

SPECIAL ADOPTIONS

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Offshore Wind Renewable Energy

Special Adopted New Rules: N.J.A.C. 14:8-6

Adopted: February 10, 2011 by the New Jersey Board of Public Utilities, Lee A. Solomon, President; Jeanne M. Fox, Joseph L. Fiordaliso and Nicholas Asselta, Commissioners.

Filed: February 10, 2011 as R.2011 d.087.

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

BPU Docket Number: EX10040290.

Effective Date: February 10, 2011.

Expiration Date: August 10, 2012.

Take notice that the Board of Public Utilities has adopted new rules at N.J.A.C. 14:8-6, to codify new statutory requirements enacted through the Offshore Wind Economic Development Act, P.L. 2010, c. 57, which amended N.J.S.A. 48:3-49 et seq. The rules are designed to provide an application process and a framework under which the Board will consider and, if appropriate, approve applications for qualified offshore renewable facilities and Offshore Renewable Energy Certificates (ORECs). Major components of the proposed rules include application requirements, the need for an escrow account, the ability for the Board to designate the application window, and the ability for the Board to impose appropriate conditions upon any OREC grant.

These special adopted new rules will remain in effect until August 10, 2012 or until the rules are proposed for public comment and readopted through standard rulemaking procedures.

Full text of the special adopted new rules follows:

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.

"Key employee" means any individual employed by the applicant in a supervisory capacity or empowered to make discretionary decisions with respect to the project.

"Offshore wind energy" means electric energy produced by a qualified offshore wind project.

"Offshore wind renewable energy certificate" or "OREC" means a certificate issued by the Board or its designee, representing the environmental attributes of one megawatt hour of electric generation from a qualified offshore wind project.

"Qualified offshore wind project" means a wind turbine electric generation facility in the Atlantic Ocean and connected to the electrical transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the Board pursuant to section 3 of P.L. 1999, c. 23 (N.J.S.A. 48:3-51).

"Wind energy zone" means property located in the South Jersey Port District established pursuant to the South Jersey Port Corporation Act, N.J.S.A. 12:11A-1 et seq., or as may be amended.

14:8-6.2 Offshore wind renewable portfolio standards requirements

(a) Each supplier/provider that sells electricity to retail customers in New Jersey shall ensure that the electricity it sells each reporting year in New Jersey includes at least the minimum percentage of offshore wind (OSW) energy required for that energy year as set by the Board following the approval of a qualified offshore wind project.

(b) The total OSW energy requirement for an energy year shall reflect the projected OREC production of qualified OSW projects, for the period covered by the granted ORECs, from the commercial operation start date of the qualified OSW projects.

(c) OREC obligations are a component of Class I renewable energy requirements, and satisfaction of OREC obligations shall be counted toward Class I renewable energy requirements.

(d) A Statewide OREC target will be determined by the Board based on projected OSW production. The total will be allocated among all suppliers/providers in proportion to their retail sales.

(e) A supplier/provider shall meet the requirements for OSW energy generation through:

1. Retirement of offshore wind renewable energy certificates through a renewable energy trading program approved by the Board; or
2. Submittal of offshore wind alternative compliance payments.

(f) Any offshore wind alternative compliance payments collected shall be refunded to the ratepayers.

14:8-6.3 Application process

(a) An entity seeking to receive ORECs in connection with an offshore wind project shall submit an application to the Board for approval as a qualified offshore wind project. The application must meet the requirements set forth in this section, as well as all applicable requirements of this chapter, and of other applicable State and Federal laws.

(b) The Board will announce the open and close dates for the annual application period, and may, at its discretion, allow additional application periods.

(c) The Board shall approve, conditionally approve, or deny the application within 180 days of the receipt of a completed application. The parties may consent to an extension beyond 180 days.

(d) The applicant shall meet with Board staff and representatives of the Division of Rate Counsel no less than 30 days prior to submission of an application to discuss all aspects of the application.

(e) All applications must be consistent with Board application standards as set forth in Title 14 of the New Jersey Administrative Code.

14:8-6.4 Determination of completeness of application

(a) Upon receipt of the application, Board staff will review the application for administrative completeness in accordance with the requirements set forth in N.J.A.C. 14:8-6.5.

