce winter price spikes.

3. The Project Will Continue to Avoid Line Loss, Mitigate Transmission Costs and Ensure that Transmission Cost Overruns are not Borne by Customers.

Like the PPAs initially approved the Department, the amended PPAs will continue to obligate Mayflower Wind to deliver and sell energy and RECs to the Distribution Companies at a fixed price as measured at the Delivery Point onshore. (Joint Test’y at 17-18.) As such, customers will continue to be insulated from the risk of line loss and transmission cost overruns. D.P.U. 20-16/17/18 at 34 (“the structure of the PPAs ensure line loss risk and transmission costs are borne by Mayflower Wind and any transmission cost overruns will not be borne by ratepayers”).

4. The Project Will Remain Viable in a Commercially Reasonable Timeframe.

The proposed PPA Amendments will extend the Critical Milestones preceding Commercial Operation by between seven and 15 months and the Commercial Operation Dates by approximately 18 months. (Joint Test’y at 18; Exhibit JU-AMEND-2, Tab A, § 2(d); Exhibit JU-AMEND-2, Tab B, § 2(d).) In exchange for these extensions, Mayflower Wind will be required to post additional Development Period Security.¹⁴ (Joint Test’y at 18.) Mayflower’s need for these extensions appears to be driven primarily by its preference to interconnect its Round II and III Projects and other generation at Brayton Point. Given the availability of transmission infrastructure at Brayton Point and the complexities of interconnecting Mayflower Wind’s offshore wind generation at Cape Cod, moving the point of interconnection and Delivery Point to Brayton Point seems reasonably calculated to preserve and enhance the viability of the Project. (*Id.* at 18-19.) Moreover, based on periodic status reports the Distribution Companies receive from Mayflower Wind indicate that the developer continues to invest in the Project and take definitive steps to move the Project forward in the development process. The Project continues to demonstrate viability and that it will be completed in a commercially reasonable timeframe under the present circumstances. (*Id.* at 19.) *See* D.P.U. 20-16/17/18 at 37-39 (discussing interconnection risk and concluding that “the Companies have adequately demonstrated Project viability in a commercially reasonable timeframe”); D.P.U. 18-76, D.P.U. 18-77, D.P.U. 18-78 (Department October 21, 2021 stamp approval of proposed amendments to Vineyard Wind power purchase agreements to extend critical milestones due to permitting delays).

¹⁴ The additional Development Period Security is not due to be posted until 15 Business Days after receipt of the Amendment Regulatory Approval. (Joint Test’y at 18 n.13; Exhibit JU-AMEND-2, Tab A, § 2(nn); Exhibit JU-AMEND-2, Tab B, § 2(pp).)

5. The Project Will Continue to Allow for the Pairing of Energy Storage Systems.

Mayflower Wind's Round II Project was not paired with a specific energy storage system, and the proposed PPA Amendment does not propose such a pairing. Moreover, moving the point of interconnection within SEMA does not affect the Project's ability to pair with energy storage initiatives. (Joint Test'y at 19.) *See* D.P.U. 20-16/17/18 at 40 (discussing the possibility of a future short-duration energy storage facility and/or coordination with third parties on energy storage initiatives). Accordingly, the PPA, as amended, will continue to meet this criteria.

6. The Project Will Continue to Mitigate Environmental Impacts, Where Possible.

In its Order, the Department found that Mayflower Wind had commenced efforts to obtain necessary federal, state and local permits; undertaken necessary environmental assessments; developed a plan to mitigate potential environmental impacts; and conducted outreach to a variety of local stakeholders impacted by the Project. D.P.U. 20-16/17/18 at 42. Based on the periodic Project updates Mayflower Wind has provided to the Distribution Companies, Mayflower appears to have continued with these efforts. (Joint Test'y at 20-21.) In addition, as reflected in the amended Exhibit B to the PPAs, Mayflower has adapted its permitting strategy to account for moving the proposed point of interconnection and has included the Brayton Point interconnection configuration in its Construction Operation Plan submitted to BOEM in October 2021. (*Id.*; Exhibit JU-AMEND-2, Tab A, Annex 2 (amended Exhibit B); Exhibit JU-AMEND-2, Tab B, Annex 2 (amended Exhibit B)). As amended, the PPAs continue to ensure that the Round II Project will continue to mitigate environmental impacts, where possible.

7. The Project Will Continue to Create and Foster Employment and Economic Development, Where Feasible.

The modifications that Mayflower Wind proposes for the Project are not expected to diminish the employment and economic development opportunities anticipated from a project of this magnitude, including those that have been secured by a January 10, 2020 Memorandum of Agreement between MassCEC and Mayflower Wind. (Joint Test’y at 20.) Accordingly, the Department’s initial positive findings on these points remain valid. D.P.U. 20-16/17/18 at 45 (“there is no dispute that the construction and operational phases of the Project will result in additional employment . . . [and will] undoubtedly result in economic benefit for the region”); *id.* at 44 n.34, 45 n.36 (referencing Memorandum of Agreement between MassCEC and Mayflower Wind).

8. The PPAs, as Amended, Will Continue to be a Cost-Effective Mechanism for Procuring Reliable Renewable Energy on a Long-Term Basis.

The Department initially found that the PPAs are cost-effective based on evidence that the aggregate cost for energy and RECs under the PPAs (exclusive of remuneration) is expected to be less than forecasted market prices by \$2.272 billion over the life of the contracts. D.P.U. 20-16/17/18 at 52. The Department also relied upon evidence that the PPAs result in a levelized net direct benefit of \$22.31 per MWh (\$2019) including 2.75 percent remuneration. *Id.* Finally, the Department found that customers would receive “significant qualitative benefits” under the PPAs attributable to reliability, the Commitment Agreement, mitigated environmental impacts and economic development. *Id.* at 52-53. After considering the potential costs and benefits of the PPAs, the Department found that the PPAs are a cost-effective mechanism for procuring reliable renewable energy on a long-term basis. *Id.* at 53.

The Department’s previous findings on the cost-effectiveness of the Round II PPAs were

based on contract pricing corresponding to a 12 percent ITC. Through the Amendments, the Distribution Companies have locked in significantly more attractive pricing based on a 30 percent ITC, which reduces the price customers will pay by nearly 10 percent and eliminates any ITC-related price risk compared to the 12 percent level. As amended, the Round II PPAs will continue to be a cost-effective mechanism for procuring reliable renewable energy on a long-term basis.¹⁵

9. The PPAs, as Amended, are in the Public Interest.

In its order approving the PPAs, the Department stated that it “reviews the public interest of long-term contracts for renewable energy based on the specific facts and circumstances relevant to each proposed contract.” D.P.U. 20-16/17/18 at 53 (citations omitted). The Department’s evaluation of whether the PPAs are in the public interest considered:

(1) whether the pricing terms in the contracts are reasonable for offshore wind generation resources; (2) whether other, lower cost Section 83C-eligible resources were available to the Companies and, if so, whether the benefits of the proposed contracts justify any higher costs; (3) the reasonableness of the Companies’ decision to enter into contracts of the given size; and (4) whether the bill impacts of the contracts are reasonable in light of the benefits of the contracts.

Id. at 56 (citations omitted).

The Department reached favorable conclusions on each of the above public interest considerations. *Id.* at 57-60. Specifically, the Department found that “through the use of a fair, open and transparent competitive solicitation process, the Companies have demonstrated that (1) the pricing terms in the PPAs are reasonable for offshore wind energy generation resources and (2) there were no other lower-cost Section 83C-eligible resources available to the Companies.” *Id.* at 59. The Department also found that it was reasonable for the Distribution Companies “to contract for 804 MW of offshore wind energy generation based on the competitiveness of the bid and the level of economic

¹⁵ In addition, the cost-effectiveness of the Round II PPAs is preserved by the provisions in the Amendments that will ensure energy delivered by the Round II Project to a common Delivery Point is properly allocated to the Round II PPAs and priced at the favorable rates that have been locked in.

net benefit to ratepayers. *Id.* at 59-60. Finally, the Department found that the bill impacts expected to result from the PPAs were “reasonable in light of the benefits of the contracts.” *Id.* at 60.

The PPA Amendments do not undermine any of these findings. The PPAs resulted from a solicitation process that was fair, open and transparent and the Amendments do not propose to change the 804 MW contract quantity. Moreover, the Department’s findings that the initial contract pricing was reasonable and that the estimated bill impacts of the PPAs were reasonable in the circumstances are strengthened by the Amendments. As discussed above, the Distribution Companies have locked in lower contract prices commensurate with a 30 percent ITC. This reduction of nearly 10 percent in the contract pricing will lessen the impacts on customer bills while providing the same level of benefits to the Commonwealth. As such, the PPAs, as amended, will continue to be in the public interest and should be approved by the Department.

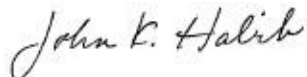
III. CONCLUSION

The Department’s Order previously concluded that the Mayflower Round II PPAs meet all of the criteria required by Section 83C and 220 C.M.R. 23.00. The Amendments to the PPAs do not diminish the Department’s findings when it initially approved the PPAs in its November 5, 2020 Order. Accordingly, for all of the reasons discussed herein, the Distribution Companies respectfully request that the Department approve the proposed amendments to the Section 83C Round II PPAs between each Distribution Company and Mayflower Wind and grant such other and further relief as is just and equitable in the circumstances.

Respectfully submitted,

**MASSACHUSETTS ELECTRIC COMPANY
and NANTUCKET ELECTRIC COMPANY
d/b/a NATIONAL GRID**

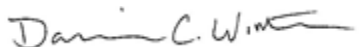
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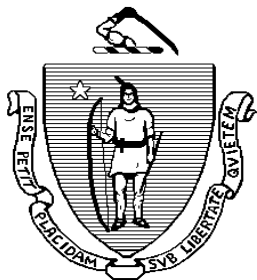
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Dated: May 25, 2022

Final Order dated December 30, 2022 under D.P.U. 22-70, 22-71, 22-72



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 22-70

December 30, 2022

Petition of NSTAR Electric Company d/b/a Eversource Energy for approval by the Department of Public Utilities of two long-term contracts for procurement of offshore wind energy generation, pursuant to St. 2008, c. 169, § 83, as amended by St. 2016, c. 188, § 12; St. 2021, c. 8 § 91 et seq.; and St. 2021, c. 24, §§ 69, 72; and 220 CMR 23.00.

D.P.U. 22-71

Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid for approval by the Department of Public Utilities of two long-term contracts for procurement of offshore wind energy generation, pursuant to St. 2008, c. 169, § 83, as amended by St. 2016, c. 188, § 12; St. 2021, c. 8 § 91 et seq.; and St. 2021, c. 24, §§ 69, 72; and 220 CMR 23.00.

D.P.U. 22-72

Petition of Fitchburg Gas and Electric Light Company, d/b/a Unitil for approval by the Department of Public Utilities of two long-term contracts for procurement of offshore wind energy generation, pursuant to St. 2008, c. 169, § 83, as amended by St. 2016, c. 188, § 12; St. 2021, c. 8 § 91 et seq.; and St. 2021, c. 24, §§ 69, 72; and 220 CMR 23.00.

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I. INTRODUCTION

On May 25, 2022, NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric”), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid (together “National Grid”); and Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”) (collectively, “Companies”) filed petitions with the Department of Public Utilities (“Department”) pursuant to An Act Relative to Green Communities, St. 2008, c. 169, § 83C (“Section 83C”)¹ and 220 CMR 23.00, each for approval of two long-term power purchase agreements (“PPAs”) to purchase offshore wind energy generation and associated renewable energy certificates (“RECs”).² The Department docketed the NSTAR Electric petition as D.P.U. 22-70, the National Grid petition as D.P.U. 22-71, and the Unitil petition as D.P.U. 22-72.

Section 83C requires that the Companies jointly and competitively solicit proposals for offshore wind energy generation and, provided that reasonable proposals have been received, enter into cost-effective long-term contracts. Section 83C(a); 220 CMR 23.00. The Companies

¹ Section 83C was added to An Act Relative to Green Communities by An Act to Promote Energy Diversity, St. 2016, c. 188, § 12. On August 11, 2022, while the Department’s investigation into the PPAs was ongoing, Governor Charlie Baker signed An Act Driving Clean Energy and Offshore Wind (“2022 Clean Energy Act”) into law, which further amended Section 83C. St. 2022, c. 179, § 61. The Department evaluates the proposed PPAs in accordance with the statutory provisions in effect at the time of the Companies’ filing.

² Each PPA incorporates a separate voluntary commitment agreement between the electric distribution company and the developer, and the Companies provided executed copies of the voluntary commitment agreements with their filings (Exh. JU-3). Pursuant to the voluntary commitment agreements, the developers agree to take certain steps in the event a third-party offshore wind developer requests interconnection at and/or delivery service on the developer’s interconnection facilities (Exh. JU-3).

may conduct competitive solicitations through a staggered procurement schedule, provided that the schedule ensures that the Companies contract for offshore wind energy generation equal to approximately 5,600 megawatts (“MW”)³ of aggregate nameplate capacity by June 30, 2027, and that individual solicitations seek proposals for at least 400 MW of offshore wind energy generation. Section 83C(b); 220 CMR 23.00. The Department must approve a long-term contract before it can become effective. Section 83C(a); 220 CMR 23.03(2).

