



March 2, 2023

Carmen D. Diaz  
Acting Secretary of the Board  
New Jersey Board of Public Utilities  
Submitted electronically to: [Board.Secretary@bpu.nj.gov](mailto:Board.Secretary@bpu.nj.gov)

**Re: IN THE MATTER OF THE OPENING OF NEW JERSEY'S THIRD SOLICITATION FOR OFFSHORE WIND  
RENEWABLE ENERGY CERTIFICATES (OREC) - Docket No. QO22080481  
COMMENTS TO REQUEST FOR INFORMATION**

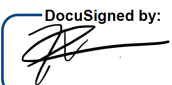
Dear Ms. Carmen D. Diaz,

Atlantic Shores Offshore Wind, LLC ("Atlantic Shores"), a 50/50 joint venture between EDF-RE Offshore Development, LLC (a subsidiary of EDF Renewables, Inc.), and Shell New Energies US LLC, currently holds one of the largest portfolios of offshore wind lease areas in the US, adding up to a total of 262,604 acres and an expected capacity potential of over 5 GW ("Portfolio"). Atlantic Shores' Portfolio consists of Lease OCS-A 0499 and Lease OCS-A 0549, which combined amount to 183,253 acres and host Project 1, a 1,510 MW project awarded an OREC from the New Jersey Board of Public Utilities ("NJBP") in June 2021; and Lease OCS-A 0541, which totals 79,351 acres and was awarded to Atlantic Shores by BOEM pursuant to the ATW 8 Bight Auction. Out of the full Atlantic Shores' Portfolio, 1.5 GW is under firm offtake agreement, leaving over 3.5 GW of uncommitted capacity strategically positioned to meet the offshore wind procurement goals of its target markets, including New Jersey.

Atlantic Shores appreciates the opportunity to submit comments in response to the Request for Information ("RFI") released by the NJBP in the abovementioned Docket on February 24, 2023, in relation to New Jersey's Offshore Wind Solicitation #3 ("NJRD3 RFP").

Please note that Atlantic Shores asserts that, as set forth in that certain Substantiation of Confidentiality dated March 2, 2023, and transmitted simultaneously herewith, certain information included in these comments is exempt from disclosure to the public pursuant to the applicable NJBP rules at N.J.A.C. 14:1-12.1 et seq., the New Jersey's Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law. Accordingly, both public (redacted) and confidential (unredacted) versions of these comments are being provided to the NJBP.

Sincerely,

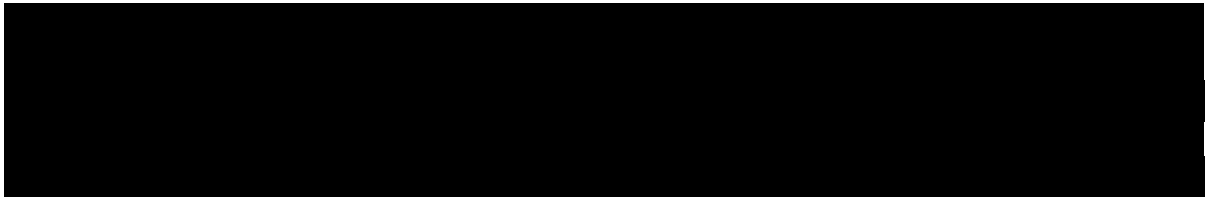
DocuSigned by:  
  
FE672F5EAAF0456  
Joris Veldhoven,  
Chief Executive Officer  
Atlantic Shores Offshore Wind, LLC



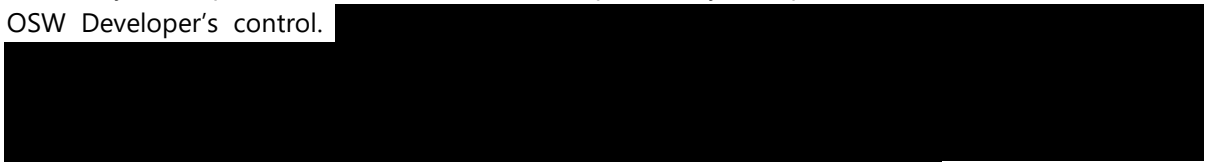
1. Atlantic Shores fully supports and acknowledges that the NJBPU seeks to create further accountability for OSW Developers to deliver both the OSW Project, and if applicable, the Prebuild Infrastructure, as well as the associated local content commitments including Tier 1 Facilities, per their NJRd3 bid commitments. Atlantic Shores is therefore supportive of the NJBPU’s introduction of the concept of commitment security as a part of the OREC award. However, we submit that such commitment security be limited to the delivery of the OSW Project and, if applicable, the Prebuild Infrastructure (see comment #2), and specifically exclude Tier 1 Commitments.

2. Atlantic Shores recommends that the NJBPU not include a requirement in the NJRd3 RFP for awarded offshore wind projects (“OSW Projects”) to carry commitment security in connection with Tier 1 Commitments for the reasons stated below.

a. In the NJBPU’s Solicitation #2 and associated approvals, it already imposed a mechanism to adjust the associated OREC price(s), to the extent that the selected OSW Developer does not generate the local content benefits represented in its application. Atlantic Shores respectfully submits that such a mechanism, in lieu of the commitment securities for Tier 1 Commitments proposed through the RFI, is the appropriate manner to ensure that OSW Developers follow through on their Tier 1 Commitments.



b. Tier 1 Facilities, as they are currently addressed within the RFI and interpreted by Atlantic Shores, are essentially developed, financed, constructed and operated by third parties, and as such out of exclusive OSW Developer’s control.



As noted in comment 6(b) below for reference, as part of its Supply Chain Investment Plan (SCIP) construct, NYSERDA requires award security for SCIP facilities to be posted by the OEM and not the OSW Developer, which acknowledges that delivery of same is outside of the exclusive control of the OSW Developer.

c.



d.



[REDACTED]

3. To the extent the NJBPU will continue to require commitment securities for Tier 1 Commitments (which, as noted in comment 1 above, Atlantic Shores does not support) the Final SGD should more clearly define what constitutes a Tier 1 Commitment.

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

4. Atlantic Shores respectfully submits that there are several challenges associated with the unilateral imposition of commitment security through an OREC award construct, compared to states that utilize a bilateral contract structure to govern the various details associated with posting, drawing, and releasing such commitment security, including, without limitation, establishment of excusable delays for missing applicable milestones. Atlantic Shores respectfully submits that the final structure of any commitment security requirements should be commercially reasonable and, to that end, OSW Developers should be permitted to review and comment on draft commitment security provisions included in any OREC award order, or, in the alternative, the Final SGD should expressly permit applicants to propose specific terms and conditions surrounding the commitment security, which terms and conditions, may include, but not necessarily be limited to:

a. Incremental posting of commitment security over time, in lieu of posting of full commitment security within ninety (90) days of issuance of Board order designating OSW Projects and awarding ORECs.

[REDACTED]

- [REDACTED]
- b. Provisions providing for the return of commitment security funds drawn if, subsequent to the drawing of such funds, the OSW Developer cures and ultimately satisfies the applicable milestone, even if not timely, or, in the alternative, if the OSW Developer ultimately achieves the COD milestone. [REDACTED]
- [REDACTED]

- c. The final release of commitment security should be made on a pro rata basis as the OSW Project is commissioned. See for reference Section 15.06(b) of NYSEDA's Standard Form Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement, in ORECRFP22-1, which can be found at <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2022-Solicitation>. The RFI currently proposes that a substantial portion of the commitment security will not be released until completion of the final critical milestone, which is achievement of final phase COD for the OSW Project and, for Projects with a Prebuild Commitment, completion of the Prebuild Infrastructure.
- d. Related to comment 4(c) above, Atlantic Shores respectfully submits that once the OSW Project has achieved COD (defined as 90% of the wind turbine generators having been placed in service) all commitment security should be released.
- e. Detail surrounding the circumstances by which failure to timely achieve critical milestones may be excused, including due to circumstances that are outside of the control of the OSW Developer (e.g., permitting, delayed interconnection facilities or system upgrades, availability of the NJWP for marshalling, etc.) or that constitute force majeure, including a proposed definition of "Force Majeure Events", which render achieving milestones or delivery of the OSW Project infeasible or unmitigable. The discretion currently afforded the NJBPU in the RFI to extend Critical Milestones dates "for good cause" does not provide sufficient certainty as to the circumstances under which such an extension would be approved.
- f. Inclusion of any security tied to the delivery of the Prebuild Infrastructure within the same OSW Project \$/MW commitment security. The Prebuild Infrastructure concept is specific to the NJRd3 solicitation and will only be awarded to one bidder who will deliver both an OSW Project and the Prebuild Infrastructure, with the latter being necessary for the OSW Project's export of power to the grid. As

such, Atlantic Shores submits that it is appropriate for any security related to the Prebuild Infrastructure to be included within the same OSW Project \$/MW commitment security.

5. Related to comment 4 above, Atlantic Shores notes that the RFI does not appear to include provisions for the release of commitment security for OSW Projects that do not have Tier 1 Commitments or a Prebuild Commitment.
6. The amount of the commitment security should be reduced. As currently proposed, the minimum commitment security of \$75,000 per MW would be the highest security amount required on the East Coast by a significant margin and therefore make the New Jersey OREC market less attractive in comparison.
  - a. For reference, at its maximum, NYSERDA's required Contract Security pre-COD, as contemplated within the last OREC Standard Form Purchase and Sale Agreement attached to its 3<sup>rd</sup> Solicitation, reaches a cumulative \$60,000 per MW, already higher than the latest required securities in Connecticut's 2019 RFP (max. \$40,000 per MW), Massachusetts' 2021 RFP (max. \$40,000 per MW for single contracts) and Rhode Island's 2021 RFP (\$40,000 per MW).
  - b. As part of its Supply Chain Investment Plan (SCIP) construct however, which ties awarded SCIP Facilities to New York State funding, NYSERDA requires SCIP Award Security from the Funding Recipient (i.e., the OEM) in the amount of 2% of the New York State Funding awarded to that Funding Recipient shortly after award, increased to 4% upon execution of the SCIP Facility Funding Agreement. As a reference, for a Funding Recipient awarded \$100 million of New York State Funding, the SCIP Award Security for that Funding Recipient would be for \$2 million, and the SCIP Contract Security \$4 million, considerably lower than a \$150,000 per MW Tier 1 Commitment for the minimum OSW Project size of 1,200 MW (\$180 million).

c.

