
**Philip J. Passanante**
Assistant General Counsel

800 King Street
Wilmington, DE 19801

P.O. Box 231
Wilmington, DE 19899-0231

302.429.3105 – Telephone
302.429.3801 – Facsimile
philip.passanante@pepcoholdings.com

April 1, 2009

**VIA ELECTRONIC MAIL**
**anne.mcshea@bpu.state.nj.us**

Anne Marie McShea
Program Administrator, Policy,
Regulatory Development and Special Projects
State of New Jersey
Board of Public Utilities
Office of Clean Energy
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625

**RE:** Atlantic City Electric Company Comments on Proposed Offshore Wind Renewable Portfolio Standard Carve-Out and Establishment of Offshore Wind Renewable Energy Certificate

In the Matter of Off-Shore Wind Set-Aside Changes to the New Jersey Renewable Energy Portfolio Standards Rules, N.J.A.C. 14:8-2
BPU Docket No. EX08100930

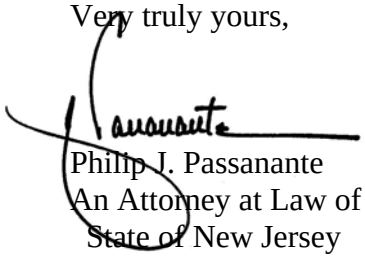
Dear Ms. McShea:

On behalf of Atlantic City Electric Company, following for your review and inclusion in the record are written comments in connection with the above-referenced proceeding.

The Office of Clean Energy is authorized to post these comments on the Board's Offshore Wind Working Group web pages.

Feel free to contact the undersigned with any questions or if I can be of further assistance.

Very truly yours,



/jpr
Philip J. Passanante
An Attorney at Law of the
State of New Jersey

Enclosure

cc: Kristi Izzo, Secretary
Mark W. Finfrock
Kenneth J. Parker
Charles A. Wimberg
William R. Swink
R. Lee Wasman
Todd L. Goodman, Esquire
Roger E. Pedersen
Wesley L. McNealy
Vicki Land

State of New Jersey
Board of Public Utilities
**Offshore Wind Public Hearing**
March 26, 2009

# Atlantic City Electric Company's Comments to the New Jersey Board of Public Utilities' ("BPU") Straw Proposal: New Jersey's Offshore Wind Renewable Energy Certificate ("OREC")

## BPU Docket No. EX08100930

**BPU's Use of Funds**

One of the Guiding Principles established to guide the development of an effective offshore wind ("OSW") carve-out was to "Minimize ratepayer impacts." The impact to customers from future Basic Generation Service ("BGS") auctions and third party supply arrangements could be significant, especially due to the fact that the OREC price will be based on a gross recovery of the costs to develop offshore wind (excludes the netting of any revenues received by the Designated Facilities from PJM). Currently, offshore wind is an above-market energy resource that is likely to increase the monthly supply cost for customers. If all the excess OREC funds and the OSW revenues received by the BPU are not refunded to customers and such refunds are not processed in a timely manner, customers will be further negatively impacted from a supply cost perspective. Consistent with the BPU's Guiding Principles, ACE recommends that BPU establish a process to refund 100 percent of any (1) excess OREC funds and (2) OSW revenues to all retail customers based on their percentage of State energy usage.

**Capacity**

It is unclear if an offshore wind facility would have the obligation to be a capacity provider to PJM. If a Designated Facility becomes a capacity provider, the revenues generated by this service will benefit only the Designated Facility and could provide a profit windfall to such provider. Since New Jersey customers are guaranteeing the revenue stream to the Designated Facilities and are, therefore, shouldering the above-market price risk, customers should also be guaranteed the benefit of capacity revenues from PJM. Under a highly competitive Request for Pricing process, such as the annual BGS auction process, bidders must provide the lowest price possible in order to win tranches. As such, the bidder's prices reflect the capacity revenue stream by reducing the bid price to recognize capacity revenues received from PJM. Due to the relatively limited number of likely bidders in the upcoming OSW bidding process, it is less likely that the true economic benefit associated with the Designated Facilities receiving capacity revenues will be reflected in the bid pricing. Furthermore, unlike traditional fossil fuel or nuclear generators who account for the overwhelming majority of BGS bidders, the OSW industry does not yet have the operational history needed to be able to factor potential capacity revenues into the Request for Pricing process. Therefore, there is a high risk of New Jersey customers paying more for offshore wind than that required to fund OSW projects. ACE

recommends that BPU require the wind providers to refund 75 percent of all capacity revenues received to BPU, which should then be refunded to customers. ACE recognizes that, if 100 percent of the capacity revenues were to be refunded, there would be no incentive for wind providers to become a capacity resource and/or maximize the efficiency of the wind resource for capacity reliance. Therefore, ACE thinks it appropriate to split such revenues between the wind providers and the customers who are financially supporting the projects.

**Third Party Suppliers Contracts**

Risks to suppliers should be minimized to avoid additional risk premium charges to ratepayers and to insure that potential suppliers are not discouraged from BGS bidding as well as direct retail participation.

To promote regulatory and cost certainty for BGS suppliers (and therefore lower risk premiums), Master Agreements should reflect a clear method of making suppliers whole on new costs stemming from the OREC obligation. Currently, BGS supplier costs are bid and spread over an unknown number of MWhs of load served. The resulting volumetric price risk for recovering the OREC obligation from customers through an unknown volume of load to be served (fixed cost to be collected over a variable volume) would be priced into BGS supplier bids through an added risk premium. ACE recommends that the BGS supplier's OREC obligation be separated from the fixed bid price per MWh and be established as a fixed dollar commitment that is collected as a pass-through from customers irrespective of load.

Separate utility long-term PPA contracts are not recommended by ACE as the approach would not achieve "cost" consistency across the State and would create a major OREC compliance issue if a wind facility under contract does not come to fruition.

Third party suppliers operating in New Jersey that have existing contracts that span OREC obligation periods will be financially harmed if they cannot pass through their OREC obligations. ACE recommends that third party suppliers be required to demonstrate to the BPU the existence of all contracts entered into prior to the effective date of the final OREC Order. Upon being deemed a "Restrictive Contract" by the BPU -- defined as a contract entered into prior to the effective date of the OREC Order -- such contract and the corresponding load will be exempt from the OREC obligation.

Third party retail suppliers entering into contracts after the effective date of the OREC Order must know their OREC obligation for the entire term of a contract and the suppliers must know this OREC obligation prior to a contract's execution. ACE recommends that the BPU set the annual OREC obligation for at least a five year forward period so that suppliers will not be required to build a risk premium into their contract price for not knowing their level of OREC obligation during, at a minimum, a five year period.

**Operating Requirements**

The proposed OREC structure significantly reduces incentives for wind generators to install and provide operating flexibility (ancillary services) to the PJM transmission system. Wind generators alter their generation in response to signals from PJM by changing the pitch of their blades or by shutting down individual turbines. In light of the magnitude of the wind farms currently under consideration in New Jersey, ACE believes this capability must be fully contemplated. ACE was encouraged that BPU Staff has stated that it is already coordinating with PJM. Operating requirements to be placed on participants in the OREC process must be clearly documented before the selection process begins. If PJM establishes a program to back-off wind generators for operating flexibility, one potential solution would be to recognize in advance a reduction in capacity factor when allocating the ORECS -- perhaps one percentage point -- to allow for PJM backing-off of wind generators during low-load and ramping periods.

**COMMENTS OF THE**
**DEPARTMENT OF THE PUBLIC ADVOCATE**
**DIVISION OF RATE COUNSEL**

**Revised Straw Proposal:**
**New Jersey's Offshore Wind Renewable Energy Certificate ("OREC")**

**March 26, 2009**

## 1. Introduction

The Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("Board" or "BPU") for the opportunity to present our comments on the Straw Proposal submitted to stakeholders for comment by the Office of Clean Energy ("OCE"), dated March 10, 2009. The purpose of OCE's proposal is to facilitate the goals established in Energy Master Plan ("EMP") released on October 23, 2008 that increases New Jersey's commitment to renewable energy to 30 percent of electricity sales by 2020. An integral part of the EMP has been the call for a minimum of 1,000 megawatts ("MW") of offshore wind capacity to be developed by 2012, and a minimum of 3,000 MW of offshore wind capacity by 2020.

OCE, in its revised straw proposal offered for comment on March 10, 2009, proposes to establish an offshore wind set-aside or "carve-out," within New Jersey's Renewable Portfolio Standard ("RPS"). This carve-out would establish a new tradable credit referred to as an offshore wind renewable energy certification or "OREC." This OREC would have a companion maximum price referred to as an offshore wind alternative compliance payment or "OACP."

Rate Counsel supports what it believes are the overall goals of OCE's proposal: to establish market certainty for the development of offshore wind generation in a challenged financial and economic environment. We do not however, support this specific proposal and find it to be premature since the costs and consequences of this proposal have not been thoroughly addressed. The Straw Proposal includes no estimates of program administrative costs, no estimates of how this approach will reduce the overall costs of delivering offshore wind energy, and most importantly, no estimates of the impact that this proposal will have on rates.

Rate Counsel is particularly concerned that OCE's proposals could have significant implications on Basic Generation Service ("BGS") rates. These issues have not been completely nor thoroughly addressed in the OCE proposal. In the few instances where general proposals have been offered, Rate Counsel believes that OCE's recommendations would result in an immediate increase in rates – driven in large part from the uncertainty associated with this newly-proposed regulation. Rate Counsel is concerned that BGS rates will increase for the following reasons:

(1) OCE's proposal will create a new class of RECs and REC requirements that will increase the cost of RPS compliance.
(2) The creation of a new set of alternative compliance payments will create new uncertainties incenting load serving entities ("LSEs") into "padding" their offers with the maximum offshore wind price ("OACP") to hedge against unexpected offshore wind market outcomes.
(3) OCE's transition proposal to establish a 2013 placeholder value for ORECs will almost certainly result in an increase in rates since no LSE will want to bear the unnecessary risk of under-pricing for this emerging RPS requirement. If LSEs are forced somehow to set prices for their offshore wind requirements at the placeholder value, it sets up the possibility of retroactively re-setting rates to correct for deficiencies in the administratively-determined price.

Rate Counsel is also concerned about the specific proposal to create an entirely new and unneeded framework that sets a troubling precedent and undermines the traditional policy goals of using a RPS to support renewable energy development.

Rate Counsel recommends that the Board utilize an already fully-vetted framework for supporting offshore wind energy development. This framework, established during the course of the Generic Solar Renewable Energy Certificate ("SREC") proceedings, and later expanded in individual electric distribution company ("EDC") filings, could be easily modified to accommodate offshore wind projects.