In these proceedings, the Companies each seek approval of two 20-year PPAs for an apportioned share⁴ of energy and RECs executed with offshore wind energy generating resource developers Commonwealth Wind, LLC (“Commonwealth Wind”)⁵ and Mayflower Wind Energy LLC (“Mayflower Wind”) (Exh. JU-1, at 8-9, 33).⁶ The proposed PPAs are the result of the Companies’ third round of solicitations for offshore wind energy generation pursuant to Section 83C.⁷

³ In 2021, the Commonwealth increased the requirement from 1,600 MW to 5,600 MW. St. 2021, c. 24, § 69; St. 2021, c. 8, § 91.

⁴ As required by statute, the Companies’ respective apportioned share is based upon the total energy demand from all distribution customers in their service territories, which, in this case, are 53.96 percent for NSTAR Electric, 45.04 percent for National Grid, and 1.00 percent for Unitil (Exh. JU-1, at 9 n.4). Section 83C(g).

⁵ Avangrid Renewables LLC owns Commonwealth Wind (Exh. JU-1, at 9 n.3).

⁶ Shell New Energies US LLC and Ocean Winds North America LLC own Mayflower Wind (Exh. AG-2-1, Att. B-2).

⁷ In 2019, the Department approved the Companies’ first round of PPAs for 800 MW from a facility proposed by Commonwealth Wind’s predecessor, Vineyard Wind LLC. NSTAR Electric Company et al., D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 89 (2019). In 2020, the Department approved the Companies’ second round of PPAs for 804 MW from a facility proposed by Mayflower Wind. NSTAR Electric Company et al., D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 94-95 (2020).

In the proposed Commonwealth Wind PPAs, the Companies will be purchasing 1,200 MW of Commonwealth Wind's proposed 1,232 MW facility, which is located in Bureau of Ocean Energy Management lease area OCS-A 0534 (Exhs. JU-1, at 32-35; JU-3, Commonwealth PPA at 5, 68-70, 90, 156, 158, 240, 242). The combined price for energy and RECs begins at \$47.68 per megawatt hour ("MWh") on a nominal levelized basis and escalates at 2.5 percent each year for 20 years (Exh. JU-1, at 36). The price in year 20 is \$76.22 per MWh (Exh. JU-1, at 36).

In the proposed Mayflower Wind PPAs, the Companies will be purchasing 405 MW of Mayflower Wind's proposed 480 MW facility, which is located in Bureau of Ocean Energy Management lease area OCS-A 0521 (Exhs. JU-1, at 32-35; JU-3, Mayflower PPA at 6, 68-71, 94, 162-165, 188, 251-254). The combined price for energy and RECs is \$76.73 per MWh on a nominal levelized basis and remains fixed for the 20-year term of the PPAs (Exh. JU-1, at 36). The prices for energy and RECs are \$61.38 per MWh and \$15.35 per MWh, respectively (Exh. JU-1, at 36).

II. PROCEDURAL HISTORY

On June 2, 2022, the Attorney General filed notices of intervention in these matters pursuant to G.L. c. 12, § 11E(a). On June 22, 2022, the Department granted the petitions to intervene as a full party submitted in each proceeding by Commonwealth Wind and the Massachusetts Department of Energy Resources ("DOER"). The Department also granted the petition to intervene as a limited participant submitted in each proceeding by Mayflower Wind.

On June 23, 2022, the Department held a joint public hearing and procedural conference for the three dockets.⁸

On August 26, 2022, the Companies and the Attorney General (together, “Stipulating Parties”) filed a joint motion for approval of a stipulation agreement (“Stipulation Agreement”). The Stipulating Parties request that the Department: (1) allow annual remuneration for each of the Companies of 2.25 percent of the annual payments under the PPAs; and (2) determine that the costs of the PPAs, including procurement, contract development and administration costs, plus remuneration, are eligible for cost recovery pursuant to the Companies’ respective long-term clean energy contract cost recovery tariffs (Stipulation Agreement at 3).

In support of their petitions, the Companies sponsored the testimony of:

(1) Jeffery S. Waltman, manager, planning and power supply for Massachusetts, Eversource Energy; (2) Katherine Wilson, manager, long-term clean energy supply, National Grid USA Service Company, Inc; (3) Timothy J. Brennan, director, wholesale markets strategy, National Grid USA Service Company; (4) Lisa S. Glover, senior energy analyst, Unitil Service Corporation; (5) Ellen Lapson, principal, Lapson Advisory, a division of Trade Resources Analytics, LLC; and (6) Robert B. Hevert, senior vice president, chief financial officer and treasurer, Unitil Service Corporation. The Attorney General sponsored the testimony of Vincent Musco, partner, Bates White Economic Consulting. DOER sponsored the testimony of Joanna Troy, director of energy policy, DOER; and Marian Swain, deputy director of policy and planning, DOER. DOER and the Attorney General jointly selected Peregrine Energy Group, Inc.

⁸ The Department held a joint public hearing for these dockets, but these cases are not consolidated and remain separate proceedings.

(“Independent Evaluator”) to provide a report on the solicitation, evaluation, selection, and contract negotiation processes. Section 83C(f); 220 CMR 23.04(6). The Independent Evaluator filed its report with the Department on June 6, 2022 (“IE Report”).⁹ The evidentiary record consists of 139 exhibits.¹⁰

On September 27, 2022, the Companies, the Attorney General, DOER, and Commonwealth Wind each notified the Department that they did not require evidentiary hearings. On October 18, 2022, the Companies, Attorney General, and DOER filed initial briefs. On November 1, 2022, Commonwealth Wind submitted a reply brief, and the Companies and the Attorney General filed letters in lieu of reply briefs.¹¹

On October 18, 2022, Commonwealth Wind filed a motion for a one-month suspension of the proceedings, and on November 1, 2022, Commonwealth Wind filed a motion to reopen the evidentiary records in the proceedings to submit an affidavit from Sy Oytan, senior vice president for offshore projects at Avangrid Renewables, LLC. The Department denied Commonwealth Wind’s motions to suspend the proceedings and reopen the records and did not admit the affidavit into evidence. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order

⁹ On its own motion, the Department moves the report submitted by Peregrine Energy Group, Inc. to the Department on June 6, 2022 (“IE Report”) into the records of these proceedings.

¹⁰ The Department admitted the parties’ prefiled testimony, responses to discovery, exhibits, and all corrected, revised, and/or supplemental versions thereof filed with the Department as of October 18, 2022. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order at 2 n.2 (November 4, 2022).

¹¹ The Department finds that the evidentiary records and briefs in these proceedings provide an adequate basis to address the Companies’ filings without a need for evidentiary hearings.

at 11-13 (November 4, 2022).¹² The Department directed Commonwealth Wind and Mayflower Wind to notify the Department within three business days whether they intended to move forward with their contractual obligations under the PPAs or file a request to dismiss the proceedings. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order at 13 (November 4, 2022).

On November 7, 2022, Mayflower Wind notified the Department that it intended to move forward with its PPAs. On November 9, 2022, the Department granted Commonwealth Wind's request for an extension of time to file its response to the Department's Interlocutory Order (Hearing Officer Ruling at 3). On November 14, 2022, Commonwealth Wind notified the Department that it was not requesting a dismissal of the proceedings. Thirty-two days later, Commonwealth Wind filed a motion to dismiss these proceedings as to the PPAs between Commonwealth Wind and the Companies ("Motion to Dismiss"). On December 23, 2022, Mayflower Wind and the Companies submitted comments in response to the Motion to Dismiss.

III. MOTION TO DISMISS

A. Introduction

Commonwealth Wind moves to dismiss the Companies' petitions pursuant to 220 CMR 1.06(5)(e) as to its PPAs with the Companies on the basis that the PPAs do not meet the statutory requirement that they facilitate the financing of Commonwealth Wind's project (Motion to Dismiss at 1, citing Section 83C(a)). Arguing that its project is no longer

¹² In this Order, the Department does not consider any portions of Commonwealth Wind's reply brief that rely on the information contained in the affidavit submitted after the records closed. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order at 11 (November 4, 2022).

financeable, Commonwealth Wind claims that it is not possible for the Department to approve the PPAs consistent with Section 83C and, therefore, the Department should dismiss the proceedings (Motion to Dismiss at 1).

B. Positions of the Parties

1. Commonwealth Wind

Commonwealth Wind alleges that there is no substantial record evidence to support a finding that the PPAs will facilitate the financing of its project (Motion to Dismiss at 8).

Commonwealth Wind claims that the statements made in its bid that the project is financeable are no longer applicable (Motion to Dismiss at 8-9 & n.8). Commonwealth Wind argues that the Department should give significant weight to Commonwealth Wind's request to dismiss the proceedings because it is the party most directly impacted by the approval or dismissal of the PPAs (Motion to Dismiss at 9).

Moreover, Commonwealth Wind maintains that after several months of discussions with the parties no realistic path to amending the PPAs has emerged and, therefore, the Department should grant its request for dismissal to promote administrative efficiency and certainty for the next round of solicitations (Motion to Dismiss at 9). Commonwealth Wind asserts that dismissing the Companies' petitions would allow the 1,200 MW that is the subject of the PPAs to be included in the next round of solicitations, which Commonwealth Wind contends is the best path forward to advance the Commonwealth's clean energy and greenhouse gas emissions goals (Motion to Dismiss at 10).

2. Mayflower Wind

Mayflower Wind submitted comments on December 23, 2022 taking no position on the Motion to Dismiss and asserts that it remains committed to implementing the Mayflower Wind project consistent with the PPAs (Mayflower Wind Reply Comments at 2). Mayflower Wind states that they agree with certain assertions made by Commonwealth Wind regarding increases in commodity prices, rising interest rates, and supply shortages that it claims challenge Mayflower Wind's economics (Mayflower Wind Reply Comments at 2-3).¹³

3. Companies

The Companies argue that Commonwealth Wind negotiated and executed the PPAs and that the Department has conducted a full and fair adjudicatory process to review the PPAs (Companies Reply Comments at 1). The Companies assert that the Department should reject the Motion to Dismiss due to the very late filing of the motion and contend that granting such a motion, at this stage, would significantly undermine the process established to encourage the development of offshore wind projects (Companies Reply Comments at 1).

¹³ Mayflower Wind also requested that the Department allow the parties to discuss these issues before issuing a decision in these proceedings. Consistent with the reasons set forth in the Department's Interlocutory Order, the Department finds that Mayflower Wind has failed to provide good cause for the Department to delay issuing a decision on the PPAs freely entered into by Mayflower Wind. In the event that Mayflower Wind and the Companies agree to amend the PPAs, the Companies may submit such amendments for Department review. See NSTAR Electric Company, D.P.U. 20-16, Motion to Approve Amendments to Mayflower Wind LLC Round II Power Purchase Agreements (May 25, 2022).

C. Standard of Review

The Department's procedural rules authorize a party to move for dismissal as to all issues or any issue in a case any time after a party files an initial pleading. 220 CMR 1.06(5)(e).¹⁴ The Department may order dismissal by motion of a party or upon its own motion if the Department concludes as a matter of law that the Department has neither the authority nor the discretion to grant the relief requested, that the filing itself is patently deficient in form or a nullity in substance, or that the non-moving party has otherwise failed to state a claim upon which relief can be granted. See, e.g., Massachusetts Electric Company v. Department of Public Utilities, 383 Mass. 675, 678-681 (1981) (upholding Department's dismissal of filing as patently defective); Bay State Gas Company, D.P.U. 10-133, at 2-5 (2011) (filing patently defective); Abbey Province, LLC, D.T.E./D.P.U. 06-72, at 10-15 (2007) (lack of jurisdiction); Massachusetts Oilheat Council, Inc./Massachusetts Alliance for Fair Competition, D.T.E. 00-57, at 8, 9, 11, 13 (2001) (no legal basis to investigate thus failed to state a claim upon which relief could be granted); Allco Renewable Energy Limited, D.P.U. 11-23/D.P.U. 11-24/D.P.U. 11-25, at 10-14 (2011) (failed to state a claim upon which relief could be granted). In determining whether to order dismissal, the Department reviews whether a party, in its initial pleading, provided factual allegations sufficient to raise a right to relief above the speculative level based on the assumption that the allegations in the initial pleading were true.

¹⁴ Procedures for dismissal and summary judgment properly can be applied by an administrative agency where the pleadings and filings conclusively show that the absence of a hearing could not affect the decision. Massachusetts Outdoor Advertising Council v. Outdoor Advertising Board, 9 Mass. App. Ct. 775, 783-786 (1980); Hess and Clark, Division of Rhodia, Inc. v. Food and Drug Administration, 495 F.2d 975, 985 (D.C. Cir. 1974).

