



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF	)	BOARD DECISION ON
FISHERMEN'S ATLANTIC CITY WIND FARM, LLC	)	STIPULATIONS BY THE
FOR THE APPROVAL OF THE STATE WATERS	)	PARTIES
PROJECT AND AUTHORIZING OFFSHORE WIND	)	
RENEWABLE ENERGY CERTIFICATES	)	
	)	
	)	DOCKET NO. EO11050314V

**Parties of Record:**

**Stefanie A. Brand, Esq.**, Director, Division of Rate Counsel  
**Stephen B. Pearlman, Esq., Inglesino, Pearlman, Wyciskala & Taylor LLC**, on behalf of Fishermen's Atlantic City Windfarm, LLC  
**Phillip J. Passanante, Esq.**, on behalf of Atlantic City Electric Company  
**Marc B. Lasky, Esq.**, on behalf of Jersey Central Power & Light Company  
**Alexander C. Stern, Esq.**, on behalf of Public Service Electric and Gas Company  
**Susan J. Vercheak, Esq.**, on behalf of Rockland Electric Company

**BY THE BOARD:**

By Order dated May 16, 2011, in Docket No. EO11050290V, the Board of Public Utilities ("Board") opened an application window for 30 days for offshore wind projects in New Jersey territorial waters pursuant to N.J.S.A. 48:3-87.2.<sup>1</sup> The Board received one application – the Petition of Fishermen's Atlantic City Windfarm, LLC ("FACW" or the "Applicant") for an offshore wind project in New Jersey territorial waters dated May 19, 2011 (the "Project"). An amended application was filed on June 1, 2012, and supplemented on March 8, 2013. This Order considers stipulations submitted by the parties to resolve the Project and to establish a joint record.

<sup>1</sup> By Order dated January 18, 2012, the Board retained this matter for review and hearing, and as authorized by N.J.S.A. 48:2-32, designated President Robert M. Hanna as the presiding officer to rule on all motions that arise during the proceedings and modify any schedules that may be set as necessary to secure just and expeditious determination of the issues.

## PROCEDURAL HISTORY

The Board adopts the procedural history as set forth in its May 29, 2013 Order and the prehearing scheduling orders issued by President Hanna on February 15, 2012, August 28, 2012, October 24, 2012, November 30, 2012, March 7, 2013, and April 18, 2013. The following procedural history summarizes and supplements those orders.

On August 19, 2010, Governor Chris Christie signed into law the Offshore Wind Economic Development Act (the "Act" or "OWEDA"), P.L. 2010, c. 57, which amends and supplements the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. and specifically requires an applicant seeking Offshore Wind Renewable Energy Certificates ("OREC") to demonstrate a net economic benefit for New Jersey ratepayers. On February 10, 2011, the Board adopted N.J.A.C. 14:8-6.1 et seq., providing an application process and a framework under which the Board will review any application and ultimately approve, conditionally approve, or deny the application. The Board readopted N.J.A.C. 14:8-6.1 et seq. with amendments on January 23, 2013.

FACW submitted an Initial Application on May 19, 2011, in response to the Board's request for offshore wind applications pursuant to N.J.S.A. 48:3-87.1. Upon receipt of the application, the Staff of the Board ("Staff" or "Board Staff") immediately began the administrative review process pursuant to N.J.A.C. 14:8-6.4 et seq. The initial review uncovered administrative deficiencies which were outlined in letters to the applicant on June 2, 2011, and June 13, 2011. The applicant responded to the administrative deficiencies with written submissions on June 8, 2011, and June 14, 2011.

The initial application consisted of six turbines, 2.8 miles off of Atlantic City, and provided the Board with the choice of three turbine manufacturers: Siemens, GE and XEMC. Ultimately, Staff determined that the application was administratively complete as of June 14, 2011, but requested FACW designate a turbine of record. On or about June 16, 2011, FACW advised Staff that Siemens would be the turbine of record for the Board's review. On June 22, 2011, Staff provided written notice to FACW that its application was considered administratively complete as of June 14, 2011.

Staff's designation of the administrative completeness was subject to the condition that the substantive review of the project would only consider the Siemens turbine. Staff advised FACW that the use of a more technologically advanced turbine, equal to, or better than the Siemens turbine, may be submitted to the Board for consideration pursuant to N.J.A.C. 14:8-6.5(a)(2)(ii). Staff letter to Pearlman, S./FACW - Administratively Complete Application Notice (June 22, 2011).

Pursuant to the Act, the Board has 180 days to conduct its review, and to approve, conditionally approve, or deny the application. N.J.S.A. 48:3-87.1(d). Pursuant to N.J.A.C. 14:8-6.3 and 6.4, the 180-day period for the Board's review began to run on June 14, 2011, when Staff determined that FACW's application was administratively complete. Pursuant to this determination, the Board's review period was initially set to expire on December 11, 2011, unless the applicant consented to an extension of time.

On June 24, 2011, FACW entered into a Participation Agreement with XEMC New Energy ("XEMC") for a majority share in the Project. By a submission dated July 12, 2011 and titled "Designation of XEMC as turbine supplier," FACW informed the Board pursuant to N.J.A.C. 14:8-6.5(a)(2)(ii), that the XEMC turbines were "the most technically advanced and are better for FACW and New Jersey than the other currently available turbines, including the two most

recently evaluated turbine options from other vendors.” By submission dated August 3, 2011, FACW provided the Board with a letter from FACW to the Commissioner of the Department of Environmental Protection stating that: “On July 11, 2011, we finalized a Definitive Participation Agreement with XEMC New Energy, a subsidiary of the XEMC Group for the supply of six turbines, financing and long term warranty/operations support for 20 years for the Fisherman’s Atlantic City Windfarm, LLC. (FACW).”

By submission dated August 1, 2011, FACW requested an expedited review and final determination on the application by the August 18, 2011 Board meeting. By letter dated August 12, 2011, Board Staff notified FACW that “the statutory criteria for the review and approval of an application has not been met” and therefore the request for expedited review was denied. The letter detailed the issues that needed to be fully addressed by FACW before Board Staff could make a recommendation to the Board and informed FACW that “despite the fact that Board Staff is unable to make a recommendation on your petition pursuant to your expedited timeframe, we remain dedicated to completing the task of reviewing the merits of your application within the timeframe set forth in the Act.”

Following the August 12, 2011, letter Board Staff and FACW continued to work on the outstanding issues and by letter dated October 7, 2011, Board Staff provided a further update to FACW on the issues that remained outstanding.

By letter dated November 23, 2011, the Applicant consented to an additional 60 days of review, beyond the initial 180 days, which placed the requirement to act no later than February 8, 2012. By letter dated December 13, 2011, the Applicant consented to an additional extension, which placed the requirement for the Board to act on or before March 21, 2012. By order dated December 15, 2011, Docket No. EO11050314V, the Board ordered that the review period be extended to March 21, 2012.

By letter dated February 6, 2012, the Applicant consented to an additional extension of time, which required the Board to act on FACW’s application on or before April 11, 2012. By order dated February 10, 2012, Docket No. EO11050314V, the Board ordered that the review period be extended to April 11, 2012.

On February 3, 2012, Rate Counsel’s expert, Acadian Consulting Group (“Acadian”), filed testimony concerning the Project. On or about February 22, 2012, Boston Pacific Company, Inc. and OutSmart BV (collectively “Boston Pacific” or “BP”), Staff’s expert, filed a report titled Evaluating the Economics of Offshore Wind Projects: Evaluation of the Application by Fishermen’s Atlantic City Windfarm LLC.

By letter dated March 2, 2012, FACW requested an additional extension of the review period until October 31, 2012, and agreed to provide an amended application by April 20, 2012, to respond to the evaluation reports by Boston Pacific and Acadian, submitted on February 22, 2012 and February 3, 2012 respectively. By order dated March 12, 2012, Docket No. EO11050314V, the Board ordered that the review period be extended to October 31, 2012, and that FACW provide an amended application on or before April 20, 2012.

By letter dated April 2, 2012, FACW notified the Board that it would not be able to submit the amended application by April 20, 2012. Accordingly, FACW requested an extension of the deadline for the submission of the amended application to June 1, 2012, and for an extension of the review period to December 31, 2012. By order dated April 12, 2012, Docket No. EO11050314V, the Board ordered that the review period be extended to December 31, 2012.

FACW submitted the amended application on June 1, 2012 (hereinafter "Amended Application").

### **EDC MOTION TO INTERVENE**

By letter dated October 17, 2011, Atlantic City Electric, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company (collectively "the EDCs") filed a joint motion to intervene in this proceeding pursuant to N.J.A.C. 1:1-16.3.

By Order dated December 15, 2011, Docket No. EO11050314V, the Board granted the EDCs' motion to intervene. Intervention was granted, in part, because FACW's application preceded the Board's adoption of regulations concerning the OREC funding mechanism and, as such, an OREC order may impact issues related to the EDCs' interests and the nature of the funding mechanism. Specifically, the Board found that had regulations concerning the OREC funding mechanism been adopted, the Board's analysis of the EDC's motion might be different.

The Board granted the EDC's motion to intervene subject to the requirements that the EDCs: 1) abide by the schedules for the proceeding set by the Board; 2) comply with the Board's procedures governing confidentiality including, but not limited to, the non-disclosure agreement executed by the parties regarding review of FACW's application; 3) abstain from participating in negotiations regarding OREC pricing; and 4) commit to working cooperatively, to the fullest extent possible, with the other parties. The Board denied FACW's request to require the EDCs to participate as one entity, and limit the scope of the EDCs' discovery but granted its request to protect confidential trade information and trade secrets by redacting materials not relevant to the EDCs.

### **REVIEW OF AMENDED APPLICATION AND PREHEARING ORDERS**

On June 1, 2012, FACW submitted an Amended Application. The Project as proposed in the Amended Application is a 25-MW nameplate capacity wind farm, which includes five 5 MW Darwind/XEMC DD115 direct drive turbines, on a monopile foundation, to be located approximately 2.8 miles offshore from the Atlantic City shoreline. The projected annual electricity output of the FACW Project is 81,421 MWh based on a P-50 production estimate.

The Amended Application materially modified the initial application. In part, FACW requested the Board to consider turbines manufactured by both XEMC and Siemens. In addition the Amended Application changed the projected output from P-90 to P-50. A P-50 output level indicates that the output estimate has a 50% chance of being exceeded.

By letter dated June 25, 2012, Board Staff notified FACW that the company had "accepted Board Staff's previous and on-going requirement that only one turbine be designated for the purposes of the review of the application," and directed FACW to "formally inform the Board and all parties to this matter of the turbine of record for the review of the amended application."

By letter dated July 3, 2012, FACW rejected Board Staff's determination that FACW must choose one turbine technology and stated that "limiting FACW to only one candidate turbine technology will prevent the Board from achieving the best possible result in this matter."

By letter dated July 13, 2012, Board Staff informed FACW that N.J.A.C. 14:8-6.5(a)(2)(i)(8) "neither requires nor encourages applicants to, in essence, ask the Board to select the turbine manufacturer for the applicant." Board Staff stated that FACW did in fact select XEMC as the turbine manufacturer in July 2011, which was reiterated in the July 3, 2012, letter and that

"Board Staff has determined that XEMC is your selected technology and will proceed with reviewing the application using that technology."

Through correspondence dated August 13, 2012, and supplemented on August 17, 2012, FACW requested that the Board "temporarily discontinue" evaluation of FACW's Amended Application until September 17, 2012, so that it could reassess its application and consider potential modifications. Rate Counsel and Board Staff consented to the suspension of review. President Hanna granted FACW's request in the August 28, 2012 Prehearing Order ("August 28<sup>th</sup> Order") by suspending the prior procedural schedule. The August 28<sup>th</sup> Order also directed FACW to provide a written statement of its assessment along with any revisions to its application by September 17, 2012 and directed the parties to confer and provide a proposed amended schedule no later than September 21, 2012. On September 17, 2012, FACW submitted a letter advising the Board that it had completed its re-evaluation of the Amended Application and concluded that no changes to the Amended Application were necessary.

The parties subsequently consented to and proposed a new procedural schedule. The Second Amended Prehearing Order dated October 24, 2012 acknowledged the consent of the parties to extend the application review period until April 30, 2013, and adopted the parties' proposed schedule. By Order dated November 20, 2012, Docket No. EO11050314V, the Board ordered that the review period be extended to April 30, 2013.

Following super storm Sandy in late October 2012, the parties advised that the storm and its aftermath significantly hindered their ability to comply with the October 24, 2012 prehearing schedule. The parties proposed and agreed to an amended procedural schedule which was memorialized in the Third Amended Prehearing Order issued by President Hanna on November 30, 2012.

Pursuant to the procedural schedule, on December 17, 2012, expert reports were filed with the Board by Boston Pacific. Following the submission of the expert reports, the New Jersey Department of the Treasury ("Treasury") informed Board Staff that a contract modification would be needed in order for Boston Pacific to perform services in support of remaining items listed in the procedural schedule. The contract modification process delayed the procedural schedule until Treasury approved the modified contract on January 23, 2013.

By February 12, 2013, the parties had consented to a new procedural schedule, which was memorialized in the Fourth Amended Prehearing Order issued on March 7, 2013. The procedural schedule required the parties' experts to submit their responses to FACW's discovery requests no later than Monday, March 11, 2013, and extend the deadline for Board action to June 30, 2013. By order dated March 20, 2013, Docket No. EO11050314V, the Board extended the deadline for its review from April 30, 2013, to June 30, 2013.

### **FACW MARCH 8, 2013 FILING**

On March 8, 2013 ("March 8<sup>th</sup> filing"), one business day before the expert responses to FACW's discovery were due, FACW submitted new documents to the Board including: 1) FACW Testimony Exhibit 26 of Chris Wissemann (Update to the New Jersey Expenditures from the Project); and 2) FACW Testimony Exhibit 27 of Chris Wissemann (Update to Proposed OREC Price). FACW characterized the filing as an update to its June 1, 2012, Amended Application and indicated that it would submit rebuttal testimony on March 25, 2013, consistent with the timeline set forth in the procedural schedule.

In its March 8<sup>th</sup> filing, FACW proposed a significant decrease in its OREC price contingent upon receipt of \$100 million in federal funding. Several factors led to the decrease in OREC price, including a \$4 million "Phase 1" grant from U.S. Department of Energy ("USDOE" or "DOE"), the potential to receive a "Phase 2" grant of \$47 million, and a potential federal Investment Tax Credit ("ITC") for renewable energy projects.<sup>2</sup> The ITC and the US DOE grants ("federal grants" or "federal subsidies") have the potential to reduce the total capital costs of the Project by approximately \$100 million. The March filing also discussed additional New Jersey expenditures, guarantees, and benefits that FACW anticipated.

Considering the nature of the filing, on March 13, 2013, the parties were requested to advise the hearing officer on whether an extension of the procedural schedule was required. Staff and Rate Counsel submitted responses on March 18, 2013. FACW submitted its reply on March 20, 2013. The EDCs did not take a position.

In Staff's March 18, 2013 letter, it explained that FACW's submission contained "significant and material changes to the project" that would require additional analysis by Staff's expert. Although Staff ultimately indicated that it could comply with the procedural schedule without an extension of time, Staff asserted that FACW's delay in providing the new information contained in the March 8<sup>th</sup> filing was "substantial and unwarranted." According to Staff, FACW had indicated in early February 2013 that the Applicant needed a final Board decision by June 30, 2013, to have sufficient lead-time to begin construction by December 31, 2013, and remain eligible for the ITC. Staff observed that FACW transmitted the filing to the Board "sixty-four days following the enactment of the Fiscal Cliff bill and thirty-five days following the representations by FACW that the ITC would significantly benefit the proposed project."

Rate Counsel indicated that FACW's March 8<sup>th</sup> filing "so fundamentally alters FACW's petition that it should be considered a new application." Rate Counsel explained that the filing contained a new OREC price, new assumptions, new project costs, new expenditures, and other new information such that the amended application was fundamentally altered. As an alternative to the Board considering the filing a new application, Rate Counsel requested eight weeks to conduct additional discovery and submit a written surrebuttal.

FACW's March 20, 2013, reply to Staff and Rate Counsel contends that the filing "complies with its obligations to update the record as new information becomes available." FACW highlighted the perceived benefits of the federal grants, without addressing the delay in supplying such information. Ultimately, FACW consented to a four-week extension of the procedural schedule.

President Hanna issued a Fifth Amended Prehearing Order on April 18, 2013. The amended procedural schedule included an extension of the Board's deadline to act on the petition from June 30, 2013 to July 31, 2013. In that order, President Hanna found that the new information contained in FACW's March 8<sup>th</sup> filing was so substantial that it could not properly be reviewed under the schedule set forth in the prior prehearing order. President Hanna further found that FACW did not provide adequate explanation for delaying its submission for sixty-four days following the enactment of the Fiscal Cliff bill and thirty-five days following the representations by FACW that the ITC would significantly benefit the proposed project. By order dated May 29, 2013, the Board extended the deadline for its review from June 30, 2013 to July 31, 2013.

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<sup>2</sup> The ITC was signed into law on January 3, 2013, as a part of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (the "Fiscal Cliff bill").

By notice dated May 9, 2013, the hearings on this matter which were scheduled pursuant to the April 18, 2013 Fifth Amended Prehearing Order, were adjourned and the parties entered into settlement discussions.

On June 28, 2013, a stipulation signed by FACW and Rate Counsel was filed with the Board recommending that the Board issue a final Decision and Order approving the Project. Board Staff and the EDCs were not signatories to the Settlement Stipulation.

