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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

In the Matter of the New Jersey's Third Solicitation
for Offshore Wind Renewable Energy Certificates
(OREC) – Attentive Energy Two 1342 MW Project

Docket No.: QO22080481

VERIFIED PETITION

By way of this Verified Petition, including all Exhibits referenced herein (collectively, the “**Petition**”), Attentive Energy, LLC (“**Attentive Energy**” or “**Petitioner**”), a limited liability company formed under and existing pursuant to the Delaware Limited Liability Company Act, having a principal business address of 12 E. 49th St., 11th Floor, New York, NY 10017, respectfully petitions and invokes the jurisdiction of the New Jersey Board of Public Utilities (the “**Board**”) seeking from the Board as follows, all in connection with Petitioner’s 1,342 megawatt (“**MW**”) approved offshore wind project to be located within Bureau of Ocean Energy Management lease OCS-A 0538 off the coast of New Jersey (the “**Project**”): (i) authorization to file with the Board *unaudited* financial statements on a quarterly basis, for the time period commencing with the effective date of the hereinafter defined OREC Order (i.e., January 24, 2024), through the term of the hereinafter defined OREC Order and *audited* financial statements on an annual basis commencing January 2, 2025 through the term of the hereinafter defined OREC Order, in lieu of the Offshore Wind Economic Development Act (“**OWEDA**”) requirement to provide the Board audited financial statements on a quarterly basis (the “**OWEDA Quarterly Audit Requirement**”); (ii) if determined necessary by the Board, a waiver pursuant to N.J. Admin. Code § (“**N.J.A.C.**”) 14:1-1.2(b) of the Board requirement set forth at N.J.A.C. 14:8-6.5(a)(4)(v),

that Petitioner commit to file audited financial statements on a quarterly and annual basis; (iii) confirmation that submittal of quarterly financial statements shall be considered timely if provided to the Board no more than sixty (60) days following the end of the applicable accounting quarter; and (iv) confirmation that submittal of annual financial statements shall be considered timely if provided to the Board no more than one hundred eighty (180) days following the end of the applicable fiscal year;

1. On August 19, 2010, OWEDA was signed into law, amending and supplementing the Electric Discount and Energy Competition Act, N.J. Stat. Ann. (“N.J.S.A.”) 48:3-49 *et seq.*

2. OWEDA established, among other things, offshore wind as a Class I resource under the renewable energy portfolio standards and directed the Board to establish an Offshore Wind Renewable Energy Certificate (“OREC”) program requiring a percentage of the State of New Jersey’s (the “State”) electric load to be supplied by offshore wind from qualified OSW projects.¹

3. A qualified OSW project is defined as “a wind turbine electric generation facility in the Atlantic Ocean and connected to the electrical transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the Board pursuant to [N.J.S.A. 48:3-87.1].”²

4. OWEDA defines an OREC as the “environmental attributes of one megawatt hour of electric generation from a qualified offshore wind project”³ and a qualified OSW project will be credited one (1) OREC for each MWh delivered to the transmission grid.⁴

¹ N.J.S.A. 48:3-51.

² N.J.A.C. 14:8-6.1 *et seq.*

³ N.J.S.A. 48:3-51.

⁴ N.J.A.C. 14:8-6.1; N.J.A.C. 14:8-6.6.

5. OWEDA also established the application requirements for OSW projects to be considered eligible to receive ORECs.⁵

6. Following the passage of OWEDA, the Board adopted rules building upon the application requirements set forth in OWEDA and setting forth an application process and evaluation framework for OSW projects, found at N.J.A.C. 14:8-6.1 *et seq.* (the “**OWEDA Regulations**”). In general terms and without limitation, the OWEDA Regulations: (i) establish application requirements; (ii) provide the Board the authority to establish application windows during which offshore wind developers may file applications to qualify their projects for ORECs; (iii) provide the Board the authority to impose conditions upon any grant of ORECs to an OSW developer; and (iv) provide various protections for the New Jersey ratepayer. The OWEDA Regulations also detail how the Board will review an application and ultimately approve, conditionally approve, or deny an application.

7. Directly relevant to this Petition, the OWEDA Regulations require that an application seeking approval as a qualified OSW project include from the applicant “[a] commitment that *audited* financial statements shall be filed with the Board on a *quarterly and annual* basis.”⁶

8. When originally signed into law, OWEDA called for the State OREC program to support “at least” 1,100 MW of offshore wind.⁷

9. On January 31, 2018, Governor Murphy issued Executive Order No. 8, directing the Board, the New Jersey Department of Environmental Protection (“**DEP**”), and any other

⁵ N.J.S.A. 48:3-87.1.

⁶ N.J.A.C. 14:8-6.5(a)(4)(v) (emphasis added).

⁷ P.L. 2010, Chapter 57, 12.

applicable State agencies to implement OWEDA in a manner to realize the development of 3,500 MW of offshore wind by 2030.⁸

10. The State Legislature followed suit and passed an amendment to OWEDA on April 12, 2018, which was signed into law by Governor Murphy on May 23, 2018, and increased the statutory goal of the OREC program to 3,500 MW.⁹

11. On November 19, 2019, Governor Murphy subsequently rescinded the 3,500 MW goal set forth in Executive Order No. 8 via issuance of Executive Order No. 92 and directed New Jersey state agencies to implement OWEDA in a manner to achieve 7,500 MW of offshore wind by 2035.¹⁰

12. On January 27, 2020, Governor Murphy released the 2019 Energy Master Plan, which set goals and directives related to OSW development. This included developing a consistent and transparent solicitation schedule through 2035 that supports a steady, long-term project pipeline.¹¹

13. On September 21, 2022, Governor Murphy signed Executive Order 307, directing the Board, the DEP, the New Jersey Economic Development Authority, and all other New Jersey state agencies with responsibilities arising under OWEDA to take all necessary actions to implement OWEDA in order to promote and realize an increased goal of 11,000 MW of OSW by 2040.¹²

14. In furtherance of OWEDA and Executive Order 307, on March 6, 2023, the Board released its “New Jersey Offshore Wind Third Solicitation, Solicitation Guidance Document,

⁸ N.J. Exec. Order No. 8 at 2 (Jan. 31, 2018), <https://nj.gov/infobank/eo/056murphy/pdf/E0-8.pdf>.

⁹ P.L. 2018, Chapter 17.

¹⁰ NJ Exec. Order No. 92 at 3 (Nov. 19, 2019), <https://nj.gov/infobank/eo/056murphy/pdf/E0-92.pdf>.

¹¹ N.J. Bd. of Pub. Utils., 2019 New Jersey Energy Master Plan: Pathway to 2050, https://nj.gov/bpu/pdf/publicnotice/NJBPU_EMP.pdf (last visited Mar. 27, 2024).

¹² N.J. Exec. Order 307 (Sep. 21, 2022), <https://nj.gov/infobank/eo/056murphy/pdf/E0-307.pdf>.

Application Submission for Proposed Offshore Wind Facilities,” opening its third application window for OREC proposals for utility scale OSW projects (the “**Third Solicitation Guidance Document**”).¹³

15. Consistent with the OWEDA Regulations, the Third Solicitation Guidance Document required applicants in response thereto to provide, among other things, an “Applicant Commitment Form,” pursuant to which the applicant commits to “file financial statements with the Board on a *quarterly* and *annual* basis as directed in the Board Order approving the Qualified Project” (emphasis added), should the applicant’s project be approved as a qualified OSW project. Notably, unlike the Applicant Commitment Form required to be executed for New Jersey’s previous offshore wind solicitation, the Applicant Commitment Form associated with the Third Solicitation Guidance Document *did not* require audited financial statements to be provided on a quarterly and annual basis.¹⁴ A true and accurate copy of the Applicant Commitment Form included in the Third Solicitation Guidance Document is attached hereto as **Exhibit A**.

16. The general purpose of financial statements is to provide information about the financial position, financial performance, and cash flows of an entity. Accordingly, financial statements provide information regarding an entity’s assets, liabilities, equity, income, and

¹³ N.J. Bd. of Pub. Utils., *New Jersey Offshore Wind Third Solicitation*, (March 6, 2023), <https://njoffshorewind.com/third-solicitation/solicitation-documents/Final-Solicitation-Guidance-Document-with-attachments.pdf>.

¹⁴ The Applicant Commitment Form associated with the New Jersey Second Offshore Wind Solicitation stated, “The Applicant will file audited financial statements with the Board on a quarterly and annual basis.” N.J. Bd. of Pub. Utils., *Offshore Wind Solicitation #2 Solicitation Guidance Document Attachment 3: Applicant Commitment Form*, <https://njoffshorewind.com/second-solicitation/solicitation-documents/Applicant-Commitment-Form.pdf> (last visited Mar. 27, 2024).

expenses (including gains and losses), contributions by and distributions to owners (in their capacity as owners), and cash flows.¹⁵

17. While both the OWEDA Regulations and the Application Commitment Form require the submittal of financial statements on a quarterly and annual basis, neither authority specifies the deadline for submittal of financial statements applicable to a given accounting period.

18. The Third Solicitation Guidance Document required applications for designation as a qualified OSW project to be filed by August 4, 2023, and as required thereby, the Petitioner filed an application with the Board seeking approval of its Project for ORECs (the “**Application**”).

19. Petitioner’s Application included, without limitation, an executed “Applicant Commitment Form” committing to, without limitation, “file financial statements with the Board on a quarterly and annual basis as directed in the Board Order approving the Qualified Project,” if the Project were approved as a qualified OSW project. As stated above, the Applicant Commitment Form did not require audited financial statements. A true and accurate copy of the Applicant Commitment Form included in Petitioner’s Application is attached hereto as **Exhibit B**.

20. Attentive Energy is a special purpose entity that is the developer, owner, and operator of the Project. Audited financial statements for Attentive Energy for 2021 and 2022 were provided in an attachment to Petitioner’s Application.

21. On January 24, 2024, in Docket No. QO22080481, the Board issued an order granting the Project ORECs (the “**OREC Order**”). A true and accurate copy of the OREC Order is attached hereto as **Exhibit C**.

¹⁵ *IAS 1 Presentation of Financial Statements Standard (Standard 2024 Issued)*, IFRS, <https://www.ifrs.org/issued-standards/list-of-standards/ias-1-presentation-of-financial-statements/> (last visited Mar. 27, 2024).

22. The OREC Order does not specifically speak to the OWEDA Quarterly Audit Requirement or the requirement in the Applicant Commitment Form to “file financial statements with the Board on a quarterly and annual basis as directed in the Board Order approving the Qualified Project”.

23. Petitioner now seeks from the Board (i) authorization to file with the Board unaudited financial statements on a quarterly basis, for the time period commencing with the effective date of the OREC Order (i.e., January 24, 2024) through the term of the OREC Order and audited annual financial statements commencing January 2, 2025 through the term of the OREC Order, in lieu of the OWEDA Quarterly Audit Requirement; (ii) if determined necessary by the Board, a waiver pursuant to N.J.A.C. 14:1-1.2(b), of the Board requirement set forth at N.J.A.C. 14:8-6.5(a)(4)(v), that Petitioner commit to file audited financial statements on a quarterly and annual basis; (iii) confirmation that submittal of quarterly financial statements shall be considered timely if provided to the Board no more than sixty (60) days following the end of the applicable accounting quarter; and (iv) confirmation that submittal of annual financial statements shall be considered timely if provided to the Board no more than one hundred eighty (180) days following the end of the applicable fiscal year.

24. Importantly, Petitioner’s requests largely mirror those previously submitted by Atlantic Shores Offshore Wind Project 1, LLC (“**Atlantic Shores**”), and granted by the Board, regarding Atlantic Shores offshore wind project awarded by the Board on June 30, 2021, in Docket No. QO21050824. For the same reasons detailed in this Petition, Atlantic Shores requested that the Board authorize it to submit unaudited financial statements on a quarterly basis and audited financial statements on an annual basis. In addition, Atlantic Shores requested that quarterly financial statements be considered timely if submitted within sixty (60) days from the end of each

applicable accounting quarter and annual financial statements be considered timely if submitted within ninety (90) days of the end of the applicable fiscal year. The Board granted Atlantic Shores' petition, waiving the requirement under N.J.A.C. 14:8-6.5(a)(4)(v) for Petitioner to submit audited quarterly financial statements throughout the 20-year term of the OREC Order for the Project and approving the timely submission timeline requests.

QUARTERLY UNAUDITED FINANCIAL STATEMENTS & ANNUAL AUDITED FINANCIAL STATEMENTS

25. Petitioner respectfully submits that the OWEDA Quarterly Audit Requirement is not industry standard and imposes a commercially unreasonable burden of hardship on Petitioner. In addition, Petitioner's extensive and time-consuming audit process precludes it from having quarterly audited financial statements available for submission to the Board.

26. Audited financial statements will require, without limitation, the following of Petitioner's employees and its Members and accounting service providers: (i) advance planning and discussions with the auditor to discuss deliverables, timelines, and overall expectations; (ii) close out of books with no deviation to the quarterly closing schedule (slight deviations can otherwise be routinely approved by the Attentive Energy Commercial Director to accommodate late third-party input or key staff unavailability); (iii) routine availability of accountants and other Attentive Energy staff to produce any complex reports or provide additional input that may be requested by the auditor (with a high risk of detracting staff from other time sensitive and important Project delivery activities); and (iv) potential deferment of work travel or vacation plans, to ensure that staff is fully available during the audit, as the ability to turn around audit requests on a timely basis is key to getting the audit process completed timely. Expansive staff availability during a single time period a year to complete an annual audit process is much more manageable from an operational standpoint than ensuring expansive staff availability four (4) times per year.

27. To generate audited financial statements on a quarterly basis in accordance with the OWEDA Quarterly Audit Requirement would impose a significant burden on Petitioner and its employees, detouring them from their core objective of developing the Project.

28. Petitioner respectfully submits that the preparation of audited financial statements on a quarterly basis will be materially disruptive to Petitioner's operations.

29. After a review of Board rules, Petitioner is not able to identify another context where the Board expressly requires the submittal of audited financial statements on a quarterly basis.¹⁶

30. Petitioner is also not able to identify another New Jersey state agency that requires the preparation and submission of audited financial statements on a quarterly basis,¹⁷ notwithstanding that various New Jersey state agencies impose requirements pertaining to financial statements generally.¹⁸

¹⁶ See, e.g., N.J.A.C. 14:3-6.3 (requiring utilities to provide "a summary of its finances and operations for the preceding calendar year" and that "in special instances utilities may be required to submit reports quarterly and/or monthly as directed by Board staff"); see also, N.J.A.C. 14:18-7.1 (providing that certified cable television companies must file a summary of their finances and operations for the preceding calendar year on or before March 31 and that if such summary is "not independently audited may be provided on an unaudited basis, if accompanied by a certification by the operator's financial officer, attesting to the truth, completeness, and accuracy of the filed reports").

¹⁷ Neither the enabling legislation nor regulations promulgated thereunder, for, without limitation, the following State agencies, include any requirement for submission of audited financial statements on a quarterly basis: Economic Development Authority (see N.J.S.A. 34:1B-1 *et seq.* and N.J.A.C. 19:30 *et seq.*); Housing and Mortgage Finance Agency (see N.J.S.A. 55:14K-1 *et seq.* and N.J.A.C. 5:80 *et seq.*); Infrastructure Bank (see N.J.S.A. 58:11B-1 *et seq.* and N.J.A.C. 7:22 *et seq.*); Educational Facilities Authority (see N.J.S.A. 18A:72A-1 *et seq.* and N.J.A.C. 9A:12-1 *et seq.*); Health Care Facilities Financing Authority (see N.J.S.A. 26:2I-2 *et seq.* and N.J.A.C. 8:95-1 *et seq.*).

¹⁸ Pertaining to the Housing and Mortgage Finance Agency: see N.J.A.C. 5:80-33:12 (c)(7)(ii)(4) ("[T]he application shall include an explanation supported by audited financial statements as to why the per unit operating expenses fall outside this recommended range"); N.J.A.C. 5:80-33:12(c)(7)(iii) ("NJHMFA reserves the right to require submission of the audited financial statements for comparable projects owned by the applicant."); N.J.A.C. 5:80-33.32(c) ("Owners shall submit to NJHMFA on an annual basis a copy of the project's most recent audited financial statements, including a detailed income and expense schedule and vacancy rate calculation by January 31."); N.J.A.C. 5:80-21.2(b)(5) ("In order for a transfer to be approved, the successor servicer must meet all of the following requirements . . . Have current certified financial statements and servicing and delinquency statistics that are satisfactory to the Agency."); N.J.A.C. 5:80-5.10(5)(ii) ("After prepayment, in implementing the provisions of N.J.S.A. 55:14K-7.b, the Agency will require the following . . . ii.

31. Furthermore, as a general rule, publicly traded companies in the United States are required to provide *quarterly unaudited* financial statements and *annual audited* financial statements.¹⁹ This precisely tracks the structure that Petitioner is seeking to follow in connection with the Project.

32. With its Application, as noted above, Petitioner submitted annual audited financial statements for Attentive Energy for 2021 and 2022.

33. Petitioner further respectfully submits that the Board would have access to all necessary financial information regarding Petitioner and the Project via quarterly unaudited financial statements and annual audited financial statements.

34. Accordingly, Petitioner respectfully requests that the Board allow, through an amendment and/or supplement to the OREC Order, or such other method as determined

Submission of annual audited financial statements”); Pertaining to the Infrastructure Bank: *see* N.J.A.C. 7:22-3.17(a)(2) (“The recipient shall certify that it is, and shall assure that its contractors and subcontractors are maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions.”); N.J.A.C. 7:22-4.23(c) (“The recipient, and all contractors and subcontractors which contract directly with the recipient or receive a portion of [State] monies, may be subject to a financial audit.”); Pertaining to the Health Care Facilities Financing Authority: N.J.A.C. 19:31-2.3 (“Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds”); N.J.A.C. 19:31-4.8(b)(8) (“Annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance against established milestones for calculating any necessary repayments pursuant to (b)1 above”); N.J.A.C. 19:31-8.9(0)(5) (“Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years.”); N.J.A.C. 19:31-10.7(a)(6) (“Annual financial statements for the two most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds”); N.J.A.C. 19:31-11.8(0)(3) (“Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of Federal income tax returns for the three most recent years”).

¹⁹ *See* Rule 3 of Regulation S-X (17 C.F.R. 210.3 *et seq.*) (requiring annual audited financial statements to be submitted as part of Form 10-K as required by Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), filed pursuant to Rule 13a-1 (17 C.F.R. 240.15d-13a-1) or Rule 15d-1 (17 C.F.R. 240.15d-1) and Rule 310 (17 C.F.R. 249.310)); *see* Rule 10-01 of Regulation S-X (17 C.F.R. 210.10-01) (requiring unaudited financial statements to be submitted as part of Form 10-Q as required by Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), filed pursuant to Rule 13a-13 (17 C.F.R. 240.13a-13) or Rule 15d-13 (17 C.F.R. 240.15d-13)).

appropriate by the Board, for Petitioner to provide to the Board unaudited financial statements on a quarterly basis, for the time period commencing with the effective date of the OREC Order through the term of the OREC Order and audited financial statements on an annual basis commencing January 2, 2025 through the term of the OREC Order, in lieu of the OWEDA Quarterly Audit Requirement.

WAIVER

35. Pursuant to N.J.A.C. 14:1-1.2, in special cases and for good cause shown, the Board may relax or permit deviations from its rules. Any request for waiver shall include: (i) the specific rule(s) or part(s) thereof for which waiver is requested; (ii) the reasons for the request of waiver, including a full statement setting forth the type and degree of hardship or inconvenience that would result if full compliance with the rule(s) would be required; and (iii) documentation to support the request for waiver.

36. To the extent determined necessary or appropriate by the Board, Petitioner seeks a waiver of the requirement set forth at under N.J.A.C. 14:8-6.5(a)(4)(v) that Petitioner adhere to the OWEDA Quarterly Audit Requirement.

37. In connection with such waiver request, Petitioner seeks to provide annual audited financial statements for all fiscal years and Petitioner seeks to provide the Board with quarterly unaudited financial statements for the term of the OREC Order, all as set forth in detail elsewhere in this Petition.

38. The hardship or inconvenience that strict compliance with the OWEDA Quarterly Audit Requirement would impose upon Petitioner are set forth elsewhere in this Petition.

39. On December 7, 2022, as noted above, the Board granted a similar waiver request made by Atlantic Shores regarding the financial reporting requirements related to its offshore wind project.²⁰

40. Specifically, the Board waived the requirement under N.J.A.C. 14:8-6.5(a)(4)(v) for Atlantic Shores to submit audited quarterly financial statements, finding that submission of unaudited quarterly financial statements and audited annual financial statements are reasonable.

