220 CMR 23.00: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 23.00: COMPETITIVELY SOLICITED LONG-TERM CONTRACTS FOR OFFSHORE WIND ENERGY

Section

23.01 Purpose and Scope

(1) Purpose. 220 CMR 23.00 establishes regulations for electric Distribution Companies to enter into Long-term Contracts with Offshore Wind Energy Developers to facilitate the financing of Offshore Wind Energy Generation.

(2) Scope.

(a) 220 CMR 23.00 applies to electric Distribution Companies within the Commonwealth of Massachusetts.

(b) 220 CMR 23.00 applies to Long-term Contracts between Offshore Wind Energy Developers and electric Distribution Companies, and the resources proposed under such contracts.

23.02 Definitions

For the purposes of 220 CMR 23.00, the terms set forth in 220 CMR 23.02 are defined as follows, unless the context otherwise requires.

Affiliated Company means affiliated company as defined in M.G.L. c. 164, § 85.

Customer means a recipient of distribution service provided by a Distribution Company.

Department means the Department of Public Utilities.

Distribution Company means electric Distribution Company, as defined in M.G.L. c. 164, § 1.

DOER means the Department of Energy Resources.

Long-term Contract means a contract for a period of 15 to 20 years for Offshore Wind Energy Generation pursuant to 220 CMR 23.00.

New Class I Renewable Portfolio Standard Eligible Resources means Class I renewable energy generating sources as defined in M.G.L. c. 25A, § 11F that have not commenced commercial operation prior to the date of execution of a Long-term Contract or that represent the net increase from incremental new generating capacity at an existing facility after the date of execution of a Long-term Contract.

Offshore Wind Developer means a provider of electricity developed from an offshore wind energy generation project that is located on the Outer Continental Shelf and for which no turbine is located within ten miles of any inhabited area.

Offshore Wind Energy Generation means offshore electric generating resources derived from wind that:

(a) are Class I renewable energy generating sources as defined in M.G.L. c. 25A, § 11F;

(b) have a commercial operations date on or after January 1, 2018, which has been verified by the DOER; and

(c) operate in a designated wind energy area for which an initial federal lease was issued on a competitive basis after January 1, 2012.

23.03 General Terms and Conditions

(1) Not later than June 30, 2017, all Distribution Companies shall jointly and competitively solicit proposals for Offshore Wind Energy Generation; and, provided that reasonable proposals have been received, shall enter into cost-effective Long-term Contracts.

(2) Long-term Contracts executed pursuant to 220 CMR 23.00 by the Distribution Companies shall be filed with and approved by the Department before becoming effective, and shall be apportioned among the Distribution Companies.

(3) A Long-term Contract for Offshore Wind Energy Generation must meet the criteria established by 220 CMR 23.00, and other applicable Department precedent.

23.04 Methods for Soliciting and Entering into Long-term Contracts

(1) In developing the provisions of Long-term Contracts, Distribution Companies shall consider Long-term Contracts for renewable energy certificates (RECs) for energy or for a combination of RECs and energy, if applicable.

(2) The Distribution Companies, in coordination with DOER, shall consult with the Attorney General regarding the choice of solicitation methods. The Distribution Companies and DOER shall jointly propose a timetable and method for solicitations of Long-term Contracts using a competitive solicitation process. Prior to initiating a solicitation, the Distribution Companies' timetable and methods for solicitation and contracting shall be subject to review and approval by the Department.

(3) The Distribution Companies shall, in any filing with the Department regarding the timetable and methods for soliciting and contracting consented to by DOER, describe the proposed methods reviewed and selected.

(4) A solicitation may be coordinated and issued jointly with other New England states or entities designated by those states.

(5) The Distribution Companies may conduct one or more competitive solicitations through a staggered procurement schedule developed by the Distribution Companies and DOER, provided that the schedule shall ensure the Distribution Companies enter into cost-effective Long-term Contracts for offshore wind energy generation equal to 1,600 megawatts of aggregate nameplate capacity not later than June 30, 2027, and provided further that individual solicitations shall seek proposals for no less than 400 megawatts of aggregate nameplate capacity of Offshore Wind Energy Generation resources. A staggered procurement schedule developed by DOER, if applicable, shall specify that a subsequent solicitation shall occur within 24 months of a previous solicitation. The Department will not approve a Long-term Contract that results from a subsequent solicitation and procurement period if the levelized price per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized price per megawatt hour plus transmission costs that resulted from the previous procurement.

(6) DOER and the Attorney General shall jointly select, and DOER shall contract with, an independent evaluator to monitor and report on the solicitation and bid selection process in order to assist DOER in determining whether a proposal is reasonable and to assist the Department in its consideration of Long-term Contracts filed for approval.

(7) A Distribution Company may, subject to Department approval, decline to pursue Long-term Contract proposals having terms and conditions that the Distribution Company determines would place an unreasonable burden on its balance sheet, provided that the Distribution Company takes all reasonable actions to structure the Long-term Contracts, pricing, or administration of the products purchased to prevent or mitigate an impact on the balance sheet or income statement of the Distribution Company or its parent company; and provided further that such mitigation shall not increase costs to ratepayers.