Also on June 28, 2013, a Stipulation on Joint Record of Exhibits signed by FACW, Rate Counsel and Board Staff, was filed with the Board ("Joint Record" or "Joint Record Stipulation"). The EDCs were not a signatory to the Joint Record.

## **SUMMARY OF STIPULATIONS**

### ***Joint Record Stipulation***

FACW, Rate Counsel, and Staff executed the Joint Record. Collectively, they request the Board to consider the listed exhibits as the full record pursuant to N.J.A.C. 1:1-15.1. The Joint Record includes exhibits related to FACW's Amended Application, discovery exchanged among the parties, pre-filed testimony of the parties and their experts, correspondence, and other items. In addition, the Joint Record includes documents related to FACW's initial application filed on May 19, 2011. The EDCs are not signatories to this stipulation.

### ***Project Stipulation***

FACW and Rate Counsel entered a stipulation on the merits of FACW's Amended Application. The Project Stipulation seeks to gain Board approval of the Project as "a qualified offshore wind project as defined in N.J.S.A. 48:3-51(3)" eligible to receive fixed-price ORECs for a period of twenty years.

The Project Stipulation includes twenty-seven numbered paragraphs and two attachments. Key terms and conditions include:<sup>3</sup>

- Standards under Section 3(b) of OWEDA – this section of the Stipulation provides information relevant to the statutory criteria for approving a qualified offshore wind project, namely, compliance with the Energy Master Plan, proof of net benefits, description of a Financing Mechanism, and proof of financial integrity.
- The financing mechanism includes an Interim OREC Pricing Plan, attached to the Stipulation as Attachment A. Attachment A establishes a set of Definitions and terms by which ORECs will be paid to the Project and includes a Planning Generation Amount, and an OREC Price schedule. The generation amount for the first year of operation (EY 2016) is set at 62,505 MWhs. Between EY 2016 and EY 2035, the generation amount is 85,492 MWhs. For EY 2036, the generation amount is 22,987 MWhs.
- OREC Price & Schedule – the signatories agree that the OREC price is a fixed price, all cost overruns will be borne by FACW, and FACW will only be paid

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<sup>3</sup> This summary is not intended to replace the actual terms of the Project Stipulation. To the extent there is any inconsistency between the Project Stipulation and the Board's summary, the terms of the Project Stipulation shall govern.

ORECs for power produced. Schedule B of the OREC Pricing Plan sets the OREC Price at \$187/MWh beginning in EY 2013, increasing 3.5% each year. The price on the anticipated date of commercial operation in EY 2016 is \$207.33/MWh, and extending out twenty years to EY 2036 at \$398/MWh.

- Potential Federal Grants – the signatories reference the FACW Petition which includes a description and estimate of state and federal funds that may be associated with the Project. The signatories also indicate that all economic benefits from the federal ITC and USDOE Grants inure to the benefit of ratepayers, net of Compliance Costs, which are reflected in the OREC price.
- Contingency Fund – the signatories created a mechanism whereby the Applicant will receive \$19.2 million from ratepayer funds in the event that federal funds are not received or are insufficient for the Project to go forward. The terms of the contingency fund are set forth in the Cost Verification and Disbursement Process, Attachment B to the Stipulation.
- Abandonment and Decommissioning Escrow Fund – FACW will establish a \$4 million decommissioning escrow fund.
- Construction Escrow – FACW will provide security in the form of escrow or letter of credit for the balance of capital required to complete the project. FACW estimates the balance is \$61 million.
- Contractual Commitment to back-up Economic Benefits – FACW will require third party contractors to commit to specified New Jersey spending levels. The Stipulation does not itemize the spending levels.
- Jurisdiction – FACW consents to the jurisdiction of federal and state courts. FACW will execute a separate instrument with XEMC to gain its consent to be subject to federal and state courts.
- Certifications – FACW agrees that the OREC Pricing Plan will not be effective prior to Type A and Type B certification.
- Engineering Monitor to Review Certifications – FACW agrees to pay up to \$50,000 for an Independent Engineering Monitor (“IEM”) selected by the Board to oversee Type Certification of the Project.
- Foundation Selection – this provision allows FACW to select “the most appropriate” foundation to be used by the Project (either jacket or monopile) provided the foundation is certified for the Project location.
- Turbine Vendor – the signatories agree that if XEMC is not able to perform, FACW may use a “functionally equivalent” Siemens turbine at no additional cost to ratepayers, subject to a 30-day review period by the Board.
- EDCs to Provide Sales and Invoicing Information to the Project – the signatories recommend that the Board require the EDCs to provide certain information to FACW's OREC Invoicing Administrator.



Staff filed objections to the Project Stipulation, which are discussed below. The EDCs submitted comments on the Stipulation but did not otherwise take a position.

### **BOARD STAFF'S POSITION ON THE PROJECT STIPULATION**

Board Staff filed its response to the Project Stipulation on July 8, 2013.<sup>4</sup> Staff in conjunction with Boston Pacific, recommended that the Board reject the Project Stipulation, on the grounds that FACW's Project violates OWEDA. (Staff Position Paper at 1.) Specifically, Staff raised objections to the following provisions: 1) the contingency fund and net benefits test; 2) the construction escrow; 3) the decommissioning fund; 4) the Project description; 5) the substitution of foundations and turbines and impact on financing structure; 6) the IEM; 7) Type B certification; and 8) designation as a pilot project.

#### **Contingency Fund**

Staff asserted that the terms of the Project Stipulation call into question the net economic benefit as well as the financial integrity of the Project. *Id.* at 4-5. In Paragraph 11 of the Stipulation, read in conjunction with the Cost Verification and Disbursement Process, designated as Attachment B to the Project Stipulation and incorporated therein, Rate Counsel and FACW agreed to a contingency fund whereby FACW can discontinue the Project and recover up to \$19.2 million from ratepayers if the federal subsidies for which FACW applied are either not approved or are deficient. Specifically, the ratepayer funded contingency fund would be triggered under Section 3 of the Cost Verification and Disbursement Process, if Petitioner: a) did not receive either the US DOE grant or the ITC; or b) received a USDOE grant that was less than \$35 million; or c) remained uncertain as of December 31, 2014, whether it would be awarded the DOE Grant. *Id.* at 5.

Staff asserted that the contingency fund is in direct violation of N.J.S.A. 48:3-87.1(b)(1)(c) because it places a \$19.2 million burden on ratepayers if the Project is discontinued; the payment is not related to actual electrical output; and, if ratepayers were to absorb a \$19.2 million burden for a discontinued Project, there would be zero benefits to ratepayers and the net benefits test simply could not be met. *Id.* at 7-8 Furthermore, Staff argued that the contingency fund violates N.J.A.C. 14:8-6.5(a)(5)(iii) because it shifts the risk of FACW not obtaining federal funds to ratepayers. The contingency fund described in the Stipulation would essentially allow FACW to recover "funding" without the production of electricity, based on a calculation other than the actual electric output of the Project. *Id.* at 15.

Staff also argued that the contingency fund represents costs that should be included within the OREC price and that the OREC price is the only subsidy that ratepayers should pay. *Id.* at 8 There is no language under OWEDA to require or allow ratepayers to provide any subsidy outside of the OREC mechanism, or conversely, to entitle an offshore wind developer to ratepayer subsidization outside of the OREC mechanism.

#### **Construction Escrow**

Staff objects on the grounds that the Act's requirement – that the entity proposing the project demonstrate financial integrity and sufficient access to capital to allow for a reasonable

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<sup>4</sup> Position Paper of Board Staff Regarding the Stipulation Executed by the New Jersey Division of Rate Counsel and Fishermen's Atlantic City Windfarm, LLC, In re Petition of Fishermen's Atlantic City Windfarm, LLC for the Approval of the State Waters Wind Project and Authorizing Offshore Wind Renewable Energy Certificates, BPU Docket No. EO11050314V (July 8, 2013) ("Staff Position Paper").

expectation of completion of construction of the project – is not met by the terms of the Stipulation. On the issue of whether FACW has demonstrated that it has sufficient capital to fund the Project, Boston Pacific expressed concerns about the financial viability of XEMC in its February and December 2012 reports. Id. at 9 (citing BP February 2012 Report at 15-16, BP December 2012 Report at 36-37). These concerns involved the financial strength of certain companies, including Xiangtan Electric Manufacturing Co., Ltd, XEMC Windpower, and XEMC Group, which provided financial statements based on Chinese accounting principles in lieu of U.S. Generally Accepted Accounting Principles (“GAAP”) standards. Ultimately, Boston Pacific concluded that FACW could demonstrate financial integrity by posting security to cover all of the required funds for development and construction.

Staff believes that the escrow amount of \$61 million agreed to under the Project Stipulation is, however, insufficient to cover the Project’s estimated development and construction costs. Staff estimates that the escrow should be funded at a level between \$120 million – \$178 million. Given the insufficiency of the construction fund escrow amount, Staff concluded that FACW has not satisfied the requirements of N.J.S.A. 48:3-87.1(b)(1)(d). Id. at 11.

### **Decommissioning Escrow**

Staff argues that a decommissioning escrow funded at \$4 million is insufficient. The Amended Application initially proposed a decommissioning and abandonment security of \$8 million as the amount necessary to adequately fund decommissioning in the unlikely event of its complete failure. In its December 12, 2012 Report, Boston Pacific characterized the \$8 million escrow amount as being adequate for that purpose at that time. Because the Project has not changed in scope or size, Staff asserts that no justification exists for reducing the estimated cost of decommissioning. Id. at 11-12.

### **Project Description**

Staff claimed that the FACW Project Description as set forth in the Project Stipulation is deficient. Staff encourages the Board to rely on the Project description which appears in the Amended Application rather than the description provided in the Stipulation. Id. at 16.

### **Foundations and Turbines**

Staff also opposed the provisions concerning foundation selections and turbine replacement. Specifically, Paragraphs 18 and 19 of the Project Stipulation permitting FACW to select the Project’s foundation and replace the XEMC turbine with the “functionally equivalent” Siemens turbine. Id. at 17.

Given the relationship between XEMC and FACW as set forth in the Petition, the substitution of the XEMC turbine for that of another manufacturer would invariably impact FACW’s Project funding source and result in additional Project costs and risks to ratepayers. The type of turbine a developer intends to use is fundamental to the application process. N.J.S.A. 48:3-87.1(a)(1) requires that the applicant provide not only the type of turbine, but give detailed information about its history-to-date, number installed globally, and a comprehensive implementation plan. Furthermore, turbine costs are the largest cost component of the Project. Any substitution of the turbine could have a material impact on the Project costs and performance and would require careful review by the Board. Id. at 18.

Also, Staff objects to placing a 30-day limit on the time for Board review of changes to technology. Allowing FACW to select the foundation at its discretion, and to switch to a functionally equivalent turbine after Project approval, upon expedited 30-day Board review, would undermine and contravene the entire OWEDA application process. Id. at 17-18.

### **Independent Engineering Monitor (“IEM”)**

Staff also opposed the language in Paragraph 17 of the Project Stipulation, insofar as it unreasonably limits the scope of duties and funding for an IEM. Id. at 20. Staff contended that Paragraph 17 of the Project Stipulation more narrowly limits the IEM’s function, is inconsistent with BP’s recommendation, and limits the duties of the IEM to the disadvantage of ratepayers. The Project Stipulation language envisions only two certification progress reviews by the IEM, which is a significantly narrower function than overseeing the certification process as recommended by BP. Furthermore, the Project Stipulation language is silent on the IEM’s authority to review FACW’s project team, assess sufficiency of safeguards, or to report to the Board. Given the scope of duties that Boston Pacific recommends that the IEM carry out, \$50,000 would be insufficient to cover that cost. Staff contended that Paragraph 17 should be rejected for those reasons. Id. at 21.

### **Certification**

Staff indicates that the Project Stipulation contravenes Boston Pacific’s recommendation as to the timing of Type B certification. Ibid.

Boston Pacific recommends that the Board refrain from approving the Project until after FACW receives Type B certification.<sup>5</sup> Contrary to Boston Pacific’s recommendations, Paragraph 15 of the Project Stipulation indicates that FACW would not receive ORECs until receiving Type A and Type B certification. To the extent Paragraph 15 of the Project Stipulation is inconsistent with Boston Pacific’s recommendations, the Project Stipulation should be rejected. Ibid.

### **Pilot Project**

Staff also objects to the Project Stipulation’s characterization of the Project as “pilot” in scale. Id. at 22. Staff stated that there is no statutory authority in the Act to consider this or any other offshore wind project as a pilot project and, therefore, no basis for the Board to review the Project under an alternative standard.

## **RATE COUNSEL’S REPLY TO STAFF’S POSITION PAPER**

In its July 12, 2013, Reply Brief,<sup>6</sup> Rate Counsel argues that the Project Stipulation is consistent with OWEDA. (RC Reply at 3.) In part, Rate Counsel argues that the Project Stipulation provides net benefits to the State’s ratepayers because “the Stipulation . . . offers ratepayers \$136 million in savings relative to FACW’s original proposal,” which is a “significant decrease in costs.” Id. at 12. Furthermore, Rate Counsel claims that Boston Pacific’s Surrebuttal Testimony states that FACW’s application (as amended March 25, 2013) demonstrates positive net benefits. Finally, Rate Counsel argues that the Project Stipulation in fact includes an OREC price lower than the amount referred to in Boston Pacific’s Surrebuttal Testimony. In addition, Rate Counsel responded to each of Staff’s arguments:

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<sup>5</sup> Type B certification commonly covers the design of the turbine but does not include full performance measurements or manufacturing process evaluations. Staff Position Paper at 21 (Citing BP Surrebuttal Testimony).

<sup>6</sup> Reply Brief by the New Jersey Division of Rate Counsel, In re Petition of Fishermen’s Atlantic City Windfarm, LLC for the Approval of the State Waters Wind Project and Authorizing Offshore Wind Renewable Energy Certificates, BPU Docket No. EO11050314V (July 12, 2013) (hereinafter “RC Reply”).

### **Contingency Fund**

Rate Counsel argues that the contingency fund is consistent with OWEDA for several reasons. Rate Counsel states, "Non-performance," as defined in OWEDA, only applies to the "construction or operational phase of the project." Id. at 4. Rate Counsel argues that, by contrast, the \$19.2 million contingency provision of the Project Stipulation "only addresses the pre-construction and pre-operational costs of the project." Ibid. Thus, Rate Counsel claims that "[a]ll costs of non-performance, in either the construction or operational phase of the project are still borne by the shareholders and not the ratepayers." Ibid.

Furthermore, Rate Counsel finds error with several of Staff's conclusions. First, Rate Counsel takes issue with Staff's characterization that FACW can unilaterally "abandon its project . . . and receive over \$19 million in subsidies." Id. at 5. Rate Counsel argues FACW cannot do this unilaterally because it can only collect \$19 million if "it's U.S. DOE Phase II grant is insufficient or rejected," meaning the decision is "made by DOE, not FACW." Ibid. Rate Counsel provides a list of conditions that must be met for FACW to recoup funds from the contingency fund. Id. at 5-6.

Rate Counsel argues that the contingency fund "reduces ratepayer exposure" because such exposure is "limited" to \$19.2 million, "an amount far less than ratepayers would pay if this risk was reflected in the OREC price proposed by FACW in its Rebuttal Testimony." Id. at 7. Rate Counsel notes that FACW's original application "proposed an OREC approximately 40 percent more than the amount in the stipulation." Id. at 8. Rate Counsel emphasizes that the risk of ratepayers is minimal because FACW has a good chance of receiving the federal funds.

Finally, Rate Counsel disputes Staff's contention that OREC payments should be the only payment ratepayers make to FACW. Id. at 7. Rate Counsel argues that no language in OWEDA limits such payments to only OREC payments.

### **Construction Escrow**

Rate Counsel argues that Staff's position – that the amount in escrow must cover "all project costs" – is a "tortured reading of the statute." Id. at 9-10. Instead, Rate Counsel argues that the amount to be held in escrow is "the balance of the capital required to complete the Project . . . net of costs already incurred as of that date." Id. at 9 (emphasis omitted). In addition, Rate Counsel asserts that requiring applicants to post the entire project cost would be cost-prohibitive for most applicants and effectively preclude offshore wind development in New Jersey.

### **Decommissioning Fund**

Rate Counsel argues that the \$4 million decommissioning fund amount is sufficient because it "is large enough to be reasonable, but not so large as to create future decommissioning cost inefficiencies." Id. at 12. Rate Counsel states that a reduction in the decommissioning fund to the \$4 million amount is appropriate because "the OREC price associated with FACW's Original Application has fallen by almost the same level." Id. at 10. Second, Rate Counsel believes that Staff's expectation that FACW place the entire amount of its decommissioning costs into an up-front insurance fund is unreasonable because the Project Stipulation "creates a very stable and secure financial platform from which FACW should be able to develop its project." Id. at 11. Third, Rate Counsel argues that the amount placed in escrow for decommissioning purposes "is almost certainly reflected in the OREC price" already. Ibid.

### **Foundation and Turbine Replacement**

Rate Counsel disputes Staff's allegation that the Project Stipulation violates OWEDA by allowing substitution of the project foundation and turbine technology which may increase costs to ratepayers." Id. at 14. Rate Counsel qualifies that any substitution is "only to increase the

chan[c]es of obtaining USDOE funding, and only if the selected foundation is certified by the American Bureau of Shipping (ABS)." Ibid. Furthermore, "FACW has agreed to accept any additional costs if such substitution is necessary." Ibid.