41. In granting the waiver, the Board has stated that the “intent of N.J.A.C. 14:8-6.5(a)(4)(v), among other things, is to serve as a check on a [qualified offshore wind project] the Board selected insofar as the financials requested would assist the Board as an indicator in evaluating whether that a [qualified offshore wind project] was timely proceeding with its construction schedule and whether the [qualified offshore wind project], once operational, was reasonably performing, without financial issues of concern.”²¹ The Board also stated that “[t]he intent of N.J.A.C. 14:8-6.5(a)(4)(v) was not to serve as an onerous hurdle that would place additional, non-industry-standard financial requirements on a Board-selected [qualified offshore wind project].”²² “According to Atlantic Shores, the requirement for submitting quarterly audited financial statements is not an industry standard and imposes a commercially unreasonable burden and hardship on the Project.”²³

TIMING FOR SUBMISSION OF FINANCIAL STATEMENTS

42. Petitioner is committed to transparency and accountability, and as discussed elsewhere in this Petition, remains committed to providing the Board with financial statements on

²⁰ Order Approving Waiver, *In re Bd. of Pub. Utils. Offshore Wind Solicitation 2 for 1,200MW to 2,400MW – Atlantic Shores Offshore Wind 1, LLC*, BPU Docket No. QO21050824 (December 7, 2022).

²¹ *Id.* at 4.

²² *Id.*

²³ *Id.*

a quarterly and annual basis. However, neither the OWEDA Regulations nor the Applicant Commitment Form are clear regarding the deadline for providing the financial statements for any given accounting period.

43. Accordingly, Petitioner seeks, similar to what the Board consented to for Atlantic Shores,²⁴ the Board's consent to submit: (i) the unaudited quarterly financial statements no later than sixty (60) days following the end of the applicable fiscal quarter; and (ii) the annual audited financial statements no later than one hundred eighty (180) days following the end of the applicable fiscal year, and for the Board to consider any such submittals timely.

NOTICE

44. Communications and correspondence related to this Petition should be sent as follows:

Adam S. Lurie
Linklaters LLP
1290 Avenue of the Americas
New York, NY 10104
Direct: (202) 654-9227
adam.lurie@linklaters.com

with copies to:

Murray Greene
General Counsel, Attentive Energy LLC
1201 Louisiana St, Suite 1800
Houston, TX 77002
Direct: (713) 858-9414
murray.greene@totalenergies.com

²⁴ *Id.* at 5.

CONCLUSION

45. **WHEREFORE**, Petitioner respectfully seeks, through an amendment and/or supplement to the OREC Order, or such other method as determined appropriate by the Board, authorization to file with the Board *unaudited* annual financial statements on a quarterly basis for the time period commencing with the effective date of the OREC Order (i.e., January 24, 2024) through the term of the OREC Order and *audited* financial statements on an annual basis commencing January 2, 2025 through the term of the OREC Order, in lieu of the OWEDA Quarterly Audit Requirement; and

46. **WHEREFORE**, Petitioner further respectfully seeks, through an amendment and/or supplement to the OREC Order, or such other method as determined appropriate by the Board, confirmation that submittal of quarterly financial statements shall be considered timely if provided to the Board no more than sixty (60) days following the end of the applicable accounting quarter; and

47. **WHEREFORE**, Petitioner further respectfully seeks, through an amendment and/or supplement to the OREC Order, or such other method as determined appropriate by the Board, confirmation that submittal of annual financial statements shall be considered timely if provided to the Board no more than one hundred eighty (180) days following the end of the applicable fiscal year; and

48. **WHEREFORE**, Petitioner further respectfully seeks, through an amendment and/or supplement to the OREC Order, or such other method as determined appropriate by the Board, if determined necessary by the Board, a waiver pursuant to N.J.A.C. 14:1-1.2, of the Board requirement set forth at N.J.A.C. 14:8-6.5(a)(4)(v), that Petitioner commit to file audited financial statements on a quarterly and annual basis; and

49. **WHEREFORE**, Petitioner respectfully requests that the Board grant such other and further relief as it determines to be just and reasonable.

Dated: April 16, 2024

Respectfully submitted,

Linklaters LLP
Attorneys for Petitioner,
Attentive Energy LLC

By: /s/ Adam S. Lurie
Adam S. Lurie
Linklaters LLP
1290 Avenue of the Americas,
New York, NY 10104
Direct: (202) 654-9227
adam.lurie@linklaters.com

EXHIBIT A

Attachment 3

Applicant Commitment Form

The Applicant makes the following commitments for the duration of each of the submitted Projects, should they become a Qualified Offshore Wind Project:

1. The Applicant acknowledges and agrees to the terms related to Contingent Projects as listed in Section 1.3 of the SGD.
2. The Applicant acknowledges and agrees to the terms related to Performance Guarantee as listed in Section 2.6 of the SGD.
3. The Applicant will notify Board Staff, within 30 days, of the departure of any key employee; submit the expertise and qualifications for any new key employee for approval by Board Staff; seek Board Staff approval for any change to the organizational structure of key employee positions and the level of expertise and qualifications of those key employees; and obtain prior Board approval for an entity to assume a controlling interest in the proposed Project or the approved Qualified Offshore Wind Project.
4. The Applicant will ensure that the Project is compliant with all applicable Federal and State statutes and regulations and municipal code requirements, and will provide proof of such compliance on an ongoing basis.
5. The Applicant shall notify the Board, in writing, of any changes to the financing plan or equity or other ownership interests in the Project within 30 days, and such changes will be subject to Board approval.
6. The Applicant will file financial statements with the Board on a quarterly and annual basis as directed in the Board Order approving a Qualified Project.
7. In the event that changes in the Project reduce or eliminate tax benefits, or tax benefits do not materialize for any reason including changes in tax laws, the cost difference will not be made up by ratepayers, suppliers, or providers.
8. The Applicant will pass along all tax credits or other governmental benefits to ratepayers that are greater than projected, which includes increased credits due to cost overruns and incremental benefits due to changes in tax law.
9. Ratepayers will not be responsible for any cost overruns and for costs associated with non-performance.
10. Any decommissioning costs in excess of the anticipated costs stated in the Application shall not be made up by ratepayers, suppliers, or providers.
11. The Applicant shall provide the Board with copies of each local, State and/or Federal permit and/or approval required to build and operate the Project within 14 days of receipt.
12. The Applicant shall supply the Board with filings made to any other regulatory, governmental administrative agency, including but not limited to, any compliance filings or any inquiries by these agencies.
13. The Applicant acknowledges that the Board may share confidential information the Applicant provides with other New Jersey agencies, PJM, and federal agencies with jurisdiction over the interconnection and permitting of the Project.
14. The Applicant will commit financial and technical support to the Research and Monitoring Initiative with a \$10,000 fee per megawatt of Qualified Project nameplate capacity.

If the Applicant cannot make any of the above certifications, an explanation must be attached to this Form, making specific reference to each such certification.

Applicant _____

Signature _____

Print Name and Title _____

Date _____

EXHIBIT B

Attachment 3

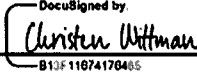
Applicant Commitment Form

The Applicant makes the following commitments for the duration of each of the submitted Projects, should they become a Qualified Offshore Wind Project:

1. The Applicant acknowledges and agrees to the terms related to Contingent Projects as listed in Section 1.3 of the SGD.
2. The Applicant acknowledges and agrees to the terms related to Performance Guarantee as listed in Section 2.6 of the SGD.
3. The Applicant will notify Board Staff, within 30 days, of the departure of any key employee; submit the expertise and qualifications for any new key employee for approval by Board Staff; seek Board Staff approval for any change to the organizational structure of key employee positions and the level of expertise and qualifications of those key employees; and obtain prior Board approval for an entity to assume a controlling interest in the proposed Project or the approved Qualified Offshore Wind Project.
4. The Applicant will ensure that the Project is compliant with all applicable Federal and State statutes and regulations and municipal code requirements, and will provide proof of such compliance on an ongoing basis.
5. The Applicant shall notify the Board, in writing, of any changes to the financing plan or equity or other ownership interests in the Project within 30 days, and such changes will be subject to Board approval.
6. The Applicant will file financial statements with the Board on a quarterly and annual basis as directed in the Board Order approving a Qualified Project.
7. In the event that changes in the Project reduce or eliminate tax benefits, or tax benefits do not materialize for any reason including changes in tax laws, the cost difference will not be made up by ratepayers, suppliers, or providers.
8. The Applicant will pass along all tax credits or other governmental benefits to ratepayers that are greater than projected, which includes increased credits due to cost overruns and incremental benefits due to changes in tax law.
9. Ratepayers will not be responsible for any cost overruns and for costs associated with non-performance.
10. Any decommissioning costs in excess of the anticipated costs stated in the Application shall not be made up by ratepayers, suppliers, or providers.
11. The Applicant shall provide the Board with copies of each local, State and/or Federal permit and/or approval required to build and operate the Project within 14 days of receipt.
12. The Applicant shall supply the Board with filings made to any other regulatory, governmental administrative agency, including but not limited to, any compliance filings or any inquiries by these agencies.
13. The Applicant acknowledges that the Board may share confidential information the Applicant provides with other New Jersey agencies, PJM, and federal agencies with jurisdiction over the interconnection and permitting of the Project.
14. The Applicant will commit financial and technical support to the Research and Monitoring Initiative with a \$10,000 fee per megawatt of Qualified Project nameplate capacity.

If the Applicant cannot make any of the above certifications, an explanation must be attached to this Form, making specific reference to each such certification.

Applicant Attentive Energy LLC

Signature  Christen Wittman

Print Name and Title Christen Wittman, Vice President Project Development

Date 7/31/2023

EXHIBIT C

To that end, by this Board Order ("Order" or "Board Order"), the Board herein approves the Attentive Energy Two 1,342 MW project ("Attentive Project" or "Project")³ proposed by Attentive Energy LLC ("Attentive" or "Attentive Energy") as a Qualified Offshore Wind Project ("QOWP") to receive OSW Renewable Energy Certificates ("ORECs"), as defined in OWEDA.⁴ Although not addressed in this Order, today the Board also separately approves by another Order, a second project submitted in response to the Third Solicitation (the "Other Awarded Project"), resulting in a total award under the Third Solicitation of 3,742 MW.

Today's action moves New Jersey closer to achieving Governor Phil Murphy's goal of reaching 100 percent clean energy by 2035. Today's action also reinforces New Jersey's leadership in the fight against the impacts of climate change and reinforces the necessary role of OSW in this critical fight.⁵ The effects of climate change are felt throughout New Jersey via the threat of flooding, the number of and severity of storms, and the environmental effects from the increase in average yearly temperatures.⁶ Simultaneously, fossil-fuel emissions have negatively impacted New Jersey's air quality, threatening residents' respiratory health.⁷ Energy systems and climate change are inextricably linked.

The Attentive Project will be located greater than 47.5 miles from the Project's nearest point to New Jersey's coast. At this distance, due to the curvature of the Earth only a portion of the tips of the nearest turbines will present above the horizon, making the Project imperceptible from the shoreline during the vast majority of viewing conditions.⁸ The Attentive Project will result in the generation of over 5,300,000 megawatt hours ("MWh") of clean electricity each year over the 20-year term of the OREC payments.⁹ This is enough electricity to power over 650,000 homes each

effective Jan. 21, 2020; 2021, c.178, §1, effective July 22, 2021.

³ The nameplate capacity of the awarded project may be different than the awarded capacity.

⁴ The Attentive Project awarded herein is the 1,342 MW project, Option 7 Scenario 2 (33-33) as submitted as part of Attentive's best and final offer ("BAFO"), an item requested from all Applicants on October 27, 2023. For additional information about Attentive's BAFO, see "Information Relied Upon in Evaluation of Applications" herein.

⁵ See generally, New Jersey Department of Environmental Protection ("DEP"), 2020 New Jersey Scientific Report on Climate Change (June 30, 2020), <https://dep.nj.gov/wp-content/uploads/climatechange/nj-scientific-report-2020.pdf>; DEP, Climate Change Impacts on Human Health & Communities: Addendum to the 2020 New Jersey Scientific Report on Climate Change (September 2022) (hereafter, "2022 Climate Change Impacts on Human Health Addendum"), <https://dep.nj.gov/wp-content/uploads/climatechange/nj-scientific-report-human-health-addendum.pdf>.

⁶ See generally, 2020 New Jersey Scientific Report on Climate Change; see generally 2022 Climate Change Impacts on Human Health Addendum.

⁷ See Vohra et al., Global Mortality from Outdoor Fine Particle Pollution Generated by Fossil Fuel Combustion: Results from GEOS-Chem, (April 2021), <https://www.sciencedirect.com/science/article/abs/pii/S0013935121000487>.

⁸ Attentive, Third Solicitation Application ("Attentive Third Solicitation Application", Attachment 10-A Appendix C ("Visibility Study") at 2.

⁹ See Attachment A to this Order for the OREC payment schedule.

year.¹⁰ In addition, the Attentive Project will reduce carbon emissions by 2.3 million tons each year over the full life of the Project.¹¹

As detailed further in this Order, today's action will yield significant economic benefits for New Jersey, building upon the Board's actions in previous OSW solicitations. The Board's approval of the Attentive Project brings a commitment from Attentive for 1,199 guaranteed full-time equivalent ("FTE") direct job-years through the first ten years of operation,¹² and an estimated 15,774 job-years,¹³ to New Jersey over the anticipated life of the Project. This decision also brings a commitment from Attentive for \$760 million of direct expenditures within the state through the first ten years of operation, and an estimated \$3.1 billion total (direct, indirect, and induced) expenditures within the state over the anticipated project life.¹⁴ Consequences for Attentive not meeting its commitments are described later in this Order.

By the Board's decision today, New Jersey makes a strong case that key parts of the OSW supply chain have been and will continue to be located here in New Jersey, for both current and future OSW projects developed inside and outside of the state. The Attentive Project, together with the Other Awarded Project (the "Two Projects"), is expected to provide sufficient volume of orders to establish a wind turbine generator tower manufacturing facility at the New Jersey Wind Port ("NJWP"),¹⁵ and will contribute to the increase in production capacity at the monopile manufacturing facility at New Jersey's Port of Paulsboro.¹⁶ These employment and economic benefits will accrue across the state and help offset ratepayer impacts from the cost of the Two Projects.

The Board remains cognizant of its duty to protect New Jersey's natural resources and significant cultural and tourism economies while simultaneously working toward achieving the state's OSW

¹⁰ According to the Energy Information Administration (EIA), 2022 data for NJ residential power consumption. See EIA, "Frequently Asked Questions (FAQs) – How Much Electricity Does an American Home Use?" <https://www.eia.gov/tools/faqs/faq.php?id=97&t=3>.

¹¹ Levitan & Associates, Inc., Evaluation Report New Jersey Offshore Wind Solicitation #3 (January 10, 2024) (the "LAI Report") at 139, Table 61, "Annual Average Avoided Emissions."

¹² Attentive BAFO Application Form for Project 07 - Scenario 2 (33-33) ("Attentive BAFO Application Form"), Economic Impacts-Project Worksheet. N.J.A.C. 14:8-6.5(a)(11)(xiii) defines an "FTE-Year" as 1,820 work hours.

¹³ Attentive BAFO Application Form; Attentive Application at 8-22, Table 8-15, "Projected cumulative job-years created by the Project."

¹⁴ Attentive BAFO Application Form, Economic Impacts-Project Worksheet; Attentive Application at 8-20, Table 8-11, "Project Economic Benefits in New Jersey;" Id. at 8-20, Table 8-12, "Reduction in Economic Benefits from Alternate Project Options, Presented Modularly." For a definition of what constitutes a "BAFO Narrative," see "Information Relied Upon in Evaluation of Applications" herein.

¹⁵ For more information about the New Jersey Wind Port, see New Jersey Wind Port, <https://nj.gov/windport/index.shtml>.

¹⁶ See Ramboll US Corporation, New Jersey Offshore Wind Strategic Plan (September 2020) ("Strategic Plan" or "2020 OSW Strategic Plan") for a description of the various components of an OSW project, https://www.nj.gov/bpu/pdf/Final_NJ_OWSP_9-9-20.pdf.

and clean energy goals. New Jersey enjoys a geographic location and ocean wind profile well-suited to the development of a robust OSW program. However, the work of harnessing OSW must be done through responsibly developed and sited wind farms. The Board remains committed to ensuring that natural resources, including fish, marine mammals, birds, and other wildlife, are protected throughout the development, operation and decommissioning of current and future wind projects. The environmental and fisheries protection requirements contained in the Solicitation Guidance Document for this Third Solicitation ("Third Solicitation SGD" or Third OSW Solicitation Guidance Document") are the strongest that have been imposed to date on any New Jersey OSW project.¹⁷ The awards today will also provide additional resources to support the collection and sharing of valuable data to inform future development and protect the natural resources that comprise a critical part of New Jersey's rich tapestry of biological diversity.

The Board also remains cognizant of the direct financial impacts that OSW projects have on New Jersey ratepayers, and therefore explicitly weighed such ratepayer impacts in gauging the value of the benefits attributable to OSW in this Third Solicitation. The evaluation of the Third Solicitation projects weighted price and ratepayer impact at 70% of the full evaluation, and the Board's decision today reflects that heavy emphasis on minimizing the cost to New Jersey ratepayers.

Through initiatives to be implemented by the Attentive Project, New Jersey can advance visionary policy and innovative programs while continuing to improve the quality of energy service in the state. We must do this while ensuring that energy is affordable and accessible for all residents of the state. Stepping boldly into a new industry through today's action, New Jersey, once again, leads the way in protecting the environment while growing the state's economy for the benefit of current and future residents of this great state.

I. BACKGROUND AND PROCEDURAL HISTORY

On August 19, 2010, OWEDA was signed into law, amending and supplementing the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq.¹⁸ OWEDA established, among other things, OSW as a Class I renewable energy resource under the Renewable Portfolio Standards ("RPS"), and directed the Board to establish an OREC program requiring a percentage of the state's electric load to be supplied by OSW from QOWPs.¹⁹ A QOWP is defined as, "...a wind turbine electric generation facility in the Atlantic Ocean and connected to the electric

¹⁷ For a definition of "Solicitation Guidance Document," see Section II. herein ("Previous Solicitations – OSW Generation"). See also BPU, New Jersey Offshore Wind Third Solicitation – Solicitation Guidance Document – Application Submission for Proposed Offshore Wind Facilities (March 8, 2023) ("Third OSW Solicitation Guidance Document" or "Third Solicitation SGD"), <https://www.nj.gov/bpu/pdf/boardorders/2023/20230306/8D%20ORDER%20OSW%20Third%20Solicitation.pdf>.

¹⁸ See OWEDA.

¹⁹ N.J.A.C. 14:8-1 et seq. See also N.J.A.C. 14:8-2.5(b)(3) (listing electricity derived from wind energy as a Class I renewable energy for purposes of qualifying an energy generator to receive renewable energy credits).

transmission system in this state, and includes the associated transmission-related interconnection facilities and equipment, and approved by the Board pursuant to [N.J.S.A. 48:3-87.1].²⁰

OWEDA defines an OREC as representing the environmental attributes of one megawatt hour ("MWh") of electric generation from an OSW project.²¹ For each MWh delivered to the transmission grid, an OSW project will be credited with one OREC.

OWEDA also establishes the application requirements for OSW projects to be considered eligible to receive ORECs. These requirements are referenced in the Board-approved Third Solicitation SGD issued with each OSW generation solicitation that provides guidance to developers regarding the format, calculations, and assumptions to be used in preparing an OSW project application to receive ORECs ("Application"). OWEDA provides key factors the Board should consider when evaluating an Application in addition to the OREC price, including the economic impacts of projects, environmental benefits including greenhouse gas ("GHG") reductions and mitigation of environmental impacts, ratepayer impacts, economic guarantees, and factors contributing to the likelihood of success of the project.²²

Ultimately, OWEDA mandates that all QOWPs deliver a net economic and environmental benefit to the state. A cost-benefit analysis of proposed projects must demonstrate that this threshold is met based upon both economic and environmental benefits.²³

OWEDA also makes clear that no OREC shall be paid until electricity is produced by the QOWP, and when such payment is made, it shall be based on the actual electric output of the project that is delivered into the state's transmission system.²⁴

Following the passage of OWEDA, the Board adopted rules that provide an Application process and evaluation framework for OSW facilities.²⁵ The rules include: 1) establishing OSW as a Class I renewable energy resource under the RPS; 2) Application requirements; 3) the ability for the Board to designate the Application windows; 4) the ability for the Board to impose appropriate conditions upon any OREC award; and 5) ratepayer protections. The rules also detail how the Board will review any Application and ultimately approve, conditionally approve, or deny an Application.

Within his first few weeks in office, on January 31, 2018, Governor Murphy signed EO 8 making New Jersey's leadership in OSW a centerpiece of the Governor's environmental and energy

²⁰ N.J.S.A. 48:3-51.

