

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “Agreement”) is made as of this
20th day of December 2021, by and between

THE STATE OF NEW JERSEY, BOARD OF PUBLIC UTILITIES, with its principal office at 44 S. Clinton Ave., Trenton, New Jersey 08625 (hereinafter, the “Board” or “NJBPU”); and

THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, with its principal office in the Department of Environmental Protection Building, 401 East State Street, Trenton, New Jersey 08625 (hereinafter, the “Department”).

The Department and the Board are collectively referred to herein as the “Parties” with each individually referred to as a “Party.”

WHEREAS, the Board has general supervision, regulation, jurisdiction, and control over all public utilities in the State, including electric utilities and their rates and service; and

WHEREAS, the Department is authorized to execute this Agreement under N.J.S.A. 13:1D-9 and N.J.S.A. 52:14-1 et seq.; and

WHEREAS, under N.J.S.A. 48:3-87.1, the Board is statutorily authorized to accept applications for approval for qualified offshore wind (“OSW”) projects and to conduct one or more competitive solicitations for open access offshore wind transmission facilities¹; and

WHEREAS, in its second solicitation for Offshore Wind Renewable Energy Certificates (“ORECs”), on June 30, 2021, the Board awarded 2,657.6 megawatts (“MW”) of OSW electric generation capacity; and

WHEREAS, the selected applicants for New Jersey’s second solicitation for OSW projects are required to commit to provide \$10,000 per each MW of generation capacity awarded (the “Research and Monitoring Fee” or “Fee”), which will be dedicated to fund research initiatives and regional monitoring of wildlife and fisheries to assess impacts from OSW development on the natural resources of New Jersey, including coastal resources and the natural environment (“Research and Monitoring Initiative” or “RMI”); and

WHEREAS, the selected applicants for New Jersey’s second solicitation for OSW projects are Atlantic Shores Offshore Wind Project 1, LLC (“Atlantic Shores”), awarded 1,509.6 MW by Board Order dated June 30, 2021 in Docket Nos. QO20080555 and QO21050824 (the “Atlantic Shores June 2021 Order”); and Ocean Wind II, LLC (“Ocean Wind 2”), awarded 1,148.0 MW by Board Order dated June 30, 2021 in Docket Nos. QO20080555 and QO21050825 (the “Ocean

¹ Open access offshore wind transmission facilities are facilities designed to collect offshore wind energy from qualified offshore wind projects and deliver the electricity generated to the electric transmission system in New Jersey.

Wind 2 June 2021 Order") (Atlantic Shores and Ocean Wind 2, collectively, the "OSW Developers"); and

WHEREAS, Atlantic Shores has committed to provide \$15,096,000 and Ocean Wind 2 has committed to provide \$11,480,000, for a combined, total Fee of \$26,576,000; and

WHEREAS, under N.J.S.A. 13:1D-9a, n, and q and other statutes, the Department, as the steward of New Jersey's natural resources and as the entity responsible for implementing the State's Coastal Zone Management Program, has an interest in ensuring adequate research and monitoring is undertaken to assess impacts of OSW on New Jersey's natural and coastal resources and environment; and

WHEREAS, the Board and the Department desire to work cooperatively with the selected OSW Developers, research institutions, OSW-related industry partners, other states, federal and regional monitoring organizations, and members of the New Jersey Offshore Wind Environmental Resources Working Group among others to identify and prioritize research and monitoring needs with respect to the Research and Monitoring Initiative in order to inform how the Board and the Department will allocate the Fee; and

WHEREAS, the Parties have determined that this Agreement is in the best interests of the public; and

WHEREAS, the Parties under the powers vested to them by law have determined that it is in the Parties' mutual interest to enter into this Agreement; and

WHEREAS, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter agreements to provide assistance to each other.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, promises and obligations contained herein, which the Parties acknowledge to be good and sufficient consideration to support this Agreement and bind and obligate the Parties hereto, the Parties hereto agree as follows:

1. PURPOSE/SCOPE OF PROJECT: For the Parties to collaboratively establish and administer the vision and scope of the Research and Monitoring Initiative and to develop the procedures and protocols for administration of the Fee, the Parties agree as follows:

- a. The Board and the Department shall work cooperatively as equal partners to establish the procedures and protocols for utilization of the Fee, as well as the establishment, implementation, and oversight of this collaborative interagency effort with regard to the RMI.

- b. The Board shall establish the methodology for collection of the Fee.
- c. The Board and the Department shall establish a steering committee comprised of an equal number of members from the Board and the Department, which committee shall include six members, three from the Board and three from the Department, to oversee and administer the RMI (the “RMI Steering Committee,”). The RMI Steering Committee shall discharge the following duties:
 - i. The RMI Steering Committee, with input from the Board, the Department, and stakeholders, will establish the framework, goals, objectives, and priorities of the RMI.
 - ii. The RMI Steering Committee, among other duties necessary to oversee and administer the RMI, shall make the determination, with input from Board Staff, and the Department Staff regarding which eligible RMI Projects, as defined below, shall be selected for funding from the Fee, and the amount of the funding to be awarded to each selected project (each award, an “Award”). The RMI Steering Committee shall provide its approval for any contract to be awarded for RMI Projects, prior to the RMI Steering Committee’s issuance of an Award.
 - iii. The RMI Steering Committee shall take measures to ensure that the Fee is used for regional research and monitoring activities that reflect the State’s highest research priorities and that will further the scientific understanding of the impacts from the offshore wind farms’ installation and operations, changes in vessel traffic along shipping lanes, and changes in fishing practices, both beneficial and detrimental, on existing natural resources and ecosystems, with respect to physical and chemical characteristics of the ocean, and with respect to both flora and fauna in coastal environments and in the benthic environment and waters off of New Jersey’s coastline (collectively the “RMI Projects”).
 - iv. With respect to the monitoring activities for which the Fee is used, the Department shall submit expenditure reports to the Board regarding the transferred funds within 30 days of expending the funds.
 - v. The RMI Projects will be conducted prior to and through all phases of offshore wind farm development, which include the pre-construction, construction, operation, and decommissioning phases (the “Phases” and each, a “Phase”).

- vi. The Department, as the RMI Steering Committee so directs, shall, in compliance with all procurement laws, regulations, rules, and Treasury guidance/circulars, issue the solicitations for eligible RMI Projects, developed under Section 1.b.ii above, for vendors to bid and/or provide RMI Project proposals and conduct their respective RMI Projects, if the RMI Steering Committee selects their projects to receive an Award. Solicitations shall not be issued until the Department receives the approval of the RMI Steering Committee. The Department shall evaluate submissions collaboratively and in consultation with the Board, issue Awards, and shall administer the contracts awarded to the vendors who submitted the selected RMI Projects.
- d. As the Board previously established in the Atlantic Shores June 2021 Order and in the Ocean Wind 2 June 2021 Order, the Board requires receipt of 50% of the Fee within sixty (60) days of the date on which an OSW project award is made to an OSW Developer, with the remaining Fee to be received annually at a rate of 25% for 2 years on the anniversary date of the OSW project award. The Board will hold the Fee in a separate, interest bearing account.
 - i. The Parties agree that the Fee shall not be used for administrative expenses by either party, except that a portion of the Fee may be used for administrative expenses in order for the Department to manage the selected RMI Projects, in an amount not to exceed \$190,000 per each year during the term of this Agreement as set forth in Section 2 herein, which includes the salary, fringe benefits, indirect costs, and operating costs of one full time “Research Scientist 2” position.
 - ii. The Parties agree that, if the RMI Steering Committee so agrees, the Fee may be used to fund a portion of, or the full amount of, certain fees, including membership fees, for membership in regional research entities.
 - iii. The Parties also agree that the Fee shall not be used as a replacement for funds allocated by or available to either Party for research and monitoring initiatives unless the RMI Steering Committee so agrees, and the Fee is dedicated to the performance of research and monitoring initiatives concerning the conditions of and potential impacts upon natural and aquatic resources, including wildlife and fisheries that may be implicated by the introduction of offshore wind generating capacity in the Atlantic Ocean.
 - iv. Upon the direction of the RMI Steering Committee, the Board’s Division of Budget and Finance will transfer a portion of the RMI Fee, in an

amount as the RMI Steering Committee so directs, to the Department for the Department to administer to each RMI Project.

