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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Offshore Wind Renewable Energy

Readoption with Amendments: N.J.A.C. 14:8-6

Proposed: August 20, 2012 at 44 N.J.R. 2102(a).

Adopted: January 23, 2013 by the Board of Public Utilities, Robert M. Hanna, President; Jeanne M. Fox, Joseph L. Fiordaliso, Nicholas Asselta and Mary-Anna Holden, Commissioners.

Filed: January 23, 2013 as R.2013 d.039, **with substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-13 and 48:3-49 et seq.

BPU Docket Number: EX12050466

Effective Date:	January 23, 2013, Readoption;
	February 19, 2013, Amendments.
Expiration Date:	May 1, 2019.

The New Jersey Board of Public Utilities ("Board" or "BPU") is herein readopting with amendments N.J.A.C. 14:8-6 addressing offshore wind renewable energy standards. These rules provide an application process and a framework under which the Board will consider and, if appropriate, approve applications for qualified offshore renewable facilities and Offshore Renewable Energy Certificates (ORECs). Major components of the readopted rules include application requirements, the ability for the Board to designate the application windows, the ability for the Board to impose appropriate conditions upon any OREC grant, and offshore wind renewable portfolio standards (RPS) requirements.

Summary of Public Comments and Agency Responses:

The following commenters submitted timely comments on the notice of proposal:

Stefanie A. Brand Esq., Director, Division of Rate Counsel (RC)

Philip J. Passanante Esq., Atlantic City Electric (ACE)

Erich J. Stephens, Vice President, Offshore MW (OSMW)

Doug Copeland, Regional Development Manager, EDF Renewable Energy (EDF)

Robert L. Gibbs, Vice President, Garden State Offshore Energy (GSOE)

Susan J. Vercheak, Esq., Assistant General Counsel, Rockland Electric (RECO)

Chris Wissemann, Acting CEO, Fishermen's Energy (FE)

General Comments:

1. COMMENT: We appreciate the opportunity to comment upon the Board's proposed revisions to its Offshore Wind Energy Rules. We agree with the proposed revisions offered by the Board and believe that these proposed revisions will (a) provide clarity on the Board's expectations in reviewing offshore wind (OSW) applications, (b) strengthen the OSW application review process, and, hopefully, (c) reduce the overall administrative cost associated with the analysis of these applications. (RC)

   RESPONSE: The Board appreciates the commenter's support of the readopted rules and adopted amendments.

2. COMMENT: We find the proposed changes to be generally positive ones which will improve the application process for both applicants and regulators, and provide a better offshore wind program for New Jersey and its ratepayers. We also offer some detailed

comments on particular sections where we find the proposed change may not have the desired effect, would benefit from additional clarity, and/or would create unintended, negative consequences. (OSMW)

RESPONSE: The Board appreciates the commenter's input on the readopted rules and adopted amendments. Specific comments are addressed within.

3. COMMENT: We compliment the BPU on the development of rules that create a system of financial incentives to bring offshore wind to New Jersey ratepayers as a source of clean, renewable energy. We have always believed that only through initiatives such as New Jersey's, can a viable offshore wind industry grow to benefit ratepayers as well as electric power suppliers in the state. The BPU's proposed OREC rules provide an excellent framework for ensuring the timely and economical development of offshore wind in New Jersey. We request that the Board consider and adopt the modifications and clarifications recommended herein to ensure that the BPU and applicants will have a productive and fair working relationship centered on maintaining the viability of offshore wind development in New Jersey and creating a model for other states. (EDF)

RESPONSE: The Board appreciates the commenter's input on the readopted rules and adopted amendments. Specific comments are addressed within.

4. COMMENT: We would like to acknowledge the Board's efforts in bringing offshore wind development in New Jersey to this significant stage as well as the challenging need to now meet multiple objectives, including:

> Issuing rules that provide sufficient clarity so the manufacturing industry that has been waiting to develop can take root and bring much needed employment and

environmental benefits to the State and region while also ensuring the program will yield successful qualified offshore wind projects; and

Ensuring that costs to customers are minimized, while recognizing that only projects that have prudently estimated costs and contingencies and utilized appropriately risk-adjusted returns will be viable.

Recognizing these critical challenges, along with the myriad of other issues involved in drafting first of its kind offshore wind regulations, in support of the Board's efforts, we offer our comments for your consideration. (GSOE)

RESPONSE: The Board appreciates the commenter's input on the readopted rules and adopted amendments. Specific comments are addressed within.

5. COMMENT: While the proposed regulations for the most part appropriately advance the intent of the Offshore Wind Economic Development Act ("the Act"), we believe that certain specific elements, if not amended, will hinder the development of offshore wind that was envisioned by the Act. (FE)

RESPONSE: The Board appreciates the commenter's input on the readopted rules and adopted amendments. Specific comments are addressed within.

N.J.A.C. 14:8-6.1

6. COMMENT: We support the proposed changes to N.J.A.C. 14:8-6.1 that now includes a definition of "controlling interest" as used in the proposed amendments to N.J.A.C. 14:8-6.5(a)lv. We believe this clarification will be useful in reviewing applications that may arise from more commercially complex offshore wind (OSW) proposals. (RC)

RESPONSE: The Board appreciates the commenter's support of the adopted amendments.

N.J.A.C. 14:8-6.3

7. COMMENT: We support the Board's proposal to modify N.J.A.C. 14:8-6.3 that allows for multiple application periods at the Board's discretion. This flexibility should allow the Board greater flexibility in responding to market changes and unanticipated changes that may facilitate OSW development. (RC)

   RESPONSE: The Board appreciates the commenter's support of the adopted amendments.

8. COMMENT: We suggest that N.J.A.C. 14:8-6.3, which sets forth the application process for offshore wind, be modified to expressly authorize the Board to institute performance requirements after an application is approved. For example, if an OREC award is contingent upon an applicant's meeting specified milestones, the Board should have the ability to enforce those performance requirements. It is in the best interests of New Jersey electric customers if the Board can require that offshore wind projects meet the applicant's own performance/output measures that underlay the Board's original approval of the projects. (RECO)

   RESPONSE: The Board agrees with the commenter that the performance of the project is a prerequisite for the payment of ORECs. The Offshore Wind Economic Development Act at N.J.S.A. 48:3-87.1.c(2) requires that "ORECs shall be paid on the actual electrical output of the project that is delivered into the transmission system of the State." Furthermore, the Board's rules at N.J.A.C. 14:8-6.5(a)12iv require that OREC pricing will be on a pay for performance basis, with payment on $/MWh basis, subject to

any quantity caps, with the offshore wind developer responsible for any cost overruns. Ratepayers will not be responsible for any cost overruns and for costs associated with non-performance.

Beyond electric output, N.J.A.C. 14:8-6.5 (a)11 requires that the proposed project must demonstrate a net economic benefit for the ratepayers of New Jersey in order to be approved. The developer must provide a detailed input-output analysis on the impact of the project on income, employment, wages, indirect business taxes, and output in the State with particular emphasis on in-State manufacturing employment. Further, the Board is empowered to evaluate the credibility of the asserted economic benefits and the applicant is required to propose consequences if claimed benefits do not materialize, and the employment impact may become conditions of any OREC order.

Therefore, approved OSW projects will be obligated to live up to and deliver on the representations made in the application, as memorialized in a Board Order approving the project.

N.J.A.C. 14:8-6.4

9. COMMENT: We support the Board's proposed amendments to N.J.A.C. 14:8-6.4 that will allow Board Staff to consult with any consultants or experts retained by the Board in determining administrative completeness phase of any application review. We support the Board's goals of attaining technical advice and the financial resource to support that technical advice, in the review of future OSW applications. (RC)

RESPONSE: The Board appreciates the commenter's support of the readopted rules and adopted amendments.

10. COMMENT: The proposed OREC rules clarify that the Board may retain "consultants or other experts" to assist it in the review of applications for administrative completeness. We do not oppose the use of consultants in the application process. We request that the Board confirm in the adopted rules, however, that it will require such consultants to enter into long-term non-disclosure agreements to preserve the confidential and proprietary information contained in the applications. The Board should also clarify that prior to retention, a prospective consultant must disclose any interest or relationship it may have with a prospective offshore wind applicant. This information will assist the NJBPU in selecting consultants that will not have an incentive to favor or otherwise discriminate against certain applicants. (EDF)

RESPONSE: The Board shares the commenter's concern about the need to avoid conflicts of interest and maintain confidentiality, but disagrees that the rules require further clarification of this issue. The Board complies with Department of the Treasury rules in the solicitation and contracting of outside consultants who are asked to assist in the review and evaluation of OSW applications. All contractors are required as part of the solicitation process to disclose conflicts of interests, including relationships with OSW developers. All bidders and contractors are also required, as part of the terms and conditions of the contract, to disclose conflicts of interest and agree to maintain the confidentiality of confidential or proprietary information contained within the OSW application.

N.J.A.C. 14:8-6.5

11. COMMENT: In several places, this section refers to an engineering, procurement, and construction (EPC) contractor. We note that many, if not most, offshore wind projects have not been built with a single EPC contractor. We suggest the wording be adjusted to reflect a scenario where a developer might use a multi-contract approach.

In addition, while it is important that contractors have strong balance sheets, we want to be clear that there should be no expectation or requirement that a contractor's balance sheet be the only means to cover potential liabilities. The reality is that for many contracts and subcontracts, the contracting companies simply cannot cover all liabilities associated with their work by their balance sheet. In these cases, appropriate risk allocation within the contracting is used to cover these risks. Given that this is a complicated issue and one that any lenders will pay considerable attention to - and indeed, will not finance the project if not correctly addressed - we would suggest that attempting to address this important issue through regulation or during the application process is both impractical and duplicative. The ratepayer would be better served by the Board focusing on an evaluation of the various contractors' capabilities and experiences in order to ensure that a credible and capable development team has been proposed. How construction risk exposures will be covered will be adequately addressed by the banks and equity investors. (OSMW)

RESPONSE: The Board appreciates the commenter's input on the readopted rules and amendments. The Board recognizes a scenario where a developer might use a multi-contract approach in lieu of a single EPC contractor and addresses this issue further in the Response to Comment 18.

We agree that construction risk exposures should be addressed by the banks and

equity investors; however, that does not absolve the Board from similarly considering the level of liability and the disposition of risk across contracts. The purpose of the adopted amendments is to strengthen the financial requirements by covering a broader spectrum of potential applicants and financial partners who may opt to accept a higher level of risk than is acceptable to the Board and New Jersey ratepayers.

N.J.A.C. 14:8-6.5(a)1

12. COMMENT: We strongly support the proposed revisions to N.J.A.C. 14:8-6.5(a)1 that will require applicants to:

- Notify the Board within 30 days of the departure of any key employee and submit the expertise and qualifications for any new key employee for approval by the Board throughout the period in which the application is active;
- Seek Board approval for any changes to the organizational structure of key employee positions and the level of expertise and qualifications of those key employees, and for any entity seeking to obtain control of the proposed or approved qualified offshore wind project;
- Disclose any prior bankruptcies for any of its parent company, affiliates, subsidiaries or key employees; and
- Clarify that substantiating documentation must be provided for any claims that manufacturing will be sourced in New Jersey.

We support the aforementioned revisions, collectively, since they should help keep the Board, as well as other parties, apprised of changes in project control that could impact any proposed OSW project's management and leadership stability. The proposed revisions requiring OSW applicants to report prior bankruptcies are important additions

to the overall financial review of any proposed project. Lastly, we strongly support additional revisions to this section requiring OSW applicants to provide project documentation, rather than simple assertions, about local sourcing of potential OSW manufacturing. This will be an important requirement in evaluating the net benefits of any proposed OSW project. (RC)

RESPONSE: The Board appreciates the commenter's support on the readopted rules and adopted amendments.

13. COMMENT: The proposed OREC rules require applicants to undertake several new notification and approval requirements regarding "key employees." For example, an applicant would have to notify the Board within 30 days of the departure of any "key employee" and submit the expertise and qualifications for any new key employee for approval by the Board. Further, the proposed OREC rules would require applicants to seek Board approval for any changes to the organizational structure of key employee positions and the level of expertise and qualifications of those key employees. We understand the Board's desire to ensure the viability of offshore wind projects and to count on the expertise of certain "key" personnel as originally proposed by a developer. The Board's proposed rules, however, requiring prior approval for "key employees" for projects that may extend over 20 years are unworkable and should be eliminated. We know from experience that "key employees" involved in a large project will frequently change throughout the 20-year life of the project. For example, highly experienced personnel may retire or move on to other projects during this time. Personnel will also rotate as the project progresses through its phases, that is, from design, to construction, to operation and maintenance. Imposing Board approvals for "key employees" for a project

with a 20-year lifespan would introduce regulatory interference and delay that could cripple the operations of a project company. Moreover, investors may refrain from financing a project where the Board holds a veto power over new key employees or organizational changes affecting key employees. Ultimately, this well-intentioned but intrusive policy could lead to the deterrence of offshore wind development in New Jersey altogether.

While we oppose any approval requirements associated with "key employees," we would accept a notification requirement in lieu of an approval requirement for the departure and addition of such employees or changes to the organizational structure affecting key employees. While such rules would still impose an administrative burden on both applicants and the Board, we recognize the Board's desire for transparency and to be kept abreast of major developments in offshore wind projects. In fact, we would also welcome periodic in-person meetings with Board staff to provide updates and explanations of major developments throughout the life of the project.

With respect to "key employees," we further request that the Board provide additional clarification and guidance as to the types of employees falling within the definition of "key employee" and subject to the notification and approval requirements in the Proposed OREC Rules. For example, if the Board is primarily concerned with "key" officers and directors of a project company, it would be helpful for the Board to provide such clarification. Additional clarity on this issue would help minimize the administrative burden of monitoring and notifying the BPU of key employee developments. Likewise, the Board could avoid facing a deluge of filings concerning "key employees" that could hamper its ability to timely address more meaningful issues before it.

Finally, but importantly, we request that the BPU clarify in its final order that the inadvertent failure to request approval for key employees, or notify the Board, as the case may be, would not in-and-of-itself cause the revocation of a project's OREC allocation. A drastic step such as this for an administrative oversight would certainly jeopardize offshore wind development in New Jersey. (EDF)

RESPONSE: The Board thanks the commenter and notes that the issues raised here are addressed in the Response to Comment 15.

14. COMMENT: We recognize that the developers have discussed at length with Board staff concerns associated with the "key employees" obligation in N.J.A.C. 14:8-6.5(a)1. The proposed amendments further complicate the issues as they require that: (1) for the duration of the project, the applicant must notify the Board within 30 days of the departure of any key employee and submit the expertise and qualifications for any new key employee for approval by the Board; (2) the applicant seek Board approval for any changes to the organizational structure of key employee positions and the level of expertise and qualifications of those key employees; and for any entity seeking to obtain control of the proposed or approved qualified offshore wind project; and (3) the applicant must disclose any prior bankruptcies for any of its parent company, affiliates, subsidiaries, or key employees. We are concerned that provisions that essentially call into question a qualified offshore wind developer's Board approval to receive ORECs simply when a "key employee" decides to leave might be untenable. Although we agree that the potential for such an unwarranted rescission by the Board is limited, that additional risk may cause investors to charge unnecessary risk premiums to developers, or simply decline to participate in the program altogether. This result, in turn, will either cause New

Jersey's offshore wind to be more expensive than necessary, or limit the prospects for a successful program. It is clearly in the interest of reducing ratepayers' costs to have as many investors participating as possible, as this will help drive down the cost of capital for projects. At the same time, we understand and agree with the importance of the Board maintaining oversight of this important and ambitious program. GSOE urges the Board to suspend implementation of this provision to also enable further discussion. (GSOE)

RESPONSE: The Board thanks the commenter and notes that the issues raised here are addressed in the Response to Comment 15.

15. COMMENT: Proposed N.J.A.C 14:8-6.5(a)1v and vi require the Board to approve the departure or hiring of any new key employee for the entire potential 20-year duration of the project. None of the public utilities subject to the Board's jurisdiction have such a requirement and for good reasons. The micromanagement of employment matters by an agency charged with assuring safe, adequate, and proper utility service and of encouraging economic development and renewable energy does not need to manage each key employee change. Utilities which work with such critical issues as electrical and natural gas safety, and major security issues do not have their key employees approved by the Board, so it is clearly unnecessary for an offshore wind farm company where performance reward is completely production based (that is, if the project does not perform, it does not earn ORECs). Moreover, such a restriction on developers of offshore wind (or any type of entity that needs approval by the Board) will make hiring employees more difficult because every job offer would be contingent upon BPU approval. The Board should amend this proposed regulation to require developers of offshore wind projects to notify the board of employee changes, but not require such

entities to obtain board approval. In particular, proposed N.J.A.C. 14:8-6.5(a)1v and vi should be amended to read (additions in boldface; deletions in brackets):

> v. The applicant shall, for the duration of the project, commit to: notifying the Board, within 30 days, of the departure of any key employee; submitting the expertise and qualifications for any new key employee **to** [for approval by] the Board; [seeking] **notifying the** Board [approval for] **of** any changes to the organizational structure of key employee positions and the level of expertise and qualifications of those key employees; and obtaining prior Board approval for an entity to assume a controlling interest in the proposed project or the approved qualified offshore wind project. Enforcement of this provision shall be a condition of the order granting ORECs;
>
> vi. The applicant is not permitted to reallocate or replace the personnel/resources or key employees they used to obtain the OREC, without **notifying** [prior approval of] the Board **within 30 days**; (FE)

RESPONSE: The Board understands the concerns raised by the commenters but notes that the adopted amendments to N.J.A.C. 14:8-6.5(a) were drafted to ease the administrative burden on applicants. The adopted amendments were enacted in response to concerns raised by some stakeholders that the originally adopted language, which required the applicant to certify that "after award, that its proposed key employees will remain the project team for the duration of the project, subject to any changes approved by the Board," was overly burdensome.

The Board believes that the notification and approval requirements in the "key employee"

provisions are necessary for the Board to make an informed decision on the merits of any proposed project and to ensure that an appropriate level of qualifications is maintained for approved projects during the term of the OREC order. The Board notes that the regulation does not require the approval of the departure of key employees. The Board notes that "key employee" is clearly defined in N.J.A.C 14:8-6.1. Furthermore, the applicant determines who the key employees are for the project. This issue is treated with the utmost seriousness by the Board since its determination on whether to approve, conditionally approve, or deny an application is based in part on the staffing of these positions and the adopted amendments ensure that these standards are maintained. The Board believes that any remaining obligations and risks borne by the applicants are outweighed by the benefits that these requirements will have on New Jersey ratepayers.

N.J.A.C. 14:8-6.5(a)2

16. COMMENT: We support the proposed changes to N.J.A.C. 14:8- 6.5(a)2 that will require a number of additional reporting requirements for OSW applicants. We are particularly supportive of the proposals that will require more concrete documentation including memoranda of understanding from turbine manufacturers on the technologies selected, or under consideration, by an OSW applicant. We also support the Board's proposal that will require OSW applicants to demonstrate their experience in projects of similar proposed size and scope. We also believe that the Board's proposed revisions in this section requiring OSW applicants to provide a wind resource and energy assessment from a wind energy consultant for the exact manufacturer, model, and specifications of turbines selected for the project will be an important part of the OSW application that allows the project to be assessed with a meaningful degree of realism. (RC)

RESPONSE: The Board appreciates the commenter's support on the readopted rules and adopted amendments.

17. COMMENT: It appears N.J.A.C. 14:8-6.5(a)2 and 10 speak to requirements related to detailed design and regulatory approvals. It is not apparent, however, if these are limited to the offshore portion of the project. As such, the revised amendment needs to clarify that both onshore *and* offshore portions of the project are addressed with regard to right-of-way and/or local approvals.

We maintain that these projects should comply with all PJM transmission requirements and that the electric distribution company (EDC) should not bare any of the burden to provide right-of-way access for these projects. The burden of acquiring rights-of-way for the transmission should be borne by the developer. Furthermore, the EDC should not be required to provide support in acquiring local, county, or State level approvals. (ACE)

RESPONSE: The Board agrees that the design and regulatory approvals should address both offshore and onshore portions of the project. This is consistent with the Act and the rules in N.J.A.C. 14:8-6, which include provisions in the application process to require submittal of plans for "all aspects of the project" with references to both the offshore and onshore portion of the project. Specifically, the definition of "qualified offshore wind project" in N.J.A.C 14:8-6.1 is inclusive of "the associated transmission-related interconnection facilities and equipment." Additionally, the provisions of N.J.A.C. 14:8-6.5(a)10i through iv provide strong requirements ensuring that the applicant will acquire all permits; are currently in the PJM queue or the proposed project is PJM queue eligible; and must identify the nature of its ocean lease and land ownership requirements for all aspects of the project including all required interconnection areas. Finally, N.J.A.C.

14:8-6.5(a)14 requires an "interconnection plan" and documentation of tasks required and discussion of issues associated with electrical interconnection. The Board therefore believes that the rules are inclusive of offshore and onshore portions of the project and clearly puts the onus of obtaining approvals, including PJM interconnection approvals and right-of-ways necessary to operate the project, on the successful entity who applied to the Board. The Board also agrees that the EDCs should not bear the burden of obtaining rights-of-way or any local, county or State approvals. These are the responsibility of the developer.

18. COMMENT: N.J.A.C. 14:8-6.5(a)2 should be amended as follows (additions to proposal in underlined boldface; deletions from proposal in cursive brackets):

> A detailed description of the project, including maps, surveys, and other visual aides. The description shall include, but need not be limited to: the type, size, and number of proposed turbines and foundations; the history, to date, of the same type, size, and manufacturer of installed turbines and foundations globally; **the configuration of turbine array, location of cable and balance of system equipment, and a description of points of interconnection;** [and] a detailed implementation plan **and schedule** that highlights key milestone activities **and completion dates** during the permitting, financing, design, equipment solicitation, manufacturing, shipping, assembly, in-field installation, testing, equipment commissioning, and service start-up**; a letter of intent or memorandum of understanding from the turbine manufacturer/supplier to supply the selected turbines; a demonstration of the financial strength of the selected turbine manufacturer/supplier and key construction contractors or vendors; a**

declaration from the foundation manufacturer/supplier that states their ability to manufacture and deliver all foundation components within the targeted schedule; a declaration from the undersea cable manufacturer/supplier that states their ability to manufacture and deliver all undersea cable components within the targeted schedule; a letter of intent or memorandum of understanding from the proposed engineering, procurement, and construction (EPC), {or} balance of plant (BOP) contractor, and/or key construction contractors {to provide EPC} or vendors.; {BOP services;} a demonstration of the applicant's experience in projects of similar size and scope proposed, including the use of other turbine types; and either selected certified wind turbine generators or provide a detailed certification plan that is underwritten by a certifying body. (OSMW)

RESPONSE: The Board believes that the use of the term EPC has the potential to limit applicants in the selection of contractors who are capable of providing construction services set forth in this section. Therefore, the Board agrees with the commenter's proposed amendment and has made this change upon adoption. This change clarifies and avoids any possible misunderstanding from an applicant that having a single EPC contractor is a requirement. The Board further believes that having construction contracts with multiple third parties is acceptable and will evaluate the experience and financial strength of those key contractors responsible for constructing the facility.

19. COMMENT: Proposed N.J.A.C. 14:8-6.5(a)2 requires developers of offshore wind to submit to the Board items that may not be available. In particular, this paragraph assumes the developer has been able to negotiate and select final vendors for the major

components of the offshore wind project such as the turbine manufacturer/supplier, the undersea cable manufacturer/supplier, and the EPC contractor. The selection of such major components, prior to the filing of an application with the Board, may not be feasible. By placing a requirement in the regulations that such major vendor be selected, the Board places the developer in a less advantageous negotiating position with vendors, particularly when a developer must respond prior to the close date of an application period set by the Board. Proposed N.J.A.C. 14:8-6.5(a)2 should be amended to read (additions in boldface; deletions in brackets):

> 2. A detailed description of the project, including maps, surveys, and other visual aides. The description shall include, but need not be limited to: the type, size, and number of proposed turbines and foundations; the history, to date, of the same type, size, and manufacturer of installed turbines and foundations globally; the configuration of turbine array, location of cable and balance of system equipment, and a description of points of interconnection; a detailed implementation plan and schedule that highlights key milestone activities and completion dates during the permitting, financing, design, equipment solicitation, manufacturing, shipping, assembly, in-field installation, testing, equipment commissioning, and service start-up; [a letter of intent or memorandum of understanding from the turbine manufacturer/supplier to supply the selected turbines; a demonstration of the financial strength of the selected turbine manufacturer/supplier; a declaration from the foundation manufacturer/supplier that states their ability to manufacture and deliver all foundation components within the targeted schedule; a declaration from the undersea cable manufacturer/supplier that states their ability to

manufacture and deliver all undersea cable components within the targeted schedule; a letter of intent or memorandum of understanding from the proposed engineering, procurement, and construction (EPC) or balance of plant (BOP) contractor to provide EPC or BOP services;] **and** a demonstration of the applicant's experience in projects of similar size and scope proposed, including the use of [other] turbine types[; and either selected certified wind turbine generators or provide a detailed certification plan that is underwritten by a certifying body].

i. The project developers shall:

(1) - (7) (No change.)

(8) To the fullest extent possible, indicate the major types of equipment that have been selected to be installed, **and if not yet selected, indicate the candidate technologies** and the characteristics specified;

(9) (No change.)

(10) Describe the selected equipment **candidate(s),** the specifications, warranties, how long it has been commercially available, approximately how many are currently in service, and where they are installed;

(11) – (12) (No change.)

ii. For actual construction, successful applicants are permitted to replace or update equipment identified in the proposal with more technologically advanced equipment that is equal to or better than the equipment identified in the proposal, subject to Board approval.

iii. – iv. (No change.)

v. Applicants shall indicate the proposed nameplate capacity for the entire project and the anticipated number of individual units for the selected technology **or for each candidate technology**; and estimate the net yearly energy output for the project, accounting for losses and include any assumptions, such as the assumed capacity factor, that are the basis for the estimate. Applicants shall provide a wind resource and energy assessment from a wind energy consultant for the exact manufacturer, model, and specifications of turbines selected for the project. Applicants shall also provide the professional qualifications for the wind energy consultant as an attachment to the application to demonstrate sufficient expertise.

vi. Applicants shall account for, to the fullest extent possible, the coincidence between time of generation for the project and peak electricity demand; provide an estimate, with documented support, of the amount of electrical capacity the project will make available, for the capability periods in the PJM Interconnection; provide an estimate, with support, of the amount of energy being generated over the term of the life of the turbines; and estimate, with support, the level of generation that their proposed project will be able to provide over the life of the equipment, assuming the project runs for the equipment's full life; (FE)

RESPONSE: The Board believes it is in the best interest of the ratepayer for the evaluation of a proposed project to be based on project specific technologies and commitments. The submission of candidate technologies would not provide the Board with the appropriate amount of information to determine if the proposed project meets the standards described in the application. For example, the Board would be unable to

properly evaluate the merits of an OREC price or the net benefits claimed in the application if it does not know the exact technology that will be used. The Board further notes that an applicant is permitted, pursuant to N.J.A.C. 14:8-6.5(a)2ii, "to replace or update equipment identified in the proposal with more technologically advanced equipment that is equal to or better than the equipment identified in the proposal, subject to Board approval." In the absence of project specific information, the Board cannot properly evaluate a proposal and the risk or commitment the project may impose on ratepayers.

20. COMMENT: N.J.A.C. 14:8-6.5(a)2vi would benefit from clarification as to what is meant by "capability periods". (OSMW)

    RESPONSE: The Board notes that term capability period is taken from PJM language that is not inclusive of offshore wind generation. Therefore, upon adoption the Board is seeking to provide new language which will more accurately reference PJM standards for offshore wind.

N.J.A.C. 14:8-6.5(a)3

21. COMMENT: We support the Board's proposed revisions to N.J.A.C. 14:8-6.5(a)3 requiring additional and detailed cost documentation, as well as accounting and financial information based upon U.S. GAAP standards. (RC)

    RESPONSE: The Board appreciates the commenter's support on the readopted rules and adopted amendments.

22. COMMENT: This section requires audited financial statements and other detailed financial information about the applicant and parent companies, presumably to assure that the applicant has access to capital sufficient to carry out pre-construction development

activities. We fully agree that this is an important assessment to make, but we propose that a slightly different approach be taken to this question, for the following reason: Audited financial statements are not a particularly useful means to determine if a company has either the capital or, just as importantly, commitment to spend capital, needed to complete a project. For example, an applicant with a large balance sheet may not have commitment at the highest managerial levels to see a project through to completion. On the other hand, a small development company which shows essentially no balance sheet may have strong support from an investor(s), which will provide all the capital needed at the correct moment in the development process.

Given this, we suggest a two-part approach to testing for access to capital necessary to complete pre-construction development:

First, N.J.A.C. 14:8-6.5(a)3vi should be rewritten in such a way to: (a) give the applicant the flexibility to demonstrate access to capital through whatever means the applicant believes best makes their case for access to capital, given the nature of their investment backers, and (b) give the BPU the authority to test these claims as part of the application process. For example, an applicant with a modest balance sheet could provide a letter of commitment from an investment fund, stating the level of capitalization the investor is prepared to make should the OREC order be made. The financial statement of an investment fund is not particularly useful or relevant to determining if funds for any specific investment would be available at a particular time, and so the BPU could then look to past investment history or other financial information to determine the investor's capabilities and commitment. Or another applicant may indeed provide audited financial statements showing a strong balance sheet of their parent company, but then the BPU

might look to a letter from the CEO or Board in order to gauge the larger company's commitment to the project.

Second, as part of any OREC Order, the BPU should establish milestones towards completion of the project, and reserve the right to withdraw the OREC order if milestones are missed due to lack of investment. Given the long and difficult development process any applicant will face, BPU should not withdraw an OREC order because an applicant misses a milestone for reasons not germane to the developer's ability to secure funding and ultimately complete the project.

One important note regarding assessing an applicant's access to capital: While it is important to test for access to capital to complete pre-construction development activities, it would not be reasonable to expect an applicant to have secured construction capital at the time of an OREC application, as it would be much too early in the development process for such capitalization. Rather, BPU should look to an applicant's ability to raise the construction capital at the appropriate time by considering the developer's track record in raising similar levels of construction capital for similar projects, and general support from investors and lenders with whom the applicant has secured construction capital in previous projects.

We propose the following amendments to the section (additions in boldface; deletions in brackets):

3. A complete financial analysis of the project, which includes:

i. - iii. (No change.)

iv. A comprehensive business plan with fully documented estimates of all associated and relied upon revenue and expense projections; [and]

v. A full cost accounting of the project, including **pre-**[total] construction **development costs,** [the feasibility study used to determine the] **construction costs,** and decommissioning **costs, along with any studies, vendors' quotes or estimates, or other information used to determine these** costs;

vi. Documentation of the applicant's capability and commitment to finance pre-construction development activities; such documentation may include financial statements of the applicant and/or its parents, letters of commitment, summary of relevant past project experience, and other documentation of financial capability and commitment to fund pre-construction activities from the applicant's investors or owners. Should the Board find the documentation submitted by the applicant does not demonstrate sufficient financial capability and commitment to complete pre-construction activities, the Board may deny the application or deem the application incomplete, in which case the Board may specify additional financial documentation necessary for the application to be considered complete. and

vii. Schedules for pre-construction development, financing, and construction, up to the commercial operation date. Such schedules shall indicate key, objective milestones towards completion of the project, and projected completion date for each milestone. The Board may rescind an OREC Order if, after evidentiary hearings, it is determined that a missed milestone caused a material delay to the

project's operation, and was due to the applicant not providing sufficient funding to the project in order to maintain the project schedule.

[vi. Two years of audited financial statements, including accompanying financial notes to these statements, of the applicant and/or parent company in US GAAP. If not in US GAAP, the applicant shall provide an opinion from an accounting firm that attests to the financial statements and accompanying financial notes and the strength of the applicant and/or parent company and has provided professional qualifications that demonstrate that expertise; and

vii. Audited financial statements for two years, in US GAAP, including accompanying financial notes to these statements, for key projects suppliers including, but not limited to, the turbine manufacturer and EPC contractor. If not in US GAAP, the applicant shall provide opinions from an accounting firm that attests to the financial statements, including accompanying financial notes to these statements, and the strength of the key project suppliers and has provided professional qualifications that demonstrate that expertise;] (OSMW)

RESPONSE: Several commenters have proposed that the Board remove the requirements that seek to obtain audited financial statements to help assess the financial capability of developers and financial backers. Prior to issuing the OREC Order, the Board needs to have a high degree of confidence that the project will be able to obtain development and construction financing. Alternative approaches such as

monitoring the completion of project milestones with the ability to withdraw an OREC order if milestones are missed due to lack of investment or shifting focus to a developer's ability to access sufficient capital to fund only pre-construction expenses, do not provide the necessary assurance that the project will be able to obtain all development and construction financing. The Board is concerned that "pre-construction" costs are miniscule compared to construction financing and will not risk being put in a position of potentially approving an OREC order without having vetted the ability of developers to finance the lion's share of project costs. The financial statements will be evaluated in conjunction with the proposed method of financing the project proposed in accordance with N.J.A.C. 14:8-6.5(a)4.

23. COMMENT: According to the proposed OREC rules, an applicant must submit financial statements that conform to the US GAAP system of accounts. Any alternative system of accounting would require a separate opinion from an accounting firm and would be subject to increased scrutiny by the BPU. The Board should be aware that many international companies with experience in developing offshore wind, such as EDF-RE, are based in Europe and therefore do not utilize the US GAAP system. Thus, EDF-RE requests that the Board modify the proposed OREC rules to permit explicitly the use of the International Financial Reporting Standards (IFRS) system, a set of standards developed by the International Accounting Standards Board. This accounting system is a leading global standard for the preparation of public company financial statements and should be recognized by the BPU as an acceptable alternative to US GAAP. (EDF) RESPONSE: The adopted amendments requiring the use of financial statements that conform to the US GAAP system of accounts reflects the Board's consideration of how

best to accommodate differing accounting practices and standards in use in the U.S., European Union, Asia and other regions. In making this determination, the Board looks to the U.S. Securities and Exchange Commission (SEC) for guidance on whether financial statements prepared according to international accounting standards should be permitted which they have not adopted. A single accounting standard is preferred in order to provide consistent evaluation across all applications. The Board also notes that the adopted amendments at N.J.A.C. 14:8-6.5(a)3vi and vii provide applicants with alternative means of compliance.

24. COMMENT: Given that project developers should not be required to choose the major vendors/suppliers prior to filing an application with the Board, proposed N.J.A.C. 14:8-6.5(a)3 should be amended. Additionally, the requirement that an accounting firm provide an opinion that attests to the strength of the developer and the key project suppliers should be removed. Accounting firms, by their nature, can provide financial information and certify its accuracy. Accounting firms generally do not attest to financial strength. This requirement should be removed. Accordingly, proposed N.J.A.C. 14:8-6.5(a)3 should be amended as follows:

    3. A complete financial analysis of the project, which includes:

        i. - iii. (No change.)

        iv. A comprehensive business plan with fully documented estimates of all associated and relied upon revenue and expense projections; [and]

        v. A full cost accounting of the project, including total construction, the feasibility study used to determine the construction costs, and decommissioning costs;

vi. Two years of audited financial statements, including accompanying financial notes to these statements, of the applicant and/or parent company in US GAAP. If not in US GAAP, the applicant shall provide an opinion from an accounting firm that attests to the financial statements and accompanying financial notes [and the strength] of the applicant and/or parent company and has provided professional qualifications that demonstrate that expertise; and

[vii. Audited financial statements for two years, in US GAAP, including accompanying financial notes to these statements, for key projects suppliers including, but not limited to, the turbine manufacturer and EPC contractor. If not in US GAAP, the applicant shall provide opinions from an accounting firm that attests to the financial statements, including accompanying financial notes to these statements, and the strength of the key project suppliers and has provided professional qualifications that demonstrate that expertise;] (FE)

RESPONSE: The Board thanks the commenter and notes that the issues raised here in relation to US GAAP are addressed in the Response to Comment 23. Regarding the comment requesting that the Board remove the requirement for the financial statements and notes to attest to "the strength" of the applicant or parent company, the Board strongly believes that this requirement is necessary to protect ratepayers by ensuring that these companies providing vital services to the proposed projects are fundamentally sound. Removing this requirement would permit an applicant not able to meet the US GAAP standard, to submit financial documents to a lower standard.

N.J.A.C. 14:8-6.5(a)4

25. COMMENT: We support the proposed revisions to N.J.A.C. 14:8-6.5(a)4 that will require an OSW applicant to produce evidence and documentation supporting its financial support, such as: a letter of intent to offer credit from credible financiers; a letter of commitment from equity investors; and/or a guarantee from an investment grade party. We also support the hold-harmless modifications included in the revisions to N.J.A.C. 14:8-6.5(a)5 and 9. (RC)

RESPONSE: The Board appreciates the commenter's support on the readopted rules and adopted amendments.

N.J.A.C. 14:8-6.5(a)5iii and 9iii

26. COMMENT: Under the proposed OREC rules, the Board would disallow applicants from imposing certain costs such as decommissioning expenses and tax benefits that fail to materialize on "suppliers or providers." We request that the Board define these terms or at least clarify whether the Board is referring to electric power suppliers and transmission providers, or the applicant's suppliers and providers of equipment and other services in connection with the development, construction, and operation and maintenance of the offshore wind facility. We would understand the former interpretation but would take issue with a rule that would prevent developers from agreeing to share costs with the various equipment suppliers and service providers assisting in the development, construction, and operation/maintenance of the facility. Such a rule would be unduly restrictive in that it would preclude applicants from establishing creative cost-sharing mechanisms that would ultimately benefit ratepayers. (EDF)

RESPONSE: The Board notes that the term "suppliers or providers" refers specifically to New Jersey basic generation service suppliers and third-party electric power providers consistent with the New Jersey Renewable Portfolio Standard terms and definitions set forth in N.J.A.C. 14:8-1.2.

N.J.A.C. 14:8-6.5(a)12

27. COMMENT: We support the proposed revisions to N.J.A.C. 14:8-6.5(a)12 clarifying (a) the means by which OREC plan information is provided; and (b) the total revenue requirement method under which OREC prices will be required to be calculated. Rate Counsel also supports the proposed revisions in this section that will require OREC pricing proposals to specify: total equipment, construction, operation, and maintenance costs of the project; tax credits, subsidies, or grants the project will qualify for; debt service costs and return on equity assumptions; taxes and depreciation assumptions; the nameplate capacity of the project; the expected energy output of the project; the assumed capacity factor and the number of ORECs to be produced by the project; and the price per OREC (megawatt hours (MWh)) necessary to make the project commercially viable. Requiring this information up-front, as part of the overall filing requirements, should facilitate and reduce the administrative costs associated with the review of any OSW application.

We also support the proposed amendments to N.J.A.C. 14:8-6.5(a)12 that require the value of electric energy, capacity payments, and any other environmental attributes or other benefits be returned to ratepayers. We support the Board's revisions that limit excess incremental energy revenue retention to 25 percent, excluding environmental attributes or other benefits. (RC)

RESPONSE: The Board appreciates the commenter's support on the readopted rules and adopted amendments.

28. COMMENT: We submit that there is no need for developers to have up to 25 percent of the incremental energy revenues if the project produces energy revenues exceeding those associated with the sale of ORECs. This excess energy revenue is not needed to finance offshore wind projects since there is too much uncertainty in the projection of energy revenues exceeding those associated with the sale of ORECs. As such, there is too much risk for potential financiers to include this 25 percent provision in the determination of capital loaned to the offshore wind developers. Since this excess energy revenue is not needed for financing the offshore wind project and the ratepayers of New Jersey are subsidizing these projects, the ratepayers should benefit from 100 percent of the excess energy revenue.

Additionally, inclusion of this 25 percent provision will further complicate an already complex bidding process. By affording bidders the opportunity for this 25 percent provision, it will bring the commodity market into consideration during the bidding process. It will also complicate the Board's ability to complete an objective comparison when determining which bidder price is best. (ACE)

RESPONSE: The Board has received comments from many of the offshore wind stakeholders on this issue (see Comments 29, 30, and 31 below). The offshore wind developers argue against the 25/75 developer/ratepayer sharing of incremental energy revenues as proposed in the rule; an electric distribution company (EDC) argues that 100 percent of the incremental revenues should be returned to ratepayers; and the Division of Rate Counsel agrees with the adopted amendments. The Board generally agrees that

since ratepayers of New Jersey are subsidizing these projects, the ratepayers should benefit from the excess energy revenue. However, the Board also recognizes that without some type of incentive, these revenues will likely be managed by the OSW developers in the least cost effective manner. The Board has determined after staff discussions with Rate Counsel, developers, and other stakeholders, that the 25/75 split is the most equitable distribution considering all parties and positions. The Board believes that 25 percent is the minimum amount necessary to incentivize developers to effectively manage revenue stream. The remaining 75 percent of revenues being returned to ratepayers will be reflected in the cost benefit analysis to the State and developers will therefore be credited with the funds being returned to ratepayers. This provides developers with an incentive to maximize revenues while recognizing ratepayers' significant support in rates of offshore wind.

29. COMMENT: We understand that the provision permitting the applicant to "propose that it retain up to 25 percent of the incremental energy revenues, but not any other environmental attributes or other benefits, with the remainder to be returned to ratepayers" is attempting to equitably allocate between project owner and ratepayers any "upside" or revenue that a project may obtain beyond what was originally anticipated during the application process. Clearly this is a key issue which needs to be explicitly addressed in the regulations. However, this sentence is impossible to evaluate as to fairness, effectiveness of the program, or in some ways even meaning, without considering it in the context of the general revenue mechanism (yet to be proposed). For example, it's confusing as to how a project owner might properly earn any upside under the current regulations, given the other requirements in this section. It's also difficult to

determine a fair allocation of upside without understanding downside exposure, much of which would be determined by the revenue mechanism. For example, depending on factors such as how the revenue mechanism works and the potential for downside to the project owner, the fairest approach may very well be that 100 percent of any upside be returned to ratepayers, as opposed to only the 75 percent proposed here. Given the importance of considering this issue in the context of the revenue mechanism, we recommend that this sentence be removed from this section of the regulations, and the issue of equitable allocation of upside be addressed in the yet-to-be-proposed section regarding the revenue mechanism. (OSMW)

RESPONSE: The Board thanks the commenter and notes that the issues raised here are addressed in the Responses to Comment 28.

30. COMMENT: Under the proposed OREC rules, 100 percent of the monetary value associated with the "electric energy, capacity payments and any other environmental attributes or other benefits" generated by an offshore wind project will be "returned" to ratepayers. To the extent that a project produces energy or capacity revenues associated with production above the annual OREC threshold accorded that project, the Board proposes that 75 percent of those revenues be returned to ratepayers and that the remaining 25 percent of those revenues be allocated to the developer. While we understand and agree that ratepayers should be entitled to the benefits of offshore wind renewable power, we believe that the proposed allocation for revenues in excess of the annual OREC threshold is an insufficient incentive for developers to invest in advanced technology and other operational efficiencies that could maximize a project's

performance. We believe the Board should adopt a more equitable allocation of a 50 percent return to ratepayers and a 50 percent return to the developer.

Under the proposed OREC pricing framework, developers would already have to undertake a substantial financial risk by proposing an OREC price based on forecasts and estimates that cannot possibly take into account unforeseen circumstances such as changes in law, equipment scarcity and the global economy. Under the current rules and the proposed OREC rules, ratepayers would receive 100 percent of the monetary value derived from the offshore wind associated with a project's ORECs. Adopting a revenue sharing mechanism where developers retain 50 percent of revenues that exceed those associated with its sale of ORECs would incentivize developers to invest in ways to continually improve and maximize the operational efficiency of their projects. The failure to adopt a more equitable revenue sharing could result in projects voluntarily curtailing their output under certain conditions which would deprive New Jersey and its ratepayers of the full benefit of this renewable resource. Thus, we request that the Board modify the proposed revenue allocation for over-performing projects to provide a 50 percent return to developers and 50 percent to ratepayers. Should the Board decide not to adopt this recommendation, we respectfully request that, at a minimum, the BPU adopt a procedural mechanism that would permit developers to petition the Board for a modified OREC price based on a material change in circumstances upon which the applicant submitted its initial application. (EDF)

RESPONSE: The Board thanks the commenter and notes that the issues raised here are addressed in the Response to Comment 28.

