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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Qualified Offshore Wind Projects

Adopted New Rules: N.J.A.C. 14:8-6.6 and 6.7

Adopted Amendments: N.J.A.C. 14:8-6.1 and 6.2

Proposed: August 20, 2018, at 50 N.J.R. 1879(a).

Adopted: January 17, 2019, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra Chivukula, and Bob Gordon, Commissioners.

Filed: December 18, 2018, as R.2019 d.009, with **non-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.

BPU Docket Number: QX18040466.

Effective Date: February 19, 2019.

Expiration Date: May 1, 2019.

Summary of Public Comments and Agency Responses:

The Board of Public Utilities (“BPU” or “Board”) received comments from the following: Stefanie A. Brand, Division of Rate Counsel (RC); Philip J. Passanante, Atlantic City Electric Company (ACE); Thomas R. Donadio, Jersey Central Power & Light (JCP&L); Joseph F. Accardo, Jr., Public Service Electric & Gas (PSE&G); Margaret Comes, Rockland Electric Company (RECO); Tony Bawidamann, New Jersey Business & Industry Association (NJBIA); Andrew M. Gohn, American Wind Energy Association (AWEA); Brue Burcat, Mid Atlantic

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Renewable Energy Coalition (MAREC); Katherine Bowes, National Wildlife Federation (NWF); Doug Copeland, EDF Renewables Offshore Development, LLC (EDFR); Frederick Zalcman, Orsted (ORSTED); and Jamil Khan, Deepwater Wind, LLC (DWW).

General Comments

1. COMMENT: On behalf of the 62 undersigned environmental, labor, faith, community, and business organizations – representing hundreds of thousands of New Jerseyans – we write to express our strong support for the Board of Public Utilities’ recent actions to advance responsibly developed offshore wind power, including this proposed rulemaking to establish the State’s critical Offshore Wind Energy Certificate (OREC) funding mechanism. (NWF)
2. COMMENT: The proposed regulations as drafted are the result of countless hours of engagement with stakeholders and reflect a coherent, thoughtful, and comprehensive assessment of what regulatory structure is the best fit for the offshore wind industry in New Jersey. (AWEA)
3. COMMENT: Atlantic City Electric (ACE) supports Governor Murphy’s Executive Order No. 8 and will continue to work with the New Jersey Board of Public Utilities to implement an OREC funding mechanism that meets the Administration’s objectives while eliminating risk for ACE and minimizing the financial impact on ACE’s customers. (ACE)
4. COMMENT: Although minor points of clarification are requested, we believe that the proposed rules provide a workable model to collect ORECs as funding for offshore wind projects. Specifically, the BPU’s decision to collect the OREC charge through a non-by-passable surcharge included on the electric distribution companies (EDCs) bill to its customers is the easiest for stakeholders to manage and will assist in the development of an OREC market. This type of charge is the most transparent to customers. We agree with the BPU that all contracts

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should be between developers and the State/BPU and we are committed to working with the BPU, the OREC administrator ultimately hired by the Commission, and winning offshore wind developers, to seamlessly execute the development of offshore wind (OSW). (PSE&G)

5. COMMENT: Rockland Electric Company supports New Jersey’s offshore wind efforts and commends the Board for developing the proposed OREC funding mechanism so New Jersey can move forward with offshore wind development. Offshore wind development involves significant investment by customers and ORECs should be structured so that the costs and risks to customers are minimized. (RECO)

6. COMMENT: We strongly support the “all-in approach” to OREC, three months of reserve, and the ability to bank and borrow ORECs. These are key items that will help reduce financing risk, thereby reducing cost to ratepayers. (EDFR)

7. COMMENT: We support the overall goals of the rulemaking to establish market certainty for the development of OSW generation. (RC)

8. COMMENT: Generally, JCP&L continues to advocate that the BPU consider using the funding mechanism approved in Maryland as a model for the OREC funding mechanism in New Jersey. We view the OREC obligation as “a supplier requirement” and continue to have “concerns about ratepayer costs due to the application of the proposed ‘all-in-cost’ approach when pricing ORECs.” (JCP&L)

9. COMMENT: To qualify for the 2019 Federal Investment Tax Credit (ITC), we recommend that the BPU fully adopt the proposed rules without delay. The ITC allows developers to offset a portion of eligible offshore wind project costs, resulting in savings for ratepayers. Failure to adopt the proposed rulemaking well in advance of the acceptance of OREC applications on

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December 28, 2018, will create uncertainty for project proponents and may jeopardize the ability of proposed projects to take full advantage of the ITC. (DWW)

10. COMMENT: Any delay in offshore wind procurement could result in missed opportunities to capitalize on growing jobs and supply chain components in New Jersey that would provide net economic benefits within the State. (DWW and NWF)

11. COMMENT: The regulatory framework is necessary to facilitate longer-term projects. Long-term infrastructure modernization projects will maintain the integrity of New Jersey's energy systems. (NJBIA)

12. COMMENT: All payments should be made from the pre-collected OREC surcharge funds and not from ACE's funds. Other than that specific issue, ACE has no other material edits to the rule proposal. (ACE)

RESPONSE TO COMMENTS 1 THROUGH 12: The Board appreciates the positive feedback and general support of the proposed OREC funding mechanism constructs and proposed rulemaking. Governor Murphy ordered that the BPU immediately take action to fully implement the Offshore Wind Economic Development Act (OWEDA) and this funding mechanism is a necessary component of the Governor's Order. There are a number of design elements that are unique and specific to the OREC program that are being proposed for the first time. The Board appreciates the opportunity to clarify these design elements for stakeholders and to reduce complexity wherever possible.

The Board reviewed and considered many design parameters including the Maryland OREC funding mechanism and the use of escrow accounts. The Board believes that a direct payment method is more secure and has less risk for ratepayers and OSW developers as noted

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above by PSE&G and others. The role of EDCs as payment agents also reduces administrative complexity by allowing for direct monthly payments from the EDCs, in lieu of relying on monthly payments by more than one hundred independent third-party suppliers (TPSs).

It is also worth noting that, subsequent to the rule adoption, there will be a procurement process to jointly contract an OREC administrator, which will design the actual tracking, invoicing, and accounting mechanisms called for in adopted new rule, thus providing further assurances in the role of the OREC administrator, subject to Board approval. In addition, the proposed new rule calls upon the Board to establish a Renewable Portfolio Standards (RPS) carve-out and OREC surcharge, which will be a separate proceeding where additional input will be sought and procedures further clarified.

As per the broader concerns regarding cost-benefits of offshore wind, these issues are not the subject of this rulemaking but are central to the solicitation process. The Board appreciates the comments by NJBIA and others expressing concern around the cost-benefits of offshore wind and related rate impacts. N.J.A.C. 14:8-6.6 specifically requires an applicant to submit a cost benefit analysis of a project and an analysis of rate impacts. The rules also require the Board to evaluate a proposed project's cost-benefits and specific rate impacts on commercial and residential customers before making a final decision. These issues will, thus, be addressed during the evaluation of proposed projects and are not the subject of these proposed amendments and new rules for the OREC funding mechanism. Issues of confidentiality are also not the subject of this rulemaking.

13. COMMENT: The Board should consider the following: 1) What is the cost-benefit analysis

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for ratepayers to subsidize this type of power; 2) How much will the new energy source cost businesses in increased rates; 3) How many potential jobs will be lost as energy prices continue to rise; and 4) Are there other alternatives that could meet our policy goals while protecting ratepayers? (NJBIA)

14. COMMENT: The Board should consider how many potential jobs will be lost as energy prices continue to rise; and whether there are other alternatives that could meet our policy goals while protecting ratepayers. (NJBIA)

RESPONSE TO COMMENTS 13 AND 14: The Board appreciates the comments by NJBIA, which are relevant to OWEDA and the existing rules at N.J.A.C. 14:8-6, which specify the standards of evaluation for proposed offshore wind projects. N.J.A.C. 14:8-6 already requires an applicant to submit a cost-benefit analysis of a project and an analysis of rate impacts. The rules also require the Board to evaluate a proposed project's cost-benefits and specific rate impacts on commercial and residential customers before making a final decision. These issues will, thus, be addressed during the evaluation of proposed projects and are not the subject of the proposed rules for the OREC funding mechanism.

On Other Models and Approaches

15. COMMENT: While supportive of the Board's proposal, JCP&L advocated for a slightly different model that relies on the use of escrow accounts to receive payments directly from suppliers instead of the use of the EDCs as payment agent. This is the type of OREC funding mechanism used in Maryland. (JCP&L)

RESPONSE: The BPU reviewed and considered the Maryland OREC funding mechanism and

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the use of escrow accounts during the design and development stage. The Board believes a direct payment method is more secure and has less risk for ratepayers and OSW developers as noted above by PSE&G and others. The role of EDCs as payment agents also reduces administrative complexity by allowing for direct monthly payments from four EDCs in lieu of relying on monthly payments by over 100 independent TPSs.

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

16. COMMENT: A project may be built in phases and, therefore, may have more than one commercial operation date. The commenter also requested clarification of the definition of “commercial operation date” (COD) to reflect the likelihood of phased development. To permit efficient financing (and lower OREC prices) for such projects, the definitions of “qualified offshore wind facility” and “commercial operation date” should be clarified to reflect phased development and to tie the 20-year OREC qualification life to the COD. (ORSTED)

RESPONSE: The intent of the proposed amendments and new rules is to support the development of New Jersey’s offshore wind resources in phases of development consistent with Executive Order No. 8, OWEDA, and the implementing rules. The term “COD” is intended to be applied to all, or part of, a project based on when “it is interconnected to the transmission system in New Jersey and begins to generate power.” If 1,000 MWs of capacity are developed in two phases of 500 MWs each, then each phase of development can establish a COD tied to when the project phase is scheduled to come online. The 20-year qualification life, thus, begins from that date of operation when the phase of the project interconnects to the transmission system and generates power.

