



New Jersey Board of Public Utilities

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Re: Draft Guidance Document Comments

Atlantic Shores Offshore Wind, LLC (Atlantic Shores) congratulates you on the recent issuance of the Draft Guidance Document for New Jersey's Second Offshore Wind Solicitation (Second Solicitation), its ambitious 1,200 to 2,400 MW procurement target and the quality of its contents.

Our team is particularly satisfied with your consideration of our previous feedback and resulting improvements on the Round 1 Solicitation, and we commend the NJBPU for your thoughtful Stakeholder outreach process. Building on this process, and per the NJBPU's offer to provide written comments by August 19, 2020, we have put together the following comments. We hope they will provide valuable insight to improve the quality of submissions.

- **Timeline:** We appreciate the opportunity to comment on a draft version of the Solicitation before the final Solicitation is issued in September. We suggest the NJBPU consider an extension of the OREC Application Submission Deadline if any significant changes are included between the draft and the final document in order to ensure these changes may be incorporated by Applicants in a reasonable timeframe.
- **Section 1:** Section 1 of the draft Solicitation Guidance Document refers to a number of factors that could influence the timing and quantity of OREC awards, which could differ from the schedule set forth in Table 1. One factor notes the possibility of awarding ORECs between 1,200 and 2,400 MW for this solicitation. We suggest that the NJBPU clarify the circumstances where these factors might be applied. Clarification allows Applicants the ability to put forth their strongest effort in achieving a maximum award in their Application by providing a better sense of what the ultimate award might be for this solicitation.
- **Section 1.1:** N.J.A.C. 14:8-6.6(f) of the OREC Funding Mechanism, which is referred to in Section 1.1 and Attachment 5 of the Solicitation Guidance Document, provides for a three-month holdback of PJM revenues. In the event of an EDC failure to pay, the three-month holdback gives security for Project finance investors to make full and timely payment of ORECs up to the OREC allocation pursuant to the Board Order. The NJBPU should consider how to increase the amount of the holdback (absent a lengthy regulatory amendment process) in the event the EDC failure to pay is of such a

magnitude that a three-month holdback is insufficient to cover scheduled OREC revenue (ex: petition to waive the applicable regulation) to help reduce uncertainty on the offtake structure and seek better financing terms, which should ultimately benefit the ratepayer.

- Section 1.2:** Section 1.2 states that “The Board reserves the right to select less than 1,200 MW or more than 2,400 MW, if circumstances warrant.” Footnote 20 states that “Projects greater in size than 2,400 MW will be accepted if the addition of the final turbine results in a total nameplate capacity greater than 2,400 MW.” The Final Solicitation Document should confirm if there are other circumstances, beyond where the final turbine results in a total nameplate capacity of greater than 2,400 MW, where the Board would consider a project in excess of 2,400 MW.
- Section 1.2:** NJBPU’s approach to phased commercial operation provides for a realistic scheduling of construction activities. We suggest that the NJBPU clarify what constitutes Commercial Operation, i.e. what will trigger the first OREC payment of a given project phase. For example, will COD be 'approved' and OREC payment start as early as testing / commissioning of any turbine, or only once a certain number of MWs (phase 1 total MWs) are fully operational? In the latter case, it would be helpful to understand whether the NJBPU expects any market revenues associated with production during testing / commissioning be returned to the ratepayer.
- Section 2.3:** The Solicitation Guidance Document should specify the format in which the Project Narrative must be uploaded (i.e., discrete uploads section by section, or a single file with the entire narrative) and the largest file size that can be accommodated for upload.
- Section 2.4:** Following up in writing on a question asked by our Development Manager Doug Copeland in the August 5 Stakeholder meeting, we would appreciate if NJBPU could provide clarity on (1) which State agencies or representatives Applicants are allowed to reach out to between now and the close of the Solicitation period (we note that NJBPU encourages applicants to provide Rate Counsel and NJDEP regular updates); (2) whether the close of the Solicitation period is the Submission deadline or the OREC Order issuance; and (3) whether virtual outreach is acceptable where our COVID-19 Health & Safety Policy does not allow us to participate in in-person meetings.
- Section 2.5:** As the NJBPU uses an irrevocable Board Order approach for the OREC award, as opposed to an approach utilized by other states with a negotiated power purchase agreement, we suggest providing successful Applicants with a draft Board Order to review and provide comments on before a final Board Order is issued. As there can be no draft order prior to award in a competitive solicitation, we recommend the process be broken up into a two-step Board Order (initial Board Order regarding award and reasoning underlying the decision for award, and a second Board Order, whereby a draft is provided to the successful Applicant, dealing with parameters of the Award – this could be more efficient in the long run as it should minimize the successful Applicant from seeking technical or minor adjustments to the Order). Moreover, the two-step

process allows for separate Board Orders per successful Applicant, if applicable, on the second Board Order – see additional Section 2.5 comment below.

- **Section 2.5:** In addition to the previous question, due to the OREC Board Order structure differing from the standard negotiated power purchase agreement, it would be beneficial for Applicants to understand how the NJBPU will govern right of default. Clarity on different types of default, cure periods and remedies, as well as any mechanism short of entitlement termination for a successful Applicant to work through a Board Order default would help reduce uncertainty on the offtake structure and seek better financing terms, which should ultimately benefit the ratepayer.
- **Section 2.5:** Section 2.5 of the Solicitation Guidance Document refers to a final Board Order. Can the NJBPU please clarify if more than one Applicant receives an award, will there be separate Board Orders? This is relevant because Section 3c of OWEDA requires any Board order modification to be agreed to by all parties, which would be difficult across successful Applicants. In addition, investors in projects typically require approvals to be specific to the deal being financed. The theoretical possibility of cross default among unrelated projects may be unworkable, and at a minimum adds unnecessary risk and cost.
- **Section 3.1:** With regards to the requirement that “The Applicant shall disclose, in detail, any prior business bankruptcies, defaults, disbarments, investigations, indictments, or other actions against either the Applicant, its parent company, affiliates, subsidiaries, or any key employees identified above (N.J.A.C. 14:8-6.5(a)(1)(iv)),” we suggest the final Solicitation Guidance Document limit such disclosure requirements to those that are material and that such disclosure be limited to the applicable project company and the entities in the direct ownership chain. Otherwise, the question becomes extraordinarily difficult for companies with varying levels of interest in numerous “affiliates,” and bankrupt remote project companies, which have no bearing on the resources of the Applicant project company or direct up stream members.
- **Section 3.7:** We encourage NJBPU to clarify whether the Project Nameplate Capacity is the aggregate of wind turbine nameplate capacities or the capacity delivered at the Point of Interconnection.
- **Section 3.8:** As NJBPU is well aware, establishing manufacturing facilities typically requires a significant book of orders. Considering the offshore wind procurement targets of NJ as well as its neighboring states, and to ensure NJ presents the best case as an offshore wind hub, NJBPU should consider NJ-produced components supplied to projects delivering energy to other States as NJ economic benefits. In this situation, these NJ economic benefits should be eligible whether they are supplied to an affiliate of the Applicant / project or to third parties in other States.
- **Section 3.8:** We appreciate NJBPU’s requirement, “To avoid double-counting [of Economic Benefits], Applicants affiliated with prior awardees must ensure that economic

impacts associated with the prior award are excluded,” as it levels the playing-field for all Applicants in the second Solicitation. We suggest the NJBPU alternatively require any such economies of scale be clearly identified and passed on to the ratepayer as they will ultimately benefit from economies of scale across a portfolio of projects delivering to NJ.

- **Section 3.8:** The NJ Wind Port (NJWP) presents a formidable opportunity for Applicants to submit projects with high NJ economic benefits. We do note the government website states three items that will be perceived as risks for Applicants interested in incorporating the NJWP in their Application:
 - The \$300-\$400M State financing is not in place yet;
 - The NJWP plans 2 phases of construction, with different timing for marshalling and manufacturing facilities (2023 v. 2024-2026); and
 - The NJWP may be available for out of State offshore wind, in addition to NJ’s 7.5 GW, but lists no priority for NJ projects.

We encourage the NJBPU to provide clarity on (1) how they will evaluate Applications that include an Economic Development Plan relying on the NJWP, (2) how the NJBPU will ensure that Applicants are not adversely prejudiced on the economic development evaluation criteria should the NJWP-related facts change from the time of submission prior to OREC award; and (3) how the NJBPU may provide relief for Applicants awarded an OREC Order which parameters are dependent upon the NJWP if the port development is delayed or otherwise impacted.

- **Section 3.14:** Although we understand that the NJBPU is seeking Applicants with solid Operations and Maintenance experience and a mature project, it is unclear in Section 14 (N.J.A.C. 14:8-6.5(a)(7)(vi)) whether the requirement for Applicants to deliver a proof of insurance refers to the Operations and Maintenance phase (which will only be available around Commercial Operation) or the current project phase.
- **Section 3.15:** In view of the amount of the associated commitment and its impact on project economics and risk profile, the NJBPU should consider providing additional information on the timing and form of the segregated decommissioning funds that shall be required per N.J.A.C. 14:8-6.5(a)(9)(ii).
- **Section 3.16:** Reduction in fossil fuel dependence is listed in the OWEDA as one of the benefits to NJ of procuring offshore wind. Beyond the environmental benefits there is a potential economic benefit (energy security, price stability) to the state. We encourage the NJBPU to provide clarity as to how these factors will be included in the evaluation of net benefit of a project.
- **Section 4:** We appreciate the inclusion of the diversity criteria giving the NJBPU, “the ability, but not the requirement, to reflect in its evaluation the diversity of selected Applicants, technology types and wind resource locations.” We suggest that the NJBPU clarify further by (1) providing context to Applicants as to when the NJBPU may or may


not use such criteria in its evaluation and (2) confirming whether the NJBPU would, if applicable, apply these criteria within a single procurement, or across the 7.5 GW sought by the offshore wind program, or both.

- **Section 4:** We appreciate the NJBPU's transparency on providing weighted criteria and a detailed view of the selection process. We encourage the NJBPU to provide additional detail on (1) the role of the ratepayer advocate in qualifying a reasonable ratepayer impact in the eyes of the NJBPU (not mentioned) and (2) sub-weighting for these criteria that are combined in Table 3, namely OREC Purchase Price and Ratepayer Impacts, and Economic Impacts and Strength of Guarantees for Economic Impacts.


Atlantic Shores Offshore Wind appreciates the opportunity to provide comments regarding the Draft Guidance Document for New Jersey's Second Offshore Wind Solicitation and looks forward to continuing to work with New Jersey as we proceed towards the realization of these ambitious offshore wind goals.

Sincerely,


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