D.P.U. 11-23/D.P.U. 11-24/D.P.U. 11-25, at 8-9 & n.5, 10-15 (2011); see also Iannacchino v. Ford Motor Company, 451 Mass. 623, 636 (2008).

D. Analysis and Findings

Commonwealth Wind's Motion to Dismiss does not demonstrate that the Companies failed to provide factual allegations sufficient to raise a right to relief above the speculative level. As discussed below, the Companies have submitted testimony and supporting documentation on the issue of whether the PPAs facilitate financing Commonwealth Wind's proposal in accordance with Section 83C (see Section V.C.3, below). Accordingly, the Department finds that Commonwealth Wind has failed to establish that the Companies could prove no set of facts to justify review of the PPAs. Therefore, we deny Commonwealth Wind's Motion to Dismiss.¹⁵

IV. SOLICITATION PROCESS

A. Introduction

The Companies and DOER issued a request for proposals ("RFP")¹⁶ to approximately 488 individuals and entities with an interest in developing renewable energy projects and published the RFP on a dedicated website (Exhs. JU-1, at 18; WP Support Tab A). Prior to the

¹⁵ The Department notes that it previously set a deadline for any motion to dismiss by Commonwealth Wind in order to avoid the unnecessary use of resources that could be dedicated to other important matters pending before the Department (Interlocutory Order at 13). Commonwealth Wind choose not to submit such a motion and the Department has since conducted a full analysis of the PPAs as set forth in this Order. The Department also notes that to our knowledge Commonwealth Wind has not sought to terminate its obligations under the PPAs.

¹⁶ On May 5, 2021, the Department approved the timetable and method of solicitation and execution developed by the Companies and DOER for the third solicitation of offshore wind energy generation. Fitchburg Gas and Electric Light Company et al., D.P.U. 21-40, at 80 (2021).

submission deadline, the Companies held a conference for prospective bidders and answered questions about the RFP (Exh. JU-1, at 19). Thereafter, the Companies received six different proposals, all of them submitted by either Commonwealth Wind or Mayflower Wind (Exh. JU-1, at 19). An evaluation team scored the six proposals on a 100-point scale, with a maximum of 70 points for quantitative factors and 30 points for qualitative factors, and a selection team determined the winning proposals (Exhs. JU-1, at 23, 27-28; JU-2, at 10-11, 36).

The Companies state that during the RFP solicitation phase, ISO New England was in the process of undertaking a two-phase study to evaluate the potential transmission impacts of a group of energy generation projects seeking to interconnect to the transmission system serving Cape Cod (Exh. JU-1, at 21). The Companies explain that ISO New England identified interconnection constraints on the interconnection capacity available to bidders seeking to interconnect their wind energy generation projects on Cape Cod (Exh. JU-1, at 21). To address the interconnection limitations and the strategies bidders used to adapt to these limitations, the evaluation team modified the base case methodology and conducted additional sensitivity and scenario analyses (Exh. JU 1, at 22).

The evaluation team added each proposal's quantitative and qualitative points and ranked the proposals from high to low according to a proposal's total score (Exhs. JU-1, at 31; JU-4, at 20). The evaluation team also modeled portfolios of proposals that ranged from 1,280 MW to 1,685 MW of offshore wind energy generation to understand whether the selection of a portfolio of proposals would provide greater benefits to customers than a single proposal alone (Exh. JU-1, at 31). Ultimately, the selection team unanimously agreed to select a portfolio of the 1,200 MW proposal by Commonwealth Wind and the 405 MW proposal by Mayflower Wind

because that portfolio had the highest combined quantitative and qualitative score compared to other portfolios and the individual proposals (Exh. JU-1, at 32-33).

The Attorney General states that the solicitation process included effective practices to keep the solicitation fair and open (Exh. AG-VM-1, at 11). The Attorney General recommends that in future solicitations the evaluation team should conduct sensitivity analyses for load growth, natural gas prices, and environmental policy (Exh. AG-VM-1, at 17-18).

The Independent Evaluator states that it was closely involved in the entire solicitation process up to and including the selection of the winning proposals and had access to all necessary information and data to perform its monitoring, oversight, and reporting duties (Exh. IE Report at 73). The Independent Evaluator concludes that “all bids were evaluated in a fair and objective manner’ through the conduct of an ‘open, fair, and transparent solicitation process that was not unduly influenced by an affiliated company’” and that the winning portfolio was fairly selected (Exh. IE Report at 73-74, citing Section 83C(f)). The Independent Evaluator also provides recommendations for future solicitations, which include the development of rules or guidance in the RFP on: (1) the inclusion of amendments to existing PPAs in a proposal; (2) how an electric company with a potential conflict of interest could participate in the bid evaluation and selection process; and (3) the timeliness of responses to concerns raised during evaluation (Exh. IE Report at 71-73).¹⁷

¹⁷ None of the parties addressed the Independent Evaluator’s recommendations about future solicitations on brief.

B. Positions of the Parties

1. Attorney General

The Attorney General contends that the PPAs were the product of a competitive solicitation, include the input of stakeholders, and allow for Department review and approval (Attorney General Brief at 6). The Attorney General asserts that the Department should conduct sensitivity analyses for load growth, natural gas prices, and environmental policy in future solicitations (Attorney General Brief at 12). The Attorney General claims that the recommended sensitivity analyses would provide useful information as to the sensitivity of the calculated net benefits and ratepayer cost impact to certain assumptions (Attorney General Brief at 12).

2. DOER

DOER maintains that the solicitation process was open, fair, objective, transparent consistent with the RFP, and not unduly influenced by an affiliated company (DOER Brief at 12). DOER further claims that the winning proposal was selected in a reasonable manner (DOER Brief at 12).

3. Companies

The Companies asserts that the PPAs are the result of a comprehensive, non-discriminatory solicitation process (Companies Brief at 17). The Companies argue that the solicitation process satisfies all criteria for approval (Company Brief at 17).

C. Analysis and Findings

In evaluating the competitiveness of a solicitation process, the Department considers whether the process was open, fair, and transparent. Section 83C(f);

D.P.U. 20-16/D.P.U. 20-17D.P.U. 20-18, at 27; D.P.U. 07-64-A, at 60-61 (noting the

“Department’s fundamental interest in open, competitive, and transparent procurement

D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72

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processes”); Boston Gas Company/Colonial Gas Company/Essex Gas Company, D.T.E. 04-9, at 10 (2004) (RFP is acceptable if the process was open, fair, and transparent). For the Department to find that the solicitation process was fair and transparent, the Companies must demonstrate that they: (1) clearly described the evaluation process to each potential bidder; (2) provided the evaluation criteria in the RFP; and (3) provided an opportunity for bidders to request clarification of the evaluation criteria and the RFP process.

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 21-22; D.P.U. 07-64-A at 60-61 n.21, citing D.T.E. 04-9, at 10.

The Companies disseminated the statewide RFP to a group of approximately 488 entities with an interest in developing renewable energy projects based on a list developed with DOER and published the RFP on a designated website (Exhs. JU-1, at 18; WP Support Tab A). Given the broad dissemination of the solicitation to potential bidders, the Department finds that the solicitation was open. In addition, the RFP clearly identifies the criteria that the Companies use in each step of the proposal evaluation process (Exhs. JU-1, at 20; JU-2). Further, potential bidders were provided opportunities to obtain clarification about the RFP at a conference and submit written questions prior to submitting proposals (Exh. JU-1, at 19). Accordingly, the Department finds that the solicitation process was fair and transparent.

The Department also considers whether the Companies evaluated and selected winning proposals in a reasonable manner, based on the criteria set forth in the RFP.

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 21-22; NSTAR Electric Company et al.,

D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 22 (2019). After screening projects for threshold requirements, the evaluation team conducted a quantitative evaluation of the proposals based on

each proposal's costs,¹⁸ direct benefits,¹⁹ and indirect benefits²⁰ using the core measurement of levelized net benefit-per MWh, expressed in 2021 dollars (Exh. JU-1, at 24, 27). The evaluation team compared the costs and benefits using a model to simulate the operation of New England wholesale markets for energy, ancillary services, and RECs for a base case and each proposal, and scored the results on a 70-point scale (Exhs. JU-1, at 27; JU-4 at 12, 24).²¹

With respect to qualitative factors, the evaluation team scored each proposal on a 30-point scale (Exhs. JU-1, at 28-30; WP Support Tab D). The evaluation team considered statutory and regulatory requirements to identify the projects that were likely to be constructed and provide benefits, while also supplying a cost-effective means of delivering offshore wind energy generation (Exh. JU-1, at 28-29). The qualitative factors considered by the evaluation team included: (1) economic benefits to the Commonwealth and diversity, equity and inclusion; (2) benefits to low-income ratepayers in the Commonwealth; (3) siting, permitting, project schedule, and financing plan; (4) energy storage system benefits; (5) reliability benefits;

¹⁸ The direct costs of each proposal include the direct costs of energy, RECs, and remuneration (Exhs. JU-4 at 9, 35-37; JU-1, at 25).

¹⁹ The direct benefits of each proposal include the estimated direct benefits of energy, RECs, clean energy certificates, and clean peak energy certificates (Exhs. JU-1, at 25-26; JU-4, at 9).

²⁰ For each project, the evaluation team estimated the indirect benefit of energy, RECs, clean energy certificates, Global Warming Solutions Act compliance, and winter price mitigation (Exh. JU-1, at 26).

²¹ The base case represents a forecast of the New England energy grid without any of the Section 83C III offshore wind projects (*i.e.*, the proposals received in response to the RFP) (Exh. JU-4 at 12, Apps. E and F). The base case is inclusive of all statutory requirements and regulations in effect as of June 15, 2021 (Exh. JU-4 at 83, 111-113).

(6) benefits, costs, and contract risk; and (7) environmental impacts from siting (Exhs. JU-1, at 28-29; JU-2, at 38-42).

The evaluation team combined the quantitative and qualitative scores to rank the proposals based on total points (Exh. JU-1, at 31). Finally, the evaluation team modeled portfolios of proposals that ranged from 1,280 MW to 1,685 MW of offshore wind energy by combining proposals from different bidders to understand whether the selection of a portfolio of proposals would provide greater benefits to ratepayers than a single proposal would (Exh. JU-1, at 31).

Based on our review, the Department finds that the quantitative and qualitative evaluations followed the criteria provided in the RFP (Exhs. JU-1, at 23-31; JU-2, at 28-35). Further, the Department finds that the Companies appropriately considered the interconnection limitations on Cape Cod identified by ISO New England in the bid evaluation process (Exh. JU-1, at 21-22). Accordingly, the Department finds that the Companies selected the winning proposal in a reasonable manner, consistent with the criteria set forth in the RFP.

Lastly, the Department notes that the 2022 Clean Energy Act changed DOER's role for the next development of the timetable and method of solicitations of long-term contracts pursuant to Section 83C. St. 2022, c. 179, § 61. The amendments provide that DOER shall propose the timetable and method of solicitations in coordination with the Companies, rather than the Companies and DOER jointly proposing the timetable and method of solicitations. St. 2022, c. 179, § 61. In addition, the amendments authorize DOER, in consultation with an independent evaluator, to issue a final, binding determination of the winning bid. St. 2022, c. 179, § 61. Given these statutory changes, the Department will not predetermine which

recommendations for future RFPs, if any, should be incorporated into the next proposal for the timetable and method of solicitations of long-term contracts. Rather, the Department will consider the parties' reasons for why they choose to adopt or decline to adopt said recommendations in our review of the next petition for approval of the timetable and method of solicitations for long-term contracts. The Department expects that DOER will work collaboratively with the Companies, the Attorney General, and other stakeholders, as it has in the past, to consider process improvements when drafting the RFPs for future solicitations.

V. SECTION 83C RESOURCE CRITERIA

A. Introduction

As discussed above, the Companies have agreed to purchase a total of 1,605 MW of energy and associated RECs from two offshore wind energy generating resources, including 1,200 MW from Commonwealth Wind's 1,232 MW facility and 405 MW from Mayflower Wind's proposed 480 MW facility (Exh. JU-1, at 33). The PPAs each have a delivery term of 20 years from the facilities' commercial operation dates ("CODs"), which are November 1, 2027 for the Commonwealth Wind project and March 30, 2028 for the Mayflower Wind project (Exh. JU-1, at 33). The Companies state that the offshore wind energy generating resources to be developed by Commonwealth Wind and Mayflower Wind pursuant to the PPAs comply with the requirements of Section 83C and the Department's regulations (Exh. JU-1, at 37-45).