31. COMMENT: We are concerned about the proposed amendment to N.J.A.C. 14:8-6.5(a)12 which would limit a qualified offshore wind developer's ability to retain only 25 percent of revenues generated from excess ORECs (those over and above the amount estimated to be produced in a developer's application to the Board for approval of an OREC pricing plan and which are based on applicant's wind energy production estimates and studies) and which would require all revenue generated from environmental credits, capacity payments, and other revenue sources to be returned to the ratepayers. As provided in the Offshore Wind Economic Development Act and the enabling regulations enacted to date, qualified OSW developers only receive payment for ORECs generated by their projects. By its very nature, offshore wind is intermittent and unpredictable and while each qualified OSW developer surely will strive and in fact has incentive to ensure that its total revenue requirement (as reflected in its OREC pricing plan) closely matches the estimated wind resource, it is inevitable that there will be seasons during which offshore winds are greater or lesser than the estimated wind resource. A qualified OSW developer's ability to smooth that volatility, and particularly to make up a loss of estimated revenue in years where the estimated wind resource is lower than planned, through retention of additional revenue from excess ORECs generated or through other revenue products is essential to meeting financing requirements and investment principles. Without this ability, lending institutions and investors will lack the confidence that a qualified OSW project will generate sufficient revenues to meet debt and equity requirements. GSOE is certainly willing to discuss appropriate revenue sharing with ratepayers above a certain threshold. However, 25 percent to the OSW developer and 75 percent to ratepayers in addition to perhaps being arbitrary seems also unreasonable and

could have a chilling effect on OREC application interest. In this context, it should be noted that although the Board conducted stakeholder outreach over a year ago, this provision was not discussed in those handful of meetings as now set forth in the regulation. We recommend eliminating the proposed provision until such time as a more fulsome discussion on the OREC revenue mechanism can be held. (GSOE)

RESPONSE: The Board thanks the commenter and notes that the issues raised here are addressed in the Response to Comment 28.

32. COMMENT: We suggest a modification to N.J.A.C. 14:8-6.5(a)12, which describes the OREC pricing method for Board consideration as part of each offshore wind applicant's application. The proposed regulation now requires the applicant to include a "revenue requirement" for its project over a 20-year period, but explicitly forbids the applicant from subtracting the value of the energy and capacity payment the project is expected to earn over the same 20-year period from the OREC price. We urge that the application be modified to require that the applicant identify the benefit to customers of placing the energy price risk and capacity price risk on customers, which risks are included in the ORECs to be sold by the applicant. The Board could implement this change by simply requiring all proposals to include two OREC prices: the price for a "REC-only" OREC, in which the applicant retains all market revenues for the output of the project; and the price for an "All-in" OREC, in which market revenues associated with the project are returned to electric customers. Without this modification, the proposed restriction has the effect of requiring that New Jersey electric customers take the combined risk of the price of energy and capacity in the OREC pricing structure without identification of the estimated cost or benefit of bearing the risk. While the Board may conclude that such a

risk is appropriate for customers to bear, we suggest that the proposed modification to make this cost transparent would better inform the Board's evaluation process. (RECO)

RESPONSE: The Board notes that currently, the applicant must account for the value of PJM revenues returned to ratepayers in the cost-benefit analysis as well as any risks of non-performance to be borne by shareholders. As discussed above in the Response to Comment 8, OREC pricing is based on a pay for performance basis for each MWh of electricity generated and delivered to the grid; requires that the project fairly balances the risks and rewards of the project between ratepayers and shareholders; and that any costs of non-performance in either the construction or operation phase of the project shall be borne by the shareholders. Therefore, the Board does not believe that the amendments proposed by the commenter are necessary.

33. COMMENT: A project developer has no way of knowing its actual total costs for the project or the total number of ORECs that actually will be produced. Additionally, they may not know all of the tax credits, subsidies, or grants that the project will ultimately qualify for. The amendments below clarify that such information provided to the Board is projected or expected. Finally, the regulation should be clarified to make it clear that the value of the electric energy, capacity payments, and other environmental attributes or other benefits are returned to ratepayers only during the time period for which the project receives ORECs. The language below clarifies that such payments expire at the end of the term of the OREC pricing method.

Proposed N.J.A.C. 14:8-6.5(a)12 should be amended as follows (additions in boldface; deletions in brackets):

12. A proposed OREC pricing method and schedule for the Board to consider.

i. – vi. (No change.)

vii. The OREC pricing method shall represent the calculation of the price based on the total revenue requirements of the project over a 20-year period including the cost of equipment, financing, taxes, construction, operation, and maintenance, offset by any state or Federal tax or production credits and other subsidies or grants. The value of the electricity and related capacity payments associated with the ORECs shall not be deducted when calculating the OREC price.

viii. OREC pricing proposals shall specify:

(1) Total **projected** equipment, construction, operation, and maintenance costs of the project;

(2) Tax credits, subsidies, or grants the project **is expected to or has qualified** [qualify] for;

(3) Debt service costs and return on equity assumptions;

(4) Taxes and depreciation assumptions;

(5) The nameplate capacity of the project;

(6) The expected energy output of the project;

(7) The assumed capacity factor and the number of ORECs **expected** to be produced by the project; and

(8) The price per OREC (megawatt hours (MWh)) necessary to make the project commercially viable.

ix. The value of electric energy, capacity payments, and any other environmental attributes or other benefits shall be returned to ratepayers **for the term of the**

OREC pricing method. Such other benefits include, but are not limited to, tax credits, subsidies, grants, or other funding not previously identified in the application and not included in the calculation of the OREC price submitted to the Board. To the extent that the project produces energy revenues exceeding those associated with the sale of ORECs, the applicant may propose that it retain up to 25 percent of the incremental energy revenues, but not any other environmental attributes or other benefits, with the remainder to be returned to ratepayers. The annual amount of revenues from whatever source expected to be generated by the project shall be reflected in the revenue plan; (FE)

RESPONSE: The commenter correctly points out that the current language could be interpreted to mean that an applicant would be required to maintain all obligations under the OREC order past the 20 year term when these obligations, with the exception of decommissioning requirements detailed in both the application and Board order, will expire. Therefore, the Board agrees with the commenter's suggested amendments on the term during which ratepayers will be reimbursed the value of PJM revenues and other benefits associated with the project and has made the change upon adoption. The Board believes that this change is necessary to clarify that repayment of the electric energy, capacity payments, and other environmental attributes or other benefits are returned to ratepayers only during the time period for which the project receives ORECs.

The Board does not agree with the commenter's proposed amendments on the OREC pricing proposals and reiterates that the total project costs and revenues must be provided for the Board to make an informed decision on the merits of the proposed project.

N.J.A.C. 14:8-6.5(a)15

34. COMMENT: We support the proposed revisions to N.J.A.C. 14:8-6.5(a)15 increasing an OSW applicant's escrow amount from $100,000 to $125,000 in order to cover the costs associated with the review of the application as well as any additional funds deemed necessary by Board staff to conduct a meaningful review of the OSW application. (RC)

RESPONSE: The Board appreciates the commenter's support of the proposed amendment; however, a change is being made to the amendment upon adoption that is described in the Response to Comment 35 below.

35. COMMENT: In a departure from the currently-effective rules, the proposed OREC rules would require applicants to place a $125,000 deposit (up from $100,000) "with the State," as opposed to placing it in escrow, in order to reimburse the Board for consultants and other costs associated with the review of the project's application. The rules further allow the Board staff to "direct the applicant" to replenish the deposited amount. If such account is not replenished to "an appropriate amount," within 10 days of staff's decision, the application would be considered "incomplete."