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The Board, thus, clarifies the definitions of “COD” upon adoption to be consistent with phased development and to ensure the OREC qualification life begins upon the COD of the OSW project “or phase of a qualified OSW project.” This means that a single “qualified offshore wind facility” as approved by the Board may have multiple CODs specific to each phase of development.

18. COMMENT: The definition of “offshore wind facility qualification life” at N.J.A.C. 14:8-6.1 should be clarified to state that such qualification life commences on the actual commercial operation date of the project. This will ensure the approved OSW projects receive the full 20 years envisioned for OREC generation. The “qualification life” should apply to the generation facility or a project phase. (AWEA and ORSTED)

RESPONSE: The Board agrees with commenters that the qualification life begins on the date a project becomes operational. The Board will clarify the definition upon adoption to be consistent with phased development and to ensure the OREC qualification life begins upon the COD of the OSW project “or phase of a qualified OSW project.” This means that a single “qualified offshore wind facility” as approved by the Board may have multiple CODs specific to each phase of development.

N.J.A.C. 14:8-6.2

19. COMMENT: The rules at N.J.A.C. 14:8-6.2(g) address the RPS Class I requirements and establishment of the carve-out for offshore wind. The provisions at N.J.A.C. 14:8-6.2(g) should be clarified to reflect that the EDCs will be paying for the ORECs as payment agent for

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suppliers. (Orsted)

RESPONSE: The rules at N.J.A.C. 14:8-6.2(g) specifically apply to the RPS Class I requirements and suppliers who are the obligated entity that must meet New Jersey’s RPS and offshore wind carve-out. The rules do not change or alter that obligation on suppliers, but do allow for “a designated payment agent” as noted in N.J.A.C. 14:8-6.2(g)2iv. N.J.A.C. 14:8-6.6(c) states: “[t]he Board shall direct each EDC to serve as payment agent on behalf of the suppliers in each EDC territory to facilitate the transfer of OREC funding payments from ratepayers to offshore wind developers.” The term “OREC payment agent” is further defined at N.J.A.C. 14:8-6.1 to mean “the electric distribution company that shall facilitate the transfer of funds pursuant to this subchapter.” Therefore, no clarification is required.

20. COMMENT: The rules at N.J.A.C. 14:8-6.2(g) require that the OSW carve-out shall “account for any payments made in excess of a project’s approved OREC allowance and these payments shall be refunded to ratepayers.” This provision should clarify that overpayments of the annual OREC allowance will be refunded to ratepayers annually. As currently drafted, this provision does not specify which OREC allowance overpayments will be refunded or the schedule for refunding such overpayments. It is unclear why there would be payments made in excess of an allowance. (RC)

RESPONSE: The rules at N.J.A.C. 14:8-6.2(g) account for excess payments and address a situation that could occur due in part to the manner in which the OREC purchase percentage is set. The OREC purchase percentage is set based on an estimate of future retail load and is designed to match the total MWhs of offshore wind within the carve-out. If the OSW purchase

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percentage is set too high based on a weak estimate of retail load, the suppliers' obligation could conceivably exceed the number of MWhs specified in the Annual OREC allowance, in which case they would obtain an offshore wind alternative compliance payment (OACP) to meet their annual RPS requirements. These OACP payments, made by the EDCs from the OREC surcharge account, would simply be refunded or in this case credited back to ratepayers.

21. COMMENT: The rule needs to be clarified to allow projects to sell excess, unused ORECs after the 20-year OREC period as Class I RECs. (RECO, RC, and ORSTED)

RESPONSE: The rules clearly establish an "OREC qualification life" of three years during which ORECs can be applied to the OSW RPS carve-out during the energy year in which they are produced, and the following two energy years. However, only ORECs specified within the Board-approved annual OREC allowance schedule are eligible to receive payment during this 20-year term. There is no provision to receive payment for ORECs beyond this 20-year term. All other ORECs that are not otherwise used to meet the OSW RPS carve-out during the 20-year term may be eligible as Class I RECs.

22. COMMENT: The rules at N.J.A.C. 14:8-6.2(g)3 require the OREC administrator to conduct a true up twice annually at six months and at 12 months and no later than 120 days after the close of each energy year during each year of supplier obligations, to ensure compliance and provide the Board recommendations for any adjustments to the OSW purchase percentage and OSW carve-out. Clarification is required as to whom this compliance applies and the process that compliance will follow at what level of detail relative to the roles and responsibilities of

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individual suppliers and EDCs. (RC)

RESPONSE: “Compliance” denotes compliance with New Jersey RPS standards for offshore wind as a Class I Resource as set forth at N.J.A.C. 14:8-6.2 and for all entities with obligations under N.J.A.C. 14:8-6, which include the suppliers, EDCs as payment agents, and OSW developers. Compliance is on an annual basis, consistent with N.J.A.C. 14:8-6.2, which requires all suppliers who serve retail electricity customers in New Jersey to retire a set amount of offshore wind renewable energy certificates.

23. COMMENT: The rules at N.J.A.C. 14:8-6.2(g)4 require that any adjustment to the OSW purchase percentage and OSW carve-out schedule shall be made at least three years in advance of the applicable energy year. Adjustments to the Class I requirements, necessitated by a change in the OSW requirement percentage, shall be made in tandem and three years in advance. This provision may allow an appropriate amount of time for adjustments to the overall OREC percentages, but this may be too lengthy of a period to make corrections to payment percentages. This may perpetuate short comings: create more risk of OSW revenue recovery and result in a certain degree of rate shock. (RC)

RESPONSE: The OSW purchase percentage is defined at N.J.A.C. 14:8-6.1, Definitions. OREC purchase percentage “means the percentage of load for which all suppliers must purchase and retire ORECs, or receive an OACP credit, per this program, as set forth in the OSW carve-out.” The OREC purchase percentage is set by the Board in consultation with the OREC administrator. This is an estimation based on total approved MWhs from offshore wind projects divided by total Statewide retail sales and is expressed as a percentage. The OSW purchase percentage

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signals how many ORECs a supplier must retire to meet the carve-out and this percentage will be trueed up by the OREC administrator and adjusted by the Board as necessary three years in advance. Three-year advance notice allows for an orderly adjustment by all suppliers including basic generation service (BGS) and TPS. For the first three years, the OREC purchase percentage will be set, but then may be adjusted annually, three years out on a continuing basis. The OREC administrator will recommend to the Board, the annual OREC purchase percentage based on annual true-up, Statewide retail sales, and any other factors. The surcharge will be adjusted annually based on total MWhs approved by the Board and each time a new OSW project or project phase comes online.

24. COMMENT: N.J.A.C. 14:8-6.6(b)5 requires that a participation agreement and any subsequent modifications shall be developed by the OREC administrator and approved by the Board. Prior to approval by the Board, any such participation agreement and any subsequent major modifications should be published and be subject to comment by the EDCs, Rate Counsel, and all other interested stakeholders. (RECO)

RESPONSE: The Board appreciates the comments on the importance of the participation agreement being subject to comment by the EDCs, OSW developers, and Rate Counsel. N.J.A.C. 14:8-6.6(b)5 and (d) note that the Board will direct the EDCs to jointly contract the OREC administrator and that a standard participation agreement will be developed by the OREC administrator and approved by the Board. The Board will, thus, have full oversight and shall establish the procedures for approval to include review by the EDCs, OSW developers, and Rate Counsel.

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25. COMMENT: N.J.A.C. 14:8-6.2(g)2ii should be clarified to allow for the extension of the OSW carve-out to cover the banking period for any unsold ORECs. (AWEA and ORSTED)

RESPONSE: N.J.A.C. 14:8-6 clearly establishes a 20-year term for the “offshore wind facility qualification life” during which an offshore wind facility may receive, and be paid for, ORECs consistent with the annual OREC allowance schedule. The rules also clearly establish an “OREC qualification life” of three years during which “ORECs are eligible to be applied to the OSW RPS carve-out during the energy year in which they are produced, and the following two energy years, pursuant to the Offshore Wind Economic Development Act, N.J.S.A. 48:3-87.1 et seq.” This means ORECs generated in year 20 of the facility’s OREC qualification life will be eligible for the OSW RPS carve-out for two additional years. It is further noted that pursuant to N.J.A.C. 14:8-6.2(g)2iv, the RPS carve-out will “[b]e set and maintained by the Board in order to ensure that sufficient revenues from suppliers, or designated payment agent, are received by the qualified OSW projects for the ORECs generated up to each project’s approved OREC allowance.” The Board is, thus, required to establish and maintain an RPS OSW carve-out consistent with the OREC qualification life and ensure payment for ORECs generated from COD through year 20 up to the number of MWhs specified in the annual OREC allowance schedule. Therefore, the Board does not believe clarification is necessary.

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

26. COMMENT: In support of the principle that qualified OSW projects shall only be entitled to “OREC revenues” for megawatt hours (MWhs) actually generated over the 20-year term

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delineated in the Board Order, and shall have no recourse against the Board, the suppliers, the EDCs, the OREC administrator, or the ratepayers for any additional payments, fundamental fairness dictates that electric utility customers should only be required to compensate OSW projects for the ORECs that they actually produce. The provision should clarify that the term “OREC revenues” in N.J.A.C. 14:8-6.6(a)4 is intended to mean payments for the qualified OSW project’s OREC allowances. (RECO)

RESPONSE: OWEDA and N.J.A.C. 14:8-6.6(c) specify that OSW developers are only entitled to receive payment for ORECs for megawatt hours actually produced, which will be verified annually by the OREC administrator. The term “OREC revenues” means payments for the qualified OSW project’s OREC allowances.

