

Gertsman, Jake

From: Gibbs, Robert L. <Robert.Gibbs@pseg.com>
Sent: Wednesday, May 01, 2013 9:35 AM
To: Gertsman, Jake
Cc: Erich Stephens; Stern, Alexander; Gabrielle Figueroa; Robinson, Anthony R.; 'Carolyn.Heeps@res-offshore.com'; Foltzer, Charlene E. (Mktg Function); 'charles.wimberg@atlanticcityelectric.com'; 'doug.copeland@edf-re.com'; Elizabeth M. McKeever; 'gallagherlaw@hotmail.com'; 'gkurdian@wfw.com'; 'jkooper@hess.com'; Roenbeck, Joseph P. (Mktg Function); 'kevin@arcadiawind.com'; 'kevin.lindquist@res-americas.com'; 'Irmiller@kleinfelder.com'; 'mark.finfrock@pepcoholdings.com'; 'paul.gallagher@fishermensenergy.com'; 'peter@arcadiawind.com'; Maguire, Peter; 'raupc@coned.com'; 'renshawdt@gmail.com'; 'rhonda.jackson@fishermensenergy.com'; 'stephen@arcadiawind.com'; Swetz, Stephen; Fagan, Tim; 'wemples@conedcss.com'; 'Ken.Mosca@atlanticcityelectric.com'; 'wrswink@pepco.com'; Eisenstark, Gregory (geisenstark@morganlewis.com); tdonadio@firstenergycorp.com; 'scheong@firstenergycorp.com' (scheong@firstenergycorp.com); 'kmalcolm@firstenergycorp.com'; 'tdonadio@firstenergycorp.com'; 'scheong@firstenergycorp.com'; 'rschreader@firstenergycorp.com'; Robinson, Anthony R.; 'raupc@coned.com'; Filewicz, Myron; Foltzer, Charlene E. (Mktg Function); 'philip.passanante@pepcoholdings.com'; cplummer@dwwind.com; Jennings, Scott
Subject: Garden State Offshore Energy, LLC Modified OREC Funding Mechanism Proposal
Attachments: 2013_04_29_NJ OREC Funding Proposal_v7_FINAL.docx
Importance: High

Jake,

In accordance with the agreement between NJBPU staff and the OREC funding mechanism stakeholder group giving until May 1, 2013 to submit revised proposals, and on behalf of Garden State Offshore Energy, LLC, I attach a modified OREC funding mechanism proposal for consideration by the NJBPU and staff.

You will note that the proposal is a modified version of the OSW Developers' original proposal from 2011; the modifications contained in the attached remain true to the statutory requirements outlined in the Offshore Wind Economic Development Act of 2010 ("OWEDA") and attempt to establish a framework that is fair to OSW developers and ratepayers and yet is financeable which is the key consideration here. Of particular note, the modified version attached hereto eliminates the Central Clearinghouse Fund ("CCF") which was the purported reason for Boston Pacific's involvement and the state's concern over appropriation. It replaces the CCF with individual escrow accounts at each approved developer level to act as (a) a limited time repository for PJM Revenues and other funds scheduled for refund to the ratepayers and (b) a NJBPU set cash reserve necessary to attract financing but also to reduce the risk of payment default from any of the 100+ Suppliers in the state of New Jersey and in the event of low load demand. These independently operated escrow accounts will be governed not only by prevailing law with respect to these types of financial accounts, but also through the Board Order approving an OSW project whereby the Board is free to impose additional protections/restrictions on the escrow accounts use by an approved OSW developer. GSOE has attempted to structure this proposal so that an OREC Administrator has both Supplier payment/OREC delivery confirmation powers as well as the authority to audit all transactions and report such audits to the NJBPU, Rate Counsel and the EDCs to ensure the escrow accounts are being used properly and that funds due to be refunded to ratepayers are done so in the time required and amounts appropriate.

As noted, the modified version builds on the general consensus that was developed back in 2011 by the OSW developers, Suppliers and EDCs. We do not believe Boston Pacific's invoicing option, either in its original form or

modified form, to be financeable due to a lack of cash reserve or other provisions as allowed by OWEDA (banking for instance). The credit risk and other as of yet unidentified provisions that need to be added to Boston Pacific's proposal create a situation where financing will be extremely difficult, if not impossible, to obtain from the financial community without significant cost to ratepayers. We remain concerned that this may ultimately jeopardize the viability of achieving OWEDA's goals (i.e. – the building of any offshore wind projects). While both in discussions with other stakeholders and separately, GSOE did consider modifications to the Boston Pacific proposal, none were considered sufficient enough to overcome the concerns noted above.

Finally, while GSOE would prefer to avoid any additional delay in finalizing the OREC funding mechanism, it continues to agree with Board Staff that the goal here is to get it right the first time and not put something in place that ultimately does not achieve the ability to be financed or adequately balance the risks to OSW developers and Ratepayers. If additional time and stakeholder discussion is required to identify an OREC funding mechanism that achieves the balance required by OWEDA, then GSOE is willing to engage in those discussions.

We appreciate your time and consideration of the attached and look forward to further discussions.

Regards,

Rob

Robert L. Gibbs, Esq.
Manager – Market Strategy & Planning
Public Service Electric & Gas Company
80 Park Plaza, T8
Newark, New Jersey 07102
Email: Robert.Gibbs@pseg.com
Office: 973-430-7985

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PROPOSAL FOR AN OREC FUNDING AND SETTLEMENT MECHANISM

Version: April 29, 2013

Background

On February 10, 2011 the New Jersey Board of Public Utilities (“the Board”) promulgated rules at N.J.A.C. 14:8-6 et seq. to codify new statutory requirements enacted through the Offshore Wind Economic Development Act, N.J.S.A. 48:3-49 et seq. (“OWEDA”). Major components of the rules included:

- application requirements (net economic and environmental benefits to NJ)
- the need for an escrow account
- the ability for the Board to designate an application window
- the ability for the Board to impose appropriate conditions upon any Offshore Renewable Energy Certificate (“OREC”) grant

The rules balance costs and benefits in the broader context of the overall impact on New Jersey’s manufacturing and employment objectives, as well as recognition of the potential benefits offshore wind energy has on the environment and retail electricity prices. The rule adoption represented a major step in New Jersey’s promotion of offshore wind development. However, the promulgated regulations specifically reserved for a subsequent rulemaking establishing an OREC funding mechanism.

In June 2011, the Board opened a stakeholder process to explore the collaborative development of the funding and settlement mechanism that will be vital in encouraging necessary investment in offshore wind farms. What follows is a proposed Program for facilitating OREC procurement.

Definitions

Annual OREC Allowance- for each OSW Project, the Board-approved total scheduled annual OREC production; each OSW Project is entitled to sell its entire Annual OREC Allowance each year, at the Board ordered OREC Price for the project, as described in Section 1.1.

Annual Total Projected Load – The state’s total amount of actual load in the Energy Year immediately preceding the year the regulations go into effect, as determined by the Board. This Annual Total Projected Load will remain constant for each Energy Year in which the OSW wind Carve-Out is in effect unless later adjusted by the Board per Section 1.2.. The Annual Total Projected Load is used in calculating the OREC Purchase Percentage, as described in Section 1.2.

Annual True-up – The Annual True-Up occurs one hundred and twenty (120) days after the end of each Energy Year, and is described in detail in Section 6.

Approved OREC Revenues – for each OSW Project, the product of the Annual OREC Allowance and the OREC Price, which are approved by the Board and codified in the OREC Order; see Section 1.3.

The Board – The New Jersey Board of Public Utilities

COD – Commercial Operations Date(s), as established in an OSW Project's OREC Order.

Due Date –the date by which Suppliers are required to make their monthly payment into each OSW Project's Escrow Account, being the earlier of (A) 100 days after the end of each calendar month or (B) 10 days after PJM's monthly settlement date and when actual load information is received by a Supplier.

Designated Escrow Agent – an independent financial institution, designated by each OSW Project for the purpose of administering the Escrow Account for such OSW Project, including but not limited to performing invoice confirmation, accounting, audit, and compliance services

EDCs – Electric Distribution Companies

Energy Year – the energy year begins on June 1 and concludes on May 31

Escrow Account – an independent account established by each OSW Project, and for each OSW Project, administered by its Designated Escrow Agent, for the deposit of OREC Payments and PJM Revenues and from which confirmed monthly Approved OREC Revenues, or PJM Revenues under certain circumstances, are withdrawn

Excess ORECs – Any ORECs that an OSW Project generates in a year in excess of the Annual OREC Allowance. Excess ORECs remain the property of the OSW Project; the OSW Project may utilize any Excess ORECs as provided in Section 4.4.

OACP – Offshore Wind Alternative Compliance Payment, as defined in Section 1.2. The OACP is specific to an Energy Year, and is equal to the OREC Purchase Price in any Energy Year.

OREC - Offshore Renewable Energy Certificate; a Renewable Energy Certificate (REC) generated by an OSW Project, and used to show compliance with the provisions of this program.

OREC Administrator - A third-party entity that monitors and reports to the Designated Escrow Agent each Supplier's actual load and each OSW Project's actual generation, performs the Annual True-up and further manages the accounting and compliance responsibilities related to the OREC program, as described in Section 3

OREC Lifetime – The period during which an OREC can be submitted for use in this program; ORECs are eligible to be applied toward the OSW Project Carve-Out during the Energy Year in which they are produced, and the following two Energy Years pursuant to cf: P.L.2009, c.289, s.2.

OREC Order – An order granted by the Board to each OSW Project, by which an OSW Project is deemed qualified and entitled to participate in this program, and specifying requirements and limitations to participating in this program.

OREC Payment – The payment (\$) made by Suppliers into each OSW Project's Escrow Account each month, which, for each OSW Project, is calculated as the product of the Supplier's actual monthly load and the OREC Purchase Percentage in effect for the current Energy Year (MWh) for each OSW Project, and then multiplying that product by the OREC Purchase Price (\$) in effect for the current Energy Year for each OSW Project.

OREC Price – The price that a particular OSW Project is entitled to receive for the sale of one of its ORECs under this program and established by an OREC Order (Section 1.1).

OREC Purchase Percentage – for each OSW Project, the percentage of load for which each supplier must purchase ORECs, or make an OACP, per this program, for such OSW Project, as set forth in the OSW Project Carve-Out (Section 1.2). It is calculated by taking the sum of all Annual OREC Allowances in effect for such OSW Project in a given Energy Year, and dividing by the Annual Total Projected Load for the Energy Year.

OREC Purchase Price – The amount that Suppliers must pay each OSW Project to receive an OREC through this program; the OREC Purchase Price is equal to the OACP. An OREC Purchase Price is established by the Board for each OSW Project in its OREC Order and published by the Board in advance of each Energy Year in the OSW Project Carve-Out (Section 1.2).

OREC Schedule – a schedule included in each OSW Project's OREC Order, representing the expected amount of ORECs that the project will produce each month of the year, with the monthly amounts totaling to equal the Annual OREC Allowance.

OREC Transaction Management Agreement – A uniform agreement entered into between each OSW Project and its Designed Escrow Agent. This OREC Transaction Management Agreement shall serve as the detailed management plan or "operating manual" describing how OREC Payments are applied to ORECs submitted for payment by an OSW Project and other services related to the Escrow Account.

OSW Project Carve-Out – The regulatory change to the RPS requirements that, for each OSW Project, establishes for each Energy Year the percentage of load (the "OREC Purchase Percentage") that a Supplier must cover by purchasing ORECs from such OSW Project or making OACPs into such OSW Project's Escrow Account, the OREC Purchase Price, and the OACP amount, as described in Section 1.2

OSW Project – An offshore wind project which has been approved by the Board as a qualified offshore wind project pursuant to OWEDA and which has received an OREC Order per Section 1.1.

OWEDA – Offshore Wind Economic Development Act; N.J.S.A. 48:3-49

PJM Revenues – All revenues received by an OSW Project for the sale of energy, capacity, and any other ancillary products into PJM markets, as specified in the OSW Project's OREC Order. Each OREC has a dollar amount of PJM Revenues associated with the OREC, as described in Section 5.2

Project Payment Date – 5 days after the Due Date and the date by which the OREC Administrator confirms the amount of ORECs submitted by each OSW Project for payment and the monthly Approved OREC Revenue to be withdrawn from each OSW Project's Escrow Account, per Section 2.2.

Ratepayers – New Jersey ratepayers as defined in existing enabling statutes and regulations

Reserve Amount – an amount of cash held in reserve in each OSW Project's Escrow Account which is to be maintained and utilized by each Designated Escrow Agent per Section 3.

RPS – Renewable Portfolio Standard as defined in existing enabling statutes and regulations

SBC – Societal Benefit Charge as defined in existing enabling statutes and regulations

Supplier – All entities in New Jersey serving the function of Basic Generation Service (BGS) provider or retail electric supplier. All are required to comply with the OREC obligation pursuant to OWEDA.

Term – the period during which OSW Projects may sell ORECs per their OREC Order

1. Annual OREC Allowance and Revenues

1.1 OREC Order and OREC Price for Each Project

The Board reviews OREC applications, and approves, via a Board Order (“OREC Order”), those project applications which meet the criteria established by OWEDA and its enabling regulations, including but not limited to, the net positive benefits test as described therein. Once a project receives an OREC Order, it is considered to be a qualified offshore wind project under the OWEDA (“OSW Project”).

The OREC Order specifies a price (“OREC Price”) that each individual OSW Project will receive for each OREC it generates. The OREC Price is on an “all-in” basis, representing the total revenue received by the OSW Project for each OREC submitted for payment under this program, provided that all PJM Revenues associated with the OREC, per section 5.2, are credited to New Jersey ratepayers (“Ratepayers”) as described in Section 3.5, except as otherwise provided for herein.

Pursuant to N.J.A.C. 14:8-6.5(a)12iii, the Board shall approve an OREC Price for each individual OSW Project, which reflects that project’s total revenue requirement including but not limited to its cost of capital, debt service, operations, maintenance, overhead, general and administrative costs, so long as the criteria established in OWEDA and these regulations are successfully accounted for, including but not limited to the net positive benefits test described in N.J.A.C. 14:8-6.5(a)11. The OREC Price applies to every OREC generated by the OSW Project during the Term of the OREC Order, so long as the OREC is utilized during its OREC Lifetime (defined hereafter) through this program.

In addition to the project’s OREC price, each Order shall also include but not be limited to specifications for:

a) A Commercial Operations Date (“COD”) after which ORECs may be sold (“Term”) through this program.

b) The total quantity of ORECs that the project is allowed to sell in a year through the program (“Annual OREC Allowance”). Also, an (“OREC Schedule”), showing the expected amount of ORECs produced for each month of the year, with the monthly scheduled amounts totaling to the Annual OREC Allowance. (Note that scheduled amounts may be exceeded per Section 4.4)

c) A requirement for participation in and on-going contribution to paying for the services of the OREC Administrator, see Section 3

d) A requirement that PJM Revenues shall be allocated as described in Sections 3 and 5.

Each OSW Project shall establish a PJM-EIS GATS account to document the number of ORECs generated. ORECs held in each OSW Project's GATS account shall be the sole and exclusive property of such OSW Project and may be submitted for payment at the discretion of the OSW Project, subject to the provisions of Section 4.4.

1.2 OSW Project Carve-Outs to the Renewable Portfolio Standard ("RPS")

For each OSW Project, the Board will establish or modify by regulatory change to the RPS requirements, within six months after issuance of any OREC Orders, a carve-out to the RPS Schedule A ("OSW Project Carve-Out"). This OSW Project Carve-Out will, for each OSW Project, establish for each Energy Year (hereafter defined):

a) the percentage of load (the "OREC Purchase Percentage") that a Supplier must cover by purchasing ORECs from such OSW Project or making OACPs (hereafter defined) into such OSW Project's Escrow Account. The OREC Purchase Percentage is calculated by dividing the OSW Project's Annual OREC Allowances in effect in a given Energy Year by the Energy Year's Annual Total Projected Load (hereafter defined).

b) the "OREC Purchase Price" which is the OSW Project's approved OREC Price that each individual OSW Project has been authorized in OREC Orders in effect for the Energy Year

c) The OACP Amount, which is always equal to the OREC Price in effect for the OSW Project for the Energy Year.