B. Positions of the Parties

Commonwealth Wind argues that its project can no longer be financed under the terms of the PPAs because of changes in the global economy and that the PPAs do not meet the requirements of Section 83 and are contrary to the public interest (Commonwealth Wind Reply

Brief at 3, 10-14). Commonwealth Wind asserts that the bid submission statements are insufficient to demonstrate that the PPAs facilitate the financing of Commonwealth's proposal (Commonwealth Reply Brief at 10). Specifically, Commonwealth Wind maintains that the mere existence of a PPA is not sufficient to secure financing unless the PPAs provide financial terms that are acceptable to potential financing partners (Commonwealth Reply Brief at 10).

The Attorney General, DOER, and the Companies maintain that the PPAs facilitate the financing of the Commonwealth Wind and Mayflower Wind projects and that the projects are eligible offshore wind energy generating resources that meet the criteria set forth in Section 83C and the Department's regulations (Attorney General Brief at 5-7; DOER Brief at 6, 8-10, Companies Brief at 17-25). All of these parties contend that the Department should approve the PPAs (Attorney General Brief at 3; DOER Brief at 10; Companies Brief at 28).

C. Analysis and Findings

1. Introduction

The Department's review of long-term offshore wind energy contracts ensures that the Companies, which are subject to the Department's supervisory authority under G.L. c. 164, § 76, have complied with the relevant laws and that the interests of the ratepayers, who fund the contracts, are appropriately protected. The Companies must demonstrate that an offshore wind energy resource they have contracted with meets the criteria set forth in Section 83C. First, the Companies must demonstrate that the offshore wind energy generating resource: (1) has a COD, as verified by DOER, of January 1, 2018 or later; (2) qualifies as a Class I renewable energy generating resource, as defined by G.L. c. 25A, § 11F; and (3) operates in a designated wind energy area for which an initial federal lease was issued on a competitive basis after January 1,

2012. Section 83C; 220 CMR 23.02. In addition, the Companies must demonstrate that the PPAs facilitate the financing of the offshore wind energy resource. Section 83C(a); 220 CMR 23.01(1). An electric distribution company need not demonstrate that the long-term contract is necessary to secure project financing, only that it will assist in securing project financing. NSTAR Electric Company, D.P.U. 12-30, at 40 (2012); Massachusetts Electric Company/Nantucket Electric Company, D.P.U. 10-54, at 52 (2010). Further, Section 83C and the Department's regulations require that the offshore wind energy generating resource for a selected proposal meet the following criteria: (1) provide enhanced electricity reliability; (2) contribute to reducing winter electricity price spikes; (3) avoid line loss and mitigates transmission costs to the extent possible, while ensuring that transmission cost overruns, if any, are not borne by ratepayers; (4) adequately demonstrate project viability in a commercially reasonable timeframe; (5) allow offshore wind energy generation resources to be paired with energy storage systems; (6) mitigate environmental impacts, where possible; and (7) where feasible, create and foster employment and economic development in Massachusetts. Section 83C(d)(5); 220 CMR 23.05(1).

2. Eligibility

The Commonwealth Wind and Mayflower Wind projects have CODs of November 1, 2027 and March 30, 2028, respectively (Exhs. JU-1, at 33, 40; JU-3, Commonwealth PPAs at 5, 90, 107, 178; JU-3, Mayflower PPAs at 6, 21, 94, 111, 188). Pursuant to the PPAs, the developers must meet the CODs, or they will be subject to certain penalties, including delay damages and the potential for contract termination (Exhs. JU-1, at 40; DPU 2-14; DPU 2-15). In addition, the record demonstrates that the projects, if constructed, will qualify as RPS Class I

renewable energy generating sources (Exhs. JU-1, at 37, JU-2 at 24; JU-3, Commonwealth PPAs at 5; JU-3, Mayflower PPAs at 6). Finally, the Department finds that the Companies have demonstrated that the facilities will operate in a designated wind energy area for which a federal lease was issued on a competitive basis after January 1, 2012 (Exhs. JU-1, at 38; JU-2, at 30; JU-3, Commonwealth PPAs at 46; JU-3, Mayflower PPAs at 47). Accordingly, the Department finds that the Companies have demonstrated that the Commonwealth Wind and Mayflower Wind projects each meet the threshold eligibility criteria for offshore wind energy generating resources under Section 83C and 220 CMR 23.02.

3. Facilitation of Financing

After review, we disagree with Commonwealth Wind's argument that the record does not support a finding that the PPAs "facilitate the financing" of Commonwealth Wind's proposal. The Department consistently has interpreted the language of Section 83C as requiring that the electric distribution companies demonstrate that the long-term contracts will assist with financing the offshore wind energy generating sources, i.e., that the contracts will make financing easier or less difficult. D.P.U. 12-30, at 40, citing D.P.U. 10-54, at 52 n.59; Webster's Third New International Dictionary 812 (1993). It is not required by statute, therefore, that the Companies demonstrate that the PPAs guarantee that the projects will be financed, as Commonwealth Wind contends. D.P.U. 12-30, at 40, citing D.P.U. 10-54, at 52.²²

²² The Department's interpretation of the statutory provision regarding financing is consistent with the grammatical structure of the text. Section 83C(a) states: "To facilitate the financing of offshore wind energy generation resources in the commonwealth, every distribution company shall, in coordination with the department of energy resources, jointly and competitively solicit proposals for offshore wind energy generation; and provided that reasonable proposals have been received, shall enter into

The record evidence includes detailed testimony from the developers and supporting documentation that demonstrate PPAs with creditworthy counterparties, such as the Companies, are an integral consideration to equity investors and lenders and assist with obtaining financing on favorable terms (Exhs. JU-1, at 45; AG 2-1, Atts. A-2 at 72, B-2 at 82).

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 28; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 29.

Further, the Department finds that Commonwealth Wind has not timely produced any evidence to rebut the factual allegations presented by the Companies.²³ Based on the above-cited

cost-effective long-term contracts.” The first clause of the statutory provision, “to facilitate the financing of offshore wind energy generation resources in the commonwealth,” is a prefatory clause that announces the purpose of the statute; the prefatory clause does not limit the following operative clauses directing the Companies to solicit proposals and enter into reasonable contracts. See District of Columbia v. Heller, 554 U.S. 570, 577-578 (2008) (discussing the statutory construction of prefatory clauses).

Moreover, the Department’s interpretation that Section 83C requires only that the PPAs assist with financing and not guarantee financing is consistent with Section 83C’s allowance for proposals to be coordinated with other New England states. Section 83C(b); Wheatley V. Massachusetts Insurers Insolvency Fund, 456 Mass. 594, 601 (2010) (a “statute must be viewed as a whole”). For example, Section 83C expressly contemplates that the Companies may enter into PPAs for a portion of the energy to be produced by a facility as part of a coordinated proposal with entities from other states contracting for the remaining products. Section 83C(b). In such a hypothetical, it could not be said that the Companies’ PPAs for a portion of the facilities’ output would guarantee its financing, but the Companies’ PPAs would reasonably assist with the financing of the offshore wind energy resource.

²³ As the Department discussed in its Interlocutory Order, Commonwealth Wind made a decision to not disclose its concerns about the financeability of its project to the Department while the record was open. D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72, Interlocutory Order at 8-9 (November 4, 2022). Nevertheless, the Department stresses that our decision herein would not differ had Commonwealth Wind’s affidavit been admitted into the record. The affidavit merely contains conclusory statements by Commonwealth Wind that its proposal is no longer viable due to global economic circumstances; and, therefore, would not constitute clear and convincing evidence sufficient to rebut the record evidence produced by the Companies. Although the

evidence, the Department finds that the PPAs will facilitate the financing of the Commonwealth Wind and Mayflower Wind projects.

4. Enhanced Reliability

The projects will interconnect and deliver energy into the New England regional interconnected system (Exhs. JU-1 at 35-36; JU-2 at 21; JU-3, Commonwealth PPAs; JU-3, Mayflower PPAs).²⁴ As we have said about other renewable energy facilities, the projects' interconnection will help to bolster the reliability of the system as a whole and, thereby, contribute to system resource adequacy and system security support.

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18 at 31; D.P.U. 18-76/D.P.U. 18-77D.P.U. 18-78, at 31.

Department will not opine on what would constitute clear and convincing evidence of Commonwealth Wind's allegations, we note that the affidavit alludes to third-party analyses and net present value calculations that Commonwealth Wind has not offered to the Department, nor has Commonwealth Wind presented any evidence from potential investors or lenders supporting the statements that the project cannot be financed.

Ultimately, in this proceeding Commonwealth Wind has requested that the Department delay, dismiss, or reject PPAs that Commonwealth Wind freely negotiated based on no more than its own self-interested, conclusory statements. In so doing, Commonwealth Wind fails to acknowledge the potential serious harm to ratepayers that would result. Not only would ratepayers lose the opportunity to realize the PPAs' benefits, but the precedent set would open the door for future winning bidders to back out of their agreements based on information gleaned about the other bids during the Department's review and submit more advantageous bids in the next round at the expense of ratepayers. The protection of ratepayers' interests demands that the Department require clear and convincing evidence that a decision that presents such risks is required as a matter of law. In the seven months since the PPAs were filed, Commonwealth Wind has provided no such evidence to the Department.

²⁴ The Commonwealth Wind PPAs include the possibility of one or two delivery points for the output of its project, *i.e.*, West Barnstable, Massachusetts or a combination of West Barnstable and Acushnet, Massachusetts (Exh. JU-1, at 36). The Mayflower Wind PPAs include the possibility of a single delivery point at Brayton Point in Somerset, Massachusetts (Exh. JU-1, at 35).

In addition, the projects will mitigate natural gas demand in the region and reduce threats to grid reliability caused by pipeline constraints, a key policy concern of ISO New England (Exh. JU-1, at 37). For these reasons, the Department finds that the projects will enhance electricity reliability.

5. Reduced Winter Electricity Price Spikes

To determine whether a renewable energy resource will reduce winter electricity price spikes, the Department evaluates a project's output and capacity factor at the electric system's peak. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 33; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 32-33; D.P.U. 10-54, at 198. As part of that review, we consider the evaluation team's calculation of the estimated reduction in exposure to extreme energy prices when the project is in service (Exhs. JU-2, at 33; JU-4 at 10). Further, the record indicates that the projects will add relatively high and stable winter capacity factor offshore wind generation to the region, thereby increasing resources available to address demand spikes and reducing reliance on fossil fuel generation during high periods of natural gas demand (Exh. JU-1, at 38). Based on our review of the projects' generation characteristics, the Department finds that the projects are likely to produce power during winter peak times and contribute to the reduction of winter electricity price spikes (Exhs. JU-1, at 38; JU-4 at 16).

6. Avoided Line Loss, Mitigated Transmission Costs, Protection from Transmission Cost Overruns

The PPAs provide for the projects to deliver and sell energy and RECs on a fixed price schedule as measured at the onshore delivery point (Exhs. JU-1, at 39; AG 2-18; DPU 1-10). The Department finds that the structure of the PPAs ensure that line loss risk and transmission

costs are borne by the projects and that any transmission cost overruns will not be borne by ratepayers (Exh. JU-1, at 39).

7. Project Viability in a Commercially Reasonable Timeframe

The Companies' RFP requires bidders to demonstrate the proposal can be developed, financed, and constructed within a commercially reasonable timeframe (Exh. JU-2, at 34). Further, pursuant to the RFP requirements, bidders must demonstrate that the proposal includes sufficient time for necessary permits, regulatory approvals, other commitments, project financing, completion of design work, equipment procurement, and construction to complete the project consistent with the proposed COD (Exh. JU-2, at 33). Moreover, the Companies require bidders to provide critical milestones in their markup of the form PPAs that are consistent with their proposal and reasonably achievable (Exh. JU-2, at 33).

After review of the record evidence, the Department finds that the proposals selected by the Companies include sufficient information concerning the design, development, financing, and construction of the projects for the Companies to reasonably conclude that the selected projects are viable and would be completed in a commercially reasonable timeframe (Exhs. JU-1, at 40; AG 2-1, Atts. A-2, B-2). In addition, the Companies' PPAs include critical milestones to support the achievement of the projects within the proposed CODs and require the developers to post financial security related to their obligations to develop the projects, meet the critical milestones, and deliver energy and RECs throughout the term of the PPAs (Exhs. JU-1, at 40; JU-3, Commonwealth PPA; JU-3, Mayflower PPA). Further, the Companies' PPAs include additional critical milestones which will provide an earlier indication of schedule

progress and limit project viability risk (Exh. JU-1, at 40).²⁵ Based on the record evidence, the Department finds that the Companies have demonstrated that the projects are viable and will be completed in a commercially reasonable timeframe.

8. Energy Storage

The Companies' RFP allows for the pairing of energy storage systems with offshore wind energy generation resources (Exhs. JU-1, at 44; JU-2, at 21). The two selected proposals did not include pairing with specific energy storage systems; however, both developers expressed support for potential applications that incorporate energy storage in the future (Exhs. JU-1, at 44; AG 2-1, Atts. A-2, at 71, B-2, at 80). Accordingly, the Department finds that the PPAs allow for the offshore wind energy generating resource to be paired with energy storage systems as required under Section 83C.

