

GSOE PROPOSAL
FOR AN
OREC FUNDING AND SETTLEMENT MECHANISM

Background

On February 10, 2011 the New Jersey Board of Public Utilities promulgated rules at N.J.A.C. 14:8-6 et seq. to codify new statutory requirements enacted through the Offshore Wind Economic Development Act, N.J.S.A. 48:3-49 et seq. (“OWEDA”). Major components of the rules included:

- application requirements (net economic and environmental benefits to NJ)
- the need for an escrow account
- the ability for the Board to designate an application window
- the ability for the Board to impose appropriate conditions upon any OREC grant

The rules balance costs and benefits in the broader context of the overall impact on New Jersey’s manufacturing and employment objectives, as well as recognition of the potential benefits offshore wind energy has on the environment and retail electricity prices. The rule adoption represented a major step in New Jersey’s promotion of offshore wind development. However, the promulgated regulations specifically reserved for a subsequent rulemaking regulations establishing an OREC funding mechanism.

In June 2011, the Board opened a stakeholder process to explore the collaborative development of the funding and settlement mechanism that will be vital in encouraging necessary investment in offshore wind farms. What follows is a proposed Program for facilitating OREC procurement. **Exhibit 1** provides an overview of the proposed funding and settlement mechanism.

1. Approved OREC Supply and Revenues

- The Board will establish by order, concurrent with issuance of OREC awards, a multi-year schedule, beginning with the energy year in which the first qualified offshore wind facility achieves commercial operations and continuing for each subsequent energy year up to and including the energy year in which the last qualified offshore wind facility ceases commercial operations, that requires Suppliers (hereafter defined) to purchase the total projected OREC production of each qualified offshore wind project (“OSW”) approved by the Board (for each energy year, the “Approved OREC Supply”) for a twenty-year period.
- The Board-approved OREC prices for each individual OSW shall be on an “all-in” basis and unique to an individual approved qualified offshore wind project. Pursuant to N.J.A.C. 14:8-6.5(a)12iii, the “all-in” price reflects an individual approved qualified OSW’s total revenue requirement including its cost of capital, debt service, and return as well as operations, maintenance, overhead, general and administrative costs.
- As contemplated by OWEDA, the total of all revenue requirements for all approved and qualified OSWs (the “Approved OREC Revenues”), once established by the

Board, shall not be subject to reduction or modification during the term of each approved qualified OSW.

2. Supplier OREC Purchase Percentage

- Each third party supplier (a “Retail Supplier”) and each basic generation service provider (a “BGS Supplier” and, together with each Retail Supplier, both individually or collectively referred to hereinafter as a “Supplier”) shall purchase a percentage of the kilowatt-hours it sells (the “OREC Purchase Percentage”) from qualified offshore wind projects as that term is defined in OWEDA. Hereinafter the “OREC Purchase Requirement” shall mean the total number of kilowatt-hours an individual Supplier must purchase pursuant to OWEDA.
- Each Supplier shall calculate the amount of its required monthly OREC Purchase Requirement based upon the then-current quarterly OREC Purchase Percentage as calculated by an independent Clearinghouse (hereafter defined) established upon approval of the Board to handle OREC financial transactions.
- Not less than 30 days before the BGS auction, the Clearinghouse will provide to the Board, who shall then publish the same, a three-year forward-looking schedule including, on a quarterly basis: (i) a forecast of total state electric consumption, based on forecasts submitted by the EDCs; (ii) the OREC Purchase Percentage of each BGS Supplier; (iii) the Approved OREC Supply; and (iv) the OREC Price (defined in Section 4 below). The OREC Vintage Year shall be the same as the first Energy Year of the BGS award. .
- For BGS Suppliers, the OREC Purchase Percentage and OREC Price (hereafter defined) established in the Vintage Year of the BGS auction shall remain in effect for the term of the BGS supply agreements entered into in the applicable BGS auction.
- For Retail Suppliers, the OREC Purchase Percentage shall be used for all contracts executed in that OREC Vintage Year. For any retail supply agreement which has a term that extends into the following energy year or beyond, the Approved OREC Supply for the original term of such retail supply agreement shall be determined by the OREC Vintage Year when the retail supply agreement was executed. The OREC Purchase Percentage applicable to term extensions of retail supply agreements shall be determined by the OREC Vintage Year of the term extension.
- Suppliers that have contracts to supply electricity to New Jersey customers, and which meet all of the following criteria, may petition the Board for an exemption from the OREC Purchase Requirement stemming from load served under that contract. Such a petition shall demonstrate all of the following:
 1. The contract was executed prior to the effective date of OWEDA, or August 21, 2010;
 2. The contract does not include a provision that authorizes the Supplier to pass on RPS compliance costs to its customers; and
 3. The Supplier has made a good faith effort to recoup its RPS compliance costs and has been unable to do so.