The Board will maintain these OSW Project Carve-Outs so as to ensure that each OSW Project will receive sufficient revenues from Suppliers on the Due Date for all ORECs submitted at such OSW Project's OREC Price, up to such OSW Project's Approved OREC Revenues, as required by OWEDA. The Board shall annually evaluate, and if necessary adjust, the Offshore Wind Carve-Out to ensure such sufficient revenues as required by the OWEDA, including adjustments needed to account for any new OREC Orders issued in the previous year, changes to the Annual Total Projected Load, or events of Insufficient OREC Demand (Section 4.1).

Each OSW Project Carve-Out will commence the first Energy Year in which such OSW Project's COD falls. Each OSW Project Carve-Out shall continue for each Energy Year during which such OSW Project is operational for any time, up to and including the Energy Year in which the OSW Project reaches the end of its Term as established in its OREC Order. The Energy Year begins on June 1 and concludes on May 31. Each OSW Project Carve-Out will be published annually on or before January 2. Once established by the Board, each OSW Project Carve-Out may then be adjusted no more frequently than annually. Any adjustment to an OSW Project Carve-Out schedule will be made at least three years in advance of the applicable Energy Year.

Suppliers shall apply ORECs that they receive from each OSW Project to their load (i.e. retire the ORECs) in order to meet each OSW Project Carve-Out obligation, in the same manner they would retire other types of RECs to meet other RPS obligations. Suppliers can only meet each OSW Project Carve-Out requirement by purchasing ORECs from each OSW Project, or submitting OACPs to each OSW Project's Escrow Account, as described in Section 3.

1.3 Project Revenue Requirements

Per the OWEDA, the total annual revenue requirement for an OSW Project ("Approved OREC Revenues"), once established by the Board, shall not be subject to reduction or modification during the Term of each OSW Project's OREC Order, and further the Board shall maintain, per Section 1.2, each OSW Project Carve-Out such that each OSW Project is able to receive the full Approved OREC Revenues to which it is entitled. Each OSW Project shall only be entitled to OREC revenue for ORECs actually generated, and shall have no recourse for the failure to generate ORECs. If an OSW Project's revenue requirements are found to exceed its Approved OREC Revenues, the developer's only recourse will be to seek another OREC Order (necessitating meeting the criteria of OWEDA and its enabling regulations).

2. Suppliers' OREC Purchases

2.1 Percentage and Price

Each third party Supplier (a "Retail Supplier") and each basic generation service provider (a "BGS Supplier" and, together with each Retail Supplier, both individually or collectively referred to hereinafter as a "Supplier") shall purchase from each OSW Project, as described in Section 3, the number of ORECs needed to meet the OREC Purchase Percentage for each OSW Project, described in Section 1.1, or make OACPs if sufficient ORECs are not available. Each Supplier shall pay the OREC Purchase Price designated for each OSW Project for the ORECs, as established in each OSW Project Carve-Out.

2.2 Payment Terms

By the Due Date, each Supplier shall submit payment ("OREC Payment") to each Designated Escrow Agent for deposit in each OSW Project's Escrow Account. The OREC Payment for each OSW Project shall be calculated as the product of (a) the OREC Purchase Percentage established by the Board (Section 1.2) for such OSW Project and (b) actual load information for the month in the Supplier's possession, and then that product multiplied by (c) such OSW Project's OREC Price established for the Energy Year (Section 1.2).

IMPORTANT NOTE: Payments from suppliers less frequently than monthly will require an increase in the Reserve Amount provided for in this document, and delay of refund of PJM Revenues to ratepayers.

By the Due Date, the OREC Administrator shall provide to each Designated Escrow Agent the number of ORECs generated by each OSW Project, based on such OSW Project's PJM-EIS GATS account.

As soon as practicable, but in no case more than fifteen (15) days after the Due Date ("Project Payment Date"), the Designated Escrow Agent shall, subject to the terms and conditions of the OREC Transaction Management Agreement, disburse funds due to each OSW Project for ORECs generated and submitted for payment by such OSW Project in the preceding month (Section 3.2). With the exception of the Reserve Amount detailed in Section 3 below, funds remaining in each OSW Project's Escrow Account after disbursement of payments due each OSW Project shall be refunded to Ratepayers each month in accordance with Section 4.3 below.

At the termination of a Supplier's load service in the state, there may be several months where adjustments to previous payments need to be made. If such an adjustment resulted in an overpayment by a Supplier, each Designated Escrow Agent shall refund such overpayment to the Supplier from their respective OSW Project's Escrow Account (see Section 3.6). If such an adjustment resulted in an underpayment by a Supplier, the Supplier shall issue such payment to each OSW Project by the next applicable Due Date. Any such adjustments must be requested

or paid by the end of the Annual True-up for the Energy Year in which the Supplier's load service in the state terminated.

2.3 Limited Exemption for Certain Grandfathered Contracts

Suppliers that have contracts to supply electricity to New Jersey customers, and which meet all of the following criteria, may petition the Board for an exemption from the requirements of this program for that amount of load served under that contract. Such a petition shall demonstrate all of the following:

1. The contract was executed prior to August 21, 2010 (commonly known as the effective date of OWEDA); and
2. The contract does not include a provision that authorizes the Supplier to pass on RPS compliance costs to its customers; and
3. The Supplier has made a good faith effort to recoup its RPS compliance costs and has been unable to do so.

Any such petition for exemption under this Section 2.3 shall be made prior to the Board first establishing any OSW Project Carve-Out per Section 1.2, and no such petitions will be considered after an OSW Project Carve-Out is first established.

The amount of any load exempted under this Section 2.3 shall be subtracted from the appropriate Energy Year(s)'s Annual Total Projected Load when calculating the OREC Purchase Percentage.

2.4 Supplier Default

Suppliers shall in all cases make a full OREC Payment to each OSW Project on the Due Date each month, as described in Section 2.2. The OREC Administrator, the Designated Escrow Agents and the Board shall exchange information as necessary to ensure that all Suppliers are making required monthly OREC Payments.

Each OSW Project may use their respective Escrow Account (see section 3.6) to ensure timely payments for ORECs despite any underpayments, irregular payments, or non-payment from Suppliers. In the event that the Board finds [how such determination is made to be defined by the Board in regulations] that a Supplier has defaulted on an OREC Payment, upon appropriate notice and opportunity to cure having been provided, the Board shall also establish reasonable compensatory and punitive penalties, including, but not limited to, revocation of the Supplier's license to sell and supply electric power within the State.

Any funds due from a defaulting Supplier that are later recovered shall be submitted to each OSW Project in proportion to the OREC Payment due to them to correct any arrearage to OSW Projects or any refund due to ratepayers, as appropriate.

3. OREC Settlements and Administration

3.1 Escrow Account

Each OSW Project shall maintain an Escrow Account to receive and disburse funds required by this program. Each OSW Project's Escrow Account shall be administered by a Designated Escrow Agent with any interest earned being returned to the Ratepayers via the EDCs.

Each OSW Project's Escrow Account shall maintain a cash reserve amount (the "Reserve Amount") equal the total amount of payments due to each OSW Project for generation during

the month in which the highest generation occurs in a given Energy Year, based on the OREC Schedules in effect and the OSW Project's OREC Price for that Energy Year. The purpose of this reserve amount is to make up for any underpayment or non-payment from Suppliers, for any reason, as the Suppliers are required to make per Section 2.2.

A Designated Escrow Agent may use the cash reserve in the Escrow Account for the following purposes only or as otherwise outlined in its OREC Order:

- (a) to pay for ORECs submitted during an event of insufficient OREC demand, as described in section 4.1; or
- (b) to continue to make OREC Payments during the resolution of an event of Supplier default, under-payment, or non-payment, per section 2.4; or
- (c) for any purpose necessary to ensure that the OSW Project receives its full Approved OREC Revenues on a timely basis, for example to cover seasonal mis-match between OREC purchases and OREC production; or
- (d) to make refund payments to Suppliers in the event one or more Suppliers determines that they have made excessive OREC Payment(s), and the excess payment cannot be recovered by an adjustment to a subsequent OREC Payment.

Only the Reserve Amount may be maintained in each OSW Project's Escrow Account from month to month. After the receipt of payment from Suppliers, and the disbursement of payments due an OSW Project for actual generation, each Designated Escrow Agent shall funds in excess of the Reserve Amount, if any, to Ratepayers, in accordance with Section 4.3.

The Reserve Amount may not be used to pay for any Administrator service fees, or any other purpose not explicitly stated here.

Any funds left over in the Escrow Account after the OSW Project end the Term of their OREC Order shall be returned to ratepayers via the EDCs. Any interest earned by funds in the account shall be credited to the EDCs to be refunded to Ratepayers.

3.2 Designated Escrow Agent

Each OSW Project shall retain, at their sole cost, a Designated Escrow Agent. Although each OSW Project will be required to pay for the services provided by its Designated Escrow Agent, the Designated Escrow Agent shall be entirely independent. The relationships, rights, and obligations among the parties of this program (e.g. Suppliers, EDCs, the OSW Project, the Board) shall be fully set forth in an "OREC Transaction Management Agreement" to be developed by the OSW Projects and their Designated Escrow Agents entity in coordination with Board staff, Rate Counsel and the EDCs. The OREC Transaction Management Agreement shall be uniform for all OSW Projects and Designated Escrow Agents and shall describe and require all details and mechanisms necessary for the Designated Escrow Agent to carry out its functions per this program.

Subject to the terms of the OREC Transaction Management Agreement, each Designated Escrow Agent shall:

- Collect funds from Suppliers in accordance with respective OREC procurement obligations.

- Disburse ORECs or OACP receipts to Suppliers so that Suppliers may satisfy their respective OREC obligations as part of their RPS requirement.
- Establish and maintain a PJM EIS GATS account to appropriately hold and transfer ORECs it receives
- Afford Board Staff viewing access of the above accounts.
- Disburse funds to OSW Projects in accordance with OREC Orders and this program.
- Collect PJM Revenues from OSW Projects.
- Disburse funds to the EDCs for the benefit of ratepayers as specified herein.
- Maintain appropriate books and records.
- Provide reports and documentation to the Board, its Advisors and Staff as and where required.
- Engage accountants and other service providers, or hire staff, for the sake of managing its own business functions and carrying-out the escrow functions.
- Bill the OSW Project for escrow services rendered to the marketplace.
- Maintain and utilize the Reserve Amount as described herein, and alert Board Staff, Rate Counsel, the OSW Project, and Suppliers of any concerns (e.g. shortfalls due to reduced energy consumption or OREC obligation non-compliance).

Except as provided for in Section 5 below, the a Designated Escrow Agent shall refund from an Escrow Account all PJM Revenues associated with the ORECs (see section 5.2) submitted by the OSW Project for payment within fifteen (15) days following receipt of the payment from Suppliers described in Section 2.2.

Administrative costs related to the Designated Escrow Agent shall be considered legitimate project expenses paid for by the OSW Projects and may be recovered through the OREC Price.

3.3 OREC Administrator

A single entity independent of any Supplier or OSW Project owner or affiliate shall be retained by the OSW Projects to provide payment confirmation, accounting and compliance services related to the OREC program (the "Administrator").

Subject to the terms of the OREC Transaction Management Agreement, the Administrator shall:

- On a monthly basis, monitor and report to the Board any Supplier that has not, by the Due Date, submitted to any OSW Project an OREC Payment in the amount required for each Supplier in accordance with these regulations;
- On a monthly basis, monitor the number of ORECs deposited into each OSW Project's PM-EIS GAT's account for payment;
- On a monthly basis, confirm the retention, use, or refund of any PJM Revenue deposited in each OSW Project's Escrow Account (pursuant to Section 5 below);
- Perform the Annual True-up to ensure Supplier OREC Payments and OSW Project OREC deposits are matched and/or accounted for appropriately, described in Section 6;
- Perform appropriate audit services to each OSW Project's Escrow Account and provide such audit reports to the Board, Rate Counsel, and EDC's as appropriate;
- In furtherance of the obligations set forth above, engage accountants and other service providers, or hire staff, for the sake of managing its own business functions and carrying-out the Administrator functions;
- Bill OSW Projects for Administrator services rendered in accordance with these regulations;

- Alert Board Staff, Rate Counsel, OSW Projects, and Suppliers of any concerns (e.g. – shortfalls due to reduced energy consumption or OREC obligation non-compliance)

Administrative costs related to the OREC Administrator shall be considered legitimate project expenses paid for by the OSW Projects and may be recovered through the OREC Price.

3.4 OSW Projects

In order to receive the payment described in Section 2.2, each OSW Project shall, on the Due Date, transfer to its Designated Escrow Agent's PJM EIS GATS account all ORECs for which the OSW Project seeks to receive the OREC Price.

3.5 Suppliers

Suppliers shall satisfy their obligations under this program by purchasing ORECs from or making OACPs to the Designated Escrow Agent for each OSW Project on a monthly basis, as described in Section 2 and by providing to the Administrator load and OREC Payment information for the month in the Supplier's possession.

The OREC Payment will be applied by each OSW Project's Designated Escrow Agent to either purchase ORECs or make OACPs on the Suppliers' behalf. The OREC Administrator will provide a final calculation of how many ORECs and OACPs were purchased in a given year during the Annual True-Up described in Section 6. Only the purchase of an OREC, or receipt of an OACP, from an OSW Project will satisfy requirements for Suppliers under this program. Solar, Class I and Class II RECs may not be used to satisfy a Supplier's requirement under this program, but an Excess OREC may be used to satisfy a Class I or Class II REC requirement (but not a Solar REC requirement).

3.6 Accounting for ORECs

The OREC Administrator shall confirm the amount of ORECs deposited by an OSW Project into its PJM-EIS GATS account for the purpose of ensuring that OSW Projects are only paid for the amount of ORECs generated in that particular month and that Suppliers are provided with appropriate certificates to demonstrate year-end compliance. OSW Projects shall be paid in full for ORECs deposited into its PJM-EIS GATS account up to the amount specified in accordance with Section 3.2.

4 OREC supply/demand mismatch

4.1 Insufficient OREC Demand

The OREC Administrator shall monitor the amount of OREC demand for signs of low Supplier demand to enable all OSW Projects to sell their Annual OREC Allowance. In the event of lower energy sales for a period of three (3) consecutive months or more, indicating that there might be insufficient OREC demand, the OREC Administrator shall immediately notify the Board and each OSW Project of such shortfall. In addition, any OSW Project may file a notice with the Board stating that there is likely to be insufficient OREC demand to be able to sell all its ORECs.

Within thirty (30) days following the receipt of a notice of insufficient OREC demand by either the OREC Administrator or an OSW Project, the Board shall initiate a stakeholder process and rulemaking to lower, if necessary, the Annual Total Projected Load utilized in future Energy Years, in accordance with Section 1.2, so as to avoid further instances of insufficient OREC demand (see Section 1.2)

4.2 Insufficient OREC Supply

If a Supplier makes an OREC Payment to an OSW Project for more ORECs than such OSW Project is able to provide in that month, then the Designated Escrow Agent shall issue to that Supplier a confirmation of payment which shall satisfy the Supplier's OREC obligation until the Annual True-Up (see section 6), at which time the Supplier will either receive ORECs (if available), or if no ORECs are available than an OACP receipt, for the payment, allowing the Supplier to meet its obligations in accordance with the OWEDA. The OACP amount for each OSW Project in any given Energy Year shall be equal to that OSW Project's OREC Purchase Price, as described in Section 1.1

4.3 OACP Refund to Ratepayers

After the Annual True-Up (see Section 6), any OACP payments shall be refunded to the Ratepayers by way of the EDCs, in proportion to their load share during the year. Such refund may be in the form of a credit to the Societal Benefit Charge ("SBC") or as otherwise directed by the Board. Administrative costs related to this process will be fully recoverable by each of the EDCs.

4.4 Excess ORECs

The OSW Project shall retain ownership of any Excess ORECs. The OSW Project, at its sole discretion, may use Excess ORECs in either of the following ways:

a) Hold the Excess ORECs in order to submit them for payment in a future month or year in which the OSW Project might have a production deficit. Excess ORECs are eligible to be applied toward the OSW Project Carve-Out during the Energy Year in which they are produced, and the following two Energy Years ("OREC Lifetime") pursuant to cf: P.L.2009, c.289, s.2. Should an OSW Project hold and later submit Excess ORECs in this manner, they will be required to submit the PJM Revenues associated (see Section 5.2) with that OREC.

b) Sell the Excess ORECs to any party for any purpose, including but not limited to compliance with a regulatory obligation that can be met with a general wind REC, such as New Jersey's RPS Class 1 obligation. Any PJM Revenues associated with Excess ORECs utilized in this manner belongs to the OSW Project.

