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BRIAN O. LIPMAN
Director

January 11, 2023

Via Electronic Mail
Carmen D. Diaz, Acting Board Secretary
44 South Clinton Avenue, 1st 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 in accordance with the revised Notice and issued by the Board of Public Utilities ("Board") in this matter on December 21, 2022. In accordance with the revised Notice, these comments are being filed electronically with the Board's Acting Secretary at 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
Andrea Hart, BPU

STATE OF NEW JERSEY

BEFORE THE BOARD OF PUBLIC UTILITIES

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

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL
IN RESPONSE TO THE SECOND REQUEST FOR STAKEHOLDER FEEDBACK
ON THE THIRD OSW SOLICITATION AND SOLICITATION GUIDANCE
DOCUMENT (SGD) DATED NOVEMBER 30, 2022**

JANUARY 13, 2023

(1) Introduction and Overview

The Division of Rate Counsel ("Rate Counsel") thanks the Board of Public Utilities ("Board" or "BPU") for the opportunity to provide written comments on New Jersey's Third Offshore Wind ("OSW") Solicitation as well as the draft Solicitation Guidance Document ("SGD") that will be provided to potential solicitation participants and developers.

Rate Counsel is providing these written comments as the statutorily designated representative for New Jersey ratepayers for matters before the Board, other executive agencies, and the Legislature. Rate Counsel's mission is to assure that all classes of utility consumers receive safe, adequate, and proper utility services at fair, just, and reasonable rates. OSW Renewable Energy Certificates ("ORECs") bid into this process, like all others, will be financially supported and backed by New Jersey's retail electricity ratepayers. It is imperative that all matters conducted in this solicitation process, from the development of the SGD, to the bid offering, to bid submissions and evaluations, to, most importantly, OREC financing awards, be done with ratepayers and ratepayer impacts in mind. Ultimately, this entire process is being done for the sole purpose of assisting New Jersey ratepayers in reaching an environmentally and economically sustainable energy future.

Rate Counsel welcomes this continued opportunity for participation in the various activities leading up to the Third OSW Solicitation including being allowed to offer comments on the December 13 technical workshop and the ability to offer these written comments. Rate Counsel commends Board Staff and other OSW stakeholders for the work that has been done in getting to this point in the process, up to and including the recent work done to facilitate OSW-supporting transmission investments through the PJM State Agreement Approach ("SAA"). As Rate Counsel noted during the SAA process, we support the concept of the SAA which seeks potential OSW transmission solutions that have the ability to reduce future OSW development and operational costs as well as future OSW development and operational risks. Rate Counsel hopes, with the current OSW solicitation, ratepayers can start to see the fruition of this forward thinking.

However, Rate Counsel has two overarching concerns with the Third OSW Solicitation and how those concerns are reflected in the SGD. The first concern rests with the current economic uncertainty and how unnecessary levels of economic and financial risks associated with the Third OSW Solicitation may be passed along to ratepayers. The second concern rests with the capacity levels that have been earmarked for this solicitation and how total capacity decisions and OREC awards may arise to meet those capacity targets. Rate Counsel's written comments will address each below.

(2) Economic and Financial Uncertainties

Current economic conditions are reflected by: high prices for a variety of commodities, equipment, and services; wage inflation; worker scarcity in certain select parts of the economy; increasing interest rates; and continued supply chain disruptions that began during the post-pandemic recovery period and continue to this day. Based on the current draft SGD, it is likely that bids offered in the Third OSW Solicitation may propose to shift some, or a large number of these risks onto ratepayers. Prices, however, are not only increasing for offshore wind developers, but for New Jersey ratepayers as well.

Costs for everything from bread to aspirin are up. Ratepayers simply cannot afford drastically higher electric bills particularly if such bill increases are driven by attempts to insulate OSW developers from the same risks that New Jersey households and small businesses face. This winter, when there has been a significant increase in natural gas prices, New Jersey households have to choose between heating their home, feeding their family, or paying for medication.