9. Mitigation of Environmental Impacts

The record demonstrates that Commonwealth Wind and Mayflower Wind have submitted construction and operation plans to the Bureau of Ocean Energy Management that detail how the developers have sited, planned, and designed their projects to mitigate environmental impacts (Exhs. JU-1, at 42; AG 2-1, Atts. A-2, at 135, B-2, at 140). Further, the Department finds that the Companies selected proposals from developers with substantial experience concerning the environmental impacts of their proposed projects and that the proposals include detailed documentation of the developers' environmental permitting efforts, stakeholder engagements, fisheries mitigation plans, environmental mitigation plans, environmental justice impacts

²⁵ All milestones are subject to time extensions of up to a total of two years if the Developers provide additional security (Exhs. JU-1, at 40; DPU 2-14; DPU 2-15).

assessments, and community engagements (Exhs. JU-1, at 42; AG 2-1, Atts. A-2, at 135-157, B-2, at 140-240). After review, the Department finds that the projects mitigate any environmental impacts, where possible.

10. Employment Benefits and Economic Development

The Companies consider a broad range of employment and economic development benefits in the qualitative scoring of the proposals (Exhs. JU-2, at 34; WP Support Tab C at 20). Proposals must also include factual support for employment and economic development projections and reflect any commitments with governmental and nongovernmental entities (Exh. JU-1, at 34).

After review, the Department finds that the Companies selected proposals with significant estimated employment benefits and economic development opportunities for the Commonwealth (Exhs. JU-1, at 40-41; AG 2-1, at Atts. A-2, at 300-317, A-15, B-2, at 384-421, B-25). For example, the Commonwealth Wind proposal includes commitments to develop offshore wind supply chains in Massachusetts, including: (1) the development of a subsea cable manufacturing facility in Somerset, Massachusetts; and (2) a redevelopment of Salem Harbor to support wind turbine marshalling (Exh. JU-1, at 41). Similarly, Mayflower Wind's proposal includes commitments to support economic development, workforce training, and low-income ratepayers, as well as wind industry development initiatives (Exh. JU-1, at 41). While the Department recognizes that estimates of employment potential contain uncertainties and actual benefits could differ from projections, there is no dispute that the construction and operational phases of the projects will result in additional employment (Exh. JU-1, at 40-41). As with additional employment, any measures of financial benefit to the economy are only estimates, but

the construction and long-term operation of the projects will, however, undoubtedly result in economic benefit for the Commonwealth (Exh. JU-1, at 40-41). Accordingly, the Department finds that the projects will create and foster employment and economic development in the regional economy.

In addition, the proposals by Commonwealth Wind and Mayflower Wind include approximately \$77 million in financial commitments to third parties to fund purported economic development projects, as memorialized in separate memoranda of understanding with the third parties and DOER (Exh. JU-1, at 40-41). While these economic development agreements are part of the bidders' overall project costs and, therefore, reflected in the resulting PPA prices for energy and RECs, the Companies are not parties to these agreements, the agreements are not a part of the PPAs, and neither the Companies nor DOER are requesting that the Department approve or enforce these agreements (Exhs. JU-1, at 41-42; DPU 3-10; DPU-DOER 2-11).²⁶ Further, these economic development agreements are a part of the highest-scored proposals, which included energy and REC prices below the statutory cap, and the agreements are consistent with the guidance in the RFP (Exhs. JU-1, at 32; JU-2, at 34; IE Report at 73-74).

The Department is concerned, however, that the parties and stakeholders could adopt an overly broad interpretation of the requirement that projects foster economic development that may result in higher costs to ratepayers. This is particularly a concern given the serious economic impact that the COVID-19 pandemic, supply chain disruptions, and rising energy costs

²⁶ The agreements between DOER and the developers are legally binding, and DOER may pursue legal action pursuant to the agreements if the developers fail to meet their obligations therein (Exh. DPU-DOER 2-10).

have had on ratepayers in the recent past. Aside from the qualification that resources must foster economic development only “where feasible” and the requirement that long-term contracts be cost effective, Section 83C does not define “create and foster economic development.” As discussed in Section VII, below, however, petitions for approval of PPAs filed pursuant to Section 83C must include sufficient information for the Department to determine the PPAs are in the public interest.²⁷ To demonstrate that costs borne by ratepayers for economic development proposals are in the public interest, the Department will consider how the economic development proposals relate to the construction, operation, or maintenance of the offshore wind energy generating resource that is the subject of the PPAs and whether the benefits to ratepayers of the economic development proposals outweigh the costs.²⁸

VI. COST EFFECTIVENESS

A. Introduction

The Department must take into consideration both the potential costs and benefits of the PPAs and approve a long-term contract under Section 83C only upon finding that it is a cost-effective mechanism for procuring reliable renewable energy on a long-term basis.

Section 83C; 220 CMR 23.05(1). In D.P.U. 10-54, the Department first considered an

²⁷ The Department notes that some of the entities and uses of funding pursuant to the economic development agreements are redacted, not sufficiently described, or unrelated to the actual development of the offshore wind projects (e.g., Exhs. JU-1, at 43 (describing funding for construction of affordable housing); DOER-2a; DOER-3).

²⁸ As discussed above, the next solicitation for offshore wind energy generation resources will be governed by the 2022 Clean Energy Act’s amendments to Section 83C, which require the Department to promulgate new regulations. St. 2022, c. 179, § 61. Therefore, the Department may consider appropriate standards for costs associated with economic development to be recovered from ratepayers in that forthcoming rulemaking proceeding.

appropriate standard for evaluating the cost-effectiveness of a long-term contract for renewable energy pursuant to Section 83. The Department determined that it would:

consider in our cost-effectiveness analysis all costs and benefits associated with [a proposed contract], including the non-price benefits that are difficult to quantify, and including costs and benefits of complying with existing and reasonably anticipated future federal and state environmental requirements In reviewing [the] benefits and costs of [a proposed contract] . . . our focus is on the benefits and costs that accrue to [the company proposing the contract] and its customers.

D.P.U. 10-54, at 71.

Likewise, Section 83C requires the Department to ensure that long-term contracts are cost-effective to electric ratepayers over the term of the contract, taking into consideration the potential economic and environmental benefits to ratepayers. Section 83C(d)(iii), (e); 220 CMR 23.05(1). Accordingly, the Department will evaluate the cost-effectiveness of each PPA based on the costs and benefits that such PPAs provide.

B. Positions of the Parties

1. Attorney General

The Attorney General argues that the PPAs are a cost-effective mechanism for procuring beneficial, reliable renewable energy on a long-term basis (Attorney General Brief at 6-7). The Attorney General asserts that the PPAs appear to provide Class I renewable generation resources at below-market costs (Attorney General Brief at 7, citing Exh. JU-1, at 39). As support, the Attorney General cites the Companies' analysis that the winning portfolio of projects had a levelized positive net direct benefit of \$38.66 per MWh (Attorney General Brief at 7, citing Exh. JU-4, at 26-28). Lastly, the Attorney General argues that, as compared to the other project portfolios, the selected Commonwealth Wind and Mayflower Wind portfolio received the

highest combined quantitative and qualitative score (Attorney General Brief at 7, citing Exh. JU-4, at 26-28).

2. DOER

DOER argues that the PPAs are cost-effective and result from a competitive procurement process (DOER Brief at 7). DOER asserts that the Commonwealth Wind and Mayflower Wind projects had the highest levelized net benefit of all proposals and portfolios evaluated (DOER Brief at 7, citing Exhs. JU-1, JU-4). DOER maintains that the forecasted direct benefits of the contracts exceed the costs and that, over the term of the contracts, ratepayers will receive an average of \$0.006 per kilowatt-hour (“kWh”) in direct savings (DOER Brief at 7). DOER further contends that, when indirect benefits are included, the contracts will result in a levelized net benefit of \$0.039 per kWh (DOER Brief at 7-8). In total, DOER asserts that the contracts are expected to provide approximately \$1.28 billion in total net direct benefits (DOER Brief at 8). DOER recognizes that any long-term contracts present inherent risks but asserts that the PPAs will reduce price volatility to ratepayers given that they represent a 20-year fixed price agreement for renewable energy (DOER Brief at 8).

3. Companies

The Companies maintain that the prices set in the PPAs were established through an open and robust competitive bid process (Companies Brief at 19). The Companies assert that, over the 20-year term of the contracts, an estimated \$1.28 billion in below-market costs will accrue to electric ratepayers when accounting for the difference between direct costs and the forecast of direct benefits (Companies Brief at 20). Since the PPAs provide both below-market costs and

qualitative benefits to customers, the Companies argue that the PPAs are cost-effective (Companies Brief at 20).

C. Analysis and Findings

As described in Section IV, above, the Companies evaluate the costs and benefits of the proposals to select the winning proposal (Exh. JU-4, at 5). The Companies employ a computer model to forecast the value of energy and environmental attributes under the base case and each proposal case (Exh. JU-4, at 12). These forecasts form the basis for the evaluation team's assessment of the benefits associated with the individual proposals. Therefore, to determine whether the Companies' estimates of quantifiable net benefits are reasonable, the Department must evaluate whether the price forecast and the market revenue estimates derived from the forecast are reasonable. D.P.U. 10-54, at 108. To do so, the Department must determine whether the forecast is a reasonable projection of energy and REC prices. D.P.U. 10-54, at 108.

The Companies apply an energy market production cost and system expansion optimization model to develop their market forecast of energy and REC prices, including analysis of: (1) demand requirements; (2) capacity expansion; (3) pricing for fuel, emissions, and RECs; (4) transmission topology; and (5) load forecasts (Exh. JU-4, at 11-15).²⁹ As the Department previously has found, this type of analysis is valid for evaluating the benefits of

²⁹ The computer model contained assumptions about various energy market factors, including: (1) generating unit capacity additions; (2) transmission; (3) load forecast; (4) installed capacity requirements; (5) RPS requirements; (6) CES and carbon emissions caps; (7) emissions allowance prices; (8) generating unit retirements; (9) generating unit operational characteristics; and (10) fuel prices (Exh. JU-4, at 11-15). The Department has reviewed the various assumptions underlying the model and finds them to be reasonable.

energy from PPAs for renewable generation. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 49; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 46. In addition, this method is consistent with the approach described in the RFP and employed in previous reviews of long-term contracts (Exh. JU-2, at 9-13, 36-38). D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 49; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 46. Accordingly, because the energy and REC market price forecasts the Companies use to evaluate the proposals rely upon well-established and appropriate methods, the Department finds that such forecasts result in reasonable market revenue estimates for these products.

For the Department to determine that the PPAs are cost-effective over the life of the proposed contracts, the Department must compare the estimated costs and benefits of the PPAs. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 50; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 46-47. The Companies estimate the cost of energy and RECs under each contract by multiplying the projected quantity of delivered products by the contractually specified schedule of energy and REC prices, taking into consideration that the PPAs provide for fixed prices over the contract terms (Exhs. JU-1, at 24; JU-4, at 9). Based on the forecasted market prices of energy and RECs and estimated production of the facilities, the Companies estimate that the total cost of the PPAs, exclusive of remuneration, will be below the estimated market value of energy and RECs over the term of the contracts by a value of \$1.28 billion (Exhs. JU-1, at 39; DPU 1-7, Att. A).

To determine whether a contract is a cost-effective mechanism for procuring reliable renewable energy on a long-term basis, the Department also considers whether additional qualitative benefits will accrue to the Companies' ratepayers over the term of each PPA.

D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 51; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 47.

Many qualitative benefits have been identified as accruing to ratepayers over the term of the proposed contracts, including benefits related to reliability, acceptance of commitment agreements, environmental impacts, employment, and economic development (Exh. JU-2, at 38-42). The Commonwealth Wind and Mayflower Wind portfolio received a competitive combined qualitative score when compared against other proposals and portfolios (Exh. JU-4, App. B at 26, 28).³⁰

Based on the discussion above, the Department finds that the Companies have demonstrated that the PPAs are likely to provide significant net benefits to ratepayers (Exh. JU-1, at 39). In particular, the Companies have shown that the aggregate cost for energy and RECs under the PPAs, exclusive of remuneration, are less than the forecasted market prices for energy and RECs by \$1.28 billion over the life of the contracts (Exhs. JU-1, at 39; DPU 1-7, Att. A; DPU 2-2). The Companies' analysis also shows that inclusive of remuneration the PPAs result in a levelized net direct benefit of \$6.26 per MWh (Exhs. JU-4, at 26, 28; DPU 1-7, Att. B).³¹ The Department further finds that significant qualitative benefits will flow to ratepayers under the PPAs (Exh. JU-1, at 34, 37, 40-42). Accordingly, after taking into consideration both the potential costs and benefits of the PPAs, the Department finds that the

³⁰ As discussed in Section IV, above, when accounting for the combined quantitative and qualitative score, the selected portfolio ranked highest among all proposals and portfolios (Exh. JU-4, App. B, at 26, 28).