²¹ ibid.; N.J.A.C. 14:8-6.1.

²² N.J.S.A. 48:3-87(a) and -87(d); N.J.S.A. 48:3-87.1(b).

²³ N.J.S.A. 48:3-87.1 (b)(1)(b).

²⁴ N.J.S.A. 48:3-87.1 (c)(1).

²⁵ N.J.A.C. 14:8-6.1 et seq.

agenda.²⁶ EO 8 reinvigorated the implementation of OWEDA, set a bold vision for a clean energy economy, and supported a large-scale OSW market and in-state supply chain that would utilize a trained New Jersey workforce for construction, installation, interconnection, and operations and maintenance of OSW projects.²⁷ EO 8 set a goal of 3,500 MW of OSW capacity by 2030, and directed the Board, and other implementing State Agencies, to “take all necessary action” to fully implement OWEDA.²⁸ EO 8 recognized that “portions of the OSW supply chain being located in New Jersey, including manufacturing, assembly and construction of the component parts of the OSW turbines, will contribute to a stronger New Jersey economy.”²⁹

EO 8 specifically directed the Board to begin the rulemaking process to establish the OREC program (“OREC Funding Mechanism”) to provide the necessary regulations to determine how suppliers will meet their RPS obligations, and how OSW developers will receive payments for their projects.³⁰ EO 8 also directed the Board to proceed with a solicitation of 1,100 MW of OSW as a first step in meeting the 3,500 MW goal.

In response, on February 28, 2018, the Board issued an Order directing Board Staff to take specific actions to implement EO 8, including preparing an initial 1,100 MW solicitation, and initiating a rulemaking proceeding for the OREC Funding Mechanism.³¹

After a notice and comment period, the Board adopted new rules and amendments to N.J.A.C. 14:8-6.6 regarding the OREC Funding Mechanism. The OREC Funding Mechanism set forth the method and process by which ratepayers will fund a QOWP in accordance with all applicable laws, rules, Executive Orders, and Board Orders, and provided the method by which the revenue earned from a QOWP will be refunded and delivered to ratepayers. Each Basic Generation Service Supplier (“BGS”) and Third Party Supplier (“TPS” and together with BGS, the “Suppliers”) that sells electricity to retail customers in New Jersey must ensure that the electricity includes, at least, the minimum percentage of OSW energy required for that Energy Year, as set by the Board, following the approval of a QOWP.³² The OREC Funding Mechanism describes the method by which suppliers will meet this obligation, and how funds from the sale of ORECs will flow to the QOWP.

The OREC Funding Mechanism also mandates that the OREC price reflects the total capital and operating costs for a QOWP, offset by any state tax, federal tax or production credits, and any

²⁶ EO 8.

²⁷ Id. at 1-2.

²⁸ Id. at 1.

²⁹ Id. at 9.

³⁰ Id. at 6.

³¹ In the Matter of the Implementation of Executive Order No.8 - Offshore Wind and the OREC Funding Mechanism, BPU Docket No. QO18020151 (Feb. 28, 2018).

³² N.J.A.C. 14:8-6.2. An “Energy Year” means the 12-month period that runs from June 1st through May 31st of the following year, numbered according to the calendar year in which it ends. For instance, Energy Year 2024 runs from June 1, 2023 through May 31, 2024. See N.J.A.C. 14:8-6.1.

other subsidies or grants, as approved by the Board.³³ The OREC Funding Mechanism further provides that once the Board approves a QOWP, it shall be funded through an OREC as set forth in the OREC Funding Mechanism, and in accordance with the following principles:³⁴

1. A Board Order that approves a QOWP shall be binding and enforceable on all parties referenced therein;
2. The total annual OREC allowance for a QOWP, once approved by the Board, shall not be subject to reduction or modification during the term of its awarding OREC Board Order unless otherwise agreed to by both parties, the Board and the applicable QOWP developer;
3. A developer of a QOWP shall be eligible to receive the project's approved OREC rates and payments for 20 years, subject to the terms and conditions contained in the awarding OREC Board Order;
4. QOWPs shall only be entitled to OREC revenues for MWh actually generated and delivered over the 20-year term delineated in the Board Order, and shall have no recourse against the Board, the suppliers, the Electric Distribution Companies ("EDCs"), the OREC Administrator, or the ratepayers for any additional payments;
5. ORECs from a QOWP shall have a qualification life of three (3) years, including the year it was generated and the following two (2) years, thus, allowing ORECs generated in a particular year to be banked for future use before it expires; and
6. All revenues generated by a QOWP shall be returned to ratepayers.

On May 23, 2018, Governor Murphy signed the Clean Energy Act ("CEA") into law (P. L. 2018 c. 17). Among other things, the CEA amended N.J.S.A. 48:3-87 to increase OWEDA's initial 1,100 MW requirement to "at least" 3,500 MW from OSW projects.³⁵

On November 19, 2019, Governor Murphy signed EO 92, increasing the state's OSW energy goal from 3,500 MW by 2030 to 7,500 MW by 2035.³⁶ Governor Murphy found that expanding the OSW goal will ensure that New Jersey can "meet the state's goals of 50 percent renewable energy by 2030 and 100 percent clean energy by 2050, in addition to creating a significant number of good-paying jobs."³⁷

³³ N.J.A.C. 14:8-6.5(a)(12)(vii).

³⁴ N.J.A.C. 14:8-6.6(a).

³⁵ N.J.S.A. 48:3-87(d)(4).

³⁶ EO 92, at 1.

³⁷ Id. at 3. Notably, Executive Order No. 315 ("EO 315") changed this target to 100% clean energy by 2035. Exec. Order No. 315 (Feb. 15, 2023), 55 N.J.R. 509(a) (March 20, 2023).

On January 27, 2020, Governor Murphy released the 2019 Energy Master Plan ("2019 EMP").³⁸ The 2019 EMP stressed the critical need for action to address the grave threat of climate change, providing a roadmap to achieve 100 percent clean energy by 2050, and an 80 percent reduction of GHG emissions from 2006 levels, as provided in the Global Warming Response Act (L. 2007, c.112, N.J.S.A. 26:2C-37 to 44).³⁹

The 2019 EMP sets forth several key goals and directives related to OSW development:

1. Develop a consistent and transparent solicitation schedule through 2035 that supports a steady, long-term project pipeline;
2. Coordinate with New Jersey's electric grid operator, PJM Interconnection, L.L.C. ("PJM") to ensure that transmission planning and interconnection rules accommodate New Jersey's OSW resources, and determine how much of New Jersey's energy demand should be met with OSW through 2050;
3. Develop OSW jobs for a supply chain that can service the Mid-Atlantic OSW market;
4. Develop job training programs to support the OSW industry and supply chain development; and
5. Develop port infrastructure and participate in inter-regional collaboration to support the OSW industry.

There are three types of port facilities necessary for the OSW industry: (i) manufacturing, (ii) staging and marshalling, and (iii) operations and maintenance. The 2019 EMP notes that, while all three types are important, special attention should be given early on to manufacturing to ensure New Jersey becomes an anchor of the supply chain.

EO 8 also directed the President of the BPU, with the assistance of the Commissioner of the New Jersey Department of Environmental Protection ("DEP"), to develop an Offshore Wind Strategic Plan ("Strategic Plan"). In creating the Strategic Plan, the President and the Commissioner were directed to engage key stakeholders and solicit input from the public. The Strategic Plan was released in July 2020 for public comment and was approved by the Board in September 2020. The Strategic Plan provides a blueprint for the state to achieve Governor Murphy's then goal of 7,500 MW of OSW by 2035 with specific focus on critical components of offshore wind development, including achieving scale to reduce costs, job growth, supply-chain businesses, workforce development, data collection, and appropriate siting of facilities, that will ensure that natural resources are protected throughout the development and operational stages of offshore wind energy development and production.⁴⁰

³⁸ BPU, 2019 New Jersey Energy Master Plan: Pathway to 2050, https://nj.gov/bpu/pdf/publicnotice/NJBPU_EMP.pdf.

³⁹ EO 315.

⁴⁰ 2020 OSW Strategic Plan.

On September 21, 2022, Governor Murphy signed EO 307, directing the BPU, the DEP, the New Jersey Economic Development Authority ("NJEDA"), and all other New Jersey state agencies with responsibilities arising under OWEDA to take all necessary actions to implement OWEDA in order to promote and realize a further increased goal of 11,000 MW of OSW by the year 2040.⁴¹

As discussed above, the Strategic Plan provides a blueprint for the state to achieve Governor Murphy's then goal of 7,500 MW of OSW by 2035. Since the release of the Strategic Plan in 2020, in addition to EO 307 increasing NJ's OSW procurement goal to 11,000 MW, the Board awarded a of transmission projects through the State Agreement Approach, and major port and supply chain development activities are underway at the NJWP and the Port of Paulsboro. Recognizing the rapidly changing offshore wind energy landscape in New Jersey and along the eastern seaboard, in July 2023 the Board approved a contract with a consulting to assist Staff in developing a second OSW strategic plan ("Second Strategic Plan") to guide New Jersey in achieving its offshore wind energy objectives in future solicitations. Development of the Second Strategic Plan is underway and will include significant stakeholder engagement and input.

II. PREVIOUS SOLICITATIONS

OSW Generation Solicitations

Prior to the Third Solicitation, the Board issued two solicitations for OSW projects to be constructed in areas leased from the federal Bureau of Ocean Energy Management ("BOEM") in federal waters off the coast of New Jersey. Both solicitations relied on an SGD that provided a consolidated place for all Application requirements, guidance on the preparation of the Application, standards and assumptions to be used in preparing an Application, schedule, and key dates.⁴²

On September 18, 2018, the Board approved an SGD for 1,100 MW of OSW, opened a solicitation window, and invited all interested parties to submit OSW Applications by December 28, 2018 ("First Solicitation").⁴³

At the close of the First Solicitation Application window on December 28, 2018, the Board received Applications from three OSW developers: Ocean Wind LLC ("Ocean Wind"); Atlantic Shores Offshore Wind Project 1, LLC; and Equinor Wind US, LLC.⁴⁴

⁴¹ EO 307.

⁴² By way of reference, "Applicant" refers to the proposing entity; "Application" refers to the documents submitted by an Applicant; "Project" refers to a distinct project size and associated infrastructure combination; and "Bid" refers to the project-specific price.

⁴³ In the Matter of the Opening of Offshore Wind Renewable Energy Certificate (OREC) Application Window for 1,100 Megawatts of Offshore Wind Capacity in Furtherance of Executive Order No. 8, BPU Docket No. QO18080851 (Sept. 18, 2018).

⁴⁴ Id.

After thorough review, on June 21, 2019, the Board found that the Ocean Wind 1,100 MW project was the most beneficial to New Jersey and was designated as a QOWP eligible to receive ORECs.⁴⁵

On September 9, 2020, the Board approved an SGD for 1,200 MW to 2,400 MW of OSW, opened a solicitation window, and invited all interested parties to submit OSW Applications by December 10, 2020 ("Second Solicitation").⁴⁶

At the close of the Second Solicitation Application window on December 10, 2020, the Board received Applications from two OSW developers: Atlantic Shores Offshore Wind Project 1, LLC ("ASOW 1") and Ocean Wind II, LLC ("Ocean Wind 2").

After thorough review, on June 30, 2021, the Board found that the Ocean Wind II 1,148 MW project and the ASOW 1 1,509.6 MW project were the most beneficial to New Jersey and were designated as QOWPs eligible to receive ORECs.⁴⁷

In evaluating Applications for the First Solicitation and the Second Solicitation, Board Staff diligently obtained input from DEP, the New Jersey Division of Rate Counsel ("Rate Counsel") and the Board's independent evaluator, Levitan & Associates, Inc. ("Levitan" or "LAI").

OSW Transmission Solicitations

The Board has long recognized that limits on the existing transmission system, as well as the challenges associated with expanding or replacing transmission facilities, represent a major source of cost uncertainty and potential risk of delays in meeting the state's OSW goals.

In 2019, the New Jersey Legislature enshrined the concept of an "open access offshore wind transmission facility" into state law as meaning "an open access transmission facility, located either in the Atlantic Ocean or offshore, used to facilitate the collection of offshore wind energy for its delivery to the electric transmission system in this state."⁴⁸ Further, the Legislature provided

⁴⁵ In the Matter of the Board of Public Utilities Offshore Wind Solicitation for 1,100 MW – Evaluation of the Offshore Wind Applications, BPU Docket No. QO18121289, Order dated June 21, 2019.

⁴⁶ In the Matter of the Opening of Offshore Wind Renewable Energy Certificate (OREC) Application Window for 1,200 to 2,400 Megawatts of Offshore Wind Capacity in Furtherance of Executive Order No. 8 and Executive Order No. 92, BPU Docket No. QO20080555, Order dated September 9, 2020.

⁴⁷ In the Matter of the Opening of Offshore Wind Renewable Energy Certificate (OREC) Application Window for 1,200 to 2,400 Megawatts of Offshore Wind Capacity in Furtherance of Executive Order No. 8 and Executive Order No. 92, BPU Docket No. QO20080555 and In the Matter of the Board of Public Utilities Offshore Wind Solicitation 2 for 1,200 to 2,400 MW – Ocean Wind II, LLC, BPU Docket No. QO21050825, Order dated June 30, 2021; In the Matter of the Opening of Offshore Wind Renewable Energy Certificate (OREC) Application Window for 1,200 to 2,400 Megawatts of Offshore Wind Capacity in Furtherance of Executive Order No. 8 and Executive Order No. 92, BPU Docket No. QO20080555 and In the Matter of the Board of Public Utilities Offshore Wind Solicitation 2 for 1,200 to 2,400 MW – Atlantic Shores Offshore Wind Project 1, LLC, BPU Docket No. QO21050824, Order dated June 30, 2021.

⁴⁸ N.J.S.A. 48:3-51.

the Board the authority to “conduct one or more competitive solicitations for open access offshore wind transmission facilities designed to facilitate the collection of offshore wind energy from QOWPs or its delivery to the electric transmission system in this state.”⁴⁹

The 2019 EMP explained how “planned transmission to accommodate the state’s offshore wind goals provides the opportunity to decrease ratepayer costs and optimize the delivery of offshore wind generation into the state’s transmission system.”⁵⁰ The EMP further stated that “[c]oordinating transmission from multiple projects may lead to considerable ratepayer savings, better environmental outcomes, better grid stability, and may significantly reduce permitting risk.”⁵¹ The 2019 EMP directed that the Board “should endeavor to collaborate with PJM to ensure that transmission planning and interconnection rules accommodate [offshore wind] resources.”⁵²

PJM’s transmission planning process is known as the Regional Transmission Expansion Plan (“RTEP”). The RTEP planning process runs in multiple “windows” each year, and can result in the construction of new transmission facilities that improve economic efficiency or system operations, meet reliability needs, or, upon request by a state, and/or meet state-mandated public policy requirements.⁵³

PJM developed an alternative route for states to plan transmission expansion around public policy needs, called the State Agreement Approach (“SAA”), and incorporated the SAA into its Operating Agreement.⁵⁴ In proposing the SAA, PJM explained that the SAA “provides a vehicle for states to propose: (i) a state public policy project to PJM for inclusion in the RTEP, the costs of which shall be recovered from the customers in the states proposing the project.”⁵⁵

Board Staff worked with PJM to include the then OSW goal of 7,500 MW by 2035 as a public policy requirement in an RTEP window utilizing the SAA. The SAA RTEP window opened in April 2021. Pre-qualified transmission developers submitted competitive transmission proposals to PJM by the close of the window on September 17, 2021. After careful review of all proposals received, the Board awarded a series of projects to construct the onshore transmission facilities necessary to successfully deliver 7,500 MW of OSW to New Jersey customers (“SAA Facilities”).⁵⁶

⁴⁹ N.J.S.A. 48:3-87.1.

⁵⁰ 2019 EMP at 117.

⁵¹ Id.

⁵² Id.

⁵³ Additional background on the RTEP process is available from PJM. See PJM, RTEP: Planning for Long-Term Transmission Needs, <https://www.pjm.com/~media/about-pjm/newsroom/fact-sheets/rtep-fact-sheet.ashx#:~:text=PJM%20planners%20continuously%20analyze%20the,help%20ensure%20the%20system%20meets>.

⁵⁴ Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., (June 2, 1997) (“PJM Operating Agreement”) <https://agreements.pjm.com/oa/4541>.

⁵⁵ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, PJM Compliance Filing, Docket No. ER13-198, 38-39 (October 25, 2012).

⁵⁶ See In the Matter of Declaring Transmission to Support Offshore Wind A Public Policy of the State of

As part of the SAA Facilities, the Board gave special attention to the duct banks and associated cable access vaults that would be installed in a single construction effort for use by subsequent QOWPs ("Prebuild Infrastructure" or "PBI").⁵⁷ The PBI will be constructed from offshore of the landing point identified in the NJ SAA RTEP solicitation, the Sea Girt National Guard Training Center ("Sea Girt NGTC"), to the awarded Point of Interconnection ("POI") to the PJM high-voltage electric grid, the Larrabee Collector Station ("LCS"). The PBI will minimize environmental and community impacts by utilizing a single shore crossing and a single, or limited, onshore corridor(s) to the POI.

Board Staff determined that the PBI would be solicited as part of the Third Solicitation. On August 4, 2023, together with the project Applications discussed in detail below, PBI proposals were received from all developer applicants who submitted project applications in the Third Solicitation ("Third Solicitation Applicants" or "Applicants").

On October 25, 2023, the Board rejected all PBI proposals submitted in the Third Solicitation, finding that the rejection was in the best interest of the public and ratepayers, and directed Board Staff to develop a separate PBI solicitation.⁵⁸

On November 17, 2023, the Board approved a PBI Solicitation Guidance Document ("PBI SGD") and opened a solicitation window for a PBI solicitation ("Prebuild Solicitation" or "PBI Solicitation") that will close on April 3, 2024.⁵⁹ The Prebuild Solicitation is open to all entities pre-qualified by PJM through PJM's pre-qualification planning process as eligible to be a Designated Entity prior to responding to the Prebuild Solicitation.⁶⁰ The project resulting from this Board-run Prebuild Solicitation will qualify as a Public Policy Project under PJM's SAA process, for inclusion in the

New Jersey, BPU Docket No. QO20100630, Order dated October 26, 2022 ("October 26, 2022 Order") 70-73; id. at "Appendix A: Selected Projects."

⁵⁷ A "duct bank" is a concrete structure between cable vaults that house the necessary number of physically-separate conduits (empty pipes) in which transmission cables can be installed (pulled through, from one point to another). "Cable access vault" or "cable vaults" are physically-separate, underground vaults (accessible through manhole covers), located at certain distances along the onshore cable route of the PBI, to allow each qualified offshore wind project to install and maintain its own transmission cables without impacting other qualified projects' transmission cables. See Third OSW Solicitation Guidance Document, at iii.

⁵⁸ In the Matter of the Opening of New Jersey's Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481 (Order dated October 25, 2023) ("October 25, 2023 Order").

⁵⁹ In the Matter of the Opening of a Solicitation for a Transmission Infrastructure Project to Support New Jersey's Offshore Wind Public Policy, BPU Docket No. QO23100719 (Order dated November 17, 2023) ("November 17, 2023 Order").

⁶⁰ A "Designated Entity" is a PJM pre-qualified transmission developer who PJM has selected as the designated entity to construct and own and/or finance a transmission project included in the PJM Regional Transmission Expansion Plan ("RTEP"). Id. at 1.

RTEP under the SAA-specific provisions of Schedule 6 of the PJM Operating Agreement.⁶¹ It is anticipated that the Board will make an award resulting from this Prebuild Solicitation in Q3 of 2024.

As discussed further below, all Applicants to the Third Solicitation are required to utilize the SAA Facilities, including the PBI.

III. THIRD SOLICITATION

On March 6, 2023, the Board approved and issued the Third Solicitation SGD.⁶² Applications for the Third Solicitation projects were to be submitted by June 23, 2023. On June 7, 2023, the Board extended the application due date to August 4, 2023.⁶³

On August 4, 2023, applications were received from the following four OSW developers for OSW generation projects:

Atlantic Shores Offshore Wind Project 2, LLC
Attentive Energy LLC
Community Offshore Wind ("COSW") NJ 1, LLC
Invenergy Wind Offshore LLC

On December 15, 2023, COSW notified the Board that they were withdrawing their Application from consideration in the Third Solicitation.

Eligibility for Award

To be eligible to win an award for the sale of ORECs, an Applicant must:⁶⁴

- Submit an Application found to be administratively complete;
- Submit an OREC Purchase Price offer that meets all requirements of OWEDA and N.J.A.C. 14:8-1, et seq.;
- Have a reasonable ratepayer impact;
- Demonstrate that the project is viable and is likely to begin commercial operation as proposed;
- Submit an Application that is consistent with the New Jersey Energy Master Plan, adopted pursuant to section 12 of L.1977, c.146 (C.52:27F-14), in effect at the time the Board is

⁶¹ PJM Operating Agreement, Schedule 6.