### **Independent Engineering Monitor**

Rate Counsel argues that FACW's agreement to adopt the recommendation of an IEM chosen by the Board and to fund, up to a proposed cap of \$50,000.00, does not violate OWEDA or place ratepayers at risk. Id. at 15. Rate Counsel states this is not a problem because the Board has the authority to include in any order approving an offshore wind application that the applicant reimburse the Board and the State for costs related to regulatory review and monitoring of the Project.

Rate Counsel argues that Staff's insistence that the Project Stipulation is invalid because some of its consultants' recommendations were not expressly adopted is misplaced. Rate Counsel argues that if FACW were to implement Boston Pacific's recommendation to wait until receipt of Type B certification, it would severely hamper the financing and completion of the Project. Thus, alternatively, the Project Stipulation included the express provision that no ORECs would be issued until all certification were achieved.

### **Other Benefits of the Project Stipulation**

Rate Counsel argues that the Board is allowed to consider, and the Project Stipulation contains, other benefits not mandated by OWEDA. Id. at 16. First, FACW has agreed to place the turbine designs "in escrow for the life of the Project to be accessed by FACW as needed," which could be useful in case of any future maintenance issues. Ibid. Second, the Project Stipulation states that XEMC is subject to the jurisdiction of both federal and NJ courts. Finally, the Project Stipulation incorporates an Interim OREC Pricing Plan, which could serve as an opportunity for the Board to examine the practical application of a financing mechanism.

## **FACW'S RESPONSE TO STAFF'S POSITION PAPER**

On July 12, 2013, FACW submitted a response to Staff's Position Paper.<sup>7</sup> FACW defended the merits of the Project Stipulation and, in the alternative, offered potential remedies to fully address Staff's concerns. FACW's defense of the Project Stipulation focuses almost exclusively on the legality of the contingency fund.

### **Contingency Fund**

FACW claims that Staff's assertion that the contingency fund violates the net benefits standard of OWEDA misconstrues the plain language and framework of OWEDA, as well as the fundamental nature of the contingency fund. (FACW Reply at 14.) FACW asserts that the contingency fund is consistent with OWEDA, achieves the lowest possible costs for ratepayers, and the Board should find it permissible under the Act. Id. at 14-15.

FACW argues that under Staff's assumption that the Project would not be constructed resulting in a \$19.2 million obligation to the ratepayers, no project could satisfy the net benefits test, and therefore, Staff's application of the statute is not reasonable and runs counter to the standard required by OWEDA. Id. at 15.

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<sup>7</sup> Reply Brief of Fishermen's Atlantic City Windfarm LLC to the Staff Position Paper, In re Petition of Fishermen's Atlantic City Windfarm, LLC for the Approval of the State Waters Wind Project and Authorizing Offshore Wind Renewable Energy Certificates, BPU Docket No. EO11050314V (July 12, 2013) ("FACW Reply").

FACW claims that under Staff's application of the net benefit test set forth in N.J.S.A. 48:3-87.1(a)(10), Staff assumes that the Project will not be constructed, concludes that no benefits will accrue, and then recommends to reject the proposal. But, the Act clearly requires that the benefits should be measured from the assumption that the Project will be constructed. Id. at 15-16. FACW also argues that the regulation and OWEDA requires that the Project as a whole result in net benefit to the State; each individual prong does not need to result in a benefit. Because Staff ignored this critical point, and analyzed impacts to ratepayers in isolation, its arguments are inapplicable. Id. at 16. FACW also asserts that under Staff's approach, no project can satisfy the net benefits standard as to the ratepayers. Id. at 17.

FACW argues that because the tax incentives are not currently available, ratepayers can only benefit in the event that such incentives are actually realized. Therefore, the contingency fund is not a mechanism that passes a burden to taxpayers, but rather is a mechanism that allows for ratepayers to benefit from a lower OREC price should possible subsidies be realized. Ibid.

FACW also asserts that the contingency fund is entirely consistent with and in fact mandated by N.J.A.C. 14:8-6.5(a)(5)(iv). since it has unequivocally "demonstrate[d] a commitment to pass along tax credits or other governmental benefits to ratepayers that are greater than projected." If these subsidies materialize, the savings immediately pass to ratepayers through the lower OREC price and if they are not realized, then the contingency fund is triggered and the benefits cannot be passed onto ratepayers. Id. at 18.

Finally, FACW asserts that the contingency fund is not a financing mechanism which places the costs of non-performance on ratepayers. Rather, it is merely an interim measure to ensure that the lowest possible OREC price is secured for ratepayers. Id. at 19.

Last, FACW argues that Staff has misinterpreted the statutory silence in OWEDA regarding other potential ratepayer subsidies. Because the statute is silent, there is no requirement that ORECs be the only form of ratepayer subsidy. Therefore, the contingency fund is consistent with the legislative intent to achieve the lowest possible OREC price for ratepayers and it is permissible for the Board to consider it under the Act. Id. at 19-21.

#### **Proposed Modifications to the Project Stipulation**

FACW stated that it believed that Staff's core objection to the Project Stipulation was the contingency fund of \$19.2 million. In order to overcome this objection, while not conceding that the Project Stipulation constitutes an unreasonable approach, FACW agreed to remove the contingency fund from the Project Stipulation as well set forth the parameters of its acceptance of all of Staff's recommendations in its Position Paper. FACW stated that the elimination of the contingency fund along with seven additional changes to the Project Stipulation would, if implemented, address Staff's objections. Id. at 3.

FACW's proposal to eliminate the contingency fund leads to the following pricing tiers with each tier reflecting benefits to ratepayers from the receipt of a federal subsidy:

1. Initial OREC price: \$251 per MWh;
2. ITC price adjustment bringing the initial OREC price to \$220 per MWh based upon receipt of the benefits of the ITC;
3. USDOE price adjustment without the ITC, brings the initial OREC price to \$214 per MWh based on receipt of USDOE Grant commitments; and
4. USDOE price adjustment along with ITC, which results in an initial

OREC price of \$187 per MWh based upon receipt of USDOE grant commitments and receipt of the benefits of the ITC.

[Id. at 4-5.]

FACW noted that for each tier, the other terms and conditions are set forth in Attachment A to the Project Stipulation. In addition, FACW proposes to address Staff's concerns that the Project Stipulation does not meet the net benefits test required by OWEDA. FACW agrees to:

1. Eliminate the contingency fund, eliminating Staff's concern relative to the impact of the contingency fund on realizing net benefits; and
2. Require its contractors to commit to certain local expenditures and job creation metrics. To the extent that the Board wants the amounts stated, FACW has provided these amounts in its rebuttal testimony.

[Id. at 6.]

With respect to Staff's concerns about the financial integrity of XEMC and specifically Staff's concern about the sufficiency of the \$61 million of construction funds to be placed in escrow, FACW proposes to:

1. Eliminate any reference to \$61 million, but otherwise retain the language as it appears in the Project Stipulation such that it is clear that the balance of funds required to complete construction will be posted up to \$120 million; or
2. Place a higher, Board determined amount in escrow 30 days prior to the commencement of office construction date, provided that the OREC price is modified to reflect the cost such that for every \$10 million increase in the escrow amount above \$61 million, the initial OREC price increases by \$0.45/MWh.

[Id. at 7-8.]

With respect to Staff's concerns regarding the provisions in the Project Stipulation permitting FACW to change the foundation technology and providing the Board with 30 days to approve the change in turbine technology, FACW agrees to either:

1. If acceptable to the Board at the time of the OREC order, amend the Project definition such that a jacket is designated as the foundation selection and eliminate the 30-day review limitation on foundations or turbines; or
2. Accept the Project definition as it appears in the amended application and agree that any changes to either turbine or foundation will be subject to a Board review of a duration chosen by the Board. Any such requested change would be accompanied by sufficient supporting information to facilitate an expedient review, such as technical details, designs, history of use, and financing implications.

[Id. at 9-10.]

Regarding Staff's concern about the sufficiency of the \$4 million contained in the decommissioning fund, FACW agrees to either:

1. Keep the decommissioning fund at \$4 million provided for in the Project Stipulation and reflected in the OREC price levels identified in Section I(A) of its response; or
2. Increase the decommissioning fund to \$8 million accompanied with an elimination of the \$4/MWh discount by modifying the OREC price levels identified in Section I(A) of its response.

[Id. at 10-11.]

In response to Staff's position that the Project Stipulation unreasonably limits the scope of the IEM and unreasonably limits its cost to \$50,000, FACW agrees to an expansion of the IEM's role as determined by the Board but believes that the potential costs of such an expanded role must be addressed by including a provision for an unlimited IEM scope that would be paid by FACW, so long as the initial OREC price increases by \$0.10 per \$100,000 in cost above \$50,000. Id. at 11.

Finally, FACW seeks to alleviate Staff's issues with the Project Stipulation relating to Type B certification by agreeing that either:

1. The Board order issued in this matter would not be effective until Det Norske Veritas ("DNV") Type B certification is received; or
2. In the event that this is deemed inadequate by the Board, FACW will commit to providing DNV Type B certification by August 20, 2013 and understands that no Board Order will be issued until such occurs.

[Id. at 11-12]

FACW believes that its proposed modifications should result in the recommendation of Board Staff for the approval of the FACW Petition and provide a basis for a Board approval in accord with the terms discussed in its response. Id. at 12.

In a letter filed with the Board on July 17, 2013, Rate Counsel advised that it does not support FACW's alternative proposal and that the proposal is materially different from the Project Stipulation.

#### **INTERVENOR'S POSITION ON THE STIPULATION**

The EDCs jointly filed their response to the stipulations on July 8, 2013. ("Intervenor Response"). The EDCs offered comments on the Project Stipulation but did not take a position on the document or the attachments.

The Intervenor noted that, despite being granted Intervenor status by the Board, as well as negotiating and executing a confidentiality agreement with FACW, they were never supplied with non-public testimony and discovery responses. Instead, they were only provided with heavily redacted documents based upon FACW's unduly broad interpretation of a condition in the Board's intervention order that granted a request to protect confidential trade information and trade secrets by redacting materials not relevant to the Intervenor. In addition, during the



settlement discussions, the Intervenors were not permitted to participate in settlement meetings at any time during which OREC pricing or related financial issues were discussed.

While the Intervenors did not challenge the limitations placed on them by the Board's intervention order or FACW's interpretations of the order, they were unable to meaningfully analyze the application or the settlement documents, and are not in a position to comment on the record since they were denied access to highly-relevant portions of the record and were precluded from meaningful participation in the settlement process. (Intervenor Response at 2.)

The Intervenors also noted that the Stipulation appropriately reflects that they will receive full and timely recovery of those costs associated with the \$19.2 million in abandonment costs from their respective ratepayers through specified existing adjustment clause mechanisms.

With respect to the "OREC Pricing Plan," the Intervenors noted that, if approved, the OREC Pricing Plan would impose obligations on the EDCs, including:

- annual provision of Third Party Supplier ("TPS") and Basic Generation Service ("BGS") supplier information to Petitioner;
- monthly provision to Petitioner of retail sales data for each third party supplier and Basic Generation Service provider; and
- crediting offshore wind energy and capacity revenues back to ratepayers.

With respect to the OREC price, the Intervenors noted that, while it is a fixed price, Petitioner and Rate Counsel have agreed to a fixed annual inflation adjustment of 3.5% per Energy Year.

### **ANALYSIS AND FINDINGS**

An applicant seeking to develop a qualified offshore wind project must demonstrate that it has satisfied the criteria outlined in N.J.S.A. 48:3-87.1 and N.J.A.C. 14:8-6.1 et seq. Pursuant to N.J.S.A. 48:3-87.1, the applicant must provide fourteen different categories of information for the Board's review:

- (1) a detailed description of the project . . . ;
- (2) a completed financial analysis of the project . . . ;
- (3) the proposed method of financing the project, including identification of equity investors, fixed income investors, and any other sources of capital;
- (4) documentation that the entity has applied for all eligible federal funds and programs available to offset the cost of the project or provide tax advantages;
- (5) the projected electrical output and anticipated market prices over the anticipated life of the project . . . ;
- (6) an operations and maintenance plan for the initial 20-year operation of the project . . . ;
- (7) the anticipated carbon dioxide emissions impact of the project;
- (8) a decommissioning plan for the project including provisions for financial assurance for decommissioning as required by the applicable State and federal governmental entities;
- (9) 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;

- (10) a cost-benefit analysis for the project . . . ;
- (11) a proposed OREC pricing method and schedule for the board to consider;
- (12) a timeline for the permitting, licensing and construction of the proposed offshore wind project;
- (13) a plan for interconnection, including engineering specifications and costs; and
- (14) any other information deemed necessary by the board in order to conduct a thorough evaluation of the proposal. . . .

FACW provided information responsive to each of the categories noted above and its application was considered administratively complete pursuant to N.J.A.C. 14:6-6.4 on June 14, 2011. Since then, FACW amended its application on June 1, 2012, and supplemented the application on March 8, 2013. The parties conducted extensive discovery on each iteration of the FACW application.

The parties subsequently participated in settlement discussions, which resulted in two stipulations: 1) a Stipulation on Joint Record of Exhibits, signed by FACW, Rate Counsel, and Staff ("Joint Record"); and 2) a Stipulation on the terms of the Project, signed by FACW and Rate Counsel ("Project Stipulation"). Staff opposed the Project Stipulation between FACW and Rate Counsel. The EDCs did not file an objection to either stipulation.

**Stipulation on the Joint Record**

The signatories to the Stipulation on the Joint Record request the Board to consider the listed exhibits as the full record pursuant to N.J.A.C. 1:1-15.1. The signatories also represent that the exhibits "collectively comprise all parties' cases-in-chief and the entire record in this matter." (Joint Record at 2.) The signatories also agreed "to abide by their continuing obligation to update and correct any and all relevant information pertaining to the application, as soon as such information becomes known or available until the Board determines the record is closed." Id. at 3.

Upon review of the stipulation, the Board **APPROVES** the Joint Record as comprising the full record in this matter, with the following exception. Paragraph 34 of the Joint Record indicates that certain itemized documents relate to "FACW's original Application dated February 9, 2011 . . . ." The Board rejects any assertion that it received an application filed pursuant to N.J.S.A. 48:3-87.1 from FACW prior to May 19, 2011. The Board did not open an application window for offshore wind projects until May 16, 2011, FACW filed an application on May 19, 2011, and that application was considered administratively complete on June 14, 2011. Therefore, the Board **FINDS** that any information submitted by FACW prior to May 19, 2011, did not constitute a properly filed application and is not considered part of the record.

The parties shall have ten (10) days from the effective date of this Order to submit any additional relevant information. After that time, the record shall be closed and may not be supplemented absent an appropriate order from the Board or the hearing officer. If a party submits additional documents for the record prior to the closing date and any other party determines that rebuttal evidence is necessary, the aggrieved party shall make an application to the hearing officer.

### **Project Stipulation between FACW and Rate Counsel**

FACW and Rate Counsel request that the Board approve a Project Stipulation executed by the two signatories and issue a final decision and order. To approve the Project Stipulation as a qualified offshore wind project, the Board must find that the following conditions are satisfied:

(a) the filing is consistent with the New Jersey energy master plan, adopted pursuant to section 12 of P.L.1977, c.146 (C.52:27F-14), in effect at the time the board is considering the application;

(b) the cost-benefit analysis, submitted pursuant to paragraph (10) of subsection a. of this section, demonstrates positive economic and environmental net benefits to the State;

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

(d) the entity proposing the project demonstrates financial integrity and sufficient access to capital to allow for a reasonable expectation of completion of construction of the project.

[N.J.S.A. 48:3-87.1(b)(1)].

The Board must also consider "the total level of subsidies to be paid by ratepayers for qualified offshore wind projects over the life of the project" and "any other elements the Board deems appropriate." N.J.S.A. 48-3-87.1(b)(2).

### **Energy Master Plan (EMP)**

The signatories assert that the FACW Petition is consistent with the 2011 EMP because the State has articulated a commitment to offshore wind and the Project will provide net economic benefit to the State. Stip. at ¶ 5(a). The Board agrees that "[o]ffshore wind has been supported by the Christie Administration" and that OWEDA aims to create an OREC program supporting up to 1,100 MW of generation capacity off the coast of New Jersey. 2011 Energy Master Plan, at 101 (available at [http://nj.gov/emp/docs/pdf/2011\\_Final\\_Energy\\_Master\\_Plan.pdf](http://nj.gov/emp/docs/pdf/2011_Final_Energy_Master_Plan.pdf)).

The EMP supports offshore wind, in part, because it is "renewable, has no carbon output, and has the potential to develop a manufacturing and support industry within the State, thereby creating direct, indirect, and induced economic benefits for many years to come." *Ibid.* The Board **FINDS** that FACW's Project is consistent with the EMP because it would provide up to 25 MW of generation and the Project has the potential to create "direct, indirect, and induced economic benefits for the State." The Board must now consider whether the Project demonstrates the actual positive economic benefits that OWEDA requires.

### **Cost Benefit Analysis**

Pursuant to N.J.S.A. 48:3-87.1(b)(1)(b), the Project must demonstrate "positive economic and environmental net benefits to the State." To demonstrate such benefits N.J.S.A. 48:3-87.1(a)(10) and N.J.A.C. 14:8-6.5(a)(11) require the applicant to submit information, including but not limited to, in-State spending levels, manufacturing, employment, and indirect business

taxes.

The signatories rely on the entire Joint Record in asserting that the Project satisfies this requirement. Stip. at ¶ 5(b). The Project Stipulation does not articulate which facts within the record demonstrate a net economic benefit. The Project Stipulation also fails to describe anticipated New Jersey spending levels, means to achieve goals for job creation, or calculate a specific benefit to the State. See id. at ¶¶ 5, 13. The Project Stipulation merely states that FACW will request third party contractors to commit to New Jersey spending levels. See also (FACW Reply, supra, at 6.)