³¹ The Companies calculated the levelized net direct benefit including their initially proposed remuneration rate of 2.75 percent. As discussed in Section VIII, below, the Companies adjusted their requested remuneration rate from 2.75 percent to 2.25 percent, which increases the estimated benefit to ratepayers.

Commonwealth Wind PPA and the Mayflower Wind PPA are each cost-effective mechanisms for procuring reliable renewable energy on a long-term basis. Section 83C; 220 CMR 23.05(1).

VII. PUBLIC INTEREST

A. Introduction

The public interest constitutes an overarching consideration in the Department's fulfillment of its regulatory and ratemaking duties. D.P.U. 10-54, at 27, citing Attorney General v. Department of Telecommunications & Energy, 438 Mass. 256, 268 (2002); see also Wolf v. Department of Public Utilities, 407 Mass 363, 369 (1990) (the "mission of the [Department] is to regulate in the public interest"). The Department reviews the public interest of long-term contracts for renewable energy based on the specific facts and circumstances relevant to each proposed contract. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 53; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 48-49.

B. Positions of the Parties

1. Attorney General

The Attorney General asserts that the proposed PPAs are in the public interest (Attorney General Brief at 8). Further, the Attorney General contends that the PPAs result in bill impacts that are acceptable based on a 20-year projection of costs and emission levels (Attorney General Brief at 8). The Attorney General also maintains that the PPAs: (1) protect ratepayers from cost overruns, delays, or underperformance; (2) limit permitting, construction, and interconnection risks from the developer; (3) require the projects to qualify as a Class I Renewable Resource and a Clean Peak Resource as well as maintain that classification going forward while meeting minimum capacity requirements; (4) require developers to post development and operating

period security, which provides liquid capital for the distribution companies to access in the event of a default; and (5) provide numerous protections against regulatory actions, changes in law or accounting standards, and adverse determinations by courts and/or regulatory bodies, which may require termination payments (Attorney General Brief at 8).

The Attorney General also claims that the projects may qualify for significant expanded tax credits enacted after the Companies negotiated the PPAs (Attorney General Brief at 10). The Attorney General asserts that the PPAs did not include a provision that was included in prior PPAs for developers to pursue in good faith and pass-through additional incentives (Attorney General Brief at 10). Further, she contends that the Department should require the Companies to explore an addendum to the PPAs that provides a price adjustment based on additional tax benefits for which the projects might qualify (Attorney General Brief at 11).

For future PPAs, the Attorney General argues that the Department should require that the Companies include provisions to ensure any federal tax incentives created after a PPA is executed benefit ratepayers (Attorney General Brief at 11). In addition, the Attorney General claims that the Companies should include cross-default provisions in future PPAs (Attorney General Brief at 12, citing Exh. AG-VM-1, at 20-21). The Attorney General asserts that a cross-default provision would provide that a default on a previous PPA would also be a default event on a more recent PPA (Attorney General Brief at 12). The Attorney General maintains that a cross-default provision would prevent a supplier with multiple, separate PPAs from selectively defaulting on a PPA with the least favorable terms to the supplier (Attorney General Brief at 12).

2. DOER

DOER asserts that the Department should find that the PPAs are in the public interest as (1) the selection of the 1,605 MW portfolio of Commonwealth Wind and Mayflower Wind bids was the result of a fair, reasonable, and transparent bid evaluation process consistent with the RFP; (2) the distribution companies entered into PPAs with the bidders whose proposals received the highest portfolio score and rank among all proposals evaluated and (3) have pricing terms that are reasonable for offshore wind energy generation (DOER Brief at 10-11). Additionally, DOER contends that as the PPAs are projected to provide direct savings to ratepayers, the proposed PPAs are advantageous to customers, meet the Department's public interest standard, and should be approved (DOER Brief at 13).

3. Companies

The Companies argue that the PPAs are in the public interest because they fulfill the Section 83C requirements (Companies Brief at 16-17, 28). Further, the Companies contend that the PPAs were executed under a comprehensive and non-discriminatory solicitation and satisfy all applicable criteria for approval (Companies Brief at 17).

C. Analysis and Findings

To determine whether the PPAs are in the public interest, the Department considers the following criteria: (1) whether the pricing terms in the contracts are reasonable for offshore wind generation resources; (2) whether other, lower cost Section 83C-eligible resources were available to the Companies and, if so, whether the benefits of the proposed contracts justify any higher costs; (3) whether the Companies' decision to enter into contracts of this size was reasonable; and (4) whether the bill impacts of the contracts are reasonable in light of the

benefits of the contracts. D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 53-54, 56-60; D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 48-49, 52-56; D.P.U. 10-54, at 217-283.

The Companies procured the PPAs through an open, fair, and transparent competitive solicitation process (see Section IV.C, above). The record further shows that the Companies selected the portfolio of proposals that received the highest combined quantitative and qualitative score and rank among all the portfolios of proposals evaluated (Exhs. JU-1, at 30, 32, 45; JU-4, at 26). Therefore, the Department finds that the pricing terms in the PPAs are reasonable for offshore wind energy resources. NSTAR Electric Company, D.P.U. 12-98, at 25 (2013) (a properly conducted competitive solicitation provides a direct comparison of the costs and benefits of alternative resources, as well as some assurance that the price is not too high for a given resource); New England Gas Company, D.P.U. 10-114, at 221 (2011) (a competitive bidding and qualification process provides an objective benchmark for analyzing the reasonableness of price). After review, the Department finds that the Companies provided sufficient justifications for their decision to select the portfolio of projects that received the highest combined quantitative and qualitative score (Exh. JU-1, at 29, 31-32; JU-4; WP Support Tab C; WP Support Tab D).

With regard to the reasonableness of the Companies' decision to enter into contracts of this size, the Companies have demonstrated that the selected portfolio, which consists of 1,605 MW of offshore wind energy, is superior to the other portfolios of proposals and produces more economic net benefits to ratepayers (Exhs. JU-1, at 31-33; JU-4, exhibit B). In addition, Section 83C requires that the Companies enter into cost-effective long-term contracts equal to 5,600 MW of aggregate nameplate capacity not later than June 30, 2027. Section 83C(b). The

Companies had procured a total of 1,604 MW of offshore wind energy in their first and second rounds of solicitations. D.P.U. 18-76/D.P.U. 18-77/D.P.U. 18-78, at 89; D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, at 94-95. Accordingly, the Department finds that the Companies' decision to enter into PPAs for 1,605 MW of nameplate capacity was reasonable and consistent with the requirements of Section 83C.

The Department has also reviewed the Companies estimated bill impacts (Exhs. JU-1, at 48-49; JU-5). In particular, the Companies provide bill impacts for each rate class and for a range of different consumption levels within each rate class (Exh. JU-5). Based on the current market environment, the Companies project that the PPAs will result in overall net bill savings for ratepayers over the life of the contracts (Exh. JU-5). After review, the Department finds that the bill impacts of the PPAs are reasonable given the benefits of the contracts.

With respect to the potential tax incentives enacted after the PPAs were negotiated, the Companies explain that Mayflower Wind offered to make an adjustment for an increased federal investment tax credit during the negotiation of the second round PPA, and a similar provision was not included in the third round because neither developer included a similar adjustment to their bids (Exh. AG 5-2). The Department finds that the Companies' explanation is reasonable. Further, the Department has found that the Companies conducted a fair, open, and transparent competitive solicitation process and that the resulting PPAs are cost effective (see Section IV.C; Section VI.C, above). Therefore, the Department will not require the Companies to explore amendments to adjust the price of the PPAs, but the Department encourages the Companies and DOER to consider changes to the RFP or form PPAs for future procurements that allow the benefits of federal tax incentives enacted between the execution of a PPA and the project's COD

to benefit ratepayers. In addition, the Department encourages the Companies to consider the potential benefits or drawbacks of including of cross-default provisions in future PPAs, including whether cross-default provisions could promote or hinder the purpose of Section 83C.

In conclusion, through the use of a fair, open and transparent competitive solicitation process, the Companies have demonstrated that: (1) the pricing terms in the PPAs are reasonable for offshore wind energy generation resources; and (2) there was no higher ranking portfolio of proposals of Section 83C-eligible resources available to the Companies. In addition, the Department finds that it was reasonable for the Companies to contract for 1,605 MW of offshore wind energy generation based on the competitiveness of the bid, the level of economic net benefit to ratepayers, and the requirements of Section 83C. Finally, the Department finds that the estimated bill impacts of the PPAs are reasonable in light of the benefits of the contracts. For these reasons, the Department finds that the PPAs are in the public interest.

VIII. MOTION FOR APPROVAL OF STIPULATION AGREEMENT

A. Introduction

As discussed above, the Stipulating Parties propose to adjust the Companies' initially requested remuneration rate from 2.75 percent of the annual payments under the PPAs to 2.25 percent of the annual payments under the PPAs (Stipulation Agreement at 3; Exh. JU-1, at 45). The Stipulating Parties maintain that the 2022 Clean Energy Act requires the Department to promulgate regulations for future solicitations that "provide for an annual remuneration for the contracting distribution company equal to 2.25 per cent [sic] of the annual payments under the contract" (Stipulation Agreement at 3, citing St. 2022, c. 179, § 61). The Stipulating Parties assert that, notwithstanding the requirement for the Department to promulgate regulations, the

statutory provision applies to the PPAs and should be acted upon by the Department at the time of the approval of the PPAs (Stipulating Agreement at 3). The Stipulating Parties also request that the Department determine that the costs of the PPAs, including procurement, contract development and administrations costs, plus remuneration, are eligible for cost recovery pursuant to the Companies' respective long-term clean energy contract cost recovery tariffs (Stipulating Agreement at 4).

B. Standard of Review

In assessing the reasonableness of an offer of settlement,³² the Department reviews all available information to ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Boston Edison Company, D.P.U. 92-130-D at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. D.P.U. 95-104, at 15; D.P.U. 88-28/88-48/89-100, at 9.

C. Analysis and Findings

The Department has reviewed the Stipulating Parties' proposal to adjust the remuneration rate to 2.25 percent of the annual payments under the PPAs. The proposal to lower the proposed remuneration rate will benefit ratepayers and is consistent with the 2022 Clean Energy Act's amendment to Section 83C. Thus, the Department concludes that the proposed remuneration

³² The stipulations are in the nature of offers of settlement.

rate of 2.25 percent is consistent with both applicable law and the public interest and that approval of the adjustment results in a just and reasonable outcome. In addition, based on the findings in this Order, the Department determines that the costs of the PPAs, including procurement, contract development and administrations costs, plus remuneration at a rate of 2.25 percent of the annual payments under the PPAs, are eligible for cost recovery pursuant to the Companies' respective long-term clean energy contract cost recovery tariffs. The Department shall review the Companies' respective proposed long-term renewable energy contract adjustment filings to ensure that the proposed rates to be charged or credited to customers in connection with these PPAs are consistent with the requirements of Section 83C, the Department's regulations, the Companies' approved long-term renewable energy contract adjustment tariffs, and the directives of this Order. Section 83C(i); 220 CMR 23.06; NSTAR Electric Company, M.D.P.U. No. 69C; Massachusetts Electric Company/Nantucket Electric Company, M.D.P.U. No. 1361; Fitchburg Gas and Electric Light Company, M.D.P.U. No. 317.

IX. ORDER

Accordingly, after review and consideration, it is

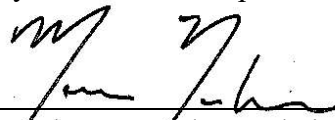
ORDERED: That the power purchase agreements between NSTAR Electric Company and Commonwealth Wind, LLC and NSTAR Electric Company and Mayflower Wind Energy LLC for offshore wind energy generation and renewable energy certificates filed on May 25, 2022, pursuant to Section 83C and 220 CMR 23.00, are APPROVED; and it is

FURTHER ORDERED: That the power purchase agreements between Massachusetts Electric Company and Nantucket Electric Company and Commonwealth Wind, LLC and Massachusetts Electric Company and Nantucket Electric Company and Mayflower Wind Energy LLC for offshore wind energy generation and renewable energy certificates filed on May 25, 2022, pursuant to Section 83C and 220 CMR 23.00, are APPROVED; and it is

FURTHER ORDERED: That the power purchase agreements between Fitchburg Gas and Electric Light Company and Commonwealth Wind, LLC and Fitchburg Gas and Electric Light Company and Mayflower Wind Energy LLC for offshore wind energy generation and renewable energy certificates filed on May 25, 2022, pursuant to Section 83C and 220 CMR 23.00, are APPROVED; and it is

FURTHER ORDERED: That NSTAR Electric Company, Massachusetts Electric Company and Nantucket Electric Company, and Fitchburg Gas and Electric Light Company shall comply with all other directives contained in the Order.