⁶² Third Solicitation SGD.

⁶³ In the Matter of the Opening of New Jersey's Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481 (Order dated June 7, 2023) ("June 7, 2023 Order").

⁶⁴ N.J.S.A. 48:3-87.1(b); N.J.A.C. 14:8-6.5.

considering the Application;

- Demonstrate positive economic and environmental net benefits to the state through a benefit-cost analysis;
- Demonstrate that the financing mechanism is based upon the actual electrical output of the project, fairly balances the risks and rewards of the project between ratepayers and shareholders, and ensures that any costs of non-performance, in either the construction or operational phase of the project, shall be borne by shareholders of the Applicant; and
- Demonstrate financial integrity and sufficient access to capital to allow for a reasonable expectation of completion of construction of the project.

Evaluation Criteria

The Board must evaluate Applications against multiple factors set forth in OWEDA and the rules at N.J.A.C 14:8-6 et seq. These factors were distilled into six evaluation criteria defined in the SGD, and are based on the overarching goals of New Jersey's OSW policy:⁶⁵

- Contributing to a stronger New Jersey economy by anchoring an offshore wind supply chain in the state;
- Combating global climate change to protect New Jersey and also to protect New Jersey's natural resources;
- Providing added reliability for the transmission network and transmission rate relief for ratepayers; and
- Achieving all of this at the lowest reasonable cost and risk to New Jersey ratepayers.

The six evaluation criteria, as identified in the Third Solicitation SGD, are:⁶⁶

- OREC Purchase Price – This includes meeting the requirement for a fixed pay-for-performance price, as well as plans for maximizing revenue from the sales of energy, capacity, and ancillary services, which are credited back to ratepayers.
- Ratepayer impact – This includes the average increase in residential and industrial customer bills, including consideration of the timing of any rate impacts.
- Economic impact – This includes, among other metrics, the number of jobs created, increase in wages, taxes, receipts, in-state expenditures, and state gross domestic product for each MW of capacity constructed, including development of the New Jersey offshore wind supply chain and utilization of port and existing supply chain facilities.

⁶⁵ June 7, 2023 Order at 31.

⁶⁶ Id. at 30.

- *The strength of guarantees for economic impact* – This includes all measures proposed to assure that claimed in-state expenditures and jobs commitments will materialize, as well as the consequences for shortfalls.
- *Environmental and fisheries impact* – This includes the net reductions of pollutants for each MWh generated, and the feasibility and strength of the Applicant's plan to avoid, minimize, or mitigate onshore and offshore impacts created by construction and operation of an OSW project. This evaluation criterion also includes consideration of project design elements that will facilitate future expansion of OSW delivery capability and avoid, minimize, or mitigate future incremental environmental and fisheries impacts.
- *Likelihood of successful commercial operation* – This includes developer and key employee experience, feasibility of project timelines, permitting plans, equipment and labor supply plans, feasibility of port facilities and marshalling plans, and the current progress displayed in achieving these plans.

Ranking and weighting of the above criteria in the Third Solicitation reflected the overarching goals of New Jersey's OSW policy. To that end, the following weighting was applied in the evaluation of Third Solicitation Applications.⁶⁷

Criterion	Weight
OREC Purchase Price and Ratepayer Impacts	70%
Non-Price Considerations	
<ul style="list-style-type: none"> • Economic Impacts and Strength of Guarantees for Economic Impacts • Environmental and Fisheries Impacts 	30%

The likelihood of successful commercial operation, including, but not limited to, feasibility of project timelines, permitting plans, equipment and labor supply plans, offshore transmission network ("OTN")-ready designs, and experience of the developer and the project team was used as a gating criteria to determine whether a project is eligible to become a QOWP.

Under N.J.S.A. 48:3-87.1(b)(2)(b), the Board must also consider any other elements it deems appropriate in conjunction with the Application. The Board finds the following additional elements appropriate for consideration:

- Diversification of the risk of successful project completion;
- Providing economic benefits to more communities around different ports and manufacturing facilities, thereby strengthening New Jersey's likelihood of success as a regional manufacturing center supporting the nascent offshore wind industry along the Atlantic seaboard, including:

⁶⁷ The OREC Purchase Price and Ratepayer Impacts criteria, and the Economic Impacts and Strength of Guarantees for Economic Impacts criteria were combined for the purpose of the ranking and weighting of the six criteria.

- A mix of local industries, technologies, and labor force categories
- A mix of ports infrastructure development and uses
- Multiple locations of port, manufacturing, and operational activities;
- Diversification in all tiers of the supply chain, including diversification in the type and location of material and equipment suppliers, and support services;
- Incorporation of alternative construction methods and/or technology selection, including
 - Foundation type
 - Wind Turbine Generator (“WTG”) model performance
 - Spatially distinct BOEM lease areas; and
- Heightening the prospect of more robust competition in subsequent procurement rounds through diversity in selected Applicants.

Evaluation of Applications

Applications were evaluated first by determining administrative completeness in accordance with N.J.A.C. 14:8-6.4. An administrative completeness review of each Application was conducted, and deficiencies were found in all Applications (“Administrative Completeness Review Findings”). Applicants were notified of the deficiencies on August 25, 2023, and were given the opportunity to cure the deficiencies. All Applicants were notified that their deficiencies were cured on September 11, 2023, and all Applications were deemed to be administratively complete on that date.

In accordance with 48:3-87.1(c)(4)(d) the Board may approve, conditionally approve, or deny an Application within 180 days of receipt of an administratively complete Application.

After the determination of administrative completeness, a detailed evaluation of each Application was conducted.

Coordination with Other State Agencies

Board Staff and LAI worked closely throughout the evaluation process with other New Jersey state agencies, as described below:

New Jersey Department of Environmental Protection

Board Staff engaged with DEP throughout the Third Solicitation window. DEP assisted Board Staff in developing the environmental and fisheries protection sections of the Third Solicitation SGD. Applicants were directed to meet with DEP prior to submitting their Applications; the DEP Office of Permitting and Project Navigation participated in the Bidders Technical Conference; and DEP contact information and permitting guidance documents were included on the Solicitation Website at NJOffshorewind.com to facilitate coordination with DEP. DEP further assisted in the evaluation of each Applicant’s permitting plan, environmental protection plan, fisheries protection plan, data management plan, infrastructure monitoring plan and interconnection plan in order to ensure consistency with the Solicitation requirements and relevant environmental regulations.

DEP provided its findings in a memo to Board Staff on January 3, 2024 ("DEP Memorandum"), which was reviewed and considered by Board Staff. DEP found that Attentive adequately addressed the requirements of the Third OSW Solicitation Guidance Document. DEP felt that Attentive's Environmental and Fisheries Protection Plans exceeded SGD requirements, and that their Infrastructure Monitoring Plan was well thought out through all stages of development.⁶⁸

New Jersey Division of the Rate Counsel

Board Staff engaged Rate Counsel to solicit feedback on the potential ratepayer impacts associated with OREC award(s) consistent with OWEDA and the governing rules at N.J.A.C 14:8-6 et seq. Applicants were also directed to meet with Rate Counsel prior to submitting their Applications. Rate Counsel provided its findings in a memo to Board Staff on January 3, 2024 ("Rate Counsel Memorandum"), which was reviewed and considered by Board Staff. The Rate Counsel Memorandum assessed the Attentive project bids and found that they provide the second most-attractive price per MWh among the bidders. Further, the Rate Counsel Memorandum found that combining the 1,342 MW Attentive Project and the 2,400 MW Other Awarded Project provided the lowest cost option of potential portfolios around 3,700 MW. However, the Rate Counsel Memorandum expressed concern about the total potential ratepayer impact of the projects, particularly when coupled with other clean energy initiatives.⁶⁹

New Jersey Economic Development Authority

Board Staff engaged with the NJEDA throughout the Third Solicitation Window. NJEDA assisted Board Staff in developing the economic benefits sections of the Third Solicitation SGD, as well as assisted Board Staff in the evaluation of each Applicant's economic development plans, supply chain development and ports utilization plan, and stakeholder engagement plan. NJEDA provided its findings in a memo to Board Staff for review and consideration on January 5, 2024 ("NJEDA Memorandum"), which was reviewed and considered by Board Staff. NJEDA urged Board Staff to prioritize projects that utilize the NJWP for marshalling and manufacturing with a preference for the development of Tier 1 full-scale manufacturing facilities that result in significant in state job creation. NJEDA also expressed a preference for an award that results in a tower facility proposal that is self-sufficient within the Third Solicitation.⁷⁰

Information Relied Upon in Evaluation of Applications⁷¹

⁶⁸ Memorandum from DEP to Board Staff, NJDEP Review of 2023 OREC Applications, (January 3, 2024), at 5-6.

⁶⁹ Memorandum from Rate Counsel to Board Staff, Ratepayer Impact Analysis – Offshore Wind ("OSW") Third Solicitation BPU Docket No QO2208481, (January 3, 2024) at 4-5.

⁷⁰ Memorandum from NJEDA to Board Staff, Third Offshore Wind Solicitation (NJ3) - Economic Impact Evaluation, (January 5, 2024) at 2-3.

⁷¹ Publicly available versions of the Application, responses to clarifying questions ("CQ Responses"), interview transcript, Attentive's BAFO, as well as the Rate Counsel Memorandum, NJEDA Memorandum, DEP Memorandum, and LAI Report, each of which are defined hereafter in "Information Relied Upon in Evaluation of Applications," will be available through the Public Document Search Tool located at

Board Staff relied upon the following information to form its own opinions and recommendations to the Board regarding this matter: ⁷²

- The Applications submitted at the close of the Third Solicitation window on August 4, 2023;
- Information submitted to cure deficiencies identified in Administrative Completeness Review Findings. Applicants were notified of the deficiencies on August 25, 2023, and were given the opportunity to cure the deficiencies. All Applicants were notified on September 11, 2023 that their deficiencies were cured. Applicants were notified that their responses would become part of the record and that the Board would rely on them in its further review of their Application;
- Answers to clarifying questions (“CQs”) posed by Board Staff and LAI sent to all Applicants on September 1, 2023 (“CQs, Set 1”). CQ Responses were received by September 11, 2023 as requested. Applicants were notified that their responses would become part of the record and that the Board would rely on them in its further review of their Application;
- Answers to a second round of CQs posed by Board Staff and LAI sent to all Applicants on September 19, 2023 (“CQs, Set 2”). CQ Responses were received by September 26, 2023, as requested. Applicant were notified that their responses would become part of the record, and that the Board would rely on them in its further review of their Application;
- Answers to a third round of CQs posed by Board Staff and LAI sent to all Applicants on October 6, 2023 (“CQs, Set 3”). CQ Responses were received by October 16, 2023, as requested. Applicants were notified that their responses would become part of the record, and that the Board would rely on them in its further review of their Application;
- Answers to a fourth round of CQs posed by Board Staff and LAI sent to all Applicants on October 31, 2023 (“CQs, Set 4”). CQ Responses were received by November 7, 2023, as requested. Applicants were notified that their responses would become part of the record, and that the Board would rely on them in its further review of their Application;
- Answers to a fifth round of CQs posed by Board Staff and LAI sent to two Applicants, one on November 27, 2023, with CQ Responses received by December 4, 2023, as requested (“CQs, Set 5”); and one on December 1, 2023 (“CQs, Set 6”), with CQ Responses received by December 8, 2023 as requested. The Applicants were notified that their CQ Responses would become part of the record, and that the Board would rely on them in its further review of their Application;

<https://publicaccess.bpu.state.nj.us/> BPU Docket No. QO22080481 on or after January 24, 2024.

⁷² This Order, Attentive’s Application, all CQ Responses, the interview, the supplemental information and Attentive’s BAFO collectively form the obligations and duties between the Board and Attentive for the Attentive Project. Attentive is bound by all statements and representations made in their submittals, whether or not specifically discussed in this Order.

- Statements made on the record by each Applicant at interviews held on November 8, 2023 and November 9, 2023 (each, an “Applicant Interview”). Applicants were interviewed by Board Staff, LAI, and representatives of DEP to review their Application and ask questions prepared by LAI in consultation with Board Staff and DEP. The Applicant Interviews were documented by a court reporter. Each Applicant was notified that its responses would become part of the record, and that the Board would rely on them in its further review of their Application;
- Information that the Applicant considered supplemental to its responses during the Applicant Interview, which was requested at the Applicant’s Interview (“Supplemental Information”). Supplemental Information was submitted on November 15, 2023 and November 16, 2023 as requested. Each Applicant was notified that its Supplemental Information would become part of the record, and the Board would rely on it in its further review of the Application;
- A best and final offer (“BAFO”) that was requested from all Applicants on October 27, 2023. The BAFOs were received by December 15, 2023 as requested. Each BAFO consisted of a narrative description of the BAFO (“BAFO Narrative”) and a BAFO application form (“BAFO Application Form”) for each project option. Applicants were notified that their BAFO would become part of the record, and the Board would rely on it in its further review of their Application;
- The memorandum from DEP to Board Staff, NJDEP Review of 2023 OREC Applications, dated January 3, 2024, on environmental impacts;
- The memorandum from Rate Counsel to Board Staff, Ratepayer Impact Analysis – Offshore Wind (“OSW”) Third Solicitation BPU Docket No QO2208481, dated January 3, 2024, on ratepayer impacts;
- The memorandum from NJEDA to Board Staff, Third Offshore Wind Solicitation (NJ3) - Economic Impact Evaluation, dated January 5, 2024, on economic benefits; and
- The LAI Report, submitted to Board Staff, dated January 10, 2024. The LAI Report contained LAI’s independent quantitative and qualitative analyses of all the information listed above.

Portfolio Analysis

In addition to the evaluation of individual projects, Board Staff and LAI conducted a portfolio analysis to test the potential price, economic benefits and costs, attributable to the selection of projects from more than one Applicant. A portfolio solution with multiple awardees has the potential to position New Jersey favorably to achieve greater manufacturing capability to support both New Jersey’s and neighboring states’ offshore wind procurement goals, while conferring valuable employment and economic benefits. By the Board’s action today, the Board determines that a portfolio solution that includes the Two Projects totaling 3,742 MW furthers New Jersey’s OSW goals and is in the best interest of the state and its residents.

Measures taken today will likely solidify the Tier 1 supply chain in New Jersey, and the size of this portfolio award will offer the most certainty in that regard.⁷³ Building a local supply chain will create jobs, investment opportunities, education programs, and revenue generation, and should serve to lower the cost of future OSW projects by allowing for components to be sourced from New Jersey rather than transported from Europe or Asia to New Jersey. Both of the Two Projects awarded today commit to purchasing wind turbine generator towers from a tower manufacturing facility to be developed at the NJWP, and together, they provide sufficient volume for a tower manufacturer to commit to construct the manufacturing facility. Both of the Two Projects awarded today also commit to purchase monopile foundations from the EEW foundation manufacturing facility at the Port of Paulsboro ("EEW Foundation Manufacturing Facility"), and they commit to provide capital for the facility to expand its production capacity and to increase the size of the monopile foundations that the facility can produce.

II. DISCUSSION

The Third OSW Solicitation Guidance Document requires consideration of the following six evaluation criteria: 1) Likelihood of successful commercial operation; 2) OREC purchase price; 3) Ratepayer impacts; 4) Environmental impacts; 5) Economic impacts; and 6) Strength of guarantees for economic impacts. The Board has considered the Attentive Application and the entirety of the Attentive record developed during the evaluation process, with respect to these criteria.

Likelihood of Successful Commercial Operation

The likelihood of successful commercial operation, including, but not limited to, the evaluation of developer and personnel experience, feasibility of Attentive Project timelines, permitting plans, equipment and labor supply plans, and OTN-ready designs was used to determine whether the Attentive Project was eligible to become a QOWP.

Ownership Structure, Financial Strength and Financing Plan

The Attentive Project is jointly owned and controlled by TotalEnergies OFW US1, LLC ("TotalEnergies US"), LLC and Corio OSW Investments LLC ("Corio").⁷⁴ France-based TotalEnergies SE, the parent of TotalEnergies US has a balance sheet exceeding \$300 billion in assets, while Corio's parent, the Australia-based⁷⁵ Macquarie Group Limited, reported \$575 billion in assets under management.⁷⁶ Attentive will use a combination of debt, tax equity, and sponsor equity to finance the Project.⁷⁷ Attentive anticipates funding approximately 15% of the Project's

⁷³ LAI Report at 166.

⁷⁴ Attentive Application Narrative at 1-11.

⁷⁵ Id. at 1-12.

⁷⁶ Id. at 5-1.

⁷⁷ Id. at 5-2.

construction cost with sponsor equity.⁷⁸ The remaining 85% of the Project's construction cost will be funded with a construction loan and tax equity bridge loan.⁷⁹

Project Design

The Attentive Project's base case proposes to use a Wind Turbine Generator ("WTG") from an established manufacturer, which is expected to be type-certified years in advance of the Project's 2031 Commercial Operations Date ("COD"). The WTG will be supported by monopiles produced at the EEW Foundation Manufacturing Facility. The proposed cabling for the Attentive Project utilizes industry standard technology that sufficiently fulfills requirements set forth in the Third Solicitation SGD.

Transmission

The Attentive Project will interconnect with the electric transmission grid in New Jersey by utilizing SAA Capability at the Larrabee Collector Station POI, through the 1,342 MW Smithburg circuit ("LCS Smithburg Circuit").⁸⁰ The Attentive Project will use the Prebuild Infrastructure resulting from the BPU's current PBI Solicitation.⁸¹ The Attentive Project will utilize PJM's new queue reform system in their transmission planning efforts, which allows the Attentive Project to submit a more complete application for a queue position in PJM's Cycle #1.⁸² The application phase for PJM's Cycle #1 is currently open.

The Attentive Project has proposed an OTN-ready design, consistent with the Third Solicitation SGD requirements, which will allow for the potential future connection of multiple OSW platforms.

Ports, Infrastructure, Development, Logistics, and Supply Chain

The Attentive Project plans to use the NJWP for marshalling and will participate in NJEDA's lease Request for Proposal ("RFP") process. The Attentive Project has indicated it has been encouraging supply chain partners to localize their manufacturing facilities at the NJWP, as it is one of the few East Coast facilities with the capacity to co-locate both marshalling activities and

⁷⁸ *Id.* at 5-3.

⁷⁹ *Id.* at 5-10, Attachment 5-A, "Letters of Support from Leading Banks."

⁸⁰ State Agreement Approach Capability ("SAA Capability"), as set out in the FERC-approved PJM Rate Schedule 49 § 1.2, all transmission capability created by approved SAA solutions as studied by PJM, including the capability to integrate resources injecting energy up to their maximum facility output, capability which may become CIRs through the PJM interconnection process, and any other capability as consistent with studies performed by PJM for the SAA.

⁸¹ November 17, 2023 Order.

⁸² Refer to PJM Manual 14H, <https://www.pjm.com/-/media/documents/manuals/m14h.ashx>, for a description of the PJM queue reform, which is designed to more efficiently and timely process new service requests by transitioning from a serial "first-come, first-served" queue approach to a "first-ready, first-served" Cycle approach.

Tier 1 manufacturing.⁸³ As part of the Attentive Project's plan to grow New Jersey's OSW supply chain, Attentive will support expansion of the EEW Foundation Manufacturing Facility. Attentive will also support development of a tower manufacturing facility at the NJWP.

Developer and personnel experience

Co-developers TotalEnergies US and Corio have a combined OSW portfolio of 40+ GW, of which a significant portion is being jointly developed.⁸⁴ TotalEnergies' Seagreen 1 OSW Project, located off the coast of Scotland, delivered first power in August 2022, and became fully operational in October 2023.⁸⁵ This project demonstrates the ability of Attentive to deliver an OSW project of similar size and distance from the coast as the Attentive Project. The Attentive Project's senior team possesses specific expertise or experience in developing, permitting, constructing, and operating large-scale energy infrastructure in New Jersey, the U.S., and abroad.⁸⁶

Project Schedule and Stakeholder Engagement

Attentive has extensive experience designing, permitting, and constructing utility-scale infrastructure projects across multiple regulatory jurisdictions in New Jersey and in the United States.⁸⁷ The Attentive Project has undergone years of pre-development efforts in the New York Bight ahead of its lease area acquisition in 2022, which has allowed for the proposal of a mature project and a schedule that has identified and incorporated risks faced by OSW projects in the United States in order to meet the 2031 COD.⁸⁸ Of equal importance is Attentive's approach to stakeholder engagement. Attentive has already met with over 180 unique stakeholders and conducted more than 250 stakeholder meetings.⁸⁹ Last summer, Attentive released a Fisheries Communication Plan regarding interactions with the fishing community and will ensure that the coastal tourism industry, recreational and commercial fishing industries will be included during relevant decision-making processes for onshore and offshore design elements.⁹⁰ Attentive has

⁸³ A Tier 1 manufacturing facility is a facility that contracts with an Applicant for a major contract package or component, such as turbines, blades, towers, foundations, etc.