We do not oppose the increase in the amount of the deposit, nor the shift from escrow to the "State account." We understand that the Department of the Treasury has advised Board staff that the initial reimbursement funding must be deposited in an authorized State account because it is "State revenue." We request that the Board provide applicants with commercially reasonable assurances, however, that the deposit will be used by the Board solely for its stated purpose. Such assurances could be inserted into the final OREC rules or could take the form of a letter to a prospective applicant. This would provide applicants with the certainty often requested by lenders as a condition precedent for the financing of the project. Further, we request that the Board extend the

replenishment deadline from 10 days to a more reasonable 21 days. Often, circumstances are such that a replenishment in 10 days would be simply impossible. A 21-day deadline would permit an applicant to obtain and deposit additional funds promptly without the risk of penalty for circumstances that are out if its control. (EDF)

RESPONSE: The Board agrees with the commenter that the replenishment deadline should be extended to 21 days from the currently proposed 10 days. Furthermore, the Board has also determined that the current requirement of $100,000 is sufficient and will not adopt the proposed amendment raising the amount to $125,000. The Board is making both of these changes upon adoption.

The Board appreciates the commenter's concern that the application deposit will be used only for the Board's review of the application. However, the process for depositing, invoicing, and reimbursing funds is a Department of the Treasury administrative process. Applicants may contact BPU staff for specific information on the process.

N.J.A.C. 14:8-6.6

36. COMMENT: We certainly appreciate the Board's efforts in attempting to advance offshore wind development. However, the current rules only establish the process for an offshore wind developer to apply to become a qualified developer eligible to receive ORECs. Offshore wind development is not viable without a bankable funding and clearing mechanism. We have provided substantive comments in the past as to what such a mechanism should look like. However, stakeholder efforts with respect to this core piece of the offshore wind development process have not been conducted in over a year. We stand ready to reopen communication and welcome any opportunity for the stakeholder community to work with the Board and its Staff to ensure that an appropriate mechanism is implemented in a manner that respects the concerns of all interested entities, including the State itself. (GSOE)

RESPONSE: The Board agrees with the commenter on the need for rules codifying an OREC funding mechanism and has engaged a consultant, Boston Pacific Company, Inc., to assist with developing a methodology.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. requires State agencies that adopt, readopt, or amend State regulations exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

Section 388 of the Energy Policy Act of 2005 authorizes the Secretary of the Interior to grant leases on the Outer Continental Shelf (OCS) for alternative energy projects, including offshore wind energy projects. The Secretary delegated this authority to the Director of the Bureau of Ocean Energy Management (BOEM), formerly known as the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). BOEM is responsible for the environmental review process and for managing responsible development of offshore resources other than oil and gas. Under the Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf (REAU) rules, which were promulgated April 2009, a lessee is required to submit a Site Assessment Plan (SAP) before conducting a site assessment and required to submit a Construction and Operations Plan (COP) before beginning construction. Both the SAP and the COP must undergo a National Environmental Policy Act (NEPA) review. After the SAP is approved, a five-year site assessment term begins, during which the lessee assesses the potential impacts of the project's activities and prepares the COP. However, to reduce the review time, the SAP and COP can be submitted simultaneously.

The environmental compliance reviews required for the leasing process are conducted under the NEPA for major actions including: lease issuance, plan approval (site assessment, construction and operation), and decommissioning activities. This process includes a review of air quality, water quality, marine mammals, sea turtles, birds, bats, seafloor habitats, physical oceanography, coastal habitats, socioeconomics, cultural resources, fisheries, and multiple use conflicts. In addition to NEPA, other environmental consultations include: the Coastal Zone Management Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act (Section 106), Endangered Species Act (Section 7), Clean Air Act, and the Migratory Birds Treaty Act. There are a number of Federal agencies in addition to BOEM involved in the offshore wind permitting process including: the U.S. Coast Guard, National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, Federal Aviation Administration, U.S. Geological Survey, and Department of Defense.

Entities submitting applications pursuant to the readopted rules and the adopted amendments are required to follow the Federal requirements pursuant to N.J.A.C. 14:8-6.5(a)5, 9, and 10 as described in the proposal Summary. Compliance with these standards is a prerequisite for both Board approval of an application and the continued operation of any approved qualified offshore wind project.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 14:8-6.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

14:8-6.5 Application requirements

(a) Each application shall meet the requirements set forth in (a)1 through 16 below. The application shall include:

1. (No change from proposal.)

2. A detailed description of the project, including maps, surveys, and other visual aides. The description shall include, but need not be limited to: the type, size, and number of proposed turbines and foundations; the history, to date, of the same type, size, and manufacturer of installed turbines and foundations globally; the configuration of turbine array, location of cable and balance of system equipment, and a description of points of interconnection; a detailed implementation plan and schedule that highlights key milestone activities and completion dates during the permitting, financing, design, equipment solicitation, manufacturing, shipping, assembly, in-field installation, testing, equipment commissioning, and service start-up; a letter of intent or memorandum of understanding from the turbine manufacturer/supplier to supply the selected turbines; a demonstration of the financial strength of the selected turbine manufacturer/supplier; a declaration from the foundation manufacturer/supplier that states their ability to manufacture and deliver all foundation components within the targeted schedule; a declaration from the undersea cable manufacturer/supplier that states their ability to manufacture and deliver all undersea cable components within the targeted schedule; a letter of intent or memorandum of understanding from the proposed

engineering, procurement, and construction (EPC)*,* *[or]* balance of plant (BOP) contractor***, and/or key construction contractors or vendors*** *[to provide EPC or BOP services]*; a demonstration of the applicant's experience in projects of similar size and scope proposed, including the use of other turbine types; and either selected certified wind turbine generators or provide a detailed certification plan that is underwritten by a certifying body.

i. - v. (No change from proposal.)

vi. Applicants shall account for, to the fullest extent possible, the coincidence between time of generation for the project and peak electricity demand; provide an estimate, with documented support, of the amount of electrical capacity the project will make available, *[for the capability periods in the PJM Interconnection]* ***that is calculated consistent with PJM rules and procedures***; provide an estimate, with support, of the amount of energy being generated over the term of the life of the turbines; and estimate, with support, the level of generation that their proposed project will be able to provide over the life of the equipment, assuming the project runs for the equipment's full life;

3. - 11. (No change from proposal.)

12. A proposed OREC pricing method and schedule for the Board to consider.

i. - viii. (No change from proposal.)

ix. The value of electric energy, capacity payments, and any other environmental attributes or other benefits shall be returned to ratepayers ***for the term of the OREC pricing method***. Such other benefits include, but are not limited to, tax

credits, subsidies, grants, or other funding not previously identified in the application and not included in the calculation of the OREC price submitted to the Board. To the extent that the project produces energy revenues exceeding those associated with the sale of ORECs, the applicant may propose that it retain up to 25 percent of the incremental energy revenues, but not any other environmental attributes or other benefits, with the remainder to be returned to ratepayers. The annual amount of revenues from whatever source expected to be generated by the project shall be reflected in the revenue plan;

13. - 14. (No change.)

15. All applicants must place a minimum of *[$125,000]* ***$100,000*** on deposit with the State to reimburse the Board for the costs of consultants and other costs associated with the review of the application.

i. (No change from proposal.)

ii. Failure to replenish the account to the level required by Board staff within *[10]* ***21*** days of notification will serve to render the application incomplete and toll the time for review.

iii. (No change from proposal.)

16. (No change.)

(b) (No change.)