By Order of the Department,



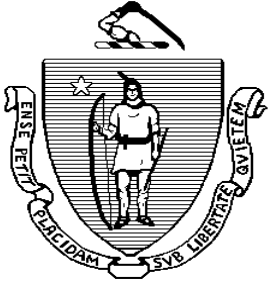
Matthew H. Nelson, Chair

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.

Massachusetts Department of Public Utilities Memorandum from Hearing Officer Crane
dated January 20, 2023 under D.P.U. 20-16, 20-17, 20-18



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

MEMORANDUM

TO: Service Lists:
NSTAR Electric Company, D.P.U. 20-16
Massachusetts Electric Company/Nantucket Electric Company, D.P.U. 20-17
Fitchburg Gas and Electric Light Company, D.P.U. 20-18

FROM: Kevin T. Crane, Hearing Officer

RE: Motion by Mayflower Wind Energy LLC for Full Participant Status and to Extend the Appeal Period

DATE: January 20, 2023

CC: Mark D. Marini, Department Secretary

On February 10, 2020, NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric”), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid (“National Grid”), and Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”) (collectively, “Companies”) each filed a petition with the Department of Public Utilities (“Department”), pursuant to the Green Communities Act, St. 2008, c. 169, § 83C (“Section 83C”)¹ and 220 CMR 23.00, for approval of two long-term power purchase agreements with Mayflower Wind Energy LLC to purchase offshore wind energy generation and associated renewable energy certificates (“Round II PPAs”). The Department docketed the Eversource petition as D.P.U. 20-16, the National Grid petition as D.P.U. 20-17, and the Unitil petition as D.P.U. 20-18. The Department issued a final order approving the Round II PPAs on November 5, 2020. NSTAR Electric Company, et al., D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18 (2020).

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

On May 25, 2022, the Companies filed a joint motion seeking the Department's approval of amendments to the Round II PPAs pursuant to 220 CMR 1.04(5)(a). The Department approved the amendments to the Round II PPAs on December 30, 2022. NSTAR Electric Company et al., D.P.U. 20-16/D.P.U. 20-17/D.P.U. 20-18, Stamp-Approved Motion (December 30, 2022).

On January 19, 2023, Mayflower Wind Energy LLC filed a motion to be granted full participant status in these proceedings and to extend the appeal period of the Department's approval of the Round II PPA amendments. **Any party that wishes to submit a written response to the motion filed on January 19, 2023 by Mayflower Wind Energy LLC in the above-referenced proceedings must do so by 5:00 P.M. on Friday, January 27, 2023.** 220 CMR 1.06(5)(e).

At this time, parties must submit, serve and exchange all materials only in electronic format. Parties must retain the original paper version and the Department will later determine when the paper version must be filed with Mark D. Marini, Department Secretary, Department of Public Utilities. Further, parties shall submit all electronic files via email only to dpu.efiling@mass.gov. All materials shall be deemed to be filed or received on the date on which the email containing the material is received by the Department.

Commonwealth Wind LLC Appeal to Massachusetts Supreme Court Cited herein

Petition for Appeal by Commonwealth Wind, LLC filed with Massachusetts Supreme Judicial
Court dated January 19, 2023 under D.P.U. 22-70, 22-71, 22-72

January 19, 2023

By Electronic Mail

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 2nd Floor
Boston, Mass. 02110

Re: Petition for Appeal of Commonwealth Wind, LLC | D.P.U. 22-70/22-71/22-72

Dear Secretary Marini:

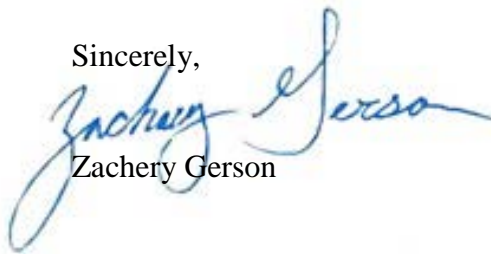
Pursuant to G.L. c. 25, § 5, enclosed for filing please find: (1) the timely Petition for Appeal of Commonwealth Wind, LLC from the December 30, 2022 Order of the Department of Public Utilities and the November 4, 2022 Interlocutory Order of the Department of Public Utilities in D.P.U. 22-70/22-71/22-72; (2) a Notice of Appearance for Thaddeus Heuer; and (3) a Certificate of Service.

In accordance with the instructions provided in the Hearing Officer's June 30, 2022 Procedural Notice, this filing is being submitted and served in electronic format only at this time.

Further pursuant to G.L. c. 25, § 5, Commonwealth Wind, LLC formally requests that the record on appeal include one copy of all exhibits and documents introduced in the proceeding, including all orders, all briefing, all motions and all replies thereto.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,


Zachary Gerson

Enclosures

January 19, 2023

Page 2

Cc: Kevin Crane, Hearing Officer
Service List, D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72
dpu.efiling@mass.gov

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT

No. _____

COMMONWEALTH WIND, LLC,)
)
Plaintiff-Appellant,)
)
v.)
)
DEPARTMENT OF PUBLIC UTILITIES,)
)
Defendant-Appellee.)

**PETITION FOR APPEAL BY COMMONWEALTH WIND, LLC
D.P.U. 22-70/22-71/22-72**

1. On December 30, 2022, the Department of Public Utilities (the “Department”) issued an Order (the “Final Order”) approving power purchase agreements (the “PPAs”) between Commonwealth Wind, LLC (“Commonwealth Wind”) and three Massachusetts distribution companies pursuant to An Act Relative to Green Communities, St. 2008, c. 169, § 83C (“Section 83C”)¹ and 220 C.M.R. § 23.00 in the proceedings docketed as D.P.U. 22-70, D.P.U. 22-71, and D.P.U. 22-72.
2. The purpose of Section 83C is “[t]o facilitate the financing of offshore wind energy generation resources in the commonwealth.” Section 83C(a); 220 C.M.R. § 23.01(a).
3. To achieve that purpose, Section 83C requires the Massachusetts electric distribution companies to “solicit proposals for offshore wind energy generation; and provided, that

¹ St. 2008, c. 169, as amended by St. 2016, c. 188, § 12, St. 2021, c. 8, § 91 et seq., St. 2021, c. 24, §§ 69 and 72, and St. 2022, c. 179, § 61.

reasonable proposals [are] received . . . enter into cost-effective long-term contracts.”

Section 83C(a).

4. The Department must approve the resulting contracts before they become effective and must find that they meet certain specified criteria. Section 83C(e).
5. The PPAs are long-term contracts procured through the third Section 83C solicitation, under which Commonwealth Wind would develop an approximately 1,232 megawatt (“MW”) offshore wind energy generation facility (the “Project”) located south of Martha’s Vineyard and Nantucket, expected to be operational in approximately four to five years, and the electric distribution companies would purchase energy and renewable energy credits generated by the Project. Final Order at 3.
6. The Department approved the PPAs despite Commonwealth Wind – the party that must finance and develop the Project – submitting uncontested evidence and briefing that, due to dramatic and sudden changes in global markets, the PPAs would *not* facilitate the financing of the Project because the terms of the PPAs could no longer support financing, and requesting that the Department dismiss the proceedings as to the PPAs. *See, e.g.*, Reply Brief of Commonwealth Wind (Nov. 1, 2022); Affidavit of Sy Oytan (Nov. 1, 2022); Motion to Dismiss of Commonwealth Wind (Dec. 16, 2022).
7. Rather than consider Commonwealth Wind’s evidence or allow time to appropriately supplement the record to reflect undisputed and widely-recognized market changes that occurred during the pendency of the Department’s proceedings, the Department, by the Final Order and an Interlocutory Order issued on November 4, 2022 (the “Interlocutory Order”): (i) denied Commonwealth Wind’s motion to temporarily suspend the proceedings (which sought time to fully develop a record on the significance of new

market conditions); (ii) refused to admit into the record Commonwealth Wind’s updated evidence on the financeability of the Project under the PPAs; (iii) denied Commonwealth Wind’s motion to dismiss the proceedings as to the PPAs (which was filed on the basis that the PPAs would not facilitate financing of the Project); and (iv) found that “the PPAs will facilitate the financing of the Commonwealth Wind . . . project[.]” Final Order at 23-24, 46; Interlocutory Order at 13.

8. In order to conclude that the PPAs would facilitate financing of the Project, the Department (i) excluded Commonwealth Wind’s timely evidentiary submissions from the record, (ii) discounted Commonwealth Wind’s statements in its briefs and motions, and (iii) relied instead on a statement that Commonwealth Wind made when submitting its bid in September 2021 – more than a year earlier and before relevant market changes had occurred – that PPAs would assist it in obtaining financing. Final Order at 10-11, 21-24.
9. Contrary to the Department’s finding, there was no “testimony from the developers” that the PPAs would assist with financing. Final Order at 23 & 23 n.23.
10. By approving the PPAs despite the reality that the Project cannot be financed and will not proceed under the PPAs, the Department has unnecessarily created uncertainty regarding the implementation of Section 83C, which is a critical component of the Commonwealth’s efforts to meet its greenhouse gas emission reductions. *See* G.L. c. 21N §§ 3, 3A, 4 (requiring greenhouse gas emission limits and sublimits); Bethany A. Card, Determination of Statewide Greenhouse Gas Emissions Limits and Sector Sublimits for 2025 and 2030, June 30, 2022 (setting 2025 limits of 33% reduction from 1990 levels by 2025 and 50% reduction by 2030, with more aggressive limits for the electric power sector); Massachusetts Clean Energy and Climate Plan for 2025 and 2030, at iv, xiv, 3-5, 27, 62-

65, 69-72, June 30, 2022, available at <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download> (noting that Massachusetts's Clean Energy and Climate Plan is "anchored by" offshore wind development that is expected to be in operation by 2030).

11. Section 83C provides for the solicitation of 5,600 MW of offshore wind energy generation capacity by June 30, 2027, and the next solicitation under Section 83C must occur by May of 2023. Section 83C(b) (subsequent solicitations must occur within 24 months of a previous solicitation).² However, the Final Order approves PPAs for 1,200 MW of capacity that cannot be financed and built under the PPAs, just as the Commonwealth must determine the parameters and available capacity for its next solicitation.
12. The Final Order, including its incorporation of the Interlocutory Order, is a final decision of the Department.
13. Commonwealth Wind is an aggrieved party in interest.
14. Commonwealth Wind hereby appeals the Final Order and Interlocutory Order, and respectfully requests that the Final Order be set aside and vacated as to the PPAs because, as further explained below, they are based upon errors of law, are unsupported by substantial evidence, are arbitrary, capricious, and constitute an abuse of discretion, and are otherwise not in accordance with law.

² The third solicitation under Section 83C was issued on May 7, 2021. Exh. JU-1 at 11, 14.

JURISDICTION

15. The Supreme Judicial Court for Suffolk County has jurisdiction over the subject matter of this action, and authority to order the relief requested, pursuant to G.L. c. 25, § 5.

PARTIES

16. Commonwealth Wind is a Delaware limited liability corporation with a principal place of business at 2701 NW Vaughn St., Suite 300, Portland, OR 97210. Commonwealth Wind is wholly owned by Avangrid Renewables, LLC, a U.S.-based renewable energy developer with more than 8,000 MW of owned and controlled wind and solar generation in 22 states. Avangrid Renewables, LLC is in turn owned by Avangrid, Inc., a U.S.-publicly traded company.
17. The Department is an agency of the Commonwealth of Massachusetts, established pursuant to G.L. c. 25, § 1, having its offices at One South Station, Boston, Massachusetts.

FACTS

18. In order “[t]o facilitate the financing of offshore wind energy generation resources in the commonwealth,” Section 83C and the Department’s regulations at 220 C.M.R. § 23.00, direct NSTAR Electric Company (“Eversource”), Massachusetts Electric Company and Nantucket Electric Company (together “National Grid”), and Fitchburg Gas and Electric Company (“Unitil”) (collectively the “Distribution Companies”) to solicit proposals for offshore wind energy generation. Section 83C(a); 220 C.M.R. § 23.03(1).
19. Provided that reasonable proposals are received, Section 83C directs the Distribution Companies to enter into cost-effective long-term contracts for offshore wind energy

generation for an amount equal to approximately 5,600 MW of aggregate nameplate capacity by June 30, 2027.³ *See* Section 83C(a); Section 83C(b); 220 C.M.R. § 23.03(1).

20. The Distribution Companies, in coordination with the Massachusetts Department of Energy Resources (“DOER”) developed a request for proposals (“RFP”) to enter into long-term contracts for offshore wind energy generation for the third solicitation under Section 83C, which the Department approved in D.P.U. 21-40. Final Order at 10 n.16.
21. On May 7, 2021, the Distribution Companies, together with DOER, issued the RFP. Exh. JU-1 at 14.
22. Commonwealth Wind submitted proposals in response to the RFP on September 15, 2021. *Id.* at 9 n.3.
23. The Distribution Companies selected Commonwealth Wind’s Project as a winning bid. *Id.* at 8-9, 33.
24. Following contract negotiations with the Distribution Companies, Commonwealth Wind entered into the PPAs with the Distribution Companies for approximately 1,200 MW of the Project in April 2022. *Id.* at 9; Exh. JU-3 at 1.
25. On May 25, 2022, each of the Distribution Companies filed a Petition for Approval of Proposed Long-Term Contracts for Offshore Wind Energy Generation Pursuant to Section 83C and the Department’s regulations at 220 C.M.R. § 23.00. Final Order at 1.
26. The Department docketed the petitions as D.P.U. 22-70, D.P.U. 22-71, and D.P.U. 22-72. *Id.*

³ Long-term contracts for offshore wind generation procured pursuant to Section 83C have previously been approved in dockets D.P.U. 18-76/18-77/18-78 and D.P.U. 20-16/20-17/20-18.