⁸⁴ Attentive Application Narrative at 1-4.

⁸⁵ See Seagreen Wind Energy, <https://www.seagreenwindenergy.com/about-us>. The Seagreen Offshore Wind Farm, located 27 km off the Angus coast in the North Sea's Firth of Forth, is currently Scotland's largest wind farm and the world's deepest fixed-bottom offshore wind farm. See Seagreen Wind Energy, "Scotland's Largest Offshore Wind Farm is Now Operational" (October 15, 2023), <https://www.seagreenwindenergy.com/post/scotland-s-largest-offshore-wind-farm-is-now-operational>.

⁸⁶ Attentive Application Narrative at 1-33.

⁸⁷ Id. at 12-2.

⁸⁸ BOEM Lease Area OCS-A 0538.

⁸⁹ Id. at 9-1.

⁹⁰ Attentive Energy, Fisheries Communication Plan for the Attentive Energy Offshore Wind Project, https://attentiveenergy.com/wp-content/uploads/2022/08/ATT-FSH-COM-PLN-ATT-000001_2_IFU_20220823_Attentive-Energy-Fisheries-Communication-Plan.pdf; Attentive Application at

also designed the Attentive Project's cable routing and interconnection strategy to minimize disruption to onshore communities and coastal private landowners.⁹¹

New Jersey Risk Mitigation Mechanisms

The Board acknowledges the challenges faced by OSW projects awarded prior to 2023, but remains undeterred in its pursuit of OSW as a component of the state's clean energy goals, and in pursuit of the significant economic benefits and good-paying, family-sustaining jobs that OSW generates. The Board took the following steps in the design of the Third Solicitation to mitigate challenges that OSW projects may face in the future.

Inflation Adjustment

The submitted OREC pricing for the Attentive Project will be adjusted for inflation based on the change in labor and commodity indices between the date that Attentive's Application to the Third Solicitation was submitted and the date of BOEM approval of the Project's Construction and Operations Plan ("COP").

The change in OREC due to the inflation adjustment will be limited to a 15% increase or a 15% decrease to the OREC, even if a larger adjustment is indicated by the change in index values.⁹² The inflation adjustment will minimize the risk of the impact of inflation on the financial health of the Attentive Project. Details of the inflation adjustment can be found in Attachment B to this Order.

Performance Guarantees

The Attentive Project is required to make a compliance filing with the Board and to provide performance security that will bind Attentive, and its parent companies, successors or assigns, to meeting their financial commitments to the funding of Phase 3 of the EEW Foundation Manufacturing Facility, and to the completion of the Attentive Project. The security required for the Tier 1 supply chain investment in the EEW Foundation Manufacturing Facility is 100% of the total funding commitment proposed and approved by the Board in this Order. For completion of the Attentive Project, the security is in the amount of \$50,000 per MW awarded by the Board, which totals \$67,100,000. Details regarding these performance commitments are provided in Attachment B to this Order.

The Board believes that the design components of the Attentive Project, the strength of Attentive and its financial backers, the experience of Attentive and the experience of the Attentive Project's key personnel, the transmission system de-risking by utilizing the SAA Facilities and the PBI, inflation adjustment, and performance guarantees provide sufficient evidence that the Attentive Project will reach commercial operation.

9-18.

⁹¹ Attentive Application Narrative at 9-1.

⁹² Third Solicitation SGD at 5-6.

OREC Purchase Price, Ratepayer Impacts, and Cost-Benefit Analysis

The Attentive Project was one of nine projects, excluding nine contingent projects that were withdrawn, submitted by Attentive.⁹³ LAI conducted price analyses to inform the Board about how the Attentive Project compared to the other project options submitted by Attentive, as well as the projects submitted by all other Applicants. LAI also determined the incremental, net, and total costs to be borne by New Jersey ratepayers for the projects proposed by all Applicants. Cost and price analysis were conducted using the following values:

1. *First Year OREC Price*: The All-In OREC Purchase Price in nominal \$/OREC that will be applicable during the First Energy Year of the 20-year OREC term.⁹⁴ An Energy Year is the 12-month period from June 1 through May 31 and is to be numbered according to the calendar year in which it ends.⁹⁵
2. *Levelized OREC Purchase Price ("LOPP")*: The present value of OREC Purchase Price payments over the 20-year OREC term divided by the present value of the quantity of ORECs purchased over the 20-year OREC term.⁹⁶
3. *Levelized Net OREC Cost ("LNOC")*: The unitized (dollars per MWh) net OREC cost is the OREC Purchase Price minus the revenue credits for energy and capacity and the avoided cost of Tier 1 Renewable Energy Certificates ("RECs"), levelized in nominal dollars over the 20-year OREC term.
4. *Present Value of Net OREC ("PVNOC")*: The total net OREC cost over the 20-year OREC term is the OREC Purchase Price multiplied by the quantity of ORECs minus the total energy and capacity revenue credits and avoid cost of Tier 1 RECs, on a present value basis.

The Attentive Project offers a first year OREC price of \$131.00/MWh,⁹⁷ a LOPP of \$165.14/MWh,⁹⁸ and a PVNOC of \$3.3 billion.⁹⁹ Attentive included a 3.0 percent annual escalator

⁹³ Projects of 1,200 MW and 1,342 MW with various Tier 1 agreement options and economic benefit investment program options.

⁹⁴ Nominal dollars are unadjusted for inflation. They represent the actual or predicted amount for a transaction in a particular year, whereas "real" or "constant" dollars represent the amount adjusted for actual or predicted inflation to a reference year.

⁹⁵ N.J.A.C. 14:8-6.1.

⁹⁶ Levelized values represent a string of values as a single value, which if it occurred in each period of a specific term would be financially equivalent on a present value basis to the original string.

⁹⁷ Attentive BAFO Application Form, OREC Pricing Schedule worksheet.

⁹⁸ LAI Report at 67-68, Table 15, "OREC Purchase Price Summary."

⁹⁹ *Id.* at 75-77, Table 18, "Present Value of Net OREC."

in its OREC Purchase Price schedule. The LNOC is \$96.75/MWh.¹⁰⁰ The LNOC adjusts the LOPP by including estimates for the revenue credits to be returned to ratepayers.

Ratepayer impacts account for revenue generated by the Project and returned to ratepayers. Ratepayer bill impact estimates are based on the PVNOC divided by the present value of the MWh load that would absorb those costs. LAI utilized Energy Information Administration ("EIA") data covering the 2022 calendar year to estimate monthly usages.¹⁰¹ The Attentive Project revenue plan identifies a strategy for producing all revenues over the 20-year OREC term, and Attentive is required to make a good faith effort to maximize all project revenues.¹⁰² Revenues include but are not limited to revenue from the sale of energy, capacity, renewable energy certificates ("RECs") above annual allowance, ancillary services ("AS"), and any other product sales.¹⁰³ Per OWEDA and N.J.A.C. 14:8-6 et seq., all revenue other than ORECs must be credited to New Jersey ratepayers. The Board acknowledges that Attentive may sell its products directly through the PJM wholesale energy, capacity, and ancillary markets as well as bilateral sales, either directly by Attentive or by its outsourcing to an unregulated marketing affiliate to effectuate bilateral sales.

Based upon the estimated PVNOC, the average monthly bill ratepayer impacts for the Attentive Project as estimated by LAI are: \$3.13 for residential customers; \$26.87 for commercial customers; and \$234.80 for industrial customers (expressed in 2023 dollars).¹⁰⁴ These monthly bill impacts will not begin until the Attentive Project's OSW are operational, which is anticipated in 2031.

The cost-benefit analysis ("CBA") represents a consolidation of the quantitative economic components of the evaluation, including OREC Purchase Price, ratepayer impact offsets (i.e., revenue returned to ratepayers), in-state economic development effects, and environmental impacts. Attentive submitted a CBA as part of its Application as required by N.J.A.C. 14:8-6.5(a)(11). LAI conducted an independent CBA to ensure that all projects were compared on a consistent basis. Content provided by the Applicants helped inform LAI's independent CBA. LAI's CBA resulted in a value of 2.20¹⁰⁵ for the Attentive Project, which meets the eligibility requirements of positive economic and environmental net benefits to the state.¹⁰⁶

¹⁰⁰ Id. at 67-68, Table 15, "OREC Purchase Price Summary".

¹⁰¹ Id. at 41-46, "Ports, Infrastructure Development, Logistics and Supply Chain." From a ratepayer perspective, a smaller project will result in lower total costs and hence a smaller rate impact. However, a larger project that benefits from economies of scale will generally have a lower LNOC, that is, a larger project will generally have a lower cost per MWh produced.

¹⁰² Attentive Application Narrative at 7-1 to 7-10.

¹⁰³ Under N.J.A.C. 14:8-6.1, the term "All Project Revenues" includes "all revenues generated by a qualified offshore wind facility, during the 20-year term of the Board Order, resulting from the sale of energy, capacity, or any ancillary service in PJM, or any other revenue that is generated by a qualified offshore wind facility."

¹⁰⁴ LAI Report at 82-83, Table 20, "Retail Rate Impacts."

¹⁰⁵ Id. at 143-144, Table 63, "Expected Cost-Benefit Analysis Comparison."

¹⁰⁶ Id. at 135-146, "Cost Benefit Analysis."

Environmental Impacts

All of the projects proposed in the Third Solicitation will help New Jersey reduce GHG emissions and other pollutants from the electric sector by displacing fossil fuel-fired generation. Avoided emissions for the awarded projects, on a per MWh basis, are very similar.¹⁰⁷ The Attentive Project will result in an average of 2.3 million short tons of avoided GHG emissions annually. Direct emissions (carbon dioxide, sulfur dioxide, nitrogen oxides, and particulate emissions) resulting from development, construction, operation, and decommissioning activities associated with the Attentive Project are anticipated to be a total of 0.6 million short tons. Based upon the most recent data available from the U.S. Energy Information Administration, these net annual avoided emissions represent approximately 12% of New Jersey's current GHG emissions from the electricity sector.¹⁰⁸

Attentive's environmental protection plan is guided by the environmental protection hierarchy of avoid, minimize, mitigate effects to address potential adverse environmental impacts during project development, construction, operations, and decommissioning.¹⁰⁹ The development of Attentive's environmental monitoring and research program was informed by stakeholder engagement and active participation in regional science entities, industry associations, and working groups.¹¹⁰ The Attentive Project articulates a goal of no net loss to biodiversity and aims to achieve an overall net positive impact for certain species.¹¹¹ Attentive represents it will contribute a total of \$30 million to regional wildlife, fish, invertebrate, and habitat research, monitoring and conservation efforts. Specifically, of this \$30 million, Attentive commits \$15 million to the research and monitoring fee ("RMI Fee") required of awarded projects for research initiatives and the regional monitoring of the environment, wildlife, and fisheries dedicated to assessing the impacts from OSW development on the natural resources of New Jersey.¹¹² This RMI Fee commitment is \$1.58 million beyond the \$13.42 million otherwise required by the SGD. Attentive commits the remaining \$15 million to fund additional programs with universities and science organizations to support research and conservation programs that align with the goals of New Jersey's Research and Monitoring Initiative, also known as "RMI."¹¹³ These additional programs include funding for research on marine mammals, Red Knots, and Roseate Tern as well as funding to develop the Offshore Wind Connect Program at Rutgers to support

¹⁰⁷ Id. at 140, Table 61, "Average Annual Avoided Emissions".

¹⁰⁸ U.S. Energy Information Administration: New Jersey Electricity Profile 2022 (last updated November 2, 2022).

¹⁰⁹ Attentive Application Narrative at 10-2.

¹¹⁰ Id. Attachments to Section 10 at 10-A-45.

¹¹¹ Id. at 10-3.

¹¹² Id. at 10-2.

¹¹³ Id. at 10-4 to 10-5; Table 10-1, "Programs in Attentive Energy's Fisheries and Environmental Monitoring Research Program;" DEP, Offshore Wind – Research and Monitoring Initiative ("RMI"), <https://dep.nj.gov/offshorewind/rmi/>.

environmental and fisheries research and workforce development.¹¹⁴ The Attentive Project is located 47.5 miles from New Jersey shoreline at its closest point and thus will result in negligible visual impacts to any potential viewers on the shoreline.¹¹⁵

Attentive's fisheries protection plan pledges a commitment to collaborate with ocean users and the fishing community.¹¹⁶ Attentive has a robust fisheries stakeholder engagement plan and a team of fisheries professionals tasked with ongoing engagement with the commercial and recreational fishing industries.¹¹⁷ Based on engagement with stakeholders, the Attentive Project incorporated marine traffic and fishing safety concerns into the development of a unique turbine grid layout which facilitate three lines of orientation for transiting through the project area and where practicable aligns with prevailing fishing and vessel traffic directions.¹¹⁸ The Attentive Project aims to achieve no net loss of revenue to commercial fishermen and aims to achieve a net positive impact for some specific species, including surfclams and black sea bass.¹¹⁹ Attentive is actively participating in the ongoing effort by Northeastern States and the Special Initiative for Offshore Wind to develop a regional fisheries compensation mechanism and is engaged with regional science entities, other groups focused on fisheries stakeholder engagement, and state and federal agencies in service to the responsible development of offshore wind.¹²⁰ The Attentive Project's \$30 million commitment to environmental and fisheries research and monitoring includes support for several fisheries research initiatives, including studying how wind farm structures may impact economically valuable fisheries, exploring the potential to seed surfclams as a means of enhancing the surfclam fishery, and investigating the socioeconomic impacts of the Project on recreational and commercial fisheries as well as shore based fisheries stakeholders.¹²¹

The Attentive Project's Data Management and Availability Plan provides a framework for data collection and management that is consistent with best practices. Attentive's plan provides an initial data catalog that inventories for each potential study or survey the type of data to be collected and the timeline for collection.¹²² Attentive commits to transparency with respect to sharing non-proprietary data and to establishing a data sharing process or portal, which will be actively maintained by a Data and Information Officer.¹²³ The Project also commits to explaining why any data kept confidential are commercially sensitive and to disseminating the data to the appropriate publicly available database(s) as soon as is feasible after quality assurance and

¹¹⁴ Attentive Application Narrative, Attachments to Section 10, at 10-A-36 to 10-A-41.

¹¹⁵ Id., Attachments to Section 10, "Visibility and Viewshed Impact Study Lease Area OCS-A 0538" at 1-2; Table 10-1, "Programs in Attentive Energy's Fisheries and Environmental Monitoring Research Program."

¹¹⁶ Id. at 11-1.

¹¹⁷ Id. at 11-3.

¹¹⁸ Ibid.

¹¹⁹ Id. at 11-1.

¹²⁰ Id., Attachments to Section 11 at 11-A-30.

¹²¹ Id. at 11-5.

¹²² Id. at Attachment B to Section 10, at Table 2, "Technical Studies and Surveys."

¹²³ Id. at Attachment B to Section 10, "Offshore Wind Infrastructure Monitoring Plan."

quality control review.

The Attentive Project Offshore Wind Infrastructure Monitoring Plan identifies potential opportunities to use a variety of offshore wind farm infrastructure as monitoring platforms. It offers a detailed summary of the environmental parameters that could be monitored, the types of sensors that could be applied and the power and communication requirements for their deployment.¹²⁴ Attentive's plan demonstrates careful attention to the research priorities of New Jersey's Research and Monitoring Initiative and productive engagement with regional science entities, government agencies, industry associations and working groups to identify beneficial opportunities for infrastructure monitoring which it pledges to continue in the future.¹²⁵

The Attentive Project demonstrates a robust commitment to avoiding, minimizing, and mitigating environmental and fisheries impacts.

Economic Impacts

EEW Foundation Manufacturing Facility at the Port of Paulsboro

The EEW Foundation Manufacturing Facility at the Port of Paulsboro in Southern New Jersey is the first and largest facility for monopile production in the U.S. Phase 1 of the EEW Foundation Manufacturing Facility is a monopile finishing facility that began operation in February, 2021. Phase 2 of the EEW Foundation Manufacturing Facility involves full manufacture of monopiles and is scheduled to be completed by January 1, 2026. Attentive's Project will provide a Tier 1 investment to enable the Phase 3 expansion of the EEW Foundation Manufacturing Facility. Attentive commits to expand upon existing strategic infrastructure investments from past solicitations by investing \$58.85 million,¹²⁶ which is the pro-rata share of the \$164.1 million needed for both components of the Phase 3 expansion, at EEW's monopile factory. Attentive will also source its monopiles for the Project from the EEW Foundation Manufacturing Facility. Attentive's investment in the EEW Foundation Manufacturing Facility's Phase 3 expansion will increase the capacity of the facility to supply two offshore wind projects simultaneously while upgrading the capability of the facility to support next generation monopile sizes.

New Jersey Wind Port¹²⁷

Attentive is committing to use the NJWP for WTG marshalling. Attentive is in a unique position, by already securing an option to lease an alternative port at Arthur Kill Terminal, located near the NY-NJ border, for other projects in its U.S. offshore wind portfolio, which will enable flexibility to the logistics plan by offering additional storage space that may not be available at NJWP. This flexibility will help New Jersey optimize usage and minimize the risk of impacting construction delays. Attentive will continue to prioritize the use of the NJWP for the Project's marshaling, but

¹²⁴ Id. at Attachment C to Section 10 at Table 2, "Technical Studies and Surveys".

¹²⁵ Id. at Attachment C to Section 10, "Offshore Wind Infrastructure Monitoring Plan".

¹²⁶ Id. at 8-2.

¹²⁷ Attentive Application Narrative at 2-45 to 2-46.

will maintain a high degree of project maturity and viability by having leasing rights to a secondary port as a contingency. Attentive also commits to support establishing an offshore wind tower factory at the NJWP, boosting the state's unique advantages for offshore wind manufacturing. Attentive's Project will provide an anchor order at the NJWP. The proposed tower facility will be OEM-agnostic, meaning it will be capable of supporting tower production for all three primary WTG OEMs. The tower facility is expected to create 300 jobs and \$350 million in economic output associated with the facility's construction, approximately 500 indirect jobs, and over \$1.75 billion in economic impacts to New Jersey over the facility's lifespan.¹²⁸

O&M Facility¹²⁹

Attentive is committed to delivering a cost-effective Operations and Maintenance ("O&M") solution to New Jersey ratepayers and will do so by leveraging a regional O&M approach. This approach will include a New Jersey-based local O&M facility to conduct tasks such as warehousing. Attentive's primary consideration is Buckeye Partners, L.P.'s ("Buckeye") Port Reading site, which Attentive is supporting to facilitate the repurposing of an underutilized portion of its Port Reading waterfront refined products and fuel storage terminal into a multi-purpose hub for renewables including offshore wind, potentially serving offshore wind logistics, operations, and innovation. Buckeye's site offers adequate quayside acreage (greater than 25 acres), plus an additional 25 acres for warehousing and storage, and sufficient depths (35 feet) to facilitate service operation vessel ("SOV") operations or other large vessel operations along the Arthur Kill. Its location is just 70 nautical miles from Attentive's lease area, is well positioned to support offshore wind logistics and O&M operations, and has the added benefit of being well situated to potentially support centralized and multi-use offshore wind logistics operations, including multiple offshore wind developers or contractors. As Buckeye's technical advisor, Attentive will support Buckeye's interests in repurposing this site into a multipurpose hub for renewables, including offshore wind.

NJEDA Wind Institute

Attentive committed to investing \$15 million¹³⁰ in the New Jersey Economic Development Authority Wind Institute's mission of expanding vocational training programs, addressing workforce challenges statewide with a specific emphasis on the NJWP, and supporting innovation initiatives within the Wind Institute. Through close collaboration, Attentive and the Wind Institute aim to advance key state priorities in workforce development, education, research, and innovation, fostering the growth of New Jersey's offshore wind industry.

New Jersey Manufacturing Extension Program

¹²⁸ *Id.* at 8-9.

¹²⁹ *Id.* at 2-46.

¹³⁰ *Id.* at Attachment 8-F, Table 1, "Community investments (No. 01 through 23)."

Attentive Energy commits \$8.4 million¹³¹ to the New Jersey Manufacturing Extension Program (“NJMEP”) in a comprehensive three-part effort supported by the National Institute of Standards and Technology (“NIST”), which aims to enhance the profitability and competitiveness of New Jersey manufacturers. The NJMEP Targeted Funds include Greening and Innovation for Manufacturing Facilities, offering flexible investments in eco-friendly technologies for small businesses. The SMWVBE Business Development fund provides grants to diverse small businesses, promoting competitiveness in the offshore wind supply chain.¹³² The Veteran Family Program supports New Jersey veterans and their families in manufacturing. In collaboration with NJMEP, Attentive aims to ensure a lasting presence for local manufacturers in the offshore wind supply chain, fostering economic growth and sustainability.