Rate Counsel is particularly concerned about how future OREC prices will be allowed to increase, and the proposed inflation factor offered in the SGD. The SGD, for instance, notes that applicants can offer a fixed initial year OREC price that can be adjusted by a fixed annual escalator, or a fixed schedule of OREC price over time can also be bid. [1] Board Staff also proposes that "submitted OREC pricing for each Project... will be adjusted for inflation" once that Project has a BOEM [Bureau of Ocean and Energy Management]-approved Construction and Operations Plan ("COP"). Staff then provides a specific formula that will be used to assess an inflation-adjustment to initial OREC offers.[2]

Staff's proposed inflation formula uses an index-based approach to adjust OREC prices. The index is comprised of only input cost components that Board Staff has identified. These various components appear to be limited to those broad categories used in OSW project development such as labor costs, fabrication costs, steel costs, and fuel costs. Each component of the index appears to have a weight (called an "F-value") although the source of these weights is not provided. The inflation adjustment also appears to be limited to a one-time adjustment for the time period spanning OREC offer date and BOEM approval of the COP. Last, the SGD provides that the allowed one-time OREC price adjustment will be capped at 15 percent on a symmetric basis, meaning that increases are limited to 15 percent and decreases are also limited to 15 percent.[3] Rate Counsel has a number of observations and concerns about this proposal.

First, Rate Counsel does not understand why Board Staff feels compelled to offer such a one-time OREC price increase allowance to bidders. This adjustment included in the SGD

[1] SGD at 5.
[2] Ibid.
[3] Id. at 6.

suggests that there is a consistent and uniform need by bidders for such an allowance. However, the assumed need for an inflation adjustment has not been proven in any proceeding before the Board nor have stakeholders been given the opportunity to challenge the need for such an adjustment. Rate Counsel is concerned that this proposal will create a windfall reward for those OSW developers that did nothing more than follow good business practices in securing their materials and equipment under options and other advanced purchases. These developers will not need such an adjustment and could use this margin to offer an even more competitive bid. Instead of generating a diversity of bids that include lower-cost bids by more prudent developers, Board Staff's proposal will lead to a "hold-harmless" provision that places all bidders on a common footing by making them whole for changes in input costs and supply chain constraints.

Second, this adjustment assumes that the index is consistent with OSW development costs. Board Staff has provided no evidence that OSW development costs generally follow the same cost inflation trends as those proposed in the OREC price adjustment index. For instance, one component of the index includes BLS PPI Data Series PCU811310811310 (Commercial machinery repair and maintenance) which can include a wide range of activities having nothing to do with power generation, much less OSW development. Further, this index assumes an OSW development cost function that is weighted in the same manner as the index proposed by Staff. Again, there is no evidence that this is the case which could very easily result in Board Staff unnecessarily providing an inflationary windfall to developers at New Jersey ratepayers' expense.

Last, Rate Counsel finds the entire inflation adjustment proposal unfounded and unfair because it affords benefits to developers at ratepayers' expense. While the potential harm of this adjustment is slightly mitigated by the limit to a one-time event and includes a cap, setting the cap at 15 percent is too high. Any cap should not exceed the general rate of inflation, which is now below eight percent.[4] Furthermore, Rate Counsel sees no reason why the caps should be symmetrical. Instead, they should allow OREC price decreases to move to the full level of the observed cost index. There is simply no justification for offering developers a "floor" on downward OREC price adjustments. This is nothing more than a free asset value floor created by the Board at New Jersey ratepayers' expense.

The one-time price adjustment being proposed by Board Staff is of significant importance and value. For example, in the Board's approval of Ocean Wind II ("OW2") in the Second OSW Solicitation, had this project been allowed to increase its first year OREC price on a basis similar to the index being proposed in this solicitation then the initial year OREC prices, and all the subsequent year OREC prices would have been considerably higher. Ratepayers could have been exposed to as much as a 15 percent increase in the entire OREC price schedule and paid an additional $1.4 billion in total OREC revenues (nominal dollars) over 20 years or $689 million in net present value terms relative to what was originally approved by the Board. Likewise, the inclusion of a similar adjustment applied to the Board's approval of Atlantic Shores Offshore Wind Project ("ASOW") in the same solicitation would have exposed ratepayers to an additional $1.9 billion in total OREC revenues (nominal dollars) over 20 years or $912 million in net present value terms relative to what was originally approved by the Board.

