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The Department of Public Utilities' Approval of Commonwealth Wind PPA

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The Department of Public Utilities (DPU) approved the power purchase agreement (PPA) between Commonwealth Wind and the Massachusetts electric distribution companies (Electric Companies) despite objections from Commonwealth Wind that the project will not be financeable under the terms of the PPA. The PPA is an agreement between Commonwealth Wind and the Electric Companies for the Electric Companies to purchase the electricity produced from Commonwealth Wind's proposed offshore wind project to be built off the coast of Massachusetts. Commonwealth Wind states that its offshore wind project is no longer financeable due to a combination of economic factors, including sharp inflation and the Russian war in Ukraine.

The Electric Companies are required to solicit proposals for offshore wind energy generation and enter PPAs, which then go to the DPU for review and approval. The Electric Companies have solicited two prior solicitations of PPAs, all of which were approved by the DPU. During this third solicitation process, the only bidders were Commonwealth Wind and Mayflower Wind, both of which received winning bids. Other offshore wind developers were eligible to submit bids, but declined to do so. PPAs with Commonwealth Wind and Mayflower Wind were negotiated and agreed to with the Electric Companies, then submitted to the DPU for approval in mid-2022. The PPA requires Commonwealth Wind to secure financing for its offshore wind project.

In late 2022, however, Commonwealth Wind signaled that its offshore wind project could not be financed and built under the terms of the PPA. It stated that it is far more expensive to construct the project than could have been foreseen earlier in the year. Commonwealth Wind cited to a variety of factors, including the prolonged war in Ukraine, inflation, increased interest rates and commodity prices, particularly for wind turbines. It requested that the DPU dismiss the proceeding and not approve the PPA. The Electric Companies countered saying that doing so would undermine the development of offshore wind. Mayflower Wind, the other bidder in this round, acknowledged these market effects, but remained committed to its project.



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The Department approved the PPA, finding its terms reasonable. The Department noted that the PPA is not required to guarantee financing for Commonwealth Wind's project. It also acknowledged the importance of protecting ratepayer interests. The Department was concerned that allowing Commonwealth Wind out of the PPA would deprive ratepayers the benefits of the PPA, and also set the precedent that developers may back out of their PPA late in the process to get more advantageous terms.

The effect of this determination remains to be seen. Commonwealth Wind's window to appeal is until January 19, 2023. If the PPA becomes effective and Commonwealth Wind is not able to secure financing, it may be considered in default of the PPA, and the Electric Companies could then invoke default procedures against Commonwealth Wind, which includes an undisclosed amount of damages as provided in the terms of the PPA.

Considering Governor Healey's pledge to increase the amount of offshore wind to Massachusetts, the Electric Companies and the Commonwealth should review current experiences and seek to ensure that their next steps encourage developers to submit bids in future solicitations. Otherwise, a higher demand for offshore wind with fewer developers willing to supply could lead to increased costs for the ratepayers footing the bill.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Emmett Lyne and Joseph Dorfler.

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