NJ Trust for Public Land

Attentive Energy commits \$2 million¹³³ to The Trust for Public Land (“TPL”) in a dual initiative for a more livable New Jersey. Through the Newark Green Schoolyards Project, Attentive supports transforming Newark school asphalt lots into green parks, enhancing sustainability, urban revitalization that will connect 29,000 Newark residents to the benefits of nature. The investment backs the community gardens Pilot Project for improved nutrition and food justice, supporting 2,500 students; approximately three quarters of these students qualify for free or reduced lunch. In parallel, Attentive Energy aids the Barnegat Bay Watershed Program, ensuring the protection of priority lands and promoting clean air, water, wildlife habitat, and community health. The funds contribute to completing projects, providing municipal assistance, exploring conservation opportunities, and fostering a healthier watershed for its 560,000 residents and visitors. Attentive Energy's support aligns with TPL's mission to enhance Newark schoolyards and expand the Barnegat Bay Watershed Program, prioritizing community well-being.

OSW Connect: Rutgers STEM Workforce Early Career Pathways

Attentive commits \$2 million¹³⁴ to Rutgers University for the Offshore Wind Connect program. The investment focuses on student/faculty training, internships, and access programs, emphasizing STEM education. Initiatives include curriculum development, a Certification in Wind Energy, student research internships, and an industry-recognized certificate program for workforce/re-training. The support extends to access programs at the School of Biological and Environmental Sciences and School of Engineering, creating pathways for New Jersey youth to enter the offshore wind industry.

¹³¹ ibid.

¹³² The acronym “SMWVBE” refers to small, minority, women, veteran business enterprises.

¹³³ Attentive Application Narrative, Attachment 8-F, Table 1, “Community investments (No. 01 through 23).”

¹³⁴ ibid.

Grassroots Offshore Wind Engagement and Recruitment

Attentive commits \$2 million¹³⁵ to MRV Group, a diversity supplier and consultant, for enhancing engagement with small, diverse businesses, community-based organizations, and overburdened communities in the clean energy industry. MRV Group will serve as a liaison between these entities and the offshore wind supply chain, addressing critical questions and facilitating place-based engagements. Their efforts include building a diverse in-state supply chain, qualifying vendors, and aligning with New Jersey's environmental justice law for active engagement of overburdened communities.

SeaAhead Innovation Suite and Pilots

Attentive commits \$6.6 million¹³⁶ to SeaAhead, a public benefit corporation dedicated to advancing ocean ventures. As the anchor sponsor for SeaAhead's mid-Atlantic activities, Attentive aims to catalyze an innovation community, support innovative startups, and stimulate investment in bluetech. SeaAhead's phased approach involves building regional networks, delivering bluetech pilots, expanding innovation hubs, and connecting investors to actionable program participants. The partnership includes an Equity and Access in Innovation series for entrepreneurs in overburdened communities, collaboration with MRV Group, and coordination with the NJ Wind Institute. Attentive's investment seeks to foster offshore wind innovation in New Jersey, educating and energizing the local investor community about the opportunities in offshore wind.

OSW Workforce Pathways and Skills Collaborative with NJCCC

Attentive commits \$4 million¹³⁷ to The OSW Workforce Pathways and Skills Collaborative, a partnership with The New Jersey Council of County Colleges (NJCCC). In collaboration with NJEDA and the Wind Institute, NJCCC plays a vital role in advancing workforce programs at New Jersey's 18 community colleges. The initiative aims to establish the Offshore Wind Network for community colleges, provide funds for the development of offshore wind-related workforce and academic programs, and foster partnerships between higher education institutions and local high schools to integrate them into the offshore wind industry. Attentive's funding will support NJCCC in positioning coordinated workforce resources within the county college network, enhancing access and capacity to meet the workforce demands of the clean energy sector in New Jersey.

The NJ Resident Affordability Initiative with NJ SHARES

Attentive commits \$4 million¹³⁸ to New Jersey SHARES, a non-profit organization dedicated to

¹³⁵ ibid.

¹³⁶ ibid.

¹³⁷ ibid.

¹³⁸ ibid.

assisting income-eligible households with essential bills. In collaboration, New Jersey SHARES will leverage its expertise and state-wide network to administer the ATTENTIVE-NJ SMART housing assistance program. By closely working with Attentive Energy, they will identify optimal locations and populations for maximum local and statewide impact. Acknowledging the urgency of the affordability crisis in New Jersey, this partnership aims to establish accessible safety nets through the ATTENTIVE-NJ SMART program, providing critical support to those facing housing-related challenges.

Offshore Wind Small Business Connect with SBDC (and Innovation Center at Brookdale Community College)

Attentive commits \$4 million¹³⁹ to the New Jersey Small Business Development Center ("SBDC") for a comprehensive partnership targeting supply chain gaps, particularly in offshore wind. The collaboration focuses on building pathways for to become contract-ready. Key components include an offshore wind SMWVBE-specialized pathway, targeted support for Monmouth and Ocean Counties, and additional assistance for Salem County and businesses across New Jersey. The Offshore Wind Pathways initiative involves Small Business Learning Labs, coordinated by NJ SBDC, Chambers of Commerce, NJEDA's Wind Institute, NJEDA, and Attentive Energy. These labs and personalized consulting that the Small Business Learning Labs offers aim to prepare for offshore wind opportunities and create a robust pipeline for their participation. The collaboration also emphasizes entrepreneurship support in Monmouth and Ocean Counties and facilitates statewide development for access to the NJWP, promoting outreach, education, recruitment, and small business support for diverse communities.

Offshore Wind Reentry Workforce Initiative

Attentive commits \$1 million¹⁴⁰ to the Returning Citizens Support Group for the Offshore Wind Reentry Workforce Initiative, supporting returning citizens and justice-involved youth. The program comprises two tracks: one focuses on workforce preparation for adults through case management, record expungement, and skills training, while the other partners with entities like the Newark Street Academy to guide youth into offshore wind career pathways. An administrative track ensures program metrics and success reporting. The initiative, estimating to serve 2,500 adults and 200 disconnected youth, provides a second chance and meaningful workforce opportunities.

Environmental Justice Community Impact Grant Challenge

Attentive commits \$3 million¹⁴¹ to an environmental justice partner. The program offers

¹³⁹ ibid.

¹⁴⁰ ibid.

¹⁴¹ ibid.

competitive grants to Community-Based Organizations (“CBOs”) across New Jersey, addressing environmental injustices through initiatives like afterschool programs and workforce development. The grant administrator identifies innovative programs, advancing environmental justice and distributing funds to qualifying entities, building internal capacity. This multi-year initiative aims to engage diverse organizations in the offshore wind industry, contributing to meaningful environmental justice efforts in overburdened communities (“OBCs”) across all of New Jersey.¹⁴²

K-12 Offshore Explorers Curriculum

Attentive commits \$1 million¹⁴³ to Waterfront Alliance for the "Offshore Explorers" program—an expansion of Estuary Explorers. This initiative brings STEM education to 10-12 schools annually, reaching up to 1,200 youth in New Jersey's OBCs. It promotes offshore wind in schools with a focus on maritime or clean energy sectors, raising awareness of offshore wind benefits and opportunities. The program guides lessons on technical, economic, and community aspects of clean energy projects, fostering support for offshore wind initiatives in the state.

New Jersey Institute of Technology (“NJIT”) Academic Research and Workforce Pathways Fellowship

Attentive commits \$2 million¹⁴⁴ to NJIT's Academic Research and Workforce Pathways Fellowship, supporting diverse graduate and PhD students in offshore wind research. The Attentive Energy scholarship program covers tuition and stipends, with added support for recruitment and student success systems. Collaboration between NJIT and Attentive Energy facilitates job opportunities for fellows within offshore wind projects. The fellowship aims to train about 50 fellows over 9 -10 years, preparing them for successful employment in the offshore wind industry.

Paulsboro, Salem, and Elizabeth Community Coalitions

Attentive commits \$350,000¹⁴⁵ to the Paulsboro and Salem Community Coalition, \$175,000 for each municipality, and \$100,000 to the Elizabeth Community Coalition. These investments support the development of advisory boards and quality-of-life pilot programs in collaboration with local leaders, including primary partners Anchor Leadership Solutions, LLC, and the Greater Elizabeth Chamber of Commerce with Elizabeth Development Company. The programs involve local steering committees, coordination with other Attentive Energy projects, targeted outreach, and funding for local quality-of-life initiatives. The coalitions aim to boost local engagement in offshore wind, distribute microgrants, and establish consistent feedback channels between

¹⁴² Attentive Application Narrative at 8-6. For a definition of “OBCs,” see <https://dep.nj.gov/ej/communities/>.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

communities and Attentive Energy.

CARP ("Carpenters Apprentice Ready Program") Direct Entry Program

Attentive commits \$1 million¹⁴⁶ to the Eastern Atlantic States Regional Council of Carpenters ("EASRCC") to enhance their CARP program. The funding supports a direct entry pre-apprenticeship program that recruits women and residents of OBCs and connects them directly to union apprenticeship programs in lieu of the traditional application process. This aids in preparing participants for direct entry into New Jersey's building trades unions, affiliated with EASRCC, specifically targeting union jobs in the offshore wind industry.

Diverse Recruitment Initiative with IBEW Local 400 Education Fund

Attentive commits \$3.15 million¹⁴⁷ to the International Brotherhood of Electrical Workers ("IBEW") Local 400 Joint Apprenticeship Training Fund to enhance its apprenticeship program. This investment expands recruitment efforts targeting women, residents with disabilities, veterans, and overburdened communities in New Jersey. It supports pre-apprenticeship training for success in the offshore wind industry, offers direct entry to IBEW graduates into building trades unions, and upgrades equipment and facilities for green energy jobs. This partnership aims to create pathways for diverse individuals into long-term union career opportunities.

OSW Training Flexible Fund for Union Careers

Attentive commits \$1 million¹⁴⁸ to a fund addressing union training needs and expanding apprenticeship programs for offshore wind, with specific partner unions to be named later.

Native American Advancement Corporation ("NAAC") Protected Species Observer and Resiliency Initiative

Attentive commits \$500,000¹⁴⁹ to NAAC, aiding in workforce development for local disadvantaged, rural, and tribal communities in southern New Jersey. The investment focuses on creating employment pathways, offering resiliency-focused programming, and connecting residents to offshore wind opportunities, with a particular emphasis on supporting the Nanticoke Lenni-Lenape Tribal Nation and other tribal communities.

New Jersey Lasting Opportunity Fund

¹⁴⁶ ibid.

¹⁴⁷ ibid.

¹⁴⁸ ibid.

¹⁴⁹ ibid.

Attentive will establish a Lasting Opportunity Fund for \$14 million,¹⁵⁰ allowing it to continue to make investments through its operations phase that have not been identified at this time. The fund is representative of Attentive Energy's iterative and stakeholder-driven approach to economic benefits. The Lasting Opportunity Fund will facilitate investments during the Project's operations phase.

Guarantees for Economic Impacts

Attentive commits to a guaranteed spending of \$760 million through the first ten years of operation, including the development and construction phases. In addition, Attentive guaranteed 1,199 FTE years of job creation through the first ten years of operation, including the development and construction phases. Alongside its guarantees, Attentive proposed remedies to cure any shortfalls. Attentive commits that 90% of any shortfall in guaranteed in-state spend will be cured through a reduction in OREC price over the full or remaining OREC term with the remaining 10% going to funding for State-owned offshore wind programs and assets, including, but not limited to the Wind Institute and/or NJWP, as directed by NJEDA.¹⁵¹ The calculation of the OREC price reduction equivalent in value to 90% of the guaranteed expenditure shortfall, if applicable, will be set by Board order.

In particular, Attentive commits to remedy any shortfalls in guaranteed spending during the first ten years of the operation phase by increasing funding in its supply chain and workforce development efforts.¹⁵² Specific to its job guarantees, Attentive commits to support job creation in New Jersey equal to or greater than the guaranteed values in the event that Attentive cannot fulfill its guarantees. Attentive commits \$85,500/FTE-Year for the development/construction phase and \$61,500/FTE-Year for the operation phase.¹⁵³ To strengthen its offering around guaranteed minimum total in-state job creation, Attentive commits to apply a 2.5% annual escalator to its jobs' shortfall remedies after the commercial operation date.¹⁵⁴

III. DECISION AND FINDINGS

The awards today consisting of the Attentive Project, the 1,342 MW project, Option 7 Scenario 2 (33-33) as submitted as part of Attentive's BAFO, and the Other Awarded Project results in New Jersey's largest OSW solicitation award to date. The Board's decision is guided by several factors in this regard. First, the Board chose these Two Projects due to their significant generation of clean energy to combat climate change. Second, these Two Projects together commit to provide the full amount of the funding necessary for the EEW Foundation Manufacturing Facility to expand its production capacity. Third, both of these Projects commit to marshalling at the NJWP and to purchase towers from a tower manufacturing facility to be developed at the NJWP, providing sufficient volume required by the identified tower manufacturer to develop the facility. Meeting

¹⁵⁰ ibid.

¹⁵¹ LAI Report at 98, "Attentive."

¹⁵² ibid.

¹⁵³ Attentive BAFO Narrative at 10, Table 2: Summary presentation of guarantees and cures for shortfall, with updated BAFO offer.

¹⁵⁴ Id.

these commitments will provide significant economic benefits in manufacturing and related supply chain developments through use of New Jersey ports and infrastructure, resulting in jobs and economic growth that will be enjoyed in New Jersey for decades to come.

The Board recognizes that the OSW industry is currently facing financial and supply chain challenges. However, the Board believes that this is not the time for inaction. The negative impacts of climate change are increasing, and cementing New Jersey as an OSW hub now will allow New Jersey to guard against supply chain elements being established in other states before New Jersey gains this foothold. The Projects awarded today will establish a robust, diverse supply chain that will result in significant benefit to New Jersey's economy, and that will create a significant number of well paying, green economy jobs.

The Board has given careful consideration to the ratepayer impact resulting from these two Project awards, and considered the potential benefits and drawbacks of the size of the awards made today compared to a lesser award. One of the key factors in the cost of OSW today is that the global demand for OSW far exceeds the available supply, particularly in the areas of specialized electrical equipment needed for OSW projects and the availability of installation and support vessels. The Board does not see this supply chain imbalance easing in the near term, and the Projects awarded today have taken the current state of the supply chain into account in their OREC prices and proposed COD. The Board relies in part on the analysis conducted by Board Staff and LAI that shows that the economic and jobs benefits to New Jersey that would be realized by the local supply chain these projects are expected to establish, as well as the avoided lost opportunity costs, exceeds the benefit of a smaller award today even if the cost of OSW falls in the near term.¹⁵⁵

After a careful and thorough review of the complete record in this matter, including the representations and warranties made by Attentive, the Board **HEREBY FINDS** that the Attentive Project meets each of the following threshold conditions:

1. The filing is consistent with the New Jersey Energy Master Plan, adopted pursuant to section 12 of L.1977, c.146 (N.J.S.A. 52:27F-14), in effect as of the date of this Order;
2. The cost-benefit analysis demonstrates positive economic and environmental net benefits to the state;
3. The financing mechanism is based upon the actual electrical output of the Attentive Project, fairly balances the risks and rewards of the Attentive Project between ratepayers and shareholders, and ensures that any costs of non-performance, in either the construction or operational phase of the Attentive Project, will be borne by shareholders of the Applicant; and
4. The Application for the Attentive Project demonstrates financial integrity and sufficient access to capital to allow for a reasonable expectation of completion of construction of the Attentive Project.

¹⁵⁵ LAI Report at 166, "Portfolio Size Considerations."

The Board **FURTHER FINDS** that the Attentive Project meets or exceeds all of the standards for a qualified OSW facility as set forth in N.J.S.A. 48:3-87.1 et seq. and N.J.A.C. 14:8-6.5 et seq.

As such, upon consideration of the evaluation criteria provided in the Third OSW Solicitation Guidance Document and discussed in detail herein, the Board **HEREBY CONCLUDES** that the Attentive Project is in the best interest of the State of New Jersey.

The Board **HEREBY FINDS** that the Attentive Project satisfies the overarching goals of New Jersey's OSW policy in that it: 1) contributes to a stronger New Jersey economy by anchoring an OSW supply chain in New Jersey; 2) combats global climate change to protect New Jersey and its natural resources; 3) provides the most added reliability for the transmission network and transmission rate relief for ratepayers; and 4) achieves all of this at the lowest reasonable cost and risk to ratepayers.

As such, the Board **HEREBY APPROVES** the Attentive Project as a QOWP, and **HEREBY APPROVES** the Attentive Project Annual OREC Price Schedule shown in Attachment A to this Order, subject to the additional Terms and Conditions provided in Attachment B to this Order, and thus, **HEREBY ORDERS** that the Attentive Project be deemed eligible to receive ORECs subject to the following:

1. The Attentive Project Annual OREC Price Schedule, shown in Attachment A, and subject to the Terms and Conditions in Attachment B to this Order, provides the fixed OREC price per MWh that Attentive may receive for ORECs in compliance with the rules at N.J.A.C.14:8-6 et seq. Attentive's annual OREC Allowance is 6,604 gigawatt hours ("GWh") per year.¹⁵⁶ The OREC price schedule is based upon a first year OREC Payment of \$131.00 per MWh (EY 2032), and a 3.0% Annual Rate of escalation which results in a fixed annual OREC price each year thereafter as shown in the Annual OREC Price Schedule, Attachment A to this Order. The OREC price is subject to adjustment due to the Inflation Adjustment summarized earlier in this Order and described in detail in Attachment B to this Order.
2. The OREC payment schedule shall begin on the COD and continue for 240 consecutive months, covering Project Years 1 through 21, where years 1 and 21 may be partial Energy Years as shown in Attachment A to this Order, Annual OREC Pricing Schedule. Subject to any subsequent Board-approved modification to the schedule, Project Year 1 will correspond with Energy Year 2032 and the OREC payment schedule shall continue for a period of 20 years (240 months) ending no later than 2052, subject to all Terms & Conditions provided in Attachment B to this Order, and any and all regulatory requirements. The total Attentive Annual OREC Allowance for the Attentive Project shall not be subject to reduction or modification during the term of this Order unless otherwise agreed to by the Board and Attentive.
3. The OREC Price as bid by Attentive reflects total Project costs, in accordance with the requirements established under OWEDA and at N.J.A.C 14:8-6 et seq.

¹⁵⁶ This amount shall be referred to as the "Attentive Annual OREC Allowance."

4. As a QOWP, Attentive shall only be entitled to OREC payments for MWh actually delivered over the 20-year term beginning at the COD as delineated in this Order, and shall have no recourse against the Board, the suppliers, the EDCs, the OREC Administrator, or the ratepayers for any additional payments. Attentive may not exceed the Attentive Annual OREC Allowance of 6,604 GWh. As detailed in N.J.A.C. 14:8-6.6, any unmet OREC allowances in a given year may be carried forward for up to two years to provide a reasonable opportunity to meet the Attentive Project's total expected production.
5. All revenues generated by the Attentive Project, including but not limited to, all revenues from participation in regional wholesale markets, shall be collected, managed, and returned to ratepayers in compliance with OWEDA and the rules at N.J.A.C.14:8-6.6. As required under N.J.A.C. 14:8-6.6(e), Attentive shall make all commercially reasonable efforts and exercise all due diligence to maximize revenues from the Attentive Project. Attentive shall also be responsible for the collection and transfer of all Attentive Project revenues on behalf of ratepayers, and shall be bound by all additional requirements under N.J.A.C. 14:8-6.6(f).
6. Attentive's market revenue settlement procedure must maximize ratepayer interests while managing the risks associated with wholesale markets. In accordance with terms in Appendix B to this Order, Attentive must submit a compliance filing to propose a risk-management strategy four years before the COD.

The Board **HEREBY DIRECTS** Board Staff to open a Docket in this matter specific to the Attentive Project.

The Board **HEREBY ORDERS** that the Attentive Project receive SAA Capability subject to the following:

1. The Board designates to the Attentive Project the LCS Smithburg Circuit.¹⁵⁷ In accordance with the SAA Agreement,¹⁵⁸ the Board can assign SAA Capability to an entity if it has a "New Service Queue" position.¹⁵⁹ To satisfy this requirement, the Board conditionally assigns SAA Capability to the Attentive Project, and the Attentive Project is directed to obtain, within six months of the effective date of this Order, a New Service Request at PJM that matches the designated LCS Smithburg Circuit SAA Capability of 1,342 MW energy and 403 MW capacity, consistent with Appendix D of the SAA Agreement. The Attentive Project shall inform Board Staff once the New Service Request is secured. The

¹⁵⁷ October 26, 2022 Order.