**2. Rate Counsel Opposes Additional Set-Asides**

Rate Counsel has opposed establishing new set-asides for renewable energy resources since the advent of the EMP discussion and working group process. Our rationale for opposing these set-asides is quite simple: set-asides result in inefficiencies raising costs to ratepayers. It was Rate Counsel's experience during the course of the EMP working group discussions that the idea of establishing new set-asides was a popular policy proposal for the myriad individual renewable energy developer interests participating in the process. During these discussions, proposals emerged for set-asides for on-shore wind, behind-the-meter wind applications, and bio-fuel generation, to name a few.

Rate Counsel is very concerned that if the Board approves OCE's Straw Proposal it will be moving down a very slippery slope of splitting and balkanizing renewable energy markets into numerous sub-markets with their own tradable credits, their own suppliers, and their own inefficiencies. In such a situation, the state's renewable energy policy digresses into one of various interest groups seeking preferential treatment for their resources at the expense of other renewable energy generation, and ultimately, ratepayers. The Board needs to seek another solution that promotes the efficient development of renewable energy, without compromising the integrity of its own long-term policy.

Rate Counsel is also concerned that by adopting OCE's proposal the Board would inadvertently draw itself into the very trap that has contributed to the current renewable energy underinvestment problem: namely, the regulatory uncertainty resulting from frequent changes in rules and regulations that increases risk for project developers. Adopting OCE's proposal potentially signals to the market that the Board is ready and willing to change or modify its regulatory policies on renewable energy. This creates a moving standard, or set of standards, that challenges renewable energy investment.

While the change in regulatory policy proposed by OCE certainly offers significant benefits to offshore wind developers, it potentially creates adverse impacts on current and potential renewable energy projects that may have been expecting higher REC premiums due to the development of offshore wind energy as the marginal technology setting market prices. Extracting wind energy from the current potential REC resource mix potentially lowers the market clearing price, changing payback and internal rate of return assumptions for existing and emerging projects.

**3. OCE's Proposal Would Undermine the Traditional Goals of a RPS**

A RPS is typically established to set a renewable energy threshold that all market participants must meet. Suppliers are then required to either develop their own renewable energy production, or purchase renewable energy credits ("RECs") from those qualifying facilities that do not need these credits to meet their own power generation requirements (i.e, those over complying with the standard).

A RPS is commonly thought of as a "market-based" approach for developing renewable energy because it lets the market determine, at the margin, the most cost-effective sources for meeting renewable energy standards. In adopting the RPS, the Board specifically noted:

> New Jersey's RPS proposal for 20 percent renewables by 2020 is not predicated on the development of off-shore wind resources; nor does the RPS, except for the solar set aside dictate what renewable energy technologies are to be developed to meet the RPS requirements. ***The RPS is a market-based rule. It relies on the economic competitiveness of the market in response to the regulation to develop facilities for compliance.***[1]

Under a RPS, a renewable energy supply curve arises in which the least-cost renewable energy resources are developed and deployed first, with higher cost resources either being developed last, or not at all if they are relatively uneconomic. As a result, the least-cost development of renewable energy is thought to be assured through competition.

When the Board modified its RPS in 2006, it established a solar energy set-aside which effectively established a separate solar energy market, and necessitated the

[1] NJ Register, Volume 38, Issue 10, May 15, 2006

development of solar renewable energy credits ("SRECs") for trading purposes for load serving entities ("LSEs"). The Board's approval of the solar set-aside within the RPS created a sub-market which effectively split-off close to 2,000 MW of renewable capacity into its own unique market with its own suppliers and customers. OCE's offshore wind proposal compounds this market segmentation by pulling an additional 3,000 MWs, for a total of 5,000 MW of potential renewable energy capacity away from a traditional RPS approach and into not one – but two separate classes of set-asides.

Competitive markets are defined by a large number of buyers and sellers. Having a large number of buyers and sellers creates competitive pressure for cost reduction and the emergence of substitutes and alternatives. If an LSE, for instance, needs a REC, and finds one offered by an offshore wind facility at $45, while an onshore wind facility is offering RECs at $25, the LSE can choose the lower-cost alternative to meet its RPS requirement.

Creating more and more sub-markets undermines those goals of competitive renewable energy markets by reducing the number of buyers and sellers and creating specific market differentiation. Market differentiation is the first step in moving otherwise competitive markets into those that have the ability to exert various degree of market power since substitutes and alternatives are greatly reduced. Suppliers in these markets become price-makers, not price takers. Competitive pressures to reduce costs are significantly deteriorated, and ultimately consumers (ratepayers) will pay higher rates for projects that may not have existed in a more robust market structure. Rate Counsel cannot support such a mechanism, regardless of how well-intentioned.

**4. OCE's Proposal Would Result in New and Potentially Costly Administrative Structure**

OCE's proposal creates an entirely new market structure, price discovery institution, and regulatory compliance mechanism that would unnecessarily increase costs to ratepayers. OCE's current proposal would do the following:

- Establish a new offshore wind set-aside within the Board's existing RPS.
- Create a new set of RECs and ACPs, each of which would have their own vintage years. If OCE's proposal is approved, LSEs could have as many as 10 different compliance certificates to manage in order to meet their RPS requirements.[2]
- Create and administer a non-binding price discovery process comprised of a "Request for Pricing Proposals" ("RPP") to set the administrative standard-offer price for ORECs that differs little from a feed-in tariff.

[2]This would include: (1) RECs; (2) ACPs; (3) SRECs; (4) SACPs; (5-7) three different vintage years of ORECs; and (8-10) three different vintage years of OACPs.

- Require the Board to be the supplier administrator that takes title to ORECs and serves as the broker collecting revenues for ORECs from LSEs, and allocating payments to offshore wind developers.

None of these proposals would be necessary if the Board utilized the existing solar contracting approach developed by a broad group of stakeholders for a period now approaching one year. As will be discussed later in our recommendations, by utilizing this approach the Board could:

- Preserve the existing RPS and its market structure without the need for developing a set-aside or new class of RECs and ACPs.

- Leverage the existing competitive bidding process developed by the EDCs for solar energy and what should be lower incremental cost than the stand-alone costs of developing a RPP process proposed by the OCE.

- Leverage the existing solar auction process into a broader renewable energy auction process at what should be a lower incremental cost than the supplier administrative functions included in the OCE proposal.

- Restrict the Board's overall engagement in the mechanics of the renewable energy development process to simply review and approval (and not active participant).

**5. OCE's Proposal is Inconsistent with the Board's Past Rejection of Feed-In Tariffs**

OCE's Straw Proposal, at its core, is a modified feed-in tariff: a mechanism frequently proposed as a remedy to renewable energy underinvestment, and one just as frequently rejected by the Board due to its inefficiency in determining price. Typically, a feed-in tariff is based upon an administratively-determined standard offer price. Renewable energy developers receive payment for their renewable energy generation at the standard offer price regardless of the fact that their actual costs may be considerably lower than the administratively-determined standard offer price.

The only difference between the OCE proposal and a traditional standard offer is the use of a RPP process to set the appropriate standard offer price. Rate Counsel believes this approach is potentially worse than an administratively-determined price which is at least tempered by regulatory oversight.

OCE's proposal would use a RPP or "indicative offer" approach at discovering price. Under this approach, developers offer non-binding price offers for offshore wind energy.

The approach is non-binding from a price perspective since a high bid does not exclude a developer from later offering ORECs at the lower standard offer price.[3]

Rate Counsel is concerned that this approach may unnecessarily inflate bids, and drive up ratepayer costs, since there is little to no accountability for excessive offers. In such a framework, developers have an incentive to bid-up the price because in doing so, the developer is (a) not excluded from future market participation and (b) can increase profits by inflating its bid, which if followed by all participants, would drive up the OREC supply curve and the market clearing price used to determine the standard offer. If the Board accepts this proposal, some mechanism needs to be included that would reject loosing bids (high offers) from future participation.

OCE's proposal to temper the possibility of inflated bids further highlights the feed-in tariff properties of this approach. By using a consultant, and information from bids in other states and other projects, OCE's proposal digresses into an administratively-determined, regulated price. Thus, ratepayers have the unattractive choice of setting a standard offer price from a faulty bidding system or a potentially inefficient regulatory process. The Board should reject this type of approach much as it has done for solar energy.

**6. Rate Counsel is Concerned That The Proposal Could Increase BGS Rates**

Rate Counsel is concerned that OCE's proposal will have an unnecessary impact on BGS rates for customers.

First, these BGS rates will increase due to the additional costs for offshore wind energy as well as the compliance and administrative costs included in the OCE proposal. Increases in RPS compliance costs for LSEs, in turn, will be passed along to ratepayers. Unfortunately, the cost of this new compliance standard is unknown since OCE has provided no estimates regarding the administrative costs or the rate impacts of its proposed market design.

Second, the creation of a new set of ACPs ("OACPs") will create an opportunity for LSEs to immediately insulate themselves from risky offshore wind market outcomes. Given market uncertainties about prices, LSEs will have incentives to impute the maximum compliance price for offshore wind to insure against pricing shortfalls.

Third, the transition proposal offered by OCE, for the first round of offshore wind sales in 2013, will result in one of two outcomes. First, it is highly unlikely that OCE will be able to accurately estimate an administratively-determined offshore wind price and some form of *ex post* true-up will likely be required. Second, if OCE sets both OREC and OACP prices, it is highly likely that the OACP price will be selected in order to insure against uncertain market outcomes, and the possibility that LSEs may not be

[3]Assuming that a bidder meets the technical requirements to be a designated facility. There is a binding constraint on the quantity offered by the bidder: they cannot, at a later time, increase the capacity (and energy) from the facility beyond an amount included in the original offer.

reimbursed for choosing some lower price (like the placeholder OREC price) at some later date.

### 7. OCE's Proposal Excludes A Rate Impact Analysis

A significant shortcoming in OCE's Straw Proposal is the omission of any program cost estimate. It is hard to evaluate the overall merits of this program without reference to program costs. Ultimately, program costs will determine the effectiveness of this program over other alternatives, and most importantly, the rate impacts that will be imposed on ratepayers from this new program.

Rate Counsel would also propose that some form of cost circuit breaker, like that adopted by the Board in the RPS rule modifications for solar, be adopted.