FACW's Supplemental Testimony, filed on March 8, 2013, provides detail concerning local expenditures and employment metrics. (FACW Testimony Exhibit 26, supra; FACW Rebuttal Testimony Exhibit 3 of Steve Gabel). It appears that FACW continues to rely on these estimates in support of the stipulation. (FACW Reply, supra, at 6.)

The signatories point to Surrebuttal Testimony filed by Staff's expert, Boston Pacific, as further evidence that the Project creates net benefits. Boston Pacific testified:

FACW's guarantee of direct jobs and direct expenditures in New Jersey, and its substantiation with vendor quotes, provides documentation of economic benefits of \$156.5 million (net present value). With documented economic benefits and a lower OREC price, even if FACW's claimed benefits for tourism, environmental impacts, merit order effect, and lessons learned are excluded, the Project provides net benefits of \$33.4 million (net present value). The Project then meets the requirement to demonstrate net benefits to the State as required under the Act.

[BP Surrebuttal at 18:7-16.]

The Board notes that while the signatories accurately quote the Boston Pacific Surrebuttal Testimony, they leave out pertinent information that misrepresents its finding. In fact, Boston Pacific evaluated the March 8<sup>th</sup> filings and March 25<sup>th</sup> rebuttal testimony "[w]ith the price at \$199.17/MWh and the risk of securing the federal assistance falls on FACW, rather than New Jersey ratepayers." Id. at 11:4-6. Additionally:

Several factors have led to the decrease in OREC price, including a reduction in estimated capital cost, the assumed receipt of U.S. Department of Energy (DOE) grant funding, and the assumed receipt of the federal investment tax credit (ITC) for renewable energy projects.

[Id. at 10:16-19.]

Boston Pacific's testimony supports a conclusion that an OREC price less than \$199 would produce net benefits, given the Project's anticipated expenditures and related guarantees. Considering the testimony of Boston Pacific, the Supplemental testimony of Wissemann, and FACW's promise to require subcontractors to commit to job creation and spending levels, the Board finds the lack of detailed explanation in the stipulation is not a bar to approving the application.

### Contingency Fund

Staff denies that the Project Stipulation demonstrates a net economic benefit to the State because the signatories propose to establish a “contingency fund” to collect an additional \$19.2 million from ratepayers. See Stip. at ¶ 10, Attachment B. The proposed contingency fund sets forth a process whereby certain project costs incurred by FACW in its attempt to “secure the maximum level of federal subsidies” will be eligible for reimbursement by ratepayers if FACW obtains insufficient federal subsidies and is unable to continue the Project. Stip. Attachment B at 1, 3. Eligible costs include, but are not limited to, “planning, designing, permitting, acquiring, construction, installing, testing, certifying, approving, financing, and otherwise developing the Project[.]” Id. at 2.

Essentially, the contingency fund embraces an “all-or-nothing” approach to the Project. It creates a mechanism “to allow the project to proceed *only* in the event *both* Federal Subsidies, the ITC and the USDOE Grant, become available to reduce the OREC Price.” (FACW Reply, supra, at 4 (emphasis in the original)). Staff highlights that the contingency fund would obligate ratepayers to reimburse FACW up to \$19.2 million even if the Project is never built. The argument continues that ratepayers will not receive any benefit from paying \$19.2 million for an abandoned project.

FACW concedes that “no benefits can accrue if a project is not constructed.” (Id. at 16.) The company argues, however, that Staff’s analysis is flawed. FACW counters that in order to calculate net benefits, the Board must assume that the Project will be built. Essentially, no project would ever be able to pass the net benefits test if it is evaluated on the presumption that the project will fail. Ibid. Even if the Board accepts FACW’s argument that the \$19.2 million should not be considered in the Board’s evaluation of the net benefits test, the question remains – on what basis should the Board assign to ratepayers the risk of the Project not receiving adequate federal subsidies?

On this point, Rate Counsel views the contingency fund as a fair solution that reduces the OREC price by \$50 million and caps ratepayers’ risk exposure at \$19.2 million. “[R]atepayers are agreeing to a low-probability maximum risk of \$19.2 million in exchange for a \$50 million OREC cost savings.” (RC Reply, supra, at 7.) “The contingency fund is therefore necessary to prevent FACW from [transferring] that risk [of not obtaining federal funds] to ratepayers through a higher OREC price.” Ibid.

Rate Counsel explains “the Stipulation was established as an innovative way to provide a ‘backstop’ to the project developer” if the company is not able to receive the Phase 2 federal grant through no fault of its own. Id. at 4. Rate Counsel emphasizes that the Stipulation requires FACW to exercise “all commercially reasonable efforts to obtain the USDOE Grant Commitments and the ITC in the maximum amount available for the Project.” Id. at 5. In describing the specific terms under which FACW may recoup money from the contingency fund, Rate Counsel states the following:

If FACW fails to continue to compete for these funds, or drops out of the DOE program, it will not be eligible for cost recovery from the Contingency Fund. Equally important, if FACW fails to deliver its Phase 1 deliverables to DOE in a timely fashion, thereby jeopardizing its potential Phase 2 funding, the project will also be ineligible for any cost recovery from the Contingency Fund. Further, if FACW fails to provide a satisfactory grant application, or is denied Phase 2 funding for any grant performance issue, it will not be eligible for cost recovery from the Contingency Fund.

Lastly, FACW will only be reimbursed for the expenses and investments it has incurred up to \$19.2 million if its Phase 2 DOE funding request is rejected.

[(RC Reply, supra, at 5-6.)]

Rate Counsel did not cite to the Cost Verification and Disbursement Process in support of the above description and the Board could not find such express terms upon its own reading of the Stipulation. There is no indication whether FACW would agree with Rate Counsel's characterization of the terms of the contingency fund. Notwithstanding, the signatories agree that the contingency fund is consistent with OWEDA because it enables the State to achieve the lowest OREC price.

The Board also notes that the Verification and Disbursement Process requires FACW to petition the Board and obtain, what the signatories described as, a "Disbursement Order" prior to collecting funds from ratepayers. The petition, described in the Stipulation as a "Verification Filing," would be subject to scrutiny by Rate Counsel and Staff for prudence, etc. See Stip. Attachment B. These safeguards, however, do not allay the Board's policy concerns.

The Board does not support a ratepayer "backstop" to protect FACW against future, possible failure to obtain a federal grant or ITC. The regulations specifically recognize the potential for tax benefits to change for any number of reasons, even due to a change in federal law. N.J.A.C. 14:8-6.5(a)(5)(iii) ("The applicant shall commit that the cost difference in the event that . . . tax benefits do not materialize for any reason including changes in tax laws, will not be made up by ratepayers . . ."). Construing the regulation, the financial consequence of not obtaining federal assistance should be borne by the developer, not ratepayers. Ibid. Accordingly, the Board **FINDS** that the contingency fund is not consistent with OWEDA.

#### **OREC Price**

In the event that the Board rejected the contingency fund, FACW asks the Board to consider an alternative pricing schedule submitted pursuant to N.J.A.C. 14:8-6.5(a)(5)(iv):

- i) Initial OREC Price of \$251/MWh;
- ii) ITC price adjustment bringing the Initial OREC Price to \$220/MWh based on receipt of the benefits of the ITC;
- iii) DOE price adjustment without the ITC, brings the Initial OREC Price to \$214/MWh based on receipt of USDOE Grant Commitments;
- iv) DOE price adjustment along with the ITC, which results in an initial OREC Price of \$187/MWh based on receipt of USDOE Grant Commitments and receipt of the benefits of the ITC.

For each tier the other terms and conditions are as set forth in Attachment A to the Stipulation, with the appropriate proportionate corresponding changes to the OREC Price.

[(FACW Reply, supra, at 5.)]

Tier 1 sets FACW's OREC Price at \$251/MWh if the company does not receive any federal subsidies. Tier 2 reduces the OREC Price to \$220/MWh if FACW receives the ITC. Tier 3 reduces the OREC Price to \$214/MWh if FACW receives the Phase 2 grant, but not the ITC.

Tier 4 reduces the price to \$187/MWh if FACW receives the ITC and the Phase 2 grant.

Rate Counsel does not support the alternative proposal because it is materially different from the Project Stipulation. The Board agrees with Rate Counsel on this issue. Only the Stipulation is before the Board for consideration. Conceptually, however, a pricing tier is one method an applicant may use to demonstrate its commitment to pass along “tax credits or other governmental benefits to ratepayers that are greater than projected” as required by N.J.A.C. 14:8-6.5(a)(5)(iv). The Board does not make any findings as to the amounts listed in the tiers.

Rate Counsel advocates for the Board to approve an OREC price of \$187/MWh, per the Project Stipulation, because FACW is in a good position to win the DOE Phase 2 grant. According to Rate Counsel, FACW’s competition for the grant – Baryonyx and Dominion – do not have commercial operation dates and they are located in states without “legislatively created offshore wind financial structures in place. The Statoil project in Maine just announced . . . that it was suspending its project due to regulatory uncertainty . . . [and] the Principle Power project has no announced commercial operation date and indicated earlier in the year that its scope of work was still undefined.” (RC Reply, supra, at 7.) For these reasons, Rate Counsel asserts that the risk to ratepayers is minimal.

FACW has acknowledged that the federal subsidies are not currently available and are quite uncertain at this point in time. (FACW Reply, supra, at 17.) “These are not subsidies that can be ‘applied for’ as of the date of this filing, nor can it presently be determined that the Project ‘will qualify for’ such subsidies.” Id. at 18. The uncertainty of the funds is not an automatic bar to their inclusion in the OREC price provided “the risk of securing the federal assistance falls on FACW, rather than New Jersey ratepayers.” See N.J.A.C. 14:8-6.5(a)(5)(iii); (BP Surrebuttal at 11:1-7.)

Although the Board strongly encourages applicants to apply for all available federal funding, N.J.S.A. 48:3-87.1(a)(4), N.J.A.C. 14:8-6.5(a)(5), it is premature for the Board to rely on FACW’s receipt of such funds at this time. Based on the information known to date, and absent the contingency fund, the company appears to propose an Initial OREC price of \$251/MWh.<sup>8</sup> Rate Counsel has not agreed to FACW’s alternative proposal, therefore, the Board **FINDS** that a settlement on the OREC price no longer exists. The Board **WILL DEFER** its decision on the initial OREC price until the parties have an opportunity to be heard on the issue.<sup>9</sup>

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<sup>8</sup> Absent federal funding and absent a contingency fund it appears that FACW would propose an initial OREC price of \$251/MWh. We note, however, that this price is lower than the amount FACW proposed in the Amended Application and the pricing tier is different than what was presented in the March 8<sup>th</sup> filing. To avoid any ambiguity, FACW should provide written confirmation concerning its proposed OREC price.

<sup>9</sup> In addition, the Amended Application lists an initial OREC price commencing on June 1, 2013, with an annual escalation of 3.5%. (FACW Testimony Exhibit 19 of Steve Gabel, Attachment 1, Section 2.2.) The Settlement Stipulation lists an initial OREC price commencing on June 1, 2012, with an annual escalation of 3.5%. Stip. Attachment A at B-1. Absent unique circumstances and compelling justification, the Board is not inclined to approve an initial OREC price for a date that precedes the commercial operation date.

### **Financing Mechanism**

Although OWEDA left the design of the financing mechanism to the discretion of the Board, the Act requires that “the financing mechanism [be] based upon the actual electrical output of the project, fairly balances the risks and rewards of the project between ratepayers and shareholders, and ensures that any costs of non-performance, in either the construction or operational phase of the project, shall be borne by shareholders[.]” N.J.S.A. 48:3-87.1(b)(1)(c).

The signatories drafted a document titled “Interim OREC Pricing Plan” attached to the stipulation as Attachment A, to describe the proposed funding mechanism. The Pricing Plan presumed an initial OREC price of \$187/MWh for EY 2013 and increased the OREC annually by 3.5% until EY 2036.

The Pricing Plan also includes procedures for OREC invoicing and administration. Neither Staff nor the EDCs took a position on the details of the invoicing and administration process. Because the Project fails to satisfy the other elements of OWEDA, it is not necessary for the Board to issue findings and conclusions on the administrative aspects of the pricing plan.

### **Financial Integrity**

The fourth criteria relates to the financial integrity of the applicant. N.J.S.A. 48:3-87.1(b)(1)(d). According to the rebuttal testimony of Wissemann, “XEMC Group is a (75) year old company that is the parent company of XEMC Manufacturing and XEMC New Energy. XEMC Group, XEMC Manufacturing, and XEMC New Energy (together, the ‘XEMC Entities’) had annual revenues of more than \$1.6 billion in 2011 . . . . XEMC Group is 100% owned by the Hunan Province and as such, provides the financial backing for XEMC in completing this project.” (FACW Rebuttal Testimony Exhibit 2, supra, at B-4 to -5.)

The Project Stipulation suggests that FACW has demonstrated “financial integrity and sufficient access to capital to allow for a reasonable expectation of completion of construction of the project” because FACW has agreed to provide construction security for the “balance of capital required to complete the Project[.]” Stip. at ¶ 12; (FACW Rebuttal Testimony Exhibit 2, supra, at B-5.) FACW estimates this balance is approximately \$61 million. Stip. at ¶ 12.

Staff agrees that a construction guarantee would provide reasonable assurances about FACW’s financial integrity. However, Staff opposes the Project Stipulation on the grounds that a \$61 million guarantee is insufficient to cover the balance of construction costs. Staff estimates that the total costs of the Project are \$120 million or more. (Staff Position Paper at 11.)

According to Staff’s expert, a construction guarantee is necessary because they “could not verify the financial capability of XEMC, the debt and equity investor in the FACW Project.” (BP Surrebuttal at 13.) Boston Pacific’s December 2012 evaluation of the project specifically stated:

In this case, we could not rely on the financial statements that were provided since they are presented based on Chinese accounting principles. During our review of the initial application we asked that these financial statements be either presented in U.S. GAAP, or be accompanied with an opinion from a global accounting firm that attests to the financial strength of these companies. In response, Applicant did not provide financial statements in U.S. GAAP, but provided letters from their auditors confirming that they had audited the 2011 financial statements



based on Chinese accounting principles. However, these letters were not sufficient to demonstrate the financial strength of these companies under U.S. GAAP. The auditor for Xiangtan Electric Manufacturing Co.<sup>82</sup>, the manufacturer of the turbines, provided a letter that only states that they conducted an audit of the 2011 financial statements. However, no information was provided about the financial strength of the company. XEMC Group was audited by Hunan Jianye CPA Company Limited. This company provided a letter indicating that they had audited the 2011 financial statements; however, the letter did not provide enough information to demonstrate the financial strength of the company. Financial statements were only provided for two contractors: Weeks Marine and DCO Energy, an affiliate of Energenics, both provided audited financial statements in U.S. GAAP. These firms, through tangible net worth calculations, demonstrate their solvency. We could not assess the financial strength of the other firms, as no financial statements were provided for them.

[Expert Report of Boston Pacific, pgs. 36-37 (December 12, 2012) (hereinafter "BP December 2012 Report")].

Boston Pacific's analysis in December 2012 and May 2013 led Staff to conclude that an escrow for the total cost of construction is necessary for FACW to demonstrate financial integrity.

Rate Counsel describes Staff's position on this issue as unreasonable because there is no statutory requirement for an applicant to provide a guarantee against the entire project cost. Rate Counsel also explains that FACW only promised to commit a guarantee against capital costs, not all project costs. See (FACW Rebuttal Testimony Exhibit 2, supra, at B-5:14-20.) Wissemann testified, "Petitioner will agree to security in the form of escrow, letter of credit or other form to be agreed upon, for the balance of the capital required to complete the Project . . ." Id. It appears that Boston Pacific interpreted this language to mean that "all of the required funds for development and construction will be provided in escrow to cover construction costs." (BP Surrebutal at 13:18-19.)

Nonetheless, FACW has clarified that the "[t]he intention of the language in the Stipulation is to cause FACW to post the balance necessary for construction – whatever that is, whether it is \$60 million or \$120 million. The sentence in which the \$61 million is referenced is not governing but simply an estimate." (FACW Reply, supra, at 7.) The Board is unaware whether Rate Counsel would agree with its interpretation of the Stipulation.

Notwithstanding, the Board **FINDS** that the plain language of this provision in the stipulation is clear. Namely, FACW will post security "for the balance of the capital required to complete the Project." Considering FACW's clarification, the Board **FINDS** that FACW has committed to funding the escrow with "the balance of funds required to complete construction . . . up to \$120 million." See (FACW Reply, supra, at 8, para (i).) The Board makes no determination as to the actual amount of funds required to complete construction.

### **Other Factors**

The signatories have provided additional information for the Board's consideration. Although the additional elements presented for the Board's consideration do not cure the deficiencies related to N.J.S.A. 48:3-87.1(b)(1), certain provisions warrant discussion.<sup>10</sup>

Concerning Paragraph 1, the procedural history, the Board rejects any notion that it received a properly filed application by FACW pursuant to N.J.S.A. 48:3-87.1 or N.J.S.A. 48:3-87.2 prior to May 19, 2011. The Board **FINDS** that any reference to a February 2011 submission is improper.

Concerning Paragraph 2, the Board **FINDS** that the project description lacks certain specific detail. The Board **ADOPTS** Staff's description of the project as stated in the Amended Application.

