

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Offshore Wind Renewable Energy

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

Authorized By: New Jersey Board of Public Utilities, Robert M. Hanna, President, Jeanne M. Fox, Nicholas Asselta, and Mary-Anna Holden, Commissioners.

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

Calendar Reference: See Summary below for an explanation of exception to calendar requirement.

BPU Docket Number: EX12050466

Proposal Number: PRN 2012-115.

Comments may be submitted through October 19, 2012 by e-mail **in Microsoft Word format**, or in a format that can be easily converted to Word, to: rule.comments@bpu.state.nj.us or on paper to:

Kristi Izzo, Secretary

New Jersey Board of Public Utilities

ATTN: BPU Docket Number: EX12050466

44 S. Clinton Ave., 9th floor, P.O. Box 350

Trenton, NJ 08625-0350

The agency proposal follows:

Summary

The Board of Public Utilities (“Board” or “BPU”) is hereby proposing to readopt its Offshore Wind Renewable Energy rules at N.J.A.C. 14:8-6. 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 rules proposed for readoption 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.

In developing the rulemaking, the Board conducted stakeholder outreach through public meetings. The feedback received was carefully considered and many suggestions were incorporated into the rules.

By filing this notice of proposed readoption with the Office of Administrative Law prior to August 10, 2012, the expiration date of these rules is extended 180 days to February 6, 2013, pursuant to N.J.S.A. 52:14B-5.1.c. As the Board has provided a 60-day comment period on this notice of proposal, it is exempted from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

Following is a section-by-section summary of the rules proposed for readoption and the proposed amendments.

N.J.A.C. 14:8-6.1 includes definitions of terms that are used multiple times in the subchapter to ensure consistency and to avoid redundancy. The proposed amendment provides a definition of “controlling interest” as used in the proposed amendments to N.J.A.C. 14:8-6.5(a)1v.

N.J.A.C. 14:8-6.2 details the offshore wind (OSW) renewable portfolio standards. The rule requires that following the approval of a qualified offshore wind project, electricity sold to retail

customers by energy suppliers and providers in New Jersey must include a minimum amount of offshore wind energy, to be set by the Board. The rule also requires that the total OSW energy requirement for an energy year must reflect the projected OREC production of qualified OSW project and OREC obligations are a component of Class I renewable energy requirements. Finally, the rules require that suppliers and providers must meet the requirements for OSW energy generation by the retirement of ORECs through an approved trading program or through alternative compliance payments. Alternative compliance payments will be refunded to ratepayers. This section is proposed for readoption without change.

N.J.A.C. 14:8-6.3 details the application process for entities seeking to receive ORECs in connection with a qualified offshore wind project. Pursuant to the section, the Board will: announce the open and close dates for application periods; approve, conditionally approve, or deny the application; and meet with the applicant and representatives of the Division of Rate Counsel no less than 30 days prior to the submittal of the application. Additionally, the applications are required to be consistent with Board application standard and all applicable State and Federal laws. The proposed amendments clarify that the Board is permitted to open multiple application periods at its discretion.

N.J.A.C. 14:8-6.4 details the procedures for Board staff to determine the administrative completeness of the application, which include: notification by Board staff to the applicant within 30 days that the application is complete or if any deficiencies have been found; if the application is deemed complete, the Board will have 180 days to approve, conditionally approve, or deny the application; and the procedures for the remedying of any deficiencies by the applicant. The proposed amendments clarify that Board staff will consult with any consultants or experts retained by the Board in determining administrative completeness.

N.J.A.C. 14:8-6.5 details the application requirements for qualified offshore wind projects.

N.J.A.C. 14:8-6.5(a)1 requires that the applicant provide the full business information of the developer and multiple requirements for key employees. The proposed amendments require that 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. The proposed amendments also require the applicant 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; and for any entity seeking to obtain control of the proposed or approved qualified offshore wind project. Finally, the proposed amendments will require that the applicant must disclose any prior bankruptcies for any of its parent company, affiliates, subsidiaries or key employees and will clarify that substantiating documentation must be provided for any claims that manufacturing will be sourced in New Jersey.

N.J.A.C. 14:8-6.5(a)2 requires the applicant to provide a detailed description of the project including maps, surveys, and other visual aides. The Board is proposing to add the following requirements for the description of the project: configuration of turbine array, location of cable and balance of system equipment, and description of points of interconnection; 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; a demonstration of the applicants 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. Additionally, the proposed amendments require the applicant 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 and the professional qualifications for the wind energy consultant as an attachment to the application to demonstrate sufficient expertise; and an estimate, with documented support, of the amount of electrical capacity the project will make available, for the capability periods in the PJM Interconnection. The proposed amendments also clarify that the application must provide the turbine technology that has been selected by the applicant. Finally, the proposed amendments require the implementation plan to include a schedule and a completion date.

N.J.A.C. 14:8-6.5(a)3 requires a complete financial analysis of the proposed project which must include pro forma income statements, balance sheets, cash flow projections, a comprehensive business plan, and full cost accounting of the project. The proposed amendments require the applicant to submit: the feasibility study used to determine construction costs; two years of audited financial statements, including accompanying financial notes to these statements, of the applicant and/or parent company in US GAAP; and audited financial statements for two years, in US GAAP, including accompanying financial notes to these statements, for key projects suppliers. The amendments provide the applicant with the alternative means with complying with the proposed amendments if US GAAP is not available.

N.J.A.C. 14:8-6.5(a)4 requires the submission of the proposed method of financing of the project including: identification of investors and sources of capital; a demonstrated ability to

finance; a detailed financial plan; and a commitment for the submittal of quarterly and annual audits to the Board. The proposed amendments would add the requirement for the applicant to produce evidence 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.

N.J.A.C. 14:8-6.5(a)5 requires the applicant to provide documentation demonstrating that the developer has applied for all current eligible State and Federal grants, rebates, tax credits, and programs available to offset the cost of the project or provide tax advantages. The rules currently require that the developer commit that the cost differences resulting from changes in tax laws will not be made up by ratepayers. The proposed amendments add that any potential cost differences will not be made up by suppliers or providers.

N.J.A.C. 14:8-6.5(a)6 requires the applicant to provide the electrical output and anticipated market prices over the anticipated life of the project. The requirement includes: the project revenue plan; financial expectations and marketing strategies; the total installed capacity in megawatts for the entire project as well as expected term of OREC energy production in megawatt-hours; and the total amount of clean energy being generated. This paragraph is proposed for readoption without change.

N.J.A.C. 14:8-6.5(a)7 requires the applicant to produce an operations and maintenance plan for the duration of the OREC period. This paragraph is proposed for readoption without change.

N.J.A.C. 14:8-6.5(a)8 requires production of the anticipated carbon dioxide emissions impact of the project. This paragraph is proposed for readoption without change.

N.J.A.C. 14:8-6.5(a)9 requires a decommissioning plan for the project including provisions for financial assurance for decommissioning as required by the applicable State and Federal governmental entities. The proposed amendments clarify that the decommissioning plan complies

with applicable State and Federal statutes and/or regulations and requires the applicant to commit that any decommissioning costs in excess of the anticipated costs stated in the application will not be made up by ratepayers, suppliers, or providers.

N.J.A.C. 14:8-6.5(a)10 requires that the applicant list all State and Federal regulatory approvals, permits, or other authorizations required pursuant to State and Federal law for the offshore wind project and provide copies of all applications and any issued approvals or permits. Approval of any offshore wind application is contingent on the developer obtaining all required approvals, permits, and authorization. This paragraph is proposed for readoption without change.

N.J.A.C. 14:8-6.5(a)11 requires that the applicant provide a cost-benefit analysis of the project. The paragraph includes requirements for the submission of cost and benefit analyses demonstrating the project's net benefit to ratepayers, including a detailed input-output analysis of 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. This paragraph is proposed for readoption without change.

N.J.A.C. 14:8-6.5(a)12 requires the submission of an OREC pricing method and schedule for the Board to consider. The paragraph also requires an electric power supplier or basic generation service provider to comply with the OREC program through the purchase of ORECs at a price and for the time period required by the Board and that payment will not occur until electricity is produced by a qualified offshore wind project. The paragraph currently requires that OREC pricing on an actual renewable premium basis would represent a project's revenue requirement, taking into consideration tax credits and other subsidies, minus the actual value of spot energy market prices and/or capacity. The proposed amendments require that the OREC pricing method 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 would not be deducted when calculating the OREC price. The proposed amendments also require the 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. Additionally, the proposed amendments require that the value of electric energy, capacity payments, and any other environmental attributes or other benefits must be returned to ratepayers. 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. The applicant will be permitted under the proposed amendments to propose that it retain up to 25 percent of the incremental energy revenues, but not any other environmental attributes or other benefits, if the project produces energy revenues exceeding those associated with the sale of ORECs. The remainder will be returned to ratepayers. Finally, the proposed amendments require that the annual amount of revenues from whatever source expected to be generated by the project must be reflected in the revenue plan.

