

October 7, 2022

**VIA E-MAIL (BOARD.SECRETARY@BPU.NJ.GOV)**  
**PUBLIC VERSION**

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Acting Secretary Carmen Diaz  
NJ Board of Public Utilities  
44 South Clinton Street, 9th Floor  
P.O. Box 350  
Trenton, New Jersey 08625

**Re: IN THE MATTER OF THE OPENING OF NEW JERSEY'S THIRD  
SOLICITATION FOR OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES  
(OREC)  
BPU DKT. No. QO22080481  
Request For Information**

Dear Acting Secretary Diaz:

Enclosed for filing are comments of Orsted Wind Power North America LLC in the above-referenced matter.

The attached comments are being filed with the Board Secretary electronically only, consistent with the Board's Order dated March 19, 2020 (Docket No. EO20030254) directing that all submissions to the Board, of any kind, be submitted electronically. Under separate cover we are filing today a Confidential Copy of the comments, along with an affidavit to substantiate the claim of confidentiality.

No paper copies will follow and we would appreciate if the Board Secretary's office would please acknowledge receipt of this letter.

Sincerely,

COZEN O'CONNOR



By: Gregory Eisenstark

Enclosure

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**To: New Jersey Board of Public Utilities Staff**

**Date: October 7, 2022**

**RE: Request for Information  
IN THE MATTER OF THE OPENING OF NEW JERSEY'S THIRD  
SOLICITATION FOR OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES (OREC)  
Docket No. QO22080481**

Ocean Wind Power North America LLC (the "Company"), an indirect, wholly-owned subsidiary of Ørsted A/S, is writing to provide comments to the Request for Information in the matter of the opening of New Jersey's Third Solicitation for Offshore Wind Renewable Energy Certificates issued by New Jersey Board of Public Utilities ("BPU") on September 16, 2022. As the global leader in offshore wind, Ørsted has a vision of creating a world that runs entirely on green energy. The Company is the leading offshore wind developer in the U.S. with almost 5,000 megawatts (MW) of awarded capacity through a half-dozen projects on the East Coast, including two projects delivering power to New Jersey: Ocean Wind 1 and Ocean Wind 2.

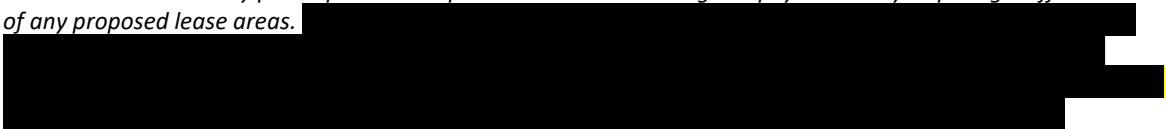
The Company commends New Jersey for its leadership in advancing offshore wind energy development in a way that fosters sustainability of the industry, facilitates regional collaboration, and spurs innovation and economic opportunities and its recently increased commitment to procure 11 gigawatts of offshore wind energy by 2040. The Company's comments below are offered to support New Jersey's continued refinement of the OREC solicitation process.

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#### **A. Project Design**

1. What are the benefits and challenges of the Board requiring submittal of minimum and/or maximum project capacity bid sizes?
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?
3. What considerations should guide the determination of minimum and/or maximum project bid sizes?
4. What technical, economic, or environmental considerations affect proposed project sizes?
5. What, if any, transmission technology constraints, such as cable or converter station capacity, would directly affect project size?
6. What are the benefits and challenges of the Board allowing the inclusion of energy storage in applicants' projects?
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?

*Any capacity requirements on project proposals should have the flexibility to enable optimized use of the offshore wind lease areas. Overly prescriptive bid requirements risk increasing ratepayer costs by requiring inefficient use of any proposed lease areas.*



[REDACTED]

[REDACTED]

**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?
  - b. How would such a requirement affect the level of proposed economic benefits and guaranteed economic benefits applicants submit?
  - c. Under such a framework, what deposit forfeitures or damages should be imposed if there are shortfalls relative to the firm economic benefits guarantees?
  - 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?
  - 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?
9. Proposed economic benefits require pledges or guarantees from applicants to ensure timely realization. What are the practical limitations of such pledges or guarantees?
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?
11. How should Board Staff consider the benefits and impacts to Environmental Justice and Overburdened Communities when evaluating projects?
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.
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?
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?
15. Are there additional specific requirements, beyond those included in the Second Solicitation’s SGD, that should be considered for the Economic Development Plan8?