### 8. Proposals Could Shift Market Risk from Developers to Ratepayers

An earlier version of OCE's straw proposal defined annual OREC prices as the difference between the total OREC price offered by a project and the annualized LMP price for spot (wholesale) market energy. Thus, potential developers would bid an "all-in" price, referred to as a "revenue requirement,"[4] needed to earn a return on their investment. Revenues would include electricity sales revenues and net OREC revenues (presumably the all-in price less electricity sales revenues). The most recent version of the proposal has stricken this formula from the proposal although there are repeated references to "revenue requirements" elsewhere in the OCE proposal, and a statement that "all of the Designated Facility's revenue received from PJM associated with energy produced and delivered (OSW Revenues) will be the property of the BPU." Rate Counsel would request clarification on this pricing proposal to ensure that OREC prices are based only on the additional financial support (i.e., non-electricity sales revenues) needed to develop offshore wind projects.

Rate Counsel would not support a pricing mechanism that includes a true-up for wholesale energy prices. Overall financial support for offshore wind energy comes from a variety of sources that broadly include REC revenues, federal tax incentives, other state and federal incentives, and electricity sales revenues. Rate Counsel believes that wind developers are better suited to bear the risk associated with changes in wholesale energy prices than ratepayers. Including this aspect in any REC pricing proposal does not send strong signals to developers to maximize electricity sales revenues from their facility from non-spot market transactions. The current Straw Proposal notes that OCE will "develop provisions to ensure that the OSW Designated Facilities maximize the sale of electricity to PJM." How OCE intends to make these assurances, and its qualifications to make such assurances, raises exceptional concerns for Rate Counsel.

---

[4] A revenue requirement is a regulatory construct designed to develop a set of revenues needed to earn a return on a regulated asset and is not a method of financial modeling typically used by competitive, merchant energy assets. This further highlights the feed-in tariff, regulatory-based approach of the Straw Proposal.

Further, including electricity sales revenues into a formula to determine OREC prices is entirely inconsistent with other forms of renewable energy pricing support including solar energy. For instance, SREC prices are not trued up for actual electricity savings (or sales) revenues under the Board's long term SREC contracting approach. Solar developers only bid the additional (not total) financial support needed to ensure project development. Revenue streams associated with electricity savings, incentives, and tax credits are excluded from the SREC determination.

Rate Counsel recommends that if the Board accepts OCE's proposal, OREC prices be bid at levels needed to support the project net of anticipated electricity sales revenues. It should be up to wind developers to find ways to meet or exceed those anticipated electricity sales revenue targets.

**9. Excess Revenues Should be Used to Lower Rates**

OCE has proposed that any excess OREC revenues be used as a funding source for clean energy programs supported by all retail customers such as the Clean Energy portion within the Societal Benefits Charge ("SBC") or the Universal Services Fund ("USF"). Rate Counsel is opposed to using excess revenues for anything but credits to the already significant commitments ratepayers are making to clean energy initiatives. The Board should be clear that any excess revenues created from this program will be used to reduce rates, and not to expand, or create additional (higher) incentives for existing clean energy programs beyond their budgeted levels.

**10. The Use of Non-Price Evaluation Terms Potentially Biases Outcomes**

OCE has proposed using other factors in determining its standard offer price such as the potential that a developer can actually complete a project and an undefined range of economic benefits to New Jersey from any individual project/bid. While Rate Counsel supports specific, and pre-defined participation qualifications, we are concerned that the use of such undefined (or loosely defined) non-price terms is highly subjective and arbitrary. The use of these subjective evaluation parameters potentially biases market outcomes by influencing the standard offer, which in turn impacts market entry, wind energy capacity development, and ultimately, rates.

**11. Recommendations: The Current SREC Contracting Approach Should be Modified to Support Offshore Wind Energy**

Rate Counsel recommends that the Board direct stakeholders to this process, particularly EDCs, to work collaboratively in modifying the current SREC contracting approach to accommodate offshore wind development. Rate Counsel offers the following suggestions for consideration in this process:

- The Board would direct each of the EDCs to support a target amount of offshore wind energy. There would be no specific ORECs nor any other specific "set-aside."

- The Board and other stakeholders would develop a long-run contracting process for RECs generated by offshore wind energy that, as starting point, follows some variation of the schedule offered by OCE in its Straw Proposal. Some share of the EMP's offshore wind goal can be securitized, while the remaining share is left to the bi-lateral market much like the current plans being utilized for solar energy.

- EDCs would be required to enter into long-term REC contracts with offshore wind energy developers only.

- EDCs would conduct a Request for Proposals ("RFP") process, overseen by an independent third-party administrator, preferably the same third party administrator overseeing the solar energy RFP process.

- Offshore wind developers would submit fixed long term bids for the RECs generated from their projects.

- EDCs would award REC contracts to winning (least cost) bids subject to Board approval. Rejected bids would not be allowed to participate (serve as supply sources) until the next RFP process.

- EDC REC contracts would be for the specific price and quantity offered in the bid, not a market clearing price.

- EDCs would auction RECs to the market in a fashion similar to SRECs.

- EDCs would develop mechanisms, including the use of the Clean Energy Budget within the Societal Benefits Charge ("SBC"), to recover the prudently-incurred cost of the program including:

    - Administrative costs associated with the program.

    - Credits for revenues collected from the REC auction that are in excess of those paid under longer-term REC contracts arising from the competitive bidding process.

    - Charges to make up for shortfalls between revenues generated from the REC auction proceeds and the long-term REC contracted amounts from the competitive REC bidding process.

- The Board will establish a circuit breaker that restricts continued progress in developing future offshore wind energy capacity to some absolute cost, or percent cost increase, constraint.

Rate Counsel believes this approach would be more efficient and transparent relative to the proposal offered by OCE.

Testimony of Doug Pfeister, Bluewater Wind

Offshore Wind Renewable Energy Certificate Hearing

New Jersey Board of Public Utilities

Trenton, NJ

March 26, 2009

Thank you President Fox and Board Staff for giving me the opportunity to provide you comments on the proposed offshore wind carve out in the state rps and establishment of an offshore wind renewable energy certificate (OREC).

My name is Doug Pfeister. I'm project director for New Jersey and head of siting and permitting for bluewater wind of Hoboken. We are an offshore wind developer with active projects in several states in the northeast, including New Jersey and Delaware, where we have the country's first offshore wind power purchase agreement, with Delmarva Power and Light.

Governor Corzine and the Board have shown great leadership on offshore wind, building upon years of study and analysis going back to the 2004 Feasibility Study and the Blue Ribbon Panel on offshore wind and continuing today with the ecological baseline studies due for completion

this year. The state is leading the way on offshore wind – but is doing so upon a rock-solid foundation.

The offshore wind straw proposal we are all considering is the result of an open, inclusive, and responsive stakeholder process seeking to find a policy solution that will bring large-scale renewable energy to New Jersey. That source – the only source available in a state as small and densely populated as New Jersey – is offshore wind. This technology, spinning in Europe since the early 1990s with 30 projects now in operation, is more expensive than conventional power generation but without it, New Jersey cannot serve a significant portion of its load with in-state renewable electricity. A thousand megawatts of offshore wind means that roughly 300,000 households will be powered by pollution-free, renewable electricity. There is just no other option if renewable energy is to lead us into the future in New Jersey.

The straw proposal is intelligently designed so that ratepayers pay only the above-market incremental cost to bring offshore wind parks to construction. The proposal entitles the projects to a fixed price per mwh – but ratepayers pay just the amount not collected in the PJM marketplace. This is a market-based solution that caps the OREC payment and enables ratepayers to reap the benefits of high electricity prices through lower OREC payments. In other words, when wholesale electricity prices are high, OREC prices are low.

Getting this offshore wind policy right is a big opportunity for New Jersey. Getting it right means bringing a big, brand-new industry to the state, an industry that will spend billions of dollars over the next five years and create upwards of a 1,000 union jobs so that hundreds of wind turbines can be installed, hundreds of miles of electric cable can be laid, and key components of the electric grid – substations and transmission lines back on shore – can be upgraded and built. If New Jersey doesn't get the policy right, then some other state will, and the American offshore wind industry will go there. Over the past five years, the European land-based wind industry has come to America as the market and policy environment have matured. The story will repeat itself soon for offshore wind. It's not a question of *if* – but *when* and *where*.

I'll close by sharing with you an offshore wind success story I came across in a recent issue of the online publication renewable energy world. After the fall of the Berlin Wall, and a draw down in American troop levels in the country, the german port city of Bremerhaven fell on hard times as its services as a supply harbor to the US army were drastically scaled back. It was also at this time that Bremerhaven was losing business to lower-cost Asian and eastern European shipyards. The combined effect was devastating: 3,500 port workers lost their jobs and the city's population shrank by 25 percent.

But Germany's national policies to ensure development of 30,000 megawatts of offshore wind by 2030 and an investment of 250 million euros into the city produced an offshore wind "boomtown." Here are the results:

1. Four new production facilities for turbines up to six megawatts in size;
2. Two manufacturing plants for rotor blades up to 200 feet long;
3. A design and manufacturing facility for offshore steel foundations for offshore wind;
4. Two major R&D centers, containing one of the largest wind tunnels and blade testing facilities in the world;
5. Bachelor- and master-of-science programs in wind energy at the local university; and
6. Last but not least, the creation of 700 new jobs over the last four years and an additional 300 to 500 expected in the near term.

This is the kind of future we can have in New Jersey with the right policies – such as the straw proposal we are discussing – to bring offshore wind to the state.

Thank you for your time and I am happy to take any questions you may have.

**IN THE MATTER OF OFF-SHORE WIND SET-ASIDE CHANGES TO THE NEW JERSEY RENEWABLE ENERGY PORTFOLIO STANDARDS (NJRPS) RULES, N.J.A.C. 14:8-2**

**BPU DOCKET NO. EX08100930**

**MARCH 26, 2009 PUBLIC COMMENTS BEFORE THE**

**NEW JERSEY BOARD OF PUBLIC UTILITIES**

**BY**

**ROBERT L. GIBBS, MANAGER DEVELOPMENT – ENERGY RENEWABLES**

**ON BEHALF OF**

**PSEG GLOBAL, LLC**

Good morning President Fox, Members of the Board, my name is Robert Gibbs. I am Manager Development for PSEG Global, L.L.C. ("Global") and am speaking today on behalf of Global. PSEG Renewable Generation, LLC, a wholly owned subsidiary of Global, has partnered with Deepwater Wind to form Garden State Offshore Energy, LLC and through this joint venture develop a 350 MW wind farm off the coast of South Jersey that, if built, will produce more than 1.2 billion kilowatt-hours annually – enough to supply over 110,000 New Jersey households with clean, renewable energy made here in New Jersey. Global appreciates the opportunity to speak on this important topic and specifically to provide comment on the Board Staff's Offshore Wind Renewable Energy Certificate ("OREC") straw proposal. With me today is a representative from our joint venture partner, Deepwater Wind, who will also share thoughts with you.