N.J.A.C. 14:8-6.5(a)13 requires the applicant to produce a timeline for the permitting, licensing, and construction of the proposed offshore wind project. This paragraph is proposed for readoption without change.

N.J.A.C. 14:8-6.5(a)14 requires the applicant to produce a plan for interconnection, including engineering specifications and costs. This paragraph is proposed for readoption without change.

N.J.A.C. 14:8-6.5(a)15 details the requirements for the applicant to reimburse the Board for consultants and other costs associated with the review of the application. The proposed amendments revise the form of the reimbursement from an escrow account to an account on deposit with the State and raise the amount that the applicant will be required to place in the account from \$100,000 to \$125,000 in order to cover the costs associated with the review of the application. The applicant will also be required to deposit additional funds deemed necessary by Board staff. These amendments also clarify that additional amounts may be requested during the term of the OREC order to cover costs related to regulatory oversight.

N.J.A.C. 14:8-6.5(a)16 requires the applicant to provide any other information deemed necessary by the Board in order to conduct a thorough evaluation of the proposal and empowers the Board to hire consultants or other experts to assist in the evaluation of the applications. This paragraph is proposed for readoption without change.

N.J.A.C. 14:8-6.5(b) requires the Board, in reviewing an application submitted pursuant to N.J.A.C. 14:8-6.5(a) to determine that the application satisfies conditions including: consistency with the New Jersey Energy Master Plan; the cost-benefit analysis demonstrating positive economic and environmental benefits to the State and the net benefits of the project; the comparison of purchases of Class I RECs to out-of-State wind projects; a demonstration that the financing mechanism is based upon the actual electrical output of the project; and the financial integrity of the project. This subsection is proposed for readoption without change.

N.J.A.C. 14:8-6.6 is reserved for the funding mechanism which will be addressed at a later date by the Board.

Social Impact

The Board anticipates significant positive social impacts, including environmental and health, if the Board approves any applications for qualified offshore wind projects pursuant to the rules proposed for readoption and the proposed amendments. The Board believes that these projects would further the use of renewable energy, which helps reduce air pollution and dependence on foreign oil and gas resources. Air pollution has a negative effect on biodiversity, climate change, and forest ecosystems, for example, through greenhouse gases and acid rain.

Economic Impact

The statute and rules proposed for readoption with amendments require successful applicants to demonstrate net economic benefits to the State. The inclusion of 1,100 megawatts of offshore wind as a Class I renewable in the RPS requirement is anticipated to have significant economic and rate impacts pending the approval of any offshore wind applications pursuant to the rules proposed for readoption and the proposed amendments. The approval of any proposed project submitted by an applicant would provide a positive economic benefit pursuant to the provisions of N.J.A.C. 14:8-6.5(a)11 as described in the Summary above. The Board anticipates that a consequence of the approval of qualified offshore wind projects pursuant to these rules may require the electric distribution companies to request Board authorization to pass on the costs of the purchase of ORECs on to electricity customers through rates, assuming the costs meet the Board's standard that the costs are reasonable and prudent. Finally, the reimbursement fees to be paid by applicants pursuant to N.J.A.C. 14:8-6.5(a)15, described in the Summary above, will be calculated to appropriately reimburse a consultant retained by the Board pursuant to N.J.A.C. 14:8-6.5(a)16.

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, socioeconomic, 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 rules proposed for readoption and the proposed 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 Summary above. 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.

Jobs Impact

The Board does not expect the rules proposed for readoption with amendments to have a direct material effect on jobs in New Jersey. However, the Board anticipates a positive jobs impact for any proposed offshore wind project that will ultimately be approved pursuant to the rules proposed for readoption and the proposed amendments. The extent of these impacts is unknowable until the Board has the opportunity to review the specifications of any proposed projects.

Agriculture Industry Impact

The Board does not expect the rules proposed for readoption with amendments to have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments do not impose reporting or recordkeeping requirements. The rules do impose compliance requirements on entities applying to received ORECs in connection with offshore wind projects, some of which entities may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The application process requirements are described in the Summary above, and the costs to applicants are discussed in the Economic Impact above. Depending on the professional composition of an applicant's employees, it may be necessary for an applicant to employ outside professional services, such as engineers, accountants, and attorneys, in order to comply with the requirements. The cost for such services would vary widely, depending upon the extent to which such services are required and the fees charged by the professionals employed. The Board believes that the application requirements are the minimum necessary in order to enable it to completely and fairly evaluate applications for ORECs in connection with offshore wind projects; therefore, no lesser requirements are provided based upon the business size of an applicant.