5. PJM Revenues and Cash Reserves

5.1 PJM Revenues

OSW Projects shall sell all energy, capacity, and other products associated with the production of ORECs into the PJM Market. All PJM Revenues associated with an OREC (such association defined in Section 5.2) which receives the OREC Price under this program shall, upon the receipt of payment for such OREC, be deposited in the Escrow Account refunded to ratepayers via the EDCs, except as allowed for in Sections 3.1 (Escrow Account), 5.3 (initial start-up funding) and 5.4 (project retention).

5.2 PJM Revenues Associated with an OREC

For the purposes of administering this program, a specific amount of PJM Revenues shall be associated with particular ORECs, per the following: Each month, a qualified OSW Project shall report to the Administrator the total amount of ORECs generated in the month and the total amount of PJM Revenues received for that same month's generation. This report shall include all revenues earned and all ORECs generated, regardless of how the revenues or ORECs are later allocated or utilized. This report may be verified by the Administrator through PJM or by reviewing the OSW Project's records.

5.3 Initial Start-Up Funding

An OSW Project may immediately utilize, and is not required to deposit in the Escrow Account or refund to the ratepayers, any PJM Revenues received during the period between the OSW Project's COD and the first Project Payment Date on which the OSW Project receives its first payment. After receiving its first payment for ORECs, the OSW Project will then have six months to refund these retained PJM Revenues to the ratepayers.

5.4 Project Retention

After the initial start-up period described in Section 5.3, projects are required to refund PJM Revenues to the ratepayers per Sections 3.2 and 5.2, except that an OSW Project may, without penalty or prior approval, retain such PJM Revenues in the Escrow Account as necessary to maintain the Reserve Amount set forth in Section 3.1.

In summary, PJM Revenues associated with the projects' ORECs are collected first by the OSW Project as it sells power into the PJM market. Upon receipt of payment for ORECs or OACPs from Suppliers as described in Section 2.2, the PJM Revenues associated with the ORECs submitted are deposited in the Escrow Account and promptly issued to the EDCs to be refunded to Ratepayers, except for during the initial start-up period whereby a developer may hold all collected PJM Revenues while it waits for the first OREC payment to be received from Suppliers on the Project Payment Date (Section 5.4). Once an OSW Project receives PJM Revenues it has two avenues through which the PJM Revenues may flow. First, the OSW Project may retain PJM Revenues as may be necessary (Sections 3.5, 5.2 and 5.4). Otherwise, all subsequent PJM Revenues are passed to the EDCs to be refunded to ratepayers.

6. Annual True-up

Concurrent with the RPS compliance report required by N.J.A.C.14:8-2.11 but no sooner than October 1st following the end of each Energy Year, an "Annual True-Up" is conducted by the Administrator, Designated Escrow Agents, Suppliers, OSW Projects, and EDCs, with the oversight of the Board, consisting of the following:

a) Each Supplier's annual OREC obligation for each OSW Project is calculated based on actual sales and each OSW Project Carve-Out. Suppliers make any additional OREC purchases or OACPs with each such OSW Project, as necessary to comply with each OSW Project Carve-Out. The Supplier may also receive a refund for any overpayment, so long as the appropriate amount of ORECs are returned to their respective OSW Project. If a Supplier made a payment for which it received a payment receipt and not an OREC during the year, the supplier is provided with an OREC, if available, as a result of the true-up process. If no OREC is available, the payment is converted to an OACP and an acknowledgement of the OACP is provided to the Supplier. The value of the OACP is returned to the EDCs to be refunded to Ratepayers (see Section 1.1). Suppliers are penalized for under payments only if they did not make monthly payments as described in Section 2.2, and do not make true-up payments through the Annual True-Up process. If during the Annual True-Up, the Board determines that a Supplier defaulted on its OREC obligation, the Board shall initiate whatever action necessary to ensure compliance and full payment, and may revoke a Supplier's license to operate in keeping with existing regulations. If a Supplier exits the New Jersey market because of bankruptcy or any other reason, the Board shall ensure that the OREC obligation is met for any energy delivered by that supplier, and that any Supplier that steps into the exiting Supplier's energy delivery obligations also meets the corresponding OREC obligations.

b) Each OSW Project's total OREC submission for the Energy Year is confirmed as not exceeding its Annual OREC Allowance under its OREC Order. If it is determined that an OSW

Project did not meet its Annual OREC Allowance, it has the opportunity to submit any ORECS to make-up the short fall as part of the Annual True-Up, but has no recourse if it does not have the ORECs to provide.

c) OSW Projects confirm or demonstrate to the OREC Administrator that any PJM Revenues associated with ORECs submitted (as defined in Section 5.2) by the project for payment have been refunded to Ratepayers, with appropriate exceptions described in Sections 3.5, 5.2, and 5.4. OSW Projects are required to immediately refund any PJM Revenue shortage to EDCs to be refunded to Ratepayers per Section 3.5

e) If any OSW Project reached the end of its Term during the Energy Year, the Board will confirm that all Escrow Account Reserve Amounts at the OSW Project associated with, or necessary for, the project ending its Term have been submitted to the EDCs to be refunded to ratepayers.

f) EDCs submit as part of their annual SBC filing the revenues received from OSW Projects to be credited to the SBC for the benefit of ratepayers or otherwise credited to the ratepayers as directed by the Board. Board staff will compare these filings with the OREC Administrator reports to ensure that all revenues due to ratepayers were provided to the EDCs and that all of those revenues have been credited to the SBC, or otherwise credited to the ratepayers as directed by the Board.

g) A review of all OREC Administrator actions, including those which took place during the Annual True-up. All reports or findings of this review shall be provided to the Board, each of the EDCs, the Rate Counsel, and made publicly available on a website.

h) The Board shall at the end of the Annual True-up conduct a review of each OSW Project Carve-Out, and if necessary adjust each OSW Project Carve-Out, for the purposes described in Section 1.2.



April 30, 2013

VIA ELECTRONIC FILING

Jake Gertsman, Esq.
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
PO Box 350
Trenton, NJ 08625
Jake.Gertsman@bpu.state.nj.us

RE: Comments Regarding Boston Pacific OREC Funding Proposal

Dear Mr. Gertsman,

Please accept the following comments submitted on behalf of the Sierra Club. Promoting Offshore Wind (OSW) will provide significant economic, environmental, and societal benefits to New Jersey, enabling New Jersey to become a leader in clean energy while providing employment opportunities and reducing the use of polluting and greenhouse gas emitting energy sources. For the reasons set forth below, the Sierra Club believes that modification to the Boston Pacific Offshore Renewable Energy Credit (OREC) Funding Mechanism Proposal is necessary for successful OREC funding. We propose changes that would preserve the intention to avoid the reappropriation of funds by the state, but strengthen the BP proposal in a few key areas that will increase the likelihood that OSW projects receive proper financing, reduce risk to Developers, Suppliers, and the ratepayer, and better integrate the OREC process into New Jersey's Renewable Portfolio Standard (RPS).

I. Background

The Offshore Wind Economic Development Act (OWEDA) was signed by Governor Chris Christie on August 19, 2010. This law required an OSW carve out of New Jersey's Renewable Portfolio Standard, called for an OREC funding mechanism to be put in place, and mandated that said OREC program would be able to support 1,100 MW of OSW development. In 2011, the New Jersey Board of Public Utilities opened a stakeholder process to explore the collaborative development of a funding and settlement

mechanism to encourage necessary investment in OSW farms. This resulted in a program proposed to fund offshore wind farms through ORECs. However, we have yet to see an implementation of a finalized OREC program. Given that it has been almost three years since the signing of OWEDA, it is urgent to implement a successful OSW funding mechanism if the goal of 1,100 MW of OSW by 2020 is to be achieved¹.

We would like to address the Boston Pacific OREC Funding Mechanism Proposal (Invoicing Option), created December 11, 2012 as a result of an OSW Funding stakeholder meeting. This proposal incorporated many of the elements of a successful OREC funding mechanism, but it received much criticism from OSW Developers and energy Suppliers in the stakeholder meeting that took place on February 21, 2013. While the Boston Pacific (BP) Proposal provides a good base for OREC funding, we believe substantial modification is necessary to ensure that the OREC mechanism is sufficient to allow for project financing.

II. The Invoicing Option requires modification to address multiple deficiencies, including: risks to OSW Developers and Suppliers purchasing ORECs, mechanisms to address OREC production uncertainties such as banking and alternative compliance payments, and integration of ORECs into the RPS.

There are several fundamental flaws with the BP Proposal that increase the financial risk for stakeholders in OSW and jeopardize the success of the OREC program. Therefore, the BPU should take into consideration the following concerns and solutions.

A. Placement of Risk of Supplier Nonpayment on the Offshore Wind Developer

The reliance of Developers on a reserve fund in the case that a Supplier defaults on payments or declares bankruptcy places Developers in a state of financial instability. Given that Developers are completely reliant on Supplier payments to cover operational costs and that there is no concise structure outlined for how they would receive reserve funds, they are put at increased financial risk. A delay in reserve fund payments to Developers has the potential for serious risk implications. Furthermore, the reserve fund may not be safe from state reappropriation of funding, making it an inadequate financial safeguard.

¹ Senate Act No. 2036. *Offshore Wind Energy and Development Act*. 10 June 2010.

We propose that, rather than be required to draw from a reserve fund, the Developers be allowed to keep revenues from PJM auctions in the event that Suppliers fail to fulfill their monthly requirement for OREC payments. This reduces bureaucratic inefficiency, thereby inflicting fewer costs to ratepayers than a reserve fund scenario. It also allows Developers to be more financially stable and independent by eliminating uncertainties related to access to reserve funds.

B. Lack of Adequate notice of OREC pricing

By only giving a month's notice of OREC pricing for Suppliers by the BPU, Suppliers are put at increased financial risk. With little notice and predictability of the costs that they will incur, they will find it difficult to include OREC purchases into their budgets. This in turn has the potential to lead to Suppliers defaulting on payments to Developers.

We suggest that the BPU issues OREC orders with pricing at least one year in advance of the Energy Year to which the order pricing will apply. This enhances the ability of Suppliers to budget for OREC spending, and also enhances financial security for the Developers by giving them more advanced notice of pricing. By establishing the prices at least one year in advance, Developers and Suppliers will be given adequate time to plan for each financial year as a whole rather than on a month-to-month basis.

C. Lack of an OREC Alternative Compliance Payment (OACP)

This mechanism is not present in the BP Proposal, and places Suppliers at risk for not meeting their OREC requirements and suffering legal consequences. In the case that Developers cannot meet the OREC demands of Suppliers, Suppliers would require an Offshore Alternative Compliance Payment (OACP) system to allow them to meet their OREC requirements and reimburse ratepayers for ORECs they collected for but did not receive. It is highly recommended that such a mechanism be put into place.

The Sierra Club recommends incorporation of OACPs into the OREC funding mechanism. This will address any potential shortfall in the supply of ORECs by the Developers and overpayment of ORECs by the Suppliers. In the case that Developers are paid in excess of the ORECs that they can produce in a compliance period, they should be required to submit OACP certificates covering the shortfall to the Suppliers that will demonstrate compliance with OREC purchase requirements. The OACP certificates would be the same price as ORECs, but Suppliers may only purchase OACP certificates if there is no availability of ORECs. Revenue from the sale of OACPs would be returned

to ratepayers by Developers, using the same mechanism by which they refund PJM revenues.

D. Lack of Banking ORECs

Per OWEDA, Developers need the ability to bank ORECs for future use. In the Proposal, there is no clause that states this as an option. By allowing Developers this option, it allows them to receive credit for the energy they produce, which can make up for shortfalls in OREC production they may face in future years. Year to year fluctuation could be caused by unusual weather patterns, extreme events that jeopardize or damage equipment, or unforeseen maintenance issues. A banking mechanism will help to smooth out fluctuations in OREC production, and can minimize the use of OACPs. This in turn reduces instances of overpayment and subsequent refunds, and therefore reduces price volatility experienced by ratepayers. While the Sierra Club would ideally have OSW Developers producing as much renewable energy as possible, we understand that they have to operate in sometimes extreme and uncontrollable conditions, so financial safety mechanisms are warranted.

In this scenario, the BPU should periodically compare the number of ORECs projected and actually supplied by each project. In the case that a pattern is evident of OREC surpluses for a particular OSW Project, we recommend that the BPU systematically increases the number of ORECs a project is allowed to produce and, in turn, reduce the price to reflect the quotient of operating and capital costs divided by the number of ORECs.

E. Failure to Integrate OREC Mechanism with the RPS

In the BP Proposal, there is no reference to an integration of the OREC mechanism with New Jersey's Renewable Portfolio standard. It is possible that this may be implied by the OREC orders issued by the BPU, but it is necessary for this to be more explicitly stated. By not integrating the OREC mechanism, the Proposal violates OWEDA, which directs the BPU to develop an OREC mechanism that requires a percentage of New Jersey's energy sales to be from OSW².

The Sierra Club proposes that the BPU establish a proposed schedule for ramping up OSW development in order to meet the target set by OWEDA. A sample timeline is as follows:

² Senate Act No. 2036. *Offshore Wind Energy and Development Act*. 10 June 2010.

Table 1. Proposed timeline for implementing offshore wind projects in New Jersey.

<u>Year</u>	<u>MW Installed</u>	<u>ORECs likely</u>
2016	100	350,400
2017	200	700,800
2018	400	1,401,600
2019	700	2,452,800
2020	1100	3,854,400

To implement this timeline, the BPU would solicit bids from developers for the capacity target for that program year. On a project by project basis, the number of ORECs likely to be generated by the project will be determined by BPU. Each OREC that a Supplier is required to buy will decrease by one the number of other Class I RECs which that Supplier is required to purchase in that same compliance year. Per the proposal outlined herein, the impact of the OREC carve-out on the requirements for other Class I RECs will be known one year in advance, which should give Suppliers adequate time to adjust REC procurement plans as necessary. Under this proposal, it is not necessary at the outset of the program to establish the exact percentage contribution of offshore wind to the overall renewable portfolio in each year. Instead, this percentage would be determined by projected production prior to each compliance year, and trued up at the end of the year.

This method of RPS integration is very different from the solar carve-out, which defines the number of SRECs required on a percentage basis in each program year through 2028. This works for solar because the requirement is met by a large number of small projects that are relatively easy to finance. In contrast, OSW projects are much larger, and would be difficult if not impossible to finance if the price of ORECs were subject to change based on new entries into the market. The system by which the BPU determines the number of ORECs offered into the market on a per-project basis removes this uncertainty and makes financing possible.

In order for the OSW industry to mature and for OSW to become a major contributor in electricity generation, it will be necessary to increase the installed amount of OSW energy beyond 1,100 MW after 2020. The BPU has this authority under NJSA 48:3-87(d)(4) (*emphasis added*):

“...that the board establish an offshore wind renewable energy certificate program to require that a percentage of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from offshore wind

energy in order to support at least 1,100 megawatts of generation from qualified offshore wind projects.”

We strongly recommend that the number of megawatts of OSW installed continue to be ramped up beyond the required 1100 MW in 2020. OSW is New Jersey’s best resource for in-state utility scale renewable energy. While this fledgling industry requires a jump-start in the form of state support, it will eventually mature and be able to sustain its own growth, along with thousands of family-supporting jobs. It will also displace more harmful energy technologies including coal and natural gas, thus improving New Jersey’s air and water quality and reducing the state’s contribution to climate disruption. But it is unlikely that it will reach this point by 2020, and will require further growth beyond the mandated minimum of 1100 MW.

III. Conclusion

The Boston Pacific Invoice Option has significant room for improvement in terms of mitigating financial risk to OSW Developers, allowing Suppliers adequate time to budget for OREC pricing, dealing with the variable nature of OSW generation, and integrating the OREC funding mechanism into the RPS. The Sierra Club strongly suggests integrating the suggestions provided above into the BP Proposal to make it a more comprehensive and successful OSW funding mechanism.