¹⁵⁸ Letter from PJM to The Honorable Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission re: Submission for Filing an Executed State Agreement Approach Agreement between PJM and BPU, Rate Schedule FERC No. 49, FERC Docket No. ER22-902-000 (January 27, 2022) ("SAA Agreement").

¹⁵⁹ The SAA Agreement uses language that is associated with an earlier PJM process. The Board and Board Staff will work with PJM to update the SAA Agreement to better match the current process. The conditional assignment of SAA Capability here best reflects the Board's attempts to comply with the SAA Agreement's requirements.

Board authorizes Board Staff to formally assign the SAA Capability to the Attentive Project once the New Service Request is properly secured.

2. The Board observes that its rules require a QOWP to take all reasonable efforts to maximize revenues from the qualified project. N.J.A.C. 14:8-6.6(e). Based on changes to PJM's Effective Load Carrying Capability rules since the award of SAA 1.0, it may be prudent for New Jersey ratepayers for the Attentive Project to request more CIRs than designated in the above paragraph.¹⁶⁰ Therefore, the Board directs Board Staff to investigate options that may provide additional value to ratepayers. If Board Staff finds that additional value is available to ratepayers, the Board directs Board Staff to pursue, in accordance with N.J.S.A. 48:3-87.1(c), any prudent modifications to this award.
3. The Attentive Project will utilize one of the 1500 MW, 525 kV PBI transmission corridors.¹⁶¹ The PBI route from landfall to the LCS will be determined by the outcome of the BPU's PBI Solicitation.

The Board **HEREBY DIRECTS** the Attentive Project in planning and executing its offshore export cable route to coordinate with other awarded projects and take all reasonable measures to anticipate the future need of other offshore wind generators' export cables to successfully navigate the congested marine corridor east of the Sea Girt NGTC such that up to four export cables can reach the PBI infrastructure at the lowest risk and cost to ratepayers.

The Board **FURTHER ORDERS** that the Electric Distribution Companies ("EDCs") undergo the following actions pursuant to the terms of this Order:

1. Serve as payment agents, on behalf of all suppliers obligated under the Renewable Portfolio Standard rules, to facilitate the collection and transfer of monthly OREC payments from ratepayers to Attentive in compliance with the rules at N.J.A.C. 14:8-6.6(c);
2. Implement a monthly OREC surcharge on ratepayers as required by N.J.A.C. 14:8-6.6(c) and as described further below;
3. File a tariff with the Board, no later than 180 days, unless an earlier date is set by Board Staff, prior to the COD of the Attentive Project, to collect a non-bypassable OREC surcharge to be assessed as a distribution charge that will be sufficient to meet each supplier's OREC obligation. The EDCs shall implement the ratepayer surcharge based upon the Board-approved total Attentive Annual OREC Allowance for the Attentive Project, multiplied by the OREC price, and expressed as a per kilowatt hour (kWh) charge to be collected from all ratepayers on behalf of the suppliers. The EDCs shall begin collecting the OREC surcharge no later than four (4) months in advance of the COD of the Attentive Project to ensure that adequate funds will be available to complete the initial OREC

¹⁶⁰ See Federal Energy Regulatory Commission "Order Accepting Tariff Revisions Subject to Condition" FERC Docket No. ER23-1067 (April 7, 2023), accepting revisions to PJM Open Access Transmission Tariff and Reliability Assurance Agreement related to the Effective Load Carrying Capability construct.

¹⁶¹ PBI SGD at 3.

payment to Attentive. The surcharge shall be implemented in compliance with N.J.A.C. 14:8-6.6(c);

4. Annually file with the Board for recoverable charges for the administrative fees incurred as payment agent and for the OREC Administrator fees;
5. Enter into a joint contract to retain an OREC Administrator to facilitate all transactions between ratepayers, suppliers, EDCs, and OSW developers, as appropriate. The OREC Administrator will be responsible for tracking and verifying all payments and obligations as described under N.J.A.C. 14:8-6.6. If a contract with an OREC Administrator is in effect at least one year prior to the earliest COD of the Projects awarded today, such contract (the "Initial Contract") shall be amended to include the Attentive Project approved in this Order. If a contract with an OREC Administrator is not in effect at least one year prior to the earliest COD of the Two Projects awarded today, the EDCs shall issue a request for proposals to competitively bid a contract with an OREC Administrator to ensure the most efficient and cost competitive price for ratepayers. The EDCs shall prepare an amendment to the Initial Contract, or a Request for Proposals, as applicable, and submit the document to the Board for approval. The OREC Administrator and the Attentive Project, as a QOWP, will enter into an OREC Transaction Management Agreement, as such agreement defined under N.J.A.C. 14:8-6.1.¹⁶² The OREC Administrator and the Attentive Project, as a QOWP, also will enter into a Standard Participation Agreement, as such agreement is defined under N.J.A.C. 14:8-6.6(b)(5).¹⁶³ Based upon the participation of all parties, the OREC Administrator shall conduct a true-up twice per year to ensure compliance with the Renewable Portfolio Standards and as stipulated under N.J.A.C. 14:8-6.6.; and
6. Enter into, and comply with, the OREC Transaction Management Agreement, defined at N.J.A.C. 14:8-6.1 and the Standard Participation Agreement with Attentive to be established by the OREC Administrator. The Standard Participation Agreement and any subsequent modifications shall be developed by the OREC Administrator and approved by the Board.

The Board **HEREBY DIRECTS** Board Staff to establish an OSW carve-out to the Class I Renewable Portfolio Standards based upon the approved Attentive Annual OREC Allowance of 6,604 GWh within eighteen months of the date of this Order.

The Board **FURTHER ACKNOWLEDGES** Attentive's proposal for the distribution of guaranteed economic benefits shortfall. The Board is keenly aware of the impact to ratepayers regarding the cost associated with the benefits of OSW. As such, the Board **HEREBY ORDERS** that any

¹⁶² Under N.J.A.C. 14:8-6.1, an "OREC Transaction Management Agreement" means a uniform agreement entered into between each qualified OSW project and the OREC administrator. This OREC Transaction Management Agreement shall serve as the detailed management plan or "operating manual" describing how the OREC administrator will oversee and report out on all OREC transactions and shall require Board approval before going into effect."

¹⁶³ Under N.J.A.C. 14:8-6.6(b)(5), among other things, a QOWP is "required to comply with the standard participation agreement with the OREC administrator."

shortfall in guaranteed economic benefits be distributed as follows: 10% of the shortfall shall be as proposed by Attentive, discussed in the Guarantees for Economic Impacts section above, and 90% of the shortfall shall be returned to ratepayers as a dollar-for-dollar reduction in the OREC price. The methodology for adjusting the OREC price shall be set by a future Board order. Additionally, the Board **HEREBY DIRECTS** Board Staff to initiate discussions with Attentive regarding the methodology for adjusting the OREC price no later than one year from the date of this Order.

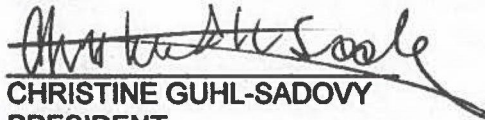
The Board **HEREBY ORDERS** that Attentive adhere to the additional specific terms and conditions provided in Attachment B to this Order.

With the approval of the Attentive Project and the Other Awarded Project the OSW capacity for the Third Solicitation is fulfilled, and thus, all other responses submitted under the Third Solicitation are **HEREBY DENIED**.

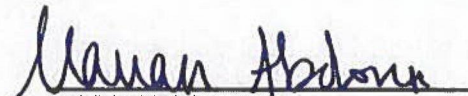
The effective date of this Order is January 24, 2024

DATED: January 24, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRILL GOLDEN
SECRETARY

WE HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE OPENING OF NEW JERSEY'S THIRD SOLICITATION FOR
OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES (OREC)

DOCKET NO. QO22080481

SERVICE LIST

New Jersey Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Sherri L. Golden, Secretary
board.secretary@bpu.nj.gov

Bob Brabston, Esq., Executive Director
robert.brabston@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Taryn Boland, Chief of Staff
taryn.boland@bpu.nj.gov

Henry Gajda, Deputy Chief of Staff
henry.gajda@bpu.nj.gov

General Counsel's Office

Michael Beck, General Counsel
michael.beck@bpu.nj.gov

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Kim Diamond, Senior Counsel
kimberly.diamond@bpu.nj.gov

Charles Gurkas
charles.gurkas@bpu.nj.gov

Office of the Economist

Dr. Ben Witherell, Chief Economist
benjamin.witherell@bpu.nj.gov

Farhana Rahman
farhana.rahman@bpu.nj.gov

Division of Clean Energy

Veronique Oomen, Director
Veronique.oomen@bpu.nj.gov

Stacy Richardson, Deputy Director
Stacy.Richardson@bpu.nj.gov

Dr. Kira Lawrence, Acting Deputy Director
kira.lawrence@bpu.nj.gov

Earl Thomas Pierce
earl.pierce@bpu.nj.gov

Kevin Dillon
Kevin.Dillon@bpu.nj.gov

Genevieve DiGiulio
Genevieve.DiGiulio@bpu.nj.gov

Bailey Wild
Bailey.Wild@bpu.nj.gov

Jack Streppone
Jack.streppone@bpu.nj.gov

New Jersey Division of Law

NJ Department of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Paul Youchak, DAG
paul.youchak@law.njoag.gov

David Apy, DAG
david.apy@law.njoah.gov

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Maura Caroselli, Esq., Managing Attorney
mcaroselli@rpa.nj.gov

David Dismukes, Ph.D
Acadia Consulting Group
5800 One Perkins Place Drive, Suite 5-F
Baton Rouge, LA 70808
daviddismukes@acadianconsulting.com

New Jersey Department of Environmental Protection

P.O. Box 420
Trenton, NJ 08625

Megan Brunatti
megan.brunatti@dep.nj.gov

Katherine Nolan
katherine.nolan@dep.nj.gov

Elizabeth Lange
elizabeth.lange@dep.nj.gov

Levitan & Associates, Inc.

20 Custom House Street, Suite 830
Boston, MA 02110

Richard L. Levitan, President & Principal
rl@levitan.com

Ellen G. Cool, Ph.D., Vice President &
Principal
egc@levitan.com

Sara Wilmer, Vice President & Principal
sw@levitan.com

Attentive Energy LLC

12 East 49th Street, 11th Floor
New York, NY 10017

Caroline Tkachuk
caroline.tkachuk@totalenergies.com

Christen Wittman
christen.wittman@totalenergies.com

Atlantic City Electric

Atlantic City Electric Co. – 89KS
P.O. Box 231
Wilmington, DE 19899

Phil Passanante, Esq.
philip.passanante@pepcoholdings.com

Heather Hall
Heather.hall@pepcoholdings.com

Jersey Central Light & Power

300 Madison Avenue
Morristown, NJ 07962

Joshua R. Eckert
jeckert@firstenergycorp.com

Rockland Electric Company

Consolidated Edison Co. of NY
Law Department, Room 1815-S
4 Irving Place
New York, NY 10003

John L. Carley, Esq.
carleyj@coned.com

Public Service Electric & Gas

PSEG Services Corporation
P.O. Box 570
80 Park Plaza, T-5
Newark, NJ 07101

Matthew Weissman, Esq.
Matthew.weissman@pseg.com

Stacey M. Barnes
Stacey.barnes@pseg.com

Bernard Smalls
Bernard.smalls@pseg.com

ATTACHMENT A

ANNUAL OREC PRICING SCHEDULE

**Annual OREC Price Schedule and Planned Output Schedule
 Attentive Project**

Awarded Capacity (MW)		Phase 1
		1342
COD (month/year)		7/2031
Energy Year, Ending May 31 of	All-in OREC Price (\$/OREC)	Output (months)
2032	\$131.00	11
2033	\$134.93	12
2034	\$138.98	12
2035	\$143.15	12
2036	\$147.44	12
2037	\$151.86	12
2038	\$156.42	12
2039	\$161.11	12
2040	\$165.95	12
2041	\$170.93	12
2042	\$176.05	12
2043	\$181.33	12
2044	\$186.77	12
2045	\$192.38	12
2046	\$198.15	12
2047	\$204.09	12
2048	\$210.22	12
2049	\$216.52	12
2050	\$223.02	12
2051	\$229.71	12
2052	\$236.60	1

ATTACHMENT B

ADDITIONAL TERMS AND CONDITIONS

This Board Order approving the Attentive Project is subject to all applicable federal, state and local laws and regulations, including, but not limited to, OWEDA, Executive Order No. 8, Executive Order No. 92, Executive Order No. 307, the Third OSW Solicitation Guidance Document, and the Board's implementing regulations at N.J.A.C. 14:8-6 et seq.

This Board Order approving the Attentive Project is also subject to the following terms and conditions:

1. Ownership Considerations
 - a. The Attentive Project's co-developers, TotalEnergies US and Corio, shall also be subject to this Order and to these Terms and Conditions.
 - b. In the event of any sale or other transfer to any other entity of a controlling interest in the Project or in the Project owners as described in the Attentive Application, such sale or transfer shall require prior Board approval, pursuant to N.J.A.C. 14:8-6.5(a)(1)(v) and N.J.A.C. 14:8-6.5(a)(4)(iv).
2. Annual OREC Allowance
 - a. The total Attentive Annual OREC Allowance of 6,604,239 MWh per year, as approved by the Board, shall not be subject to reduction or modification during the term of this Order unless otherwise agreed to by the Board and Attentive.
 - b. Attentive may not exceed the Attentive Annual OREC Allowance of 6,604,239 MWh per year in any given year. Any unmet OREC allowances in a given year may be carried forward to the next year, as required by N.J.A.C. 14:8-6.6(b).
3. OREC Price
 - a. The OREC Price approved in this Order is subject to adjustment based on the following Inflation Adjustment mechanism.
 - i. The OREC pricing will be adjusted for inflation upon BOEM approval of the COP. The inflation adjustment will use the following mechanism, with the adjustment multiplier calculated to one decimal place:

$$OREC_{inf} = OREC_{base} \times \sum \frac{Index_{M,i}}{Index_{I,i}} \times F_i$$

where:

$OREC_{inf}$ is the First Energy Year OREC price after inflation adjustment at BOEM approval of the COP;

$OREC_{base}$ is the First Energy Year OREC price before inflation adjustment as bid;

$Index_{M,i}$ is the average index value for price component i over the six months before and six months after BOEM approval of the COP;

$Index_{i,i}$ is the average index value for price component i over the twelve months prior to the Application Submission Deadline; and
 F_i is the fraction of the OREC price associated with price component i such that $\sum F_i = 1$.

- ii. The change in $OREC_{base}$ due to the inflation adjustment will be limited to 15%, that is, it will be neither increased nor decreased more than 15%, even if a larger adjustment is indicated by the index values. The indices that will be included in the adjustment formula, and their F values, are shown in the table below:

Component	F Value	Index
Fixed	0.2	NA
Labor (unitless index)	0.3	BLS Employment Cost Trends Data Series CES2000000003 Average hourly earnings of all employees, construction, seasonally adjusted
Fabrication (unitless index)	0.3	BLS PPI Data Series PCU811310811310 PPI industry data for Commercial machinery repair and maintenance, not seasonally adjusted
Steel (unitless index)	0.1	BLS PPI Data Series PCU331110331110 PPI industry data for Iron and steel mills and ferroalloy manufacturing, not seasonally adjusted
Fuel (US\$ per barrel)	0.1	U.S. Energy Information Administration WTI-Cushing Oklahoma, daily price for the last trading day of the month

4. Performance Guarantees

- a. Within 180 days after the effective date of this Order, Attentive shall make a compliance filing with the Board that binds Attentive, and its parent companies, successors or assigns, to meeting the following commitments made by Attentive and approved by the Board in this Order:
- i. Providing \$58.85 million toward completion of Phase 3 of the EEW Foundation Manufacturing Facility. Attentive may choose to redirect this funding toward a different identified phase of the EEW Facility, upon 180 days' notice to the Board and Rate Counsel. In the absence of an objection from the Board or Rate Counsel, the funding may be directed toward the identified phase of the EEW Facility
 - ii. Achieving the Attentive Project COD of July1, 2031 subject to Paragraph 6 below.

- b. The compliance filing shall include:
 - i. A schedule with specific dates for each of the Critical Milestones listed below. The compliance filing may propose alternate Critical Milestones if other Critical Milestones better align with the realization of Attentive's commitments. Alternate Critical Milestones are subject to Board approval.
 - ii. A detailed description and copy of the proposed financial instrument(s) to be used to secure Attentive's commitments ("Commitment Security").
- c. Critical Milestones for funding the EEW Foundation Manufacturing are:
 - i. Critical Milestone 1: Providing at least \$14.71 million, representing the funding that is at least 25% of the total funding commitment as proposed by Attentive and approved by the Board in this Order.
 - ii. Critical Milestone 2: Providing at least \$29.43 million, representing the funding that is at least 50% of the total funding commitment as proposed by Attentive and approved by the Board in this Order.
 - iii. Critical Milestone 3: Providing \$58.85 million, that represents 100% of the total funding commitment as proposed Attentive and approved by the Board in this Order
- d. Critical Milestones for completion of the Attentive Project are:
 - i. Critical Milestone 1: BOEM approval of the COP.
 - ii. Critical Milestone 2: Achievement of COD.
- e. The Attentive Project shall provide Board Staff with written notice, copying Rate Counsel, when each Critical Milestone in each category listed above is achieved, within seven (7) days after that achievement, which notice shall include information and supporting documentation demonstrating with reasonable specificity that such Critical Milestone has been achieved. Board Staff shall have 45 days to review this written notice in order to verify the reasonableness of such representation(s) before providing its recommendation to the Board. The Board will issue a Board Order, within 120 days of Board Staff's review, allowing or disallowing the Commitment Security to be reduced as described below. Board Staff may request additional information from the Attentive Project about its filing, including additional documentation, access to company personnel, or other information. The Board Staff review period is renewed upon receipt of the requested documentation or clarification from the Attentive Project.
- f. Not less than three months prior to each Critical Milestone, Attentive may petition the Board to extend any of the Critical Milestone dates related to the EEW Foundation Manufacturing Facility if, for good cause, the Critical Milestone cannot be achieved by the date specified in the compliance filing. Attentive may request a one-time as-of-right extension of a Critical Milestone related to the EEW Foundation Manufacturing Facility of up to three (3) months upon written notice to Board Staff. Extension of Critical Milestone dates beyond the three-month extension period are subject to Board approval.

- g. Extensions of the critical milestone related to the Attentive Project COD shall be in accordance with paragraph 5 below.
- h. Financial Commitment
 - i. For Attentive's commitment to complete the Project by their proposed COD, Attentive shall post Commitment Security in the amount of \$67,100,000, representing \$50,000 per MW awarded herein. Attentive shall post 50% of this Commitment Security within one year of the effective date of this Order, with the balance posted within three years of the anniversary date of this Order.
 - ii. For Attentive's commitment to provide funding for the EEW Foundation Manufacturing Facility, Attentive shall post an additional Commitment Security in the amount of \$58.85 million, representing 100% of the total funding commitment as proposed by Attentive and approved by the Board herein. Attentive shall post 50% of this Commitment Security within 60 days prior to the date for Critical Milestone 1 as contained in the Compliance Filing approved by the Board, with the balance posted within 60 days prior to the date for Critical Milestone 2 as contained in the Compliance Filing approved by the Board.
- i. The Commitment Security may be in the form of:
 - i. One or more parent company guarantees, if the parent is investment grade (defined as having one or more credit rating of BBB or above from Standard and Poor's or Baa3 or above from Moody's, or comparable alternative rating agency);
 - ii. One or more letters of credit from an investment-grade third-party financial guarantor (defined as an institution with a rating of BBB or above from Standard and Poor's or Baa3 or above from Moody's); and/or
 - iii. Upon Petition to the Board, other financial instruments acceptable to the Board that provides a comparable level of security to ratepayers, including, but not limited to, corporate guarantees and performance bonds. The performance bond must be issued by a qualified surety that is authorized to do business in the state of New Jersey and listed on the most current edition of the U.S. Treasury Department's Circular 570.
 - iv. Attentive may request that responsibility for the Commitment Security be split between its parent companies.
 - v. Within 90 days of the effective date of this Order, Board Staff shall develop standard parent company guarantee and letter of credit language and share that language with Attentive, who will use the language to complete the company's compliance filing requirement under Section 4.b.ii. above.
- j. Attentive shall provide Board Staff with the final, fully executed version of each Commitment Security described in its compliance filing within seven (7) days of the date on which the Commitment Security is fully executed. Attentive shall also provide Board Staff with copies of any amendment made to a Commitment Security, within seven (7)

days of the date on which such amendment is fully executed. Attentive shall regularly keep Board Staff informed of the anticipated date of execution of each such Commitment Security or amendment, as applicable.

k. Treatment of Commitment Security

- i. Commitment Security for each of the categories above may be reduced, if approved by the Board as described above, by 20 percentage points for achieving Critical Milestone 1 and 20 percentage points for achieving Critical Milestone 2, if applicable. Upon completion of the final Critical Milestone for that category, the Commitment Security shall be closed if all prior Critical Milestones in that category have been achieved.
- ii. Notwithstanding anything described above, the Commitment Security can otherwise only be terminated upon approval of the Board.
- iii. If Attentive misses a Critical Milestone in any of the categories above, Attentive shall forfeit an amount equal to the total Commitment Security posted for that category, multiplied by the percentage value assigned to each relevant Critical Milestone, as set forth above. For example, if Attentive misses Critical Milestone 1 for funding the EEW Foundation Manufacturing Facility, the amount forfeited shall be the total Commitment Security of the investment commitment, multiplied by 20 percentage points.
- iv. Any funds so forfeited will either be committed to development of offshore wind infrastructure in New Jersey, or returned to ratepayers, at the discretion of the Board.