Global shares the view of the Board and the New Jersey Energy Master Plan that renewable generation, particularly offshore wind, must play a growing role in our energy

portfolio. However, as you know, offshore wind farms are billion-dollar projects that require developers to navigate uncharted regulatory territory and assume considerable risks. As Global has moved through the development process for its proposed 350 MW facility off the New Jersey coastline it has become increasingly clear that growing an offshore wind industry requires a productive partnership with local, state and federal government entities. We commend the Corzine administration and the BPU in particular, for facilitating such a partnership. The process for developing this straw proposal was open, deliberative and thoughtful.

Global believes the Board Staff's OREC straw proposal is a sound construct that would provide the kind of predictable revenue stream that will be necessary to finance a large offshore wind project. In particular, it recognizes that once built, wind generation can compete in the energy marketplace, but given the construction, siting and cost issues associated with the development, off-shore wind can only come from a small number of projects assuming those projects have the capability of obtaining appropriate financing upfront and can insure lenders that a fixed long-term revenue stream exists. With a few refinements, we believe the proposed carve out will help the State make progress toward the Governor's clean energy goals by tapping into New Jersey's most abundant renewable resource, offshore wind. We also believe this construct will help achieve these goals with the least amount of risk to ratepayers because it relies on a competitive process to set the OREC price, and it will not require ratepayers to subsidize offshore wind development unless the offshore wind farms are built.

I would, however, like to suggest a few minor changes that we believe should be made to the straw proposal.

First, the straw proposal states that the first Request for Pricing Proposal ("RPP") establishing the Vintage Year 2013 OREC price will be issued in August 2009 with the final vintage year price being set before the February 2010 BGS auction. Global believes that setting the OREC price this early would be premature. Despite what some developers may believe, setting a 20-year OREC price at the same time as deploying MET stations in the water and with limited engineering data available to verify a project's estimated total cost will lead to inaccurate OREC pricing either by: (a) developers building additional risk premiums into their bids, which will possibly result in higher costs to the ratepayers; or (b) submitting unreasonably low bids that are not supported by sufficient data and are inadequate to successfully execute projects, leading to their cancellation before any construction begins. Clearly, it is in the best interests of developers, ratepayers and regulators to have as much information as possible when submitting or assessing the accuracy of price bids.

To deal with this problem, Global strongly recommends that for the Vintage Year 2013, the BPU work with pre-qualified offshore developers, as determined through the straw proposal process, and an independent consultant of its choosing to establish an OREC price based upon the best available information. This would be used as a reference point to provide BGS Suppliers and third party suppliers appropriate guidance for the Vintage Year 2013. However, for this first year of the OREC process only, those projects determined to be Designated Facilities should be permitted to, if necessary, file to supplement their OREC price on a one-time basis as part of the Vintage Year 2014 process in recognition that, by that time more reliable data will have been acquired. This will allow both the Board and developers to have better information about construction

and financing costs and overall economics of specific projects prior to establishing a final OREC price for the remaining nineteen years. This approach will reduce the price risk faced both by ratepayers and offshore wind developers.

For future Vintage Years, the Board can follow its RPP process as laid out in the straw proposal.

Second, with regard to the process by which Designated Facilities refund revenues from their energy sales to the BPU, we think two changes are needed. First, the straw proposal states that all revenue from energy sales will be "property of the BPU;" however, this should only be the case for megawatt hours that generate ORECs. If during a given year, a project generates energy above the OREC target, that energy will generate a Class 1 REC, not ORECs, and the BPU should not receive the energy revenues from those megawatt hours. Second, we recognize that the BPU needs to ensure that designated facilities get appropriate value for their energy because that will directly impact the size of the subsidy ratepayers must pay. We believe the simplest way to accomplish this is for the BPU and designated facilities to agree at the outset that the Designated Facilities will sell all of their energy into the PJM day ahead market. By coming to this agreement up front, the BPU will not have to second-guess developer decisions after the fact about how they sold their energy. With this agreement, the BPU will simply have to verify that a Designated Facility has sold all of its energy into the day-ahead market.

Third, Global believes the Board should adopt a high bar with respect to qualification criteria to assure the Board will receive bona fide and feasible proposals. These criteria should, at a minimum, require an applicant to demonstrate the ability to

finance multi-billion dollar projects and the capability to construct and operate projects such as the ones currently proposed. Without these stringent eligibility requirements, the Board runs the risk of accepting bids from applicants with either no real intent to develop such projects or a complete lack of expertise that will cause the projects to be cancelled even before they are constructed and thereby missing the state's EMP goals completely.

Finally, Global strongly favors regulatory language that will provide as much certainty as possible that OREC prices and rules will not change for projects already approved and constructed under a prior Board Order or rule. The OREC construct is only financeable if lenders have confidence that OREC revenues will be there to secure the loan required to build the project. For the Board's off-shore wind objectives to truly succeed, there must be clear assurances that the terms and pricing structure for previously approved offshore wind projects will not be altered in mid-course. Such language has been considered by the Board in other proceedings and must be included in this process as well.

Once again, I would like to thank you President Fox and the Members of the Board for the opportunity to speak today. If there are any questions, I would be glad to answer them at this time.

**IN THE MATTER OF OFF-SHORE WIND SET-ASIDE CHANGES TO THE NEW JERSEY RENEWABLE ENERGY PORTFOLIO STANDARDS (NJRPS) RULES, N.J.A.C. 14:8-2**

**BPU DOCKET NO. EX08100930**

**MARCH 26, 2009 PUBLIC COMMENTS BEFORE THE**

**NEW JERSEY BOARD OF PUBLIC UTILITIES**

**BY**

**CLINTON L. PLUMMER, VICE PRESIDENT - DEVELOPMENT**

**ON BEHALF OF**

**DEEPWATER WIND, LLC**

Good morning President Fox and Members of the Board. My name is Clinton Plummer; I am Vice President of Development at Deepwater Wind, LLC ("Deepwater") and am here today representing Deepwater. As was mentioned previously, Deepwater has partnered with PSEG Renewable Generation to create Garden State Offshore Energy, LLC ("Garden State"), which is exclusively focused on developing offshore wind serving the State of New Jersey. Given our focus on this State, we very much appreciate the opportunity to share with you our comments on the Board Staff's Offshore Wind Renewable Energy Certificate ("OREC") straw proposal.

I would like to start by saying that Deepwater agrees with the New Jersey Energy Master Plan in that "*there is an opportunity for New Jersey to redesign its energy system while establishing a clean energy industry as a major part of our economy.*" In fact, the offshore wind project proposed by Garden State would not only deliver up to 350 MW of clean, renewable power to the State, but also would create hundreds of jobs right here in New Jersey. And this is just the beginning. If the State moves quickly, and creates an environment favorable to the

development offshore wind, then New Jersey could benefit from some of the same economic upturns that the German cities of Bremerhaven, Emden and Rostock have enjoyed as a direct result of offshore wind development.

However, as my colleague Robert Gibbs mentioned previously, in order to build an offshore wind farm, a company such as Deepwater must assume considerable regulatory and commercial risk and absorb significant development costs long before there is any certainty of a return. We must invest millions of dollars to simply determine the feasibility of a project. Once a project's feasibility has been established, then we must then invest - and risk - billions of dollars to construct the offshore wind farm.

Deepwater believes that the OREC straw proposal put forth by the BPU can, with a few clarifications, unlock the potential benefits of the development of offshore wind for the State of New Jersey by overcoming a portion of the regulatory and commercial risks I just mentioned. Specifically, there are three components of the OREC straw proposal that we believe are absolutely crucial to the viability of this fledgling industry in New Jersey.

First, we commend the BPU's recommendation to establish a firm price for the first Vintage Year of OREC's no later than 30 days prior to the February 2010 BGS auction. Price certainty will allow companies such as Deepwater to continue to invest the millions necessary for the development of an offshore wind farm because we will know that, if built, a project will be able to earn a certain level of income. As my colleague from PSEG mentioned previously, we believe that it is in the best interests of developers, ratepayers and regulators to have as much information as possible when submitting or assessing the accuracy of price bids. As such, we concur with PSEG's recommendation that for the Vintage Year 2013, the BPU should work with pre-qualified offshore developers, as determined through the straw proposal process, and an

independent consultant of its choosing to establish an OREC price based upon the best available information. For Vintage Year 2014 and thereafter, an RPP will be a reasonable means of establishing an OREC price.

Second, we applaud the BPU's proposed structure of serving as the clearing house for collections from Suppliers and payments to OSW Designated Facilities. This structure will facilitate the lowest possible cost of energy by allowing developers to finance against the creditworthiness of the State.

Third, we agree that a rigorous prequalification of OSW Developers participating in the annual Request for Pricing Proposals will not only maximize the likelihood of the State receiving an Operational Project on schedule, but also minimize the risk of delay caused by artificially low bids submitted by unqualified developers. Deepwater suggests that the initial round be limited to the three pre-qualified bidders and that in successive RPP's, the BPU consider the quantity of content produced in New Jersey as a factor in deciding qualifications.

These three things – price certainty, the BPU's "clearinghouse" approach, and a rigorous prequalification – are aspects of the OREC straw proposal that we believe will contribute significantly to the success of this program. There are, however, three areas in which the OREC straw proposal needs clarification or revision in order to succeed.

First, given that developers will be investing billions of dollars to build the OSW Designated Facilities on the expectation of receiving ORECs as described in the straw proposal, it will be absolutely necessary to provide lenders and other capital partners with some form of surety that the OREC revenues assured to the OSW Designated Facilities will not be compromised in the future. Without such assurance, securing financing for a billion-dollar

project – especially in today's financial environment - will be very difficult. Deepwater would be happy to recommend language based upon prior board proceedings.

Second, as we understand the straw proposal, the BPU and an OSW Designated Facility will agree upon an annual OREC target (expressed in MWH's), the BPU will commit to purchase all OREC's (at a price based upon full revenue requirement) up to the MWH's established by the annual OREC target, and the OSW Designated Facility will reimburse the BPU with the proceeds from the sale of its output in the PJM day ahead market. Given that the OSW Developers must bear production risk, we believe the program will be most successful if the BPU establishes a fair and symmetric means of compensating OSW Designated Facilities. Clearly, if the OSW Designated Facility produces less than the annual OREC target, then it will receive less income. Therefore, we propose that if the OSW Designated Facility produces more than the OREC target, then such facility should be entitled to the proceeds from the sale of the power produced in excess of the annual OREC target.