Respectfully submitted,

Thomas Schuster, Campaign Representative
Sierra Club Beyond Coal Campaign
PO Box 51
Windber, PA 15963
Tel: (814)-467-2614
Email: tom.schuster@sierraclub.org

Christine Guhl, Organizing Representative
Sierra Club, Beyond Coal Campaign New
Jersey
120 Finderne Avenue, Suite 280
Bridgewater, NJ 08807
Tel: (908)-231-0202
Email: christine.guhl@sierraclub.org

Gertsman, Jake

From: Doug Copeland <Doug.Copeland@edf-re.com>
Sent: Wednesday, May 01, 2013 11:07 AM
To: Gertsman, Jake
Subject: Current OREC Funding Mechanism Comments

Jake,

I wanted to submit brief comments regarding the current OREC Funding Mechanism Proposals. EDF RE is generally supportive of the Modified Invoice Option being proposed. This proposal builds on the current BPU proposal from Boston Scientific but addresses project owner concerns. The key elements that it addresses are: creating a payment mechanism that provides assurance of payment, stronger credit support, and providing additional details to make this concept workable to all those involved.

While delays are not preferred as we move forward, it may also make sense to provide additional time to submit comments based on the tremendous efforts by suppliers, distributors, and developers as we seek to find additional common ground.

Thanks,
Doug

Doug Copeland
Regional Development Manager

EDF Renewable Energy
40 W. Evergreen St.
Philadelphia, PA 19118
T: 267-535-1366
F: 215-248-2381

www.edf-re.com

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OffshoreMW

367 Herrontown Rd.
Princeton NJ 08540
+1 609 924 0136
www.OffshoreMWllc.com

1 May 2013

Via Email

Jake Gertsman, Esq.
Legal Specialist
Board of Public Utilities
Trenton, New Jersey

RE: Offshore Wind Payment Mechanism

Dear Mr. Gertsman:

Thank you for the opportunity to provide comments on Boston Pacific's proposed Invoice Option for the OREC program payment mechanism. While the payment mechanism of the OREC program might on first consideration seem an administrative detail which is easily addressed, it is in fact at the heart of a successful OREC program and critically important to achieving the purposes of OWEDA. We are therefore most appreciative of the time and energy that you and your team have put into this issue, and we are eager to continue working with you and the other stakeholders to quickly finalize an appropriate OREC payment mechanism.

Importance of a payment mechanism that provides assurance of payment

The reason the payment mechanism is so important is because, simply put, without an appropriate payment mechanism investors will not know if they will see their investment returned even if a project is successfully completed and generating ORECS. Without payment assurance, developers will be unable to finance their projects, and therefore no offshore wind projects would be built; constructing such projects for the benefit of New Jersey is of course the whole purpose of OWEDA. OWEDA calls for an OREC program that enables project financing in at least two different ways. First, OWEDA requires that the Board "... establish an offshore wind renewable energy certificate program to require that a percentage of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from offshore wind energy in order to support at least 1,100 megawatts of generation from qualified offshore wind projects." (Emphasis added.) (N.J.S.A. 48:3-87 d. (4)). Given that this requirement to support offshore wind projects is in the context of how offshore wind projects will receive revenues (which would include a payment mechanism), it is clear that the support intended is to support the financing of the projects. Second, OWEDA requires the Board to determine whether an applicant for a qualified offshore wind project satisfies certain conditions including, among others,

whether the applicant demonstrates sufficient access to capital. (N.J.S.A. 48:3-87.1 b. (1) (d)). Pursuant to its obligation to adopt rules to implement OWEDA, the Board requires that applicants demonstrate access to capital for the project in the form of LOIs from credible investors, letter of commitment from equity investors and/or guarantee from an investment grade party. (N.J.A.C. 14:8-6.5(a) 3 & 4). Such access to capital on the part of any developer is not possible without an overall OREC program, including a payment mechanism that is designed and intended to support offshore wind project financing.

A payment mechanism that provides strong assurance of payment is not new or unique to offshore wind or the OREC program. Any large infrastructure investment which is to be paid for by the operational revenues generated by that investment (as opposed to being paid for upfront, such as by a bond issue) will require such assurance of payment in order to receive financing. Indeed, large power projects routinely are financed and built using Power Purchase Agreements (PPAs): contracts, the main point of which is to ensure prior to construction, that the generator will be paid for services delivered once the project is completed. These PPAs typically rely on a numbers of mechanisms to ensure payment, given that no one mechanism is likely to suffice, and because of the extreme importance of assuring payment under a variety of circumstances. While it is not feasible to replicate the PPA approach under OWEDA, the level of assurance of payment found in PPAs is an appropriate benchmark by which to gauge the ability of an OREC program and payment mechanism to enable project finance.

Invoice Option proposal is a useful concept but needs additional refinement

As described in detail below, it is our view that the initial Invoice Option provides a useful basis for how a payment mechanism might work, if it is necessary that such a mechanism not utilize an escrow account or central clearinghouse. However, as proposed, the Boston Pacific mechanism is not consistent with several requirements of OWEDA, would be extremely problematic for Suppliers to implement, and falls far short in fulfilling the key element to any payment mechanism: Assurance of payment to offshore projects for ORECs they generate. Without a mechanism that has built into it such assurances of payment, developers will be unable to secure financing, and the regulations will have failed in implementing the requirement that OWEDA provide a means to finance projects.

Specifically, the Boston Pacific Invoice Option has the following key deficiencies (among others):

- Percentage purchase requirement: Under OWEDA, suppliers are required to purchase an amount of offshore wind (or make OACPs) which is calculated as a percentage of the suppliers' sales. The Boston Pacific proposal does not incorporate this requirement.
- OREC banking and OACPs: Under OWEDA, generators need to have the ability to bank ORECs for future use, and there needs to be an OACP mechanism in the event Suppliers are unable to purchase an OREC; the Boston Pacific proposal is silent on both of these issues.
- Assurance of Payment: As discussed above, assurance of payment for ORECs is critical to the implementation of OWEDA; the Boston Pacific proposal is silent on this centrally important issue.

Modified Invoice Option offers additional features and details necessary for a workable mechanism

OffshoreMW, in close consultation with suppliers, EDCs and other developers which participated in the recent working group process, has developed a Modified Invoice Option (attached to these comments) which addresses the problems highlighted above, as well as provide details necessary to ensure a workable payment mechanism, including sufficient assurance of payment to enable project finance. This Modified Invoice Option used the Boston Pacific proposal as the foundation or starting point, and as such we believe this new proposal maintains key features that the BPU determined important for a workable mechanism. Specifically, this Modified Invoice Option does not necessitate the use of any central clearinghouse or any escrow accounts at any juncture.

Key features of this Modified Invoice Option are as follows:

- Suppliers' OREC obligation is calculated on the basis of their sales, and so suppliers are fully compliant with the program requirements so long as invoices are paid as required (regardless of whether an OREC is delivered or not)

- An OACP mechanism that minimizes impact to ratepayers by having those OACPs held with a few, easily regulated entities (i.e. the offshore wind generators), by providing a means and incentive to return OACPs to ratepayers as quickly as possible, and by paying interest on OACPs that are held by Generators.

- Mechanisms to ensure payment for ORECs, the aggregate of which provide a similar level of payment assurance to the various mechanisms found in a PPA; these payment mechanisms are sufficient to enable project financing as required by OWEDA.

Moving forward to a payment mechanism with greater stakeholder consensus

We would like to take this opportunity to publicly thank the other stakeholders, in particular the supplier community, for offering their time and views to us during the course of developing this Modified Invoice Option. Because of this collective effort, we're hopeful that other stakeholders are able to be supportive of most of what is proposed in this Modified Invoice Option. We recognize, however, that despite our collective efforts to date, some aspects of the Modified Invoice Option do not have the support of all stakeholders, even if there is consensus on many key elements. Given this, OffshoreMW is eager to continue the discussion amongst the stakeholders, as we believe that there are avenues for further discussion which would be productive and bring about a greater consensus position (if not full consensus).

To this end, we would like to respectfully encourage the BPU to facilitate such conversations on an efficient and speedy basis, and suggest that the following next steps would be helpful in that regard:

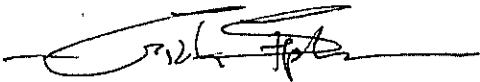
- 1) An unresolved question during the stakeholder discussions was whether or not a generator-level escrow account, as described in the GSOE proposal, was desirable or acceptable from the BPU's

perspective. Our view is that guidance from the BPU regarding this question would considerably move forward the discussions, regardless of which direction the guidance leads. Our reason for saying this is that the GSOE proposal and the Modified Invoice Option have many fundamental similarities, with perhaps the single key difference being the use, or not, of an escrow account.

2) As noted above, we have been consulting earnestly with the supplier community so as to understand their concerns, and have been giving considerable thought as to ways to resolve their concerns with this Modified Invoice Option. These discussions have been on-going right up until the deadline for comment and as such, in our view, there are still avenues for discussion that would be worth further exploration. With this in mind, we would request that, after disseminating all stakeholder comments to all stakeholders and providing some guidance on the point above, the BPU set another near-term deadline by which to receive additional comment.

Thank you again for the opportunity to provide these comments. We look forward to working with the Board staff and other stake-holders over the next few weeks, so that the funding mechanism regulations can be quickly finalized by your staff. Implementing these regulations soon is critically important to the development of New Jersey's new offshore wind industry, and the job creation and other benefits that offshore wind will bring to the state.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erich Stephens', written over a horizontal line.

Erich Stephens
Executive Vice President

Attachment: Modified Invoice Option Proposal

Modified Invoice Option for the OREC payment mechanism

1 May 13

The presentation and discussion at the 21 Feb 13 Stakeholder meeting helped to clarify Boston Pacific's proposed Invoice Option for the OREC payment mechanism, and address some of the issues that had been identified. Conceptually, the Invoice Option appears to be a reasonable approach to ensuring a payment mechanism robust enough to support financing of offshore wind projects, as called for by the Offshore Wind Economic Development Act (OWEDA).

However, a number of issues with the Invoice Option as originally proposed by Boston Pacific make the mechanism problematic for one or more stakeholders; these issues are described in Section I of this document. In Section II, a "Modified Invoice Option" is proposed, which keeps the core concepts of the original Invoice Option but contains additional provisions that are needed to address the issues of concern. Section III of the document summarizes key similarities and advantages of this Modified Invoice Option relative to the Boston Pacific proposal.

I. Concerns with the original Invoice Option proposal

1) Integration of the OREC payment mechanism with the RPS, and an RPS percentage requirement: As a matter of practicality in managing their product offerings and cash flow, Suppliers need to be able to make OREC purchases (or OACP payments) on the basis of a percentage of their sales, as opposed to a prescribed and varying numbers of ORECs (as would be the case in the Boston Pacific proposal). Because of the BGS auction mechanism, this OREC percentage needs to be known and fixed for three years out, at a minimum. In addition, because the OREC program is a carve-out to the general RPS requirement, Suppliers need a specific OREC requirement, expressed as a percentage of their sales, in order to be able to make plans to comply with the general RPS in the most cost-effective manner. Furthermore, OWEDA requires that the Board of Public Utilities (Board) establish a "...percentage of the kilowatt-hours sold in this State..." which needs to be purchased from offshore wind in order to support project development (N.J.S.A. 48:3-87d(4)). The Boston Pacific proposal is problematic in that it would require Suppliers to purchase ORECs generated in any given month, regardless of the Suppliers' load in that month. It's also not clear that the Boston Pacific proposal would be in compliance with the previously cited provision of OWEDA.

2) Generators need the ability to bank ORECs: The OWEDA statute specifies that offshore wind generators with an OREC award (Generators) be allowed to hold (bank) ORECs for later use in the year in which they are generated, and up to the following two years (N.J.S.A. 48:3-87p). The flexibility of such banking is essential to support project financing and to manage year-to-year variation in generation and load. The Invoice Option as originally proposed appears to have no provision for such banking.

3) Minimizing OACPs while also both preventing windfall to Suppliers and sufficient OREC demand for Generators: The original Invoicing Option proposal is silent on the topic of Offshore Alternative Compliance Payments (OACP). An OACP mechanism is needed to prevent Suppliers from earning a windfall in the event of OREC supply being lower than expected, or load being greater than expected. And while OACPs are refunded to ratepayers in any event, it is in ratepayers' interest to avoid needlessly collecting OACPs, or for the OACP amount to be needlessly high. OACPs are also called for in OWEDA (N.J.S.A. 48:3-87d(4)). While OACPs are necessary for the reasons described, it is important to note that in order for the entire OREC program to work, Suppliers must be compelled to buy any and all ORECs available, up to any particular project's established annual cap, before making an OACP. That is, the OACP is not an *optional* compliance mechanism for the Suppliers to decide to use or not, but rather is an *alternate* compliance mechanism, to be used only in the event of insufficient OREC supply to meet the established percentage requirement. This point is specified in OWEDA, "In the event there are insufficient offshore wind renewable energy certificates available, the electric power supplier or basic generation service provider shall pay an offshore wind alternative compliance payment established by the board." (N.J.S.A. 48:3-87d(4)).

4) Certainty of payment for ORECs generated: In order for the Invoice Option to support project financing as required by OWEDA¹, it is critically important that the payment mechanism limit, to the greatest extent possible, any risk of non-payment to Generators, and provide mitigation in the event of non-payment. To the extent that Generators are subject to risk of non-payment —a risk that the Generator by themselves would be unable to control— offshore projects will either be unable to secure project financing, or if they are able to obtain project financing would result in a higher cost to ratepayers than necessary, since investors would require higher returns in exchange for taking on these higher risks.

A reasonable benchmark for determining if the Invoice Option provides sufficient assurance of payment to enable project financing would be the payment assurances built into Power Purchase Agreements (PPAs). These PPAs are the typical means by which power projects (of any type) are able to secure financing. As described in further detail below, these PPAs typically have at least three different mechanisms, or safety-nets, to assure payments from the buyer. In contrast, the Boston Pacific Invoice Option provides no means of assuring payment for ORECs, and so would not enable project financing as called for by OWEDA.

¹ OWEDA calls for an OREC program that enables project financing in at least two different ways. First, OWEDA requires that the Board "... establish an offshore wind renewable energy certificate program to require that a percentage of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from offshore wind energy in order to support at least 1,100 megawatts of generation from qualified offshore wind projects." (Emphasis added.) (N.J.S.A. 48:3-87 d. (4)). Given that this requirement to support offshore wind projects is in the context of how offshore wind projects will receive revenues, it is clear that the support intended is to support the financing of the projects. Second, OWEDA requires the Board to determine whether an applicant for a qualified offshore wind project satisfies certain conditions including, among others, whether the applicant demonstrates sufficient access to capital. (N.J.S.A. 48:3-87.1 b. (1) (d)). Pursuant to its obligation to adopt rules to implement OWEDA, the Board requires that applicants demonstrate access to capital for the project in the form of LOIs from credible investors, letter of commitment from equity investors and/or guarantee from an investment grade party. (N.J.A.C. 14:8-6.5(a) 3 & 4). Such access to capital on the part of any developer is not possible without an overall OREC program that is designed and intended to support offshore wind project financing.

II. Modified Invoice Option for the OREC Payment Mechanism

The following Modified Invoice Option is a proposed means to address the issues and concerns identified above, while at the same time maintaining the key elements of the Invoice Option (in particular, avoiding any state direction of payments or oversight of funds, or any entity maintaining a reserve account or escrow² of any sort).

1) RPS integration and carve-out percentage: After issuing an OREC Order, the Board establishes a project-specific offshore wind carve-out to the RPS. This carve-out is established at least three Energy Years prior to the first Energy Year of the carve-out, and commences with the Energy Year in which the offshore wind facility is scheduled to begin production.

A) Project-specific percentages, OREC price, and OACPs: The carve-out percentage, the OREC Price, and the OACP is specific to each project, i.e. Suppliers (as used in this document Supplier or Suppliers refers to both Third Party Suppliers (TPS) and BGS providers) are required to purchase a set percentage of their load from each approved offshore wind project at a specified OREC price, or make an OACP in the same amount only in the event an OREC from that project is not available. By requiring that OACPs be used only in the event ORECs are not available, there is no need to set the OACP at a high amount, thus minimizing ratepayer over-payment in the event of insufficient ORECs. The carve-out begins in the Energy Year in which the project is expected to be on-line, and specifies the OREC price, which also equals the OACP for that project. The total offshore wind carve-out would be the sum of percentages assigned to each project with an OREC award. The Suppliers would use the percentages and OREC/OACP information to set their electricity prices and bids in the BGS auctions or other product offerings.

B) Ensuring sufficient OREC demand: In calculating the carve-out percentage, the Board should use a low-case estimate for total sales (meaning the percentage for the offshore wind carve-out errs in the direction of having more than enough demand to buy all ORECs). This will ensure sufficient demand for sale of all ORECs entitled to be sold pursuant to all OREC Orders, and to avoid having to frequently adjust the carve-out percentage; avoiding frequent changes to the RPS percentage, even if done three Energy Years out, is desirable for the sake of an orderly market and regulatory certainty. This approach could be codified in the regulations by requiring the Board to use the lowest total sales from an Energy Year that occurred during the last 10 Energy Years. Note that any over-collection of OREC funds resulting from this conservative approach is returned to ratepayers, as described below.

2) Supplier payments based on percentage of load: Once the carve-out for any particular project begins, each month the Generator invoices the Suppliers for ORECs, as specified by the OREC Administrator. Each month's OREC payment due is calculated as Supplier's load for the month X Project's Carve-out % X Project's OREC/OACP price. In contrast to the original Invoice Option, this invoice amount is independent and regardless of the amount of ORECs generated in a month. In order to calculate the correct invoice amounts, for each month the EDCs provides the OREC Administrator with the final sales

² While this mechanism does not call for the use of any escrow account, it can accommodate the use of escrow accounts if deemed desirable; see Section II (7) for discussion.

amount for each Supplier, allowing the Administrator to inform the Generator as to how much to invoice each supplier, given the Generator's carve-out percentage and OREC price.

3) OREC Delivery: Generators deliver ORECs to Suppliers as the ORECs are paid for and available over the course of the year, up to the higher of either i) amount for which Supplier has made OREC payments or ii) the maximum number of ORECs allowed to be sold at the established price each year, per the Generator's OREC Order.

A) Timing of OREC delivery to Suppliers: Generators are allowed to deliver ORECs to suppliers as available (which may mean after payment for the OREC has been made) and are also required to deliver ORECs so long as they are available and paid for. For example, because of the seasonal mis-match between when load peaks and when offshore wind generation peaks, Generators may receive most payments for ORECs in the summer when load is high, but some of those ORECs may not be delivered until the winter months, when generation may be higher. Generators are required to deliver ORECs to Suppliers as available and for which they have received payment, including use of any banked ORECs, up to the annual maximum amount allowed under their OREC Order. For example, if a Generator receives more payment in a summer month than ORECs generated in the month, the Generator would be required to deliver a banked OREC from a previous month, if available.

B) Ensuring correct OREC transfers and payments, and year-to-year variation: Monthly and at the end of each Energy Year, the OREC Administrator reviews payments received by Generators from Suppliers, and the amount of ORECs delivered from Generators to Suppliers to verify that the payments and ORECs delivered are correct. Any discrepancies would be brought to the parties for resolution or referral to Board staff if necessary. If either party had an issue with the OREC Administrator's review they would first attempt to resolve the issue with the Administrator and if unsuccessful raise the issue to Board staff for resolution.

i) Supplier requirements for compliance: Because the OREC Administrator will, over the course of the year, certify allowable invoice amounts based on actual load of each Supplier and the OREC carve-out, all that a Supplier need to do to comply with the program is simply honor Invoices approved by the OREC Administrator, as they are presented to them by Generators. There should be no further action required by Suppliers (assuming all invoices are paid in full), except to document compliance using the ORECs provided, and certification of OACPs issued by the Generator (see next section).³

ii) OACP Payments: If at the end of the Energy Year the Generator has received more payment for which it can either provide ORECs or payment for a number of ORECs which is in excess of the maximum annual amount allowed per the OREC Order, the Generator must forward these excess payments, which are then considered to be OACPs, to the EDC for refund to ratepayers. The Generator is required to provide a statement or certificate to the Supplier

³ In the unlikely event that a Supplier pays approved invoices but receives neither ORECs nor OACP certification from a Generator, evidence of paid invoices should hold the Supplier harmless for compliance with the OREC carve-out, and enforcement should be directed at the Generator, not the Supplier.

indicating as such, so that the Supplier will have ORECs and an OACP statement from Generators, the sum of which documents the Supplier's compliance with the carve-out. These OACPs are also registered by the OREC Administrator, and applied by the Board when doing the annual RPS compliance review for the RPS generally. For example, if a Supplier has paid a Generator for 100 ORECs over the course of the year, but the Supplier only received 90 ORECs from that Generator, then the Supplier will have made 10 OACP payments which they are credited with in calculating RPS compliance. The Board may also set an interest payment due for OACPs held by the Generator before returning the funds to ratepayers via the EDCs. By requiring such interest payment, if Generators are sure they will not be able to produce an OREC, or if the Generator sells up to the maximum annual amount of ORECS before the end of the year, the Generator would have incentive to transfer the OACP to EDCs for credit to ratepayers prior to the end of the Energy Year. This contrasts favorably to the Boston Pacific Invoice Option, which would require Suppliers to hold OACPs until a year end true-up, and with no mechanism available to incentivize early return of OACPs to ratepayers (see Section III for a summary of other advantages of having the OACP go through the Generator, as opposed to being held by the Suppliers).

iii) Insufficient OREC demand: Should load in a year be less than projected when setting the carve-out, there will be insufficient demand from Suppliers for ORECs, and Generators will be unable to sell all the ORECs they are allowed to sell during that year. If at the end of the Energy Year the Generator has not been able to sell all of the ORECs up to the maximum annual amount allowed in their OREC Order, then:

a) Use of PJM Revenues: Generators are allowed to utilize PJM Revenue as payment for unsold ORECs, up to the annual cap. Any OREC for which a Generator receives payment in full using PJM Revenues shall be considered sold by the Generator, and therefore not carried over to the following year as described in the next paragraph.

b) Roll unsold ORECs into next year: If an OREC cannot be paid for in full using PJM Revenues per above, the OREC Administrator will allow the unsold amount of ORECs to be added to the subsequent year's annual allowed amount for that project: For example, if a project is allowed to sell 100 ORECs per year, but can only sell 80 ORECs in Year 1, and then receives payment in full for 10 using PJM Revenue, then the cap for the following year is adjusted to 110 ORECs. Note that this provision does not increase the Suppliers' percentage requirement, and so unsold ORECs may continue to accumulate in subsequent years.

c) Consideration for adjusting RPS percentage three years out: The Board will make a determination whether total load is trending less than projected when setting the offshore wind carve-out for the project, in which case the Board would increase carve-out percentages so as to prevent future insufficient OREC demand. However, any adjustment would only apply starting three Energy Years out.

iv) OREC Banking: If a Generator sells ORECs up to the annual allowed amount, and has excess ORECs at the end of the year, the Generator is required to bank the ORECs for future use for eighteen months after the end of the Energy Year in which the OREC was created. The

Generator is also required to utilize its oldest ORECs first. This requirement to bank ORECs will minimize possible future OACP payments, and is equitable to the requirement allowing Generators to utilize PJM revenues should they have unsold ORECs in a given year. Given the requirement to use the oldest ORECs first, it is unlikely that a banked OREC will approach its expiration date (which is two years after the end of the year in which it was generated, per the RPS). However, if after eighteen months from the end of the year in which it was generated an OREC has not been utilized, the Generator is allowed to sell the banked OREC as Class 1 RECs at whatever price they may receive.

C) Project failure or on-going underperformance:

i) If after issuing an OREC Order, whether before or after construction of a project, the Board determines that the project either will not be built or has failed entirely such that it will never generate any ORECs again, the Board will remove the Generator's carve-out starting three Energy Years out. If the carve-out has already begun before the Board determines that the project has failed, there will be a period of three Energy Years during which all payments being collected for purchase of ORECs from the projects will be deemed as OACPs. The OREC Administrator shall invoice Suppliers for these OACPs, and payments will be made directly to the EDCs for refund to ratepayers.

ii) Each OREC Order shall specify a Minimum Annual Generation, which shall be established based on inter-year variation in wind energy, probability and extent of unscheduled outages, and other factors normal to the operation of an offshore wind project. If a Generator fails to exceed this Minimum Annual Generation for three consecutive Energy Years, the Board shall examine the reasons for the under-production, determine whether the under-production is expected to continue, and if so adjust the Generator's carve-out proportionally, beginning three Energy Years out.

4) Assurance of payment: In order for an Invoice Option to support project financing, as called for in OWEDA⁴, the regulations need to contain specific provisions to ensure Suppliers make full and timely payments of invoices. This need for assurance of payment is not unique to the Invoice Option or offshore wind generally. Any large infrastructure investment which is to be paid for by the operational revenues generated by that investment (as opposed to being paid for by a bond issue, for example) will

⁴ OWEDA calls for an OREC program that enables project financing in at least two different ways. First, OWEDA requires that the Board "... establish an offshore wind renewable energy certificate program to require that a percentage of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from offshore wind energy in order to support at least 1,100 megawatts of generation from qualified offshore wind projects." (Emphasis added.) (N.J.S.A. 48:3-87 d. (4)). Given that this requirement to support offshore wind projects is in the context of how offshore wind projects will receive revenues, it is clear that the support intended is to support the financing of the projects. Second, OWEDA requires the Board to determine whether an applicant for a qualified offshore wind project satisfies certain conditions including, among others, whether the applicant demonstrates sufficient access to capital. (N.J.S.A. 48:3-87.1 b. (1) (d)). Pursuant to its obligation to adopt rules to implement OWEDA, the Board requires that applicants demonstrate access to capital for the project in the form of LOIs from credible investors, letter of commitment from equity investors and/or guarantee from an investment grade party. (N.J.A.C. 14:8-6.5(a) 3 & 4). Such access to capital on the part of any developer is not possible without an overall OREC program that is designed and intended to support offshore wind project financing.

require such assurance of payment in order to receive financing. Furthermore, these projects will be able to obtain financing only with regard to contracted cash flow, and not for potential or anticipated revenues such as from renewable energy credits sold on the spot market. This requirement for payment assurance is stricter when the investment is larger and if the technology or project is new to the investor market, which is certainly the case for offshore wind projects. Investors in power projects with smaller initial capital investments than required for offshore wind, such as solar projects or some thermal generation projects, may be able to afford a higher risk of non-payment than required here, but no investor will be able to expose the large amounts of capital needed for a single offshore wind project to the risk of non-payment.

And even if an investor were willing to fund the project despite there being risks to payment assurance, that investor will require a higher rate of return in exchange for taking that risk. This would turn the OREC program into an economically inefficient means of supporting offshore wind, as the resulting higher cost of capital will increase the overall cost of an offshore wind project, and create higher costs to ratepayers.

Therefore, not including sound provisions to assure payments to the offshore wind generators, as proposed in this section, will most likely prevent projects from being built because of investors needing assurance of payment, or at best result in needlessly higher OREC prices and costs to rate payers.

Typically investors in power projects rely on a contract with a single credit-worthy buyer in order to assure payment. Such contracts typically provide at least three layers of assurance of payment; each of these various protections could be thought of as a safety-net against non-payment, with multiple nets in place to ensure that even if one or more of the nets fail, payment is still assured. The first net is that the buyer is a creditworthy buyer, either because they have a large balance sheet and favorable credit score, or because they provide some other means of credit support such as a bond. The second net is that the contract itself contains specific provisions for when payments are due and allowable actions that are to be taken if this payment schedule is not met. Third, the seller has a clear cause of action in the courts should the buyer continue to fail to meet the provisions of that contract. Additionally, in instances where the buyer may not be as creditworthy as required, or if timely payment is of the utmost importance, an escrow account may also be deployed to insure on-time payments and to provide payment for some period should a buyer default.

None of these typical protections against non-payment are available in the Invoice Option as currently proposed. We are not suggesting that the contracting arrangement described above needs to be fully implemented with each of the sixty or more buyers of ORECs, acknowledging that to do so would be difficult, if not impossible, as a practical matter. However, if an invoice approach is to be successful, it will require protections against non-payment that, in aggregate, provide the same level of protection that would be provided by a single contract with a credit-worthy buyer, as described above.

This Modified Invoice Option, therefore, relies on three different means to ensure payment: additions and modification to regulations so as to provide specific and escalating Board action in the event of non-payment; credit support from the Suppliers to which Generators can seek recourse in the event of non-payment; and a reserve of PJM Revenues (and OACPs, if available) that can be drawn on by Generators in the event of non-payment. These three different means of ensuring payment can be looked at as three

different safety nets, similar to the safety net arrangement described previously in a bilateral contract with credit-worthy counterpart arrangement. Each of these nets has its own costs and benefits, and no one net alone is sufficiently strong to ensure payment on its own in all scenarios. Instead, some combination of the three nets is the most efficient and effective means of ensuring payments, and thus fairest to the ratepayer. The first net, regulatory protections, has the least cost to everyone and so should be made as strong as possible, although it alone cannot provide sufficient protection for the reasons described below. The next net, requiring Supplier credit support and Generator recourse directly to Suppliers, can provide the strongest assurance of payment, but incurs some costs on Suppliers. The final net, the PJM/OACP Revenue reserve, offers the most immediate and direct assurance of payment, but has the biggest direct impact on ratepayers. We are therefore proposing that the reserve amount be capped, and that there be incentives for Generators to use this safety net as sparingly as possible. The drawbacks and benefits, and means of implementation, of each of these three nets are described in further detail below.

A) Specific regulatory protections: The major benefit of writing protection against non-payment into the regulations is that doing so has no costs to anyone, and Suppliers who continuously make payments as required will bear no costs or penalties whatsoever. The major drawback is that reliance on regulation alone will not be sufficient to enable project financing, for several reasons. First and foremost, if a Supplier is undergoing commercial stress that causes it to be late or miss OREC payments, regulatory action alone will likely not be able to suddenly compel payment. Consider, for example, that a supplier sliding into bankruptcy would likely be indifferent to the threat of losing its license since it is going out of business anyway, or simply does not have the cash to make payment no matter how significant the repercussions. Secondly, even if penalties were collected, there is no mechanism available to use these penalties to make good on payments due to the Generator, since by law such penalties are general revenue to the state. Finally, the Board's regulatory process is not intended to move at the speed necessary to serve as a collections agency, which for all intents and purposes the Board would become without other means of payment assurance. Despite these significant drawbacks, regulatory protections do have value in that the regulations will provide a legal basis for presenting valid invoices to the Suppliers (the heart of the Invoice Option), and in some ways fill the role of a contract that normally would exist between buyer and seller.

We are proposing modifications to the regulations that are specific in nature so as to be effective, and escalate with on-going non-payment so as to be fair to Suppliers, as detailed below:

i) the regulations should contain a clear requirement for all Suppliers (BGS providers, third party suppliers, aggregators) to honor invoices presented by approved OREC Generators, to make monthly payments for ORECs per any OREC Order, and specify that Generators are to deliver ORECs, or certification of OACP, to Suppliers only after payment in full is received from a Supplier, and within 10 days of receiving such payments;

ii) the regulations should specify that Supplier Master Agreements between EDCs and BGS providers which are in effect in an Energy Year when an OREC Order is also in effect specifically require payments of OREC Invoices by the BGS providers, pursuant to the regulatory

change discussed in (i) above, with non-payment of such invoices to be considered an event of default to the Supplier Master Agreement;

iii) the licensing requirements for third party suppliers should be modified so as to specifically require payments of OREC Invoices by third party suppliers, with non-payment being grounds for non-renewal or revocation of the license;

iv) the regulations and Supplier Master Agreement should specify a schedule as to when payment of invoices are due, and actions allowed or required in the event of non-payment, as follows:

a) Payment in full of invoice due within 20 days of being presented electronically;

b) After 20 days, interest (at rate to be set by Board in regulations) on the overdue amount begins to accrue, and Generator reports late payment to the Board and OREC Administrator;

c) After 30 days of non-payment, Generator reports further late payment to the Board and OREC Administrator, and is allowed to begin withholding PJM/OACP Revenues from delivery to the EDCs, up to the amount of the late payment.;

d) After 90 days of non-payment, or in the event of a third late payment in a 12 month period, the Board shall issue an Order to Show Cause why Supplier license should not be suspended or, in the case of a BGS provider, why the Supplier is not in violation of the Supplier Master Agreement; and

e) In the event of three late payments of any duration within any 18 month period, the Board shall issue an Order to Show Cause why Supplier license should not be suspended or, in the case of a BGS provider, why the Supplier is not in violation of the Supplier Master Agreement;

v) The regulations should specify that in the event of non-payment by a Supplier, the Generators will have a cause of action against the Supplier and the Supplier may be liable for Generator's legal and court costs;

vi) The regulations should provide the ability of Suppliers, Generators and EDCs to establish efficient administrative processes to effectuate the transfer of funds between the entities, for example by allowing for electronic invoicing and payments.

One could argue that the ability to take the actions described above is already allowed under the existing RPS and licensing regulations. However, the current regulations are not nearly as specific or prescriptive as being proposed here. There is a big difference between finding the ability to take an action in a vague or broad regulation, and a specific regulatory requirement to take a specific action. Given that this is a new program and assurance of payment is critically important to successfully implementing OWEDA, it is important to remove any ambiguity and provide the utmost clarity and certainty in the regulations. Robust and clear regulations ensuring Supplier payments are a no-cost, no-pain way to better ensure success of the of the OREC program.

B) Credit support and recourse to credit support: In a normal commercial situation in which invoices are being used to require payment, the buyer and seller will have a contract in place which provides the basis for the seller presenting the invoice for payment. Furthermore, one or both parties are likely to require some sort of credit support (e.g. surety bond, significant balance sheet, etc.) from the other party to ensure timely payment of invoices and performance under the contract; without such credit support the contract could become worthless in the event of default or non-performance. This is particularly true in the case of project financing, where assurance of timely payments from the buyer is the basis on which investors, particularly lenders, will be willing to make a substantial up-front investment that is paid out over many years. Without such credit support, the lender to the project has no ability to ensure re-payment should the buyer default or otherwise fail to make payment.

Given that OREC purchases from Suppliers will be the basis for securing financing for these projects, it is imperative to ensure payment, and this therefore requires some degree of credit support from the Suppliers. We note that Suppliers already have to provide some degree of credit support in order to participate in the New Jersey market generally. Below we propose some basic, limited means by which the existing credit support mechanisms can be modified to provide minimal credit support to the purchase of ORECs:

i) the BPU should review and if necessary increase the surety bond requirements for each Third-Party Supplier and the letters of credit for each BGS provider, to ensure that the bonds are proportionate to the increased payment obligation as a result of the OREC Order; and

ii) the surety bonds or letters of credit of Suppliers should be modified to allow Generators to have direct recourse to the bond or letter of credit in the event of payments being in excess of 60 days late; and

iii) In the event of a two payments that are 30 days or more late within a 12 month period, the Generator should have recourse to the Supplier's surety bond or letter of credit.

C) Reserve Allowance: One way of ensuring payment is to maintain a cash reserve upon which the seller can draw if the buyer does not make payment. Such a mechanism does have a cost in that the cash could be put to other use, in this case by the ratepayer. A cash credit support is also inherently limited by the amount of cash being held: Should a buyer owe an amount that is in excess of the cash credit support, the credit support is insufficient. Nonetheless, a cash reserve is a simple and secure means of better ensuring payment and can provide an important backstop to limited events of non-payment.

Given this, Generators should be allowed, but not required, to hold a cash reserve made of PJM Revenues (defined below) and, if available, OACP payments, and utilize this cash reserve in the event of Supplier non-payment. Should a Generator be unable to secure financing on the basis of the first two mechanisms of ensuring payment, described above, then a reserve credit support mechanism would be available to use. Ideally, the first two mechanisms would be sufficient, and the use of a cash reserve may not be necessary. However, as only minimal credit support from the Suppliers is being proposed in the previous section, and given the limitations of regulatory protection described previously, Generators may find it necessary to utilize a reserve credit

support as well. The cost of this cash credit support would be considered in the net benefit test of the OREC Application, so Generators would have an incentive to avoid its use if at all possible. The amount allowed to be held in reserve is also capped, so as to provide additional ratepayer protection. Additional details of this reserve include:

i) PJM Revenues are defined as all the revenues received by the Generator from selling the energy from a wind park into the PJM spot markets. PJM Revenues are associated with a particular OREC by dividing the total PJM Revenue received in the month in which the OREC was generated by the number of ORECs created in that month.

ii) For every OREC delivered by a Generator to a Supplier, the Generator is required to monthly forward PJM Revenues associated with that OREC to the EDCs for credit to ratepayers, except that the Generator may withhold PJM Revenues up to a reserve amount specified in the OREC Order. If PJM Revenues are not sufficient to maintain the reserve amount in the event of Supplier non-payment, the Generator may also withhold OACP payments, if any are available, to make up the reserve amount.

iii) The reserve amount allowed to be held is capped at an amount equal to the OREC sales revenue the Generator would receive in the two months with the greatest OREC generation, as defined in the OREC Order generation schedule⁵.

iv) The Board should specify an interest rate that shall be paid by the Generator for any reserve funds held by the Generator, and this interest payment shall be paid monthly to the EDCs for credit to ratepayers.

v) The amount of revenues to be held in this manner, up to the two month cap, shall be specified in the OREC Order and be considered in the net-benefit analysis submitted with the OREC application. OREC applications should also be allowed to propose a reduction in the amount of reserve held over the term of the OREC Order.

5) OREC Administration (Accounting): Every month the following transactions shall occur, as approved or recorded by the OREC Administrator:

A) Generators report to the OREC Administrator the monthly production from the facility, the number of ORECs registered with PJM GATS, the PJM revenues received, amount invoiced to the Suppliers, amount of payments received from Suppliers in payment for previous invoices, and amount of payments made to EDCs along with an accounting of the source of those payments.

B) EDCs shall provide the OREC Administrator with the amount of PJM revenues and OACPs received from the Generators and refunded to Ratepayers, as well as the amount of MWh sales by each Supplier during previous months, as final data becomes available.

⁵ Reasoning for this reserve amount may be found in the last version of the Clearinghouse model proposed to the Board during previous stakeholder meetings, as this is the equivalent amount to that earlier proposal.

C) Suppliers pay any invoices received from Generators that were authorized by the OREC Administrator.

D) The OREC Administrator uses information provided per above to ensure that the proper payments are made to the EDCs for credit to ratepayers, and to report to the Generators the proper amount to invoice each Supplier. Any discrepancies or disagreements would be brought to the attention of the parties for resolution or referral to Board staff if necessary. If either party had an issue with the OREC Administrator's review they would first attempt to resolve the issue with the Administrator and if unsuccessful raise the issue to Board staff for resolution. Generators are allowed to withhold PJM Revenues or OACPs and apply them to cover any unpaid invoices that were due to be paid by a Supplier in that month or earlier month, as described above. If and when the Generator later receives payment on overdue invoices, then the appropriate amount of PJM/OACP Revenue is forwarded to the EDCs (if the Supplier also paid interest on the late amount, and the Generator was already paid in full using PJM/OACP Revenues, then the interest should also be forwarded to ratepayers). PJM Revenues are monitored by the OREC Administrator to ensure proper credit to ratepayers, and to report to the Board in the event the Board determines it necessary to take action against a Supplier for non-payment. PJM Revenues associated with a banked OREC are refunded only at the time the banked OREC is actually delivered to a Supplier.

E) The responsibility of any Generator to contract and pay for an OREC Administrator should be specified in the funding mechanism regulations. If there are multiple Generators they will share in the costs of the OREC Administrator based on the proportion of their annual OREC cap amount relative to the total annual cap amount of all scheduled OREC deliveries in effect at the time. The regulations should specify a maximum and minimum contract duration for the OREC Administrator. The regulations could require the Generator(s) to provide the request for proposal (RFP) for the OREC Administrator to the Board for any comment, prior to the RFP being issued. The regulations would specify the duties and responsibilities that the OREC Administrator would conduct and thus needed to be included in the RFP. These responsibilities include:

i) Receive Supplier final monthly sales data from the EDCs (this data must be kept confidential), calculate invoice amounts for each Generator, and provide each Generator with the invoice amount for each Supplier;

ii) Calculate the percentage of the total sales for each EDC for the Energy Year prior to the Energy Year for which payments are being made and provide this to the Generators for use in making the applicable OACP/PJM revenue payments to each EDC. The EDCs will refund the OACP/PJM revenues to ratepayers on a kilowatt hour basis;

iii) Receive monthly from each Generator information as to the amount of OREC/OACP payments made by each Supplier, the total generation during the month, the number of ORECs registered in GATS, the number and vintage of ORECs transferred to each Supplier, the number of OACP certificates due/transferred to each Supplier, the amount of PJM revenue received, and the amount of OACP payments and PJM revenue transferred to each EDC, and a report of any late payments received from Suppliers and the length of each late payment;

iv) Receive monthly from each EDC information regarding the OACP payments and PJM revenues received from each Generator, and a report of any late payments received from Generators and the length of each late payment;

v) Conduct a monthly reconciliation of flow of funds and ORECs between the Suppliers, Generators and EDCs. If any discrepancies are identified, attempt to resolve them with the parties and if unresolved report them to the Board;

vi) Provide monthly the Board with a list of any late payments from Suppliers and/or Generators and the length of each late payment;

vii) Conduct an annual review of all transactions that will identify the amount of OREC/OACP payments made by Suppliers that need to be classified as OACPs for each Generator and must be forwarded, with interest, to the EDCs for refund to ratepayers;

viii) Provide the Board an annual report summarizing all transactions including all late payments for the Energy Year, specifying the entity that was late and the length of each late payment (a non-confidential version of this report to be provided to all Suppliers, Generators and EDCs);

ix) On an on-going basis throughout the year, identify any discrepancies and attempt to resolve them with the parties and if unresolved report them to the Board; and

6) Annual Review: At the end of each Energy Year, the OREC Administrator will review all the transactions conducted during the Energy Year and inform the appropriate entities of any issues that are identified in that review and the corrective action needed. If any party had an issue with the OREC Administrator's finding they would first attempt to resolve the issue with the Administrator and if unsuccessful raise the issue to Board staff for resolution. If the final identified actions are not taken the OREC Administrator would inform Board staff, who would take appropriate action. After resolution of any identified issues the OREC Administrator would issue a report to all Suppliers, Generators, EDCs and Board staff summarizing all the transactions conducted during the Energy Year and include a statement that all transactions are correct. Board staff will use the information in the report as part of their annual RPS compliance review. Because the Suppliers will have been making monthly payments to Generators, based on final data, and because Generators will have been monthly delivering ORECs to Suppliers, and because the OREC Administrator will be monitoring and addressing any discrepancies throughout the year, there should be no need for any annual true-up, aside from verifying the previous year's transactions as described above.

7) Escrow Accounts Variation: The mechanism described above does not involve the use of any escrow accounts by any entity, and so is an appropriate and workable mechanism if it is deemed desirable or necessary to avoid having any entity hold cash in an escrow account.

At the same time, this proposed mechanism does not preclude the use of escrow accounts if such accounts are found to provide desirable advantages. An Escrow Account Variation of this Modified

Invoice Option would simply require each Generator to deposit payments from Suppliers and PJM Revenues into an escrow account specific to their project, and withdraw OREC payments from the escrow account only as approved by the OREC Administrator. PJM Revenues, OACP Payments, and any interest would be withdrawn from the escrow account as authorized by the OREC Administrator for payment to the ratepayers via the EDCs. The amount maintained in the escrow account would be as described in Section II (4)(C), page 10, as allowed to ensure payment to the Generator in the event of Supplier default or non-payment.

The disadvantages of requiring such escrow accounts include the following: i) The additional administrative and bank fee cost of maintaining such escrow accounts, which would ultimately be borne by ratepayers; ii) the need to monitor and authorize funds going into and out of the escrow account itself, as opposed to just funds moving between the entities, would add an additional level of complexity to the work of the OREC Administrator; iii) the possibility that a Generator might not be able to rightfully access funds in the escrow account for any reason, or that the funds could be wrongfully paid to others before the Generator could make claim, would introduce yet another level of risk and uncertainty to the program, making it more difficult, and perhaps more costly, to secure financing for the projects.

In considering possible advantages of requiring escrow accounts, we note that under this Modified Invoice Option, as with the Boston Pacific proposal, the OREC Administrator will at all times maintain a third party accounting of ORECs, OACPs, PJM Revenues, and payments due to and from the various parties. The Boston Pacific proposal apparently would require the 60+ Suppliers to hold any OACPs on their account until after an end of the Energy Year true-up, as the Suppliers would have no way of knowing if the funds held on account would be used to purchase an OREC or make an OACP payment until after the true-up. In contrast, this Modified Invoice Option would require the OACPs to be held by the much smaller number of Generators, and these Generators would have both the information at hand (i.e. the knowledge as to whether or not they have or will have ORECs to provide for payments received) and the incentive (requirement to pay interest on OACP funds they hold) to forward OACPs to Ratepayers (via EDCs) at the earliest possible opportunity. Therefore, the escrow accounts would not add significant protection with regard to OACPs, as there would never be significant amount of OACPs funds on hand, and what OACPs are being held are held by a small number of Generators, making oversight and enforcement relatively straightforward.

Given the above, it would seem the only benefit of requiring the use of escrow accounts would be to safeguard against a Generator refusing or being unable to forward PJM Revenues. This is a highly unlikely scenario, given that the first penalty would come in the month after non-compliance, when the OREC Administrator would not certify invoices as being eligible for payment. Since the value of the certified invoices is likely to exceed the value of PJM Revenues, even a Generator struggling for cash would have every incentive to forward PJM Revenues. Furthermore, because PJM Revenues need to be forwarded monthly, the incremental amount at risk would never likely exceed a month or two worth of PJM Revenues. Finally, the Board could in due course rescind an OREC Order if a Generator fails to cure un-forwarded PJM Revenues, which in turn means that the Generator's lenders would also have incentive to make sure payments were made on the PJM Revenues (in much the same way a mortgage holder ensures payment of property taxes, for example).

The additional cost and complexity of requiring escrow accounts needs to be weighed against the marginal benefit of protecting against the unlikely event of a Generator not forwarding PJM Revenues in any given month. But whether or not the escrow accounts are deemed desirable, this Modified Invoice Option would be a workable mechanism.

III. Summary of similarities and advantages of the Modified Invoice Option

This Modified Invoice Option has several important similarities with the Boston Pacific proposed Invoice Option, and as such maintains the key advantages of the Invoice Option concept. In particular, this Modified Invoice Option does not require the use of a third-party entity to act as a clearinghouse, and does not require the use of any escrow accounts (but does allow for their use if desired, as discussed in Section II (7)). Both Invoice Option proposals also avoid the accumulation of large amounts of funds at any one point, and provides for the prompt return of PJM/OACP Revenues to Ratepayers.

There are a number of important differences between the two invoice option proposals; under the Modified Invoice Option:

1) Suppliers make OREC/OACP payments on the basis of percentage of their sales:

- Complies with OWEDA;
- Only practical way for Suppliers to manage their product offerings and pricing;
- Provides a basis for addressing the unavoidable load/generation mismatch.

2) OACPs go through Generators (as opposed to being held by Suppliers until a year-end true-up):

- Allows for the OACP amount to be minimized, as the OACP can equal the OREC price;
- Allows for and incentives faster return of OACPs to ratepayers, potentially prior to the end of the Energy year, and with interest if not (as opposed to the necessity of holding OACPs until the year end true-up, with no interest, under the Boston Pacific Invoice Option);
- Administrative simplicity for all involved, particularly Suppliers: so long as Suppliers pay authorized Invoices, they have complied with the program, and no further accounting, funds management, or payments on their part is required;
- Increased transparency and easier to monitor OACPs held by a few Generators that cannot easily leave the state, as opposed to 60+ Suppliers which routinely enter and leave the market;
- Builds into the mechanism the need for Suppliers to buy ORECs whenever available, and make OACPs only when ORECs are not available or when total load exceeds what was projected in establishing the OREC carve-out;

- Enhanced ability to finance projects under the program because lenders would have greater assurance of receiving all payments due, as there would be no chance of a Supplier incorrectly withholding a payment as an OACP when in fact an OREC was available.

3) Multiple means of assuring payment from Suppliers allows program to support project finance, as called for by OWEDA, as well as avoid costs for ratepayers:

- Assurance of payment is based on multiple means of protection (safety nets), just as do typical industry sales contracts (power purchase agreements), which are also used to support project finance.
- Strong payment protections aside from a cash reserve would limit the need for Generators to utilize PJM/OACP Revenues to ensure payments are received, allowing these revenues to be quickly returned to the ratepayers.