3. OREC Clearinghouse

- All qualified offshore wind developers shall agree upon and obtain Board approval for an independent third-party to provide clearing and settlement functions for all OREC transactions (the “Clearinghouse”). The Clearinghouse shall be duly authorized by the Board to receive such payments and transfer the appropriate amounts to each qualified OSW. Administrative costs related to the Clearinghouse shall be considered legitimate project expenses paid for by qualified offshore wind developers and may be included within a qualified offshore wind developer’s OREC pricing structure.
- Suppliers shall satisfy their OREC Purchase Requirement through the purchase of OREC certificates on a monthly basis from the Clearinghouse.
- Only the purchase of an OREC or offshore wind alternative compliance payment (“OACP”) from the Clearinghouse will satisfy the OREC Purchase Requirement. Solar, Class I and Class II RECs may not be used to satisfy a Supplier’s OREC purchasing requirement but an OREC may be used to satisfy a Class I or Class II REC requirement (but not a Solar REC requirement).
- The Clearinghouse shall establish a PJM-EIS account so that it can receive ORECs from approved qualified OSW, and then assign them to Suppliers in accordance with each Supplier’s OREC Purchase Requirement.
- The Clearinghouse shall establish an escrow bank account, through which it will receive payments from Suppliers, receive revenues from approved qualified OSWs for liquidating PJM products, and disburse funds to qualified OSWs and ratepayers.
- The Clearinghouse shall be authorized to retain six (6) months’ worth of Approved OREC Revenues (the “OREC Reserve Fund”) which shall be collected by retaining the payments qualified OSWs receive from PJM and/or any other source, and which are deposited with the Clearinghouse in accordance with Section 5 below, and may use said revenues and payments:
 - (a) to allow an approved OSW to recover (i) any OREC revenue deficiency caused by a shortfall in demand from Suppliers during an Energy Year on a continuous monthly basis until such deficiency is recovered ; (ii) OREC revenue from excess ORECs generated in the current Energy Year which are used to make up for a shortfall in OREC production in the immediately preceding Energy Year; or (iii) to collect OREC revenue not submitted by a Supplier due to customer non-payment; or
 - (b) to serve as a reserve against Suppliers’ monthly OREC Purchase Requirement. Specifically, a Supplier who determines it has purchased more ORECs than it was required for a particular month as a result of any PJM reconciliation process may seek recovery of said over-purchase from the reserve held by the Clearinghouse.