Paragraph 7, in part, discusses the demonstration nature of the Project. The Board understands that FACW considers a project of 25 MW to be a pilot-scale project. In addition, the Board acknowledges receipt of a letter from DOE expressing support of pilot-scale offshore wind projects.<sup>11</sup> The DOE did not offer an opinion on the merits of the FACW Project. The Board **FINDS** that N.J.S.A. 48:3-87.2 provides for no alternative (or pilot) evaluation criteria. Therefore, for the purpose of evaluating the Project, the Board will apply the standard of review as articulated in OWEDA.

Paragraph 11 indicates that FACW will fund a decommissioning escrow in the amount of \$4 million. Staff complains that this funding level is a downward departure from FACW's representation in its June 1, 2012 Amended Application that \$8 million would be an appropriate level. See (FACW Pre-Filed Direct Testimony Exhibit 13 of Chris Wissemann, at 6-7.)

FACW argued that the minimum decommissioning cost should be \$3 million and therefore, the \$4 million decommissioning fund in the Project Stipulation was sufficient. FACW also indicated that decreasing the decommissioning cost helped to achieve the \$187 OREC price. (See FACW Reply at 10-11.) Rate Counsel also points out that the decommissioning cost was reduced in similar proportion to the total cost of FACW's Original Application. Based on these specific facts and circumstances, the Board **FINDS** that the decommissioning fund is sufficient, provided FACW commit to covering the total cost of decommissioning, even if such amount is greater than \$4 million.

In Paragraph 15 of the Project Stipulation, the signatories agree that the OREC pricing plan shall not be effective until the project receives both Type A and Type B certification from Det Norske Veritas ("DNV"). Staff objected to this provision since it is contrary to Boston Pacific's recommendation that that the Board refrain from approving the Project until after FACW receives Type B certification. (BP Surrebuttal at 33, 36.) This recommendation was based upon Boston Pacific's analysis identifying the additional risk associated with a pre-commercial stage technology and partners and its finding that "with respect to partnership risk, XEMC is a much lower-profile partner than others would be. For example, other companies already have a

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<sup>10</sup> The Board's failure to specifically address any particular paragraph within the Stipulation should not be construed in favor or against the terms outlined in such paragraph.

<sup>11</sup> Letter from U.S. Department of Energy Assistant Secretary Danielson to N.J. Board of Public Utilities President Hanna and Commissioners Fiordaliso, Fox and Holden (May 1, 2013).

foothold in the extensive offshore wind developments seen in Europe." Id. at 15.

Rate Counsel opposes Staff's position and notes that if FACW were to implement Boston Pacific's recommendation to wait until receipt of the Type B certification, it would severely hamper the financing and completion of the project and would effectively nullify the FACW Project before it could begin. (RC Reply, supra, at 15-16.)

FACW believes that the terms of the Project Stipulation satisfied Staff's concerns because they would not receive an OREC payment until Type B certification is obtained and thus ratepayers would bear no risk. (FACW Reply, supra, at 11-12.) FACW also presented testimony that it is following a development pathway of "design a turbine, build operating prototypes on land, certify the turbine, build it at demonstration scale offshore and then build utility scale projects." (FACW Rebuttal Testimony Exhibit 2, supra, B-14:15-19.)

Notwithstanding the signatories' defense of the provision, FACW has proposed two alternative solutions:

1. The Board order issued in this matter would not be effective until DNV Type B certification is received; or
2. In the event that this is deemed inadequate by the Board, FACW will commit to providing DNV Type B certification by August 20, 2013 and understands that no Board Order will be issued until such occurs.

[(FACW Reply, supra, at 12.)]

The Board is concerned about the delay FACW has experienced in obtaining Type B certification and is persuaded that Boston Pacific's concerns are warranted. Specifically, more than two years have passed since FACW notified Staff of its intention to use the XEMC turbine. FACW has been aware since the time of its Initial Application that it did not have Type B certification for the XEMC turbine. Although FACW has made progress toward obtaining Type B certification, it is still pending. Given the specific facts and circumstances of the FACW application, the Board **FINDS** that Type B certification is necessary to fully evaluate the Project. Additionally, in light of FACW's representation that it will obtain Type B certification in the near future, FACW should supplement its application upon receipt. Accordingly, the Board **REJECTS** Paragraph 15 of the stipulation.

In Paragraph 17 of the stipulation, the signatories attempt to circumscribe the regulatory authority of the Board. This provision indicates that FACW will hire an IEM chosen by the Board and pay for the IEM's professional services, up to \$50,000. Staff complains that this provision is inconsistent with its expert's recommendation.

N.J.S.A. 48:3-87.1(c)(4) states, "the applicant will reimburse the board and the State for all reasonable costs incurred for regulatory review of the project, including but not limited to consulting services, oversight, inspections, and audits." Accordingly, if the Board determines that an IEM is necessary for regulatory review of the Project, FACW will be required to reimburse the Board and the State for all reasonable costs. The statute does not cap the reimbursement level or the scope of the Board's regulatory authority. Any attempt to circumscribe the Board in such manner is **DENIED** as it would violate N.J.S.A. 48:3-87.1(c)(4).

Paragraph 18 describes a process whereby FACW may change the foundation selected for the Project if such a change would increase its chances of obtaining federal funding; and,

Paragraph 19 indicates that FACW may change the turbine manufacturer if XEMC is no longer able to perform. Paragraph 19 acknowledges that Board approval is necessary for a change in technology, but requires the Board to act within 30 days of the petitioner's request. Paragraph 18 does not acknowledge that Board approval is necessary for a change in technology.

FACW's potential need to make material changes to its Project after two years of review by the Board is troubling. The application filed on May 19, 2011, contemplated three turbine manufacturers: GE, XEMC, and Siemens. In July 2011, FACW advised Staff that XEMC is its turbine of choice. In the June 2012 Amended Application, however, FACW requested the Board to review both XEMC and Siemens. Staff informed FACW that promoting two different turbine manufacturers was essentially equivalent to asking the Board to review two different applications and Staff insisted that FACW select which technology it desired the Board to review. In September 2012, FACW confirmed that it desired the Board to evaluate the XEMC technology.

Through this Project Stipulation, FACW advises the Board that it may need to change turbine manufacturers again. The repeated back-and-forth concerning turbine manufacturer fails to instill confidence in the viability of this Project. Nonetheless, the Board acknowledges that under N.J.A.C. 14:8-6.5(a)(2)(ii) "[f]or 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." The Board also acknowledges that a change in turbine manufacturer in this case would likely materially impact the financing structure due to XEMC's role in debt and equity financing of the Project.

Applying N.J.A.C. 14:8-6.5(a)(2)(ii), FACW may update its equipment, subject to Board approval. The statute does not place a time period for the Board's review of such requests, and the Board rejects FACW's attempt to impose one. Therefore, Paragraphs 18 and 19 are denied to the extent they eliminate Board approval for a change in technology or otherwise require Board action within a set period of time.

Paragraph 20 designates the Project as a qualified offshore wind project and is **DENIED** for the reasons set forth herein.

Paragraph 21 is approved to the extent that it states the term of the OREC order is twenty years from the commercial operation date. This provision is **DENIED** in all other respects.

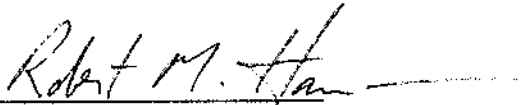
CONCLUSION


For the above reasons, the Board is satisfied the Project Stipulation does not meet the standard for a qualified offshore wind facility pursuant to N.J.S.A. 48:3-87.1. As of this point there is no resolution of the underlying Amended Application. In order to resolve the dispute in a timely manner, the presiding officer may set a hearing schedule for the parties to litigate their positions. If FACW desires to proceed on the papers in lieu of a hearing, FACW shall advise the Board in writing within ten (10) days of the effective date of this Order.

This order shall be effective on July 30, 2013.

DATED: 7/29/13

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

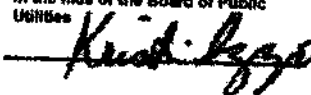
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

ATTEST:  
  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities  


IN THE MATTER OF THE PETITION OF FISHERMEN'S ATLANTIC CITY WIND FARM, LLC  
FOR THE APPROVAL OF THE STATE WATERS PROJECT AND AUTHORIZING OFFSHORE  
WIND RENEWABLE ENERGY CERTIFICATES – REQUEST FOR EXTENSION OF TIME FOR  
APPLICATION REVIEW  
DOCKET NO. EO11050314V

SERVICE LIST

**BOARD OF PUBLIC UTILITIES**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
PO Box 350  
Trenton, NJ 08625-0350

Kristi Izzo, Secretary  
[Kristi.Izzo@bpu.state.nj.us](mailto:Kristi.Izzo@bpu.state.nj.us)

Mark Beyer, Chief Economist  
Office of the Economist  
[mark.beyer@bpu.state.nj.us](mailto:mark.beyer@bpu.state.nj.us)

Jerome May, Director  
Division of Energy  
[Jerome.May@bpu.state.nj.us](mailto:Jerome.May@bpu.state.nj.us)

Tricia Caliguire, Esq., Chief Counsel  
Counsel's Office  
[Tricia.Caliguire@bpu.state.nj.us](mailto:Tricia.Caliguire@bpu.state.nj.us)

Jacob Gertsman, Esq., Legal Specialist  
Counsel's Office  
[Jake.Gertsman@bpu.state.nj.us](mailto:Jake.Gertsman@bpu.state.nj.us)

Michael Winka, Director  
Office of Clean Energy  
[m.winka@bpu.state.nj.us](mailto:m.winka@bpu.state.nj.us)

Anne Marie McShea  
Office of Clean Energy  
[a.mcshea@bpu.state.nj.us](mailto:a.mcshea@bpu.state.nj.us)

**RATE COUNSEL**

140 East Front Street 4th Floor  
P.O. Box 003  
Trenton, N.J. 08625-003

Stefanie Brand, Esq., Director  
Division of the Rate Counsel  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Felicia Thomas-Friel, Esq.  
[ftthomas@rpa.state.nj.us](mailto:ftthomas@rpa.state.nj.us)

Henry M. Ogden, Esq.  
[hogden@rpa.state.nj.us](mailto:hogden@rpa.state.nj.us)

**Acadian Consulting Group**  
5800 One Perkins Place Drive  
Building 5, Suite F  
Baton Rouge, LA 70808

David Dismukes, Consulting Economist  
[dismukes@lsu.edu](mailto:dismukes@lsu.edu)

**CITY OF ATLANTIC CITY**

1301 Bacharach Blvd.  
Suite 704  
Atlantic City, NJ 08401

Rhonda Williams  
City Clerk

**DEPARTMENT OF LAW & PUBLIC SAFETY,  
DIVISION OF LAW, PUBLIC UTILITIES**

124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, NJ 07101

Marisa Slaten  
Deputy Attorney General  
[marisa.slaten@dol.lps.state.nj.us](mailto:marisa.slaten@dol.lps.state.nj.us)

Alex Moreau  
Deputy Attorney General  
[Alex.Moreau@lps.state.nj.us](mailto:Alex.Moreau@lps.state.nj.us)

Veronica Beke  
Deputy Attorney General  
[veronica.beke@dol.lps.state.nj.us](mailto:veronica.beke@dol.lps.state.nj.us)

**PETITIONER**

Fishermen’s Atlantic City Windfarm, LLC  
985 Ocean Drive  
Cape May, New Jersey 08204

Daniel Cohen  
President  
(609) 425-1044  
(609) 884-3261 Fax  
[daniel.cohen@fishermensenergy.com](mailto:daniel.cohen@fishermensenergy.com)

Paul Gallagher, Esq.  
General Counsel  
(609) 226-7206  
(609) 884-3261 Fax  
[gallagherlaw@hotmail.com](mailto:gallagherlaw@hotmail.com)

**PETITIONER OREC COUNSEL**  
Inglesino, Pearlman, Wyciskala, & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054-3715  
(973) 947-7111  
(973) 887-2700 (fax)

Stephen B. Pearlman, Esq.  
(973) 947-7133  
[spearlman@iandplaw.com](mailto:spearlman@iandplaw.com)

Justin A. Marchetta, Esq.  
(973) 947-7163  
[jmarchetta@iandplaw.com](mailto:jmarchetta@iandplaw.com)

**PETITIONER OREC ADVISOR**  
Gabel Associates  
417 Denison St.  
Highland Park, New Jersey 08904  
(732) 296-0770  
(732) 296-0799 (fax)

Steven Gabel, President  
(732) 296-0770  
[steven.gabel@gabelassociates.com](mailto:steven.gabel@gabelassociates.com)

**FOR ATLANTIC CITY ELECTRIC COMPANY**

Philip J. Passanante, Esq.  
Associate General Counsel  
Atlantic City electric Company  
500 North Wakefield Drive – 92DC42  
PO Box 6066  
Newark, Delaware 19714-6066

**FOR JERSEY CENTRAL POWER & LIGHT COMPANY**

Marc B. Lasky, Esq.  
Gregory Eisenstark, Esq.  
Morgan, Lewis & Bockius, LLP  
89 Headquarters Plaza North, Suite 1419  
Morristown, NJ 07960

Lawrence E. Sweeny  
Kevin Connelly  
Tom Donadio  
Jersey Central Power and Light Company  
300 Madison Ave  
Morristown, NJ 07962

Arthur E. Kotkosz, Esq.  
FirstEnergy Corp.  
76 S. Main Street  
Akron, OH 44308

**FOR PUBLIC SERVICE ELECTRIC AND GAS COMPANY**

Alexander C. Stern, Esq.  
Assistant General Regulatory Counsel  
PSEG Services Corporation  
80 Park Plaza T5G  
Newark, NJ 07102  
[Alexander.Stern@pseg.com](mailto:Alexander.Stern@pseg.com)

**FOR ROCKLAND ELECTRIC COMPANY**

Susan J. Vercheak, Esq.  
Assistant General Counsel  
c/o Consolidated Edison Company of New York, Inc.  
Law Department, Room 1815-S  
4 Irving Place  
New York, NY 10003

INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054  
(973) 947-7111  
Attorneys for Petitioner,  
Fishermen's Atlantic City Windfarm, LLC

IN RE PETITION OF FISHERMEN'S  
ATLANTIC CITY WINDFARM, LLC FOR  
THE APPROVAL OF THE STATE WATERS  
WIND PROJECT AND AUTHORIZING  
OFFSHORE WIND RENEWABLE ENERGY  
CERTIFICATES

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

BPU Docket No.: EO11050314V

STIPULATION

With respect to this matter, having been opened to the New Jersey Board of Public Utilities (the "*Board*") by way of Petition of Fishermen's Atlantic City Windfarm, LLC, as Petitioner ("*FACW*" or the "*Petitioner*"), the Signatory Parties (as hereinafter defined) do hereby join in recommending that the Board issue a final Decision and Order (hereinafter defined as the OREC Order) approving this "Stipulation" and the recommendations made herein (including attachments, the "*Stipulation*"). In furtherance thereof, it is hereby stipulated and agreed by and between FACW and the New Jersey Division of Rate Counsel ("*Rate Counsel*" and together with FACW, the "*Signatory Parties*") by way of this Stipulation, that:

1. **Procedural History.** FACW has provided certain information to the Board in an effort to obtain an offshore wind renewable energy certificate ("*OREC*") order ("*OREC Order*") to build a wind farm (as further detailed in section 2 below, the "*Project*") off the coast of Atlantic City, New Jersey (the "*State*"). On May 19, 2011, FACW submitted that certain "Verified Petition" (the "*May 2011 Verified Petition*") to the Board, which was supplemented, following a June 2, 2011 letter from the Board, by two (2) responses dated June 8, 2011 (the "*First Response to the June 2, 2011 Board Letter*"), and June 14, 2011 (the "*Second Response to*



the June 2, 2011 Board Letter,” and together with the First Response to the June 2, 2011 Board Letter, the May 2011 Verified Petition and the February 2011 Verified Petition, the “*Original Application*”). FACW’s Original Application was deemed administratively complete as of June 14, 2011.

A period of discovery followed, during which time the Board ordered, and FACW consented to, several extensions of the time to review the Original Application. The Board’s review period was set to expire on December 11, 2011, pursuant to N.J.A.C. 14:8-6.3 and 6.4. By letter dated November 23, 2011, FACW consented to an additional sixty (60) days of review to February 8, 2012. By letter dated December 13, 2011, FACW consented to an additional extension to March 21, 2012, which was so ordered pursuant to Board Order dated December 15, 2011, pursuant to which the Board also granted a motion to intervene by Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric & Gas Company and Rockland Electric Company, as electric distribution companies (including their successors and assigns operating in New Jersey, the “*EDCs*”). By letter dated February 6, 2012, FACW consented to an additional extension of time to review to April 11, 2012, which was so ordered pursuant to Board Order dated February 10, 2012.

By letter dated March 2, 2012, FACW requested an additional extension of the review period until October 31, 2012, which was so ordered pursuant to Board Order dated March 12, 2012. The Board also ordered that FACW submit an amended application to the Board on or before April 20, 2012, having noted FACW’s consent to submit such application “in order to respond to the evaluation reports by Boston Pacific Company, the Board’s consultant, and Acadian Consultants, consultant for the Division of Rate Counsel.” Pursuant to Board Order dated April 12, 2012, the Board extended (i) the deadline for the amended application to June 1,

2012, and (ii) the review period to consider the amended application to December 31, 2012. On June 1, 2012, FACW filed the amended application with the Board (the "*Petition*"). All capitalized terms not defined herein shall have the meaning ascribed to them in the *Petition*. The *Petition* includes Pre-Filed Direct Testimony Exhibits 1 through and including 24, and 26 through and including 27, as well as Rebuttal Testimony Exhibits 1 through and including 9, all of which are part of the record in this matter. FACW, Board Staff, Rate Counsel, and the EDCs have stipulated to the record for this matter by entering into that certain "*Trial Record Stipulation*" dated June \_\_, 2013 (the "*Trial Record Stipulation*"). Pursuant to N.J.A.C. 14:8-6.5, the Signatory Parties agree that FACW's *Petition* is complete.