(b) Board staff will notify the applicant within 30 days of the submission if the application is administratively complete or is deficient. If the application is deficient, the applicant will be advised which items must be remedied to correct the deficiency or deficiencies.

(c) Once Board staff notifies the applicant that the application is complete as filed, the 180-day period for the Board to approve, conditionally deny, or deny the application will commence on the date the complete application was filed.

(d) If Board staff has notified the applicant that a deficiency or deficiencies exist, the 180-day period will not commence until all deficiencies have been remedied and the filing is deemed by Board staff to be administratively complete.

(e) If Board staff notifies the applicant that the application with the remediation of the deficiency or deficiencies is now complete, the 180-day period for the Board to approve, conditionally deny, or deny the application will commence on the last filing date of the remediation of all deficiencies.

14:8-6.5 Application requirements

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

1. Full business information, including the developer's name, primary contact person, website, telephone numbers, e-mail address and street address;

i. The proposal must list all key employees and include resumes of employees that have an identifiable track record in construction and operation of power plants of similar size and scope;

ii. The applicant shall describe any work done to date by the key employees in developing projects of similar scope, especially any ocean-based energy project or New Jersey large scale energy project sitting work;

iii. If the work described was not performed by the entire team, the applicant must delineate the experience or work performed by key employees;

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

v. The applicant shall commit to certifying, after award, that its proposed key employees will remain the project team for the duration of the project, subject to any changes approved by the Board. Enforcement of this provision shall be a condition of the order granting ORECs;

vi. The applicant is not permitted to reallocate the personnel/resources or key employees they used to obtain the OREC, without prior approval of the Board; and

vii. To the extent that there is a claim, the applicant shall include, as appropriate, employment documentation, include letters of intent/commitment/contract that if an OREC award is granted, manufacturing services will be sourced from a New Jersey location;

2. A detailed description of the project, including maps, surveys and other visual aides. The description shall include, but need not be limited to: the type, size and number of proposed turbines and foundations; the history, to date, of the same type, size and manufacturer of installed turbines and foundations globally; and a detailed implementation plan that highlights key milestone activities during the permitting, financing, design, equipment solicitation, manufacturing, shipping, assembly, in-field installation, testing, equipment commissioning and service start-up.

i. The project developers shall:

(1) Demonstrate applicable experience in projects of the size and scope proposed;

(2) Demonstrate that the wind technology is viable, cost competitive, and suitable for use in New Jersey's offshore environment under varying and expected meteorological and climate conditions;

(3) Indicate the areas used for all aspects of the project including the location(s), the construction staging area(s), and port usage;

(4) Include a map with the location of the site(s) clearly marked by longitude and latitude and the Federal Bureau of Ocean Energy Management, Regulation and Enforcement block numbers;

(5) Describe any current uses, conflicts, or characteristics of the ocean and land areas identified pursuant to (a)2i(4) above;

(6) Specify whether the project is located at one site, or divided among several sites;

(7) Define the attributes which make the site(s) attractive and list any potential problems, constraints or limitations with siting an energy facility at that location or locations;

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

(9) Indicate whether the project team plans to own or lease equipment;

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

(11) Include a description of the ability of the equipment to work in New Jersey's offshore and near shore climates and the basis for that conclusion; and

(12) Indicate the equipment's delivery time once an order has been placed;

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

iii. Applicants shall describe construction plans in detail, identifying proposed subcontractors, with evidence of the capability of performing

necessary tasks, as well as proposed time frames for completion of all necessary tasks.

iv. Applicants shall identify all applicable Federal and State statutes and regulations and municipal code requirements, with the names of the Federal, State and local agencies to contact for compliance, and a commitment to provide proof of all such compliance on an ongoing basis.

v. Applicants shall indicate the proposed nameplate capacity for the entire project and the anticipated number of individual units for the selected technology or for each candidate technology; and estimate the net yearly energy output for the project, accounting for losses and include any assumptions, such as the assumed capacity factor, that are the basis for the estimate.

vi. Applicants shall account for, to the fullest extent possible, the coincidence between time of generation for the project and peak electricity demand; provide an estimate, with support, of the amount of energy being generated over the term of the life of the turbines; and estimate, with support, the level of generation that their proposed project will be able to provide over the life of the equipment, assuming the project runs for the equipment's full life;