Housing Affordability Impact Analysis

The Board does not expect the rules proposed for readoption with amendments to have an impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the scope of the rules is limited to addressing the regulation of the offshore wind industry.

Smart Growth Development Impact Analysis

The Board does not expect the rules proposed for readoption with amendments to have an impact on housing production in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plans in New Jersey because the scope of the rules is limited to addressing the regulation of the offshore wind industry.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:8-6.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 6. QUALIFIED OFFSHORE WIND PROJECTS

14:8-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and 14:4-1.2.

“Controlling interest” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the company, whether through the ownership of voting securities, by contract, proxy, or otherwise.

...

14:8-6.3 Application process

- (a) (No change.)
- (b) The Board will announce the open and close dates for [the annual] **all** application periods, [and may, at its] **which shall be set at the Board's** discretion[, allow additional application periods].
- (c) - (e) (No change.)

14:8-6.4 Determination of completeness of application

- (a) Upon receipt of the application, Board staff, **in consultation with any consultants or other experts retained pursuant to N.J.A.C. 14:8-6.5(a)16**, will review the application for administrative completeness in accordance with the requirements set forth in N.J.A.C. 14:8-6.5.
- (b) - (e) (No change.)

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. Full business information, including the developer's name, primary contact person, website, telephone numbers, e-mail address, and street address;
 - i. – iii. (No change.)

iv. The applicant shall disclose, in detail, any prior business bankruptcies, defaults, disbarments, investigations, indictments, or other actions against either the applicant, **its parent company, affiliates, subsidiaries**, or any key employees identified in (a)1i above;

v. The applicant shall, **for the duration of the project**, commit to:

[certifying, after award, that its proposed key employees will remain the project team for the duration of the project, subject to any changes approved] **notifying the Board, within 30 days, of the departure of any key employee; submitting the expertise and qualifications for any new key employee for approval by the Board; seeking 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 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 prior approval of the Board; [and]

vii. [To the extent that there is a claim, the] **The** applicant shall [include, as appropriate, employment] **provide** documentation, [include] **including, but not limited to**, letters of intent/commitment/contract, **to substantiate any claims** that [if an OREC award is granted,]

manufacturing services **related to the qualified offshore wind project** will be sourced from a New Jersey location;

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; [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; 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; 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 [will] **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 [candidates] **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;

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;

4. The proposed method of financing the project, which includes:

i. (No change.)

ii. Evidence 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;

Recodify existing ii. – iv. as **iii. – v.** (No change in text.)

5. Documentation to demonstrate that the developer has applied for all current eligible State and Federal grants, rebates, tax credits, and programs available to offset the cost of the project or provide tax advantages.

i. - ii. (No change.)

iii. The applicant shall commit that the cost difference in the event that changes in the project reduces or eliminates tax benefits, or tax benefits do not materialize for any reason including changes in tax laws, will not be made up by ratepayers, **suppliers, or**

providers.

iv. (No change.)

6. – 8. (No change.)

9. A decommissioning plan for the project including provisions for financial assurance for decommissioning [as required by the] **and which complies with any** applicable State and Federal [governmental entities] **statutes and/or regulations.**

i. - ii. (No change.)

iii. The applicant shall commit that any decommissioning costs in excess of the anticipated costs stated in the application shall not be made up by ratepayers, suppliers, or providers;

10. – 11. (No change.)

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

i. – vi. (No change.)

vii. **The OREC pricing [on an actual renewable premium basis would represent a project's revenue requirement, taking into consideration tax credits and other subsidies, minus the actual value of spot energy market prices and/or capacity prices;] 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 equipment, construction, operation, and maintenance costs of the project;**
- (2) Tax credits, subsidies, or grants the project will 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 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. 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 [establish a \$100,000 escrow account and submit proof of that escrow account with the application] **place a minimum of \$125,000 on deposit with the State** to [pay] **reimburse the Board** for **the costs of** consultants and other costs associated with the review of the application.

[i. The applicant shall immediately notify Board staff in the event the escrow drops below 25 percent of the initial escrow value.]

[ii.] **i.** Board staff will direct the applicant, if appropriate, to place an additional amount [into escrow] **on deposit with the State**, based upon the current and expected costs associated with the application review **and related administrative proceedings.**

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

iii. Subsequent to approval of a qualified offshore wind facility, the successful applicant may, at the direction of Board staff, be required to place additional amounts on deposit with the State for the purpose of reimbursing the Board for costs related to regulatory review of the project, including, but not limited to, consulting services, oversight, inspections, and audits; and

16. (No change.)

(b) (No change.)