Third, and further to my previous suggestion, we propose that if an OSW Designated Facility produces more than the annual OREC target, then the OSW Developer should have the option to either (1) sell the excess renewable attributes – independent of the excess energy – in the NJ Class I REC or voluntary markets or (2) hold excess ORECs for up to five (5) years. We believe that five years is necessary because of the annual variation in wind resources.

To reiterate: we believe the OREC straw proposal, with the modifications suggested above, can be successful in moving New Jersey towards the objectives of the Energy Master Plan. We also believe this program will minimize risk to ratepayers because of the competitive process used to set the OREC price, and because ratepayer subsidy will not be required unless

the offshore wind farms are built. We commend the Corzine administration and the BPU in particular, for your vision and leadership in creating this OREC straw proposal.

I very much appreciate your time, President Fox and the Members of the Board, as well as the opportunity to speak with you today. If you have any questions, I would be happy to answer them at this time.

# BEFORE THE
# NEW JERSEY BOARD OF PUBLIC UTILITIES

NEW JERSEY OFFSHORE WIND
RENEWABLE ENERGY CERTIFICATE PROGRAM

**COMMENTS**
**OF**
**PEPCO ENERGY SERVICES, INC.**

## I. INTRODUCTION

On March 10, 2009, the New Jersey Board of Public Utilities ("BPU") issued a "Public Hearing Notice and Opportunity for Comment" in connection with the Revised Straw Proposal: New Jersey's Offshore Wind Renewable Energy Certificate (OREC)" (the "Draft Proposal"). The Draft Proposal was prepared by the BPU Office of Clean Energy ("OCE"). The Draft Proposal summarizes the general framework and business rules for the OREC program outlined in New Jersey's Energy Master Plan.

## II. COMMENTS

PES is a competitive supplier of retail electricity to customers in the mid-Atlantic region. PES is a licensed electricity supplier in New Jersey, Connecticut, Pennsylvania, Maryland, Massachusetts, Delaware, District of Columbia, New York, Illinois, Texas, and Virginia. PES actively participates in various working groups in these jurisdictions and has experience working with the different commissions' staffs as they implement various retail choice and environmental regulations, statutes, and requirements.

The Guiding Principles of the OREC proposal state that one of the goals of the Program is to "minimize ratepayer impacts." However, PES is concerned that the Draft Proposal does not minimize ratepayer impacts, but will increase the costs for ratepayers as the proposal introduces new and potentially costly risks to both competitive suppliers and Basic Generation Suppliers ("BGS"), and thus to New Jersey consumers.

PES is also concerned that the current proposal does not address existing contracts that competitive suppliers already have in place that span OREC plan years and that these suppliers will be financially harmed if they cannot pass through their OREC obligations to customers.

PES identifies below issues with the Draft Proposal and suggests changes that address concerns without major structural changes to the proposed program. If implemented, the changes proposed by PES will reduce ratepayer impacts and protect competitive and BGS suppliers from financial harm during the transition from the current rules implementing the Renewable Portfolio Standards ("RPS") to one that includes ORECs.

A. The OREC Requirement should be tied to a Percentage of Load Served as with the Current RPS.

The Draft Proposal changes the calculation of the renewable obligation for both competitive and BGS suppliers (hereinafter referred to as "suppliers") from a percentage of the load served (as is the case with the current RPS rules) to a supplier's percentage of retail electric sales in the State of New Jersey over a plan year, times the number of ORECs for the plan year. This change is problematic because a supplier will not know until well after the completion of the plan year in question the number of ORECs it must procure to meet its obligation. Because the quantity of the obligation is not known, neither is the cost of the ORECs. When preparing pricing offers under the current methodology, a supplier knows the percentage of a customer's load that must be met with specific types of renewables, and it also has a keen understanding of its load under a variety of weather and economic conditions. The supplier can hedge its renewable needs based on this knowledge.

However, under the Draft Proposal, a supplier will not know its share of New Jersey's retail sales until after the plan year is over so it will be impossible to incorporate the cost of ORECs required to meet the supplier's obligation into a retail pricing offer. While some retail contracts may include the ability to pass certain costs through to the customer, not all contracts do, particularly those awarded by State and local government bodies. Furthermore, in some cases, the supplier may no longer be serving a customer when the supplier finds out its actual OREC obligation and cost and may have difficulty collecting these costs retroactively.

To offset this regulatory uncertainty, suppliers, acting rationally, will likely add risk premiums to their pricing which will increase the cost to New Jersey consumers. The impact of this uncertainty can be lessened if the BPU incorporates the following proposal.

PES proposes that the BPU creates a specific percentage of load for which ORECs are required for a five year period. The percentage will be based on the BPU's desired OREC requirement as stated in the current proposal, except that true-ups will not occur. For example if the BPU's objective is to have the marketplace purchase 1,000 ORECs for the first plan year and the expected retail sales for the plan year are 100,000MWH, then each supplier would have a 1% OREC requirement for that year. The 1% requirement is obtained by dividing the 1,000 ORECs for the plan year by the expected retail sales for that year. PES' proposal is for the BPU to establish an OREC percentage for each of the first five plan years in this manner. Near the end of the first plan year the BPU would re-evaluate its OREC requirement for the sixth plan year, along with developing its estimate of retail sales for that year to arrive at the required OREC percentage for the sixth plan year. Through this process, suppliers would always understand their OREC percentage for each of the next five plan years. By removing the uncertainty associated with a supplier's OREC obligation for each of the next five plan year, this proposal will eliminate the need for a supplier to add a risk premium to all pricing, which will reduce the cost to consumers, while allowing the BPU to adjust the percentages so that OREC purchases are made at levels that achieve the goals of the Energy Master Plan.

B. Suppliers Should Have a Limited Exemption from the OREC Requirement for Existing Contracts.

Competitive suppliers operating in New Jersey that have existing contracts that span OREC plan years will be financially harmed if they can not pass through the cost of their new OREC obligations.

PES has two suggestions for dealing with this issue. First, since the longest retail contracts competitive suppliers offer tend to be five years in length, the BPU should set the OREC target or the percentage of OREC requirements if PES's proposal above were adopted, for a five year term instead of the three year term proposed. If a provision such as this is not

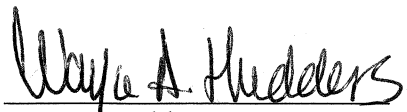
adopted, then suppliers will either stop offering longer term contracts, which are very desirable to customers when energy prices are low or falling, as is currently the case, or they will add additional risk premiums into their prices. PES recognizes that this proposal if adopted would appear to prevent the BPU from starting the OREC program as of June 1, 2013 as planned since 2013 is only three years away from when final OREC regulations are likely to be finalized. Another alternative is for the BPU to maintain the June 1, 2013 implementation target but exempt from the OREC requirement the load that is already under contract until these contracts end. A supplier would be required to be able to demonstrate the basis for the exemption of load from the requirement.

Competitive suppliers and ratepayers would both benefit under this proposal. If suppliers become saddled with potentially unrecoverable costs caused by the creation of the OREC program they will add additional risk premiums into their pricing, particularly for fixed price offers, as the risk of unrecoverable costs will increase. These risks will adversely affect consumers who will bear higher electricity costs and more stringent terms and conditions.

## III. CONCLUSION

PES appreciates the opportunity to submit these comments. PES respectfully requests that the BPU accept its recommendations to improve the Draft Proposal.

PEPCO ENERGY SERVICES, INC.

By: 

Wayne Hudders
Senior Energy Market Analyst

March 25, 2009

Filed with NJBPU via email: anne.mcshea@bpu.state.nj.us

**BEFORE THE**

**NEW JERSEY BOARD OF PUBLIC UTILITIES**

# Comments of Conectiv Energy Supply, Inc. on Straw Proposal for Offshore Wind Renewable Energy Certificate Program

## I. Background

On March 10, 2009, the New Jersey Board of Public Utilities ("BPU") issued a "Public Hearing Notice and Opportunity for Comment" relating to its "Revised Straw Proposal: New Jersey's Offshore Wind Renewable Energy Certificate (OREC) (the "Straw Proposal"). On March 26, 2009, the BPU conducted a public hearing to solicit comments on the Straw Proposal from interested parties. At the hearing, BPU President Jeanne Fox stated that the BPU would accept written comments until April 1, 2009.

Conectiv Energy is a competitive wholesale energy trading and generation company headquartered in Delaware, currently supplying New Jersey Basic Generation Service ("BGS") and actively participating in the New Jersey REC market. In addition, Conectiv Energy owns and operates several power plants located in and near New Jersey and recently announced plans to develop a 4 MW photovoltaic solar power generation facility in Vineland, New Jersey under an agreement with the City of Vineland and the Landis Sewerage Authority. Conectiv Energy actively participates in various working groups in New Jersey and appreciates the opportunity to comment on the Straw Proposal.

## II. Comments

Conectiv Energy commends the BPU for taking a leading role in designing and implementing innovative renewable initiatives, such as this OREC proposal, and respectfully

offers these limited comments to address certain concerns from the perspective of a BGS Supplier.

Most importantly, cost recovery risk for BGS Suppliers should be minimized both to avoid additional risk premiums, which may be passed through to ratepayers, and to ensure a robust competitive BGS procurement. To promote regulatory certainty for BGS Suppliers, and therefore minimize risk premiums, the changes to Supplier obligations must be established and clarified well in advance of the first BGS auction that includes the OREC requirement. If cost recovery not clarified in advance, the BGS Master Agreements should reflect a clear method of making Suppliers whole on new costs stemming from the impact of changes or clarifications to the OREC obligation.

In addition, OREC requirements should not result in incremental credit requirements for BGS Suppliers. In the current financial environment, any additional credit requirements could reduce the number of Suppliers willing (or able) to bid and therefore lessen competition for BGS load in New Jersey.

In its current form, the Straw Proposal provides for certainty of revenues to the offshore wind ("OSW") developer, but does not provide cost recovery certainty to the BGS Suppliers or the competitive retail suppliers who serve load in New Jersey. First, under the Straw Proposal, it appears that BGS Suppliers are required to pay OSW developers for a fixed number of ORECs at a fixed price each year. BGS Suppliers, however, must recover OREC costs on a per MWh-served basis. Thus, if fixed OREC requirements are based on a MWh quantity of forecasted load, and those forecasts prove to be too high, then BGS Suppliers will not recover their OREC costs because BGS Suppliers are paid on a per MWh-served basis. Suppliers may include the resulting volumetric price risk (i.e., fixed cost, variable volume) into their BGS Supplier bids as an increased cost per MWh.