Throughout the course of this proceeding, FACW, Rate Counsel and Board Staff have served and responded to numerous discovery requests. Provided the request was served after June 1, 2012, and pursuant to the *Trial Record Stipulation*, these discovery requests are part of the record in this matter (specifically, this includes requests and responses to RCR-PF2-1 through and including RCR-PF2-235, NJBPU-ECON-17 through and including NJBPU-ECON-38, FACW-BPU-1 through and including FACW-BPU-54, and FACW-RC-1 through and including FACW-RC-125). Pursuant to the procedural schedule, on December 17, 2012, expert reports were filed with the Board. Rebuttal Testimony Exhibits 1 through and including 9 were filed on March 25, 2013, and surrebuttal testimony was filed on May 8, 2013. Pursuant to the *Trial Record Stipulation*, these reports and additional testimony are also part of the record.

In addition to the aforementioned extension orders, the Board also appointed Board President Robert M. Hanna as the presiding officer in this matter by Order dated January 18, 2012. President Hanna thereafter issued an initial prehearing scheduling Order on February 15, 2012, and additional prehearing Orders amending the schedule on August 28, 2012, October 24,

2012, November 30, 2012, March 7, 2013, and April 18, 2013. As set forth in the most recent amended prehearing Order dated April 18, 2013, the Parties have consented to extend the deadline for Board action to July 31, 2013.

2. **Project Description.** The Project being proposed for approval is a wind turbine farm composed of five turbines (totaling twenty-five megawatts (25MW)) located approximately 2.8 miles from the shore of Atlantic City. The proposed turbine is an XEMC Darwind with one hundred fifteen (115) meter blades. The Project is fully permitted with permits from the United States Army Corps of Engineers, New Jersey Department of Environmental Protection, National Oceanic and Atmospheric Administration, and Federal Aviation Administration, and an easement and license to cross from Atlantic City, New Jersey and the South Jersey Transportation Authority, respectively. FACW has provided numerous materials on the Project, all of which are part of the record in this proceeding pursuant to the Trial Record Stipulation. Submitted Project materials include: substantial details regarding the configuration of the turbine array, the foundation, the location of cable and balance of system equipment, and a description of points of interconnection; a detailed implementation plan and schedule that highlights key milestone activities and completion dates during the permitting, financing, design, equipment solicitation, manufacturing, shipping, assembly, in-field installation, testing, equipment commissioning, and service start-up; an agreement with the turbine manufacturer/supplier to supply the selected turbines; a declaration from the foundation manufacturer/supplier that states their ability to manufacture and deliver all foundation components within the targeted schedule; a declaration from the undersea cable manufacturer/supplier that states their ability to manufacture and deliver all undersea cable components within the targeted schedule; a letter of intent or memorandum of understanding from the proposed engineering, procurement, and

construction (EPC) firm, balance of plant (BOP) contractor, and key construction contractors or vendors; and a demonstration of FACW's experience.

3. **The Petition Meets the Regulatory and Filing Requirements.** The Signatory Parties agree that FACW's Petition has satisfied the application filing requirements set forth in (i) Section 3(a) of the New Jersey Offshore Wind Economic Development Act, N.J.S.A. 48:3-87.1, *et seq.* ("**OWEDA**"), codified at N.J.S.A. 48:3-87.1(a) and (ii) the accompanying regulations promulgated by the Board and set forth in N.J.A.C. 14:8-6.5.

4. **The Project Complies with Section 4 of OWEDA.** FACW has satisfied Section 4 of OWEDA, codified at N.J.S.A. 48:3-87.2. Specifically, the Project constitutes a qualified wind energy project located in State territorial waters 2.8 miles offshore of Atlantic City, New Jersey, a municipality in which casino gaming is authorized, and is not more than twenty-five megawatts (25 MW) in nameplate capacity. The Signatory Parties agree that FACW has the option to reduce the size of the Project, but may not increase the size of the Project.

5. **The Project Meets the Standards under Section 3(b) of OWEDA.** The Signatory Parties agree that FACW has satisfied the following elements of OWEDA, and therefore, no triable issue of material fact exists thereon:

a. **Energy Master Plan.** Pursuant to N.J.S.A. 48:3-87.1(b)(1)(a), the Petition is consistent with the New Jersey Energy Master Plan (the "**EMP**"), adopted pursuant to section 12 of P.L.1977, c. 146 (codified at N.J.S.A. 52:27F-14), and in effect at the time the Board is considering the Petition. The EMP notes the State's commitment to the development of offshore wind projects in the State, and requires that such projects provide net economic benefit to the State, which the Signatory Parties have stipulated to under Section 5(b) hereof.

b. **Net Benefit.** FACW's net benefit analysis, as set forth in the record for this matter pursuant to the Trial Record Stipulation, demonstrates that the Project will provide positive economic and environmental net benefits to the State pursuant to N.J.S.A. 48:3-87.1(b)(1)(b).

c. **Financing Mechanism.** FACW's financing mechanism is based upon the actual electrical output of the Project, fairly balances the risks and rewards of the Project between ratepayers and shareholders, and ensures that any costs of non-performance, in either the construction or operational phase of the Project, shall be borne by shareholders of FACW, all pursuant to N.J.S.A. 48:3-87.1(b)(1)(c).

The Board is in the process of developing a uniform set of procedures for the imposition, billing, collection, and disbursement of ORECs pursuant to OWEDA (the "*Board OREC Plan*"). Prior to the adoption and implementation of the Board OREC Plan, and as a necessary condition to commence financing the Project, FACW and Rate Counsel agree to, and request that the Board approve, the provisions of an interim OREC pricing plan, (as attached hereto as RC-FACW Stipulation Attachment A, the "*Interim OREC Pricing Plan*"). The Interim OREC Pricing Plan is based upon the OREC Pricing Plan, as originally submitted as Attachment 1 to Testimony Exhibit 19 of the Amended Application dated June 1, 2012, and adjusted hereby with the consent of Rate Counsel to provide for (i) an Initial OREC Price of \$187 and (ii) the removal of the Debt Interest Rate Adjustment, the Environmental Curtailment Adjustment, and Section 6.3 components set forth in the original submission.

The Signatory Parties recommend that the Interim OREC Pricing Plan shall be in effect for this Project unless and until the final Board OREC Plan is adopted and made effective by the Board to at least one other offshore windfarm in commercial operation under OWEDA, at which

time without any further action the terms and conditions of the Interim OREC Pricing Plan shall continue, subject to the oversight administration provided in the final Board OREC Plan. The actions of the OREC Invoice Administrator shall be subject to the direction and/or oversight, as applicable, of the entity charged with administrative oversight in the final Board OREC Plan, so long as the terms and conditions of the Interim OREC Pricing Plan shall remain in effect.

The OREC Price is based on the costs of the Project as detailed in the Petition and, once set, is known and can be forecasted such that FACW cannot receive a "pass through" of cost overruns, and is only paid for the actual amount of energy produced.

Risks of nonperformance of the Project are borne by the Petitioner in that Petitioner is only paid for an OREC when it generates a megawatt hour; i.e. the number of ORECs available to FACW is tied to the output of the Project. Thus, if the Project never performs, FACW will not be paid.

d. **Financial Integrity.** The Signatory Parties agree that FACW has demonstrated financial integrity and sufficient access to capital to allow for a reasonable expectation of completion of construction of the project pursuant to N.J.S.A. 48:3-87.1(b)(1)(d). This is especially the case in light of FACW's agreement to provide construction security as described in Section 12 hereof.

6. **The Project Meets Statutory Conditions of Section 3(c) of OWEDA.** The Signatory Parties agree that FACW's Petition has demonstrated compliance with the following statutory conditions, all of which are contained in Section 3(c) of OWEDA, codified at N.J.S.A. 48:3-87.1(c):

a. No OREC shall be paid until electricity is produced by the Project;

- b. ORECs shall be paid on the actual electrical output of the Project that is delivered into the transmission system of the State;
- c. Ratepayers and the State shall be held harmless for any cost overruns associated with the Project; and
- d. FACW has to date and will continue to reimburse the Board for all reasonable costs incurred for regulatory review of the Project.

7. Consideration of other elements as the Board deems appropriate. FACW has addressed additional areas of consideration pursuant to N.J.S.A. 48:3-87.1(b)(2)(b), to the Board and Rate Counsel, as set forth in subsections (a) and (b) of this Section.

a. Adequate Management. The Project has assembled a management and professional services team that is adequate to plan, finance, construct and operate the Project.

b. Demonstration Nature of the Project. If approved, the Project may be the first offshore wind farm in operation in the United States, providing, on a pilot scale, an opportunity to evaluate certain environmental, construction, operational and financial issues.

8. OREC Price & Schedule. The Signatory Parties agree that prior to the adoption, effective date and applicability to this Project of the Board OREC Plan, or through the Term as applicable, the Interim OREC Pricing Plan is just and reasonable and should be approved, subject to the provisions of Section 5(c) of this Stipulation.

According to Interim OREC Pricing Plan, the OREC Price is a fixed price (with fixed annual inflation adjustments), whereby all cost overruns that FACW may incur will not subsequently cause an increase in the OREC Price, and therefore shall be borne by FACW, and not ratepayers. FACW will only be paid ORECs for power produced, thus all performance risk is

borne by FACW under this OREC financing mechanism, fully insulating New Jersey ratepayers from such risk.

The Signatory Parties also agree that the OREC Pricing Plan provides transparency for the Petitioner, EDCs, and electric suppliers during the transaction of ORECs under the OREC Pricing Plan.

9. Treatment of Potential USDOE Grant Funds and ITC. Consistent with the requirements of Section 3(a) of OWEDA, FACW's Petition includes a description and estimate of state and federal tax benefits that may be associated with the Project, as well as documentation that FACW has applied for all eligible federal funds and programs available to offset the cost of the Project including grant monies from the USDOE awarded under the National Offshore Wind Strategy, jointly propounded by the Secretaries of Energy and Interior (the "*USDOE Grant*"). All economic benefits from the federal investment tax credit ("*ITC*") and USDOE Grants inure to the benefit of ratepayers, net of Compliance Costs (as defined in the Verification Process), which are reflected in the OREC Price as set forth in Section 8 hereof.

10. Contingency Fund to Facilitate Obtaining or Realizing USDOE Grant and ITC monies. Consistent with the goal of achieving the lowest OREC Price, the Signatory Parties have agreed on a process to achieve maximum financial support from the federal government through the realization of both the federal ITC and a USDOE Grant. In order to achieve both forms of federal support to the benefit of ratepayers, FACW must make certain investments, commencing in 2013, to ensure that the Project can qualify for the ITC. These investments must be expended prior to certainty as to whether, and in what amount, the USDOE Grant will be awarded. As such, the Signatory Parties have agreed to a mechanism by which certain costs incurred by FACW, during the time period from issuance of an OREC Order through the



USDOE Grant decision, will be reimbursed in the event the Federal subsidies are insufficient to allow the Project to be developed, with such costs subject to review by Rate Counsel and the Board. Accordingly, the Signatory Parties, as a material inducement to entering into the Stipulation agree and are required to be bound by, the terms and conditions of the "Cost Verification and Disbursement Process" (the "*Verification Process*") in its entirety, as set forth in RC-FACW Stipulation Attachment B. The Board, through its adoption of the OREC Order, and the EDCs, under the jurisdiction of the Board, which pursuant to the OREC Order shall have obligated itself to enforce the provisions thereof relative to the EDCs, shall be bound by the terms and conditions of the Verification Process in its entirety.

11. **Abandonment and Decommissioning Escrow Fund.** The Signatory Parties agree that FACW will fund an abandonment and decommissioning escrow fund, in the amount of \$4 million, for decommissioning after completion of its useful life or in the event that the Project completely fails (the "*Abandonment and Decommissioning Escrow Fund*"). The Abandonment and Decommissioning Escrow Fund will be fully funded by FACW upon commencement of installation of turbine foundations (the "*Commencement of Offshore Construction*") in an escrow account at U.S. Bank, National Association, or equivalent. Upon the occurrence of an Abandonment & Decommissioning Event or Failure (as hereinafter defined), the State shall notify FACW of such Abandonment & Decommissioning Event or Failure in writing within thirty (30) days (the "*Abandonment & Decommissioning Failure Notice*") at FACW's corporate offices listed herein. If FACW has not cured or provided a written plan reasonably acceptable by the State to cure such Abandonment & Decommissioning Event or Failure within sixty (60) days of receipt of the Abandonment & Decommissioning Failure Notice, the State shall immediately have access to the monies in the Abandonment and Decommissioning Escrow Fund. The

occurrence of one of the below events shall constitute an "*Abandonment & Decommissioning Event or Failure*":

a. **Failure to complete construction:** In the event FACW commences offshore construction, but, subject to force majeure events which shall toll the period, FACW does not have fully erected foundations, towers, and turbines within eighteen (18) months of Commencement of Offshore Construction, the State or its designated agents may draw upon the Abandonment and Decommissioning Escrow Fund for decommissioning. For purposes of this Section 11, toll the period shall mean the requisite additional time to allow the parties to be in a comparable position as they were immediately prior to the force majeure event, given the impact of the force majeure event, at which point any time limits resume.

b. **Constructed but failure to operate:** In the event the Project is fully constructed, but, subject to force majeure events which shall toll the period, fails to produce power for a period of twelve (12) consecutive months following completion of construction, the State or its designated agents may draw upon the Abandonment and Decommissioning Escrow Fund for decommissioning.

c. **Operational failure:** In the event the Project fails to produce power for twelve (12) consecutive months during the twenty-year OREC period, subject to force majeure events which shall toll the period, the State or its designated agents may draw upon the fund for decommissioning.

d. **End of twenty-year commercial operation:** In the event the Project ceases operation at the end of the twenty-year OREC period and, subject to force majeure events which shall toll the period, fails to produce power for a period of twelve (12) months with no

demonstrable plan for decommissioning or repowering, the State or its designated agents may draw upon the Abandonment and Decommissioning Escrow Fund for decommissioning.

Prior to disbursement of funds from the Abandonment and Decommissioning Escrow Fund, the designated banking institution may invest such monies in debt or demand obligation securities of or guaranteed by the United States of America, the State, or any other investment grade obligation as determined by a national rating agency and approved in writing by the Board or its designee. If no Abandonment & Decommissioning Event or Failure occurs, FACW reserves the right to recall the full \$4 million of the Abandonment and Decommissioning Escrow Fund, plus interest, upon commencement of decommissioning by FACW.

**12. Project to Provide Construction Escrow Amount to Demonstrate Financial wherewithal to complete construction.** FACW will provide security in the form of escrow or letter of credit at the option of FACW for the balance of the capital required to complete the Project thirty (30) days prior to Commencement of Offshore Construction, net of costs already incurred as of that date. The estimated amount of this balance is approximately sixty-one million dollars (\$61,000,000). FACW will select a state or federally chartered banking institution to issue the escrow or letter of credit with a long term investment grade rating as determined by a national rating agency with notice in writing to the Board and Rate Counsel, to confirm and/or issue the escrow or letter of credit at the option of FACW. These escrowed funds or letter of credit shall be accessible and drawn by FACW or its designee, and shall be subject to commercially standard disbursement terms.

**13. Project to provide contractual commitment to back-up economic benefits.** FACW will incorporate a provision in its contracts with third party contractors, contractually committing its construction, operations and maintenance contractors to specified New Jersey spending levels.

14. **Jurisdiction.** FACW consents that it shall be subject to the jurisdiction of both federal and State courts of the United States of America. FACW will execute a separate instrument with XEMC to gain its consent to be subject to the jurisdiction of both federal and State courts of the United States of America.

15. **Approval Subject to Achieving Certain certifications.** The OREC Pricing Plan attached hereto as RC-FACW Stipulation Attachment A shall not be effective until the Project receives Type A and Type B certification from Det Norske Veritas ("*DNV*").

16. **Project to provide certain turbine designs into escrow.** Consistent with Boston Pacific's recommendations, FACW shall ensure that XEMC places its design and related information in escrow for the life of the Project to be accessed by FACW as needed.

17. **Independent Engineering Monitor to Review Certification.** Consistent with Boston Pacific's recommendations, an independent engineering monitor ("*IEM*") will verify that FACW's turbine vendor certifications have been obtained, will conduct a progress review of progress made toward DNV Type B certification concluding ninety (90) days after the Board OREC Order, and will conduct a second review of progress made toward DNV Type A certification concluding no later than March 2015. FACW will be responsible for the full cost of such monitoring by an IEM up to a cap of fifty thousand dollars (\$50,000), which IEM shall be chosen by the Board.

18. **Foundation Selection.** To increase the chances of obtaining USDOE funding, FACW shall select the most appropriate foundation to be used by the Project (either jacket or monopole), provided the foundation selected is properly certified for the Project location by either American

Bureau of Shipping (“ABS”) or DNV, consistent with Boston Pacific’s recommendation that an independent agency certify the foundations.