*Bidding for offshore wind offtake agreements occurs while projects are at a highly conceptual and early phase of project development. At this stage projects have not received required permits and face significant concept uncertainties.*

[REDACTED]

*Consequently, developers need flexibility in how they fulfil*

*any local content commitments. An overly punitive or prescriptive local content guarantee will either cause developers to: (i) reduce local content in bids; or (ii) add costs for ratepayers.*

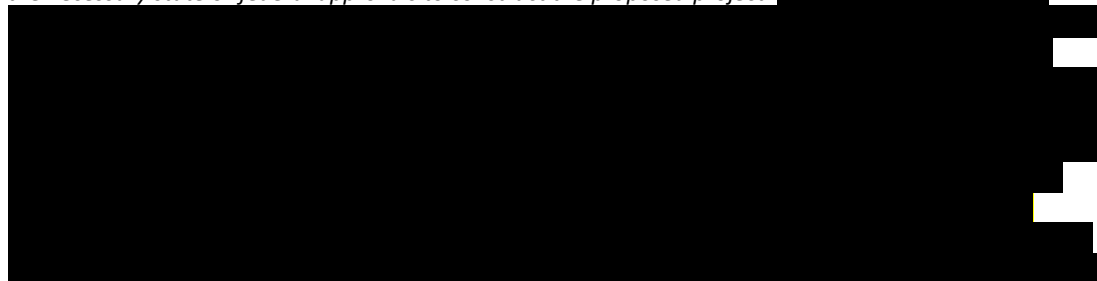
*An economic benefits true-up mechanism requiring developers to pay damages to compensate for an economic benefit shortfall has been an industry standard and appropriate way to ensure compliance with economic benefit commitments. A deposit system would not be in the interest of the ratepayers and would result in higher prices for New Jersey. Developers would be required to commit significant capital under such a system early in the project lifecycle. This will have a negative impact on project economics and risk driving up return requirements and ratepayer costs.*

*Offering additional incentives, like an increased OREC price for projects that exceed the guaranteed local economic benefits, is more likely to ensure developers deliver the full scope of economic benefits proposed. By offering an incentive to exceed economic benefit commitments developers are given an incentive that will both help mitigate the costs of developing local supply chain opportunities that develop after OREC award and encourage more New Jersey content.*

### **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?
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?  
*Adding performance guarantees will likely result in higher costs for rate payers.*
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?
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?
  - b. What measures could be taken to protect New Jersey ratepayer interests?
  - 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?
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?

*The addition of performance guarantees will increase costs for ratepayers. Prior to approval of a project's COD, the timing of a project's completion cannot be guaranteed since a project will not yet have received the necessary state or federal approvals to construct the proposed project.*



### **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 equitably between ratepayers and applicants 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.
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?
23. Describe how an inflation adjustment mechanism could affect OREC pricing.
24. If an inflation adjustment is included, what are the elements of residual inflation risk?
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?
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?
27. Describe how an inflation adjustment mechanism could affect the project development timeline and/or viability of an offshore wind project.
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?
29. Should the inflation adjustment mechanism be based on a single defined index or multiple indices?
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?
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.
32. What are the benefits and challenges of applying the adjustment to all versus only a specific percentage of the OREC price?
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?
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.
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?
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")?

[REDACTED]

[REDACTED]

*Any inflation adjustment mechanism should be clearly defined and transparent.* Selection of appropriate indexes is critical to minimize the impact of the ratepayer. [REDACTED]

[REDACTED]

[REDACTED]

**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?
38. Are there additional specific requirements, beyond those included in the Second Solicitation’s SGD, that should be considered for the Fisheries Protection Plan?
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.
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?
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.
42. What delays may exist in making proprietary data available and why?
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.
44. What requirements for stakeholder review of mitigation and monitoring plans are reasonable and appropriate for the awarded project?
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.

46. What information is available about embodied carbon<sup>11</sup> in applicants' proposed supply chains? What types of embodied carbon data can applicants report?
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 or the Third Solicitation? Why or why not?

*Ørsted values the opportunity to share environmental data with the public, regulatory agencies and others, including the data noted in paragraph 39 above. However, due to the time duration between conducting and analyzing survey data, as well as refining and/or supplementing the data as required by BOEM and other federal agencies, data sharing is feasible and most appropriate to occur as part of the public Construction and Operation Plan ("COP") release – which occurs at BOEM's issuance of Notice of Intent (NOI). It is at this point the COP, and all the relevant data included in it (including the items noted in paragraph 39), has been determined by BOEM to be complete. Premature release of partially analyzed data, incomplete data, or data not determined by BOEM to be complete may result in stakeholder misunderstanding and confusion.*

#### **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?
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?

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The Company appreciates the opportunity to provide comments New Jersey's upcoming offshore wind solicitation. If there are any questions regarding the Company's responses or request any additional information the Company will assist where possible.

Respectfully submitted,

ORSTED WIND POWER NORTH AMERICA LLC

By: Thomas Riding  
Title: Authorized Person