5. Tax Benefits

- a. In return for the sale of ORECs, Attentive is required to return to ratepayers the value of tax credits, subsidies, grants or other funding received that was not anticipated in the Application and therefore not reflected in the Attentive's OREC price, but has been realized through diligent pursuit of additional tax credits, subsidies, grants, or other funding that protects ratepayer interests. Attentive was required to make efforts to maximize these tax credits, subsidies, grants, or other funding at the time of Application submittal. Attentive is required to make efforts over the OREC term to maximize these tax credits, subsidies, grants, or other funding that provide a benefit to New Jersey ratepayers. Attentive shall commit to informing Board Staff promptly, but no later than 30 days after receipt, of all such tax credits, subsidies, grants, and or other funding received, and shall further commit to informing Board Staff promptly of the value received from each when such information becomes available.
- b. In accordance with N.J.A.C. 14:8-6.5 (a)(4), Attentive shall commit that the cost difference in the event that changes in the Project reduces or eliminates tax benefits, or tax benefits do not materialize for any reason including changes in tax laws, will be borne by Attentive alone and not be made up by ratepayers, suppliers, or providers. By virtue of this commitment, Attentive acknowledges that it shall not have any expectation whatsoever of assistance from New Jersey in satisfying this cost difference.
- c. In accordance with N.J.A.C. 14:8-6.5 (a)(5), Attentive shall commitment to pass along tax

credits or other governmental benefits to ratepayers that are greater than projected promptly, but no later than 90 days after Attentive receives such tax credits or other governmental benefits. This pass along of benefits will be effective without the need for any subsequent Board approval/confirmation, and will serve as a condition of the OREC approval, subject to the following:

- i. Attentive shall commit to informing Board Staff promptly but no later than 30 days after receipt, of all such tax credits or other governmental benefits to ratepayers that are greater than projected.
- ii. Tax credits that are greater than what were projected that are the result of Attentive's reasonable increased project cost basis can be retained by Attentive and not returned to ratepayers. The term "increased project cost basis" as used above only refers to increases in project capex subsequent to the BAFO submitted by Attentive. The term does not refer to increases on the portion of project capex eligible for the tax credit.
 1. Increases in project cost due to inflation will result in a modified OREC based on the Inflation Adjustment mechanism described in paragraph 3 above. Therefore, $\text{Credit Retained} = \text{Credit Rate} * (\text{Total Increased Cost} - \text{Increased Cost Covered by Inflation Adjustment})$.
- iii. Attentive is required to return net tax, subsidy, or grant benefits to ratepayers, subject to Board review and approval of the costs to obtain the benefits, in accordance with the provisions contained in this Section 5.

6. Project Schedule

a. The Attentive Project shall have a COD no later than July 1, 2031.

b. Schedule Delays

- i. The Board acknowledges the uncertainties associated with various aspects of the Attentive Project and the changing conditions in the marine environment. Attentive may reserve the right for the COD to be delayed for up to, but no longer than, 6 months without having to obtain Board approval. Such delay will not have any effect on the overall OREC period or the total financial compensation to be received by Attentive over the life of the OREC term, other than the fact that the OREC term will commence and end on the delayed basis (the "Permissible Delay"). Attentive shall notify the Board as soon as it is aware of any delay of up to 6 months.
- ii. Any delay(s), for any reason, beyond the Permissible Delay would qualify as a material change to the binding OREC Pricing Schedule listed in Attachment A, and therefore be subject to Board approval. The Board retains the right to deny requests for changes to the OREC Pricing Schedule beyond the Permissible Delay.
- iii. In the event of a delay beyond the Permissible delay, Attentive shall request Board approval prior to any delay that it anticipates will exceed the Permissible Delay. In the request, Attentive shall include in sufficient detail an explanation for the delay, and Attentive's actions to minimize the delay.
- iv. Any delay expected to be greater than six months shall first exhaust the Permissible Delay. As further explanation, the Permissible Delay is not intended to be used at the

discretion of Attentive at any point during the Project Schedule. The Permissible Delay shall only be used at the beginning of any total delay period.

- v. If Attentive petitions the Board for a greater than six-month delay, there will be no change to the OREC Pricing Schedule, other than the fact that it will commence on a delayed basis commensurate with the actual delay and be extended for a comparable period.
- vi. If the Board does not approve the request for a greater than six-month delay or grants the request with conditions, or if there is a delay as to which Attentive did not request approval from the Board, Attentive shall receive the payments dictated by the OREC Pricing Schedule shown in Attachment A to this Order starting on the actual COD, and shall cease receiving payments six months beyond the end date of the OREC Pricing Schedule shown in Attachment A to this Order (i.e., Attentive receives the benefits of the six-month delay, but not for any additional delays that are not approved by the Board).
- vii. If the Project is delayed for any reason, the first year OREC price shall be the first year OREC price as bid. For example, the first year OREC price as bid is \$131.00/MWh for Energy Year 2032. If the Project is delayed so that it commences in Energy Year 2033, the OREC paid in that first Energy Year shall be \$131.00/MWh, not the OREC price bid for Energy Year 2033.
- viii. The OREC Price Schedule is to be interpreted as a level price for the project month(s) listed in the schedule irrespective of administrative Energy Year. Beginning with the first full month following COD, OREC values will be calculated as follows: each megawatt-hour, or fraction thereof, delivered to the POI in that month will be multiplied by the OREC Price for the project month shown in Attachment A to this Order.
- ix. If the COD is earlier than contemplated in this Order, there will be no change to the OREC Pricing Schedule, other than the fact that it will commence and end on an earlier basis.

7. Revenue Settlement Process

- a. Attentive is required to take all reasonable efforts to maximize revenues associated with the Attentive Project, N.J.A.C. 14:8-6.6(e), because these revenues must be returned to ratepayers. N.J.A.C. 14:8-6.6(f)(1). Within this framework, an energy trading and hedging program may produce benefits for ratepayers, primarily by helping to reduce wholesale price volatility for Project resources. Attentive may engage an Energy Manager to administer the risks associated with selling Project resources in the energy markets by entering into bilateral contracts or other commercial activities.
- b. Attentive shall submit a compliance filing four years before the COD. The compliance filing shall propose a revenue management plan detailing the hedging activities that the Energy Manager may pursue. The compliance filing must also: (1) detail the proposed costs of administering the revenue management plan; (2) show to the Board's satisfaction that the activities will maximize ratepayer benefits and not adversely affect ratepayers; (3)

propose a methodology, in concert with the OREC Administrator, to account for the net benefits and revenues that shall accrue to ratepayers due to the revenue management plan; and (4) detail any insurance Attentive will obtain to protect against losses and minimize risk.

- c. The costs of administering a Board-approved revenue management plan with hedging activities through an Energy Manager shall be borne by ratepayers. All benefits shall accrue to ratepayers and any losses, if incurred during approved and prudent hedging activities, shall be accounted for by Attentive and the OREC Administrator, while determining the ratepayers' net benefits in Project revenues.

8. Changes to Key Personnel

- a. Attentive shall notify Board Staff of the departure of any key employee of the Project¹⁶⁴ within thirty (30) days of the departure. Attentive shall submit the expertise and qualifications for any new key employee, and shall submit any changes to the organizational structure of key employee positions to Board Staff within thirty (30) days of hiring a new key employee or of implementing changes to the organizational structure of key employees. Notification by email is sufficient, requesting confirmation that the notification has been received. Board Staff retains the right to respond with questions or clarifications should it need.
- b. Once satisfied that the Project's key employees and the organizational structure of key employee positions conform to the Board's rules, Board Staff will notify Attentive.
- c. In providing notification, Board Staff does not intend to limit or become deeply involved in Attentive's hiring or personnel decisions, but rather to confirm that the Project's key employees conform to the Board's rules at N.J.A.C.14:8-6.5 (a)(1)(i) and (ii).

9. Environmental and Fisheries Protection and Data Management

- a. To ensure New Jersey's natural resources, including but not limited to, fin fish and shellfish, sea turtles, marine mammals, avian species, bats and benthic populations are protected throughout the life of the Project from pre-construction through decommissioning and that any impacts are being actively monitored and mitigated as required by law, Attentive shall:
 - i. Work with Board Staff and the DEP to identify and implement best management practices (BMPs) for the avoidance, minimization and mitigation of adverse impacts on natural resources. Within 6 months of this Order, Attentive shall prepare an initial report ("BMP Report") describing how BMPs and other environmental and fisheries protection measure described in the Application have been or will be implemented by the Project. Attentive will meet three (3) times annually with Board Staff and DEP to discuss the Project's progress towards implementing or implementation of BMPs and other environmental and fisheries protection measures. Attentive will be responsible

¹⁶⁴ Attentive Application Narrative, at 1-32 to 1-36, "Attentive Energy's Team."

for providing formal meeting minutes for these meetings. One of these meetings will be a joint meeting with all awarded projects, Board Staff, and DEP. Attentive shall review and update its BMP Report at least annually by measuring the Project's performance relative to the BMPs and environmental and fisheries protection provisions submitted in the Application or that have been identified subsequently. Attentive shall incorporate appropriate established BMPs and those that emerge from the broader research and monitoring community into both its environmental and fisheries Adaptive Monitoring Plans and Adaptive Mitigation Plans (Sections 9a ii -v).

- ii. Develop an Adaptive Environmental Monitoring Plan in a manner consistent with the provisions described in Attachment 6 of the Third OSW Solicitation Guidance Document. Monitoring efforts should be designed to identify and assess adverse impacts of offshore wind energy development and operations on New Jersey's natural resources and shall commence at least 2 years prior to construction and occur throughout the life of the Project at a frequency in accordance with best practices for the relevant variable or species and at a spatial scale to reasonably capture the range of conditions within the project area. The Adaptive Environmental Monitoring Plan shall: 1) identify the natural resources (not including fish, shellfish and fisheries) that are most likely to be impacted; 2) identify the potential impacts (if known) to those resources; 3) describe the research and monitoring efforts and methods required to assess the impacts of OSW on those resources; and 4) explain how the results of monitoring efforts will be shared and (as appropriate) used for decision making.
- iii. Develop an Adaptive Environmental Mitigation Plan in a manner consistent with the provisions described in Attachment 6 of the Third OSW Solicitation Guidance Document. The Environmental Mitigation Plan shall describe how the Project will avoid, minimize, and offset impacts to New Jersey's natural resources (not including fish, shellfish and fisheries). The plan shall: 1) articulate the goals of the effort; 2) explain how mitigation will be integrated into the overall project planning process; 3) identify and justify appropriate mitigation measures; 4) propose methods for evaluating the efficacy of mitigation efforts; and 5) explain (as appropriate) how results can inform future action.
- iv. Develop an Adaptive Fisheries Monitoring Plan in a manner consistent with the provisions described in Attachment 9 of the Third OSW Solicitation Guidance Document. Monitoring efforts should be designed to identify and assess adverse impacts of offshore wind energy development and operations on New Jersey's fish, shellfish, and commercial and recreational fisheries and shall commence at least two years prior to construction and occur throughout the life of the Project at a frequency in accordance with best practices for the relevant species and at a spatial scale to reasonably capture the range of conditions within the project area. The Fisheries Monitoring Plan shall: 1) identify the fish and fisheries resources that are most likely to be impacted; 2) identify the potential impacts (if known) to those resources; 3) describe the research and monitoring efforts and methods required to assess the impacts of

OSW on those resources; and 4) explain how the results of monitoring efforts will be shared and, as appropriate, be used for decision making.

- v. Develop an Adaptive Fisheries Mitigation Plan in a manner consistent with the provisions described in Attachment 9 of the Third OSW Solicitation Guidance Document. The Fisheries Mitigation Plan shall describe how the Project will avoid, minimize and offset impacts to fish and fisheries resources. The Fisheries Mitigation Plan shall describe how the Project will avoid, minimize and offset impacts to fish and fisheries resources. The Plan shall: 1) articulate the goals of the effort; 2) describe how stakeholders will be consulted and engaged through all stages of project development; 3) explain how mitigation will be integrated into the overall project planning process; 4) identify and justify appropriate mitigation measures; 5) propose methods for evaluating the efficacy of mitigation efforts; and 6) explain (as appropriate) how results can inform future action. The plan shall be informed by a review of the Fisheries Communication Plan required in the Application and include consideration of safety concerns and U.S. Coast Guard and industry recommended safety measures. Attentive shall also work collaboratively with NOAA Fisheries and New Jersey Marine Resource Administration to mitigate adverse impacts from project related activities on fisheries surveys undertaken by these entities.
 - vi. Update the Infrastructure Monitoring Plan in a manner consistent with the provisions described in Attachment 8 of the Third OSW Solicitation Guidance Document and specify a timeline for implementation of the Plan.
 - vii. Update the Data Management and Availability Plan in a manner consistent with the provisions described in Attachment 7 of the Third OSW Solicitation Guidance Document. Attentive shall develop a publicly available web-based resource that makes non-proprietary data collected in association with the Project accessible for download and/or directs the user to the public data repository where those data can be accessed.
- b. In collaboration with BPU and DEP, Attentive shall establish milestones for the development, review, and issuance of the Plans described above in Sections 9.a.ii-v. Once developed, Attentive shall share drafts of these plans with BPU, DEP, NOAA, regional science entities and relevant stakeholders for review.
 - c. Attentive shall review and update annually the BMP Report described in Section 9 a i, the Plans described above in Sections 9.a.ii-vii. Attentive shall submit clean and redlined versions of these documents as attachments to the Annual Environmental and Fisheries Report required below in Section 11.a.
 - d. Attentive shall make the up-to-date versions of the Monitoring and Mitigation Plans described above in Sections 9.a.ii-v publicly available on their website.

10. Research and Monitoring Fee

- a. Attentive shall provide payment to the State of New Jersey for research initiatives and the regional monitoring of the environment, wildlife, and fisheries dedicated to assessing the impacts from OSW development on the natural resources of New Jersey in the amount of \$15,000,000 ("Research and Monitoring Fee"), which will be administered by the New Jersey Offshore Wind Research and Monitoring Initiative ("RMI").¹⁶⁵ Payment shall be made on the following schedule: 50% of the RMI Fee within 90 days of the date of this Order, and the remainder paid in equal annual installments on the anniversary of the date of this Order over a 2-year period. The funding will be administered by the DEP and BPU, with stakeholder input to aid in the identification and prioritization of regional research and monitoring needs.

11. Reporting Requirements and Monitoring

- a. The Attentive Project shall report annually in writing to the Board and DEP on actions taken to ensure environmental protection, fisheries protection, and mitigation of environmental and fishing impacts ("Annual Environmental and Fisheries Report"). The reporting period shall cover a full year starting with the effective date of this Order. The Annual Environmental and Fisheries Report shall be submitted no later than 30 days after the anniversary of the effective date of this Order. This report shall provide a high-level summary of: 1) the status of the environmental protection measures included in the Application, 2) the incorporation of any new environmental and fisheries protection measures since the Application, 3) the development and/or implementation of the Adaptive Monitoring and Mitigation Plans, 4) the development and/or implementation of the Infrastructure Monitoring Plan; 5) the implementation of the Data Management Plan; and 6) a description of any major scientific findings that have emerged from the Project's research and monitoring efforts; and 7) the timelines for commitments to environmental impacts required below in Section 11.e. It shall also include all attachments described in Section 9. An appendix to the Annual Environmental and Fisheries Report shall provide the highlights of the Report in an accessibly written summary to be made publicly available annually on Attentive's Project website when the Report is submitted. Attentive shall make periodic presentations on its Environmental and Fisheries Protection efforts to the Environmental Resources Offshore Wind Working Group and other groups as requested by BPU and/or DEP.
- b. The Attentive Project shall report annually in writing to the Board and DEP beginning 1 year from the effective date of this Order on the policies and programs that may be adopted by the Board or DEP to help reduce future environmental or fisheries impacts or enhance the protection of natural resources. This report shall be included as a section of the annual environmental and fisheries report and detail any proposed future mitigation or protection measures that could be adopted, providing a description, proposed timeline, and expected outcomes of the recommended action.
- c. The Attentive Project shall report at least quarterly in writing to the Board beginning 3 months from the effective date of this Order, its progress in the development of the tower

¹⁶⁵ New Jersey Offshore Wind Research and Monitoring Initiative. <https://dep.nj.gov/offshorewind/rmi/>

facility at the NJWP. The report shall include milestones achieved during the reporting period, milestones expected to be achieved during the next reporting period, any problems encountered and the resolution of those problems or Attentive's plan for resolving those problems, any Project schedule impacts, and any other information that Attentive believes to be material to the development of the tower facility at the NJWP.

- d. The Attentive Project shall report quarterly in writing to the Board beginning 3 months from the effective date of this Order on the status of relevant state, Local, and Federal permitting. This report shall detail permitting timelines, status of any ongoing work with a government agency and identify any potential issues encountered by the Project.
- e. The Attentive Project shall report annually in writing to the Board, beginning 30 days after the anniversary of the effective date of this Order, the status of all guarantees and commitments made in its application ("Annual Guarantees and Commitments Report"). This report will detail status reports of spend, Tier 1 facilities, payments to educational institutions and any other firm commitments made by Attentive. Additionally, within 180 days of the date of this Order, Attentive shall propose timelines for Board approval for each of the commitments described in the Economic Impacts and Environmental Impacts sections of this Order. Board-approved timelines shall be reflected in Attentive's first Annual Guarantees and Commitments Report. If Attentive fails to timely meet its funding commitments, the Board may establish proceedings to modify the OREC price in alignment with the 90/10 shortfall mechanism described in this Order.
- f. The Attentive Project shall report quarterly in writing to the Board beginning 3 months from the effective date of this Order on the status of Tier 1 Facilities, all guarantees and commitments made in their application, and funding toward the initiatives outlined in the Economic Impacts section of this Order. This report shall document all monies funded toward each initiative from the previous quarter, the most current total toward funding of each initiative, and include a schedule of anticipated dates of funding and amounts for future investments.

12. Sharing of Confidential Information by the NJBPU

- a. The Board and/or Board Staff shall, from time to time, provide to other New Jersey state agencies information deemed by Attentive to be confidential in order for those agencies to better understand the Attentive Project, to track the Project's development, and for any other reason deemed appropriate by the Board or Board Staff. Board Staff will notify Attentive prior to providing such information to such other state agencies for Attentive's information only.

13. Documentation of Economic Benefits


- a. Attentive shall retain an independent consultant subject to approval by Board Staff, who will evaluate the actual local content spend from the effective date of this Order through the COD plus one year. Attentive and the selected consultant shall develop a calculation methodology subject to approval by Board Staff. Attentive shall submit an annual report of local content spend beginning 2 years from the effective date of this order. Attentive shall submit a report of the consultant's evaluation within 6 months of the COD plus one year.

- b. Attentive shall retain an independent consultant subject to approval by Board Staff, who will verify the direct jobs resulting from the Attentive Project annually from the effective date of this order through the end of the OREC period. Attentive and the selected consultant shall develop a calculation methodology subject to approval by Board Staff. Attentive shall submit an annual report of the consultant's evaluation beginning 2 years from the effective date of this Order. Attentive shall submit a report of the consultant's evaluation within 6 months of the COD plus one year.

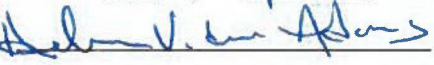
VERIFICATION AND POWER OF ATTORNEY

I, Murray Greene, of full age, being duly sworn according to law, upon my oath, depose and say:

1. I am the General Counsel of Attentive Energy LLC.
2. I reviewed the attached Petition and affirm that the information contained therein is true and accurate to the best of my knowledge and belief.
3. I hereby appoint and authorize Adam S. Lurie, Esq. of the law firm Linklaters LLP to prosecute the Petition and to appear on my behalf before the New Jersey Board of Public Utilities in this matter and any matters relating to the Petition.



Murray Greene
General Counsel,
Attentive Energy LLC

Sworn and subscribed to before me
on this 16th day of April 2024.


Notary Public



