



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 13-57

March 29, 2013

Joint Petition of Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, and Western Massachusetts Electric Company for approval of a proposed timetable and method for the solicitation and execution of long-term contracts for renewable energy, pursuant to St. 2012, c. 209, § 36.

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## I. INTRODUCTION

Pursuant to Section 83A of An Act Relative to Green Communities, St. 2008, c. 169 (“Section 83A”),<sup>1</sup> electric distribution companies are required to jointly solicit proposals for long-term contracts from renewable energy developers twice over the period January 1, 2013 through December 31, 2016. St. 2012, c. 209, § 36. The electric distribution companies must jointly select a reasonable method of soliciting proposals from renewable energy developers using a competitive bidding process. St. 2012, c. 209, § 36. The electric distribution companies must consult with the Commonwealth of Massachusetts Department of Energy Resources (“DOER”) and the Attorney General of the Commonwealth (“Attorney General”) regarding the choice of contracting and solicitation methods, and shall propose the timetable and method for solicitation and execution of contracts in consultation with DOER. St. 2012, c. 209, § 36. The timetable and method for solicitation and execution of such contracts is subject to review and approval by the Department of Public Utilities (“Department”). St. 2012, c. 209, § 36. On March 1, 2013, the Department adopted emergency regulations, 220 C.M.R. § 21.00 et seq., to implement the provisions of Section 83A. Long-Term Contracts for Renewable Energy, D.P.U. 13-42 (March 1, 2013).

On March 1, 2013, Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, and Western Massachusetts Electric Company (together, “electric distribution companies” or “Petitioners”) jointly filed a request for approval of a proposed timetable and

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<sup>1</sup> Section 83A was added to the Green Communities Act by An Act Relative to Competitively Priced Electricity in the Commonwealth, St. 2012, c. 209, § 36.

method for soliciting and executing long-term contracts for renewable energy through a request for proposals (“RFP”) process. The Department docketed this matter as D.P.U. 13-57.

On March 5, 2013, the Department requested comments on the petition from interested persons. D.P.U. 13-57, Notice of Filing and Request for Comments (March 5, 2013). On March 4, 2013, DOER submitted initial comments. On March 15, 2013, the Attorney General, EDP Renewables (“EDP”), Massachusetts Clean Energy Center (“MassCEC”), and Minuteman Wind LLC (“Minuteman”) submitted initial comments. On March 22, 2013, the Petitioners, Conservation Law Foundation (“CLF”), and DOER submitted reply comments.

## II. SUMMARY OF THE PETITION

### A. Introduction

The Petitioners seek approval of a proposed timetable and method for the solicitation and execution of contracts to be used for the first of two solicitations required by Section 83A. The electric distribution companies propose to conduct a competitive solicitation to secure bids from generation sources that meet the requirements of Section 83A (RFP § 1.1). The electric distribution companies propose to solicit bids for renewable energy and/or renewable energy certificates (“RECs”) for approximately 1.8 percent of their total annual load for a period of ten to 20 years (RFP § 1.1). At the conclusion of the solicitation process, the electric distribution companies will jointly evaluate and select the winning bids (RFP § 1.3). Each electric distribution company intends to enter into a contract with the winning bidder(s) for the company’s apportioned share of energy and/or RECs (RFP § 2.5).

B. Bid Evaluation Process

The proposed RFP sets out a three-stage bid evaluation process (RFP § 2.1). The first stage identifies bidders that have satisfied certain eligibility, threshold, and other minimum requirements (RFP § 2.2). To be eligible to participate in the solicitation, a facility must: (1) be qualified by DOER as a Class I renewable generation unit pursuant to Massachusetts renewable portfolio standards (“RPS”), 225 C.M.R. § 14.01 et seq., and to sell RECs under the RPS program; (2) enter commercial operation on or after January 1, 2013;<sup>2</sup> and (3) not participate in the Commonwealth’s net metering program or the net metering program of any other jurisdiction (RFP § 2.2.2.2). Bids that meet the eligibility requirements will be evaluated to determine whether they comply with threshold requirements which, according to the Petitioners, are intended to screen out proposals that may: (1) be insufficiently mature in terms of project development; (2) lack technical viability; (3) impose unacceptable financial accounting consequences for the electric distribution companies; (4) do not satisfy Section 83A requirements; (5) do not comply with RFP requirements pertaining to credit support; or (6) fail to satisfy minimum standards for bidder experience and ability to finance the proposed project (RFP § 2.2.3).

The second stage of the bid evaluation process ranks bids based on specified weights given to price and non-price factors (RFP § 2.3). The Petitioners propose to weight price factors

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<sup>2</sup> Specifically, facilities must either: (1) have a commercial operation date on or after January 1, 2013; or (2) represent a capacity expansion of an existing generation facility or a repowering of an existing generation facility where the capacity expansion or repowering has a commercial operation date on or after January 1, 2013, provided that only the energy and RECs associated with the incremental expansion or repowering will be eligible (RFP § 2.2.2.2(b)).

80 percent and non-price factors 20 percent (RFP § 2.3). Price evaluation will compare the total cost of the products bid (i.e., energy and RECs) to the estimated market value of the products, factoring in the production profile and location of the proposed project over the duration of the bid (RFP § 2.3.1). Non-price factors include: (1) siting and permitting; (2) project development status and operational viability; (3) experience and capabilities of the bidder and the project development team; (4) financing; and (5) exceptions to the draft power purchase agreement (“PPA”)<sup>3</sup> (RFP § 2.3.2). Following evaluation of the price and non-price factors, the electric distribution companies will select a short list of bids (RFP § 2.3.2.2).

In the third stage of the bid evaluation process, the electric distribution companies will re-rank the bids on the short list based on the second-stage evaluation criteria and, at the electric distribution companies’ discretion, the following additional factors: (1) cost-effectiveness; (2) risk associated with project viability; (3) contribution to employment creation and economic development; (4) unique risks to customers; and (5) portfolio effect (i.e., the value of diversity of resources) (RFP § 2.4). As a result of the third-stage evaluation, the electric distribution companies will select the final bids for contract negotiations (RFP § 2.4). The distribution companies may jointly negotiate PPAs and jointly file executed PPAs with the Department or each distribution company may individually negotiate and file executed PPAs (RFP § 2.5; Petitioners Cover Letter at 2).<sup>4</sup>

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<sup>3</sup> The Petitioners state that, upon Department approval of the timetable and method of solicitation, the electric distribution companies, in coordination with DOER, will issue the RFP along with bidder forms and a draft PPA that will serve as the framework for executed PPAs (Petitioners Cover Letter at 3).

<sup>4</sup> The Petitioners anticipate that the PPAs will vary based on company-specific contracting requirements (Petitioners Cover Letter at 2).

C. Bid and Contract Requirements

The proposed RFP requires that bidders submit proposals for the sale of products from a facility (1) for a term of between ten and 20 years, and (2) in quantities equal to or greater than one megawatt (RFP §§ 2.2.2.4, 2.2.2.5). A bidder may bid the entire production or any portion of the production of energy and/or RECs<sup>5</sup> from its facility (RFP § 2.2.2.5).<sup>6</sup> The proposed RFP specifies no maximum contract size but the electric distribution companies' stated objective is to procure approximately 1.8 percent of their respective distribution loads through this process (RFP § 2.2.2.5; Petitioners Cover Letter at 3).

Section 2.2.3.2 of the RFP requires eligible bidders to propose a reasonable schedule that provides for: (1) the closing of construction financing and commencement of construction on or before December 31, 2015 and a commercial operation date on or before December 31, 2016; or (2) an alternative closing date for construction financing and commercial operation of no later than December 31, 2018, along with an explanation of why the later dates are appropriate. The structure of the PPA will be both unit-specific and unit-contingent (RFP § 2.2.2.3).

With respect to pricing, bids can include one or a combination of the following options: (1) a fixed price for the contract term; or (2) a price that increases at a fixed rate for the contract term or for different fixed rates for different periods of the contract (RFP § 2.2.4.2(a)). Pricing may not be contingent upon: (1) the availability of the federal production tax credit ("PTC");<sup>7</sup>

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<sup>5</sup> Capacity is not an eligible product (RFP § 2.2.2.3).

<sup>6</sup> If a bidder proposes to sell both energy and RECs, the bidder must provide separate prices for each product as well as a bundled price (RFP §§ 2.2.2.3, 2.2.2.5).

<sup>7</sup> 26 U.S.C. § 45.

(2) the availability of the federal investment tax credit (“ITC”);<sup>8</sup> or (3) the availability or receipt of any other government grant or subsidy (RFP § 2.2.4.2(c)). Bidders must provide firm pricing for 180 days (RFP § 2.2.4.1).

The RFP also provides information for bidders seeking to recover significant transmission costs outside of the PPA through federal transmission rates, pursuant to Section 83A.<sup>9</sup> Bidders seeking this alternative must provide: (1) schedules that estimate the total construction cost and annual revenue requirement of the transmission facilities needed to interconnect the generation facility; and (2) a cap on both the total construction cost and annual revenue requirement that the transmission provider would be allowed to recover through federal transmission rates (RFP § 2.2.4.2). Any PPA subsequently executed would include provisions related to PPA termination if the total estimated construction costs of the transmission facilities exceed the proposed cap for those costs or if cost recovery in excess of the proposed annual revenue cap is sought through federal transmission rates (RFP § 2.2.4.2). In addition, either (1) the PPA would provide for a price reduction if the federal transmission rates exceed the proposed annual revenue cap during the term of the PPA, or (2) the services agreement between

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<sup>8</sup> 26 U.S.C. § 48.

<sup>9</sup> Section 83A provides that the Department shall adopt regulations which, “to the extent there are significant transmission costs included in a bid, . . . authorize the contracting parties to seek recovery of such transmission costs of the project through federal transmission rates, consistent with policies and tariffs of the federal energy regulatory commission, to the extent the [D]epartment finds such recovery is in the public interest[.]” St. 2012, c. 209, § 36, ¶ 4; see also 220 C.M.R. § 21.07(3) (emergency regulations effective March 31, 2013).

the transmission provider and the electric distribution company<sup>10</sup> would provide that the rates paid by the electric distribution company will not exceed the proposed capped annual revenue requirement (RFP § 2.2.4.2). Finally, bidders seeking the transmission alternative must also submit a separate bid that contemplates recovery of transmission costs through the PPA price (RFP § 2.2.4.2).

D. Proposed Timetable

The proposed timetable for the bidding process is set forth in Table 1, below (RFP § 3.1).

**Table 1: Proposed Solicitation Timetable**

<b>Event</b>	<b>Anticipated Date<sup>11</sup></b>
Issue RFP	Day 0
Bidders Conference	Day 14
Submit Notice of Intent to Bid	Day 21
Deadline for Submission of Questions	Day 21
Due Date for Submission of Proposals	Day 35
Selection of Short-Listed Bidders	Day 155 [120 days after bid submission]
Negotiate and Execute Contracts	Day 185 [150 days after bid submission]
Submit Contracts for Department Approval	Day 214 [179 days after bid submission]

This timetable assumes that the electric distribution companies issue the RFP by April 1, 2013 and file executed PPAs with the Department by November 1, 2013 (Petitioners Cover Letter at 4). The Petitioners state that this schedule is designed to provide the potential for successful

<sup>10</sup> The RFP requires the transmission provider to enter into a service agreement with the electric distribution company that provides that no costs for the transmission facilities will be recovered from the electric distribution company unless the renewable energy facility achieves commercial operation (RFP § 2.2.4.2).

<sup>11</sup> Anticipated Date refers to the anticipated number of days from the date of issuance of the RFP.

bidders to obtain an executed PPA pursuant to the RFP later this year in order to allow developers to qualify for the PTC or the ITC (RFP § 1.1; Petitioners Cover Letter at 4).<sup>12</sup>

### III. SUMMARY OF COMMENTS

#### A. Petitioners

##### 1. Transmission Costs

According to the Petitioners, the proposed RFP properly implements the requirements of Section 83A with respect to bids that include significant transmission costs (Petitioners Reply Comments at 7). The Petitioners maintain that the process set forth in the RFP will allow for the evaluation of traditional bids that include transmission costs in the PPA price as well as bids that include the transmission cost alternative (i.e., bids that seek to recover transmission costs outside of the PPA through federal transmission rates) (Petitioners Reply Comments at 5).<sup>13</sup> The Petitioners further argue that they would not select a bid with alternative transmission cost treatment unless the bid yielded superior benefits to customers (Petitioners Reply Comments at 5).

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<sup>12</sup> To be eligible for the PTC and ITC, certain renewable energy technologies must commence construction by December 31, 2013. What actions qualify as the commencement of construction for this purpose, however, has not yet been established (Petitioners Cover Letter at 4). See also Letter from U.S. Senators Michael Bennet and Jerry Moran to Neal S. Wolin, Acting Secretary of the Department of the Treasury, and Steven T. Miller, Acting Commissioner of the Internal Revenue Service (March 5, 2013) (requesting that the Internal Revenue Service promptly issue guidance on the eligibility qualifications for the renewable energy tax credits that were extended in the American Taxpayer Relief Act), available at <http://www.bennet.senate.gov/newsroom/press/release/bipartisan-group-of-senators-urge-irs-to-quickly-clarify-rules-for-wind-ptc>.

<sup>13</sup> The Petitioners maintain that transmission costs can be calculated on a net present value basis, which will allow bids using the transmission cost alternative to be compared to bids that include transmission costs in the PPA price (Petitioners Comments at 5).

The Petitioners argue that the Department should reject the Attorney General's recommendation that bids seeking the transmission alternative should be required to provide a transmission contract that caps transmission costs (Petitioners Reply Comments at 6). Although the Petitioners recognize the need for enforceable contracts that cap transmission costs, the Petitioners contend that mandating specific, additional terms and conditions would limit the flexibility of bidders as well as the flexibility of the electric distribution companies to enter into contracts that represent the best sharing of risks and benefits for ratepayers (Petitioners Reply Comments at 6-7).<sup>14</sup> The Petitioners argue that the appropriate time for the Department to make findings regarding any specific transmission cost proposal will be when the electric distribution companies file PPAs for Department review as part of a Section 83A adjudicatory proceeding (Petitioners Reply Comments at 7).

## 2. Change in Law Provision

The Petitioners refute the arguments of EDP and Minuteman related to the change in law provision of the RFP<sup>15</sup> (Petitioners Reply Comments at 8). The Petitioners note that the change in law provision in the current RFP also was contained in previously approved long-term

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<sup>14</sup> The Petitioners cite RFP § 2.2.4.2 in support of their argument that preserving bidder flexibility is in the best interests of ratepayers: "Bidders proposing [the transmission alternative] are encouraged to offer price benefits to the [d]istribution [c]ompanies and their customers to the extent their construction costs or annual revenue requirements are less than their proposed caps" (Petitioners Reply Comments at 7 n.11).

<sup>15</sup> Section 2.2.2.3 of the RFP provides in pertinent part:

If a [d]istribution [c]ompany agrees to purchase both electric energy and RECs under a PPA and the RECs cease to conform to the RPS Class 1 eligibility criteria, the applicable [d]istribution [c]ompany will thereafter only purchase electric energy under that PPA, and the Seller will be permitted to sell those non-conforming RECs to a third party.

contracts for renewable energy executed pursuant to the solicitation process approved by the Department in 2010 (Petitioners Reply Comments at 9). According to the Petitioners, changes in RPS requirements are outside of their control and, therefore, the electric distribution companies and their ratepayers should not bear the risk of a PPA for non-conforming Class I RECs (Petitioners Reply Comments at 8). The Petitioners contend that developers are in the best position to assess the risk associated with any change in RPS requirements and, therefore, can determine how to best include such risk in their bids through the relative assignment of energy and RECs prices (Petitioners Reply Comments at 9).

### 3. Solicitation Timetable

The Petitioners argue that the proposed timetable is aggressive, given that the electric distribution companies must coordinate and collaborate on scoring and bid selection, and should not be accelerated (Petitioners Reply Comments at 10-11). In response to MassCEC's and Minuteman's arguments that certain renewable energy projects may require a more aggressive selection and approval process in order to qualify for the ITC or PTC, the Petitioners assert that if developers need to have executed contracts approved by the Department in advance of December 31, 2013, even an accelerated timetable likely will be insufficient given the amount of time the Department has required historically to review proposed long-term contracts for renewable energy (Petitioners Reply Comments at 11-12, citing NSTAR Electric Company, D.P.U. 11-05/D.P.U. 11-06/D.P.U. 11-07 (2011)).<sup>16</sup> The Petitioners further argue that the proposed timetable represents a "best case" scenario which assumes that the Department

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<sup>16</sup> The Petitioners state that the Department has previously required at least six months to review long-term renewable energy contracts (Petitioners Reply Comments at 12).

approves the proposed timetable and method of solicitation in advance of the RFP's anticipated April 1, 2013 issuance date (Petitioners Reply Comments at 12).<sup>17</sup>

4. Weighting of Employment and Economic Development Impacts

Finally, the Petitioners argue that the Department should reject Minuteman's argument that the RFP should provide for greater consideration of impacts on Massachusetts employment and economic development (Petitioners Reply Comments at 13-14). The Petitioners contend that project cost is a primary consideration under Section 83A but that the RFP appropriately weighs other factors such as employment and economic development (Petitioners Reply Comments at 13, citing St. 2012, c. 209, § 36).

B. Attorney General

The Attorney General argues that certain changes to the RFP are necessary to: (1) limit ratepayer exposure to the risks associated with transmission projects; (2) ensure that the bids are fairly evaluated against each other; and (3) reduce the likelihood of litigation during the Department's review of future Section 83A contracts (Attorney General Comments at 2). First, the Attorney General contends that bidders submitting an alternative bid in which transmission costs are recovered outside of a PPA through federal transmission rates should be required to enter into a transmission contract that includes a cap on transmission costs and addresses stranded costs (Attorney General Comments at 7). According to the Attorney General, the RFP as currently drafted does not protect ratepayers against cost overages that often arise during the construction of transmission facilities or against stranded costs that may arise after a

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<sup>17</sup> The Petitioners state that they are unclear whether the RFP may be issued prior to the Department's adoption of final Section 83A regulations (Petitioners Reply Comments at 12).

transmission line enters service (Attorney General Comments at 10-11). The Attorney General further argues that the RFP provisions intended to address the issues associated with cost overages are not sufficient and that an enforceable transmission contract with a cost cap is necessary (Attorney General Comments at 9-11).

Next, the Attorney General argues that the proposed RFP should be amended to exclude bids that recover transmission costs without a contract in order to ensure that bids are evaluated fairly against each other (Attorney General Comments at 7). The Attorney General maintains that, because the RFP treats all-in bids (i.e., bids that include in the contract price the cost of constructing the transmission needed to interconnect the generation facility) the same as alternative bids (i.e., bids that seek to recover transmission costs outside of the PPA through federal transmission rates), the electric distribution companies will not be able to fairly evaluate price because transmission costs under the alternative bids may increase from estimates (Attorney General Comments at 7, 11-12). The Attorney General contends that because price is weighted so heavily in the bid evaluation process, it is inappropriate to ignore the risk that price may increase if a transmission cap is exceeded (Attorney General Comments at 12-13).

In addition, the Attorney General contends that the RFP should require any PPA that recovers transmission costs outside of the PPA to include a bonding provision or financial assurance that ensures that ratepayers do not pay for transmission if the generator does not deliver the contracted-for energy (Attorney General Comments at 8, 13-14). The Attorney General asserts that ratepayers should not bear the risk of paying for the transfer capability that goes unused if the generator does not perform at its expected capacity factor and that requiring

bonding or financial assurance is necessary to remove such risk from ratepayers (Attorney General Comments at 13-14).

C. Conservation Law Foundation

CLF argues that it is imperative to align the timing of the Section 83A solicitation process and PPA approval with the availability of the ITC and PTC (CLF Reply Comments at 1-2). To that end, CLF supports MassCEC's proposal to reduce the bid-review period from four months to three months in order to allow the Department additional time to review proposed PPAs and to allow bidders the opportunity to avail themselves of the federal tax credits (CLF Reply Comments at 2). In addition, CLF contends that the proposed stage-three evaluation process is critical to meeting the requirements of Section 83A (CLF Reply Comments at 3). CLF contends that the second-stage evaluation places too much emphasis on price, and that the third-stage evaluation will be critical to ensuring that (1) both the costs and benefits of a PPA will be evaluated in accordance with Section 83A, and (2) the Commonwealth has a diverse mix of clean energy resources that contribute to system reliability, jobs, and other economic development (CLF Reply Comments at 2-3). Finally, with respect to the Attorney General's recommendations related to transmission costs, CLF maintains that the proposed RFP is consistent with Section 83A (CLF Reply Comments at 3). CLF asserts that while Section 83A opens the door to addressing transmission to the extent there are significant transmission costs included in a bid, the RFP modifications requested by the Attorney General go beyond what is permitted under the statute (CLF Reply Comments at 3-4).

D. Department of Energy Resources

With respect to the RFP's treatment of bids that seek to recover transmission costs outside of a PPA, DOER argues that the RFP affords extensive, multilayered ratepayer protections against identified risks associated with such bids (DOER Comments at 2). DOER maintains, however, that because Section 83A established a first-in-the-nation transmission policy, there may be additional questions for the Department and the Federal Energy Regulatory Commission ("FERC") to address in future proceedings (DOER Comments at 2; DOER Reply Comments at 3). DOER maintains that although the Attorney General raises legitimate concerns with respect to transmission costs, these issues can be addressed during contract negotiations and in subsequent contract-review proceedings (DOER Reply Comments at 3-5). DOER argues that given the complexity and potential diversity of proposals, it is difficult to require specific mechanisms through the RFP process to address the Attorney General's concerns; however, DOER supports the Attorney General's proposal to require transmission service contracts that cap transmission costs to provide greater ratepayer protections (DOER Reply Comments at 5-6). Finally, while DOER recognizes that the risks EDP and Minuteman identify with respect to changes in the RPS are valid, DOER maintains that the RFP is appropriate because it (1) allows bidders to assume the degree of risk with which they are comfortable based on their proposed allocation of total price between energy and RECs, and (2) mitigates ratepayer risk (DOER Reply Comments at 5 n.4).

E. EDP Renewables

According to EDP, although Massachusetts has several mechanisms in place to help ensure the lowest cost of energy for ratepayers,<sup>18</sup> the change in law provision contained in Section 2.2.2.3 of the proposed RFP could lead to higher contract prices (EDP Comments at 1-2). EDP argues that the risk of a change in law is typically shared between the buyer and seller, and that the assignment of risk solely to the buyer will result in higher contract prices because financing counterparties will require higher credit support (EDP Comments at 2). Accordingly, EDP argues that striking Section 2.2.2.3 of the RFP likely would result in lower bundled prices from independent power producers (EDP Comments at 2). In the event that the Department does not strike the change in law provision, EDP maintains that, at a minimum, the RFP should be amended to provide clear criteria with respect to how energy and REC pricing will be evaluated (EDP Comments at 2). EDP asserts that splitting the bundled price into individual energy and REC prices will be competitively challenging if bidders do not know how pricing will be evaluated (EDP Comments at 2).

F. Massachusetts Clean Energy Center

MassCEC supports an RFP timetable that allows projects to qualify for the PTC or the ITC (MassCEC Comments at 2). MassCEC argues, however, that the current timetable, which contemplates that contracts will be submitted to the Department on November 1, 2013, may not provide sufficient time for the Department to review the contracts before the end of the year

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<sup>18</sup> EDP maintains that these mechanisms are: (1) long-term contracts for renewable energy, which provide revenue certainty to project developers; (2) the monetary hedge that results from the bundling of electricity and RECs; and (3) a clear regulatory framework (EDP Comments at 1).

(MassCEC Comments at 2-3). Accordingly, MassCEC recommends that the four-month bid review period be reduced to three months (MassCEC Comments at 3). In addition, MassCEC supports consideration of project development status in the non-price evaluation in order to promote projects at an advanced stage of development (MassCEC Comments at 3). Finally, MassCEC endorses the re-ranking of projects on the short list in the stage-three evaluation as a valuable tool for project selection and to encourage the electric distribution companies to give particular weight to the diversity of resources (*i.e.*, size and type) during the selection process (MassCEC Comments at 3).

G. Minuteman Wind LLC

Minuteman argues that the proposed RFP should increase the weighting of non-price criteria to at least 50 percent (Minuteman Comments at 6-7). According to Minuteman, the Legislature's inclusion of language in Section 83A regarding local economic development<sup>19</sup> warrants greater consideration of Massachusetts employment and economic development impacts as non-price criteria, and such factors should be considered earlier in the evaluation process (Minuteman Comments at 4-5). Minuteman further contends that, while the proposed RFP states that it is designed to provide project developers the opportunity to qualify for the ITC or PTC, the RFP's required commercial operation date of December 31, 2018 is five years after the expiration of the tax credits and the proposed solicitation timetable does not allow sufficient

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<sup>19</sup> Section 83A amended the prior version of the long-term contracts for renewable energy statute, St. 2008, c. 169, § 83, with respect to the economic-development impacts of a renewable energy project. Compare St. 2012, c. 209, § 36 (requiring renewable energy generating sources to “where feasible, create additional employment and economic development in the [C]ommonwealth”), with St. 2008, c. 169, § 83 (requiring renewable energy generating sources to “where feasible, create additional employment in the [C]ommonwealth”).

time for the Department to review the contracts by the end of 2013 (Minuteman Comments at 7-8, citing RFP §§ 1.1, 2.2.3.2). Accordingly, Minuteman argues that the bid evaluation process should provide greater weight to projects that can demonstrate a realistic likelihood of commencing construction in 2013 (Minuteman Comments at 8). In addition, Minuteman recommends that the Department establish a fast-track process for “shovel-ready” projects that would be expeditiously selected by the electric distribution companies and reviewed by the Department (Minuteman Comments at 8). Finally, with respect to the RFP’s treatment of changes in RPS requirements, Minuteman asserts that any shift in risk caused by a change in law with respect to RPS eligibility would likely reduce bidder participation, increase bid prices, and provide a competitive advantage to project developers that do not need financing.<sup>20</sup> Minuteman argues that the Department should not accept PPAs that seek to shift the risk of change in RPS law to project developers (Minuteman Comments at 9).

#### IV. ANALYSIS AND FINDINGS

##### A. Introduction

As described above, Section 83A of the Green Communities Act requires electric distribution companies to jointly solicit proposals for long-term contracts from renewable energy developers twice over the period January 1, 2013 through December 31, 2016. St. 2012, c. 209, § 36. The Department must review and approve the timetable and method for the solicitation

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<sup>20</sup> Minuteman Comments at 8-9, citing RFP § 2.2.2.3; Peregrine Energy Group, Inc. & New Energy Opportunities, Inc., Long-Term Study on Long-Term Contracting Under Section 83 of the Green Communities Act, Report Prepared for Massachusetts Department of Energy Resources (December 31, 2012).

and execution of such long-term contracts, as well as any executed contracts that result.

St. 2012, c. 209, § 36.

In promulgating emergency regulations regarding long-term contracts for renewable energy pursuant to Section 83A, the Department sought to strike a balance between:

(1) providing some level of certainty and guidance to both electric distribution companies and renewable energy project developers regarding the process for soliciting and entering into long-term contracts; and (2) retaining sufficient flexibility to allow for a variety of contracts for diverse renewable resources. D.P.U. 13-42, at 3 (adopting emergency regulations 220 C.M.R. § 21.00 et seq.). The Department also recognized that adopting the emergency regulations was in the public interest because it may allow renewable energy generating resources to qualify for the PTC or the ITC, thereby saving money for Massachusetts ratepayers. D.P.U. 13-42, at 2-3. These same considerations guide our review of the Petitioners' proposed timetable and method for the solicitation and execution of long-term contracts for renewable energy.

B. Solicitation Timetable

The proposed solicitation timetable is for a total of 214 days and anticipates that the electric distribution companies will issue the RFP by April 1, 2013 and file executed PPAs with the Department for review by November 1, 2013 (Petitioners Cover Letter at 4). The Petitioners note that the timetable is designed to allow successful bidders to secure executed PPAs later in the year, thus preserving the opportunity for the underlying projects to qualify for the PTC or ITC<sup>21</sup> (RFP § 1.1; Petitioners Cover Letter at 4). Several commenters request that the

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<sup>21</sup> As discussed in n.12, above, in order to qualify for the PTC or ITC, certain renewable energy projects must commence construction prior to the end of 2013.

solicitation timetable be shortened by one month because they contend that this will enable Department review of any resulting contracts to conclude by the end of the year (MassCEC Comments at 3; CLF Reply Comments at 2-3; see Minuteman Comments at 8).

The Petitioners correctly note that, in order to satisfy the due process requirements of G.L. c. 30A, the Department has required at least six months to conduct its review of the long-term renewable energy contracts entered into pursuant to St. 2008, c. 169, § 83 (Petitioners Reply Comments at 12, citing D.P.U. 11-05/D.P.U. 11-06/D.P.U. 11-07).<sup>22</sup> Thus, even if the electric distribution companies file executed contracts one month earlier, on October 1<sup>st</sup> instead of November 1<sup>st</sup>, the Department would not conclude its review and issue a final Order on the contracts before the end of the year.

Although a developer clearly cannot wait for a final Department Order on its PPA before seeking to qualify its project for the ITC or PTC by the end of 2013, we nonetheless recognize that there is some benefit to bidders, and ultimately ratepayers, by having the executed long-term contracts filed with the Department earlier than November 1<sup>st</sup>. Although adjudication of any long-term contracts resulting from the RFP will not be concluded by the end of the year, an earlier filing date will facilitate the establishment of a procedural schedule and interventions in the contract cases prior to the end of the year, providing greater certainty for winning bidders to commence the construction of projects. Accordingly, the Department directs the Petitioners to amend the solicitation timetable contained in the RFP to reduce the four-month bid review period

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<sup>22</sup> See also NSTAR Electric Company, D.P.U. 12-30 (2012); Fitchburg Gas and Electric Light Company d/b/a Unital, D.P.U. 11-30 (2011); Western Massachusetts Electric Company, D.P.U. 11-12 (2011); Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, D.P.U. 10-54 (2010).

to three months, thereby allowing the electric distribution companies to file any contracts executed pursuant to the RFP with the Department on or before October 1, 2013.<sup>23</sup> A three-month bid evaluation process is consistent with the timetable approved by the Department in the most recent statewide long-term contract solicitation process conducted pursuant to St. 2008, c. 169, § 83. Fitchburg Gas and Electric Company d/b/a Unitil et al., D.P.U. 09-77, at 21-22 (2009). Given the complex nature of the joint bid evaluation process required under Section 83A, we find that any further reduction in the solicitation timetable would not be reasonable.

C. Transmission Costs

Prior to the enactment of Section 83A, the cost of constructing the transmission needed to interconnect renewable energy facilities was included in the total contract cost, and the long-term contracts entered into pursuant to St. 2008, c. 169, § 83 included transmission costs.

See D.P.U. 12-30; D.P.U. 11-30; D.P.U. 11-12; D.P.U. 11-05/D.P.U. 11-06/D.P.U. 11-07; D.P.U. 10-54. Section 83A added another option to recover transmission costs: “to the extent there are significant transmission costs included in a bid, the [Department] shall authorize the contracting parties to seek recovery of such transmission costs of the project through federal transmission rates, consistent with policies and tariffs of [FERC], to the extent the [D]epartment finds such recovery is in the public interest[.]” St. 2012, c. 209, § 36, ¶ 4; see also 220 C.M.R. § 21.07(3). Consistent with Section 83A, the proposed RFP allows two types of bids: (1) a

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<sup>23</sup> The Department confirms that the Petitioners can and should issue the RFP, as revised herein, on April 1, 2013, prior to the issuance of the Department’s final regulations regarding Section 83A (220 C.M.R. § 21.00 et seq.; see Petitioners Reply Comments at 12).

traditional “all in” bid in which transmission costs are included in the contract price; and (2) an alternative bid in which the transmission costs are not included in the contract price but, instead, will be recovered from ratepayers through transmission tariffs approved by FERC (see RFP § 2.2.4.2).

The Attorney General raises concern with respect to the treatment of transmission costs in the RFP, specifically the lack of a legally enforceable cap on transmission costs under an alternative bid scenario (Attorney General Comments at 2, 7-10). The Attorney General argues that, without such a legally enforceable cap, ratepayers will be at risk for paying (1) cost overages in the event that the costs to build transmission facilities exceed estimates, and (2) stranded costs that may arise after a transmission line enters service (Attorney General Comments at 10-11). To address this concern, DOER supports the Attorney General’s proposal to require a separate transmission service contract to enforce a cap on transmission costs (DOER Reply Comments at 5-6). The Petitioners and CLF maintain, however, that the RFP is appropriate as currently drafted and that mandating specific, additional terms and conditions would limit the flexibility of bidders as well as the flexibility of the electric distribution companies to enter into contracts that are in the best interests of ratepayers (Petitioners Reply Comments at 5-7; CLF Reply Comments at 3-4).

The Department shares the Attorney General’s and DOER’s concern about the potential exposure to ratepayers from excessive transmission costs or stranded costs under an alternative bid scenario. Accordingly, any long-term contracts resulting from the RFP must contain sufficient safeguards to limit ratepayer exposure to the risks associated with transmission cost overruns or stranded costs.

Although the Department sees value in the use of transmission service contracts to cap transmission costs under an alternative bid scenario, we will not impose any specific contract requirements through the RFP. Consistent with Department precedent, we seek to avoid predetermining or limiting the consideration of proposed contract terms. See, e.g., D.P.U. 09-77, at 22, citing Long-Term Contracts for Renewable Energy, D.P.U. 08-88-A at 10 (2009). To do so could constrain the flexibility of buyers and sellers in contract negotiations to seek the best sharing of risks and benefits under the contracts. D.P.U. 09-77, at 22-23. Nonetheless, if an electric distribution company submits to the Department an executed long-term contract under an alternative bid scenario, the contract must include an appropriate mechanism to protect ratepayers from the risk of escalating transmission or stranded costs -- whether through the use of a transmission service contract, as proposed by the Attorney General, or by some other means.

In addition, the Attorney General argues that the bid evaluation process contained in the RFP does not account for the risk that transmission costs may exceed cost estimates and, therefore, that the electric distribution companies will not be able to properly compare traditional “all in” bids with bids under the alternative bid scenario (Attorney General Comments at 7, 11-13). The Petitioners maintain, however, that they will calculate transmission costs on a net present value basis, which will allow for the evaluation of both traditional bids and transmission alternative bids (Petitioners Reply Comments at 5).

Determinations about whether the contracts that result from this solicitation are consistent with the public interest and result in just and reasonable rates must be made in the context of individual adjudications, in which the Department will weigh evidence in order to make fact-based decisions on a case-by-case basis. D.P.U. 09-77, at 23, citing D.P.U. 08-88-A

at 10-11. The Attorney General and other parties will have the opportunity to raise all relevant substantive issues with respect to the bid evaluation process in the context of the Department adjudications of the long-term contracts for renewable energy. D.P.U. 09-77, at 23, citing D.P.U. 08-88-A at 10. We expect that the Department will be provided with sufficient information to make a fair comparison between the all-in bids and the alternative bids.

D. Other Issues

Commenters raised certain other issues regarding the bid evaluation process. First, Minuteman proposes that the weighting of employment and economic development impacts be increased and that such impacts be considered earlier in the evaluation process (Minuteman Comments at 4-5). The Petitioners counter that the three-stage bid evaluation process gives appropriate weight to employment, economic development, and all other factors outlined in Section 83A (Petitioners Reply Comments at 13).

Pursuant to Section 83A, the Department shall approve a long-term contract “only upon a finding that it is a cost effective mechanism for procuring low cost renewable energy on a long-term basis taking into account the factors outlined in this section.” St. 2012, c. 209, § 36. The Petitioners, in collaboration with DOER and the Attorney General, developed the weighting of factors in the bid evaluation process (see Petitioners Cover Letter at 1-2; RFP § 1.3). Given the requirements of Section 83A, the Department finds that price is appropriately considered and weighted in the bid evaluation process (i.e., in the second and third stages), while factors such as employment and economic development are appropriately weighed at a later stage (i.e., in the third stage).

Second, EDP and Minuteman contend that the risk associated with changes in RPS requirements should not be borne exclusively by the seller as this is likely to reduce bidder participation and increase bid prices (EDP Comments at 2; Minuteman Comments at 8-10). The Petitioners respond that Minuteman's and EDP's claims regarding the allocation of risk associated with a change in law are unsupported (Petitioners Reply Comments at 8-10).

The Petitioners correctly note that the change in law provisions contained in the RFP were also included in previously approved long-term contracts for renewable energy executed pursuant to the solicitation approved by the Department pursuant to St. 2008, c. 169, § 83. See, e.g., D.P.U. 11-05/D.P.U. 11-06/D.P.U. 11-07, Exhs. NSTAR-JGD-2 (rev.) § 4.1(b). Changes in RPS requirements are outside of the control of the Petitioners as well as project developers. We find, however, that bidders are best situated to evaluate the risk of loss from subsequent changes in RPS requirements. Although such risk could, in theory, increase contract costs, the Department finds that the change in law provision in Section 2.2.2.3 of the RFP appropriately protects the electric distribution companies' customers from paying for non-conforming RECs.

Finally, EDP requests that, given the change in law provision, the RFP should be amended to include clear guidance on the evaluation of prices for energy and RECs so that bidders can submit competitive bids that appropriately assign project costs to energy and REC prices (EDP Comments at 2). Bidders are free to structure bids to account for the risk of changes in RPS eligibility under the current structure of the RFP. The Department finds that the RFP provides sufficient information on the evaluation of energy and RECs prices and that additional guidance is not warranted.

E. Conclusion

After review, the Department finds that the timetable and method for the solicitation and execution of long-term contracts contained in the proposed RFP is consistent with the requirements of Section 83A and 220 C.M.R. § 21.00 et seq. In addition to the issues discussed above, the Petitioners propose to solicit long-term contracts with a term of between ten and 20 years, consistent with Section 83A and 220 C.M.R. § 21.02 (RFP § 2.2.2.4). The Department finds that the electric distribution companies appropriately considered multiple contracting methods as required by Section 83A and 220 C.M.R. § 21.04(4), and that the proposed RFP defines eligible products as energy and/or RECs (RFP § 2.2.2.3). Section 83A and 220 C.M.R. § 21.05(1) further require that renewable energy generating sources have a commercial operation date on or after January 1, 2013, and be qualified to sell RECs under the Massachusetts RPS program. These requirements are eligibility criteria in the proposed RFP (RFP § 2.2.2.2). In addition, Section 83A and 220 C.M.R. § 21.05(1) require the Department to determine that a renewable energy generating source: (1) provides enhanced electricity reliability within the Commonwealth; (2) contributes to moderating system peak load requirements; (3) will be cost-effective to Massachusetts ratepayers over the term of the contract; and (4) creates additional employment and economic development in the Commonwealth, where feasible. These criteria are included in the first, second, and third bid evaluation stages described in the proposed RFP (RFP §§ 2.2.3, 2.3, 2.4).

The Petitioners' stated intent is to solicit energy and RECs for approximately 1.8 percent of the electric distribution companies' aggregate annual load (RFP §§ 1.1, 2.2.2.5). This is consistent with Section 83A and 220 C.M.R. § 21.08(6), which provide that electric distribution

companies shall not enter into long-term contracts under Section 83A that would, in the aggregate, exceed four percent of the total energy demand from all electric distribution customers.<sup>24</sup> Finally, consistent with Section 83A and 220 C.M.R. § 21.05(2), the RFP provides that the electric distribution companies will allocate the products purchased under the contracts on a pro-rata basis based on total energy demand (RFP § 2.5).

With the modification to the solicitation timetable addressed in Section IV.B, the Department finds that the proposed timetable and method of solicitation and execution of long-term contracts included in the proposed RFP are consistent with the requirements of Section 83A and 220 C.M.R. § 21.00 et seq. Accordingly, with the modification addressed herein, the Department approves the Petitioners' proposed timetable and method of solicitation and execution of long-term contracts for renewable energy.

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<sup>24</sup> Section 83A reserves ten percent of the aggregate level of long-term contracts to “newly developed, small, emerging or diverse renewable energy distributed generation facilities.” St. 2012, c. 209, § 36. Excluding the amount set aside for distributed generation, the aggregate obligation of the electric distribution companies is 3.6 percent of the total energy demand of all electric distribution customers. Half of that obligation is 1.8 percent (Petitioners Cover Letter at 2-3).

V. ORDER

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

ORDERED: That the petition of Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, and Western Massachusetts Electric Company for approval of a proposed timetable and method for soliciting and executing long-term contracts for renewable energy is APPROVED, subject to the directives contained herein; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, and Western Massachusetts Electric Company shall comply with all other directives contained in this Order.

By Order of the Department,

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/s/  
Ann G. Berwick, Chair

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/s/  
Jollette A. Westbrook, Commissioner

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/s/  
David W. Cash, Commissioner