If, on the other hand, the OREC volume requirements were based on a fixed percentage of load served, similar to all other New Jersey REC requirements, then Suppliers would not be at risk for under-recovery of these costs and would have no reason to include an OREC risk premium for volumetric risks.

Second, the BPU should ensure that BGS Suppliers can recover the cost of increased OREC requirements in contracts that are open at the time that such requirements are imposed. This can be done by either exempting such contracts from the increased requirements or by writing into the BGS Master Agreement a mechanism for recovery of such costs. Again, if BGS Suppliers must account for the risk of increases to OREC requirements during the terms of BGS contracts, then corresponding risk premiums might be factored into BGS bids and ultimately passed on to ratepayers.

Third, the OREC program should not disrupt the competitive balance between BGS Suppliers and competitive retail suppliers relating to pricing supply. If the OREC cost recovery methodology disadvantages BGS Suppliers relative to competitive retail suppliers, then the retail suppliers may achieve a pricing advantage and there will be further migration of customers away from BGS. Such increased migration away from BGS supply will in turn jeopardize recovery of fixed OREC costs for BGS Suppliers due to the reduced BGS load served.

For example, because retail suppliers negotiate directly with customers, they can include future OREC changes as a pass-through in their retail contract. BGS Suppliers, however, are not currently afforded such a pass-through in their Master Agreements with Electric Delivery Companies ("EDCs"). BGS contracts cover a 3-year term and are awarded in a competitive auction at a fixed price per MWh of load served. Unless the cost of increases to OREC requirements are handled as a pass-through on those contracts, or such contracts are exempt from OREC changes during the contract term, then BGS Suppliers would be exposed to a pricing

disadvantage relative to competitive retail suppliers, which may lead to further migration.

Fourth, OREC requirements should be incremental to and separate from existing New Jersey Class I REC requirements, which were recently increased. Otherwise, the considerable influx of Class I RECs due to the OSW development will devalue both existing investments in Class I generation and the positions that Suppliers have taken in Class I RECs to serve ongoing and future Class I obligations. In the Straw Proposal, it appears that only excess ORECs will convert to Class I status. Even if that is the case, however, it is preferable to create a completely separate category of RECs so as to avoid harm to the existing Class I market and so as not to discourage future development of Class I generation. If the entire OREC obligation is carved out of existing Class I requirements, the resulting reduction, which would approximate 50% of the demand for all existing non-OREC Class 1 resources, would impact the existing Class I market even more.

Respectfully submitted,

Gary Ferenz
Conectiv Energy Supply, Inc.

April 1, 2009

Filed with NJBPU via email: anne.mcshea@bpu.state.nj.us

-----Original Message-----
**From:** Pfeifferjr@aol.com [mailto:Pfeifferjr@aol.com]
**Sent:** Tuesday, March 24, 2009 9:14 PM
**To:** McShea, Anne
**Subject:** Off-Shore Wind Proposal Comments

Anne,

My only concern with the process for creating special REC's for solar and now off-shore wind is that you inadvertently are reducing the value of regular REC's, such as for on-shore wind. There are new technologies being developed as a result of innovation in the renewable energy market. It is not wrong to give incentives to develop wind off shore, just make sure that there are still sufficient incentives for renewable energy systems that can be applied on land.

One type of technology that I'd like to reference is the proliferation of small wind systems that can be mounted on the tops of apartment buildings, commercial buildings and, in some cases, even on houses. A good REC program should be an equal opportunity incentive, not just an incentive for mega-projects such as the ones proposed for off-shore wind.

Regards,
James Pfeiffer
PowerHouse Energy
Ridgewood, NJ
201-251-3815 office
201-264-5361 cell
www.powerhouseenergy.net

Comments of Iberdrola Renewables, Inc.
Regarding: Revised Straw Proposal
New Jersey's Offshore Wind Renewable Energy Certificate (OREC)

New Jersey Board of Public Utilities
Office of Clean Energy

April 1, 2009

Iberdrola Renewables, Inc. ("IBR") thanks the Office of Clean Energy for the opportunity to provide these comments regarding the "Revised Straw Proposal: New Jersey's Offshore Wind Renewable Energy Certificate." IBR is a developer of renewable energy projects, currently primarily focused on on-shore wind development. IBR owns over 2,800 MW of on-shore wind energy nationwide, including several projects within the PJM footprint including: Providence Heights (72 MW, IL); Locust Ridge I and II (combined 128 MW, PA) and; Casselman (34.5 MW, PA). The company is also part owners of the Bear Creek wind farm in Pennsylvania and IBR's subsidiary, Community Energy, Inc., participated in the development and renewable energy sales from New Jersey's only wind farm – Jersey Atlantic.

New Jersey's RPS has been a key instrument in promoting regional renewable energy development. Without New Jersey's leadership many investments in new renewable energy projects across the PJM footprint would not have occurred. We do recognize the state's interest

in promoting the development of renewable energy resources within its borders or, in the case of off-shore, in or near its coastal waters with a transmission delivery point in the state.

On-shore wind energy projects located in PJM do have benefits for New Jersey's rate payers. The projects tend to offset natural gas usage, reducing demand for this fuel which ultimately benefits New Jersey natural gas heating and electricity customers. On-shore projects also push higher-cost fossil fuel generators out of the bid stack, reducing carbon dioxide emissions and making it easier for states like New Jersey to meet its clean air goals by easing the costs of SOx and NOx allowances.

IBR offers the following specific comments on the Straw Proposal:

**Revisions to the New Jersey RPS, including the creation of O-RECs and off-shore wind mandates, should avoid impacting existing and ongoing renewable energy investments serving the New Jersey RPS.**

Companies have made investments in order to serve the New Jersey RPS and it is essential that the size of the proposed offshore requirements not impact existing projects, projects under construction or those in final development stages to serve the New Jersey RPS. Typical development project timelines for on-shore wind are typically 3 to 5 years. On-shore wind is currently the marginal resource for the RPS and a number of facilities currently under development within the PJM footprint are predicated on the availability of New Jersey Class I renewable energy credits. New Jersey, and other states with RPS, have implemented renewables requirements because they recognize that energy prices alone are not enough to support new

renewables development. In instituting an RPS, New Jersey has created a market for renewable energy.

Like all markets, an RPS can only succeed in attracting long-term investment if its rules are stable, consistent, and transparent. In order to avoid frustrating long-term renewable energy investments we respectfully request that the Office of Clean Energy ("OCE") and the Bureau of Public Utilities remain mindful of impacts to existing and ongoing investments from proposed changes to the RPS. In doing this, we request that OCE set any off-shore wind carve-out targets such that they do not reduce demand for existing and ongoing renewable energy investments necessary to meet the New Jersey RPS. To achieve this OCE should set the phase-in schedule for off-shore projects far enough in advance that Class I REC demand remains unchanged for existing projects, projects under construction, and those in the final development stages.

**OCE should develop procedures for meeting RPS targets should project delays or failures occur in siting off-shore projects.**

Unfortunately, project delays and, sometimes, failures occur in siting large energy projects. This is certainly the case with on-shore wind energy projects which require numerous environmental permits from state agencies and, in some cases, federal agencies in order to proceed. The combination of permitting challenges, public meetings and proceedings, and in some cases, opposition, can substantially delay projects. It is potentially the case that developers may experience delays in either permitting or constructing (or both) 1,000 MW of off-shore wind in approximately three years (as currently designated in the Straw Proposal). Therefore, we recommend that OCE propose a contingency plan for meeting the RPS should delays or worse occur.

Instead of requiring load-serving entities to pay an alternative compliance payment should projects fail to meet the Straw Proposal's targets, IBR recommends that off-shore projects simply be offered a fixed price O-REC based on the results of the OCE request for proposals. Projects would receive the O-REC value up to the number of designated Mwh required by the off-shore requirement. Off-shore developers will know the price they will receive for their projects in advance and can plan accordingly.

Should delays in the permitting and construction of offshore resources occur such that the offshore requirements cannot be met, instead of paying an alternative compliance payment, load-serving entities should be required to seek Class I eligible RECs in the place of O-RECs until such time as O-RECs become available. This benefits rate-payers by ensuring that load-serving entities will not be paying more expensive alternative compliance payments based on the projected costs of O-RECs, while simultaneously promoting additional Class I development while off-shore projects are being permitted and constructed. We recognize that this might require additional, short-term Class I REC auctions to supplement the ongoing BGS auction process, but we believe that this approach will be superior to simply paying alternative compliance payments.

IBR thanks OCE for the opportunity to submit these comments. If you wish to discuss our comments further please contact me at 484-654-1887 or ethumma@iberdrolausa.com .

Respectfully Submitted,

Eric Thumma
Director, Institutional Relations
Iberdrola Renewables, Inc.

# New Jersey Offshore Wind : Alaska Prudhoe Bay Crude Oil

Alaska and New Jersey, "perfect together." For over 30 years, Alaskan oil has been a resource that is taxed to benefit the people of Alaska. Each year, the residents of Alaska can expect a dividend or royalty check from revenues generated by the states tax on crude oil production. Whereas Alaskan oil may eventually run dry due to depletion, New Jersey can expect the offshore winds to blow forever. New Jersey can and should develop its offshore winds resource to benefit the residents of the state, both financially and environmentally.

The back of the envelope numbers, based on an article in the UK Guardian newspaper

http://www.guardian.co.uk/environment/2008/nov/04/greater-gabbard-windfarm-sse-npower/print

regarding a 50% stake that changed hands in the North Sea Greater Gabbard 500 MW windfarm are:

**A 3000 MW windfarm should cost about $12 billion dollars and return revenues of $25 billion dollars over 20 years.** (with the O'RECs priced at $150-$200). The wind will continue to blow after the 20 year O'RECs are retired.

The state of New Jersey has a huge opportunity to offer "green", socially conscious investors and investment funds "green bonds" to fund building the 3000 MW. Revenues accrued during the early stages can go towards funding the buildout of the latter stages of the windfarms. Bondholders can receive payment in kind- additional bonds, in lieu of interest payments until all 3000 MW are completed and in production.

Reasonable development, operations and maintenance fees should be expected.

The state, reluctant to offer new bond issues, should issue bonds for projects that will reduce New Jersey's budget deficit, especially "green projects."

New Jersey should retain ownership of the resource to benefit the citizens of the state for many years to come.