27. COMMENT: N.J.A.C. 14:8-6.6(a)1 should be amended to make clear the Board Order approving a qualified offshore wind facility should be binding and enforceable for a period of 20 years from COD, unless any change is consented to by the OSW project. Such consent is provided in OWEDA. This should be reinforced in N.J.A.C. 14:8-6.6(b)5. (ORSTED)

RESPONSE: The Board notes that N.J.A.C. 14:8-6.6(a)1 clearly states: “A Board Order that approves a qualified OSW wind project shall be binding and enforceable on all parties referenced therein.” N.J.A.C. 14:8-6.6(a)2 further states “the total annual OREC allowance for a qualified OSW project, once approved by the Board, shall not be subject to reduction or modification” during the 20-year term of the OREC “unless otherwise agreed to by both parties,” which is the same as “consented to by the OSW project.” Thus, the suggested clarification is unnecessary.

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28. COMMENT: N.J.A.C. 14:8-6.6(a)3 should be amended to delete the words “full amount of the costs to build and operate an OSW project” and replace that with “a Projects approved OREC rates and payments.” (Orsted)

RESPONSE: The Board notes that N.J.A.C. 14:8-6.6(a)3 was intended to be understood as the cost of the project as determined and approved by the Board. The “total cost to build and operate an offshore wind facility” is recovered through the OREC as represented in the “annual OREC allowance schedule,” which specifies the project’s approved schedule and payments over a period of 20 years. The phrasing that the OSW developer is allowed to recover “a Projects approved OREC rates and payments” is, thus, more precise and accurate. The Board has clarified the language upon adoption.

29. COMMENT: N.J.A.C. 14:8-6.6(a)5 indicates the three-year qualification life of an OREC, thus, allowing ORECs to be banked for future use. This provision could work but clarifications should be added to require that ORECs be retired on a “first-in, first-out” basis with banked ORECs being used first for compliance. (AWEA)

RESPONSE: The Board appreciates AWEA’s comment and agrees that it may be in the best interest of the OSW Developer to apply this rationale of “first-in, first-out” to optimize the life of ORECs and avoid ORECs that may age out or become too old to use. However, this is a substantive proposed change that cannot be made upon adoption. The Board will thus include this change in the future OREC Administrator Participation Agreement.

30. COMMENT: The rules at N.J.A.C. 14:8-6.6(b)4 state that a qualified offshore wind project

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may not exceed the annual OREC allowance in any given year. Any unmet OREC allowances in a given year, however, may be carried forward to the next year. Clarification is sought as it is unclear what the term “unmet OREC allowance” is intended to mean and further notes that it is unclear if this provision is consistent with N.J.A.C. 14:8-6.2(g)2v regarding monthly and annual excesses that are carried forward. However, there is strong support for the all-in approach, allowing developers to use three months of reserve and then have the ability to bank and borrow ORECs. These are key items that will help reduce financing risk, thus, reducing the cost of projects. (RC and EDFR)

RESPONSE: Per the requirements of OWEDA and this rulemaking, offshore wind developers will only receive ORECs for actual production based on the generation of MWhs and per the annual OREC allowance schedule approved by the Board. An offshore wind developer, however, might have “unmet OREC allowances” in a given year if the offshore wind project produces less than anticipated due to changes in the wind resource, such as lower wind speeds than average or other factors. In such a case, the OSW project may fall below what is specified in the annual OREC allowance schedule. The unmet allowances can be carried forward to the next year to be paid only if production meets the new annual OREC allowance. In such a case, the EDCs will have collected the ratepayer surcharge in the preceding year per the OREC allowance schedule, so there is no additional surcharge on ratepayers. If, in the next year, the project over produces and is in excess of the allowable OREC allowances, the OSW developer may bank the ORECs for three years. This carry forward provision, similar to the OREC banking and borrowing provisions, allows flexibility in realizing the projects revenue requirements while ensuring ratepayer subsidies are only paid based on the actual production of MWhs and not more

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than the total OREC allowance approved by the Board.

31. COMMENT: N.J.A.C. 14:8-6.6(b)6 requires that “all project revenues are refunded to ratepayers” and the commenters suggested that this language should be stronger. Project revenues have “yet to be defined” in the proposed rule. If project revenues are defined later, it should be referenced in this rulemaking. The commenters request that “all project revenues” be clarified to state that “revenues” does not include OREC revenues. It is understood that this provision refers to “the return of energy, capacity and other revenues, but OREC payments are not maintained by the project.” The commenters also request clarity on the terms “revenues,” “project revenues,” and “revenues generated by an OSW project,” which are used throughout the proposed rules, but are not defined. Proposed definition for “revenues,” “project revenues,” and “revenues generated by an OSW project” to be defined, to include, at a minimum, all revenues the OSW project receives from the sale of energy, capacity, or ancillary services. Language should be added regarding enforceability and/or failure to comply with this provision. Clarification on the time by which such project revenues will be refunded would further strengthen the rule. (RC, RECO, and ORSTED)

RESPONSE: The Board appreciates the comments and request for clarification on the term “all project revenues.” The language referencing project revenues was strengthened during the rule development stage to require all project revenues regardless of whether or not they are associated with ORECs or MWhs stipulated within the total OREC allowances. Rate Counsel makes a good point that a definition consistent with the proposed amendments and new rules should be included. A definition for “all project revenues” is added upon adoption to include “all PJM

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revenues, which include the sale of electricity, capacity, and other ancillary services into any wholesale market, as well as any revenues generated through bilateral contracts.” This definition of “all project revenues” does not include the OREC revenues paid to the OSW developer that are retained by the OSW project. N.J.A.C. 14:8-6.6(b)6, which refers to “all project revenues,” does not include OREC revenues paid to the OSW developer.

The OREC administrator is required to verify that all obligations have been met including refunds to ratepayers during an annual true-up. The Board Order approving, or conditionally approving, a qualified offshore wind facility will more broadly address compliance with and enforcement of the responsibilities and obligations of all parties.

The Board, therefore, will add a definition for “all project revenues” to be added to the definition section upon adoption to clarify the Board’s intent.

32. COMMENT: Pertaining to N.J.A.C. 14:8-6.6(b)10, there is a typographical error that reads: “A requirement that the project reports ‘to’ the policies that may be adopted by the Board to help reduce future OREC pricing and total ratepayer impacts.” This should read “... reports on the policies.” (JCP&L and RC)

RESPONSE: The Board thanks the commenter for its review and has corrected the typographical error upon adoption.

33. COMMENT: N.J.A.C. 14:8-6.6(c)8 requires the EDCs to provide detailed, monthly accounting reports to the OREC administrator of all transactions, account balances, and any other information requested by the Board or the OREC administrator related to the obligations

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identified in this provision. It is suggested that such reports be required only on a semi-annual basis and will include the same detailed, monthly information. Given the amount of effort required on the part of the EDCs to prepare these reports, they should be required only twice a year. Providing these reports twice a year will also support the OREC administrator's requirement to conduct a true-up twice a year. (RECO)

RESPONSE: The timing of these reports depends in part on the accounting, verification, and reporting system established by the OREC Administration, which will be contracted by the EDCs on behalf of the Board. The timing of reports is better determined in consultation with the OREC Administrator so that the Board may consider whether monthly or semiannually reporting is required in future rulemaking proceedings.

34. COMMENT: Pertaining to N.J.A.C. 14:8-6.6(b)4, clarification is requested on the proposed rule to be consistent with the Offshore Wind Solicitation Guidance Document on the ability to carry forward OREC allowances. (Orsted)

RESPONSE: N.J.A.C. 14:8-6.6(b)4 clearly states that “[a]ny unmet OREC allowances in a given year may be carried forward to the next year.”

35. COMMENT: N.J.A.C. 14:8-6.6(b)7 describes the calculation of the OREC surcharge to be included in a Board Order approving a project. The rule states that “a calculated OREC surcharge for the OSW project, using the anticipated in-service or COD date, based on the OREC price of each approved OSW project multiplied by the annual OREC production in MWhs and divided by the total forecasted load of the EDCs plus any applicable sales tax.”

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Clarification of the language is requested to state “estimated” before the term “annual OREC production” to appropriately describe the calculation. (Orsted)

RESPONSE: N.J.A.C. 14:8-6.6(b)7 accurately describes the calculation to be included the Board Order approving an offshore wind project. Because this Board Order precedes the actual development and operation of the offshore wind farm, the calculation must rely on the “estimated” annual OREC production. The Board has made the requested clarification upon adoption.

36. COMMENT: N.J.A.C. 14:8-6.6(b)11 requires annual reporting requirements for offshore wind developers to ensure RPS compliance and to facilitate the OREC administrator’s annual true up to ensure all obligations have been met. There should be an annual reporting requirement, the nature and scope of which needs to be clearly explained and articulated. (RC)

RESPONSE: The OREC administrator is required to develop the annual reporting requirements to facilitate annual true-up and compliance consistent with N.J.A.C. 14:8-6.6(b) and to be approved by the Board.

37. COMMENT: At N.J.A.C. 14:8-6.6(b), a codification error was identified as there is no paragraph (b)12 listed, the proposed rule jumps from paragraph (b)11 to (b)13. (RC)

RESPONSE: The Board appreciates the commenter’s reviews, however, the official published notice of proposal at 50 N.J.R. 1879(a) had the proper codification of subsection (b), which included 14 properly codified paragraphs.

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38. COMMENT: N.J.A.C. 14:8-6.6(b)12 requires a fixed, flat OREC price for the proposed term or a fixed price for every contract year pursuant to this section. There should be a fixed and defined OREC price schedule. This price schedule should be reconciled with the projects annual revenue requirement that also highlights the projects annual return. (RC)

RESPONSE: The Board appreciates the comment from Rate Counsel and notes that the rules at N.J.A.C. 14:8-6.5 already require a fixed, flat OREC price and OREC price schedule based on the total costs or revenue requirements of the project. The Solicitation Guidance Document found at www.NJOffshoreWind.com further notes this in stating that the OREC price schedule represents “the calculation of the OREC price each year 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 Board will review and evaluate the OREC price schedule in context to the Project’s annual revenue requirements and the projects annual return as part of the evaluation process leading up to a Board Order approving the OREC pricing schedule. Once approved by the Board the OREC pricing schedule may not be modified. However, the Board will confer with the OREC Administrator to see if the OREC pricing schedule can then be reconciled with the Project’s annual revenue requirements.