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

i. Pro forma income statements;

ii. Balance sheets;

iii. Cash flow projections for the proposed OREC period, including the internal rate of return, and a description and estimate of any State or Federal tax benefits that may be associated with the project;

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

v. A full cost accounting of the project, including total construction and decommissioning costs;

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

i. Identification of equity investors, fixed income investors, and any other sources of capital;

ii. A demonstrated ability to finance construction through market sources, which may include tax exempt bond financing through the New Jersey Economic Development Authority;

iii. A detailed financial plan including all sources of capital including, but not limited to, equity, long and short term debt, and other sources. Such financial plan shall include the names, functions and fees of all financial and legal advisors. The plan shall specify if and under what conditions equity or other ownership interests in the project can be transferred to other parties and consideration involved. The developer shall notify the Board in writing of any changes within 30 days and such changes will be subject to Board approval pursuant to this subchapter; and

iv. A commitment that audited financial statements shall be filed with the Board on a quarterly and annual basis;

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

i. The developer shall document all Federal or State tax incentives for which it is applying or has applied or otherwise are applicable, even if such incentives have not been sought or approved.

ii. Applicants shall provide in a financial pro forma all tax credits or other subsidies upon which they are relying on in their pricing proposal.

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

iv. The applicant shall demonstrate a commitment to pass along tax credits or other governmental benefits to ratepayers that are greater than projected. This pass along of benefits will be effective without the need for any subsequent Board approval/confirmation following an initial Board Order approving OREC pricing, and will serve as a condition of the OREC approval;

6. The projected electrical output and anticipated market prices over the anticipated life of the project, including a forecast of electricity revenues from the sale of energy derived from the project and capacity, as well as revenues anticipated by the sale of any ORECs, Renewable

Energy Certificates (RECs), air emission credits or offsets, or any tradable environmental attributes created by the project.

i. The applicants shall submit a project revenue plan which forecasts revenues as well as identifies the strategy for offering the electricity provided in the electric market and for generating all expected revenues;

ii. The project revenue plan must link the anticipated revenues to the project time schedule and costs for the entire project lifecycle term extending to the expected life of the turbines and eventual decommissioning;

iii. Applicants shall specify financial expectations and marketing strategies for securing revenue from expected capacity based payments in PJM markets, energy based payments in PJM markets, Renewable Energy Certificate (REC) revenue from Renewable Portfolio Standard (RPS) or voluntary markets, and emission credits from various air emission reduction cap and trade programs;

iv. Proposals must include the total installed capacity in megawatts for the entire project as well as expected term of OREC energy production in megawatt-hours; and

v. The total amount of clean energy being generated over the term of the OREC program and the life of the turbines must also be provided.

7. An operations and maintenance plan for the initial OREC term of the project is required and must:

i. Detail routine, intermittent and emergency protocols;

ii. Demonstrate that the applicant has the financial capacity and technical expertise to perform all necessary upkeep/maintenance over the life of the project;

iii. Identify the primary risks to the built infrastructure and how the potential risks, including, but not limited to, hurricanes, lightning, fog, rogue wave occurrences, and exposed cabling, shall be mitigated;

iv. Describe emergency shut down provisions in the event of a need for the immediate stoppage of turbine blades;

v. Identify specific and concrete elements to ensure both construction and operational cost controls;

vi. Provide proof of insurance;

vii. Be integrated into the financial analysis of the project, and must identify the projected plan for the subsequent operational term, assuming any necessary Federal lease agreements are maintained and renewed; and

viii. Include a complete operation and maintenance plan for the life of the plant;

8. The anticipated carbon dioxide emissions impact of the project. Data must be supplied on the environmental air impacts of each proposed wind-farm;

9. A decommissioning plan for the project including provisions for financial assurance for decommissioning as required by the applicable State and Federal governmental entities.

i. Proposals must estimate an expected useful economic life as well as specify a project decommissioning plan for the technology and installation area proposed.

ii. The decommissioning plan must include the anticipated cost of decommissioning the project based on applicable and/or anticipated regulatory and engineering requirements and provide for the necessary future funding. Segregated decommissioning funds shall be required;