One additional source of uncertainty that concerns Rate Counsel rests with the recent federal activity in the area of clean energy, where recently-passed legislation has led to the creation of a large number of valuable financial incentives for large clean energy projects that should also be reflected in the upcoming OSW solicitation. Rate Counsel is concerned that the

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[4] "Consumer Price Index up 7.1 percent over the year ended November 2022," U.S. Bureau Of Labor Statistics, December 16, 2022.

current SGD does not go far enough in requiring developers to demonstrate that they have and will continue to utilize all means necessary to secure federal funding from the Infrastructure Investment and Jobs Act ("IIJA") and the Inflation Reduction Act ("IRA"). Rate Counsel requests that Board Staff require developers certify and make a showing in their Section 3.6 materials requirements that: (1) their bids include applicable IIJA and IRA financial incentives; (2) that applicants are committed to continuing their best efforts at securing any and all such financial incentives in the future; and (3) that such incentives, if secured, will be passed along on dollar-for-dollar basis to New Jersey ratepayers. If such financial incentives are not pursued, developers need to explicitly set forth the reasons that justify such omissions. The current requirements only state that such information be provided if explicitly included in the OREC bid.

Last, Rate Counsel notes the recent press coverage regarding a previous OREC solicitation awardee who has publicly indicated that it would not reap satisfactory profits on its OREC-funded project if it earns only the ORECs awarded by the Board.[5] This is of great concern to Rate Counsel. At this stage in New Jersey's OSW development, the Board should avoid the potential for this type of uncertainty to impact the awards, not only in the pending Third OSW Solicitation, but in all future OSW solicitations and renewable energy procurements using ratepayer funds. Rate Counsel recommends that the Board develop explicit guidelines that prevent post-award increases to contract prices and specify monetary penalties for non-performance under the terms of the awarded contract.

Rate Counsel suggests that the Board examine Third Solicitation bids carefully and in making decisions about OREC awards, look to those bids that attempt to minimize the ratepayer impacts of the current and future economic or financial risks. The Board should seek to

[5] https://subscriber.politicopro.com/article/2022/11/largest-offshore-wind-developer-worries-about-its-east-coast-projects-00064917

demonstrate stability and certainty for both the industry and for ratepayers. Minimizing ratepayer bill impacts and steadying financial risk will be a big challenge for Board Staff in evaluating bids and one that will likely be unique relative to the prior two solicitations.

(3) Third OSW Solicitation Capacity Block

Rate Counsel is also concerned about this particular solicitation because it will represent the largest potential capacity "block" or range of any solicitation scheduled by the Board to meet the Governor's 11,000 megawatt ("MW") Offshore Wind capacity target. The third solicitation outlines a potential award block for Offshore Wind capacity that spans from 1,200 MWs to 4,000 MWs – this is a vast range in capacity and potential awards. It is important to note that this range is much larger than the Second OSW Solicitation range of 1,200 MWs to 2,400 MWs. Further, as Staff knows, these are general targets and the Board is allowed to deviate from this schedule, as it did in the second solicitation when it awarded ORECs to 2,658 MWs of Offshore Wind capacity, over 250 MWs over the previously set limit.

Rate Counsel suggests that now may be the time to be conservative in making Offshore Wind awards given that (1) times are uncertain and challenging for all large energy investments, (2) the last solicitation went outside the prescribed capacity range, (3) a previous awardee is now indicating it will need additional earnings over what was previously awarded by the Board and (4) there are at least four more solicitations of a fixed 1,200 MW target that could be used to make up any lower OSW capacity procurement amounts in the third round of bids. With these concerns in mind, Rate Counsel recommends that bidders be encouraged through the SGD to be flexible in making capacity offers, they should seek federal funding opportunities as part of their bids, and Board Staff should continue to support variety in the capacity ranges and OSW project configurations in this upcoming solicitation. Right now, the SGD allows for differing configurations but does not encourage such flexibility.

Rate Counsel believes this flexibility is critical given the proposed one-time OREC price inflation adjustment being proposed by Board Staff. The Third OSW Solicitation could see as much as 4,000 MWs of capacity developed. Using the same OW2 OREC price schedule hypothetical discussed earlier, and substituting the output associated with 4,000 MWs of capacity, rather than the previously-awarded 2,658 MWs, could result in a substantial financial burden for ratepayers. Again, assuming the same OW2 OREC price schedule, inflated for Board Staff's currently proposed inflation adjustment, could result in an additional $4.9 billion in total OREC revenues (nominal dollars) over 20 years or $2.5 billion in net present value terms relative to the approved OW2 OREC price schedule given the output of 4,000 MWs, instead of 2,658 MWs (assuming the same capacity factors).

(4) Conclusion

In conclusion, Rate Counsel thanks Board Staff for the opportunity to provide our comments here today. Rate Counsel will be providing additional written comments during the course of these proceedings and looks forward to working closely with Board Staff, as in past OSW solicitations, to provide input on the various proposals and their likely ratepayer impacts.