- e. The Department and the Board, through the RMI Steering Committee, shall collaboratively and actively engage with stakeholders as part of the RMI. The timing and nature of stakeholder engagement shall be mutually agreed upon by the Board and the Department.
- f. The Board and the Department, as the RMI Steering Committee may so direct, shall, in compliance with all procurement laws, regulations, rules, and Treasury guidance/circulars, coordinate on the development of solicitations to obtain RMI Project proposals from vendors who are qualified vendors under the criteria that the RMI Steering Committee has determined.
- g. The Department staff who will provide oversight of the RMI Projects shall provide a written report on the progress of the RMI Projects (“Department Staff Report”) at least quarterly to the RMI Steering Committee and the Board.
- h. The RMI Steering Committee shall prepare and submit to the Board and the Department a written report (“RMI Steering Committee Report”) twice per year at 6-month intervals, beginning on [March 31, 2022] that shall include but not be limited to the progress of the RMI; RMI Projects solicited, awarded and completed; any issues encountered and their resolution or proposed resolution; and plans for the next 6-month period.

2. TERM: This Agreement shall become effective as of the date first set forth above and shall continue until the earlier of (i) the respective dates on which the RMI Projects are completed and the Board and the Department have accepted the findings therefrom, or have accepted the findings as amended or (ii) the third anniversary date of the date first set forth above.

3. FUTURE OFFSHORE WIND FARM SOLICITATIONS: Prior to any future offshore wind generation solicitations, the RMI Steering Committee will evaluate whether it believes there is a need for a research and monitoring fee to be required in such future offshore wind generation solicitations to be issued by the Board. If the RMI Steering Committee finds that a research and monitoring fee is needed in future Board-issued offshore wind generation solicitations, the RMI Steering Committee shall propose to the Board,: 1) the types of research and monitoring activities for which that fee should be used; 2) the amount per MW that should be assessed as the fee rate; and 3) the methodology for fee collection, based on lessons learned with respect to the process used for collecting the Fee. The Board shall decide whether a research and monitoring fee shall be included in its future solicitations, the amount to be required, the types of

research and monitoring activities for which that fee should be used, the methodology for collection of the fee, and any other requirements associated with the fee.

4. SUBJECT TO THE AVAILABILITY OF FUNDING: The Parties' obligations under this Agreement are subject to the availability of the Fee. A failure by an offshore wind developer who committed to provide their Fee to make any payment required, or if the Fee provides insufficient funds for the RMI, such failure to make a Fee payment or such Fee payment deficiency, respectively, shall not in any manner constitute a breach or default under this Agreement. Neither Party shall be held liable in any manner whatsoever because of the absence of available funding with respect to the performance of its obligations under this Agreement.

5. DISPUTE: If there are any disputes among the Parties concerning this Agreement, the Commissioner of the Department and the President of the Board, or their respective authorized representatives, shall confer to resolve the dispute.

6. THIRD-PARTY BENEFICIARIES: This Agreement shall not create in any individual or entity the status of a third-party beneficiary, and nothing in this Agreement shall be construed to create such status. The rights, duties, and obligations contained herein shall operate only between the Parties and shall inure solely to the benefit of the Parties. The provisions of this Agreement are intended only to assist the Parties in determining and performing the obligations set forth herein. The Parties expressly agree that only they shall have any legal or equitable right to seek enforcement of this Agreement, seek any remedy arising out of performance or failure to perform by one of the Parties, or bring any action for breach of this Agreement, after complying with Section 5 of this MOU.

7. AMENDMENT: This Agreement, including Attachment A and Attachment B hereto (collectively, "Attachments"), may be amended, supplemented, changed, modified, or altered only by mutual agreement of the Parties in a writing that shall be effective as of the date the Parties shall so stipulate. There shall be no limit to the number of times this Agreement or each of the Attachments may be amended.

8. TERMINATION: Either Party may terminate this Agreement upon 30 days written notice to the other Party of such intention to terminate. Such termination request shall be permitted, with or without cause. In the event of termination, the Parties agree to conduct a final accounting within 60 days of the termination effective date, and the Parties further agree to return any unexpended distributed funds back to the NJBPU.