10. A list of all State and Federal regulatory agency approvals, permits, or other authorizations required pursuant to State and Federal law for the offshore wind project, and copies of all submitted permit applications and any issued approvals and permits for the offshore wind project.

i. An award to build an OSW facility is contingent upon the successful entity obtaining all required local, State and/or Federal permits and/or approvals.

ii. Applicants shall show that they are currently in the PJM queue or that the proposed project is PJM queue eligible.

iii. Each applicant shall identify all local, State and/or Federal permits and/or approvals required to build and operate the project and the expected time to obtain such permits and/or approvals. Developers shall provide the Board with copies of each permit or approval within 14 days of receipt by the developer. This is a continuing obligation upon the developer and shall serve as a condition of any OREC award.

iv. Applicants shall identify the nature of its ocean lease and land ownership requirements for all aspects of the project including all required interconnection areas.

v. Progress must be demonstrated in securing leases and land required, and applicants shall propose a plan for accomplishing remaining steps toward acquiring leases or land ownership. The type and number of entities securing leases or owning land must be indicated.

vi. Applicants shall identify each appropriate State or Federal agencies they will be contacting for land acquisition issues and provide the Board with a summary of the required arrangements.

vii. Applicants are required to demonstrate adequate financial resources to acquire any land or leases needed to undertake this project.

viii. The books and records of the applicant shall be subject to review and audit by the Board, or any other State entity or State designee.

ix. The applicant shall supply the Board with filings made to any other regulatory, governmental administrative agency. This includes, but is not limited to, any compliance filings or any inquiries by these agencies;

11. The cost-benefit analysis for the project, to show net benefits for the State, which shall include at a minimum:

i. A detailed input-output analysis of the impact of the project on income, employment, wages, indirect business taxes, and output in the State with particular emphasis on in-State manufacturing employment.

(1) The Board will not specify what input-output models are acceptable, and will allow applicants to use any model that successfully captures New Jersey economic benefits. Suggested models include, but are not limited to:

(A) Rutgers R/ECON model;

(B) Regional Economic Models, Inc. (REMI);

(C) MIG Inc. IMPLAN model; and

(D) The Bureau of Economic Analysis RIMS II model;

ii. Ratepayer net costs with explicit listing of foundations, assumptions and conditions;

iii. Environmental net benefits with explicit listing of foundations, assumptions and conditions;

iv. Other benefits, such as increased in-State activity from construction, operations and maintenance, and equipment purchases;

v. In-State impacts or benefits that need to be included in the cost-benefit analysis-income include, but are not limited to:

(1) Employment;

(2) Wages;

(3) Indirect business taxes; and

(4) Output, with a "particular emphasis" on manufacturing employment. Output refers to the sales of sectors or industries that would be supplying the offshore wind project with materials (such as turbines, steel and cement for support structures, wire for transmission cables) and services (such as construction and installation services, as well as engineering, legal, finance, and other professional services);

vi. Detailed information, including location, type or occupation, and salary for assumed employment impacts within New Jersey. Confirmation of employment impacts must be provided;

vii. The Board will evaluate the credibility of asserted economic benefits. The applicants shall propose consequences if claimed benefits do not materialize, and the employment impact may become conditions of any OREC award;

viii. Applicants shall provide information on any State grants or other subsidies from the New Jersey Economic Development Authority or other agencies associated with the proposed wind project and include the subsidy as part of the project cost-benefit analysis;

ix. Direct, indirect and induced effects will be considered in the evaluation, as such effects should be considered as part of the evaluation associated with construction and operation of the project;

x. The major assumptions and inputs used in the modeling must be specified by the applicant;

xi. The Board staff may ask the applicant to rerun the model with other assumptions and inputs to be provided by the Board staff;

xii. The Board staff may test an applicant's cost benefit analysis on its own model, which, preferably, would be the same one used by an applicant but it could be a different one, by replicating the analysis using model inputs supplied by the applicant;

xiii. Applicants shall also submit an explanation of the location, type and salary of employment opportunities to be created by the project with job totals expressed as full-time equivalent positions assuming 1,820 hours per year;

xiv. Applicants shall provide an analysis of the anticipated environmental benefits and environmental impacts of the project.