Renewable Energy Systems Limited
Faraday House, Station Road, Kings Langley
Hertfordshire WD4 8LH, United Kingdom
T +44 (0)1923 608 200 F +44 (0)1923 299 299
E info@res-group.com www.res-group.com

May 1, 2013

New Jersey Board of Public Utilities
Mr. Jake Gertsman
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
USA

Subject: RES Offshore Comments to "Invoice Option" (as Presented by New Jersey Board of Public Utilities ("BPU") on February 21, 2013 (re: Offshore Wind Renewable Energy Certificate ("OREC") Funding Mechanism) Proposed New Rule N.J.A.C. 14:8-6.6 Docket Number EX11060353

Dear Mr. Gertsman and members of the Board:

RES is one of the world's leading renewable energy developers working across the globe to develop, construct and operate projects that contribute to our goal of a sustainable future. RES has been an established presence at the forefront of the wind energy industry for over two decades. Our core activity is the development, design, construction, financing and operation of wind farm projects worldwide. The RES Group is active globally and RES Americas is one of the top renewable energy companies in the country, with over 5,200 megawatts (MW) of onshore wind constructed. This represents more than 10% of the operating wind farms in the US.

These comments are from RES Offshore, another part of the RES Group. RES Offshore has considerable experience in delivering utility-scale offshore wind projects and bringing a wide range of project management, environmental, engineering, technical, construction and O&M capabilities to projects. This experience and capability has been gained through RES' involvement with the UK offshore wind sector since it established in the 1990s. Our senior managers have been involved in more than twenty offshore wind projects and the Offshore team has successfully developed projects in the UK's first and second commercial tender rounds, including the construction management of nearly 200MW. We have over 5GW of projects in our current offshore project portfolio, including the provision of services for one of the largest Round 3 zones (in the Irish Sea).) In 2012 RES successfully bid, as part of a consortium, with DONG Energy for a 600MW project off the coast of Northern Ireland and a 500MW project off the north coast of France in a consortium with Iberdrola. RES Offshore has over 100 personnel dedicated to offshore projects, but can also call upon the vast experience within the wider RES Group. As a result of this significant pool of expertise our offshore activities are currently run out of the UK, although we have increasing interest in emerging offshore markets outside the UK, including the USA. This is demonstrated

by RES' participation in the BOEM Smart from the Start program and active participation in other elements of the emerging US offshore wind industry.

General Points

RES Offshore ("RES") appreciates the opportunity to submit its comments on the OREC Funding Mechanism as presented at the BPU on February 21, 2013 ("Invoice Option"). RES respects the work the BPU has done in working towards an OREC mechanism which can address the concerns of all stakeholders and lead to a strong offshore wind industry in New Jersey. Our comments will be brief as we are aware that more detailed responses are being submitted by other developers with whom we have participated in Stakeholder conference calls since the February 21st presentation by the BPU.

The proposals being submitted by Garden State Offshore Energy ("GSOE") and OffshoreMW offer differing approaches in addressing the Invoice Option, but we believe that the underlying concerns prompting these proposals are fundamentally the same, and RES concurs with concerns raised in both GSOE and OffshoreMW's response (and addressed in more detail in Section I. of the OffshoreMW submittal.).

While RES shares the totality of these concerns, our greatest concern, based on our own assessment, and those in the finance community is that the Invoice Option does not provide for assurance of payments from Suppliers to Generators for ORECs. RES believes changes need to be made to the Invoice Option to mitigate financial risk by providing for timely payment from all Suppliers and give Generators and their financiers the necessary level of comfort and assurance required to proceed with a project. Without these changes, we believe the perceived risks associated with the Invoice Option will significantly impair the ability of a developer to gain financing from investors and lenders.

RES's primary intent in making these comments is to point out the main issues of concern we have with the Invoice Option; in addition, the proposals from GSOE and OffshoreMW have evolved after a great amount of thought and discussion on the part of the stakeholder community and merit strong consideration on the part of the BPU. While some of the proposed remedies in these two proposals differ, we believe that mechanisms provided for in both the GSOE Proposal (specifically, escrow accounts, also listed as an option in the OffshoreMW Proposal) and the OffshoreMW Proposal (regulatory enforcement, recourse to credit support) in different ways mitigate risks associated with the Invoice Option and address our concerns.

In order to maintain momentum, RES encourages the BPU to carefully consider both proposals in light of our concerns and those of other stakeholders. We urge the BPU to give careful consideration to the proposal concept (or key features) it believes addresses the issues of the stakeholder community at large, then request that the stakeholders focus further discussion on that concept in order to achieve consensus.

Once again, RES appreciates the opportunity to offer our comments. We recognize that the BPU has expended much time and resource on a difficult job, and believe that if the BPU and stakeholders continue to work together as suggested, a system can be achieved which satisfies the major concerns of all stakeholders, and leads to a strong offshore wind industry in New Jersey.

If you have any comments or questions regarding this response, feel free to contact one of us per below.

Yours sincerely,

Dr Carolyn Heeps
Director of Development Strategy
carolyn.heeps@res-offshore.com
Telephone: (011) 44 (0)1923 608 211

Kevin Lindquist
Senior Manager, Development
Kevin.Lindquist@res-america.com
Telephone: 612-455-8445



Orange & Rockland
a conEdison, inc. company

Orange and Rockland Utilities, Inc.
One Blue Hill Plaza
Pearl River NY 10965-9006
www.oru.com

Susan Vercheak, Esq.
Assistant General Counsel
(212) 460-4333
Email: vercheak@coned.com

May 1, 2013

VIA EMAIL AND REGULAR MAIL

Jake Gertsman, Esq.
New Jersey Board of Public Utilities
ATTN: BPU Docket Number: EX11060353
44 S. Clinton Avenue, 9th Fl.
P. O. box 350
Trenton, NJ 08625-0350

Re: Offshore Wind Rulemaking for OREC Funding Mechanism-Boston Pacific Proposal

Dear Mr. Gertsman:

This letter is submitted to the New Jersey Board of Public Utilities (“Board”) on behalf of Rockland Electric Company (“RECO”) in response to the Staff’s request for comments on Boston Pacific Company, Inc.’s OREC Funding Mechanism Proposal (Invoicing Option)(“Proposal”), dated December 11, 2012, that was the subject of the Stakeholder Meeting on February 21, 2013.

Consistent with concerns raised at that Stakeholder Meeting, RECO respectfully suggests that the Proposal under discussion would benefit from modification. Specifically, RECO questions the lack of an alternative compliance payment (“ACP”) mechanism. Without an ACP mechanism, suppliers that include the costs of offshore wind in their Basic Generation Service bids would reap windfall profits if an offshore wind project was approved but never built. In addition, RECO opposes requiring utilities to hire an administrator solely for the purpose of overseeing the invoices to be issued. Instead, RECO deems an administrator funded by the offshore wind developers but overseen by the Board (similar to what is done for management audits for utilities) to be much more appropriate. Should the Proposal be modified to incorporate these suggestions, the implementation details will require further review.

RECO appreciates the need to finalize establishment of an OREC funding mechanism so that the State can move forward with its public policy to develop offshore wind as a renewable energy resource. Nonetheless, it is critical to set this mechanism with care so that its operation fosters offshore wind in a manner that is aligned with the long-term interests of the State’s electric customers. The extent of the criticism of the

pending Proposal, as currently configured, suggests that it is not the proper funding mechanism. RECO urges that the time necessary to develop the mechanism that properly addresses outstanding concerns ultimately serves the public policy well.

Thank you for your consideration of the above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Susan Vercheak". The signature is fluid and cursive, with a large initial "S" and "V".

Susan Vercheak

C: Service List

Gertsman, Jake

From: Rhonda Jackson <rhonda.jackson@fishermensenergy.com>
Sent: Wednesday, May 01, 2013 5:24 PM
To: Gertsman, Jake
Cc: Chris Wissemann; Paul Gallagher
Subject: OREC Funding Mechanism

Jake,

In accordance with the agreement between NJBPU staff and the OREC Funding Mechanism Stakeholder Group, extending the date until May 1, 2013 to submit revised proposals, on behalf of Fishermen's Energy, LLC, I provide the following brief comments for your consideration.

We appreciate the leadership of GSOE and OSMW, and for the time and effort spent coordinating each of their respective OREC proposals on behalf of all the stakeholders. We applaud the dedication that the OREC Stakeholder Group has to identifying an OREC funding mechanism solution that works for everyone involved.

We would like to echo a few key points:

- We hope that there is an opportunity to close the differences between the proposals.
- We would prefer to avoid any additional delay in finalizing the OREC funding mechanism, however, the goal is to get it right the first time.....
- If additional time and stakeholder discussion is required to identify an OREC funding mechanism, Fishermen's is willing to engage in those discussions as well.

We appreciate that the other developers afforded us the opportunity to stay neutral, since we are in the midst of our OREC filing.

Best Regards,
Rhonda

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Rhonda Jackson  
Director Communications, Outreach & Regulatory Affairs  
Fishermen's Energy, LLC  
PO Box 555 -- 985 Ocean Drive  
Cape May NJ 08204  
(W) 609-286-9650  
(C) 609-374-1387

[www.fishermensenergy.com](http://www.fishermensenergy.com)



**MURRAY E. BEVAN**  
mbevan@bmgzlaw.com

May 1, 2013

**VIA ELECTRONIC AND REGULAR MAIL**

Jake Gertsman, Esq., Legal Specialist  
Board of Public Utilities  
Counsel's Office  
44 South Clinton Avenue  
Trenton, NJ 08625  
Jake.Gertsman@bpu.state.nj.us

***Re: I/M/O Offshore Wind Renewable Energy Certificate (OREC) Funding  
Mechanism, Proposed New Rule, N.J.A.C. § 14:8-6.6  
Docket No. EX11060353***

Dear Mr. Gertsman:

On behalf of the Retail Energy Supply Association ("RESA"),<sup>1</sup> a broad and diverse group of Third Party Suppliers ("TPSs"), we submit these comments in response to Boston Pacific Company Inc.'s ("Boston Pacific's") proposed Offshore Renewable Energy Credit ("OREC") funding mechanism (the "Invoicing Option"), and two proposed alternative funding mechanism options from Offshore MW and Garden State Offshore Energy, LLC ("Garden State"), respectively. Following the February 21 Stakeholder meeting, RESA and other participants engaged in a series of meetings to discuss alternative funding mechanisms. It was clear from the discussions at the February 21 meeting that the Invoicing Option presented by Boston Pacific posed problems for the State's EDCs, TPSs, and prospective offshore wind developers.

As a result of the discussions following the Stakeholder meeting, two additional proposals offered by Garden State and Offshore MW have been circulated among Stakeholders in an attempt to provide the Board with a viable financing mechanism. RESA appreciates the

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<sup>1</sup> RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

efforts of Stakeholders and the collaborative nature of these discussions. RESA will discuss the Boston Pacific "Invoicing Option," the Offshore MW proposal, and the Garden State proposal. We recommend that the Board adopt the alternative funding mechanism proposed by Garden State to support the development of offshore wind ("OSW") projects in New Jersey, as it represents the fairest and most functional financing mechanism.

#### Boston Pacific's "Invoicing Option"

As discussed during the February 21 Stakeholder meeting, RESA is extremely concerned over the concept and design of the Invoicing Option. RESA was additionally dismayed to learn that the Invoicing Option contemplates a number of features not provided in the Boston Pacific Proposal, but which were raised at the Stakeholder meeting, in particular the concept of requiring TPSs to sign a long term power purchase agreement ("PPA"). Given the relatively short existence of the restructured energy market in New Jersey (less than fifteen years), it seems untenable to require suppliers in New Jersey to sign a contract under duress to purchase power from OSW projects for two decades. This type of structure would create adverse accounting and financial reporting obligations for TPSs. RESA maintains that a regulatory scheme requiring TPSs to purchase a percentage requirement of OSW energy is a much more feasible and viable alternative than requiring TPSs to enter into long term contracts with OSW developers.

The Invoicing Option is flawed in that it will not enable TPSs to anticipate their monthly OREC costs ahead of time and price their products and services accordingly. Instead, a TPS will be informed of how many ORECs were generated and the TPS' market share of those ORECs, at least two months after the OREC generation pursuant to the Boston Pacific proposal. This means that TPSs will be subject to unknowable, broad fluctuations with respect to their OREC obligations each month, due to factors not in their control. Therefore, TPSs will not be able to accurately price their products and provide their customers with any stability with respect to ORECs and OREC rate impact to their customers. Because TPSs will be unable to accurately price OREC compliance costs, TPSs will be forced to either pass such costs onto their customers as a pass-through item, or charge substantial pricing premiums to account for this risk. Ultimately, New Jersey's electricity consumers will suffer as a result of this price uncertainty, as it will undermine the budget certainty that would otherwise be available to both residential and commercial customers on a fixed price product, and can undermine what would otherwise be rational economic decisions on when to use power or even when to invest in their own operations.

Finally, the Invoicing Option is administratively burdensome and provides little oversight of OSW developers. RESA believes for OSW financing to be successful, suppliers must have confidence in the accuracy of the OREC price. Unfortunately, the Invoicing Option does not

provide sufficient oversight of developers to guard against developer errors. Essentially, TPSs are forced into a financing scheme with OSW developers where the OSW developers have all the bargaining power and TPSs are simply required to pay what the OSW developers report they owe.

While expressing concerns with regard to the Invoicing Option, RESA does acknowledge the Board's concerns that the reserve fund component of previous proposals created a possible risk of state appropriation of funds to make up for overall state budget shortfalls. RESA believes that Garden State's proposal provides the necessary protection to ensure OSW project funds will not be diverted, and speaks to the needs of suppliers in ensuring price certainty in a fair and unobtrusive way.

#### Offshore MW "Modified Invoicing Option"

RESA appreciates the opportunity to discuss Offshore MW's proposed "Modified Invoicing Option." RESA also notes the discussions with all potential developers and with the State's EDCs were extremely collaborative and productive. The Modified Invoicing Option accounts for the need of suppliers to have cost certainty on OREC/OACPs and a known percentage requirement on a three year forward basis. Suppliers would be required to respond to invoices based on actual PJM load data, rather than projected data.

Unfortunately, the Modified Invoicing Option contains critical flaws and should not be adopted by the Board. In addition, a myriad of disputed content was added to this proposal *after* substantial discussions among the parties had concluded. In an effort to buttress the financial standing of OSW developers at the expense of TPSs, the Modified Invoicing Option would have the Board reconfigure TPS licensure requirements and delineate a penalty procedure for a supplier in default (despite a lack of evidence of TPS default on renewables requirements). Such an approach imposes a significant and unnecessary burden on TPSs solely to protect OSW developers from the opportunity cost of a TPS defaulting before it actually purchases an OREC.<sup>2</sup> The Modified Invoicing Option also fails to create a symmetric mechanism in the event that an OSW project defaults.

RESA notes that in Section II, item 3A, Offshore MW contemplates receiving OREC payments during one part of the Energy Year (summer) but not issuing ORECs until later in the Energy Year (winter). This is due to seasonal variations in wind production. As a concept, RESA is not opposed to this, however, it seems unfair, and possibly not allowed under the Offshore Wind Economic Development Act ("OWEDA") for an OSW project to collect revenue

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<sup>2</sup> Because offshore wind developers would not deliver ORECs to suppliers until payment was received, the risk to the developer is one of having unsold ORECs in the event of a supplier default.

without generating ORECs. It would make sense for TPSs to begin payments to a developer at the outset of an Energy Year that the OSW developer could not call upon until ORECs are actually generated (as contemplated by the Garden State proposal). In this respect, the Offshore MW proposal completely overreaches the scope of OWEDA and simply awards money to a developer for being a developer. In addition, since there is no separate escrow account (the proposal acknowledges the possibility of one) there are concerns regarding the commingling of PJM revenue, payments from suppliers before ORECs are generated, and other project funds. While the proposal calls for oversight through an "OREC Administrator," it is generally poor practice to mix such funds, and will pose administrative and accounting difficulties in ensuring project transparency.<sup>3</sup>

RESA also has concerns about the proposed mechanism to handle insufficient OREC demand (Section II, Item 3B(iii)).<sup>4</sup> Under this section, in the event the projected energy load for an Energy Year does not account for all of the ORECs generated, the developer can tap PJM revenues to pay for unsold ORECs and retire those ORECs. The PJM monies are supposed to provide a cushion for the OSW developers in the unlikely event of supplier default, and should otherwise be refunded to ratepayers. They are not a backup plan for a reduction in total energy load. The second option allows an offshore wind developer to roll unsold ORECs into a future Energy Year, again wholly eliminating any risk to a developer for under-calculation of the OREC price or percentage. It seems to create a rather vicious scenario where OREC targets shift randomly and not according to the percentage schedule set out by the Board. RESA believes the only rational way to address insufficient OREC demand is a recalculation of the OREC obligation percentage on a three-year forward basis.