4. OREC Pricing and Terms

- The applicable OREC price charged by the Clearinghouse (the “OREC Price”) shall be the weighted average of the Approved OREC Revenues, adjusted with the production forecast, thereby giving Suppliers certainty as to what to include in their pricing structures.
- Within fifteen (15) days after the end of each calendar month (the “Due Date”), each Supplier shall submit payment to the Clearinghouse for its monthly OREC Purchase Requirement, based upon the OREC Purchase Percentage published by the Board. Each Supplier shall also submit a calculation reflecting any corrections based on finalizing preliminary load information in previous months and shall include, if necessary, purchasing additional ORECs where it had purchased too few in a previous month or subtracting ORECs from its current estimated payment if an excess number of ORECs were purchased in a previous month.
- Within fifteen (15) days after the Due Date, the Clearinghouse shall disburse funds from the escrow account to each approved qualified OSW for ORECs generated by such OSW in the preceding month.
- At the conclusion of a Supplier’s contract, there may be several months where only corrections are included. If such a correction determines that a Supplier purchased too many ORECs in a previous month, the Clearinghouse shall refund such overpayment to the Supplier via the OREC Reserve Fund.
- A Supplier shall be found in default of its OREC Purchase Requirement upon a finding by the Board that the Supplier failed to submit required OREC Payments to the Clearinghouse within established timeframes.
- In the event the Board finds that a Supplier has defaulted on its OREC Purchase Requirement, upon appropriate notice and opportunity to cure having been provided, the Board may establish reasonable compensatory and punitive penalties, including, but not limited to, revocation of the Supplier’s license to sell and supply electric power within the State.

5. Offshore Wind Alternative Compliance Payments (OACPs)

- If there are not enough ORECs produced by approved qualified OSWs to satisfy the total Approved OREC Supply in any given Energy Year (as that term is defined in N.J.A.C. 14:8-2.2), Suppliers shall submit an OACP to the Clearinghouse.
- After payment of amounts due to OSWs pursuant to Section 3, 4 or 6, any OACP payments collected by the Clearinghouse shall be transferred to the EDCs to be refunded directly to the ratepayers in a competitively neutral manner.
- The EDCs shall refund the OACP payments to the ratepayers as a credit against the Societal Benefits Charge (“SBC”).
- The OACP shall be equal to the Clearinghouse’s OREC Price.

6. Energy and Capacity Transactions

- Approved qualified OSWs, in accordance with OWEDA and except as provided for hereinafter, shall sell all electricity associated with the production of ORECs into the PJM Day-Ahead Market and submit monthly to the Clearinghouse: (a) all revenues from electricity sales and (b) all capacity payments an approved qualified OSW receives from PJM.
- The approved qualified OSWs shall transfer such revenues and payments to the Clearinghouse, which will, after an initial six (6) month retention of revenues or such other means as are necessary to capitalize or to, from time to time, replenish the OREC Reserve Fund, disburse them to the EDC's biannually in direct proportion to an EDC's percentage of the state's total estimated total energy usage served. All revenues and payments received by each EDC shall be for the express purpose of providing a corresponding offset to ratepayer bills for electric service either through an offset to the SBC or through another mechanism as directed by the Board.
- ORECs are an offset to the renewable energy portfolio standard and reduce the corresponding Class I renewable energy requirement. In the event the OREC Purchase Requirement for all Suppliers during an Energy Year fails to support the Approved OREC Revenues which approved qualified OSWs have been authorized to receive, an approved qualified OSW that has been approved to receive OREC payments pursuant to a Board order shall be permitted to recover such deficiency on a continuous monthly basis from the revenue it receives from energy or capacity sales into the day ahead market and which shall normally be required to be refunded to ratepayers under OWEDA and its enabling regulations until such deficiency is recovered.
- If a qualified OSW ultimately generates enough wind electricity to earn more ORECs than approved by the Board Order, the OSW may dispose of the additional ORECs in any manner it chooses as well as retain any additional revenues received from the sale of excess electricity and capacity. For example, the developer/generator may choose to sell the ORECs to an electricity supplier for use in complying with another state's RPS requirement, or may sell to a New Jersey supplier/provider for use in complying with the class I or class II renewable energy requirements of this chapter in accordance with N.J.A.C. 14:8-2.3, or may bank the additional ORECs for use in any future reporting year to the extent that there is a shortfall in ORECs generated during the operative term of a qualified offshore wind facilities OREC . Additional ORECs generated in any given reporting year may be used to make up any shortfall in ORECs submitted in the immediately preceding reporting year.

Exhibit
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