George St.Onge
RR Renewable Energy Consultants
George@RRREC.net www.RRREC.net

State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

JON S. CORZINE
*Governor*

RONALD K. CHEN
*Public Advocate*

STEFANIE A. BRAND
*Director*

# SUPPLEMENTAL COMMENTS OF THE DEPARTMENT OF THE PUBLIC ADVOCATE DIVISION OF RATE COUNSEL

## On the Revised Straw Proposal Dated March 10, 2009: New Jersey's Offshore Wind Renewable Energy Certificate ("OREC")

## BPU Docket No: EX08100930

## SUBMITTED: April 1, 2009

## 1. Introduction

The Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("Board" or "BPU") for the opportunity to present supplemental comments on the Straw Proposal submitted to stakeholders for comment by the Office of Clean Energy ("OCE"), dated March 10, 2009, as well as providing our response to the comments of other parties that participated in the Public Hearing on this matter in Trenton, New Jersey, on March 26, 2009.

The purpose of the OCE's Straw Proposal is to facilitate the goals established in the Energy Master Plan ("EMP") released on October 23, 2008 that increases New Jersey's commitment to renewable energy to 30 percent of electricity sales by 2020. An integral part of the EMP has been the call for a minimum of 1,000 megawatts ("MW") of offshore wind capacity to be developed by 2012, and a minimum of 3,000 MW of offshore wind capacity by 2020.

The OCE, in its revised straw proposal offered for comment on March 10, 2009, proposes to establish an offshore wind set-aside or "carve-out," within New Jersey's Renewable Portfolio Standard ("RPS"). This carve-out would establish a new tradable credit referred to as an offshore wind renewable energy certification or "OREC." This OREC would have a companion maximum price referred to as an offshore wind alternative compliance payment or "OACP."

Rate Counsel would again like to reiterate our support for the OCE's goals of attempting to create greater regulatory certainty to lower the cost, and ensure the development of offshore wind. We do not however, support the method in which the OCE proposes to accomplish these goals. Our concerns about this proposal were outlined in detail in our comments submitted to the Board on March 26, 2009 (hereafter "Initial Comments"). In summary, our concerns address the following concerns and topics:

- The Creation of New Set-Asides is Unnecessary
- The Straw Proposal Would Undermine the Traditional Goals of a RPS
- The Straw Proposal Would Result in a New and Potentially Costly Administrative Structure
- The Straw Proposal is Inconsistent with the Board's Past Rejection of a Feed-In Tariff
- The Straw Proposal Could Increase BGS Rates
- The Straw Proposal Lacks a Rate Impact Analysis
- The Straw Proposal Unnecessarily Shifts Market Risk from Developers to Ratepayers
- Excess Revenues Should be Used to Lower Rates
- The Use of Non-Price Evaluation Terms Potentially Biases Outcomes

Rate Counsel is also concerned about the specific proposal to create an entirely new and unneeded framework that sets a troubling precedent and undermines the traditional policy goals of using a RPS to support renewable energy development.

As we noted in our earlier-filed comments and public testimony, Rate Counsel recommends that the Board utilize an already fully-vetted framework for supporting offshore wind energy development. This framework, established during the course of the Generic Solar Renewable Energy Certificate ("SREC") proceedings, and later expanded in individual electric distribution company ("EDC") filings, could be easily modified to accommodate offshore wind projects.

Our supplemental comments will address a few issues and questions that were raised during the Public Hearing.

## 2. Proposed Procedural Schedule

Rate Counsel proposes that the Board modify the procedural schedule. Rate Counsel believes this schedule should be delayed for at least two reasons: (1) the current schedule is not feasible from a development perspective and (2) no critical rate impact analyses have been conducted.

On the first point, comments offered by several potential offshore wind developers at the Public Hearing clearly indicated that the current OCE proposal to initiate this program in 2013 was entirely too expedited. Wind developers noted that a number of the meteorological stations needed to get accurate wind profiles in various offshore areas are not in place and clearly not reporting important data needed to develop offshore wind power generation estimates. At least one developer indicated that the current schedule would result in price offers that were either "incorrect" or included "additional risk premiums" that would be paid by ratepayers.

Secondly, and more importantly, the schedule needs to be delayed to accommodate a rate impact analysis of the OCE Straw Proposal. To date, no rate impact analysis has been offered. As we noted in our Initial Comments, it is hard to evaluate the overall merits of this program without reference to program costs. Ultimately, program costs will determine the effectiveness of this program over other alternatives, and most importantly, the rate impacts that will be imposed on ratepayers from this new program.

Rate Counsel believes a rate impact analysis is a critical component of any market transformation process, particularly one as large as that proposed by the OCE. The capital costs of offshore wind alone could be as much as $12 billion on a constant dollar basis and $7.8 billion on a net present value ("NPV") basis.

Board Staff indicated at the public hearing that a consultant was either secured, or in the process of being secured, to conduct a rate impact study. Rate Counsel recommends that the schedule be extended to accommodate the consultant's study, and to allow at least 3 weeks for Rate Counsel and its consultants to evaluate, comment upon, and provide alternative and independent rate impact estimates.

The additional time could be used for other constructive work, like defining the terms and conditions for market participation and the definition of a "designated facility." This additional time could also be used to explore various methods of incorporating these fundamental changes into the BGS process as well as the numerous legal issues of the proposed offshore wind market design (i.e., issues related to the Board taking title to various different levels of wholesale power revenues and ORECs).

## 3. Qualification Standards

Several developers offered comments supporting strong qualification standards for participation in a future, earmarked New Jersey offshore wind program. Rate Counsel supports strong standards for participation, but would caution the Board in developing standards that are overly-stringent such that they serve as a barrier to entry. Overly-restrictive qualifications will limit the number of participants in the process and creates opportunities for market power. Thus, the Board needs to be very cautious in setting these participation standards, as well as ongoing performance standards, in any future offshore wind market design.

The OCE has not provided any specific proposals for participation qualifications, or annual performance standards, in its Straw Proposal. Rate Counsel looks forward to working with the OCE and other stakeholders in defining reasonable standards that encourage participation, innovation, entrepreneurship, and reasonable prices for offshore wind energy.

## 4. Implications for the BGS

Several parties, including many offshore wind developers, expressed serious concerns and reservations about the BGS implications created by the Straw Proposal. Almost all parties at the Public Hearing expressed concerns about the uncertainty that this proposal would create for Load Serving Entities ("LSEs") in terms of both (a) the speed at which this proposal would progress and (b) the method in which compliance obligations would be allocated to LSEs (i.e., OREC obligations). We agree with several parties' position in the Public Hearing expressing concerns that defining OREC responsibility as a percent of an unknown sales level in any given year creates uncertainty and risk that will be passed along directly to ratepayers.

## 5. Offshore Wind Power Sales

Several offshore developers expressed concerns about the method in which both energy sales and potential capacity would be valued against their overall OREC support levels in any given year. In its Initial Comments, Rate Counsel expressed strong disagreement with the proposal to define ORECs as a "full loaded" rate that somehow nets-out wholesale power sales revenues. We believe that ORECs should represent the net difference that developers need to finance their projects, not their total revenue support levels (i.e., "revenue requirement"). Developers need to incur wholesale power market risk, not ratepayers. The goal of any offshore wind market design should be to protect developers from regulatory risk – not market risk.

The myriad discussions about the appropriate wholesale energy price, and how to set the value of capacity, that occurred during the course of the Public Hearing highlights the confusion and complications for Board regulation of this aspect of the Straw Proposal. Utilizing this proposed "net-back" approach minimizes offshore developer incentives to (a) maximize wholesale energy sales, and (b) to secure those energy sales revenues (and financial support) through any long term contracting. Setting the sales revenue targets to the day-ahead market is not something usually done in other types of large power generation development projects, and Rate Counsel does not understand why the OCE would propose such a mechanism for its offshore wind energy market design.

In today's market, most large-scale power generation projects usually base a large share of their project economics on a known, longer-term contract. Basing total project economics on spot market outcomes, like a day-ahead market, is a practice that passed-away in the aftermath of the Enron era. Setting a standard of this nature shifts considerable wholesale pricing risk to ratepayers and virtually denies them the benefits of clean, zero-fuel cost, electricity. Day-ahead wholesale market prices are determined, at the margin, by fossil (primarily natural gas) prices. The OCE's proposal would essentially impose fossil-fuel price volatility on wind energy (through highly variable OREC charges), which is an outcome incongruous with the goals of the Board's RPS.

## 6. Contracting Certainty

Many offshore wind developers expressed concerns about the lack of regulatory certainty included in the OCE Straw Proposal. The lack of regulatory certainty (through contracting) is a fundamental shortcoming in the OCE Proposal and if not corrected, will result in either higher prices for ratepayers and/or uncertain levels of offshore wind development. Market power is already a potential problem with the current proposal, and would only be exacerbated by maintaining this market uncertainty since only a handful of developers (those able to incur this risk) would participate in the process.

Rate Counsel notes that if the Board adopted our recommended REC-contracting proposal (summarized again below), offshore wind developers would get the revenue support certainty

they need through long-term contracting with the EDCs. REC contracts with offshore wind developers would be binding and supported through either EDC charges to ratepayers and/or the Societal Benefits Charge ("SBC") via the Clean Energy Fund.

Despite all of the details and complicated provisions, the OCE's Proposal does not incorporate the certainty and security offshore wind developers need: all of the developers offering comments noted they need more in terms of certainty from this proposal. Rate Counsel believes that our proposed REC contracting approach provides both regulatory certainty and regulatory consistency with the Board's overall policies. The OCE proposal would represent a dramatic departure from the Board's past mechanisms for securitizing renewable energy (solar) and create a considerable number of administrative and legal challenges. If the Board wants to move forward quickly and efficiently with meeting the offshore wind energy goals of the EMP, then Rate Counsel's proposal seems to be the best course of action.

## 7. Recommendation: The Current SREC Contracting Approach Should be Modified to Support Offshore Wind Energy

Rate Counsel recommends that the Board direct stakeholders to this process, particularly EDCs, to work collaboratively in modifying the current SREC contracting approach to accommodate offshore wind development. Rate Counsel offers the following suggestions for consideration in this process:

- The Board would direct each of the EDCs to support a target amount of offshore wind energy. There would be no specific ORECs or any other specific "set-aside."

- The Board and other stakeholders would develop a long-run contracting process for RECs generated by offshore wind energy that, as starting point, follows some variation of the schedule offered by the OCE in its Straw Proposal. Some share of the EMP's offshore wind goal can be securitized, while the remaining share is left to the bi-lateral market much like the current plans being utilized for solar energy.

- EDCs would be required to enter into long-term REC contracts with offshore wind energy developers only.

- EDCs would conduct a Request for Proposals ("RFP") process, overseen by an independent third-party administrator, preferably the same third party administrator overseeing the solar energy RFP process.

