



State of New Jersey
DIVISION OF RATE COUNSEL
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

September 12, 2011

Via Overnight Delivery and Electronic Mail

Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: Initial Comments of the New Jersey Division of Rate Counsel
On the Developer Proposals for the Development of an
Offshore Wind Renewable Energy Certificate ("OREC")
Program Offshore Wind Working Group and Offshore Wind
Economic Development Act, N.J.S.A. 48:3-49 et seq.
("OWEDA") Comments
BPU Docket No. Pending

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the New Jersey Division of Rate Counsel in connection with the above-captioned matters. Copies of the comments are being provided to all parties by electronic mail and hard copies will be provided upon request to our office.

We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.

Honorable Kristi Izzo, Secretary
September 12, 2011
Page 2

Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By 
Felicia Thomas-Friel, Esq.
Deputy Rate Counsel

cc: OCE@bpu.state.nj.us
Rule.comments@bpu.state.nj.us
Mike Winka, BPU
Scott Hunter, BPU
Kenneth Sheehan, BPU
Anne-Marie McShea, BPU
Richard Jackson, BPU
Caroline Vachier, DAG
Alex Moreau, DAG
Jake Gertsman, BPU

**INITIAL COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

**On the Developer Proposals for the Development of an Offshore Wind Renewable
Energy Certificate (“OREC”) Program**

Offshore Wind Working Group Comments

September 12, 2011

1. Introduction

The New Jersey Division of Rate Counsel (“Rate Counsel”) would like to thank the Board of Public Utilities (“Board” or “BPU”) for the opportunity to present our initial comments on the proposed Offshore Renewable Energy Certification (“OREC”) funding mechanism offered by the group of offshore wind (“OSW”) developers over the course of the past three months at the OSW working group meetings. These proposals include the August 26, 2011, *OREC Funding Proposal Final* document presented to the working group and the Clearinghouse Cash Flow Summary workpaper also provided with the developers’ proposal.

Rate Counsel appreciates the opportunity to participate in the OSW working group meetings. These meetings have been productive and informative, and have led to a very constructive developer OREC funding mechanism proposal. Rate Counsel believes that the developers’ proposal has considerable merit as a basis for moving forward for a proposed OREC funding mechanism rule to present to the Board.

Rate Counsel does, however, have four areas of concern/interest, that need to be addressed in further detail before we can formally agree with the current proposal. These areas include: (1) monthly versus quarterly payment schedule; (2) the proposed reserve mechanism included in the developers’ proposal; (3) the administrative cost recovery assumptions included in the proposal; and (4) how revenues from the sale of energy (and/or capacity), that is over and above Board-authorized levels are treated.

Rate Counsel’s current comments are limited to the final proposals submitted by the developers on August 26, 2011. Rate Counsel recommends that an additional comment period be created to address other critical OREC rule requirements once a consensus on the developers’ OREC market design and clearinghouse mechanisms proposals has been reached. These additional details may include, but are not limited to, minimum proposed OREC plan filing requirements, definition of OREC bid information access, and any required reconciliation between each OSW candidate’s proposed OREC financing plan and other OSW filing provisions (like rate impacts and financial pro-formas) included in the Board’s current OSW Rule.

2. Payment Schedule

Rate Counsel supports a monthly payment schedule over the quarterly approach recommended by the third party providers during the course of the various OSW working group meetings. Rate Counsel sees considerable ratepayer costs, with little ratepayer benefits, to using a quarterly, as opposed to monthly, schedule. A quarterly schedule will necessitate a reserve mechanism that will impose considerable carrying cost on ratepayers, and will leave a considerable amount of revenue in the accounts of third party providers as opposed to ratepayers. No convincing evidence has been provided to date, that suggests that sales variation risk is consistently problematic and considerable, or that added administrative costs are considerable enough to justify the added cost of a quarterly payment schedule.

3. Reserve Mechanism

Rate Counsel is still evaluating the need for a reserve mechanism. Rate Counsel understands the developers' position that some form of a reserve mechanism may be needed to create assurances to the financial community that payments supporting their projects will be ensured even in the face of fluctuating sales and OSW generation.

These reserve balances, however, represent a ratepayer cost since they are comprised of combinations of upfront OREC contributions and what would normally be energy and capacity payment credits to ratepayer bills. Rate Counsel recognizes, however, that failure to create a reserve mechanism, where one may be needed, could lead to an additional type of ratepayer cost through a project risk premium (built into the OREC bid), that could, at least in theory, impose higher ratepayer costs than the foregone collection of insurance premiums to fund the reserve. Rate Counsel believes that more work is necessary to understand, and reconcile, these potential costs to determine a reasonable funding mechanism.

To the extent a reserve is created, Rate Counsel also recommends that Board Staff, and other stakeholders, continue to explore supplemental or alternative approaches that may allow for future reserve adjustments that (1) represent the true risk of payment failure once an adequate stream of usage and OSW generation information becomes available, and (2) does not compromise OSW financial agreements, or the potential to secure OSW financial agreements. Such adjustment mechanisms may help to alleviate concerns about unnecessarily high reserve levels and the costs they impose on ratepayers.

4. Administrative Costs

Rate Counsel recognizes that some administrative costs will be incurred to establish an OREC clearinghouse and administrator. These administrative costs, to date, are unknown and past working group meetings have not offered any insight into the potential magnitude of these costs. This is not surprising since a common framework for the OREC funding mechanism and its clearinghouse administration continues to be

debated. Rate Counsel requests that future meetings attempt to ascertain the potential range of these costs, based upon the current framework, or variations of the current framework offered by the developers.

Second, and as part of this follow-up process, Rate Counsel suggest that parties explore a non-bypassable, cost-based approach to the recovery of administrative costs rather than the more speculative approach offered in the developers' proposal and working group discussions to date. For instance, the developers have noted that they will "build-in" anticipated administrative costs into their future OREC bids. This may lead to higher-than-necessary OREC bids given administrative cost uncertainty. Rate Counsel is concerned that all developers will bid the upper, if not maximum expected amount of administrative costs into their bids rather than one more reflective of actual, post-bid (and post-contract award) administrative costs.

If the administrative costs associated with the clearing house are assessed on a load-share basis, it may be more straightforward to assess these administrative charges independently, at the time OREC revenues are collected, rather than have developers guess at their levels at the time of making their OREC bids. Rate Counsel would caution, however, that an approach of this nature could also lead to other inefficiencies if done after the fact on a cost-plus basis. Board Staff should open these issues up for further stakeholder comment and analysis, particularly as the form and framework for the OREC clearinghouse becomes more clear.

5. Gains on Sales for OSW Production in Excess of Board Order

Rate Counsel recommends that the allocation of any gains associated with sales in excess of those allowed under Board approvals recognize the considerable assurances provided by ratepayers to developers over the course of their project development. Rate Counsel suggests that Board Staff explore opportunities to share the gains on sales in some fashion that is comparable to the level of up-front assurances provided by ratepayers in the OREC clearinghouse financial mechanism. Rate Counsel believes a number of mutually-beneficial performance-based mechanisms can be created through these potential sharing approaches and that such approaches should be explored by Board Staff in formulating a final OREC funding rule proposal.