RESA appreciates that Offshore MW accounts for the possibility that an OSW project may fail after an OREC order is issued, and that the OREC order may need to be rescinded (Section II, Item 3C). However, it is rather ironic that no detailed procedure is outlined for revocation of an OREC order, while there is a burdensome and unsolicited plan for tampering with TPSs' licensure requirements and revocation of a TPS's license in the event of default. To be clear, RESA is not arguing that a TPS in default of its OREC obligations should walk away without penalty. The Environmental Compliance regulations, codified at N.J.A.C. 14:8 *et seq.* contemplate the revocation of a TPSs license, as well as financial and other penalties, in the event of a TPS' default on its environmental compliance obligations (see N.J.A.C. 14:8-1.3) and

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<sup>3</sup> An easy example is that of an attorney escrow account. An attorney can bill at an hourly rate but ask a client to provide a retainer fee. The attorney cannot simply deposit all of that retainer fee into his general account – the attorney must hold the money in escrow and only remove the money earned under the hourly arrangement. At the end of the engagement if any monies are left over, they are to be refunded to the client.

<sup>4</sup> RESA believes this should be a non-issue. Under the Offshore MW proposal a low case estimate is used to calculate the carve-out percentage (See Section II, Item 1B).

have sufficiently motivated TPSs to comply with the State's environmental mandates (to date, there is no record of a TPS defaulting on its environmental compliance obligations).

Not only does Offshore MW lay out a proposed mechanism for punishing defaulting, Offshore MW brazenly proposes to re-open the Energy Competition rules (a project, which, Board staff is undoubtedly aware, took nearly four years to accomplish the last time the Energy Competition rules were set to expire) and change TPS licensure requirements. This is untenable. No other renewable compliance mechanism is treated this way and written into TPS licensure requirements – they are all covered by N.J.A.C. 14:8-1.3. To make matters worse, Offshore MW proposes to modify TPSs credit and bond requirements. While the Board is certainly at liberty to change a TPSs bond requirement, it should be noted that the Board has *never* had to call on, let alone increase a TPSs' bond. This is likely in part due to individual credit and collateral requirements by each of the State's EDCs. This is a costly and completely unfair request, and in light of the remaining avenues of cash available to Offshore MW, is completely unnecessary.

RESA is, frankly, mystified as to the inclusion of Section II, Item 4. The bulk of this section was not part of the proposal during negotiations (and was contested by RESA after it was unilaterally inserted by Offshore MW) and reads more like comments than a financing mechanism proposal. RESA disagrees with the assertions in this Section, in particular the idea that imposing additional credit and bond requirements will only result in "some costs on Suppliers." Modification of credit and bond requirements can have *global* implications for *all* TPSs, and others in New Jersey's energy market who might rely on the bond, and should not be treated in such a cavalier fashion. Furthermore, the requirement to put forth more requirements for TPSs to comply with the invoicing mechanism (in whatever form it is adopted) is completely unnecessary. If TPSs are required to purchase ORECs on a monthly basis, they will do it, or they will lose their license or incur whatever penalty the Board (and not the OSW developers) deems appropriate. This is not the avenue or time to create penalties for TPSs to comply with one component of the RPS requirements; such a discussion, if necessary, should speak to *all* forms of renewables and should be left to the discretion of the Board. And lastly, increasing credit and bond requirements will increase the rates charged by TPSs (and undoubtedly, the bids of BGS Providers), and ultimately harm ratepayers.

RESA believes the ability of developers to hold a cash reserve comprised of PJM revenues (a similar feature is found in the Garden State proposal) negates any reason to bootstrap TPS licensure and bonding requirements to OSW projects. RESA notes, however, that Offshore MW demands a larger reserve fund (two months) than that of Garden State (one month), which ultimately harms ratepayers.

Given the onerous, overreaching requirements proposed by Offshore MW, RESA cannot support its proposal.

### Garden State

The funding mechanism proposal presented by Garden State, like the Offshore MW proposal, allows TPSs to pay for ORECs based on PJM settlement data. This was a high priority for RESA and we are pleased that both proposals account for the need of suppliers to make payments based on final load data. This also eliminates costly and administratively burdensome monthly oversight, as the need for monthly true-ups is obviated.

In lieu of a Clearinghouse, the Garden State proposal envisions direct payments from suppliers (BGS and TPS) to an OSW project or projects. As with Offshore MW, the payments would be based on project-specific OREC prices and percentage carve outs, with any modifications to the percentage being made on a three-year forward basis.

However, rather than burdening TPS credit and bond requirements, the Garden State proposal dictates that payments made to OSW projects go into a project specific escrow account. Each OSW project could hold up to one month of payments due to that project. The reserve fund would be used to cover any possible supplier shortfalls and would be called upon by a "Designated Escrow Agent" (retained at the sole cost of the offshore wind developer) only in specifically delineated circumstances. The reserve fund can only hold up to one month of revenues and any excess is automatically refunded to ratepayers.<sup>5</sup>

The proposal from Garden State acknowledges the need for suppliers to be held accountable and make regular payments, without dictating a new penalty scheme for (as yet unforeseen) errant suppliers. It is conceptually very similar to the Clearinghouse concept proposed in 2011, but without a central pool of money controlled by a central administrator. By making payments directly to the OSW projects, the fear of appropriation of funds is addressed.

RESA does note that there are minor issues with some of the proposal – for example, RESA believes requiring TPSs to make payments to OSW developers ten days after final PJM load data is released is outside of the general commercial norm for these types of transactions, and would prefer to make payments twenty (20) days after the PJM final load data is released. RESA also believes that when a project has excess ORECs and sells them as Class I RECs, that money should be refunded to the ratepayers, and should not remain the property of the OSW developer. RESA believes these issues can be readily resolved.


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<sup>5</sup> While it has not been the subject of discussions among Stakeholders, RESA notes that it is important that the EDCs do not receive a windfall as a result of their obligation to refund OACPs and PJM revenue to ratepayers, and that a timely process and mechanism will have to be developed.

Mr. Gertsman  
May 1, 2013  
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RESA appreciates the opportunity to comment regarding this important matter, and particularly appreciates the hard work and collaborative effort by all of the Stakeholders. Please do not hesitate to contact me should you have any questions or concerns.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Murray E. Bevan". The signature is fluid and cursive, with the first name "Murray" and last name "Bevan" clearly distinguishable.

Murray E. Bevan

## Deborah Petrisko

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**From:** osw-bounces@njcleanenergy.com on behalf of Gertsman, Jake  
[Jake.Gertsman@bpu.state.nj.us]  
**Sent:** Friday, June 14, 2013 3:19 PM  
**To:** osw@njcleanenergy.com  
**Subject:** [Osw] FW: OSW Funding Mechanism: Stakeholder Comments  
**Attachments:** OSW Funding Mechanism Stakeholder Comments May 1 2013.pdf; Offshore MW June 2013 Modified Proposal.pdf; ATT00001.txt

To All:

Staff has received an additional comment from Offshore MW. Attached is a complete set of comments received.

Jake Gertsman

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**From:** Gertsman, Jake  
**Sent:** Friday, May 03, 2013 5:01 PM  
**To:** OSW ([osw@njcleanenergy.com](mailto:osw@njcleanenergy.com))  
**Subject:** OSW Funding Mechanism: Stakeholder Comments

To All

The attached file contains the comments received by staff on the funding mechanism proposal.

Jake Gertsman

Jake Gertsman, Esq.  
Legal Specialist  
New Jersey Board of Public Utilities  
44 S. Clinton Ave 10th Floor  
Trenton, NJ 08625  
(609) 292-1527  
[jake.gertsman@bpu.state.nj.us](mailto:jake.gertsman@bpu.state.nj.us)

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OREC payment mechanism Discussion Document:  
Modified Invoice Option approach but with EDCs as payment agent

Summary: Suppliers remain responsible for meeting the offshore wind RPS carve-out requirements, per OWEDA. However, under this proposal the EDCs collect the necessary payment amount directly from the ratepayer on behalf of the Supplier, and forward these funds directly to the Generator. The Generators provide ORECs to the Suppliers as the Generators are paid for them, i.e. as they receive payments from the EDCs on behalf of the Suppliers. The EDC does not take on any payment obligations or other responsibilities that might have balance sheet or tax impacts, rather the EDCs are merely collecting the offshore wind costs directly from ratepayers on behalf of the Suppliers, and passing this amount on to Generators. Any collection shortage is rectified by the Generator presenting an invoice to the Supplier.

The following is intended to further outline this payment mechanism concept; additional detail will need to be developed over the course of discussions with BPU and stakeholders.

- 1) OREC Order establishes project-specific OSW carve-out: Carve-out indicates OREC price and an annual cap to the number of ORECs a Generator can sell. The Board will establish in regulation an Offshore Wind carve-out as a percentage of load for which Suppliers must buy ORECs/OACPs using the amount(s) approved in an OREC Order(s). This caps the total number of ORECs/OACPs a Supplier must buy in a year and is calculated as the established carve-out percentage multiplied by the Suppliers total state-wide sales. As with all the other proposed mechanisms, the carve-out begins with the first day of a particular energy year, and the percentage would be established as per previous proposals.
- 2) EDCs collect OREC payments from consumers on behalf of Suppliers: EDCs use a line item on their bills to collect a per KWh charge from all end-use accounts (this is similar to line items already on EDC bills collecting payments for third-party energy suppliers). This per KWh charge is calculated based on the following factors:
  - a. Each project's OREC price multiplied by that project's Offshore Wind carve-out percentage requirement. This calculation is done for every project which has an OREC Order for which payments are to be collected, and added to any other projects also due payments so as to arrive at a single per KWh charge. For example, if a Project A's OREC price is \$100/MWh and carve-out is 2%, then that project's per MWh charge is \$2/MWh (0.2 cents/KWh). Project A's per KWh charge is then added to Project B's, etc. to get to a single per KWh charge for ORECs.

- b. An additive multiplier to account for the average difference between meter-readings (customer usage) and PJM final numbers (which is the amount Suppliers must use to calculate RPS obligations). For example, if on average a 100 KWh meter reading means Suppliers must meet an RPS obligation based on 110 KWh, then amount in (a), above, is increased by 10%. This multiplier could be reviewed/adjusted annually as part of the year-end review, and/or if recommended by the OREC Administrator.
- c. An additive multiplier to account for average late- or non-payment from end-users. For example if, on an annual average, payments received are only 98% of payments due, then the amount in (a), above, is increased by 2%. The calculation of this multiplier could be based on payment history generally, or could be based on a rolling average of actual OREC payments received by Generators. This multiplier could be reviewed/adjusted annually as part of the year-end review, and/or if recommended by the OREC Administrator. We note that end-user non-payment for other services is already socialized across ratepayers, whether explicitly in EDC rate-making or in higher operating costs for third-party suppliers.

The line item amount for offshore wind is then calculated and shown on the bill by multiplying the above per KWh charge by the end-user's usage for the month.

- 3) EDCs directly forward the proceeds collected from ratepayers to the Generator's Account<sup>1</sup>: EDCs only forward the amounts actually received, and are not responsible for late or non-payment from ratepayers. EDC's notify OREC Administrator of the amount of funds transferred to each Generator. The timing and mechanics of forwarding these funds from EDCs to Generators could be modeled after the mechanisms used for EDCs to forward payments received for energy services to Suppliers.
- 4) Each month, Generators provide to Suppliers, with a copy to the OREC Administrator, an invoice for the amount that was due for a particular month less the amount received from the EDC on behalf of the supplier (this difference would be due to late- or non-payment by Supplier's customers and the difference between metered data and final sales data, and may be negligible if all measures under Section 2 are included in the per KWh charge calculation.). The invoice indicates the Supplier's OREC/OACP obligation for the most recent month for which final PJM data is available, OREC payments received on their behalf from the EDCs, a running total of the EY's OREC/OACP obligation, and balance of OREC payments received from the EDCs on behalf of the Supplier. Generators also provide to Suppliers any ORECs available, up to either the amount for which payments have been received, or the Generator's annual cap established in the OREC Order.

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<sup>1</sup> The term "Generator's Account" is used here to mean that a transaction is credited to/debited against the Generator, similar to Accounts Receivable or Accounts Payable of any other company. Alternatively, the BPU could require that these proceeds be placed in an escrow account. Which of these two options (escrow account or no escrow account) is utilized is not material to this financing mechanism. As described in later sections, the mechanism does not require the use of a large cash reserve, and so the need or value of an escrow account is probably limited.

- 5) As PJM Revenues are earned monthly by the Generator, they are forwarded to the EDC by no later than the 20<sup>th</sup> day of the following month for refund to the ratepayers with the following exception: If during an EY a Generator has not yet sold a number of ORECs up to their annual cap, the Generator is allowed to hold an amount of PJM Revenue equal to the number of ORECs generated but not yet delivered at the end of a month, times the OREC price. For example, if at the start of a month a Generator is holding 5 ORECs, generates 10 more during the month, and then at the end of the month delivers 12 ORECs, then the Generator is allowed to hold an amount of PJM Revenue equal to 3 ORECs. In a subsequent month, as a previously undelivered OREC is delivered to a Supplier, the Generator is then required to provide the appropriate amount of PJM Revenue to the EDC for refund to ratepayers. Given that the Generator will be receiving payments at the very start of an EY, the use of PJM revenue in this manner would likely only occur if there are a higher than anticipated amount of late or non-payments by ratepayers, or if the actual annual load is lower than that was used to establish the Offshore Wind carve-out.
- 6) If during the course of an EY a Generator sells an amount of ORECs up to the annual cap allowed in the OREC Order, the Generator immediately informs the EDCs and OREC Administrator. From the point of such notification until the end of the EY, the EDC would then only report to the Generators and the OREC Administrator on the amount of revenues received from Suppliers customers, without forwarding the actual funds to the Generators. Instead, the funds are considered to be OACP payments, and the EDC would refund the monies to the ratepayers on their subsequent bills. The Generator in turn issues OACP certificates to the Suppliers in proportion to the funds received at the EDC.
- 7) Generators pay interest on funds held on their Account, and for which they have not delivered an OREC. The interest rate is set by the BPU in the OREC Order, and the interest payments are made monthly and forwarded to the EDC for credit to the ratepayers. Generators do not pay interest on funds received by the EDC but then held by the EDC for immediate refund to the ratepayer, as described in Section 6.
- 8) All of the transactions described above are monitored and overseen by the OREC Administrator, with appropriate reporting from each of the different entities. At the end of each EY, a review and true-up is conducted to verify that all transactions are in order, and to determine and confirm:
  - a. If a Generator needs to present Suppliers with a final year-end statement of balance due. Such a year-end statement would be necessary if a Supplier did not receive a sufficient number of ORECs/OACPs to comply with the Offshore Wind carve-out. This would occur if a Supplier's customer does not make full and timely payment, and/or to account for differences between meter-reading and PJM final data, and/or if a monthly invoice from Generator to Supplier had not yet been paid. This discrepancy would likely be very small or even zero, depending on which measures are adopted in Section 2.

- b. If a Generator failed to deliver ORECs to a Supplier from which payment was received (via the EDC), then the Generator shall have to refund the appropriate amount back to the EDC and issue an OACP certification to the Supplier. A requirement that Generators bank all unused ORECs, and use banked ORECs as necessary, will minimize OACP situations. While it is highly unlikely that a Generator would receive excess payments for ORECs, this situation would be identified in the annual review, and the Generator would be required to make a refund payment to the Supplier(s).
  - c. If Generators made all interest payments, as described in Section 7.
  - d. If ratepayers have been credited with all funds that have been provided to the EDCs by Generators.
- 9) EDCs will have some administrative costs under this proposal. The costs for this administration should be charged to the Generators and incorporated into the OREC price; in order to do this, the EDCs will have to provide the costs to Generators prior to the Board establishing the final OREC price. The amount EDCs charge for this service could be reviewed by the Board, as it is ultimately paid for by the ratepayer and the Generator has little/no control over the cost.

## Advantages

- Supplier credit risk is greatly minimized, such that no program-specific credit support from suppliers would be needed. The only supplier credit risk to Generators is for unpaid or late payments of a Supplier's customer's bills, and this is mitigated by the calculation described in Section 2 and the use of PJM Revenues as described in Section 5.
- Greatly reduced circumstances under which OREC funds are collected from ratepayers only to have these same funds returned at a later date in the form of an OACP. Also, OACPs are returned to ratepayers faster than under all previous proposals.
- No need for a large cash reserve of ratepayer monies, **whether** in an escrow account or otherwise.
- Greater transparency on the OREC program, as charges and rebates for offshore wind appear in one place, on one bill.