39. COMMENT: OREC invoices may be subject to “banking mechanism” provided in N.J.A.C. 14:8-6.6(b)4, which allows unmet annual OREC allowances to be carried forward. It is requested that N.J.A.C. 14:8-6.6(e)9 be clarified to be consistent with the banking mechanism as described in the Solicitation Guidance Document. (ORSTED)

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RESPONSE: The rules clearly allow ORECs to be banked during its qualification life of three years and for unmet monthly OREC allowances to be carried forward to allow some flexibility for OSW projects in meeting the full revenue requirements during the 20-year term. The Solicitation Guidance Document provides further clarification on this banking mechanism.

40. COMMENT: N.J.A.C. 14:8-6.6(b)14 requires an approved decommissioning plan that should include a discussion of how decommissioning will be financed. It should also define what year the project will retire relative to the stated rate-payer financed OREC contract period. (RC)

RESPONSE: A decommissioning plan, including provisions for financial assurances, is already required under the application requirements specified at N.J.A.C. 14:8-6.5(a)9. The rule requires applicants to submit a “decommissioning plan for the project including provisions for financial assurance for the decommissioning and which complies with any applicable State and Federal statutes and or regulations.” The project decommissioning plan will be reviewed and approved by the Board as part of the application process and final decision.

41. COMMENT: N.J.A.C. 14:8-6.6(b)15 requires an approved plan for the OSW project, if it is not decommissioned immediately at the conclusion of the approved 20-year term of the OREC Funding. The decommissioning plan should include an annual estimated generation for each post-contract year, as well as forecast of costs and revenues. (RC)

RESPONSE: The Board appreciates the comment. A decommissioning plan, including provisions for financial assurances is already required under the application requirements specified at N.J.A.C. 14:8-6.5(a)9. Under the proposed new rule, the applicant and project

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developer is further required to submit, for Board approval, a plan for the OSW project post-contract period if not decommissioned. While the proposed new rule does not stipulate the required detail, the Board may request any level of detail during the evaluation of the application and before making a final decision and may reserve the right to negotiate the final post-contract terms and conditions.

N.J.A.C. 14:8-6.6(c)

42. COMMENT: N.J.A.C. 14:8-6.6(c)1 requires the EDCs to serve as payment agent on behalf of suppliers and to file with the Board, a tariff no later than 180 days prior to the COD date to collect a non-by-passable OREC surcharge to be assessed as a distribution charge that will be sufficient to meet each supplier's OREC obligation. The commenter requests a provision in the rule on how this surcharge will be assessed to net metering customers and how it will be modified and changed since it will be similar to a tracker. (RC)

RESPONSE: The Board appreciates the comment and believes this provision can be addressed in the EDCs filings. The EDCs are directed to file a tariff no later than 180 days prior to the COD date. Specific provisions for the surcharge and the calculation to be made can also be addressed in the Board Order approving the surcharge and directing the EDCs to collect the surcharge on behalf of suppliers.

43. COMMENT: N.J.A.C. 14:8-6.6(c)2 requires EDCs to implement the ratepayer surcharge based on the Board-approved total annual OREC allowance multiplied by the OREC price, and expressed as a per kilowatt hour (kWh) charge to be collected from all ratepayers on behalf of

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the suppliers. This calculation of the ratepayer surcharge should be defined in the tariff. The surcharge should be clarified to ensure that “the surcharge represents the cumulative revenue requirements for all ORECs from all offshore wind projects generating that year.” Clarification is requested to designate which entity calculates the OREC surcharge to be charged by the EDC and to ensure that each EDC tariff be updated to reflect the then-current surcharge for all projections in operation. (RC, ORSTED, and AWEA)

RESPONSE: The Board appreciates the comments and notes that “OREC surcharge” is defined at N.J.A.C. 14:8-6.1 as “a non-by-passable surcharge on ratepayers, to be set annually by the Board, and collected by the EDCs to cover the OREC costs.” N.J.A.C. 14:8-6.6(c)1 further describes “a non-by-passable OREC surcharge to be assessed as a distribution charge that will be sufficient to meet each supplier’s OREC obligation.” N.J.A.C. 14:8-6.6(c)2 requires the EDCs to “[i]mplement the ratepayer surcharge based on the Board-approved total annual OREC allowance multiplied by the OREC price, and expressed as a per kilowatt hour (kWh) charge to be collected from all ratepayers on behalf of suppliers.” Further, N.J.A.C. 14:8-6.6(c)3 states that “the amount of the OREC surcharge shall be set by the Board annually,” and “shall be equal to the forecast revenue requirements of all OREC purchases divided by the total of estimated sales for each EDC, and shall include all applicable taxes and fees.” The Board shall set the surcharge annually in consultation with the OREC administrator who is required under N.J.A.C. 14:8-6.7(a)7 to conduct an annual true up and specifically review the “annual ratepayer surcharge amount, and if necessary, recommend [to the Board] adjustments to the ... ratepayer surcharge.”

The Board Order approving the OSW project will specify the calculation and surcharge

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based on the total MWhs approved and OREC price pursuant to N.J.A.C. 14:8-6.6(b) and will direct the EDCs to collect the surcharge on behalf of suppliers. The calculation and surcharge will also be defined in the tariff filings by the EDCs who are here directed to file the tariff no later than 180 days prior to the COD date. The Board understands the definition of surcharge, as it is updated each year by the Board, to reflect all projects in current operation or all OREC revenue requirements. The Board has clarified the definition for “OREC surcharge” at N.J.A.C. 14:8-6.1 to reflect the cumulative revenue requirements.

44. COMMENT: N.J.A.C. 14:8-6.6(c)4 requires EDCs to collect the surcharge four months in advance of the COD, to ensure availability of funds for OREC payment. Collecting a surcharge four months in advance of operation conflicts with the spirit of earlier rule provisions, especially considering the possibility of delay. It is recommended that the Board establish an “imbalance account” to ensure excess amounts are refunded to ratepayers. (RC)

RESPONSE: The Board appreciates the comment and believes that a project’s COD will be fairly firm at four months prior to operation. Four months advance collection of the surcharge ensures the EDCs have established the necessary funds to begin payment of ORECs. Offshore wind is a variable resource. The first months payments may be more or less of what is estimated, so its important to allow for flexibility. Also note that absolutely no OREC payments will be made in advance of the project COD and actual operation and production. The Board sees no need for “imbalance accounts” at this early stage, since the OREC administrator will be conducting annual compliance to ensure excess funds are identified and refunded to ratepayers.

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45. COMMENT: N.J.A.C. 14:8-6.6(c)5 requires the EDCs to set up separate accounts for each OSW project to ensure that OREC funds for an OSW project are collected and dedicated to each OSW project individually and not intermingled with any other OSW project. The commenters request clarification as to how utility costs associated with this function will be approved and recovered and if these costs will be included in the tariff. The commenters also request clarification on the definition of “offshore wind administrative costs,” which should be revised to include the reasonable incremental costs incurred by the EDCs in obtaining and contracting with the OREC administrator, including the costs of any experts or consultants the EDCs used to obtain and/or contract with the OREC administrator. The new rules and amendments “do not state the mechanism by which the EDCs recover these costs, therefore, the definition of ‘offshore administrative costs’ should specifically state that the EDCs will recover these costs annually through the offshore wind surcharge.”

An EDC should be allowed to recover all reasonable incremental costs that it incurs as payment agent. Such costs should include any carrying charges that it incurs if the amounts that it must pay to OSW projects are more than the amounts that it has recovered to date from customers. This scenario is conceivable (even with the four-month cushion provided by N.J.A.C. 14:8-6.6(c)4), if, for example, an OSW project overproduces during the first half of a year. Further, “administrative fees” are not defined. This provision also should clarify that “administrative fees” include all reasonable incremental costs the EDC incurs as payment agent and for the OREC administrator fees, including any costs for EDC experts and/or consultants. The provisions do not address how utility costs associated with this function will be accounted for, and if these items will be included in the tariff. (RC and RECO)

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RESPONSE: N.J.A.C. 14:8-6.6(c)10 allows an EDC to file with the Board annually to recover the administrative fees incurred as payment agent and for the OREC administrator fees. The rule clearly directs the EDCs to file with the Board annually for recoverable charges for “administrative fees incurred as payment agent and for the OREC administrator fees.” This includes any cost incurred by the EDCs associated with administering separate accounts for each OSW project. N.J.A.C. 14:8-6.6(d)8 further provides: “Reasonable administrative costs related to the OREC administrator shall be recoverable by the EDCs. An accounting of such costs will be provided by the EDCs in writing on an annual basis to Board and Rate Counsel.”

46. COMMENT: N.J.A.C. 14:8-6.6(c)6 requires that EDCs make monthly payments to OSW developers based on the actual number of MWhs produced by the OSW project, until the annual OREC allowance approved by the Board has been reached. It is unclear how the EDCs will know the project specific information or the actual number of MWhs generated and further suggests this be the role of the OREC administrator in communicating all information to the EDCs and seeking Board approval as to how ORECs and funds are distributed. Clarification is requested on the timing of payments and provisions for late charges. It was suggested the provision at N.J.A.C. 14:8-6.6(c)6 should be amended to be consistent with paragraph (b)4 regarding “banking mechanism” for ORECs and further requested that paragraph (c)5 be clarified to provide that the OREC administrator will “provide the EDC allocation factors” to each OSW Developer, so that each OSW developer can invoice each EDC for its appropriate portion of OREC payments based on the load portion of each EDC. Without this information the OSW developers will not be able to provide appropriate invoices. (ORSTED and RC)

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RESPONSE: The Board agrees with Rate Counsel that this is an appropriate role for the OREC administrator who is directed under this rulemaking to facilitate the invoicing and payment for ORECs, as well as the annual true up to ensure all obligations are met. The OREC administrator is tasked under N.J.A.C. 14:8-6.6(d)2 with facilitating all payments, which includes informing all parties of their monthly obligations relative to each EDC and each offshore wind project.

N.J.A.C. 14:8-6.6(d) provides, “The OREC administrator shall ... [s]erve as the sole administrator for accounting, compliance, invoicing, and other administrative matters related to or arising from the OREC obligations of qualified OSW facilities pursuant to OWEDA” and is further directed to “facilitate all transactions between ratepayers, suppliers, EDCs, and OSW developers.” Under this rule, payments will be made by EDCs on a monthly basis. The OREC administrator, who is directed to facilitate invoicing by OSW developers, will provide all necessary information to participants including the necessary allocation factors for OSW developers to invoice the EDCs. The OREC administrator’s participation agreement, subject to review and input by the BPU, EDCs, OSW developers, and Rate Counsel, shall include these and other provisions.

47. COMMENT: N.J.A.C. 14:8-6.6(c)8 requires the EDCs to provide detailed, monthly accounting reports to the OREC administrator of all transactions, account balances, and any other information requested by the Board or the OREC administrator related to the obligations identified in this rule. This reporting function should be the primary responsibility of the OSW developers and the OREC administrator who should perform reconciliation of accounts and reporting to the Board and Rate Counsel. (RC)

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RESPONSE: The Board agrees with Rate Counsel that this is an appropriate role for the OREC administrator who is directed under this rulemaking to verify and reconcile all accounts during a true up at six months and 12 months. The OREC administrator will need to verify all monies collected and held by the EDCs and paid to the OSW developers, as well as all monies collected and held by the OSW developers, OREC payments received, and all project revenues returned to ratepayers. All parties under this rule have reporting requirements to facilitate the reconciliation and true up.

48. COMMENT: N.J.A.C. 14:8-6.6(c)9 requires EDCs to participate in all true up proceedings conducted by the OREC administrator as prescribed by the Board. The commenter requests more detail of what the true up process would involve. It is noted that the OREC administrator does not have the authority to initiate a proceeding that would need to be initiated by the Board and must be part of the EDC tariff proceeding. The timeline for any true up proceeding should be defined. (RC)

RESPONSE: The Board agrees with Rate Counsel that the Board would initiate the true up proceeding. The details of a true up are discussed in N.J.A.C. 14:8-6.6(d) and 6.7. As the regulatory authority, the Board may direct the OREC administrator to “conduct the trueup,” meaning that the OREC administrator would review all reports and verify all payments and obligations made in association with the OREC program and report to the Board and Rate Counsel.

49. COMMENT: N.J.A.C. 14:8-6.6(c)10 requires EDCs to file annually with the Board for

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recoverable charges associated with serving as payment agent. This should be part of the EDC tariff and that there should be a process for challenging these recoverable charges. Allowable administrative costs need to be defined along with roles and responsibilities.(RC)

RESPONSE: The Board concurs with Rate Counsel that the EDCs annual filing should be part of the EDC tariff, which is consistent with this rulemaking. Any EDC tariff filing would be subject to a public hearing process consistent with N.J.S.A. 48:2-32.6, which would, thus, allow Rate Counsel to challenge recoverable fees. The OREC administrator’s participation agreement, subject to review and input by the BPU, EDCs, OSW developers, and Rate Counsel shall include these and other provisions.

N.J.A.C. 14:8-6.6(d)

50. COMMENT: N.J.A.C. 14:8-6.6(d)1 requires EDCs to enter into a joint contract to retain an OREC administrator and describes the role and responsibilities of the OREC administrator as “independent of any supplier, EDC, or qualified OSW developer, affiliate, investor, and/or employee.” The commenter is in support of the establishment of an independent third-party administrator, but would like more detail on the competitive bidding and selection process and term of the contract. What stakeholders will participate in the OREC administrator selection process? (RC)

RESPONSE: The Board notes that N.J.A.C. 14:8-6.6(b) requires that a Board Order approving a project as a qualified offshore wind facility shall include a directive to the EDCs to jointly contract the OREC administrator, as noted in N.J.A.C. 14:8-6.6(d) and to bring to the Board for consideration a Request for Proposals, which will include the details on the bidding and selection

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process and the term of the contract, all subject to Board approval. The EDCs, as the joint contracting entity, will participate in the selection process with the final award recommendation subject to Board approval.

51. COMMENT: N.J.A.C. 14:8-6.6(d) states that the Board shall direct EDCs to enter into a joint contract to retain an OREC administrator. This provision also delineates the responsibilities of the OREC administrator. As with the standard participation agreement required by N.J.A.C. 14:8-6.6(b)5, prior to approval by the Board, any such joint contract and any subsequent major modifications should be published and be subject to comment by the EDCs, Rate Counsel, and all other interested stakeholders. This provision also should clarify “that the joint contract shall include provisions by which the OREC administrator shall indemnify and hold the EDCs harmless from any claims by the OREC projects, OREC applicants, and any other third parties, and that the EDCs have no liability of any kind to the OREC projects, OREC applicants, or OREC project developers.” This addition is necessary to protect the EDCs and their customers from liability for such claims. Finally, the joint contract with the OREC administrator should state that an individual EDC is not responsible for the obligations, financial and otherwise, of the other EDCs under the joint contract. This provision should specify that the OREC administrator is entitled to review the records of the OREC project as necessary to fulfill its obligations pursuant to this subchapter and the contract with the EDCs. (RECO)

RESPONSE: The EDCs will jointly contract for the OREC administrator, which is subject to Board approval. The Board agrees with RECO that prior to approval by the Board, any such joint contract and any subsequent major modifications shall be subject to comment by each of

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the EDCs and Rate Counsel on behalf of ratepayers. The OREC administrator contract, thus, may include provisions by which the OREC administrator shall indemnify and hold the EDCs harmless from any claims by the OREC projects, OREC applicants, and any other third parties, and provisions establishing that the EDCs have no liability of any kind to the OREC projects, OREC applicants, or OREC project developers. The joint contract with the OREC administrator may also state that an individual EDC is not responsible for the obligations, financial and otherwise, of the other EDCs under the joint contract. The OREC administrator’s participation agreement, prior to Board approval, shall also be subject to review and input by all obligated entities including the EDCs, OSW developers, and Rate Counsel on behalf of ratepayers.

52. COMMENT: N.J.A.C. 14:8-6.6(d)2 requires the OREC administrator to serve “as the sole administrator for accounting, compliance, invoicing, and other administrative matters related to or arising from OREC obligations ...” This is inconsistent with rules at N.J.A.C. 14:8-6.6(d)5 and 6 assigning OSW developers an invoice function. (RC)

RESPONSE: The Board sees no inconsistency in designating the OREC administrator the sole administrator for invoicing and other administrative matters and directing the EDC to actually submit the monthly invoice for payment. The OREC administrator is required to review “and approve” invoices for submittal to the EDCs. The OSW developers are required to submit an invoice for payment, but they are not tasked with oversight on behalf the State or asked to perform any other administrative functions.

53. COMMENT: N.J.A.C. 14:8-6.6(d)3 requires the OREC administrator to notify the EDCs at

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the beginning of each energy year of the total offshore wind carve-out obligation, total surcharge on ratepayers, and the amount to be collected by each for each qualified OSW project. The sequence of events is out of order in that the OREC administrator must first request Board Approval of 1) the total carveout; 2) the total surcharge; and 3) the total collections. Only after Board approval should the OREC administrator notify the EDCs. (RC)

RESPONSE: The Board concurs with the sequence of events noted by Rate Counsel, which is consistent with this rule that calls upon the Board to establish the OREC surcharge before the OREC Administrator notifies the EDCs.

54. COMMENT: N.J.A.C. 14:8-6.6(d)4 directs that the OREC administrator shall “facilitate all transactions between ratepayers, suppliers, EDCs, and OSW developers” and requests clarification for the transacting parties. (RC)

RESPONSE: The Board notes this paragraph is specifically directed to the OREC administrator who will facilitate “all transactions” between one or multiple parties and finds that no further clarification is needed.

55. COMMENT: N.J.A.C. 14:8-6.6(d)5i through xi directs that the OREC administrator shall develop a tracking and verification system, subject to Board approval, to track all transactions that shall account for payments, revenues, ORECs, and the retirement of ORECs, etc. The items identified in this paragraph to be tracked should also be part of the reporting requirements and there should be provisions to audit these items. It is also noted that “all project revenues” specified in subparagraph (d)5ix should be provided on an itemized basis. (RC)

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RESPONSE: The OREC administrator is required to report to the Board annually based on the true up performed at six months and 12 months, which relies upon the items identified in N.J.A.C. 14:8-6.6 and noted above. The Board agrees with Rate Counsel that these data points are the subject of the annual report to the Board.

56. COMMENT: N.J.A.C. 14:8-6.6(d)5xi directs the OREC administrator to transfer ORECs on a quarterly basis via a PJM-EIS Gats account to the suppliers. Is this transfer necessary on both a monthly and quarterly basis, as all other provisions for invoicing are done on a monthly basis? (RC)

RESPONSE: The Board notes suppliers are obligated to comply annually with the Class I RPS standards and soon-to-be-established offshore wind carve-out. Quarterly transfer is appropriate as there is a lag in PJM load data being trued up making quarterly transfer more accurate.

