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March 2, 2023
New Jersey Board of Public Utilities
Secretary of the Board
44 South Clinton Ave., 1st Floor
PO Box 350
Trenton, NJ 08625-0350

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via: publicaccess.bpu.state.nj.us

RE: New Jersey Board of Public Utilities Docket No. QO22080481, In the Matter of the Opening of New Jersey's Third Solicitation for Offshore Wind Renewable Energy Certificates, Request for Information

Dear New Jersey Board of Public Utilities Staff,

Attentive Energy LLC ("Attentive Energy") respectfully provides the following responses and questions to the New Jersey Board of Public Utilities' (the "Board" or the "NJBP") Request for Information ("RFI") for New Jersey's Third Solicitation for Offshore Wind Renewable Energy Certificates ("NJ3 solicitation") Performance Guarantees.¹

Attentive Energy is an indirect subsidiary of TotalEnergies Renewables USA, LLC ("TERUSA") and part of TotalEnergies SE ("TotalEnergies"), a global multi-energy company that produces and markets energy. TERUSA recently became one of the top five renewable energy producers in the U.S., and TotalEnergies has an 11-gigawatt ("GW") global offshore wind development portfolio and major interest in expanding within the U.S. market. TotalEnergies has an ambition to install 100 GW of global renewable power generation by 2030 and reach carbon neutrality in global business operations by 2050.

As of May 2022, Attentive Energy is the leaseholder of the 84,332-acre lease area OCS-A 0538 (the "Lease Area") in the New York Bight, establishing its long-term presence in the region and commitment to delivering a community-first approach following years-long stakeholder engagement.

We applaud New Jersey's efforts to integrate the State's offshore wind ("OSW") transmission objectives with the regional grid's planning and development process, and we support the recent State Agreement Approach ("SAA") award to construct the onshore transmission facilities necessary to successfully deliver offshore wind to New Jersey customers. We offer for consideration the following comments and questions on topics included in the NJ3 solicitation RFI to support the State's goals to lower costs, increase project schedule viability, mitigate environmental impacts, and engage New Jerseyans with a community-minded approach.

¹ Portions of this response contain confidential, proprietary, and/or commercially sensitive information. Attentive Energy has submitted a Confidential Copy of this response that should be treated as a non-public record that is exempt from disclosure to the extent permitted under applicable laws and/or as expressly set forth in the RFI. Attentive Energy has also submitted a redacted version of this response that should only be released to the public to the extent permitted under applicable laws and/or as expressly set forth in the RFI. All notices or other communications regarding the confidential nature of this response should be directed to Attentive Energy's Senior Legal Counsel Murray Greene, murray.greene@totalenergies.com.

[REDACTED]

As currently written, the Board is proposing Commitment Security that Applicants must make in association with Tier 1 Commitments. First, the Board should specifically define what qualifies as “Tier 1 Commitments”. Although currently uncertain, Tier 1 Commitments appear to be associated with primary suppliers for the qualified offshore wind projects and the Tier 1 Commitment Security appears to be associated with permitting, construction, and delivery milestone commitments on the part of the OEM or other suppliers rather than the Applicant itself. [REDACTED]

[REDACTED]

[REDACTED]

Multiple applications may also contribute towards a single Tier 1 Commitment. If these Applicants are all required to post duplicative Tier 1 Commitment Security, this will result in unnecessary added project costs. [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

Critical Milestones

Separation of Critical Milestones and Commitment Security for Tier 1 Commitments, Prebuild Infrastructure, and Standalone Projects

It is not clear why the Board has compiled a single Commitment Security associated with both Tier 1 Commitments and Prebuild Infrastructure, as these commitments involve dissimilar activities, and consequently, dissimilar milestones. Although the RFI states that Projects are only required to meet one of the two Commitment Security amounts, it is not clear if an Applicant wins with both Tier 1 and Prebuild Infrastructure commitments whether it will face compounding Commitment Security requirements. Additionally, if a Project provides two Tier 1 facilities, it is not clear if an Applicant must agree to two times the security, or if the commitment remains the same. Attentive Energy seeks clarification from the Board on these points. Attentive Energy recommends that separate milestones and separate Commitment Security be explicitly defined for Tier 1 Commitments and Prebuild Infrastructure, and these guarantees should be independent from any Commitment Security required from the Applicant that is related to the Qualified Offshore Wind Project ("Project"). Responsibility to post Commitment Security might be better assigned as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Financial Commitment