(1) Each project must document all associated impacts from pre-construction activities through decommissioning including, but not limited to, environmental, water use, water quality, avian, marine mammals, sea turtle, noise, aesthetics, tourism, navigation and endangered species. This includes sea-bed disruption of marine life, morbidity or mortality among avian, mammal or benthic populations, emissions of combustion by-products to the air or oil or other toxic releases to the ocean, or solid waste generation.

(2) Applicants shall specifically describe how their activities will be coordinated with the New Jersey Department of Environmental Protection (NJDEP) Ecological Baseline Studies, and indicate how each resource issue, if impacted, will be addressed.

(3) The applicant shall provide information regarding the direct emissions impacts of the project, including carbon dioxide, sulfur dioxide, particulate emissions, as well as other relevant environmental impacts, such as impacts on the marine environment.

(4) The applicant shall provide an assessment of environmental impacts from the project compared to other similar Class I renewable energy projects.

(5) Environmental impacts (direct and comparative) must be quantified to the extent they are significant and it is possible to quantify them.

(6) The comparative environmental impacts shall be monetized, to the extent possible, for evaluation as part of the overall cost-benefit analysis; and

xv. Applicants shall submit an analysis of the potential positive and negative impacts on residential and industrial ratepayers of electricity rates over the life of the project that may be caused by OREC requests;

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

i. An electric power supplier or basic generation service provider shall comply with the OREC program through the purchase of ORECs at a price and for the time period required by the Board.

ii. Payment will not occur until electricity is produced by a qualified offshore wind project.

iii. The burden remains on the applicant to propose a reasonable OREC price. The Board will then accept, modify or reject the proposed price of the OREC and the associated term. The Board requires a fixed, flat OREC price for the proposed term or a fixed price for every contract year. All proposals must include a total price that reflects capacity, energy and other elements of generation.

iv. OREC pricing will be on a pay for performance basis, with payments to be on a \$/MWh basis, subject to any quantity caps, with the offshore wind developer responsible for any cost overruns. Ratepayers will not be responsible for any cost overruns and for costs associated with non-performance.

v. If the pricing proposal satisfies the cost-benefit standards set forth in the statute and the Board's regulations, the Board may approve the application subject to the application satisfying other required conditions.

vi. The Board may conditionally approve an application at a lower OREC price if that OREC price would allow an applicant to satisfy the cost-benefit standards. The applicant may then accept or reject the lower OREC price.

vii. OREC pricing on an actual renewable premium basis would represent a project's revenue requirement, taking into consideration tax credits and other subsidies, minus the actual value of spot energy market prices and/or capacity prices;

13. A timeline for the permitting, licensing and construction of the proposed offshore wind project. The proposal must specify the expected project time requirements in the aggregate from start to finish as well as the time required to accomplish each specific activity related to project design, resource monitoring, impact studies, permitting, construction, and decommissioning activities with associated milestones delineated for each category of activity:

14. A plan for interconnection, including engineering specifications and costs.

i. Applicants shall document tasks required and discuss issues associated with electrical interconnection, including the distance between the project and a suitable point to interconnect with the electrical grid. Each proposed point of interconnection shall be discussed.

ii. Land acquisition requirements, new equipment to be installed, upgrades to existing equipment required, and any feasibility studies required and the time frame for review must be identified.

iii. A detailed description of how the proposed project will address and mitigate load constraints in the electric distribution and PJM transmission system must be included for each site.

iv. The proposal must demonstrate to the greatest extent possible how the project will address current or potential future load pocket or constraint problems with the electric distribution system and the PJM transmission system.

v. The applicant shall indicate the location of transmission lines and all points of interconnection to the PJM system serving New Jersey.

vi. Applicants shall provide information to the Board for costs associated with network upgrades that flow from the project even if not directly caused by the interconnection;

15. All applicants must establish a \$100,000 escrow account and submit proof of that escrow account with the application to pay for consultants and other costs associated with the review of the application.

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

ii. Board staff will direct the applicant, if appropriate, to place an additional amount into escrow, based upon the current and expected costs associated with the application review.

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

16. Any other information deemed necessary by the Board in order to conduct a thorough evaluation of the proposal. The Board may hire consultants or other experts if the Board determines that obtaining such outside expertise would be beneficial to the review of the proposal.