57. COMMENT: N.J.A.C. 14:8-6.6(d)6 directs the OREC administrator to set up a PJM GATs account to facilitate the transfer of ORECs from the OSW developer to suppliers. This should occur before N.J.A.C. 14:8-6.6(d)5, which includes the transfer of ORECs to suppliers. (RC)

RESPONSE: The Board considers the OREC administrator the administrator of the PJM-GATS-EIS account. The Board also agrees with the commenter that the sequence of these paragraphs provides more clarity if the requirement for the OREC administrator to establish a PJM-EIS GATs account is listed prior to the requirement for the OREC administrator to develop a tracking and verification system. Thus, the Board has switched the order of existing paragraphs (d)5 and 6 upon adoption. The Board will also remove duplicative language from recodified N.J.A.C.

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14:8-6.6(d)5 to align the paragraph with the lead-in text.

58. COMMENT: Clarification is requested on the use of PJM-EIS GATs accounts to facilitate the transfer of ORECs from the OSW developers to suppliers. What entities are required to establish a PJM-EIS-GATS account and whether ORECs will be transferred directly from OSW developers to suppliers or to the OSW administrator? N.J.A.C. 14:8-6.6(d)6 should clarify the specific transaction transfer that will occur, specifically that the ORECs shall be transferred from the GATs account of the qualified OSW project to the GATs account of the OREC administrator, and then, by the OREC administrator, to the GATs account of the suppliers in their load proportion. Further clarification is sought on how the number of ORECs for each EDC will be determined? How the allocation of PJM revenues from OSW developers to the EDCs will be determined? (JCP&L and ORSTED)

RESPONSE: N.J.A.C. 14:8-6.6(d)6 requires OSW developers, the OREC administrator, and the suppliers to each establish a PJM-EIS-GATs account to facilitate the transfer of ORECs. The OSW developers are required to transfer ORECs on a monthly basis to the OREC administrator who will then facilitate the transfer of ORECs to the suppliers on a quarterly basis via the PJM-EIS GATs account. The suppliers are then required to retire the correct number of ORECs on an annual basis in compliance with the RPS. The OREC administrator is responsible for facilitating and verifying these transactions as specified in N.J.A.C. 14:8-6.6(d)6 and is directed under this rulemaking to set up a tracking system to track and verify each of these transactions. This tracking system, however, is not yet established, but will be detailed in the OREC administrator's contract with the EDCs and OSW Developers. The OREC administrator is also

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responsible for determining the number of ORECs for each EDC and the appropriate allocation of PJM revenues from OSW developers to the EDCs for refund to ratepayers.

59. COMMENT: N.J.A.C. 14:8-6.6(d)7 directs the OREC administrator to conduct a true up two times each year at six months and at 12 months of each energy year and this true up shall be submitted to the Board no later than 90 days after the close of the energy year. Clarification is requested on how interested parties may participate or provide input into this process and how this provision corresponds to other provisions requiring any modification. (RC)

RESPONSE: The Board will make the annual OREC administrator report available to the public. Any necessary adjustments to the RPS obligations or to the surcharge will be conducted in the regular course and procedure. The OREC price is fixed and all revenues will be returned to ratepayers, so there will be no modification to the cost of the project; however, it may be necessary to adjust the surcharge or the RPS obligation depending on actual production and load as initial forecasts of these numbers are projections. Any true up action will be based on actual accounting to ensure that all obligations are met precisely in accordance with a Board Order that approves a qualified OSW project.

60. COMMENT: N.J.A.C. 14:8-6.6(d)8 describes administrative costs related to the OREC administrator contract that will be recoverable by the EDS. The commenter objects to the wording of the following, “which suggests that there are costs of the OREC administrator that the EDCs may not be able to recover, if the Board determines the costs are not reasonable.” This provision should be revised to make clear that the EDCs are only required to pay the OREC

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administrator for costs approved by the Board. More information is needed on how these administrative costs will be recovered by the EDCs and what process will be utilized. If the Board determines that certain costs of the OREC administrator are not reasonable, the EDCs should not be required to pay for those costs, and the EDCs should be able to deduct the disallowed amounts from future payments. Adding such language will serve to limit the risk of the OREC program for the EDCs and their customers. There needs to be a formal process as the recovery of the costs will raise rates and, thus, a full proceeding and public hearing are required. (RECO and RC)

RESPONSE: The Board appreciates the concern raised by RECO and Rate Counsel, but this language is consistent with other cases where EDCs are able to recover “reasonable costs” subject to review by the Board and Rate Counsel.

61. COMMENT: N.J.A.C. 14:8-6.6(d)9 addresses the responsibilities of the OREC administrator and states: “Any changes proposed by the OREC administrator to a Board-approved system shall be submitted to the Board for approval.” Clarification is requested on what is meant by the term “Board-approved system.” It was requested that the phrase “be consistent with OREC Orders” be added for clarity. (RC and ORSTED)

RESPONSE: The term “Board-approved system” refers to any tracking, invoicing, or payment system that is subject to Board approval. The rules clearly state that the OREC order cannot be modified without consent of both parties. The OREC order cannot be modified whether directly or indirectly by the OREC administrator nor by proposed changes to a Board-approved system. The requirement of Board approval of any changes ensures consistency with the OREC orders.

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N.J.A.C. 14:8-6.6(e) and (f)

62. COMMENT: N.J.A.C. 14:8-6.6(e)2, which requires OSW developers to establish and maintain a PJM-EIS GATs account, “do[es] not state who is responsible for creating the PJM-EIS GATs account.” N.J.A.C. 14:8-6.6(e)2 further states this account will provide the basis to track the number of ORECs generated, transferred, and retired and serve as the basis of verification for the issuance of ORECs for each MWh electricity generated by the project. (RC)

RESPONSE: The Board notes that provisions under N.J.A.C. 14:8-6.6(e) clearly direct the OSW developer to establish and maintain the PJM-EIS GATs account that shall provide the basis of verification by the OREC administrator.

63. COMMENT: Clarification is requested of N.J.A.C. 14:8-6.6(e)5, which states that “[a]t the end of each month, each OSW developer shall submit an invoice to each of the EDCs ... for payment of ORECs.” It is important to have the monthly invoicing mechanism and additionally important that: “The OREC Administrator is responsible under the proposed rules for overseeing the details of the OREC program, including providing annual true ups and verifying the production of ORECs, as well as the payments for same. However, it would be helpful to establish prudence if the OREC Administrator actually approved the invoice from the OSW developer and authorized the transfer of funds from the EDCs. The BPU appears to agree that the OREC Administrator will assume this role; however, it would be helpful if these responsibilities were specifically delineated in the contract between the EDCs and the OSW developers. [The commenters are committed] to working with the BPU and other EDCs to ensure that the duties of

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the OREC Administrator are clearly defined in the contract.” (JCP&L and PSE&G)

RESPONSE: The specific role and duties of the OREC administrator are clearly defined under N.J.A.C. 14:8-6.6(d). The administrator is responsible for “facilitating all transactions between ratepayers, suppliers, EDCs, and OSW developers” and verifying those transactions during a true up conducted at six months and 12 months. The rules are not silent on the issue of monthly invoicing and the appropriate allocation of ORECs and allocation of PJM revenues to ratepayers but rather provide that the mechanics of such monthly invoicing and payment of PJM revenues shall be further specified in the participation agreement between the OREC administrator and the OSW developers and EDCs. The Board will ensure the mechanics by which the OREC administrator facilitates and verifies all transactions are clearly defined in the contract between all parties, which are subject to Board approval. As such, N.J.A.C. 14:8-6.6(e) is changed upon adoption to require the OREC Administrator to approve invoices from the OSW Developer.

64. COMMENT: Provisions at N.J.A.C. 14:8-6.6(f)2, require all project revenues to be held in an interest bearing account to be distributed to ratepayers. A minimal interest rate should be defined as that defined for a utility rebate account. (RC)

RESPONSE: All project revenues that are held for any period of time will be subject to the annual Board Order that sets the standard interest rate for utility interest bearing accounts.

65. COMMENT: Provisions at N.J.A.C. 14:8-6.6(f)3, as currently written, allow an OSW project to hold project revenues including, but not limited to, PJM revenues (which include all revenues paid to the OSW developers by PJM for the sale of electricity, capacity, and ancillary services to

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the grid), for a period of three months. At the end of the three-month period, the OSW project is to release these revenues for refund to customers. These provisions allow that the PJM revenues can be withheld by the qualified OSW project to cover any shortfalls or mismatches in production and OREC payments. The commenters request changes at N.J.A.C. 14:8-6.6(f) to state that the three months for holding project revenues is three months from the date the project receives such revenue. These provisions are too liberal in allowing PJM revenues to be withheld by the qualified OSW project “[f]or any purpose deemed necessary ...” An objection was raised to “this nebulous phrase” that undermines the purpose of having any criteria and “allows the qualified OSW project to withhold PJM revenues for any reason.” Further objection was raised to the withholding of revenues from ratepayers for three months and the commenters submit that one month is sufficient. The commenter sees considerable customer costs, with little customer benefits, to using a quarterly, as opposed to monthly, release schedule. Also, this provision should include language that clarifies that any revenues withheld must be returned to customers. Clarification is sought as it is “unclear why the qualified OSW project needs to hold revenues, let alone for three month period ... Why not credit them immediately.” (ORSTED, RC, and RECO)

66. COMMENT: N.J.A.C. 14:8-6.6(f)4 allows an OSW project to hold project revenues including, but not limited to, PJM revenues (which include all revenues paid to the OSW developers by PJM for the sale of electricity, capacity, and ancillary services to the grid), for a period of three months. Rate Counsel requests more clarification. Additionally, Board approval should be required for the use of PJM revenues to meet any unmet OREC obligation. (RC)

RESPONSE TO COMMENTS 65 AND 66: N.J.A.C. 14:8-6.6(f)3 allows an OSW project to hold up to three months of project revenues from the date the project receives such revenues. The

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rules clearly state the intended use of the funds is to cover the monthly OREC obligation until payment is received or to cover OREC payments during resolution of an event or due to seasonal mismatches. There is a lag time of approximately three months from when PJM verifies load data and OREC payments are made so three months was determined to be the reasonable timeframe. These revenues are not held indefinitely but rather are limited to three months of revenues and upon receipt of OREC payments, all PJM revenues are due to be refunded to ratepayers.

