



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 09-77

December 29, 2009

Joint Petition by 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, Western Massachusetts Electric Company, and the Commonwealth of Massachusetts Department of Energy Resources for approval of proposed timetable and methods for the solicitation and execution of long-term contracts for renewable energy, pursuant to St. 2008, c. 169, § 83.

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I. INTRODUCTION

On July 2, 2008, Governor Patrick signed into law Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”). The Green Communities Act requires each electric distribution company, beginning July 1, 2009, to twice in a five-year period solicit proposals from renewable energy developers. St. 2008, c. 169, § 83 (“Section 83”). Distribution companies may also voluntarily solicit additional proposals over the five-year period. The electric distribution company shall select a reasonable method of soliciting proposals from renewable energy developers, which may include public solicitations, individual negotiations or other methods. Pursuant to Section 83, the timetable and method for solicitation and execution of such contracts shall be proposed by the electric distribution company in consultation with the Commonwealth of Massachusetts Department of Energy Resources (“DOER”) and is subject to review and approval by the Department of Public Utilities (“Department”). On June 12, 2009, the Department promulgated regulations, 220 C.M.R. § 17.00 et seq., to implement the provisions of Section 83. Long-Term Contracts for Renewable Energy, D.P.U. 08-88-A (2009).

On September 14, 2009, 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, Western Massachusetts Electric Company (together, “electric distribution companies”), and DOER (together, “Petitioners”) jointly filed a request for approval of a proposed timetable and method for soliciting proposals for renewable energy through a public request for proposals (“RFP”) process. This matter was docketed as D.P.U. 09-77. The Department requested comments from interested persons. Initial

comments (“Comments”) were filed on October 9, 2009,¹ and reply comments (“Reply Comments”) were filed on October 16, 2009.²

II. SUMMARY OF THE PETITION

A. Introduction

The Petitioners seek approval of an RFP which includes a proposed timetable and method for solicitation and execution of contracts to be used as one of the two solicitations required by Section 83. The electric distribution companies propose to conduct a competitive solicitation in consultation with DOER to secure bids from generation sources that meet the requirements of Section 83 and 220 C.M.R. § 17.00 et seq. The electric distribution companies propose to solicit bids for renewable energy and renewable energy certificates (“RECs”) for approximately 1.5 percent of their total annual load for a period of ten to 15 years. At the conclusion of the solicitation process, each distribution company will submit final contracts for Department approval, pursuant to Section 83 and 220 C.M.R. § 17.05.

B. Bid Evaluation Process

The proposed RFP sets out a three-stage bid evaluation process (RFP Section 2.1). The first stage identifies bidders that have satisfied certain eligibility and threshold requirements

¹ Initial comments were submitted by the following twelve entities: A.D. Makepeace; Boston & New England Maritime Trades Council, AFL-CIO (“AFL-CIO”); Alliance to Protect Nantucket Sound (“APNS”); Ansar Energy, LLC (“Ansar”); the Attorney General of the Commonwealth (“Attorney General”); Cape Light Compact; Conectiv Energy Supply, Inc. (“Conectiv”); Conservation Law Foundation (“CLF”); Consolidated Edison Development, Inc. (“Consolidated Edison”); Madera Energy, Inc. (“Madera”); and New England Clean Energy Council (“NECEC”).

² Reply comments were submitted by: APNS; Attorney General; CLF; DOER; and jointly by the electric distribution companies.

(id. § 2.2). To be eligible, facilities must: (1) be qualified by DOER as renewable portfolio standards (“RPS”) Class I Renewable Generation Units (“RPS Class I Units”) pursuant to G.L. c. 25A, § 11F and 225 C.M.R. § 14.02; (2) come into operation on or after January 1, 2008;³ and (3) be located within the jurisdictional boundaries of the Commonwealth (id. § 2.2.2.2).⁴ Bids that meet the eligibility requirements would 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 less 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 83 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 (id. § 2.2.3).

The second stage of the bid evaluation process ranks bids based on specified weights given to price and non-price factors. Specifically, the Petitioners propose to assign 80 percent weighting to price factors and assign 20 percent weighting to non-price factors (id. § 2.3.1). Price evaluation will compare the total cost of the products bid (i.e., energy and RECs) to the

³ Specifically, facilities must either: (1) have a commercial operation date on or after January 1, 2008; 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, 2008, provided that only the energy and RECs (and capacity) associated with the incremental expansion or repowering will be eligible for sale (RFP Section 2.2.2.2, citing 225 C.M.R. § 14.02).

⁴ For this purpose, within the Commonwealth means within state waters, or in adjacent federal waters, as well as a transmission line that makes landfall within the jurisdictional boundaries of the Commonwealth (id., citing Section 83).

estimated market value of these products, factoring in the production profile and location of the proposed project over the duration of the bid (id.). Non-price factors will include the following: (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 model power purchase agreement (“Model PPA”)⁵ (id. § 2.3.2).

Finally, the third stage of the bid evaluation process allows each electric distribution company to employ its discretion in the final selection of bids (id. § 2.4). The third stage considers criteria for job creation but the value assigned to this consideration would be left up to each electric distribution company at its discretion (id.).

C. Bids and Contract Requirements

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

⁵ The Petitioners have stated that, upon Department approval of the RFP, the electric distribution companies, in consultation with DOER, will issue the RFP along with bidder forms and a Model PPA that would serve as the framework for company-specific PPAs (Petitioners Letter at 2). However, the Petitioners have also stated that each electric distribution company will retain the discretion to enter into a PPA based on whether the bids submitted and subsequent negotiations meet its own internal requirements for contract execution and administration (id.). The electric distribution companies have not filed the Model PPA with the Department (Distribution Companies Reply Comments at 2).

Table 1

Event	Anticipated Date⁶
Issue RFP	Day 0
Bidders Conference	Day 14
Submit Notice of Intent to Bid	Day 17
Deadline for Submission of Questions	Day 17
Due Date for Submission of Proposals	Day 35
Selection of Short-Listed Bidders	Day 110 [75 days after bid submission]
Negotiate and Execute Contracts	Day 155 [120 days after bid submission]
Submit Contracts for Department Approval	Day 185 [150 days after bid submission]

The proposed RFP requires that bidders submit proposals for the sale of products from a facility (1) for a term of between ten and 15 years, at the bidder's discretion (id. § 2.2.2.4), and (2) in quantities equal or greater than one megawatt ("MW") (id. § 2.2.2.5). A bidder may bid the entire production or any portion of the production of energy and RECs from its facility (id.).⁷ The proposed RFP specifies no maximum contract size but the electric distribution companies' stated objective is to procure approximately 1.5 percent of their respective distribution loads through this process (id.; Petitioners Letter at 2).

Section 2.2.3.2 of the proposed RFP provides that eligible bidders must provide a reasonable schedule that provides for both: (1) the closing of construction financing and commencement of construction on or by December 31, 2011; and (2) a commercial operation date on or before December 31, 2014. The structure of the contract would be both

⁶ Anticipated Date refers to the anticipated number of days from the date of issuance of the RFP.

⁷ Bids for the sale of capacity will be considered but if a bid includes capacity, the bidder must specify, in accordance with the guidelines set forth in the RFP, the terms and conditions upon which the sale of capacity would be made to one or more of the electric distribution companies (id. § 2.2.2.3).

unit-specific and unit-contingent (RFP Section 2.2.2.3). The RFP requires bidders to provide firm pricing for 120 days (id. § 2.2.4.1).

III. ISSUES RAISED BY COMMENTERS

A. Introduction

Ansar, DOER, and CLF recommend that the Department expeditiously approve the petition in order to further economic development in Massachusetts and to avoid jeopardizing the eligibility of projects for the federal grants (Ansar Comments 2; DOER Reply Comments at 4; CLF Reply Comments at 2).⁸ However, commenters raised a variety of issues regarding the proposed (1) bid evaluation process, including limitations on contract duration and bid size, (2) solicitation timetable, and (3) Model PPA.⁹

B. Bid Evaluation Process

1. Contract Duration/Size of Bids

Cape Wind, NECEC, and CLF assert that the RFP should not preclude consideration of contracts with a term of longer than 15 years (Cape Wind Comments at 9; NECEC Comments at 5; CLF Comments at 10). Additionally, Cape Wind, NECEC, CLF, Madera, and APNS

⁸ The American Recovery and Reinvestment Act of 2009 provides for cash grants of up to 30 percent of the cost of developing certain energy projects which are placed in service by a specified date. The amount of the cash grant and the in-service requirements vary by the type of energy project. A wind facility over 100 kilowatts must be placed in service by December 31, 2012. Other renewable technologies have later in-service dates. In addition, to qualify for a cash grant, a project must begin construction by December 31, 2010 (Petitioners Letter at 4).

⁹ Several issues raised by commenters were related to costs and cost recovery issues, which are outside of the scope of this proceeding to review and approve the timetable and method for solicitation and execution of contracts pursuant to Section 83 of the Green Communities Act. Therefore, these comments will not be summarized or addressed here.

argue that the RFP should not preclude consideration of proposals for contract volumes in excess of 1.5 percent of annual distribution load, with the actual amount to be procured depending upon the electric distribution company's assessment of proposals being submitted (Cape Wind Comments at 9; NECEC Comments at 5; CLF Comments at 10; Madera Comments at 2-3; APNS Comments at 3). These commenters claim that: (1) Section 83 does not prohibit consideration of amounts greater than three percent of a distribution company's load; (2) an electric distribution company's need to manage its distribution system and maintain service reliability is consistent with the goal of providing price certainty over the long term; and (3) some projects may benefit from contracts for more than 1.5 percent of an electric distribution company's load and, therefore, will be able to offer more favorable terms to purchasers (Cape Wind Comments at 9; NECEC Comments at 5; CLF Comments at 10; Madera Comments at 2-3).

By contrast, the electric distribution companies state that Section 83 defines a long-term contract as a contract with a term of ten to 15 years (Electric Distribution Companies Reply Comments at 5). The electric distribution companies contend that there is nothing in Section 83 to suggest that the Legislature intended the specified period of ten to 15 years to be a floor rather than a ceiling (id.). Accordingly, the electric distribution companies argue that the Department does not have the authority to require a longer contract term (id.). On the issue of supply, the electric distribution companies assert that the stated objective of soliciting 1.5 percent of distribution load is a guideline for this RFP, as the first solicitation pursuant to Section 83, and is not an express limit (id.).

2. Eligibility and Threshold Requirements

Several commenters expressed concern regarding the Petitioners' proposal to consider eligible all facilities that are qualified by DOER as RPS Class I Renewable Generation Units. NECEC and CLF assert that this may result in the inclusion of existing gas-fired power plants that were expanded, retrofit and repowered with renewable fuel sources, which they contend would contravene the goal of Section 83 to encourage the growth of an economically sustainable renewable power sector (NECEC Comments at 5; CLF Comments at 8-9). Conectiv and Consolidated Edison also recommend that the RFP recognize the possibility that legislative or regulatory changes could be made to the eligibility requirements prior to completion of the solicitation process (Conectiv Comments at 1-2; Consolidated Edison Comments at 1).¹⁰ The electric distribution companies respond that Section 83 does not provide for specific exceptions or inclusions of fuel sources and, therefore, the recommendations of Conectiv, CLF, and NECEC to restrict the eligibility of certain RPS Class I resources are inconsistent with Section 83 (Electric Distribution Companies Reply Comments at 5-6).

Consolidated Edison states that the RFP should not require a seller to qualify a project's RECs in states other than Massachusetts to be eligible to participate in the RFP (Consolidated

¹⁰ Conectiv states that, on April 19, 2009, the state legislature's Joint Committee on Telecommunications, Utilities and Energy submitted a report to DOER expressing concerns about recent amendments to RPS Class I eligibility (Conectiv Initial Comments at 1). Additionally, Consolidated Edison argues that if DOER enacts its pending proposal to require procurement of solar RECs ("solar carve-out"): (1) solar RECs should be an eligible product in the procurement; and (2) electric distribution companies should be required to purchase a certain amount of solar RECs through the solicitation (Consolidated Edison Comments at 1).

Edison Comments at 1). Alternatively, the electric distribution companies argue that meeting RPS qualifications in other states is a common commercial term which is likely to enhance the value of contracts for customers (Electric Distribution Companies Reply Comments at 8).

Two commenters expressed concern with the RFP's requirement that a bidder demonstrate projected energy output during summer and/or winter peak hours to show compliance with the Section 83 requirement that a project must contribute to moderating system peak load requirements.¹¹ A.D. Makepeace contends that intermittent resources will struggle to operate during every hour of each peak period and argues that bidders should instead be required to demonstrate a project's ability to moderate summer system peak load (A.D. Makepeace Comments at 8).¹² APNS states that most renewable energy sources are intermittent and argues that requiring generators to demonstrate that they provide enhanced electricity reliability within the Commonwealth is neither realistic nor practical for all technologies (APNS Comments at 3-4). The electric distribution companies contend that Section 83 requires an assessment of a project's ability to contribute to moderating system peak load requirements and makes no distinction between summer system peak load and winter system peak load (Electric Distribution Companies Reply Comments at 6). Thus, the electric distribution companies contend that it is appropriate to consider the effect of a project on both

¹¹ In the RFP, "peak hours" are the hours used in Independent System Operator-New England's Forward Capacity Market for determining qualified capacity for intermittent resources (RFP Section 2.2.3.7).

¹² A.D. Makepeace argues that summer peak hours represent the most pressing obstacle to lowering system costs while ensuring reliability because these hours have historically produced the highest cost to meeting system reliability levels (A.D. Makepeace Comments at 8).

summer and winter system peak load requirements (Electric Distribution Companies Reply Comments at 6).

Finally, the Petitioners state that they now recognize that the RFP deadlines for financing, construction, and commercial operation are too ambitious in light of the realities of lead times for renewable energy projects in the Commonwealth (*id.* at 2; DOER Reply Comments at 3). Accordingly, the Petitioners propose to extend both dates referenced in Section 2.2.3.2 by one year.¹³

3. Weighting of Price and Non-Price Factors

Several commenters are opposed to the proposed weighting of price and non-price factors (Cape Wind Comments at 4; CLF Comments at 3-7; CLF Reply Comments at 2; Madera Comments at 3; and NECEC Comments at 1). Madera argues that the RFP should also afford considerable weight to reliability and peak load moderation (Madera Comments at 3). Cape Wind and CLF argue that the proposed weighting of non-price factors at the second stage of evaluation will result in little or no consideration of the non-price factors (Cape Wind Comments at 4-5; CLF Comments at 3-8). Cape Wind acknowledges that the third stage of the evaluation will include criteria for green job creation but argues that specific weighting must be applied to such factors (Cape Wind Comments at 5). CLF argues that the proposed three-step evaluation will result in price as the paramount attribute to be considered in the ranking of projects (CLF Comments at 5).

¹³ Specifically, the deadline for closing of construction financing and commencement of construction would be changed to December 21, 2012, and the deadline for commercial operation would be changed to December 31, 2015 (Electric Distribution Companies Reply Comments at 2; DOER Reply Comments at 3).

Some commenters suggest that the Department should prescribe evaluation criteria and weighting for specific price and non-price factors (AFL-CIO Comments at 1; Cape Wind Comments at 4-6; CLF Comments at 7; NECEC Comments at 1). Cape Wind states that the bid evaluation should consider all costs and benefits over the life of the contract (Cape Wind Comments at 4). AFL-CIO, Cape Wind, and NECEC argue that substantial weight should be afforded to non-price criteria, including job creation and environmental benefits (AFL-CIO Comments at 1; Cape Wind Comments at 4; NECEC Comments at 1). Specifically, Cape Wind recommends that economic development and job creation receive at least 30 percent weighting, as it contends is done in New York (Cape Wind Comments at 5-6, citing Order Authorizing Solicitation Methods in Consideration of Bid Evaluation Criteria in Denying Request for Clarification (N.Y.P.S.C. O3-E-O188, October 19, 2006)). Cape Wind further notes that Connecticut's process for long-term contracts for renewable energy limits consideration of price factors to 55 percent (Cape Wind Comments at 4, citing Review of Long-Term Renewable Contracts—Round 3, Conn. D.P.U.C. 08-03-03 (April 8, 2009)). AFL-CIO and NECEC argue that the electric distribution companies should be required to afford 50 percent weight to economic development and job creation advantages of proposed projects (AFL-CIO Comments at 1; NECEC Comments at 1). CLF states that, if an explicit numerical balance must be set, environmental, fuel diversity, and reliability factors should account for at least 50 percent weight, with considerable weight afforded to each project's potential to generate clean electricity without increasing greenhouse gases, consistent with the Global Warming Solutions Act (CLF Comments at 7, citing St. 2008, c. 298, An Act Establishing the Global Warming Solutions Act; CLF Reply Comments at 3).

The electric distribution companies contend that the proposed weighting is reasonable because it strikes an appropriate balance between price and non-price factors, and it is consistent with industry standards (Electric Distribution Companies Reply Comments at 4). The electric distribution companies argue that costs associated with future federal regulation of carbon dioxide emissions, as well as the value of RECs and Regional Greenhouse Gas Initiative (“RGGI”) allowances, will be accounted for in the evaluation of price factors as these costs will be reflected in the bids (id. at 4-5, citing RFP Section 2.3.1). The electric distribution companies contend that Section 83 contracts will be different from those in New York because those contracts are not limited to projects located in the state of New York, whereas Section 83 contracts must be with a project located within Massachusetts (Electric Distribution Companies Reply Comments at 5). The Attorney General supports the proposed weighting because she contends that it places the appropriate emphasis on price (Attorney General Reply Comments at 2-3). The Attorney General argues that Section 83 allows the Department to consider benefits in the areas of reliability, peak load moderation, or Massachusetts employment, but it does not diminish the primacy of cost as the focus of its consideration (id. at 3).

Finally, A.D. Makepeace asserts that the Petitioners’ proposed pricing format should include a dollars per kilowatt per year (“\$/kW/year”) format as well as a dollars per megawatt-hour (“\$/MWh”) format (A.D. Makepeace Comments at 1). A.D. Makepeace contends that the exclusion of \$/kW/year bids is inconsistent with the Petitioners’ stated goal of providing a cost-effective, long-term source of renewable energy (id.). The electric distribution companies respond that bidders may employ this type of pricing as a

non-conforming bid (Electric Distribution Companies Reply Comments at 5, citing RFP Section 2.2.4.2.).

4. Final Selection Process

Several commenters discussed the need for transparency in review of contracts (APNS Comments at 3-4; Attorney General Comments at 2; Attorney General Reply Comments at 2; Cape Light Compact Comments at 4). Cape Light Compact states that the process for review of the contracts should be transparent and objective (Cape Light Compact Comments at 4). Additionally, the Cape Light Compact argues that the third stage of the bid evaluation process should be eliminated because allowing electric distribution companies complete discretion to select winning bids in this stage renders the first and second stages of the evaluation moot (id. at 4-6). The Attorney General states that, upon filing a petition for approval of a contract, each electric distribution company should be prepared to fully document its evaluation and selection process, and submit testimony, exhibits, and all back-up documentation for review by others (Attorney General Reply Comments at 2).

The electric distribution companies respond that the discretion provided for in the third stage of the bid evaluation process is necessary to allow for the reasonable exercise of business judgment and to allow the electric distribution companies to consider a number of specified factors in reviewing bids, which they contend is consistent with Section 83 (Electric Distribution Companies Reply Comments at 5). In response to the comments of Cape Light Compact regarding access to bid prices during regulatory review of the contracts, the electric distribution companies state that they have significant concerns regarding the confidentiality of price and price-related terms resulting from the competitive solicitation (id. at 7). While they

agree that confidentiality issues will need to be addressed when the individual contracts are reviewed by the Department, the electric distribution companies argue that such issues are not relevant at this stage in the proceeding (id.).

C. Solicitation Timetable

Commenters identified potential problems with the 185-day timetable. Observing that the timetable does not explicitly address the 45-day review period afforded her by Section 83 to prepare a recommendation, the Attorney General recommends that she receive the relevant materials and information before a contract is filed with the Department (Attorney General Comments at 2-3). CLF states that the proposed RFP sets out an 185-day timetable that, after factoring in the Attorney General's 45-day review and time for the Department's review of final contracts, would take at least three-quarters of a year and potentially much longer (CLF Comments at 12). NECEC claims that the length of this timetable will discourage some bidders from entering the process and increase costs for those who participate (NECEC Comments at 6). Ansar contends that the 185-day timetable leaves relatively little margin for unforeseen delays and events, which could delay the start of project construction (Ansar Comments at 2). For these reasons, CLF, NECEC, and Ansar recommend that the timetable be as short as possible, while allowing sufficient time to process and compare the proposals (CLF Comments at 12; NECEC Comments at 2, 6; Ansar Comments at 2). In addition, instead of three evaluation stages, NECEC suggests a single step to identify a short-list of bidders, with the criteria for evaluating price proposals identified in advance (NECEC Comments at 6).

Commenters also identified potential problems with certain specific deadlines in the timetable. Consolidated Edison notes that the deadline to submit questions after the bidder's conference is only three days, which it contends is too short and should be extended to at least one week before final bids are due (Consolidated Edison Comments at 2).¹⁴ Consolidated Edison also asserts that the 30-day or longer time period between completion of the PPA execution and submittal of the PPA to the Department for review and approval is excessive and should be reduced (*id.*). A.D. Makepeace alleges that a 35-day period between issuance of the RFP and the deadline to submit proposals is too short to prepare a detailed bid (A.D. Makepeace Comments at 7). A.D. Makepeace argues that the limited response time will reflect greater uncertainty in the estimate of risks and costs in the initial stages of a project (*id.*). To produce higher quality, realistic bids, A.D. Makepeace recommends that the schedule provide an additional 30 to 60 days for the preparation of bids (*id.* at 7-8).

The electric distribution companies acknowledge the Attorney General's interest in having sufficient time for review and input given the 45-day period specified for this purpose in Section 83 (Electric Distribution Companies Reply Comments at 4). The electric distribution companies state that they will endeavor to address the Attorney General's concerns in a manner consistent with their individual business requirements (*id.*).

In response to the comments alleging problems with the 185-day timetable, the electric distribution companies state that the proposed schedule represents the Petitioners' best efforts

¹⁴ Consolidated Edison also recommends that a process for answering questions be established that would include acknowledgement of the receipt of a question, assignment of a tracking number, and a time for response (Consolidated Edison Comments at 2).

to meet a number of goals, including: (1) providing a reasonable opportunity for stakeholders to review and comment on the RFP; (2) providing a reasonable opportunity for the Department to review and render a decision on the proposed contracts; and (3) the need for this process to move as expeditiously as possible (id. at 3-4). The electric distribution companies stress that any modifications to the schedule could delay the process and jeopardize a renewable energy project developer's ability to secure federal financial incentives (id. at 4). In response to the specific concern about the deadline to submit questions after the bidders' conference, the electric distribution companies argue that three business days is a reasonable period of time (id.).

NECEC argues that the requirement to provide firm pricing for 120 days is too long for smaller developers who do not have access to long-term, multi-project equipment supply contracts or the ability to shift equipment and other technical resources amongst various development projects (NECEC Comments at 6). Even for larger developers who can hold prices for comparatively longer periods, NECEC contends that it is unclear whether and how bidders will be allowed to adjust their prices once the 120 day time period has elapsed (id.). Consolidated Edison contends that the language in Section 2.2.4.1 makes the prices, terms and conditions of the proposal valid for an indefinite period of time and suggests that, if an electric distribution company needs an extension beyond 120 days to execute a contract with a supplier, then the extension must be negotiated on mutually agreeable terms (Consolidated Edison Comments at 1). In response to Consolidated Edison's concerns, the electric distribution companies state that the intent of such language was to ensure that the price is firm for 120 days (Electric Distribution Companies Reply Comments at 9).

D. Regulatory Approval

Section 2.6 of the RFP addresses the issue of regulatory approval and the associated schedule. While CED, CLF, and Conectiv support the provision in the RFP that provides rights of termination if the Department does not approve the PPA as filed, they argue that these rights should apply to both the seller and the electric distribution companies, without liability (Consolidated Edison Comments at 2; Conectiv Comments at 4-5; CLF Comments at 12). Consolidated Edison asserts that: (1) both the seller and the electric distribution companies should be allowed to renegotiate, for a specified number of days, if a conditional approval is received from the Department; (2) there should be explicit identification of the time when or conditions under which the PPA becomes binding upon the electric distribution company; and (3) sellers should have the right to adjust milestones and pricing, in accordance with a formula, if regulatory approval is not received within a specified period of time (Consolidated Edison Comments at 2). Conectiv asserts that, if the Department's approval does not authorize the electric distribution company to recover its costs, then the electric distribution company should be able to terminate the PPA (Conectiv Comments at 5).

E. Model Power Purchase Agreement

Cape Light Compact, NECEC, the Attorney General, CLF and A.D. Makepeace request that the Department review and approve a Model PPA (Cape Light Compact Comments at 6-7; NECEC Comments at 2; Attorney General Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2; A.D. Makepeace Comments at 9). Cape Light, NECEC, the Attorney General, and CLF argue that a full evaluation of the proposed RFP is not possible without the terms of a Model PPA (Cape Light Compact

Comments at 6-7; NECEC Comments at 2; Attorney General Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2). These commenters state that lack of a Model PPA will: (1) make it much more difficult to address issues after contracts have been executed; and (2) delay the review and approval of the contracts by the Department (Cape Light Compact Comments at 6-7; NECEC Initial Comments at 2; Attorney General Initial Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2). Cape Light Compact, NECEC, the Attorney General, and CLF urge the Department to review and approve a Model PPA in order to: (1) promote transparency, fairness and efficiency; (2) ensure commercially reasonable terms; (3) establish a framework for the review of all long-term contracts that will come before the Department pursuant to Section 83; and (4) ensure, in advance, that contract terms will be consistent with Section 83 (Cape Light Compact Comments at 6-7; NECEC Comments at 2; Attorney General Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2). To avoid any delay in the review and approval of the RFP, the Attorney General and NECEC recommend that the electric distribution companies file a Model PPA for review now and leave open for subsequent determination whether to investigate the Model PPA further (NECEC Comments at 3; Attorney General Reply Comments at 2).

The Petitioners state that they have no objection to filing a Model PPA with the Department for informational purposes when a final document is available, however, they state that the Model PPA is still being developed (Electric Distribution Companies Reply Comments

at 2; DOER Reply Comments at 3-4).¹⁵ The Petitioners contend that approval of a Model PPA by the Department is not necessary for the following reasons: (1) Section 83 does not require the Department approval of a Model PPA; (2) review and approval of a Model PPA would cause substantial undue delay in the start of the solicitation process; and (3) interested parties will have ample opportunity to comment on a specific PPA at such time as an electric distribution company seeks Department approval of executed contracts containing actual terms and conditions (Electric Distribution Companies Reply Comments at 2-3; DOER Reply Comments at 3-4).

IV. ANALYSIS AND FINDINGS

As described above, Section 83 of the Green Communities Act requires electric distribution companies to twice in a five-year period beginning July 1, 2009, solicit proposals for long-term contracts from renewable energy developers. Electric distribution companies may also voluntarily solicit additional proposals over the five-year period. Each electric distribution company shall select a reasonable method of soliciting proposals from renewable energy developers, which may include public solicitations, individual negotiations or other methods. St. 2008, c. 169, § 83. The electric distribution companies must consult with DOER in the development of the solicitation process. St. 2008, c. 169, § 83; 220 C.M.R. § 17.04. The Department must review and approve the timetable and method for

¹⁵ In a subsequent letter, DOER states that the Petitioners have held a number of additional conference calls and meetings to address issues pertaining to the Model PPA (DOER Letter of November 23, 2009). DOER states that, while outstanding issues remain, it is hopeful that the Petitioners will resolve certain issues within a week or two (DOER Letter of November 23, 2009).

soliciting and executing long-term contracts, as well as any executed contracts that result.

St. 2008, c. 169, § 83.

In promulgating regulations regarding long-term contracts for renewable energy pursuant to Section 83, 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 entering into these contracts; and (2) retaining sufficient flexibility to allow for a variety of methods for soliciting proposals and entering into contracts for diverse renewable resources. Long-Term Contracts for Renewable Energy, D.P.U. 08-88, at 10 (2009) (establishing 220 C.M.R. § 17.00 et seq.). The Department stated that our objective was to avoid predetermining or limiting the consideration of proposed contracts or evaluation models in advance. Id. at 10-11. These same considerations guide our review of the Petitioners' proposed timetable and method for soliciting and executing long-term contracts for renewable energy.

The Department finds that the timetable and methods of solicitation and execution of contracts included in the proposed RFP are consistent with the requirements of Section 83 and 220 C.M.R. § 17.00 et seq. (see RFP Section 2.2 et seq.). Specifically, as allowed by Section 83, the Petitioners propose to solicit long-term contracts with a term of between ten and 15 years (id. § 2.2.2.4). Section 83 also states that each electric distribution company may consider multiple contracting methods, including long-term contracts for RECs, for energy, or a combination of RECs and energy, and the Petitioners' proposed RFP defines eligible products as electric energy and/or RECs (id. § 2.2.2.3). Section 83 requires that renewable energy generating sources have a commercial operation date on or after January 1, 2008, and

be qualified to sell RECs under the Commonwealth's RPS program, and the Petitioners' proposed RFP implements these requirements as eligibility criteria (id. § 2.2.2.2).

Section 83 requires 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 in the Commonwealth, where feasible. These criteria are included in the first, second, and third evaluation stages described in the Petitioners' proposed RFP (id. §§ 2.3, 2.4). The Petitioners' stated intent is to solicit energy and RECs for approximately 1.5 percent of the electric distribution companies' annual load (id. § 2.2.2.5), which is consistent with Section 83, which states that an electric distribution company is not obligated to enter into long-term contracts that would, in the aggregate, exceed three per cent of its total load. Because the Petitioners have implemented the requirements of Section 83 in their proposed RFP, we find that the Petitioners' proposed RFP provides a reasonable method of soliciting and executing long-term contracts for renewable energy.

Several commenters raised concerns about the proposed solicitation timetable of 185 days; some requesting that additional time be allowed for certain activities, and others requesting that the timetable be shortened. The electric distribution companies have met their obligation under Section 83 to consult with DOER with respect to the timetable and methods of soliciting and executing long-term contracts for renewable energy, and DOER's full support of the proposal is evidenced by its joint sponsorship of the petition. Because of the consultative role afforded to DOER by Section 83, the Department finds it appropriate to give considerable

weight to DOER's judgment and experience with respect to the proposed timetable of 185 days for soliciting and executing long-term contracts for renewable energy. However, while the proposed RFP describes the process to be used to initiate the solicitation of long-term contracts for renewable energy, based upon the Petitioners' experience and the input of stakeholders, additional or different contract terms may be subsequently developed. For example, as a result of the comments received in the course of this proceeding, the Petitioners propose to modify certain financing, construction, and commercial operation deadlines for bidders as outlined in the RFP.¹⁶

Commenters also raised a number of substantive issues regarding the specifics of a company's bid evaluation process, negotiations with respect to the terms and conditions of resulting PPAs, and the final details contained in the PPAs that will be submitted for Department review and approval. As an initial matter, we stated in our rulemaking on long-term contracts for renewable energy that we wish to avoid predetermining or limiting the consideration of proposed contracts or evaluation models in advance. D.P.U. 08-88-A at 10. To do so could constrain the flexibility of buyers and sellers in PPA negotiations to seek the

¹⁶ In their comments, the Petitioners state that they now recognize that the RFP deadlines for financing, construction, and commercial operation are too ambitious in light of the realities of lead times for renewable energy projects in the Commonwealth (Electric Distribution Companies Reply Comments at 2; DOER Reply Comments at 3). Accordingly, the Petitioners propose to extend both dates referenced in Section 2.2.3.2 by one year (Electric Distribution Companies Reply Comments at 2; DOER Reply Comments at 3). Specifically, the deadline for closing of construction financing and commencement of construction would be changed to December 21, 2012, and the deadline for commercial operation would be changed to December 31, 2015 (Electric Distribution Companies Reply Comments at 2; DOER Reply Comments at 3). The Department accepts these proposed modified deadlines for financing, construction, and commercial operation as reasonable.

best sharing of risks and benefits under the contracts. Further, the Department finds that Parties will have the opportunity to raise all relevant substantive issues with respect to the evaluation of proposed projects, to all phases of contract development and negotiation, and to the specific terms and conditions contained in the resulting PPA(s) in the context of the adjudication before the Department of individual long-term contracts for renewable energy. See D.P.U. 08-88-A at 10. We find that the appropriate time to address many of these substantive issues is when each electric distribution company submits a proposed contract for Department approval. See id. at 10-11. 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, where the Department will weigh evidence and argument in order to make fact-based decisions on a case-by-case basis. See id. at 10-11.

Several of the concerns noted by commenters raise questions about companies' negotiations with bidders, and the inclusion of terms and conditions in a Model PPA. They suggest that the Department review the Model PPA and limit or control the final phase of contract negotiation (Cape Light Compact Comments at 6-7; NECEC Comments at 2; Attorney General Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2; A.D. Makepeace Comments at 9). The Department is hesitant to limit the flexibility of this phase of the process in our review of the timetables and methods for solicitation. We expect that the negotiation stage of project evaluation and contract development will result in substantive changes to contract terms and conditions that are needed to establish the appropriate balance of risks and benefits under the long-term contract. Consequently, we

conclude it is not necessary at this point in time to review model terms and conditions in a Model PPA, and instead will reserve our full review of all details of the executed contracts (and the negotiation process) at the time they are proposed to the Department for approval.

Finally, we note that Section 83 of the Green Communities Act provides wide flexibility for the method for soliciting renewable energy, including through RFP solicitations, individual negotiations, and other reasonable methods, in order to allow for new renewable project financing and achieve the commercial development of renewable resources in Massachusetts. It is our expectation that any method an electric distribution company uses to solicit and enter into long-term contracts with renewable energy developers will be developed and implemented in a manner that is consistent with the intent and language of the Green Communities Act, and we will consider this at the time we review any executed contracts proposed to the Department for approval. The Department emphasizes that we, and not the electric distribution companies, are the final arbiters of whether such proposals are reasonable and whether the resulting long-term contracts achieve the objectives of the Green Communities Act.

Based on the above, the Department approves the Petitioners' proposed timetable and methods of solicitation and execution of long-term contracts for renewable energy contained in the RFP as consistent with the requirements of Section 83 and 220 C.M.R. § 17.00 et seq.

V. ORDER

Accordingly, after due notice and comment, it is

ORDERED: That the joint petition of Fitchburg Gas and Electric Light Company d/b/a Unital, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, Western Massachusetts Electric Company, and the Department of Energy Resources for approval of a proposed timetable and method of soliciting and executing long-term contracts for renewable energy is APPROVED; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company d/b/a Unital, 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,

/s/

Paul J. Hibbard, Chairman

/s/

Tim Woolf, Commissioner

/s/

Jolette A. Westbrook, 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.