(b) In considering an application for a qualified offshore wind project, submitted pursuant to (a) above, the Board shall determine that the application satisfies, at a minimum, the following conditions:

1. The filing must be consistent with the New Jersey Energy Master Plan, adopted pursuant to section 12 of P.L. 1977, c. 146 (N.J.S.A. 52:27F-14), in effect at the time the Board deems the application complete;

2. The cost-benefit analysis must demonstrate positive economic and environmental net benefits to the State because it is a key component of the legislation;

3. The comparison of purchases of Class I RECs to out-of-State wind projects;

4. An applicant's cost-benefit analysis must provide three basic types of information:

i. Impacts on New Jersey ratepayers: an analysis of the potential impacts on residential and industrial ratepayers of electricity rates over the life of the project that may be caused by incorporating any State subsidy into rates;

ii. Net benefits to the New Jersey economy through impacts on income, employment, wages, indirect business taxes, and output, with particular emphasis on in-State manufacturing employment; and

iii. Net environmental effects of the project;

5. Applicants shall show that the financing mechanism is based upon the actual electrical output of the project, and fairly balances the risks and rewards of the project between ratepayers and shareholders. Applicants shall ensure that any costs of non-performance, in either the construction or operational phase of the project, shall be borne by shareholders; and

6. Applicants shall demonstrate financial integrity and sufficient access to capital to allow for a reasonable expectation of completion of construction of the project.

i. Applicants shall prove that they have the financial resources to perform the proposed work, appropriate technical expertise, access to adequate facilities or the ability to get them, a good performance record and be qualified under all applicable laws and regulations.

ii. Applicants shall submit audited financial statements or other evidence of adequate financial capacity to the Board in order to ensure that the project can be successfully completed as proposed.

14:8-6.6 Funding mechanism (Reserved)

TREASURY — GENERAL

(a)

DIVISION OF PENSIONERS AND BENEFITS

Defined Contribution Retirement Program

Special Adopted New Rules: N.J.A.C. 17:6

Adopted: January 24, 2011 by Andrew P. Sidamon-Eristoff, State Treasurer.

Filed: January 25, 2011 as R.2011 d.063.

Authority: N.J.S.A. 43:15C-1.

Effective Date: January 25, 2011.

Expiration Date: January 25, 2012.

Take notice that, in compliance with the provisions of N.J.S.A. 43:15C-1, the State Treasurer promulgated rules implementing the provisions of N.J.S.A. 43:15C-1 et seq.

Full text of the special adopted new rules follows:

CHAPTER 6

DEFINED CONTRIBUTION RETIREMENT PROGRAM

SUBCHAPTER 1. ESTABLISHMENT OF PROGRAM

17:6-1.1 Program established

This document restates the provisions of the Defined Contribution Retirement Program (the "Program") originally established effective July 1, 2007 by P.L. 2007, c. 92 and amended by P.L. 2007, c. 103; P.L. 2008, c. 89, and P.L. 2010, c. 1; N.J.S.A. 43:1-1 et seq., 43:3C-1, 43:3C-3, 43:3C-4, 43:3C-5, 43:3C-6, 43:3C-8, 43:3C-9, 43:3C-9.1, 43:3C-9.2, 43:3C-9.3, 43:3C-9.4, 43:3C-9.5, 43:3C-9.6, 43:3C-10 and 43:15C-1 et seq.; and N.J.A.C. 17:1. The provisions of N.J.S.A. 43:15C-1 et seq. are incorporated into the Program as if fully set out in this chapter.

17:6-1.2 Program consists of three plans

(a) The Defined Contribution Retirement Program (DCRP) consists of three benefit plans: the DCRP Retirement Plan (the "Retirement Plan"), which is a defined contribution retirement plan intended to qualify for favorable Federal income tax treatment under Internal Revenue Code (IRC) § 401(a); the DCRP Group Life Insurance Plan (the "Group Life Insurance Plan"); and the DCRP Group Disability Benefit Plan (the "Group Disability Plan"). Assets held in the Trust under the Program for the Retirement Plan shall not be available for the payment of premiums, benefits or administrative expenses with respect to the Group Life Insurance Plan and/or the Group Disability Plan.