19. **Turbine Vendor.** In the event XEMC is not able to deliver turbines under the conditions set forth in the Petition, FACW will notify the Board and Rate Counsel immediately of such inability and of its intention to use a functionally equivalent Siemens turbine for the Project at no additional cost to ratepayers. In the event such a functionally equivalent turbine is required, FACW will ensure the Project remains within the statutory requirements of no greater than twenty-five (25) megawatt nameplate capacity and no greater than six (6) turbines. The Signatory Parties recommend that the Board approve or refuse such Siemens turbine as the functional equivalent of the XEMC Optimized Turbine within thirty (30) days of receipt of such notice, which approval shall not be unreasonably withheld.

20. **Approval as Qualified Offshore Wind Project.** The Project is a qualified offshore wind project as defined in N.J.S.A. 48:3-51(3).

21. **Term of OREC Order.** The term of the OREC Order shall commence upon issuance and remain in effect for twenty (20) years from the Commercial Operation Date, as defined in the Interim OREC Pricing Plan, and, subject to Section 5(c) of this Stipulation, as may be adjusted in the Board OREC Plan (the “Term”).

22. **Requirement of BGS and Electric Power Suppliers to Purchase ORECs.** The Signatory Parties agree and recommend to the Board that a requirement of the OREC Order shall be that basic generation service providers (“BGSs”) and electric power suppliers, as a condition of their licensure and participation in the State power market, shall purchase ORECs pursuant to the Interim OREC Pricing Plan, or the Board OREC Plan, as applicable, for its approved Term as

contemplated by OWEDA. The Signatory Parties agree and recommend to the Board that this OREC purchase requirement shall be enforced by the Board, and that FACW's lending institutions shall be third party beneficiaries entitled to enforce their rights, independent of FACW's rights, under the OREC Order.

23. EDCs to provide sales and invoicing information to the Project. The Signatory Parties agree and recommend to the Board that, in order to implement the Interim OREC Pricing Plan and the Board OREC Plan, as applicable, the Board shall include in its OREC Order the power to order and enforce the EDCs to provide the OREC Invoicing Administrator (referred to in the original OREC Pricing Plan as the Producer Account, so defined in the Interim OREC Pricing Plan, and the functional equivalent of same as to be set forth in any Board OREC Plan, the "*OREC Invoicing Administrator*") with all necessary sales and invoicing information of electric power suppliers and suppliers providing basic generation service on a timely, monthly basis and to otherwise coordinate with FACW and the OREC Invoicing Administrator as needed.

24. Consent Required for OREC Order Modification. Pursuant to Section 3(e) of OWEDA, codified at N.J.S.A. 48:3-87.1(c), it is the intent of the Signatory Parties that the OREC Order issued by the Board shall not be amended or modified by subsequent Board Orders or other actions without the consent of FACW and Rate Counsel. Upon the enactment of any such subsequent Board Order in violation of this provision, the Parties may pursue all appropriate remedies.

25. Stipulation Approval as Whole or Reservation of Signatory Party Rights. This Stipulation represents a balancing of interests and contains independent provisions. In the event that any particular provision of the stipulation is not accepted and approved in its entirety by the

Board, any Signatory Party aggrieved thereby shall have the right to litigate all issues addressed herein to conclusion.

It is the intent of the Signatory Parties that the provisions hereof be approved by the Board as being in the public interest. The Signatory Parties further agree that they consider the Stipulation binding on them for all purposes herein.

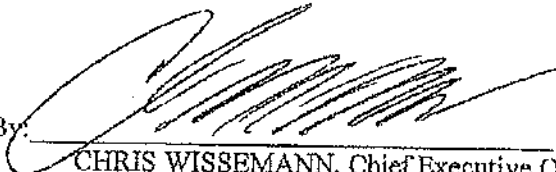
It is specifically understood and agreed that this Stipulation represents a negotiated agreement made exclusively for the FACW proceedings. Except as expressly provided herein, the Signatory Parties shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein, in total or by specific item. The Signatory Parties further agree that this Stipulation is not binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

26. Recommendations. The Signatory Parties respectfully request that the Board incorporate in the OREC Order, express, implied or by whatever other manner, the terms, conditions, and other provisions of this Stipulation.

27. Counterparts. This Stipulation may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

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FISHERMEN'S ATLANTIC CITY WINDFARM, LLC  
1616 Pacific Avenue  
Atlantic City, New Jersey 08401

By:   
CHRIS WISSEMAN, Chief Executive Officer

NEW JERSEY DIVISION OF RATE COUNSEL

By: \_\_\_\_\_  
STEFANIE A. BRAND  
Director, N.J. Division of Rate Counsel

Date: June 27, 2013



FISHERMEN'S ATLANTIC CITY WINDFARM, LLC  
1616 Pacific Avenue  
Atlantic City, New Jersey 08401

By: \_\_\_\_\_  
CHRIS WISSEMAN, Chief Executive Officer

NEW JERSEY DIVISION OF RATE COUNSEL

By: Stefanie A. Brand  
STEFANIE A. BRAND  
Director, N.J. Division of Rate Counsel

Date: June 27, 2013

**RC-FACW Stipulation Attachment A**

Attach Interim OREC Pricing Plan, as amended to reflect Initial OREC Price of \$187

## SETTLEMENT DOCUMENT

### OREC PRICING PLAN POLICIES, GOALS & MECHANICS

#### ARTICLE I

##### OVERVIEW and TRANSITION

###### Section 1.1 Overview.

This FACW "OREC Pricing Plan" is designed to protect ratepayers and permit the Project to be paid for ORECs it produces.

(a) The OREC Pricing Plan is based on the review of the OSW Project as approved by the Board. FACW will only be paid for the actual amount of energy produced by the OSW Project once the OSW Project has attained its Commercial Operations Date, as verified by an Authorized Officer of FACW who shall certify that, at a minimum, all of the OSW Project has been constructed in accordance with the plans and specifications as represented before the Board for OSW Project approval.

(b) The OREC Pricing Plan will be administered by an independent OREC Invoicing Administrator. The purpose of the OREC Invoicing Administrator is to independently administer the timely payment of OREC revenues to FACW and credit Energy Revenues and Capacity Revenues generated by the OSW Project to ratepayers.

(c) The OREC Invoicing Administrator will supervise the payment of revenues into, and out of, the OREC Administrative Account for each year included in the Term of the OREC Pricing Plan. FACW will receive OREC Revenues, and must operate its OSW Project under the agreed upon OREC Prices. Energy Revenues, Capacity Revenues, and OREC Revenues, or any other future revenue stream that may value the environmental attributes of the OSW Project, constitute the entire domain of Revenues from the OSW Project, and are allocated between ratepayers and FACW as defined in this OREC Pricing Plan.

###### Section 1.2 Future Changes in Regulation of Centralized OREC Revenue Collections and Administration.

The OSW Project constitutes a qualified offshore wind project as defined in OWEDA. The framework established in this OREC Pricing Plan will serve as the sole mechanism for transferring ratepayer-supported funding to FACW until such time as the

Board establishes a rule for a comparable OREC pricing administrative mechanism that applies to all New Jersey OSW projects, including those located in federal waters. Upon the establishment of such a rule and its applicability to at least one other offshore windfarm in commercial operation under OWEDA, the actions of the OREC Invoice Administrator shall be subject to the direction and/or oversight, as applicable, of the entity charged with administrative oversight in the final Board plan established by such rule, provided that the terms and conditions of this OREC Pricing Plan shall remain in effect.

**ARTICLE II**  
**DEFINITIONS**

**Section 2.1 Definitions**

The following defined terms shall have the respective meanings for the OREC Pricing Plan:

**"Authorized Officer"** shall mean its President, its Chief Operating Officer, and any other officer of FACW authorized by FACW to act or execute documents on behalf of FACW.

**"BGS"** shall mean basic generation service.

**"BGS Providers"** shall mean suppliers awarded BGS supply contracts under the BPU process for designating suppliers to utilities of BGS.

**"BPU"** or **"Board"** shall mean the New Jersey Board of Public Utilities.

**"Business Day"** shall mean, any day other than (i) a Saturday, Sunday or legal holiday, or a day on which banking institutions located in the municipality in which the principal office of the Lender or the Lender's trustee is located, are closed, (ii) a day on which the corporate trust department of the OREC Invoicing Administrator is closed, or (iii) a day on which the New York Stock Exchange is closed.

**"Capacity Revenues"** shall mean the amounts paid to FACW for the sale of capacity in kilowatt or megawatt terms from the OSW Project. These capacity sales can occur in PJM-based markets or through bilateral trades between FACW and any other party. Capacity Revenues will be used as a revenue credit to ratepayers against their financial costs paid to support the OSW Project.

**"Commercial Operations Date"** or **"COD"** shall mean the date of commencement of commercial operations referenced in a certificate of an Authorized Officer of FACW certifying to the terms set forth in Section 1.1(a) of this OREC Pricing Plan and delivered by or on behalf of FACW to the BPU, the Division of Rate Counsel, and the OREC Invoicing Administrator.

**"EDC"** shall mean an electric public utility, as that term is defined in N.J.S.A. 48:2-13 and N.J.S.A. 48:3-51 of EDECA, that transmits and distributes electricity to end users or its successors.

**"EDECA"** shall mean the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49, *et seq.*, as amended and supplemented from time to time.

**"Electric Power Suppliers"** shall mean entities licensed by the BPU to sell electricity at retail in the State of New Jersey or subpart thereof.

**"Energy Revenues"** shall mean the amounts paid to FACW for the sale of electrical energy in megawatt-hour terms from the OSW Project. These energy sales can occur in PJM-based markets or through bilateral trades between FACW and any other party. Energy revenues will be used as a revenue credit to ratepayers against their financial costs paid to support the OSW Project.

**"Energy Year"** or **"EY"** shall mean each annual period commencing on June 1 and ending on the immediately following May 31 for the Term of the OREC Pricing Plan.

**"Estimated Commercial Operation Date"** shall mean the forecasted Commercial Operation Date to be provided in a certification to be submitted by FACW, with respect to the OSW Project, to the Board, Rate Counsel and the OREC Invoicing Administrator no later than December 1, 2014. Thereafter, if FACW projects that the OSW Project will not achieve Commercial Operation by the end of Energy Year 2016, then FACW, with respect to the OSW Project, shall file another such certification by December of each successive year.

**"FACW"** shall mean Fishermen's Atlantic City Windfarm, LLC.

**"GATS Account"** shall mean "Generation Attribute Tracking System" ("GATS") maintained by PJM Environmental Information Services that tracks and certifies renewable energy generation and its attributes and establishes accounts for the transfer and trade of renewable energy attributes between generators and other parties.

**"Initial OREC Price"** shall mean one hundred eighty seven US dollars (US \$187).

**"OREC Administrative Account"** shall mean the OREC Administrative Escrow Account, a financial account established at and by the OREC Invoicing Administrator that will be used, at a minimum, as a clearinghouse to transfer OREC revenues from Electric Power Suppliers and BGS Providers to FACW in accordance with this OREC Pricing Plan.

**"OREC Invoicing Administrator"** shall mean the one (1) or more New Jersey based office (for purposes of administering this OREC Pricing Plan) entities designated as such by FACW and capable of performing the duties and obligations, and exercising the rights, thereof, as set forth in this OREC Pricing Plan. Provided any succeeding OREC Invoicing Administrator utilizes a New Jersey based office to implement this OREC Pricing Plan, FACW may replace the OREC Invoicing Administrator at any time, with or without cause, with notice to the Board, the Division of Rate Counsel, and the EDCs.

**"OREC Order"** shall mean the final Board order that among other things authorizes and implements this OREC Pricing Plan with respect to the OSW Project.

**"OREC Price"** shall mean the price or prices paid, from time to time, to or on behalf of FACW, for deposit in the OREC Administrative Account, by OREC Purchasers for the purchase of ORECs during the Term of the OREC Pricing Plan, all pursuant to the BPU Approving Order, OWEDA, and the Offshore Wind Regulations, as such price or prices are originally established at the Initial OREC Price, as adjusted during the Term pursuant to **Schedule B** attached hereto.

**"OREC Purchasers"** shall mean Electric Power Suppliers and BGS Providers.

**"OREC Revenues"** shall mean the funds collected from Electric Power Suppliers and BGS Providers, as OREC Purchasers, for deposit in the OREC Administrative Account during the Term of the OREC Pricing Plan.

**"OREC Revenue Requirement"** or **"Revenue Requirement"** shall mean that amount of annual OREC Revenues in any given Energy Year equal to the product of the OREC Price and the Planning Generation Amount.

**"OREC Unit Price"** shall mean the unit price, in per megawatt-hour terms, set annually and charged to Electric Power Suppliers and BGS Providers to meet their OREC purchase obligation as defined in this OREC Pricing Plan pursuant to OWEDA.

**"ORECs"** shall mean offshore wind renewable energy certificates. One OREC is equal to one megawatt-hour of OSW generation as defined by OWEDA.

**"OSW"** shall mean offshore wind energy.

**"OSW Project"** or **"Project"** shall mean the FACW offshore wind energy project that generates electricity.

**"OWEDA"** shall mean the New Jersey Offshore Wind Economic Development Act, N.J.S.A. 48:3-87.1, *et seq.*, as amended and supplemented from time to time.

**"Planning Generation Amount"** shall mean the megawatt-hour amounts provided in the attached **Schedule A**.

**"RECs"** shall mean renewable energy certificates pursuant to the requirements of EDECA.

**"Reserve Account"** shall mean either (i) a separate financial account, or (ii) that portion of the OREC Administrative Account, as determined by the OREC Invoicing Administrator, in either case from which the OREC Invoicing Administrator shall draw monies to meet payment obligations to FACW. The Reserve Account shall be set at an initial level of \$7.5 million dollars (\$7,500,000), and for every Energy Year commencing

June 1, 2013 and thereafter throughout the Term, the previous Energy Year's Reserve Account requirement shall be increased by three and one-half per cent per annum (3.5%) (the "**Reserve Amount**").

**"Revenues"** shall mean, individually or collectively, as the case may be, the OREC Revenues, Energy Revenues, and Capacity Revenues.

**"RPS"** shall mean the State's renewable portfolio standards under EDECA.



## ARTICLE III

### OREC PRICE and TERM

#### **Section 3.1 Initial OREC Price.**

The Initial OREC Price shall be set at \$187 for Energy Year 2013.

#### **Section 3.2 OREC Price for all Subsequent Energy Years.**

The Initial OREC Price shall increase each Energy Year thereafter through the Term of the OREC Pricing Plan, as provided in **Schedule B** to this OREC Pricing Plan.

#### **Section 3.3 Term.**

The "**Term**" of the OREC Pricing Plan shall be twenty (20) years from the Commercial Operations Date.

## ARTICLE IV

### OREC INVOICING ADMINISTRATION AND PURCHASES

#### Section 4.1 GATS Account and OREC sales by the OSW Project.

Upon FACW's certification of the completion and interconnection of its OSW Project as an electricity generating facility, FACW shall establish a GATS Account with PJM. Output from the OSW Project will be reported directly to GATS, and ORECs will be created in FACW's GATS Account on a monthly basis as output is reported. For class I renewable energy projects, RECs are currently created by GATS on the last business day of the month, for output for the prior month. This tracking mechanism shall apply to ORECs. Within the first five (5) days of the month FACW shall submit an invoice to the OREC Invoice Administrator stating the amount of ORECs produced, and the dollar amount due for such ORECs (which equals the amount of ORECs produced multiplied by the applicable OREC Price) and will transfer, by the fifteenth (15<sup>th</sup>) day of each month, all ORECs generated by the OSW Project in the prior month, to the OREC Invoicing Administrator, within five (5) days of payment by the OREC Invoicing Administrator to FACW for the ORECs to be transferred. The OREC Invoice Administrator shall pay for such ORECs in accordance with such invoice within five (5) days of receipt.

#### Section 4.2 OREC Invoicing Administrator and OREC Administrative Account

An independent OREC Invoicing Administrator shall use its New Jersey based office to administer the payments made from, and credits made to Electric Power Suppliers and BGS Providers. FACW will have one (1) year after the issuance of the OREC Order to select an independent OREC Invoicing Administrator. The OREC Invoicing Administrator will be selected and paid by FACW. The OREC Invoicing Administrator cannot be a FACW employee, an employee of any company affiliated with FACW, or any party that holds an ownership share, or is providing project financing to the OSW Project.

- (a) The OREC Invoicing Administrator will establish the OREC Administrative Account that will serve as a clearinghouse for revenues paid by, and ORECs credited to, Electric Power Suppliers and BGS Providers.
- (b) The OREC Invoicing Administrator will also establish its own GATS Account with PJM for the transfer of ORECs from FACW.
- (c) The Board will have regulatory oversight responsibilities over this OREC Invoicing Administrator to ensure payments made from, and credits made to, Electric Power Suppliers and BGS Providers, on the behalf of New Jersey ratepayers is consistent with the terms of the OREC Order. FACW and the OREC Invoicing Administrator shall keep proper books and accounts of all

transactions associated with the execution and administration of the OREC Pricing Plan that will be subject to inspection and audit by the BPU or the inspection of the Division of Rate Counsel.

#### **Section 4.3 OREC Purchases and Payments.**

(a) ORECs shall be purchased and paid for by Electric Power Suppliers and BGS Providers to the OREC Invoicing Administrator on a monthly basis commencing with the first day of the Energy Year of the Estimated Commercial Operation Date, subject to the other provisions of this Section 4.3. Revenues deposited in the OREC Administrative Account shall not be paid to FACW prior to COD, and shall only be paid based on ORECs produced pursuant to Section 4.1.