- Offshore wind developers would submit fixed long term bids for the RECs generated from their projects.

- EDCs would award REC contracts to winning (least cost) bids subject to Board approval. Rejected bids would not be allowed to participate (serve as supply sources) until the next RFP process.

- EDC REC contracts would be for the specific price and quantity offered in the bid, not a market clearing price.

- EDCs would auction RECs to the market in a fashion similar to SRECs.

- EDCs would develop mechanisms, including the use of the Clean Energy Budget funded by the SBC, to recover the prudently-incurred cost of the program including:

    - Administrative costs associated with the program.

    - Credits for revenues collected from the REC auction that are in excess of those paid under longer-term REC contracts arising from the competitive bidding process.

    - Charges to make up for shortfalls between revenues generated from the REC auction proceeds and the long-term REC contracted amounts from the competitive REC bidding process.

- The Board will establish a circuit breaker that restricts continued progress in developing future offshore wind energy capacity to some absolute cost, or percent cost increase, constraint.

Rate Counsel believes this approach would be more efficient and transparent relative to the proposal offered by the OCE.

Lastly, during the course of the public hearing, President Fox asked Rate Counsel how our proposal would set Alternative Compliance Payment ("ACP") values. Rate Counsel would propose establishing a different set of ACP values for those projects participating in the competitive offshore wind bidding process. These unique ACP values would be set by the Board with stakeholder input prior to any offshore wind competitive bidding process. Renewable energy projects participating in bi-lateral market (i.e., the non-offshore wind contracting market) would face the same set of Class 1 ACPs and the same process for setting those ACPs, as they do today. The Board could consider withholding the specific value of the offshore wind contracting ACPs until after a competitive bid if there are concerns that offered bids will move to the ceiling price if it is known in advance.

April 1, 2009

**BY ELECTRONIC DELIVERY**
Kristi Izzo
Secretary of the Board
New Jersey Board of Public Utilities
Two Gateway Center, 8th Floor
Newark, NJ 07102

**Re: In the Matter of Off-Shore Wind Set-Aside Changes to the New Jersey Renewable Energy Portfolio Standards (NJRPS) Rules, N.J.A.C. 14:8-2**

**BPU Docket No. EX08100930**

Dear Secretary Izzo:

As suggested by President Fox at the March 26, 2009 public hearing in the above-referenced matter, Garden State Offshore Energy ("Garden State") hereby submits copies of the public hearing remarks provided by Robert Gibbs of PSEG Global, LLC and Clint Plummer of Deepwater Wind, LLC as well as the following supplemental written comments addressing certain issues raised during the public hearing.

Garden State appreciates the Board and its Staff's leadership as well as the collaborative approach taken to developing an appropriate financing mechanism to spur

development of wind generation off the coast of New Jersey. It welcomes the opportunity to work with Board Staff, the Division of Rate Counsel and all interested stakeholders on the next phase of this process.

Although Rate Counsel raised concerns about a carve-out for offshore wind as somehow inconsistent with the purposes of the RPS, Garden State agrees with Board Staff that there is no inconsistency. In order to meet the goals and objectives of the Energy Master Plan, specifically the goal to develop 3,000 MW of offshore wind generating capacity, a mechanism to stimulate the development of offshore wind is both necessary and consistent with the purposes of the Renewable Portfolio Standard ("RPS"). As stressed in the Energy Master Plan, offshore wind is the single largest potential source of renewable energy for the State of New Jersey. Given the regulatory and commercial challenges associated with the initial development of offshore wind, an offshore wind carve out is essential to reach the Energy Master Plan goal.

At the public hearing, Rate Counsel interjected into this proceeding the concept of somehow mandating the electric distribution companies ("EDCs") to enter into long-term contracts for ORECs as a vehicle for consideration in establishing an offshore wind carve out as opposed to moving forward with Board Staff's straw proposal. Garden State is concerned about the legalities of pursuing such an approach. The legal basis for this mandate is not apparent and consequently any requirement for EDCs to enter into long-term OREC contracts could generate significant controversy, delay the Board's finalization of the OREC process and, by extension, delay the development of New Jersey's offshore wind projects. Therefore, Garden State continues to support Board Staff's straw proposal concept as the appropriate model to be implemented.

There was also some discussion at the hearing about promoting offshore wind using a model more similar to what the BPU is pursuing with solar generation and other Class 1 renewables. However, there are significant differences between solar and offshore wind development. Offshore wind turbine farms are much more capital intensive projects than the type of solar installations that we have seen in New Jersey. Most notably, solar panels of varying size and scope can be constructed in various locations across the state by many suppliers and on a much faster schedule that offshore wind. Conversely, New Jersey offshore wind can only come from a very small number of projects placed in specified well-suited locations off the coastline. Moreover, for the same reasons, unlike SRECs, which conceivably can be generated from hundreds of different projects, it would be impracticable to create a fluid, tradable OREC market for New Jersey off-shore wind, because there are only going to be a few large-scale offshore wind projects. Again, the extensive stakeholder process to this point has discussed these realities and it is in large measure because of these issues that Board Staff recognized the need for a fixed price, non-tradable OREC that would be assessed on a percentage basis on all load serving entities ("LSEs") as a cost of providing energy in New Jersey.

With respect to the issue of allocating OREC responsibility to LSEs, Garden State recognizes the public hearing comments expressed by Pepco Energy Services ("Pepco") and has no objection to the RPS requirement for offshore wind being administered on LSE's on a percentage of load basis. Although Garden State certainly defers to the LSEs with respect to this issue, it acknowledges that a known "percentage of load" based target for ORECs would likely reduce the risk to suppliers and eliminate the need for unnecessary risk premiums on customers.

At the public hearing, Fishermen's Energy raised the idea of exploring a mechanism to simplify the monthly payment and reconciliation process. Garden State is not opposed to discussing this issue further. In advance of those discussions and in recognition of the concerns expressed by Fishermen's Energy, perhaps the following structure could work:

> Month 1 - the Board of Public Utilities ("Board") pays to offshore developers the total revenue requirement as approved by the Board and offshore developers do not refund any money received from the sale of energy.
>
> Month 2 - the Board pays to offshore developers the approved total revenue requirement minus what the offshore developers would have given back from energy sales in the first month.

Subsequent months could follow the same path. Although Garden State recognizes that there is a slight lag in refunding to the Board the first month's revenues from energy sales, this process would create a simpler method of reconciliation.

During the hearing, there was a suggestion that Board Staff's straw proposal model, under which the State takes in OREC funds from LSEs/Third Party Suppliers ("suppliers") and appropriately allocates those funds to designated facilities, was overly complex and that perhaps a simpler method could be developed. However, the OREC process proposed in the Staff straw is in fact less administratively complicated than the existing New Jersey REC market, which relies on multiple brokers and bilateral contracts. Under the OREC construct, the State would simply manage payments between suppliers and designated facilities.

To the extent that the Board believes that an even simpler OREC model would be preferable, we urge it to consider Garden State's original fixed price straw proposal

whereby an OREC price would be set and each energy supplier would pay each Designated Facility in accordance with a percentage of load formula.

With respect to the comments made by Mark Finfrock on behalf of Atlantic City Electric/PEPCO Holdings ("ACE") regarding the sharing of capacity payments, it must be noted that neither Garden State's straw proposal nor Staff's straw proposal contemplated putting the risks and rewards for capacity on ratepayers. Garden State continues to accept that those risks and rewards should remain with developers. On a separate point, ACE raised the concept of exempting certain pre-existing third party supplier energy contracts from OREC obligations. Garden State must also disagree with this position because there is no basis for such an exemption. It is indisputable that the OREC obligation does not interfere with the terms of these pre-existing agreements; which represent arms-length negotiation of risk allocations by the contracting parties. In fact, the parties to those contracts assumed regulatory risks such as this when those contracts were made.

Finally, Garden State reiterates the positions expressed by Mr. Gibbs on behalf of PSEG Global, LLC and Mr. Plummer on behalf of Deepwater Wind, LLC, particularly with regards to the following four points:

1. Allowing the Vintage Year 2013 Designated Facilities to alter their OREC price on a one-time basis as part of the Vintage Year 2014 process is critical to balancing the need to move the offshore wind development process forward with the recognition that the OREC price being set in this first year would be set with less reliable data than will exist going forward. In allowing this one-time OREC price adjustment to the first year Designated Facilities, the Board and the designated developers will be able to have better information about construction and financing costs as well as overall economics of their specific projects prior to the establishment of a final OREC price for the remaining nineteen years. This approach will reduce the price risk faced both by ratepayers and offshore wind developers.

2. Point #1 notwithstanding, it is important that the BPU establish a firm price for the first Vintage Year of OREC's prior to the February 2010 BGS auction and that the OREC fixed price for the Vintage Year 2014 and beyond be set prior to the February 2011 BGS Auction. A fixed OREC price for 2013 set prior to the next BGS Auction provides BGS Auction participants with appropriate certainty prior to bidding. Moreover, price certainty will allow companies such as Garden State to continue to invest the millions necessary for the development of an offshore wind farm because it will know that, if built, a project will be able to earn a certain level of income.

3. The BPU's proposed structure of the State serving as the clearing house for collections from Suppliers and payments to Designated Facilities is appropriate and will provide the appropriate economic signal to the financial community that these projects have the full support of the State of New Jersey.

4. If the Designated Facility produces more than the OREC target, then such facility should be entitled to the proceeds from the sale of the power produced in excess of the annual OREC target. Similarly, if a Designated Facility produces more than the annual OREC Target, then the Developer should have the option to either (1) sell the excess renewable attributes – independent of the excess energy – in the NJ Class I REC or voluntary markets or (2) hold excess ORECs for up to five (5) years. We believe that five years is necessary because of the annual variation in wind resources.

Conclusion

Once again, Garden State commends the Board and the OCE for the collaborative approach taken to this process and looks forward to continuing to work with the OCE and interested stakeholders as this rulemaking process continues.

Respectfully submitted,

On behalf of Garden State Offshore Energy, LLC

*Robert L. Gibbs*
Robert L. Gibbs
Manager Development – Energy Renewables
PSEG Global, LLC

*Clinton L. Plummer*
Clinton L. Plummer
Vice President -Development
Deepwater Wind, LLC

cc: Lance Miller, BPU Dir. Policy & Planning

Samuel Wolfe, Esq., BPU Chief Counsel
Anne-Marie McShae, Office of Clean Energy
Scott Hunter, Office of Clean Energy
Cindy Miller, DAG
Rachel Boylan, Counsel's Office