The RFI explains that Projects including Tier 1 Commitments or Prebuild Infrastructure shall be required to post Commitment Security in the amount of \$150,000 per megawatt of capacity awarded and Projects that do not include Tier 1 Commitments or Prebuild Infrastructure shall be required to post Commitment Security in the amount of \$75,000 per megawatt of capacity awarded.

[REDACTED]

The RFI appears to indicate that the full Commitment Security amount is due immediately upon submitting the compliance filing. Attentive Energy recommends that the Commitment Security requirement start at a lower value and increase over time. This would better correspond to the State of New Jersey's increasing exposure to a developer over time. As development progresses and time passes, the negative impact on New Jersey resulting from a project delay or abandonment increases. As such, the Commitment Security requirement should increase over time.

Additional clarifications are sought regarding forfeiture of Contract Security

[REDACTED]

Attentive Energy asks that the Board please clarify the process for Applicants to forfeit their Commitment Security. Attentive Energy also asks that the Board confirm that when Critical Milestones are delivered, the Commitment Security is reduced by the percentage associated with the Critical Milestone.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Excusable Delays and Extensions

The RFI states that any missed Critical Milestone that is not excused by the Board will result in the forfeiture of the total Commitment Security posted, multiplied by the percentage value assigned to each Critical Milestone. First, as currently written, the RFI does not clearly identify which percentage values are assigned to each Critical Milestone. Attentive Energy requests that the Board update the RFI with those percentage values and give Applicants an opportunity to comment on those specific values. Second, for avoidance of doubt, Attentive Energy requests that the Board explicitly identify what would be classified as a Critical Milestone that may or may not be excused by the Board.

Attentive Energy requests that the Board clarify the process for petitioning the Board for an extension of any Critical Milestone. Where a Critical Milestone is depended upon by other Applicants (e.g., Prebuild Infrastructure Critical Milestones), will other Applicants be given an opportunity to comment or participate in the Board’s consideration? [REDACTED]

[REDACTED]

The Board should acknowledge that Applicants not responsible for the Prebuild Infrastructure should automatically have an excusable delay to Critical Milestones in case the Prebuild Infrastructure is not available in accordance with its Critical Milestones.

[REDACTED]

Attentive Energy seeks further clarification on agreements between the Prebuild Infrastructure Applicant and other Applicants. The Board should create and issue a draft standard agreement for comment by Applicants as part of the pre-solicitation process of defining security associated with Projects. Where the Board considers an extension of a Critical Milestone associated with the Prebuild Infrastructure, the Board must specify how it will consider the impact on the standard agreement.

Critical Milestones – Other Recommendations

The RFI defines various Critical Milestone activities and asks that Applicants make a compliance filing with specific dates for each of the Critical Milestones. Attentive Energy feels that a window of time would be more appropriate given the magnitude of the financial commitments; Critical Milestones should not be dates but rather defined as a month or a quarter. By building in this flexibility, Applicants may be less incentivized to build float into the definition of these Critical Milestone dates.

[REDACTED]

[REDACTED]

Attentive Energy also strongly recommends that the Board adopt a graduated schedule for return of Commitment Security even for late delivery of qualified offshore projects. An Applicant who completes a qualified offshore project one month late should not be penalized with complete forfeiture of its Commitment Security on the same basis as an Applicant who never completes its qualified offshore project.

Other

[REDACTED]

We again thank the Board for the opportunity to provide feedback, and ask questions, in response to the NJ3 solicitation Draft SGD. We look forward to supporting New Jersey and its communities as a long-term partner. If you have any additional questions or seek clarification to any of our responses, please do not hesitate to contact me at christen.wittman@totalenergies.com or (508) 272-6987.

Sincerely,



Christen Wittman
Project Director