9. NOTICE:

All correspondence and notices to the Department regarding this Agreement shall be addressed to:

Gary Buchanan, Director, Division of Science and Research
New Jersey Department of Environmental Protection
428 East State St., 1st Floor
Trenton, NJ 08625
Gary.Buchanan@dep.nj.gov

All correspondence and notices to the Board regarding this Agreement shall be addressed to:

Kelly Mooij, Director, Division of Clean Energy
New Jersey Board of Public Utilities
44 South Clinton Ave.
Trenton, NJ 08625
Kelly.Mooij@bpu.nj.gov

10. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the Parties and supersedes all other negotiations, representations, and understandings of the Parties, oral or otherwise, regarding the subject matter of this Agreement. This Agreement represents the entire agreement between the Parties; all negotiations, oral agreements, and understandings that occurred prior to the date of this Agreement are merged and incorporated by reference herein.

11. COUNTERPARTS: This Agreement may be signed in counterparts, each of which, when so executed and delivered, shall be deemed original, but such counterparts shall together constitute one and the same instrument.

12. SIGNATURES: The terms and conditions of this Agreement have been read and understood by the persons whose signatures appear below, and the Parties agree to comply with the terms and conditions set forth on the preceding pages.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed by their duly authorized representatives or designees as of the day, month, and year first written above.

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

By:

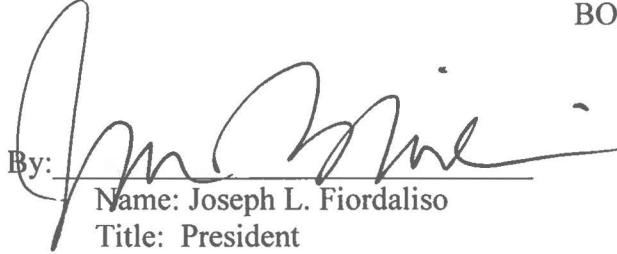


Name: Shawn M. LaTourette

Title: Commissioner

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

By:



Name: Joseph L. Fiordaliso

Title: President

ATTACHMENT A

This Attachment A is hereby incorporated into the Memorandum of Understanding (“MOU”) between the NJ Board of Public Utilities (“NJBPU”) and the New Jersey Department of Environmental Protection (the “Department”) (collectively, the “Parties”), regarding the use and administration of the Research and Monitoring (“RMI”) Fee as fully described in the MOU.

I. METHOD OF PAYMENT

- A.** Upon the direction of the RMI Steering Committee, the Board’s Division of Budget and Finance will transfer a portion of the RMI Fee, in an amount as the RMI Steering Committee so directs, to the Department for the Department to administer to each RMI Project.
- B.** NJBPU shall make transfers as needed and as agreed upon by the Parties.
- C.** NJBPU shall transfer funds within 45 days of receipt of a request by the RMI Steering Committee.

II. FINANCIAL AND PERFORMANCE REPORTING AND MOU MONITORING

A. Expenditure Reports

The Department shall submit expenditure reports to NJBPU regarding the transferred funds within 30 days of expending the funds.

B. Performance Reports

- a.** The Department staff who will provide oversight of the RMI Projects shall provide a written report on the progress of the RMI Projects (“Department Staff Report”) at least quarterly to the RMI Steering Committee and the Board.
- b.** The RMI Steering Committee shall prepare and submit to the Board and the Department a written report (“RMI Steering Committee Report”) twice per year at 6-month intervals, beginning on [March 31, 2022] that shall include but not be limited to the progress of the RMI; RMI Projects solicited, awarded and completed; any issues encountered and their resolution or proposed resolution; and plans for the next 6-month period.

C. Meetings

NA

D. Monitoring Requirements

NA

III. MODIFICATIONS TO THE AGREEMENT

The MOU and any attachment thereto represent the entire Agreement between the parties and may only be amended in accordance with Section 7 of the MOU.

IV. SPECIAL CONDITIONS

NA

V. MULTI-YEAR AGREEMENTS

The term of the MOU shall be as stated in Section 2 of the MOU.

ATTACHMENT B

This Attachment B is hereby incorporated into the Memorandum of Understanding (“MOU”) between the NJ Board of Public Utilities (“NJBPU”) and the New Jersey Department of Environmental Protection (the “Department”) (collectively, the “Parties”), regarding the use and administration of the Research and Monitoring (“RMI”) Fee as fully described in the MOU.

1. Term and Budget

The term is defined in Section 2 of the MOU. NJBPU will provide the \$26,576,000 RMI Fee in such amounts and at such times as set forth in the MOU, including those in Attachment A.

2. Reporting

The Department shall provide reports in accordance with the provisions of the MOU, including those of Attachment A.