

The Commonwealth of Massachusetts



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— ATTACHMENT E —

July 31, 2019.

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Sections 69, 103, 104 and 108 of House Bill No. 4000, “An Act Making Appropriations for the Fiscal Year 2020 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

Sections 69, 103, 104 and 108 modify the conditions by which the Department of Public Utilities (the “Department”) may approve certain long-term contracts resulting from solicitations for proposals for offshore wind energy generation conducted under Section 83C of Chapter 169 of the Acts of 2008, the Green Communities Act (“Section 83C”), as inserted by Section 12 of Chapter 188 of the Acts of 2016. Section 83C requires that, following an initial procurement for offshore wind energy generation by no later than June 30, 2017, the Department shall not approve any long-term contract resulting from one or more subsequent solicitations if the levelized price per megawatt hour, plus associated transmission costs, exceed the comparable amounts resulting from the previous procurement. Section 69 of House Bill No. 4000 modifies this provision to require the Department to adjust the price of the subsequent solicitation for the availability of federal tax credits, inflation and incentives, and to exclude mitigation efforts designed to support employment and economic development in the Commonwealth. Section 103 in turn, appears intended to clarify that this modification applies to the currently pending solicitation issued in calendar year 2019, but erroneously

characterizes it as being “subject” to the Department’s review as of July 1, 2019. Sections 104 and 108 operate to provide a sunset date for Section 69.

I support the underlying goals of Section 69, especially the consideration of the decline of federal tax credits in approving a long-term contract resulting from the current offshore wind procurement. However, the timing of this amendment at this late stage will most certainly disrupt the procurement schedule and jeopardize the Commonwealth’s ability to take advantage of any cost savings from federal tax incentives. Under the current schedule, the bids for the current solicitation are due on August 9, 2019. In the event of a change of law occurring after the Department’s approval of the solicitation, the distribution companies and the Department of Energy Resources, in consultation with the Independent Evaluator, are obligated to return to the Department to either file a conforming report or seek amendments to the solicitation if needed. Because Section 69, as drafted, will require amendments to specify precisely how the declines in federal tax credits since 2017 would affect pricing and how “mitigation efforts” to support employment and economic development should be defined, it will most likely result in a termination of the current solicitation and reissuance at an unspecified later date, following a full adjudication by the Department. This delay, together with the time needed for the distribution companies to evaluate and select the winning bidder and to negotiate and execute a long-term contract, may eliminate the ability of the winning bidder to make the investments necessary by the end of the calendar year to take advantage of the 2019 federal tax credit (this is the last year in which the credit is available). It also creates significant uncertainty for all potential bidders to the current solicitation.

To appropriately take into account declines in federal tax incentives since 2017 without jeopardizing the current schedule for selecting a second offshore wind proposal, I recommend that the price cap required by Section 83C be removed altogether for this procurement. This modification would allow the current solicitation to be completed in this calendar year without a complex amendment requiring adjudication before the Department. Further, the current solicitation already contains requirements for cost effectiveness and economic development measures, which I believe sufficiently address our shared goals of maximizing ratepayer savings and promoting employment and economic growth in the Commonwealth.

Because I agree that the price cap set forth in Section 83C should apply to future solicitations, I am returning Sections 104 and 108 for amendment to implement an appropriate sunset provision.

For the reasons stated above, I recommend that Section 69 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 69. Subsection (b) of section 83C of chapter 169 of the acts of 2008, as inserted by section 12 of chapter 188 of the acts of 2016, is hereby amended by striking out, in the fifth sentence, the words, “provided, however, that the department of public utilities shall 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”.

SECTION 69A. Subsection (b) of section 83C of chapter 169 of the acts of 2008, as inserted by section 12 of chapter 188 of the acts of 2016, is hereby amended by adding, in the fifth sentence, the words, “provided, however, that the department of public utilities shall 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”.

I also recommend that Section 103 and Section 104 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 103. Section 69 shall apply to any long-term contract that results from a solicitation issued in calendar year 2019.

SECTION 104. Section 69 is hereby repealed.

I further recommend that Section 108 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 108. Sections 69A and 104 shall take effect on January 1, 2021.

Respectfully submitted,

CHARLES D. BAKER,
Governor.