(8) To ensure an open, fair and transparent solicitation and bid selection process that is not unduly influenced by an affiliated company, the independent evaluator shall:

(a) Have access to information and data related to the competitive solicitation and bid selection process, provided that the independent evaluator ensures that proprietary information remains confidential;

(b) Issue a report to the Department analyzing the timetable and method of solicitation, and the solicitation process implemented by the Distribution Companies and DOER under 220 CMR 23.04, and include recommendations, if any, for improving the process; and

(c) Upon the Department's review of a proposed Long-term Contract, file a report with the Department that summarizes and analyzes the solicitation and the bid selection process, and provides the independent evaluator's assessment of whether all bids were evaluated in a fair and objective manner.

(9) Proposals received pursuant to a solicitation shall be subject to review by DOER. If DOER, in consultation with the Distribution Companies and the independent evaluator, determines that reasonable proposals were not received pursuant to a solicitation, DOER may terminate the solicitation, and may require additional solicitations.

(10) DOER shall give preference to proposals that demonstrate a benefit to low-income ratepayers in Massachusetts, without adding cost to the project.

(11) If the Distribution Companies are unable to agree on a winning bid following a solicitation, the matter shall be submitted to DOER, which shall, in consultation with the independent evaluator, issue a final, binding determination of the winning bid, provided that the final contract shall be subject to review by the Department, per 220 CMR 23.00 and Department precedent.

(12) If a Distribution Company deems all proposals to be unreasonable, the Distribution Company shall, within 20 days of the date of its decision, submit a filing to the Department. The filing shall include full and complete documentation supporting the Distribution Company's decision to decline the proposals. The Department will approve or reject the Distribution Company's decision within four months of the date of filing, and may order the Distribution Company to reconsider any proposal.

23.05 <u>General Criteria for Long-term Contracts and Offshore Wind Energy Generation Sources</u>

(1) Long-term Contracts must be with offshore wind energy generating resources that:

(a) Are determined by the Department to:

1. Provide enhanced electricity reliability;
2. Contribute to reducing winter electricity price spikes;
3. Be cost effective to Massachusetts electric ratepayers over the term of the contract, taking into consideration potential economic and environmental benefits to the ratepayers;
4. Avoid line loss and mitigate transmission costs to the extent possible and ensure that transmission cost overruns, if any, are not borne by ratepayers;
5. Adequately demonstrate project viability in a commercially reasonable timeframe;
6. Allow offshore wind energy generation resources to be paired with energy storage systems;
7. Mitigate any environmental impacts, where possible; and
8. Create and foster employment and economic development in Massachusetts, where feasible.

(b) Are a cost-effective mechanism for procuring reliable renewable energy on a long-term basis taking into account the factors outlined in 220 CMR 23.00.

(2) In evaluating Long-term Contracts for Offshore Wind Energy Generation, the Department will consider the recommendations of the Attorney General, which shall be submitted to the Department within 45 days of the filing of Long-term Contracts.

(3) The Department shall consider the findings of the independent evaluator and may adopt recommendations made by the independent evaluator as a condition for Long-term Contract approval. If the independent evaluator concludes in the findings that the solicitation and bid selection of a Long-term Contract were not fair and objective and that the process was substantially prejudiced as a result, the Department shall reject the winning bid proposal.

(4) The market products of Offshore Wind Energy Generation Sources procured through the Long-term Contract(s) shall be apportioned among the Distribution Companies. The apportioned share shall be calculated and based upon the total energy demand from all Customers in each service territory of the Distribution Companies.

(5) Proposals for Long-term Contracts shall include associated transmission costs; provided that, to the extent that transmission costs are included in a bid, the Department may authorize or require 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 Department finds such recovery is in the public interest.

23.06 Use of Renewable Energy and RECs Obtained through Long-term Contracts

(1) After purchasing energy and RECs, a Distribution Company may:

(a) Sell the energy to its basic service Customers, and retain RECs for the purpose of meeting the applicable annual RPS requirements; or

(b) Sell the energy into the wholesale electricity spot market, and sell the purchased RECs to minimize costs to ratepayers, provided that DOER has not notified the Distribution Company that the RECs should be retained to facilitate reaching emission reduction targets.

(2) If the Distribution Company sells the energy and RECs as provided in 220 CMR 23.06(1), it shall:

(a) Calculate the net cost of payments made under the Long-term Contracts against the proceeds obtained from the sale of energy and RECs;

(b) Credit or charge all Customers the difference between the contract payments and proceeds through a uniform, fully reconciling annual factor in distribution rates, subject to review and approval by the Department; and

(c) Design a reconciliation process that allows the Distribution Company to recover all costs incurred under such contracts, subject to review and approval by the Department.

23.07 Remuneration to Distribution Companies

(1) A Distribution Company may receive an annual remuneration up to 2.75% of the annual payments under a Long-term Contract. The purpose of such remuneration shall be to compensate the Distribution Company for accepting the financial obligation of the Long-term Contract.

(2) 220 CMR 23.07 shall be acted upon by the Department at the time of contract approval.

23.08 Long-term Contracts and RPS Requirements

(1) 220 CMR 23.00 will not limit consideration of other Short- or Long-term Contracts for power and/or RECs submitted by a Distribution Company for review and approval by the Department.

(2) If a Distribution Company has entered into Long-term Contracts consistent with 220 CMR 23.00, it shall not be required by regulation or order or other agreement to enter into additional Long-term Contracts under 220 CMR 23.00; provided, however, Distribution Companies may voluntarily execute additional Long-term Contracts, subject to the approval of the Department.

23.09 Exceptions

The Department may grant an exception from any provision of 220 CMR 23.00 for good cause shown.

REGULATORY AUTHORITY

220 CMR 23.00: St. 2016, c. 188, § 12.