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March 2, 2023

**Via Electronic Mail**

Carmen D. Diaz, Acting Board Secretary  
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 Request for Information ("RFI") issued by the Board of Public Utilities ("Board") in this matter on February 24, 2023. In accordance with the RFI, these comments are being filed electronically with the Board's Acting Secretary at [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov). **Please acknowledge receipt of these comments.**

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 solicitation guidance document ("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 opportunity to provide additional written comments on the draft SGD that will be provided to potential solicitation participants and developers.

Specifically, the RFI is seeking further input on the SGD and a new proposal pertaining to performance guarantees. Staff is proposing that winning bidders be required to provide a financial commitment guarantee. This guarantee will vary depending on the nature of the winning proposal. Those proposals that have either a “Tier 1” infrastructure component<sup>1</sup> or include prebuild infrastructure (supporting the State Agreement Approach), will be required to provide as much as \$150,000 per megawatt (“MW”) of installed OSW capacity. Those projects that do not include any Tier 1 commitments or prebuild infrastructure, and are just “simple” OSW generation projects, will be required to provide \$75,000 per MW of installed capacity. RFI at 4-5. After 90 days of an award, Staff proposes that each project be required to provide a proposed critical path milestone date or schedule, which will define performance. Failure to meet the schedule, assuming there is no as-of-right or Board-approved extension, will result in failure and a financial penalty that is based on forfeiture of the security.

Rate Counsel generally supports Staff’s proposal to require performance guarantees for winning OSW projects in the Third Solicitation. However, Rate Counsel is concerned that these new performance guarantees being proposed at this juncture—late in the pre-solicitation process, and in an environment of significant economic and financial uncertainty in the OSW industry—may not be well received by potential bidders. These new performance guarantees could

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<sup>1</sup> Tier I is defined as the primary supplier who contracts directly with the qualified offshore wind project developer to deliver a major contract package. RFI at. 4.

dampen enthusiasm for the Third Solicitation, resulting in less than robust participation. Lower participation, other things equal, will likely increase overall OREC offers. Thus, Staff's proposal could have the unintentional effect of driving up ratepayer costs. Rate Counsel hopes that Board Staff will keep this potential outcome in mind in evaluating Third Solicitation bids and strongly consider options that might defer awarding any bid if OREC offers are not competitive with prior policy expectations. This would entail deferring the 1,200 MW anticipated to be secured under the current Third Solicitation to the next and/or future solicitations.

Once again, Rate Counsel appreciates the opportunity to provide our comments and looks forward to working closely with Staff, as in past OSW solicitations, to provide input on the various proposals and their likely ratepayer impacts.

Thank you for your consideration and attention to this matter.

Respectfully submitted,

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

By: */s/ Brian Lipman*  
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