67. COMMENT: N.J.A.C. 14:8-6.6(e)5 requires an OSW project to submit a monthly invoice for payment of ORECs to the EDCs. This is duplicative of provisions in paragraph (d)2, which notes invoicing is the requirement of the OREC administrator. The commenter recommends that the OSW developer report this information to the OREC administrator, who will remit the information to the EDC. (RC)

RESPONSE: The rules require the OREC administrator to “facilitate” invoicing for OREC payments. Using the EDC as payment agent allows OSW developers to submit an invoice for payment directly to the EDC and receive payment. The OREC administrator facilitates the invoicing transaction by ensuring all parties are informed of their monthly obligations. The parties shall copy all invoices to the OREC administrator who shall review and approve all invoices for payment pursuant to N.J.A.C. 14:8-6.6(f)6 and receive all transaction reports, so that the OREC administrator can conduct the required true up at the six months and 12 months intervals.

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68. COMMENT: The Board should clarify N.J.A.C. 14:8-6.6(f)7iii to address the case in which an EDC may default and “falls to an investment grade one level above default.” In such a case, an OSW project should be able to increase reserve funds held by the project. By addressing the risk of default, the BPU may “mitigate risk,” which will lead to lower OREC pricing. Additional information is sought on “what happens if an EDC was to go bankrupt during the project life.” The commenters object to the phrase “for any purpose deemed necessary ...” as it undermines the purpose of having any criteria and allows the qualified OSW project to withhold PJM revenues for any reason. (Orsted and RECO)

RESPONSE: The rules do not address the issue of EDC default, which is addressed in full under rules governing the EDCs pursuant to N.J.A.C. 14:8-6.6(c). The Board is confident that the risk of EDC default or bankruptcy is sufficiently minimal as to not affect the OREC price. Even in the unlikely event that an EDC becomes financially insolvent, existing law and regulatory provides adequate surety that the OREC payments are guaranteed. The Board may consider this suggestion in a future rulemaking if new information suggests additional steps or provisions are needed.

69. COMMENT: The rules do not establish a cap at N.J.A.C. 14:8-6.6(e)8 and 9, which allow a qualified OSW project to carry forward any unmet OREC allowances. It is recommended that a cap be established to reduce ratepayer liability. What happens at the end of the contract term? (RC)

RESPONSE: Per the proposed new rules, each qualified offshore wind facility will be approved for a 20-year term to generate and receive payment for a specified number of ORECs or MWhs

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and not more than specified in the annual OREC allowance schedule. The ability to carry forward an unmet allowance does not increase the total number of MWhs and does not allow the project to receive payment for MWhs not generated. The cap on payment is that established by Board Order per the annual OREC allowance schedule. At the end of the 20-year term of operation, if the offshore wind project has exceeded the total number of MWhs specified in the schedule it has no recourse on ratepayers to be compensated for those MWhs. Furthermore, EDCs will establish the surcharge base on the Board-approved OREC allowance schedule, so that the OSW developer is never collecting more than what has been already collected by the EDC. By allowing the developers to bank and borrow ORECs and carry forward OREC allowances, the developer is incentivized to maximize production, which, in effect, lowers OREC price per MWh and the impact on ratepayers.

N.J.A.C. 14:8-6.7

70. COMMENT: “True ups are a vital piece to the OREC funding mechanism and will ensure that the proper payments are made by customers for the development of offshore wind. One issue that may arise during the Annual true up is PJM adjustments, i.e., meter corrections. PJM performs a monthly and annual reconciliation of meter readings for suppliers. These PJM adjusted calculations must be included in both the semi-annual and annual true ups performed by the OREC Administrator.” (PSEG)

RESPONSE: The Board appreciates calling out issues that may arise during the annual true up and agrees this should be addressed by the OREC administrator during the true up and in the OREC administrator’s participation agreement.

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71. COMMENT: At N.J.A.C. 14:8-6.7(a), any true up should be conducted within a formal proceeding. It is further noted that N.J.A.C. 14:8-6.7 requires the OREC administrator to review and report on all transactions and accounts and to report out to the Board. The “self-audit” while a valuable process, should include a process by which a party may raise an issue or contest an issue. (RC)

RESPONSE: The OREC administrator is not yet established and the terms of operation have yet to be established. The EDCs will be requested to jointly contract the OREC administrator who, once under contract, will establish a participation agreement to be approved by the Board so that all parties are informed of the process and procedures. The participation agreement is the document that will establish the policies and procedures for stakeholders to use in asking questions or raising issues of concern.

72. COMMENT: At N.J.A.C. 14:8-6.7(a)1, the rule has not previously mentioned an OACP and OACP credit and the provision is unclear. A number of provisions discuss “unmet” OREC obligations and “monthly carry over,” which may not be necessary. (RC)

RESPONSE: This provision is consistent with OWEDA and is necessary. Furthermore, see the Response to Comments 82 and 83.

73. COMMENT: At N.J.A.C. 14:8-6.7(a)2, the commenter requests clarification on the use of the term “no recourse” as it relates to earlier provisions that allow for “unmet” ORECs to be rolled over into the next month or year. The rule states that if a project “did not meet its annual

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OREC allowance, it has the opportunity to submit any ORECs from the current year or banked ORECs to make up the short fall as part of the annual true up, but has no recourse if it does not have the ORECs to provide.” (RC)

RESPONSE: One of the foundational principles of New Jersey OREC program is that it is a “pay for performance” incentive and projects are only paid or receive OREC payments based on actual production. Banked ORECs represent MWhs that have yet to be paid and so it is appropriate to allow these ORECs to be carried forward, as long as the total OREC allowance is not exceeded. However, if a project has no ORECs to present, it is because all MWhs have already been credited. A project can only receive payment for MWhs produced. In other words, a project that fails to produce sufficient MWhs has no recourse. In the case of “unmet” allowances being rolled over to the next month, the project still has to produce enough MWhs or ORECs to receive payment. All provisions for banking, borrowing, and roll-over simply create flexibility for the project to realize the production schedule and revenues initially approved by the Board.

74. COMMENT: N.J.A.C. 14:8-6.7(a)3i states that qualified OSW projects shall confirm or demonstrate to the OREC administrator that all project revenues have been delivered to the EDCs, which are to be refunded to ratepayers, with appropriate exceptions. This provision is duplicative of earlier provisions. Additionally, these revenue credits have important ratemaking implications and need to be verified by the Board. The project needs to confirm their revenue credits with the Board. The OREC administrator primarily just accounts for the balances. This provision seems to delegate responsibility to the OREC administrator that is not appropriate and

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may be inconsistent with statutes. In addition, “appropriate exceptions” should be defined. (RC)

RESPONSE: The OREC administrator is directed by the Board to verify “all project revenues” delivered to the EDCs for refund to ratepayers. This is entirely appropriate and consistent with other third-party audits that may be ordered by the Board. The OREC administrator will have unique insight and the ability to track and verify, as required under this rulemaking, offshore wind production data, PJM-EIS GATs data, PJM revenues earned data, and revenues delivered to the EDCs. The Board is not delegating responsibility, but rather directing the OREC administrator to ensure an appropriate level of oversight, tracking, and verification.

75. COMMENT: N.J.A.C. 14:8-6.7(a)3ii requires OSW projects to make up “any PJM revenue shortage” to the EDCs to be refunded to ratepayers, except when retained for an allowable use. Clarification and a definition of the term “PJM revenue shortage” is requested. The commenters note that “there cannot be a revenue shortage because a proposed project would not be approved with a guaranteed revenue credit.” Additionally, the Board lacks jurisdiction to require projects to sell or set a required revenue target, therefore, there cannot be a shortfall. (RC and Orsted)

RESPONSE: The term “any PJM revenue shortage” refers to “all project revenues” due to be refunded to ratepayers, which is referenced in this subchapter, and which is defined elsewhere.

76. COMMENT: N.J.A.C. 14:8-6.7(a)3ii requires OSW projects to make up “any PJM revenue shortage” to the EDCs to be refunded to ratepayers, except when retained for an allowable use. It is noted that this subparagraph and elsewhere in the rulemaking earmarks output revenues as “PJM revenues.” The Board should not characterize these revenues as “PJM revenues” but

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rather as “wholesale revenues” including those outside of PJM spot markets (such as bilateral sales or other long-term contract). The reference to “PJM revenues” needs to be replaced with “wholesale revenues” here and throughout the rule. (RC)

RESPONSE: PJM is the wholesale market into which all New Jersey offshore wind projects must interconnect to be eligible to be deemed a qualified offshore wind facility. The term “PJM revenues” refers to all market revenues of any type resulting from the sale of energy, capacity, or any ancillary service into the wholesale electric market or under a bilateral contract. The Board considers the term PJM revenues as being broad and inclusive consistent with the term “all project revenues” discussed in the Response to Comment 78.

77. COMMENT: A typographical error was found in the proposed rules at N.J.A.C. 14:8-6.7(a)4, where the term “reserves” was mistakenly used instead of the term “revenues” which is consistent with the rest of the section and rules. (RC)

RESPONSE: The Board thanks the commenter for the review and has made the correction upon adoption.