27. On June 22, 2022, the Department granted Commonwealth Wind's petition for leave to intervene as a full participant in D.P.U. 22-70, D.P.U. 22-71, and D.P.U. 22-72. *Id.* at 4.
28. To comply with Section 83C, the PPAs must "facilitate the financing of offshore wind energy generation." Section 83C(a).
29. There were no evidentiary hearings in these proceedings.
30. On October 20, 2022, during the briefing period before the Department, Commonwealth Wind filed a motion for a one-month suspension of the proceedings to allow the parties to examine the implications of unprecedented commodity price increases, interest rate hikes, and supply shortages on the overall viability of the Project, including whether the Project could be financed under the terms of the PPAs. Final Order at 6.
31. That motion explained that, due to changes in international markets, the Project was no longer viable under the PPAs "and would not be able to move forward" without taking steps to restore the Project to viability, such as amending the PPAs. The motion requested that the Department provide the parties an opportunity to both find a path to viability for the Project and to develop a record for the Department that reflected current realities. Commonwealth Wind Motion for a One-Month Suspension of Proceedings at 2.
32. The Department did not rule on Commonwealth Wind's motion for a suspension prior to the November 1, 2022 deadline for submitting reply briefs, so on November 1, 2022, Commonwealth Wind filed a reply brief. That brief:
 - a. Reiterated that sudden and dramatic changes to the global economy had rendered the Project uneconomic under the PPAs such that the PPAs would *not* facilitate the financing of the Project as required by Section 83C(a) and would, therefore, not lead to the benefits associated with the development of offshore wind energy

generation that are required of PPAs under Section 83C(e) and 220 C.M.R. § 23.05(1);

- b. Requested again that the Department pause the proceedings to allow the parties an opportunity to address the changes in economic circumstances affecting the Project, and allow the Department to receive evidence so that it could render a decision based on current information that would best advance the interests of ratepayers and the purposes of Section 83C; and
 - c. Explained that absent amendments to the PPAs, the Department must deny the Distribution Companies' petitions for approval of the PPAs because the PPAs (i) would *not* facilitate the financing of the Project, contrary to the established threshold requirement under Section 83C; (ii) would not satisfy the other statutory and regulatory criteria for approval, since no offshore wind energy generation facility would be built under the PPAs; and (iii) would not be in the public interest because, far from leading to the development of the Project, approval without PPA amendments would put the Project into jeopardy.
33. At the same time, Commonwealth Wind filed a limited motion to reopen the evidentiary record to admit an affidavit of Sy Oytan the Senior Vice President for Offshore Projects at Avangrid Renewables, LLC, the sole owner of Commonwealth Wind.⁴
34. The affidavit of Sy Oytan provided sworn evidence that global events including unexpectedly high and persistent inflation, supply shortage and increases in supply costs, the Russian invasion of Ukraine, and rapid increases in interest rates had negatively

⁴ Although Commonwealth Wind moved to reopen the record, the record had not been closed as of the motion. *See infra* ¶¶ 35-37. .

affected the economics of the Project to the point where the PPAs would no longer facilitate the financing of the Project due to the Project's negative net present value.

Affidavit of Sy Oytan.

35. On November 4, 2022, the Department issued the Interlocutory Order denying both Commonwealth Wind's motion for a one-month suspension of the proceedings and Commonwealth Wind's limited motion to reopen the evidentiary record to admit the Oytan Affidavit, and directing Commonwealth Wind to notify the Department and the Distribution Companies within three business days whether Commonwealth Wind intended to move forward with the PPAs or to file a request to dismiss the proceedings. Interlocutory Order at 13.
36. Although the Department asserted in the Interlocutory Order on November 4, 2022, that it had closed the record on September 28, 2022 (Interlocutory Order at 4 n.4), the Department did not provide any notice to the parties that it had closed the record on that date (*see* Hearing Officer Memorandum, Sept. 28, 2022). Instead, the Department only notified the parties of this position for the first time in the Interlocutory Order.
37. In fact, the Department kept the record open at least until it issued the Interlocutory Order on November 4, 2022, because it admitted all other previously proposed evidence into the record on that date. Interlocutory Order at 2 n.2.
38. On November 14, 2022, Commonwealth Wind filed a timely response to the Interlocutory Order. That response stated that if the Department did not support a pause in the proceedings, as previously requested by Commonwealth Wind, then the Department should continue with the proceeding so that the parties could use available time to

continue ongoing discussions that might lead to changes that could return the Project to viability. Commonwealth Wind Notice Pursuant to Interlocutory Order.

39. The Department did not respond to Commonwealth Wind's response to the Interlocutory Order.

40. On December 16, 2022, having not succeeded in finding a path to viability for the Project under the PPAs in coordination with other stakeholders, Commonwealth Wind filed a motion to dismiss the proceedings as to the PPAs. Motion to Dismiss of Commonwealth Wind.

41. In that motion, Commonwealth Wind stated that the PPAs did not meet the fundamental statutory threshold of Section 83C(a): that the PPAs must "facilitate the financing of offshore wind energy generation." As a consequence, Commonwealth Wind stated that because the PPAs would not lead to an offshore wind energy generation facility, they would also not provide the other statutory and regulatory benefits that are required for PPA approval. *See* Section 83C(e); 220 C.M.R. § 23.05(1); Motion to Dismiss of Commonwealth Wind at 6.

42. Commonwealth Wind further explained that the best path forward for the purposes of Section 83C, the public interest, and achieving the Commonwealth's policy goals was to dismiss the current proceedings as to the PPAs – which would not lead to the development of an offshore wind energy generation facility – so that the offshore wind energy generation capacity tied up in those PPAs could be included in the next Section 83C solicitation, which is statutorily mandated to commence in the first half of 2023. Motion to Dismiss of Commonwealth Wind at 5.

43. Finally, Commonwealth Wind stated that there was not the requisite substantial record evidence to support a finding that the PPAs *would* facilitate the financing of the Project. Commonwealth also explained that the public interest favored dismissal. *Id.* at 8-10.
44. Neither the Attorney General nor the Department of Energy Resources opposed that motion. The Distribution Companies filed a one page *pro forma* opposition to that motion.
45. Commonwealth Wind's motion to dismiss provided clear notice to the Department, the Distribution Companies and the public that the PPAs were no longer viable and that Commonwealth Wind could not and did not intend to proceed with the Project under the existing contracts.
46. On December 30, 2022, the Department issued the Final Order denying Commonwealth Wind's motion to dismiss and approving the PPAs.
47. In concluding that "the PPAs will facilitate the financing of the Commonwealth Wind . . . project[]," as required by Section 83C, the Department relied on (i) a May 25, 2022 statement from the Distribution Companies that "Each developer stated the importance of having long-term power purchase agreements in place in order to attract necessary equity investing and financing commitments needed to finance their projects;" and (ii) a statement that Commonwealth Wind had made as part of its bid submission in September of 2021 – more than a year earlier and before relevant market changes had occurred. Final Order at 23.
48. The Department relied on these dated statements over the more recent, more specific, and more detailed factual briefing and sworn statements of Commonwealth Wind, the party

responsible for securing financing for the Project. Motion to Dismiss of Commonwealth Wind at 9; Reply Brief of Commonwealth Wind at 7-11; Affidavit of Sy Oytan.

49. The Department appears to have denied Commonwealth Wind's motion to dismiss (and approved the PPAs) at least in part because Commonwealth Wind filed its motion to dismiss after the date on which the Interlocutory Order made a non-binding request that a motion to dismiss be filed. *See* Final Order at 11 n.15.

50. However, the Department acknowledged that whether the PPAs facilitate the financing of the Project is a threshold legal issue (Final Order at 22; *see also NSTAR Elec. Co./Massachusetts Elec. Co./Fitchburg Gas and Elec. Light Co.*, D.P.U. 20-16/20-17/20-18, Nov. 5, 2020 at 23 (a Department finding that long-term contracts under Section 83C facilitate the financing of an eligible resource is a "threshold matter")). Indeed, 220 C.M.R. § 1.06(5)(e) expressly states that a party can file a motion to dismiss at any time during the proceedings.

51. The Final Order enumerates numerous supposed benefits of the Project to Massachusetts and its ratepayers from approval of the PPAs. An affirmative finding of sufficient benefits is required to approve the PPAs under Section 83C and 220 C.M.R. § 23.05(1).

52. However, these supposed benefits are illusory: Commonwealth Wind made clear in its motion to dismiss that under the current PPAs, the Project cannot be financed, and thus cannot be built, and thus cannot deliver any of the asserted benefits. *See, e.g.*, Motion to Dismiss of Commonwealth Wind; Reply Brief of Commonwealth Wind.

53. The Final Order is a final order of the Department.⁵

⁵ On January 10, 2023, the Department issued a revised final order correcting a typographical error in its December 30, 2022 final order.

54. The Final Order makes findings of fact and conclusions of law.
55. Commonwealth Wind is a party in interest aggrieved by the rulings of the Department in the Interlocutory Order and now the Final Order.
56. Commonwealth Wind appeals the Interlocutory Order and Final Order and respectfully requests that they be set aside in their entirety because they are based upon errors of law, are unsupported by substantial evidence, are arbitrary, capricious, constitute an abuse of discretion, and are otherwise not in accordance with law.

LEGAL CLAIMS

57. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because the Department's denial of Commonwealth Wind's motion for a one-month suspension of proceedings improperly prevented the development of a full and accurate evidentiary record, and thereby led directly to legally unsupportable findings and determinations in the Final Order.
58. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because the Department's denial of Commonwealth Wind's limited motion to reopen the evidentiary record improperly prevented a full and accurate evidentiary record from being established, and thereby led directly to legally unsupportable findings and determinations in the Final Order.

59. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because the Department refused to accept or consider new, material, significant, uncontested, and credible sworn evidence submitted by Commonwealth Wind that directly contradicts the Final Order's essential findings and determinations.
60. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because the Department refused to accept or consider new, material, significant, uncontested, and credible sworn evidence submitted by Commonwealth Wind on the basis that the record had closed, despite the Department not having closed the record at the time the evidence was offered.
61. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because they wrongly concluded that the PPAs satisfy the statutory and regulatory requirements of Section 83C that PPAs must facilitate financing, despite clear and uncontested sworn evidence and repeated briefing that the Project cannot be financed under the PPAs as approved.
62. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because they wrongfully considered the benefits of the Project as evidence for approving the PPAs, despite clear and uncontested sworn evidence by Commonwealth Wind that the Project cannot be financed under the PPAs, and thus cannot be built, and thus will not deliver *any* of the asserted benefits.

63. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because they wrongfully relied upon evidence in the record of Commonwealth Wind's statements from September 2021 regarding the benefits of PPAs to financing, while refusing to acknowledge or credit subsequent evidence from Commonwealth Wind specifically refuting those September 2021 statements based on new information obtained as of October 2022.
64. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because contrary to the findings, the record contains no testimony from the developers that the PPAs would assist with obtaining financing.
65. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because they wrongfully relied upon testimony submitted by the Distribution Companies of witnesses who did not have personal knowledge of the financeability of the Project and who relied solely upon the subsequently-refuted September 2021 statements by Commonwealth Wind.
66. The Final Order and Interlocutory Order are based upon errors of law, are unsupported by substantial evidence, and are arbitrary, capricious, and constitute an abuse of discretion, because they are contrary to the Department's obligation to act in the public interest (*see, e.g., Attorney General v. Department of Telecomms. & Energy*, 438 Mass. 256, 268 (2002); *Wolf v. Department of Pub. Utils.*, 407 Mass. 363, 369 (1990)) and to "prioritize "reductions in greenhouse gas emissions to meet statewide greenhouse gas emission limits

and sublimits established pursuant to chapter 21N” (G.L. c. 25, § 1A), as approval of the PPAs for a Project that cannot be financed fails to secure any benefits for the Commonwealth or ratepayers.

PRAYER FOR RELIEF

WHEREFORE, Commonwealth Wind requests that this Court:

1. Set aside and vacate the Final Order;
2. Remand to the Department with orders that Commonwealth Wind’s motion to dismiss be granted; and
3. Grant such other relief as the Court deems appropriate and proper.

Respectfully submitted,
COMMONWEALTH WIND, LLC

By its attorneys,



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