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October 7, 2022

**Via Electronic Mail** [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Secretary of the Board  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

**Re: In the Matter of the Opening of New Jersey's Third Solicitation  
for Offshore Wind Renewable Energy Certificates (OREC)  
BPU Docket No. QO22080481**

Dear Acting Secretary Diaz:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in accordance with the Notice issued by the Board of Public Utilities ("Board") in this matter on September 16, 2022. In accordance with the Notice, these comments are being filed electronically with the Board's Secretary at [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov).

**Please acknowledge receipt of these comments.**

Thank you for your consideration and attention to this matter.

Respectfully submitted,

Brian O. Lipman, Esq.  
Director, Division of Rate Counsel

By: /s/ Maura Caroselli  
Maura Caroselli, Esq.  
Deputy Rate Counsel

Enclosure

cc: Robert Brabston, BPU  
Jim Ferris, BPU  
Kelly Mooij, BPU  
Stacy Richardson, BPU

**STATE OF NEW JERSEY**

**BEFORE THE BOARD OF PUBLIC UTILITIES**

**In the Matter of the Opening of New                    )**                   **Docket No. QO22080481**  
**Jersey's Third Solicitation for Offshore            )**  
**Wind Renewable Energy Certificates                )**  
**(OREC)    )**

**COMMENTS OF THE  
NEW JERSEY DIVISION OF RATE COUNSEL  
IN RESPONSE TO REQUEST FOR INFORMATION ("RFI") REGARDING NEW  
JERSEY'S THIRD SOLICITATION FOR OFFSHORE WIND RENEWABLE ENERGY  
CERTIFICATES ("OREC")**

**October 7, 2022**

## 1. INTRODUCTION

The New Jersey Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("Board" or "BPU") for the opportunity to provide comments on the questions issued to parties through a Request for Information ("RFI") released on September 16, 2022.

On January 31, 2018, Governor Phil Murphy signed Executive Order No. 8 designed to further the Offshore Wind Economic Development Act ("OWEDA") by setting a state goal of 3,500 megawatts ("MW") of offshore wind ("OSW") capacity by 2030. On November 19, 2019, the Governor signed Executive Order No. 92 increasing this goal to 3,500 MW of OSW capacity. On September 21, 2022, Executive Order No. 307 increased this OSW capacity target by nearly 50 percent to a new goal of 11,000 MW by 2040.

To date, the Board has successfully completed two OSW solicitations, awarding three projects a total of 3,758 MW of capacity. On February 29, 2022, the Board announced an updated OSW solicitation schedule to meet the state's OSW target with the Third Solicitation expanded to be issues in early 2023 (first quarter) with an estimated target of 1,200 MW. The schedule was revised to accommodate the integration of the Board's decision on the State Agreement Approach ("SAA") with PJM Interconnection, LLC ("PJM") for coordinated transmission development to facilitated generation developed in New Jersey offshore areas. Staff is currently in the process of developing a Solicitation Guidance Document ("SGD") for the Third Solicitation and has issued this RFI to assist in the development of the SGD.

## 2. RATE COUNSEL RESPONSE TO STAFF QUESTIONS

Rate Counsel offers the following responses to Staff's individual questions:

### A. Project Design

#### 1. What are the benefits and challenges of the Board requiring submittal of minimum and/or maximum project capacity bid sizes?

**Rate Counsel Response:** The benefits are that minimum and maximum project capacity sizes could assist Staff in its bid evaluation. The use of minimum and maximum capacity sizes could assist Staff in making apples-to-apples comparisons between OSW bids. This approach may also help Staff in limiting the total Third Solicitation award to the prescribed 1,200 MW target rather than go over that target given the uniqueness or "lumpiness" of certain capacity offers reflected by bids not subject to such constraints.

Rate Counsel observes that the potential downside, or challenge to this approach, is that these proposed OSW capacity limitations could reduce bidder flexibility and creativity in offered bids. It also reduces the Board's flexibility in selecting bids. These capacity restrictions could lead to potential bid challenges if the Board selects a level of total OSW capacity that is significantly different from the 1,200 MW envisioned in the notice to bidders and solicitation guidance document ("SGD"). For instance, a challenge could arise if the Board awards more than 1,200 MW of capacity, yet limits an individual bidder to a 1,200 MW bid. A bidder may challenge such an award if that bidder believes it could have offered more capacity (above the 1,200 MW limit) at a lower overall unit cost than what may be recommended by Board Staff for any contract award.

2. **Board Staff is considering project design nameplate submissions approximately equal to 1,200 MW, while preserving the need for flexibility in its evaluation of project nameplates that significantly diverge from the target nameplate of 1,200 MW. Is there an optimal project capacity size such that multiples of this installed capacity foster efficient OREC pricing, and if so, how is that optimal project capacity size determined?**

**Rate Counsel Response:** Rate Counsel has no opinion at the current time regarding “optimal” project capacity size. The “optimal” size of any OSW capacity solicitation is a function of the evaluation criteria and goals of the overall OSW solicitation itself and Staff has not provided a comprehensive discussion, nor explanation, of those criteria, nor has it provided any information on how this will improve the bidding process, or address bidding shortcomings relative to past solicitations. Rate Counsel has concerns that restricting project sizes to 1,200 MW, or some other fixed capacity amount, could negatively impact overall solicitation participation which, in turn, could drive up OSW generation procurement costs. Past solicitations have had multiple capacity offers at varying levels, some exceeding the general solicitation notice. In addition, there have been instances where the Board has awarded OSW OREC approvals for capacity in excess of their given solicitation capacity notice. However, Rate Counsel is not aware of any concerns about bid size offers discussed in past solicitations. Rate Counsel would caution against adopting capacity bidding constraints without clear ratepayer benefits or, at minimum, a Staff explanation of the goal it expects to reach, or the problems it is attempting to avoid, by limiting individual capacity bids. To reiterate Rate Counsel’s answer to question 1 above, a bidding constraint may also limit the Board’s flexibility.

**3. What considerations should guide the determination of minimum and/or maximum project bid sizes?**

**Rate Counsel Response:** The Board’s OSW procurement processes and decisions should be driven by pursuing the state’s renewable energy goals and mandates at minimal ratepayer costs and rate impacts. No information has been provided that shows how setting minimum or maximum capacity bid sizes will help maximize the deployment of offshore wind at the lowest ratepayer costs. Rate Counsel is concerned that modifying the bidding process, by imposing bidding capacity constraints, could result in unintended consequences that may jeopardize the timely implementation of OSW capacity consistent with Executive Order No. 307.

**4. What technical, economic, or environmental considerations affect proposed project sizes?**

**Rate Counsel Response:** All of the above considerations impact OSW project sizes. As a general matter, as technologies improve and become more efficient, unit costs (cost per installed kilowatt or “kW”) will tend to decrease. This is something that has been consistently observed with onshore wind development and the recent OSW development. Further, learning economies and innovation tend to also help facilitate lower unit costs for wind generation (like it does for all renewable energy).

Rate Counsel expects to see continued decreases in unit costs for OSW projects bid and awarded in New Jersey’s OSW solicitation just due to these industry trends. However, Rate Counsel has no opinion on how technical, economic, or environmental considerations should be melded into formulating minimum and maximum bid sizes for the upcoming solicitation and is unaware of any studies that would suggest or provide guidance on how these values should be established. Further, Rate Counsel is not aware of any ratepayer

benefits that have arisen or been quantified by restricting bid offers.

**5. What, if any, transmission technology constraints, such as cable or converter station capacity, would directly affect project size?**

**Rate Counsel Response:** Rate Counsel has no opinion at this time on this question.

**6. What are the benefits and challenges of the Board allowing the inclusion of energy storage in applicants' projects?**

**Rate Counsel Response:** Rate Counsel recommends that energy storage should be excluded from OSW bids in the Third Solicitation. OWEDA and the Board's rules address methods by which offshore generation and supporting transmission costs can be recovered through the use of ORECs; however, neither addresses nor allows for using ORECs to finance energy storage projects. While energy storage can be "considered" as part of the OREC approval processes, there is nothing in OWEDA that explicitly allows for OREC-financing of energy storage. Further, the use of energy storage along with OSW generation has not been shown to be in the public interest nor has this coupling of resources been shown to result in lower ratepayer costs relative to the status quo in any form of independent proceeding or rulemaking. Accordingly, statutory changes, and/or rule amendments would likely be needed to fund energy storage through the use of ORECs. Allowing energy storage in the process without going through the appropriate legislative or administrative rulemaking processes could result in legal challenges to the bids. That could delay or put the results of the Third Solicitation at risk and this would not be in New Jersey's best interest.

7. **If energy storage is included in a proposal, should there be specific parameters in the SGD around how it should or must be interconnected, deployed, and operated to optimize grid reliability and economic benefits to New Jersey ratepayers?**

**Rate Counsel Response:** Rate Counsel does not support adding energy storage as a resource in the Third Solicitation. However, to the extent energy storage is included, then Rate Counsel supports including a number of important minimum informational requirements for any energy storage project that is included in an OSW solicitation that is funded through ORECs. Those requirements are not defined by statute, unlike the requirements defined by statute for OSW generation. Rather, as a general matter, those requirements should be comparable to the requirements for OSW generation that include full project informational disclosures including a comprehensive net benefits analysis. Significantly, the Board's current OSW rules do not provide such guidelines because it has no legislative authority to fund energy storage projects through ORECs.

**B. Economic Impacts and Strength of Guarantees for Economic Impacts**

8. **Board Staff is considering requiring deposits that are refundable if firm economic benefits guarantees are met – or a damages term if economic benefits are not met – that would be applicable to all applicants.**

- a. **What are the benefits or challenges of implementing such a requirement?**

**Rate Counsel Response:** Rate Counsel supports Staff's intention to make OSW bidders more accountable for their purported economic development benefits. However, Rate Counsel is not convinced that the Board has the legal authority to require refundable deposits. OWEDA does not extend authority to the Board to require OSW projects to place refundable deposits on their economic development benefits. Further, a refundable deposit system could involve many complexities, and the current Board OSW rules do not explain



how a refundable deposit system would be utilized and who would “hold” refundable deposits until such time that an OREC-funded qualifying offshore wind facility is deemed in compliance with its economic development benefits.

Similarly, the Board may not have the legal authority to impose damages upon an applicant if economic benefits are not met and could also present additional administrative complications and/or responsibilities for Staff. Such complications include those pertaining to the tracking of fines and penalties, the entry of judgments and associated collection activities and any mediation and/or mitigation procedures.

Rate Counsel envisions that if this provision were to be met that the Board would have to contract with certain entities and it unclear whether the Board has the authority to do so and which entities would be the appropriate parties for those contractual relationships. To the extent penalties are imposed, those penalties would necessarily require an agreement by the bidder, as the Board does not have the statutory authority to impose a penalty of the magnitude required here. Additionally, if penalties were imposed, Rate Counsel questions how the monies collected would be utilized. Again, this would need to be defined as part of a contractual relationship. Rate Counsel would suggest such monies should be refunded to ratepayers for overpaying for ORECs. At the same time, it is unclear whether the Board has the legal authority to 1) enter into the contractual relationship which would produce the penalties; 2) mandate the penalties and 3) create an appropriate funding mechanism to allocate penalty monies in a way that relates directly to the reason for the imposed penalty.

**b. How would such a requirement affect the level of proposed economic benefits and guaranteed economic benefits applicants submit?**

**Rate Counsel Response:** Rate Counsel is uncertain of the outcome resulting from a deposit

requirement or the imposition of damages upon an applicant. However, it is likely that risk-adverse bidders will claim a lower overall level of economic development benefits per investment dollar and/or per unit of capacity since overstating these benefits will carry financial consequences. Staff should also recognize that such a requirement will change how New Jersey OSW projects are financed since a considerable level of economic development benefits will have to be secured on a cash or non-cash basis, up front, which impacts OSW project financing. Rate Counsel is concerned that this requirement has the potential to increase costs to ratepayers overall.

- c. Under such a framework, what deposit forfeitures or damages should be imposed if there are shortfalls relative to the firm economic benefits guarantees?**

**Rate Counsel Response:** Rate Counsel has no opinion on this question at the current time. However, as Rate Counsel noted previously, the Board currently has no rules in place to govern such financial transactions and it is not clear that OWEDA allows the Board to enter into a refundable deposit process or impose damages as envisioned by these questions.

- d. Under such a framework, what is the difference between a deposit forfeiture or damages term that will facilitate meeting the firm economic benefits guarantees and those that are punitive?**

**Rate Counsel Response:** Rate Counsel has no opinion on this subject at the current time. Please see earlier comments in (a) through (c) above.

- e. Under the deposit forfeiture framework, how should at-risk deposit amounts be guaranteed? Should the Board require a letter of credit from a creditworthy third party, or should parental guarantees be accepted?**

**Rate Counsel Response:** Rate Counsel has no opinion on this subject at the current time. Please see earlier comments in (a) through (c) above. If the Board determines it has the

authority to impose a deposit, the Board should ensure that there is a sufficient guarantee the funds will be available if called by the Board.

**9. Proposed economic benefits require pledges or guarantees from applicants to ensure timely realization. What are the practical limitations of such pledges or guarantees?**

**Rate Counsel Response:** There are a variety of limitations that will likely arise in this proposal, the most important of which is understanding the method that the Board will use to develop these pledges or guarantees since past solicitations have been affected via Board order, not through a contract. Rate Counsel is not sure how any binding pledges or guarantees can be accomplished without a contract and Rate Counsel is uncertain whether the Board has the legal authority to enter into such contractual relationships with OSW developers. Further, as noted in our responses to the earlier questions, Rate Counsel has questions about whether OWEDA or current Board rules allow for such a system of refundable deposits or the imposition of damages.

**10. Is there specific guidance to applicants that should be incorporated in the SGD to support the identification of benefits and impacts to Environmental Justice and Overburdened Communities, as identified in the 2019 New Jersey's Energy Master Plan and New Jersey's Environmental Justice Law, N.J.S.A. 13:1D-157?**

**Rate Counsel Response:** Rate Counsel suggests that a general adherence to the state's environmental justice laws and regulations should be followed by all OSW respondents. Respondents should be required to explicitly identify how their respective projects and proposals comply with New Jersey's environmental justice laws as part of the application process.

However, to date, the Board has not issued any rules on how environmental justice

considerations will be incorporated into its decision-making process, not just for OSW, but for any and all activities and industries that it regulates or impacts. Applying an environmental justice requirement to OSW alone, or even an individual OSW solicitation, without extending these requirements to other industries and activities, could result in asymmetric regulatory treatment that could lead to unintended policy and legal outcomes.

For instance, the Board currently does not require, nor does it have any environmental justice rules addressing such activities as natural gas pipeline replacement programs, resiliency-based transformer relocations and upgrades, new electric power transmission lines, electric vehicle programs, solar energy financial support mechanisms and general funding solicitations, to name a few. In addition, the Board does not have environmental justice requirements for any utility making a base rate application when clearly rate increases have equity and environmental justice implications. Applying an environmental justice standard to OSW alone, without considering how environmental justice impacts other state utility and energy activities regulated by the Board could be subject to legal challenge. Moreover, the Board has not examined what the rate impacts of such a policy will be on individual ratepayer classes and ratepayers overall.

Last, and more importantly for this Third Solicitation, such a requirement could lead to uncertainty and confusion by OSW developers which, in turn, could impact bidding interest and the results of the overall OSW solicitation thereby impacting overall ratepayer benefits and the least-cost delivery of OSW to New Jersey ratepayers.

**11. How should Board Staff consider the benefits and impacts to Environmental Justice and Overburdened Communities when evaluating projects?**

**Rate Counsel Response:** Rate Counsel supports the Board's consideration of environmental justice impacts as directed by state law and regulations. However, the Board does not have any explicit rules governing how environmental justice considerations will be factored into its decision-making process. In addition, Rate Counsel reiterates those comments and concerns raised in response to question 10 above.

**12. Is there specific guidance to applicants that should be incorporated in the SGD to support the dissemination of benefits to Environmental Justice and Overburdened Communities? For example, the suggestion or requirement to (1) engage with these communities on job training and supply chain opportunities, (2) define the benefits the applicant expects to provide to these communities, including potentially binding or voluntary job creation targets, and (3) explain how the applicant intends to deliver those benefits.**

**Rate Counsel Response:** As noted in our response above, Rate Counsel supports potential OSW bidders following the spirit of state-sponsored environmental justice initiatives. Rate Counsel generally supports focusing job training in environmental justice and overburdened communities but this additional focus should not produce additional costs to ratepayers associated with OSW projects. To date, the Board has not issued any specific guidelines on how environmental justice will be incorporated into its overall decision-making process, much less how environmental justice will be considered for renewable energy resources like solar and OSW. Rate Counsel does not recommend the Board offer specific recommendations regarding environmental justice, but more a general statement of how the project may benefit the communities in question.

**13. What are the potential benefits and impacts to Environmental Justice and Overburdened Communities associated with the construction and operation of offshore wind projects and the accompanying onshore infrastructure?**

**Rate Counsel Response:** Rate Counsel has not conducted this analysis to date and cannot offer an opinion at this time.

**14. How should applicants be required to report on progress toward meeting their commitments to Environmental Justice and Overburdened Communities and engagement with these communities?**

**Rate Counsel Response:** Rate Counsel generally supports strong reporting requirements for regulatory purposes but has no opinion on this particular reporting requirement at the current time.

**15. Are there additional specific requirements, beyond those included in the Second Solicitation's SGD, that should be considered for the Economic Development Plan?**

**Rate Counsel Response:** Rate Counsel generally supports strong reporting requirements for regulatory purposes but has no opinion on this particular reporting requirement at the current time.

### **C. Performance Guarantees**

**16. What mechanism could be included in a Board Order to ensure that the proposed nameplate capacity of the Project is constructed as set forth in the Order?**

**Rate Counsel Response:** The Board's decisions and orders should bind any party over which it has regulatory authority. Here, the Board has regulatory authority over OSW developers if those developers have an approved OREC financing plan to financially support their individual OSW projects (as a qualified New Jersey OSW project subject to OWEDA). It is incumbent upon these OSW developers to comply with the Board's orders and the

Board, in turn, should take any and all legal action necessary to enforce the terms and conditions of its OREC financial plan approvals including taking actions against any developer that fails to develop and operate a qualified New Jersey OSW project in a fashion consistent with its approved bid and OREC financial plan.

**17. What are the potential benefits and impacts of assessing a performance guarantee for failing to construct, or constructing less than, the proposed nameplate capacity?**

**Rate Counsel Response:** Rate Counsel supports the use of performance guarantees for OSW projects that receive Board approval for an OREC financing plan. As a general matter, performance guarantees shift performance risk away from ratepayers (the source of the funding for the OREC financing plan) and onto developers, the more appropriate party to bear such risks, since these OSW developers have more control over their projects than ratepayers.

Rate Counsel has two observations regarding this question. First, Rate Counsel is less concerned about OSW capacity guarantees, since OSW projects are required to report any substantial deviations from their Board approved OREC funding approvals, which should include any changes in approved OSW project capacity. Thus, Rate Counsel is less concerned about a performance guarantee on capacity, measured in MWs, than it is on generation, measured in MW hours (“MWhs”). The Board should be focusing more on generation (actual facility output) guarantees rather than capacity guarantees. Second, guarantees will not come without costs and it is likely that changes in the terms and conditions outlined in the SGD could result in changes to proposed ORECs with more stringent terms (guarantees) increasing OREC offers relative to less stringent terms

(guarantees). To the extent the Board wishes to determine the price differential of a guarantee, bidders could be asked to price an option with a guarantee. The Board, however, would need to set up a mechanism to determine how to evaluate the increased price to determine if the increased price provides sufficient value to accept the guarantee. It is imperative that the Board set up a transparent mechanism to evaluate differing bids before the bidding process begins. This would seem to be a very complex endeavor and would require further study on whether other jurisdictions can serve as a model for the Board in this area.

**18. If performance guarantees are to be incorporated in the Board Order governing the delivery of ORECs, how could a completion guarantee be structured to irrevocably and unconditionally guarantee performance by a certain date?**

**Rate Counsel Response:** First, Rate Counsel, while supportive of project guarantees, is concerned that the Board's current OSW rules do not clearly define procedures for project guarantees of any kind and imposing such requirements in the SGD may lead to regulatory and legal challenges. Second, the above question is ambiguous since the type of guarantee is not defined (i.e., capacity guarantee or generation guarantee or other type of guarantee). Lastly, Rate Counsel has not performed this analysis and cannot offer a specific recommendation at this time.

**19. Regarding protection of ratepayer interests:**

**a. How would the inclusion of a performance guarantee requiring performance by a certain date affect an applicant's OREC offer price?**

**Rate Counsel Response:** All other things being equal, stringent performance guarantees will likely result in higher OREC offer prices, and less stringent guarantees will result in lower OREC offer prices – insurance in competitive markets could be costly and a guarantee is



nothing more than a form of insurance.

**b. What measures could be taken to protect New Jersey ratepayer interests?**

**Rate Counsel Response:** While Rate Counsel supports performance guarantees, the challenges are (i) developing guarantees that mitigate against the most important risks faced by ratepayers in the OSW solicitation/procurement process and (ii) assuring that if an OREC offer is made with a performance guarantee, and there is an implicit cost to that performance guarantee embedded in the OREC offer, Rate Counsel would want to know the cost differential to ratepayers between an OREC offer with a performance guarantee and one without.

**c. Can the cost of a performance guarantee be laid off to a guarantor at good value from New Jersey ratepayers' standpoint? If not, why not?**

**Rate Counsel Response:** Rate Counsel cannot comment on this issue without further research. In theory, it is possible that there could be third parties interested in assuming such risks. However, the willingness to assume this risk will depend on the terms, conditions and type of performance guarantee, which has not been explored in detail for New Jersey's OSW solicitation at the current time.

Rate Counsel advises Board Staff to not make any assumptions with regards to performance guarantees until such time as an analysis has been conducted and made public and open for comment to all stakeholders, particularly those representing ratepayer interests.

**20. N.J.A.C. 14:8-6.6(b)(4) allows ORECs in excess of the Annual OREC Allowance in a given year to be carried forward to the next year if there are unmet ORECs in that year. How should the Board Order address a circumstance where there are persistent unmet ORECs over the OREC term?**

**Rate Counsel Comments:** Rate Counsel recommends that, to the extent such an outcome arises, the Board act swiftly to: (a) find ways to work with the OSW developer to remedy the deficiency as soon as possible; (b) modify the OREC financing program with the underperforming OSW developer to reflect these performance deficiencies; and/or (c) take legal and/or regulatory action to remedy the situation.

#### **D. Inflation/Deflation Adjustment**

**Board Staff is considering a pricing mechanism where the OREC price an applicant submits in their Application could be adjusted at a future milestone date based on inflation/deflation and/or specific commodity costs, particularly as they affect project component pricing and labor costs. The adjustment would be based on an actual measure of inflation or other commodity price index or indices on the future milestone date, relative to the measure of inflation, value of the index or indices at the time of Application submission. Board Staff seeks input on how such an adjustment mechanism can be designed to share risks and benefits in order to support successful project development.**

- 21. Please comment on your expectations for near-term (through 2025), medium-term (through 2030) and long-term (through 2050) inflation and the impact on OREC pricing and provide the basis for this outlook.**

**Rate Counsel Response:** Rate Counsel does not have a formal position on inflation and does not believe this should be an area of concern for Board Staff nor should it play any major role in the preparation and submission of the SGD other than requiring bidders to make such inflations adjustments clear and explicit.

Rate Counsel suggests that Board Staff allow OSW developers and the market reveal what inflation expectations exist for OSW development and allow these developers to reveal their willingness to deal with these inflationary risks through their offered OREC financing plans.

**22. What are the benefits and challenges of including an inflation adjustment mechanism in the Third Solicitation to account for changes in commodity pricing and labor costs?**

**Rate Counsel Response:** Inflation adjustments in purchased power agreements and other types of longer-term wholesale power agreements make developers whole for changes in monetary inflation (which can reduce real returns) over time. The challenge with these inflationary adjustments is that if adjustments are offered as a uniform rate or percent over the duration of a contract, and actual inflation is less than the level bid into the offer (or approved contract), the party financially supporting the contract (ratepayers, in the instance of an OREC financing plan) will pay too much and a windfall will accrue to the developer and potentially resulting in unjust and unreasonable rates for customers.

**23. Describe how an inflation adjustment mechanism could affect OREC pricing.**

**Rate Counsel Response:** Please refer to Rate Counsel's response to question 22 above. Rate Counsel further notes that, as a general matter, any non-negative inflation adjustment will increase OREC pricing offers.

**24. If an inflation adjustment is included, what are the elements of residual inflation risk?**

**Rate Counsel Response:** Please refer to Rate Counsel's response to question 22 above.

**25. What are the advantages and disadvantages of a requirement to propose (a) a fixed OREC price without inflation adjustment and (b) an inflation adjustable OREC price, versus making one or both optional?**

**Rate Counsel Response:** Rate Counsel recommends that Board Staff not include either of these options in the future SGD. Rate Counsel is unaware of any situations in past bidding

where the use of inflation adjustment factors, or no inflation factors, has been an issue. Further, Rate Counsel's review of the Second OSW Evaluation Report completed by Staff's OSW consultants finds that there was no reference to problems or concerns with inflation adjusters.

Further, Board Staff's consultants in the second OSW solicitation, had a firm grasp on how to convert bids, offers, and comparisons to market prices on nominal and real values. The prior Staff Evaluation Report (Second Solicitation) is filled with notations and formulae that shows Board consultants were able to make these real/nominal conversions and make "apples-to-apples" comparisons across various bids and developer offers. The proposal in the question above appears to be a solution in search of a problem. Rate Counsel suggests the Board let developers offer what they will in terms of inflation adjustments, and then the Board can select the least cost, most commercially reliable offer as recommended by Staff and its consultants whether that be on real or nominal terms.

**26. If an applicant offers both a fixed OREC price and an adjustable OREC price, and if the applicant's project is selected, what is the latest date that the pricing option could be chosen and why?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

**27. Describe how an inflation adjustment mechanism could affect the project development timeline and/or viability of an offshore wind project.**

**Rate Counsel Response:** Rate Counsel is unaware of instances where OSW developers, or power developers of any type, modify their development timelines to correspond with inflation adjusters. Inflation adjusters, where offered (and many times they are not), are simply used to stabilize real financial project returns and have the contracting party funding the project (ratepayers) bear the risk of these adjustments.

**28. What are the benefits and challenges of (i) applying the inflation adjustment in lieu of an annual escalator on the OREC price or (ii) allowing bids with inflation adjustment to also include an escalator?**

**Rate Counsel Response:** If OSW developers offering these types of inflationary adjustments are not gaming the system, then there should be no differences as Rate Counsel understands this question. Rate Counsel has no further opinion on this subject at this time.

**29. Should the inflation adjustment mechanism be based on a single defined index or multiple indices?**

**Rate Counsel Response:** There is no need for the Board to include such provisions in the SGD since there is no indication as to (a) why this has been a problem in the past, (b) how a change in the SGD may correct his purported problem and (c) how ratepayers will be better off because of this potential change. Developers should be allowed to use whatever index or method they choose based upon their own risk appetite which includes offering no explicit inflation adjustment at all.

**30. What publicly available index or indices are most suitable to capture applicants' exposure to inflation during the project development period? Please explain the relevance of the index or indices you suggest. If the index is not publicly available, how would you suggest the Board meet its goal of transparency and openness?**

**Rate Counsel Response:** Please refer to Rate Counsel's prior responses above.

**31. If multiple indices are used, please provide any suggestions on how they should be weighted for purposes of tracking key component costs, including calculation examples. Please identify suggested sources, either proprietary or public, that represent the best information source.**

**Rate Counsel Response:** Please refer to Rate Counsel's prior responses above.

**32. What are the benefits and challenges of applying the adjustment to all versus only a specific percentage of the OREC price?**

**Rate Counsel Response:** Please refer to Rate Counsel's prior responses above.

33. What is an appropriate way to set the baseline value of the inflation index or indices at the time of bid submission, for example an annual average or discrete monthly value?