1. DCRP Retirement Plan. The DCRP Retirement Plan is a plan of retirement benefits for the benefit of eligible employees and their beneficiaries. The Retirement Plan is intended to be a tax-qualified defined contribution money purchase pension plan under IRC §§ 401(a) et seq., and is further intended to be a "governmental plan" within the meaning of 29 U.S.C. § 1002(32) and IRC § 414(d). The Plan Administrator intends to maintain the Retirement Plan as a plan that qualifies for favorable income tax treatment under IRC § 401(a). The Retirement Plan is an individual account plan which provides for an individual account for each participant and for benefits based solely upon the amount of contributions, investment gains and losses, fees, and expenses allocated to the participant's account. Assets of the Trust with respect to the Retirement Plan shall be used solely for the purpose of providing benefits under the Retirement Plan, and for paying the administrative expenses of the Retirement Plan.

2. DCRP Group Life Insurance Plan. The DCRP Group Life Insurance Plan is a plan for the provision of group life insurance benefits for eligible employees.

3. DCRP Group Disability Benefit Plan. The DCRP Group Disability Benefit Plan is a plan for the provision of group disability insurance benefits for eligible employees.

17:6-1.3 ERISA does not apply

The United States Code provisions created by Title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 et seq., do not apply to this Program.

17:6-1.4 Governmental plan rules

The Program is intended to be a governmental plan within the meaning of 29 U.S.C. § 1002(32) and IRC § 414(d).

17:6-1.5 Exclusive benefit

The Program, the Plans under the Program, and the Trust are established for the exclusive benefit of participants and their beneficiaries. Consistent with IRC § 401(a)(2), no amount held under the Defined Contribution Retirement Program Retirement Plan will ever inure to the benefit of the Plan Sponsor, any employer, the Plan Administrator, or any successor of any of them, and all Retirement Plan investments and amounts will be held for the exclusive purpose of providing benefits to the Retirement Plan's participants and their beneficiaries. Notwithstanding anything in this chapter to the contrary, it shall be impossible at any time before the satisfaction of all liabilities to participants, beneficiaries, and alternate payees for any part of the Program assets to be used for or diverted to purposes other than for the exclusive benefit of participants, beneficiaries, and alternate payees, except that payment of taxes and administration expenses may be made from the Program assets as provided by the Program, an applicable Plan under the Program or as permitted by applicable law.

17:6-1.6 No third-party beneficiary

The Plan Sponsor and each employer does not intend by any of the Program's provisions to make any person other than a participant, an alternate payee designated by a Qualified Domestic Relations Order, or a beneficiary under an applicable Plan following the death of the participant, a third-party beneficiary of the Program or any Plan under the Program. Further, nothing in the Program can be construed or interpreted to authorize any person other than a participant, alternate payee, or beneficiary after the participant's death to maintain any cause of action under or relating to the Program. The duties, obligations, and responsibilities of the Plan Administrator and each employer concerning third parties will remain solely as imposed by applicable law.

SUBCHAPTER 2. DEFINITIONS

17:6-2.1 Definitions

Whenever used in the Program or with respect to an applicable Plan, each of the following terms has the meaning stated below. To the extent that any term is not defined in this subchapter or otherwise by this chapter, such term has the meaning given by N.J.S.A. 43:15C-1 et seq. or by the Internal Revenue Code.

"Account" means the total of the individual sub-account(s) maintained on behalf of each participant, beneficiary, or alternate payee under the investment option(s) held pursuant to the Retirement Plan.

"Alternate payee" means a person who is an alternate payee (within the meaning of IRC § 414(p)(8)) under an order directed to the Retirement Plan that the Plan Administrator has determined to be a Qualified Domestic Relations Order.

"Annuity payment option" means a payment option under the Retirement Plan, if permitted by the Plan Administrator, which includes a provision for payments based, in whole or in part, upon the life of a natural person.

"Applicable form" means the appropriate form as designated and furnished by the Plan Administrator or DSP to make an election or provide a notice as required by the Program, including a form in electronic medium with an electronic signature in compliance with E-SIGN and applicable law. As used in this definition, the following terms have the following meanings: