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Submitted Via Electronic Mail

Re: New Jersey Offshore Wind Draft Fourth Solicitation Guidance Document Application Submission for Proposed Offshore Wind Facilities, Docket No. QO24020109

Clean Ocean Action (“COA”) is a regional coalition of conservation, environmental, fishing, boating, diving, student, surfing, women’s, business, civic, and community groups with a mission to improve the water quality of the marine waters off the New Jersey/New York coast. COA has been actively following offshore wind development in the New York/New Jersey Bight for almost two decades. Over the past several years, COA has engaged with the New Jersey Board of Public Utilities (“NJBPU”), New Jersey Department of Environmental Protection (“NJDEP”), and other state and federal agencies regarding offshore wind development.¹ Rather than restate those comments, we incorporate them by reference. COA’s involvement also includes serving as a stakeholder on the NJDEP Offshore Wind Environmental Resources Working Group.

COA appreciates the opportunity to comment on the NJBPU’s New Jersey Offshore Wind Fourth Draft Solicitation Guidance Document Application Submission for Proposed Offshore Wind Facilities (“SDG”). COA strongly urges NJBPU not to move forward with the fourth solicitation for offshore wind (“OSW”) energy development until more is known about OSW

¹ E.g. Clean Ocean Action, Comments re New Jersey Offshore Wind Solicitation #3 Solicitation Guidance Document Application Submission for Proposed Offshore Wind Facilities, Docket No. QO22080481 (Jan. 13, 2023); Clean Ocean Action, Comments re Notice of Availability of a Draft Programmatic Environmental Impact Statement for Expected Wind Energy Development in the New York Bight, Docket No. BOEM-2024-0001 (Mar. 13, 2024); Clean Ocean Action, Comments re Atlantic Shores South Federal Consistency Determination for Review – Lease Area OCS-A 0499 (Oct. 19, 2023).

through a representative pilot project, the upcoming cost/benefit analysis study by the Government Accountability Office, and an independent investigation determining the cause of the recent increase in marine mammal strandings off the New Jersey and New York coast. In the meantime, actions to combat climate change must be taken now, and the cheapest, fastest, safest, and cleanest way to reduce greenhouse gas emissions is to reduce energy demand, use, and waste on a programmatic scale.²

I. Policy Concerns

COA is not opposed to responsible and reasonable OSW development that supports and sustains a healthy ocean, as proven through peer-reviewed science, good governance, and due diligence, with ecosystem monitoring and assessments developed, implemented, and evaluated by independent scientists. The current OSW development proposed off the New Jersey coast is reckless, as it falls short of the above standards.

Previously, COA submitted comments on the third solicitation's guidance document, wrote a letter to Governor Murphy and NJBPU calling to stop the third solicitation (which was never answered), and has spoken at multiple NJBPU public meetings outlining our policy position and concerns about OSW. Our concerns have not changed between solicitations, and additional issues and concerns have been and continue to be raised. Moreover, NJBPU never responded to COA's letter to outline its response and refute COA's concerns with documentation.

As pre-construction activities for offshore wind projects off the coast of New Jersey have progressed, unprecedented numbers of dolphins, whales, and sea turtles have been washing up on New Jersey's shore.³ Although regulators have insisted that offshore wind preconstruction activities are blameless,⁴ they have no definitive proof: the deaths remain scientifically unexplained, and there has never been an area-specific study to determine what role(s) preconstruction activities may have played, if any, in the deaths.⁵ Regulators acknowledge and affirm that offshore wind development poses risks to marine life in several ways, including but not limited to disorienting the animals with ocean noise or increasing vessel traffic and collisions

² WORLD ECON. FORUM, *Here's Why the Increasing Demand for Energy is a Blind Spot in the Fight Against Climate Change* (Nov. 10, 2022), <https://www.weforum.org/agenda/2022/11/cop27-reduce-energy-demand-climate-change/>; *How Secretive Methane Leaks Are Driving Climate Change*, UNITED NATIONS ENV'T. PROGRAMME (July 19, 2022), <https://www.unep.org/news-and-stories/story/how-secretive-methane-leaks-are-driving-climate-change>.

³ MARINE MAMMAL STRANDING CTR., *Cetacean Stranding Data*, <https://mmsc.org/cetaceans-2002-2023> (updated October 9, 2023); Evan Halper et al., *Dead whales and tough economics bedevil Biden's massive wind energy push*, WASHINGTON POST (Jan. 25, 2023), <https://www.washingtonpost.com/business/2023/01/25/wind-turbines-whales-biden/>.

⁴ Press Release, N.J. Dep't of Env't Prot., NJDEP Statement on East Coast Whale Mortalities (Mar. 15, 2023), https://www.nj.gov/dep/newsrel/2023/23_0021.htm

⁵ See MARINE MAMMAL STRANDING CENTER, *Marine Mammal Stranding Center Statement on Whale Deaths* (February 17, 2023) (updated May 3, 2023).

between animals and ships.⁶ This is why COA called for an investigation, and nearly 400,000 people signed a petition in support.⁷

At the same time, the environmental and economic benefits of offshore wind have become increasingly uncertain due to macroeconomic shocks, supply chain constraints, and issues connecting to existing grids to make the energy usable.⁸ New Jersey Senate President Nicholas Scutari and Assembly Speaker Craig Coughlin raised economic concerns and called for heightened review and public participation in response to the third offshore wind solicitation:

“The legislature has concerns about the BPU’s approach on the offshore wind projects. There are still many unanswered questions about the economic impact these projects will have on ratepayers as well as potential impacts to one of our state’s largest economic drivers, tourism at the shore. The BPU should be able to share these impacts with the communities affected and the legislature before moving forward with these new offshore projects.”⁹

The failure of Orsted’s Ocean Wind 1 and 2 projects¹⁰, despite receiving multiple forms of financial support and streamlined permitting,¹¹ is a glaring example of how pushing projects forward without due diligence will ultimately be to the detriment of renewable energy development.

In short, COA’s concerns for the health of the marine environment for the third, and now fourth, OSW solicitation remain, and have increased since NJBPU awarded contracts in the third

⁶ Letter from Sean A. Hayes, PhD, Chief of Protected Species, NOAA NEFSC, to Brian R. Hooker, Lead Biologist Bureau of Ocean Energy Management, Office of Renewable Energy Programs (May 13, 2022); NAT’L MARINE FISHERIES SERV., NORTH ATLANTIC RIGHT WHALE 5-YEAR REVIEW: SUMMARY & EVALUATION 24 (Nov. 2022); Offshore Wind Energy: Protecting Marine Life, NOAA FISHERIES, <https://www.fisheries.noaa.gov/topic/offshore-wind-energy/protecting-marine-life>.

⁷ Clean Ocean Action, *Petition to Demand Independent Investigation of Whale Deaths*, CHANGE.ORG (last visited Mar. 25, 2024), https://www.change.org/p/petition-to-demand-independent-investigation-of-whale-deaths?recruiter=1032124476&recruited_by_id=c173c7c0-2d9c-11ea-a987-1f790545d5f&utm_source=share_petition&utm_medium=copylink&utm_campaign=petition_dashboard

⁸ Eduardo Garcia, *Cost crunch prompts mass rethink of US offshore wind contracts*, REUTERS (Sept. 13, 2023), <https://www.reuters.com/business/energy/cost-crunch-prompts-mass-rethink-us-offshore-wind-contracts-2023-09-13/>; John Fialka, *U.S. Offshore Wind Needs to Clear a Key Hurdle: Connecting to the Grid*, SCIENTIFIC AMERICAN (Aug. 3, 2020), <https://www.scientificamerican.com/article/u-s-offshore-wind-needs-to-clear-a-key-hurdle-connecting-to-the-grid/>.

⁹ *Senate President Scutari, Speaker Coughlin Issue Statement Regarding Offshore Wind Developments*, Press Releases, INSIDER NJ (Aug. 7, 2023), <https://www.insidernj.com/press-release/150021/>.

¹⁰ Ry Rivard, *Offshore Wind Company Pulls Out of New Jersey Projects, A Setback to Biden’s Green Agenda*, POLITICO (October 31, 2023), <https://www.politico.com/news/2023/10/31/offshore-wind-new-jersey-orsted-00124661>.

¹¹ Wayne Parry, *Tax Break for Offshore Wind Energy Developer Orsted Narrowly Approved in New Jersey Legislature*, WHYY (June 30, 2023), <https://whyy.org/articles/new-jersey-offshore-wind-orsted-tax-breaks/>; AFFORDABLE ENERGY FOR N.J., *Estimation of Tax Credits Available to Orsted for Ocean Wind 1*, POLITICO, <https://subscriber.politicopro.com/f/?id=00000187-4d39-d1c2-abc7-6d393b810000#>; *OCEAN Wind 1 Project*, PERMITTING DASHBOARD, PERFORMANCE.GOV, <https://www.permits.performance.gov/permitting-project/fast-41-covered-projects/ocean-wind-1-project> (last visited Jan. 29, 2024).

solicitation before commissioning any further environmental or economic studies. The fourth solicitation would add up to 4,000 more megawatts of capacity, more than half of what is already approved, with significant environmental and economic uncertainty remaining.

II. Critiques of the SGD

Regarding the SGD itself, COA continues to oppose the voluntary nature of many of the SGD's mitigation measures designed to protect the environment, listed in Attachment 6. For example, developers "should" take measures to avoid impacts to sensitive seafloor habitats, including shellfish habitat, prime fishing areas, submerged aquatic vegetation, hard-bottom habitats, and wetlands.¹² Projects "should" use state-of-the-art technology to minimize sound effects and "should" consider the potential for sonic testing to affect fish behavior and commercial fishing.¹³ While these are common-sense ideas to reduce impacts, these measures are much less likely to be followed if they are not requirements. As written, these voluntary measures do not sufficiently protect marine life and the environment; they should be amended to be mandatory.

Additionally, many of the proposed mitigation measures lack specificity. One measure states that vessel operators must decrease vessel speed when cetaceans are observed, but by an undetermined amount for an undetermined time.¹⁴ Additionally, "[o]perators shall undergo training on applicable vessel guidelines" does little to clarify what those guidelines are, whether or not they are mandatory, and what should control if a guideline is less protective than the mitigation measures in Attachment 6, particularly if the mitigation measures remain voluntary suggestions.¹⁵ There are also no contingency plans for determining whether a project is causing environmental harm and adapting mitigation techniques or stopping work in response. Additionally, NJBPU should provide more detail on the stakeholder engagement process for developing Adaptive Environmental Mitigation and Monitoring Plans, such as who the stakeholders and regional science entities will be.¹⁶ Any monitoring reports required as part of the Adaptive Environmental Monitoring Plans must be made publicly available.

Further, the applications for projects will not be made available for the public to view until after NJBPU has selected projects for solicitation awards.¹⁷ If the public objects at that point, NJBPU will have already made binding commitments to the developer and will have much more

¹² N.J. BD. OF PUB. UTILITIES, NEW JERSEY OFFSHORE WIND FOURTH SOLICITATION SOLICITATION GUIDANCE DOCUMENT APPLICATION SUBMISSION FOR PROPOSED OFFSHORE WIND FACILITIES, at A6-2 (Mar. 6, 2024), <https://njoffshorewind.com/fourth-solicitation/solicitation-documents/Draft-Solicitation-Guidance-Document-with-attachments.pdf>.

¹³ *Id.* at A6-3-4.

¹⁴ *Id.* at A6-4.

¹⁵ *Id.*

¹⁶ *Id.* at A6-1.

¹⁷ *Id.* at 16.

incentive to push forward with the project over public opposition. This lack of transparency will erode the public's trust in NJBPU.

The SGD requires commitment securities, additional funds to ensure the developer will meet their funding commitments to the project.¹⁸ The commitment security amount is reduced when a project meets certain critical milestones in development, such as providing a specific percentage of the funding obligation, receiving approval of the Construction and Operations Plan, or achieving commercial operability by the contracted date.¹⁹ However, notwithstanding the system for reducing the commitment security, NJBPU can also terminate the commitment security by Board approval.²⁰ The SGD does not give standards regarding when the Board would otherwise approve to reduce the commitment obligation even if the critical milestones were not met.²¹ This creates a problematic loophole which could artificially prolong financially nonviable projects.

The SGD allows another source of financial risk by limiting the disclosures a company must make regarding prior business bankruptcies, defaults, disbarments, investigations, indictments, litigation, disputes, claims or complaints, failure to satisfy contract obligations, or failure to deliver products against either the Applicant, its parent company, affiliates, subsidiaries, or key employees.²² The required narrative history of any such issues may be limited to matters only in the United States.²³ This is unacceptable when many of the developers participating in these solicitations are multi-national corporations whose activities outside the United States are very relevant to evaluating their business.

Finally, as a member of the New Jersey Offshore Wind Environmental Resources Working Group, COA was very interested to read that NJBPU is committing to work with NJDEP to engage members of the working group. We agree that the working group is an important avenue for stakeholders to be heard, but NJDEP cancelled the last meeting on short notice,²⁴ so the group has not met since April 2023. An NJDEP representative recently emailed the working group members advising that a "save the date" for the next meeting would be sent soon; COA has not yet received it at the time of writing.²⁵ COA looks forward to hearing from NJDEP and NJBPU about resuming meetings.

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 18-20.

²⁰ *Id.* at 20.

²¹ *Id.*

²² *Id.* at 23.

²³ *Id.*

²⁴ Email from Megan Brunatti, Deputy Chief of Staff, N.J. Dep't Env't Prot., to Erika Bosack, Executive Director, Clean Ocean Action (Oct. 25, 2023) (on file with COA).

²⁵ Email from Elizabeth Lange, Environmental Specialist II, N.J. Dep't Env't Prot., to Cindy Zipf, Executive Director, Clean Ocean Action (Mar. 25, 2024) (on file with COA).

Thank you again for the opportunity to comment on the SGD. Please contact us if you have any questions.

Respectfully submitted,



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