**Rate Counsel Response:** Please refer to Rate Counsel’s prior responses above.

34. Regarding the milestone for determining the price adjustment date:
- a. What is the best milestone for determining the price adjustment date?
  - b. What are the benefits and challenges of the milestone being a fixed calendar date versus the date of a defined event?
  - c. Please explain your choice of milestone date and how it could be unambiguously defined.
  - d. If there is ambiguity, please explain why it should be considered.

**Rate Counsel Response:** Please refer to Rate Counsel’s prior responses above.

35. Regarding the potential inclusion of a “deadband” (i.e., the amount that the OREC price is adjusted when the adjustment resulting from applying the change in index (up or down) exceeds a certain percentage of the OREC price):
- a. What are the benefits and challenges of including a deadband in the inflation adjustment?
  - b. What are the benefits and challenges of a symmetric vs an asymmetric deadband?
  - c. What is a reasonable deadband percentage to apply and why?
  - d. What would be the impact on OREC pricing if there is a deadband on the adjustment and why?

**Rate Counsel Response:** Please refer to Rate Counsel’s prior responses above.

36. What specific content in regard to the inflation adjustment factor in a Board Order awarding a project would strengthen an applicant’s ability to execute binding agreements on a timely basis with primary original equipment manufacturers (“OEMs”)?

**Rate Counsel Response:** Please refer to Rate Counsel’s prior responses above.

**E. Environmental and Fisheries Mitigation Plan**

37. Are there additional specific requirements, beyond those included in the

**Second Solicitation's SGD, that should be considered for the Environmental Protection Plan?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

**38. Are there additional specific requirements, beyond those included in the Second Solicitation's SGD, that should be considered for the Fisheries Protection Plan?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

**39. Please discuss opportunities for sharing environmental data collected prior to and during pre- construction surveys and baseline monitoring regarding the spatial and temporal presence of marine mammals, fish, aquatic invertebrates, sea turtles and avian species and bats, as well as benthic habitats, with the environmental community, including, but not limited to, the New Jersey Department of Environmental Protection ("NJDEP") and other state agencies and regional entities.**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

**40. What is the scope of environmental data that can or should be required to be shared, for example, pre-construction data that is included in the Construction and Operations Plan submitted to BOEM, all pre-bid data, or a sub-set thereof?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

**41. Please explain the types of environmental data obtained prior to and during pre-construction surveys, during construction and during operation that applicants would consider to be proprietary and explain why.**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

**42. What delays may exist in making proprietary data available and why?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

**43. Please describe potential plans for collecting environmental, wildlife and/or fisheries data (through either pre-construction or operations-phase research and monitoring) that could be used to inform mitigation actions and/or decisions.**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

- 44. What requirements for stakeholder review of mitigation and monitoring plans are reasonable and appropriate for the awarded project?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

- 45. NJDEP is interested in opportunities to collaborate with other Atlantic seaboard states to integrate data regarding the spatial and temporal presence of marine mammals, fish, aquatic invertebrates, sea turtles, avian species and bats, as well as benthic habitats. Discuss opportunities and potential barriers that may exist.**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

- 46. What information is available about embodied carbon in applicants' proposed supply chains? What types of embodied carbon data can applicants report?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

- 47. The Second Solicitation required a fee of \$10,000/MW to support regional research and monitoring. Is a similar fee to support regional research and monitoring reasonable and appropriate for the Third Solicitation? Why or why not?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

#### **F. Evaluation**

- 48. Are there any criteria relevant to the evaluation of the Environmental and Fisheries Protection and Permitting Plans, as presented in Section 4.2 of the Evaluation Report for the Second Solicitation that should be added or any criteria that are not relevant and should be removed?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.

- 49. Are there any criteria relevant to the evaluation of the "Likelihood of Successful Commercial Operation," as presented in Section 5 of the Evaluation Report for the Second Solicitation that should be added or any criteria that are not relevant and should be removed?**

**Rate Counsel Response:** Rate Counsel has no opinion on this topic at this time.