78. COMMENT: Clarification on N.J.A.C. 14:8-6.7(a)5, which requires the EDCs to submit as part of their annual SBC filing, the revenues received from the OSW developers to be credited to the SBC for the benefit of ratepayers or otherwise credited to ratepayers as directed by the Board. The use of OSW sales revenues as a credit to the SBC is not provided for in any statute. Thus, any OSW credit would need to be a separate clause or true up. OSW revenues are credited against the OREC surcharge to reduce the total amount. It is not clear why anything associated

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with the OSW process would be tied to the SBC. (RC)

RESPONSE: The Board appreciates Rate Counsel’s guidance in how best to credit back the revenues received from the OSW developers to ratepayers. The rule will be changed upon adoption by removing reference to the SBC and the Board will, thus, direct the EDCs to submit a separate filing to credit OSW revenues against the OREC surcharge to reduce the total amount.

79. COMMENT: Clarification on N.J.A.C. 14:8-6.7(a)10, which provides that in the absence of sufficient ORECs in a given year, any payments that are made to satisfy the RPS will be drawn from the pre-collected OREC surcharge funds, and not from the EDC funds. Given the fact that the OSW developers are only paid for the actual amount of ORECs they produce, it is unclear where the funds that make the OACP are generated and who is receiving the OACPs. Additional clarification is sought on the source of funds for OACP payments. (ACE and PSE&G)

80. COMMENT: N.J.A.C. 14:8-6.7(a)10 requires that if the OREC administrator determines that there are not enough ORECs in a given year to meet the suppliers’ obligation, and there are no banked ORECs available, the OREC administrator may direct the EDCs, as the suppliers’ payment agent, to make OACP payments to satisfy the RPS. Additional discussion and information on the use of OACP payments in absence of available ORECs is needed. The commenters object to the payment of an OACP. As noted elsewhere, an OSW project is only compensated for the ORECs that it produces. Therefore, an OSW project would not be entitled to OACP payments. Additionally, pursuant to N.J.A.C. 14:8-6.2(f), any OACP payments are returned to customers. For these reasons, it makes no sense to collect OACP payments from customers only to then turn around and return them to the same customers. (RC) (RECO)

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RESPONSE TO COMMENTS 79 AND 80: The Board notes that the EDC’s interpretation of the rule is correct and consistent with the rule as drafted. In the absence of sufficient ORECs in a given year, which is an unlikely event, but could occur in the early years before a surplus of ORECs are generated, any payments that are made to satisfy the offshore wind carve-out will be drawn from the pre-collected OREC surcharge funds, and not from EDC funds. New language has been added upon adoption to clarify that all funds will be drawn from the funds collected from the “ratepayer surcharge,” which is further noted as synonymous with “OREC surcharge” in the definition added upon adoption in N.J.A.C. 14:8-6.1. The EDCs will have collected sufficient funds to cover the annual OREC allowance. Suppliers’ obligations will similarly be based on this annual OREC allowance. In the absence of ORECs, the OREC administrator may issue an OACP to the supplier to meet the obligation. These OACP payments will show up in the annual true up as payments due to be refunded or credited back to ratepayers.

81. COMMENT: N.J.A.C. 14:8-6.7(a)7, 8, and 9 address adjustments to the OSW carve-out as a result of the annual true up process. N.J.A.C. 14:8-7.7 notes that the OREC administrator, in conjunction with the Board, shall, at the end of the annual true up, conduct a review of the OSW carve-out and annual ratepayer surcharge amount and, if necessary, recommend adjustments to the OSW carve-out and the ratepayer surcharge. This provision needs to be part of the reconciliation process as it may raise rates and, therefore, needs to be part of a formal proceeding. No surcharge should be allowed to be modified without public input and participation from Rate Counsel.

N.J.A.C. 14:8-6.7(a)7 and 8 require that all adjustments to the RPS shall be made three

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years in advance, if, at the end of the annual true up, certain determinations are made. It is unclear if this would be done “after an annual true up” or as part of the “true up process.”

N.J.A.C. 14:8-6.7(a)8 address adjustments to the OSW purchase percentage whereby the Board would direct the OREC administrator to make an adjustment. It is unclear how this will occur if it is being done in percent terms. (RC)

RESPONSE: The Board concurs with Rate Counsel that all adjustments to the RPS and any change in surcharge would occur by way of a public proceeding. The rule clearly notes that the OREC administrator is asked to conduct a review “in conjunction with the Board” and is asked to “recommend adjustments to the OSW carve-out and the ratepayer surcharge.” It does not seek to supplant the regular procedures that are already established regarding the RPS or the establishment or modification of a surcharge. The rule appropriately specifies the time frame in which any adjustment that might need to be made should occur (three years in advance) and indicates the Board must direct the OREC administrator to make any necessary changes, thus, ensuring proper regulatory oversight. Any such changes would occur after a true up process and would occur by way of a public proceeding subject to comment.

Federal Standards Statement

No Federal standards analysis is required because the adopted amendments and new rules are not adopted in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

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Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[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.

“All project revenues” shall mean all revenues generated by a qualified offshore wind facility, during the 20-year term of the Board Order, resulting from the sale of energy, capacity, or any ancillary service in PJM, or any other revenue that is generated by a qualified offshore wind facility.

...

“Commercial operations date (COD)” means the date upon which a qualified OSW project*, **or a phase of a qualified OSW facility***, which is interconnected to the transmission system in New Jersey, begins to generate power for which it is eligible to receive ORECs.

...

“Offshore wind facility qualification life” means, for any qualified offshore wind generation facility, ***or project phase of a qualified OSW facility,*** the period beginning on the commercial operation date (COD) when the facility ***or project phase of a qualified OSW facility,*** is authorized to operate under this subchapter and ending on the conclusion of the

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energy year that is 20 years after the date of authorization to operate. An offshore wind facility’s qualification life applies to the facility itself, ***or project phase of a qualified OSW facility,*** and to each piece of equipment included in the facility, regardless of any interruption in the offshore wind facility’s operation; or of any disassembly, relocation, sale, or transfer of any piece of equipment included in the facility.

...

“OREC surcharge” means a non-bypassable surcharge on ratepayers, to be set annually by the Board, and collected by the EDCs to cover the OREC costs ***for all qualified offshore wind facilities in operation that year*.**

...

“Ratepayer surcharge” means “OREC surcharge” as defined in this section.

...

14:8-6.6 Funding mechanism

(a) Once the Board has approved an offshore wind project under this subchapter, the qualified OSW project shall be funded through an Offshore Wind Renewable Energy Certificate (OREC) as set forth in this subsection and in accordance with the following fundamental principles:

1.-2. (No change from proposal.)

3. A developer of a qualified OSW project shall be eligible to receive the ***[full amount of the costs to build and operate an OSW project]* ***project’s approved OREC rates and payments***** for 20 years subject to the terms and conditions of the Board Order;

4.-6. (No change from proposal.)

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(b) The Board Order granting approval of a qualified OSW project, pursuant to the provisions of N.J.A.C. 14:8-6.5 for designation as a qualified OSW project, shall conform to the provisions of this section and shall include, but not be limited to:

1.-6. (No change from proposal.)

7. A calculated OREC surcharge for the OSW project, using the anticipated in-service or COD date, based on the OREC price of each approved OSW project multiplied by the ***estimated*** annual OREC production in MWhs and divided by the total forecasted load of EDCs plus any applicable sales tax;

8.-9. (No change from proposal.)

10. A requirement that the project reports ***[to]* *on*** the policies that may be adopted by the Board to help reduce future OREC pricing and the total ratepayer impact;

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

(c) (No change from proposal.)

(d) The Board shall direct the EDCs to enter into a joint contract to retain an OREC administrator. The contract shall be competitively bid to ensure the most efficient and cost competitive price for ratepayers. The OREC administrator shall:

1.-4. (No change from proposal.)

5. Set up a PJM-EIS GATs account to facilitate the transfer of ORECs from the OSW developers to suppliers;

[5.]* *6. (No change in text from proposal.)

[6. The OREC administrator shall set up a PJM-EIS GATs account to facilitate the transfer of ORECs from the OSW developers to suppliers;]

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7. (No change from proposal.)

8. Reasonable administrative costs related to the OREC administrator shall be recoverable by the EDCs. An accounting of such costs will be provided by the EDCs in writing on an annual basis to Board staff and *[rate counsel]* ***Rate Counsel***. Board staff and Rate Counsel shall submit any objections within 60 days; and

9. (No change.)

(e) Offshore wind developers, for each qualified OSW project, in addition to any other responsibilities that may be required in the Board Order, shall:

1.-5. (No change from proposal.)

6. The OREC administrator shall be copied on*, **and shall approve,*** all monthly invoices sent to the EDCs for payment;

7. -9. (No change from proposal.)

(f) (No change from proposal.)

14:8-6.7 Annual true up

(a) Concurrent with the RPS compliance report required by N.J.A.C. 14:8-2.11, but no sooner than October 1st following the end of each energy year, an annual true up shall be conducted by the OREC administrator, suppliers, qualified OSW projects, and EDCs, with the oversight of the Board, consisting of the following:

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

4. When an OSW project has reached the end of its 20-year term during the energy year, the Board shall confirm that all PJM *[reserves]* ***revenues*** associated with, or necessary for,

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the project ending its 20-year term have been submitted to the EDCs to be refunded to ratepayers;

5. The EDCs shall submit as part of their annual *[SBC]* filings, the revenues received from the OSW developers as verified by the OREC administrator to be credited *[to the SBC]* ***against the OREC surcharge*** for the benefit of ratepayers or otherwise credited to the ratepayers as directed by the Board. The OREC administrator shall compare these filings with the annual OREC administrator reports to ensure that all revenues due to ratepayers were provided to the EDCs and that all of those revenues have been credited to the ratepayers as directed by the Board;

6.-9. (No change from proposal.)

10. If the OREC administrator determines that there are not enough ORECs in a given year to meet the suppliers' obligation, and there are no banked ORECs available, the OREC administrator may direct the EDCs, as the suppliers' payment agent, to make OACP payments*, **from the pre-collected OREC surcharge funds,*** to satisfy the RPS; and

11. (No change from proposal.)