(b) The OREC Price shall be converted by the OREC Invoicing Administrator into an OREC Unit Price obligation (\$/kWh) that will be used to establish a monthly invoice for each Electric Power Supplier and BGS Provider. The OREC Unit Price is set as the OREC Revenue Requirement multiplied by 1.05, and then divided by total estimated retail sales, as determined by the OREC Invoicing Administrator based on the most recent publically available EDC retail sales forecasts from PJM and the EDCs.

An annual OREC Unit Price will be determined by the OREC Invoicing Administrator. The OREC Invoicing Administrator may use any reasonable means to make adjustments to account for new energy suppliers or incomplete, missing, or anomalous data to ensure the adequate and timely payment of OREC revenues. By December 31 of each year the OREC Invoicing Administrator shall establish the OREC Unit Price on a three year forward basis starting on or before the December 31 of the year preceding the Estimated Commercial Operation Date.

(c) Each OREC Purchaser shall be obligated to pay an amount to the OREC Invoicing Administrator equal to the OREC Unit Price multiplied by its sales in each annual period.

(d) Each Electric Power Supplier and BGS Provider will be invoiced on a monthly basis by an amount that is equal to the product of (i) the OREC Unit Price and (ii) its retail sales in megawatt-hour terms for the month.

(e) On January 30 of each year, the EDCs shall provide the name, address, email address and other related information of each Electric Power Supplier and BGS Provider in its territory and updates as applicable within thirty (30) days of when the EDC has such information for new Electric Power Suppliers and BGS Providers and other changes. Each Electric Power Supplier and BGS Provider shall be required to provide wiring information, and otherwise coordinate, with the OREC Invoicing Administrator (or its designee) to permit electronic transfer of OREC payment on a monthly basis. If the COD is not in EY 2016, then the

starting date for OREC invoicing shall be adjusted forward for each year beyond the actual COD.

(f) On first day of the month commencing July 1 in the year in which the Project will achieve its Estimated Commercial Operation Date (currently estimated to be EY 2016), EDCs will provide to the OREC Invoicing Administrator the actual monthly retail sales of each Electric Power Supplier and BGS Provider in its service territory for the prior month. Such information shall be provided by the EDCs within five (5) days of its availability to the EDC.

(g) The OREC Invoicing Administrator will separately invoice each Electric Power Supplier and BGS Provider by an amount equal to its monthly megawatt-hour sales multiplied by the OREC Unit Price. The OREC Invoicing Administrator will be required to submit invoices to each Electric Power Supplier and BGS Provider no later than the fifth (5<sup>th</sup>) day of the month. Payment of such invoice is due and payable by each Electric Power Supplier and BGS Provider to the OREC Invoicing Administrator within ten (10) days of the date of the invoice.

(h) FACW will be responsible for the sales of capacity and energy from the OSW Project.

- i. FACW is required to transfer, by the first (1st) day of the month, all Capacity Revenues and Energy Revenues sold from the OSW Project in the prior month to the OREC Invoicing Administrator, who in turn, will deposit these revenues into the OREC Administrative Account to develop and maintain a Reserve Account and for ratepayer benefit through credit to the EDCs as provided for in subsection n of this Section 4.3.
- ii. FACW is expected to identify and report the nature of all OSW Project output energy and capacity sales and whether they were made in regional spot energy markets, or through various short, intermediate, and/or long term bilateral agreements to the OREC Invoicing Administrator on a monthly basis separate from the OREC invoicing process. FACW is expected to retain adequate records of these energy and capacity sales transactions since they may be audited by the Board.
- iii. FACW is free to make energy and capacity sales in the markets and products of its choice, but has a fiduciary responsibility to generate Energy Revenues and Capacity Revenues that, on average, are based on prices that are no less than the prices reported in applicable regional spot energy and capacity markets.
- iv. FACW will transfer all prior-month Energy Revenues and Capacity Revenues available at the first (1<sup>st</sup>) day of each following month.

- v. FACW will make good faith efforts to collect any unpaid or outstanding Energy Revenues and Capacity Revenues from other parties, and transfer such funds to the OREC Invoicing Administrator, as soon as reasonably possible.
  - (i) The OREC Invoicing Administrator will develop and maintain a Reserve Account of \$7.5 million dollars (\$7,500,000) that will escalate by three and one-half (3.5) percent per Energy Year using Capacity Revenues, Energy Revenues, and OREC Revenues collected. The Reserve Amount shall be a minimum level of funds that shall be maintained in the OREC Administrative Account for the Term, after which it will be credited to EDCs for ratepayer benefit.
    - i. All Energy Revenues and Capacity Revenues, in addition to any OREC payments from OREC Purchasers, shall be used as the funding for the Reserve Account.
    - ii. Deposits of Energy Revenues and Capacity Revenues will revert to (or remain in, as applicable) the OREC Administrative Account after the Reserve Account has been fully funded.
    - iii. The OREC Invoicing Administrator shall use Energy Revenues and Capacity Revenues and OREC payments from Electric Power Suppliers and BGS Providers to replenish the Reserve Account should its balance fall below Reserve Amount at any time.
    - iv. The OREC Administrator may deposit any or all monies collected for Reserve Account purposes in interest-bearing bank accounts provided such deposits are liquid and can be drawn upon quickly if needed to balance OREC revenue payments to FACW.
  - (j) After COD is reached, the OREC Invoicing Administrator shall disburse payment in full to FACW for its OREC production regardless of whether Electric Power Suppliers and/or BGS Providers have paid on-time or in-full. The amount paid to FACW shall equal the monthly production times the applicable OREC Price pursuant to Section 4.1.
  - (k) The OREC Invoicing Administrator shall issue a late-payment notice to a delinquent Electric Power Supplier or BGS Provider within ten (10) days past payment due date. If payment is not received within fifteen (15) days after such late payment notice, the OREC Invoicing Administrator shall refer the matter to the Board, notifying FACW and the Division of Rate Counsel. All late payments shall include a late payment fee of 2% per month calculated from the payment due date.
  - (l) No later than ninety (90) days after the conclusion of each EY, the OREC Invoicing Administrator shall transfer ORECs to the GATS Account of each

Electric Power Supplier and BGS Provider. The ORECs transferred to each Electric Power Supplier and BGS Provider will equal the amount of payments by each OREC Purchaser divided by the total payments invoiced to all OREC Purchasers; multiplied by the number of ORECs produced by the Project, for the applicable Energy Year.

(m) Any ORECs not transferred at the time shall be held in the OREC Invoicing Administrator's GATS Account for transfer to the account of any Electric Power Supplier or BGS Provider that makes payment beyond that date. Any ORECs for the applicable EY that remain after eighteen (18) months shall be sold as Class I RECs with revenues for such sales deposited into the OREC Administrative Account.

(n) After the Commercial Operations Date, the OREC Invoicing Administrator shall transfer, on the first Business Day on or after the forty-fifth (45<sup>th</sup>) calendar day of any Energy Year, to the EDCs (for allocation to ratepayers in manner to be determined by the Board) the balance of the amount in the OREC Administrative Account as of the last day of the prior Energy Year, less the applicable Reserve Amount for that Energy Year.

(o) If at any time the balance in the Reserve Account falls or is projected to fall below the Reserve Amount and FACW projects that it will take more than six (6) months to replenish the Reserve Account to the Reserve Amount, the OREC Invoicing Administrator shall adjust the OREC Unit Price to an amount sufficient to replenish the Reserve Account to the required Reserve Amount within six (6) months.

#### **Section 4.4 Transitional OREC Responsibility.**

For BGS contracts, the entire BGS FP share of OREC responsibility for EY 2015-2016 shall be placed on the June 2015 – May 2018 contract. For EY 2016-2017, the OREC responsibility would be borne one-half (½) by the June 2015 – May 2018 BGS FP contract and one-half (½) by the June 2016 – May 2019 BGS FP contract. Starting in EY 2017-2018 there would no longer be any pre-existing BGS FP contracts, and all BGS contracts shall bear equal OREC payment responsibility. If the COD occurs beyond EY 2016, these dates shall be adjusted accordingly to exempt previously executed BGS FP contracts from OREC responsibility that was not known at the time of execution.

## ARTICLE V

### MISCELLANEOUS

#### Section 5.1 Enforcement

FACW and the OREC Invoicing Administrator shall each have legal authority to: (i) seek and obtain payment from each Electric Power Supplier and BGS Provider on a timely basis, and (ii) request that the Board utilize its enforcement authority to the fullest extent possible to assure that each party delinquent in paying its OREC Invoices make payment on a timely basis.

#### Section 5.2 No Amendment

This OREC Pricing Plan shall not be amended or supplemented without a supplemental BPU OREC Order that is consented to, in its entirety, in writing by FACW and Rate Counsel, which shall have no obligation to consent to any such supplement, as this OREC Pricing Plan shall be relied upon by FACW in obtaining the Project loan financing for its OSW Project and by any project lender in providing same. The parties recommend that the BPU find in its OREC Order that it shall take no action that would in any way assist in the passage or adoption of any bill, other resolution or other action of the State Legislature or other government entity or the BPU that would adversely affect this OREC Pricing Plan, the BPU OREC Approving Order, or any Project loan agreement or related Project loan financing documents.

## Schedule A

### Planning Generation Amount\*

<u>Energy Year</u>	<u>Planning Generation Amount (MWHs)</u>
2016	62,505
2017	85,492
2018	85,492
2019	85,492
2020	85,492
2021	85,492
2022	85,492
2023	85,492
2024	85,492
2025	85,492
2026	85,492
2027	85,492
2028	85,492
2029	85,492
2030	85,492
2031	85,492
2032	85,492
2033	85,492
2034	85,492
2035	85,492
2036	22,987

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\* In the event the Commercial Operation Date is extended beyond Energy Year 2016, the Planning Generation Amount shall be extended forward year for year after Energy Year 2036.



## Schedule B

### Annual OREC Price

Energy Year	OREC Price (\$/MWH)
EY 2013	187.00
EY 2014	193.55
EY 2015	200.32
EY 2016	207.33
EY 2017	214.59
EY 2018	222.10
EY 2019	229.87
EY 2020	237.92
EY 2021	246.24
EY 2022	254.86
EY 2023	263.78
EY 2024	273.01
EY 2025	282.57
EY 2026	292.46
EY 2027	302.70
EY 2028	313.29
EY 2029	324.26
EY 2030	335.60
EY 2031	347.35
EY 2032	357.04
EY 2033	367.00
EY 2034	377.24
EY 2035	387.77
EY 2036	398.59

Note: If COD is extended beyond EY 2016, then OREC Prices shall be increased by two and eight-tenths percent (2.8%) annually after EY 2036.

**RC-FACW Stipulation Attachment B**  
Attach Cost Verification and Disbursement Process

## Cost Verification and Disbursement Process

### Preamble.

This RC-FACW Stipulation Attachment B sets forth, among other things, the terms and conditions under which certain Project costs, in an amount not to exceed nineteen million, two hundred thousand dollars (US \$19,200,000), necessarily incurred by Petitioner to secure a maximum level of federal subsidies, will be accounted for, become eligible for reimbursement, and paid. In addition, the terms, conditions, and provisions of this Verification Process have been agreed to by the Signatory Parties to, and by their execution of, the Stipulation. Accordingly, such terms, conditions, and provisions are recommendations by the Signatory Parties to the Board that the Board adopt them, in their entirety, as set forth herein, when and if the Board adopts its OREC Order. Further, the Signatory Parties recognize that nothing agreed to herein by the Signatory Parties shall bind the Board, including references herein to actions the Board shall undertake, unless and until the Board adopts such actions, either expressly in the OREC Order, or by incorporating by reference all or a portion of this Verification Process in the OREC Order.

### Section 1. Definitions.

(a) The following terms are defined in the Stipulation:

Board  
EDCs  
ITC  
OREC Order  
Petitioner (or FACW)  
Project  
Rate Counsel  
Stipulation  
USDOE Grant  
Verification Process

(b) Definitions for the following terms used in the Verification Process are set forth below:

“*EDC Recovery Sources*” shall mean, with respect to each of the EDCs, the following respective sources:

Atlantic City Electric Company:	Rider RGGI
Jersey Central Power & Light Company:	Rider RRC-RGGI Recovery Charge
Public Service Electric & Gas Company:	RGGI Recovery Charge

Rockland Electric Company:

Regional Greenhouse Gas Initiative  
(RGGI) Surcharge

“*Eligible Costs*” shall mean those costs, in an amount not to exceed nineteen million, two hundred thousand dollars (US \$19,200,000), of planning, designing, permitting, acquiring, constructing, installing, testing, certifying, approving, financing, and otherwise developing the Project, that have been verified for payment to or on behalf of FACW under this Verification Process after such reasonable conforming Project costs have been submitted as part of the Verification Filing and reviewed and approved by the Board in accordance with Section 2 of this Verification Process. For the avoidance of doubt, the following Project costs shall be deemed to be Eligible Costs, where supported by accompanying invoices or other reasonable evidence to the effect that such costs were incurred by FACW and applied to the Project: (i) cost of construction, (ii) manufacturing, (iii) deposits and progress payments against construction and/or supply contracts, vessels, port facilities, or similar to ensure continuous construction and/or against long lead time equipment, (iv) FACW management expenses, (v) third party management expenses, (vi) engineering, (vii) PJM deposits and progress payments, (viii) attorneys and advisors associated with permitting, regulatory and legal proceedings, financing, contracting and purchasing, (ix) service and construction agreements, (x) operations center planning, contracting, purchasing and construction, (xi) permitting and land rights, (xii) costs associated with leases and rights of way, and (xiii) finance costs.

“*Load Share Allocation*” shall mean with respect to each of the EDCs, the following percentages:

Atlantic City Electric Company:	13.6 %.
Jersey Central Power & Light Company:	28.9 %.
Public Service Electric & Gas Company:	55.6 %.
Rockland Electric Company:	<u>1.9%</u> .
Total:	<u>100%</u>

“*USDOE Grant Commitments*” shall mean available grant monies to apply to the Project after accounting for any Compliance Costs, where “Compliance Costs” shall mean the costs required to be incurred by or on behalf of FACW in order for FACW to obtain the USDOE Grant Commitments, which Compliance Costs shall include, without limitation, FACW’s costs relating to: (i) National Renewable Energy Laboratories, (ii) wind turbine performance measurement, (iii) foundation design, certification and performance measurement, (iv) pre-, during and post construction technical and environmental monitoring, (v) marine mammal proximity sensor arrays, (vi) avian and bat proximity sensor arrays, (vii) wind resource measurement, (viii) turbine in situ certification, (ix) FACW project management and administrative costs, (x) third-party project management, (xi) DOE compliant accounting and accounting systems, (xii) reporting, (xiii) the difference between budgeted costs of installing a jacket and the budgeted cost of

installing a monopile, (xiv) DOE related travel and tours of the wind farm, and (xv) up to US \$3,093,000 in interest and management costs associated with moving the commercial operation date to 2015. In total, available USDOE Grant monies to be applied to the Project after accounting for Compliance Costs are anticipated to be \$35 million.

### **Section 2. Sufficient USDOE Grant and ITC.**

Petitioner shall use all commercially reasonable efforts to obtain the USDOE Grant Commitments and the ITC in the maximum amount available for the Project. In the circumstance where Petitioner both (a) receives at least \$35,000,000 in USDOE Grant Commitments and (b) qualifies for the ITC, with secured funding for the Project, this Verification Process shall have no effect, as Petitioner will proceed with the Project without the need to be reimbursed for Project costs. When Petitioner makes that determination of sufficiency (Petitioner expects to learn of the USDOE Grant status around May 15, 2014), it will promptly notify (all notices shall be in writing at the notice addresses in **Exhibit B** attached to this Verification Process) the staff of the Board designated on **Exhibit B** hereto ("*Board Staff*"), Rate Counsel, and the EDCs.

### **Section 3. Insufficient USDOE Grant and/or ITC.**

(a) If on the earliest to occur of any of the following dates in clauses (i) through (iii) below of this subsection (a), Petitioner determines that it cannot send the notice of sufficiency in Section 2 above, then Petitioner shall promptly give the notification set forth in subsection (b) below: (i) any date on or before the sixtieth (60<sup>th</sup>) day after the USDOE Grant award, (ii) the day where Petitioner determines that it has become evident that no USDOE Grant award, or a lesser award, is forthcoming, or (iii) in the event the USDOE Grant award remains uncertain, December 31, 2014.

(b) The notice to be issued by Petitioner pursuant to subsection (a) above shall be governed by the following terms. Petitioner shall notify Board Staff, Rate Counsel, and the EDCs that (i) Petitioner cannot make the determination of sufficiency set forth in Section 2 above, and (ii) that Petitioner intends to proceed with either (A) the cost verification and disbursement process set forth in this Section 3, in which case Petitioner shall discontinue developing the Project (except for certain wind-up activities), or (B) the development of the Project pursuant to Section 4 hereof. Without any further action, upon issuance by Petitioner of this notice of insufficiency to the effect that Petitioner desires to follow the Section 3 cost verification and disbursement process provisions, the procedures of this Section 3 then apply, and shall be controlling, for all of the Petitioner, the Board, Rate Counsel, and the EDCs.

(c) Petitioner shall file with the Board, providing a copy to Rate Counsel, an application (a "*Verification Filing*") to (i) obtain Board verification that all Project costs spent for which reimbursement under this Section 3 is being sought are considered Eligible Costs

(upon Board verification in subsections (e) or (g) below, such costs shall also be deemed "Verified Costs") and (ii) to obtain a Board Order ("Disbursement Order") (A) requiring the EDCs to promptly pay FACW (or their designee), within ten (10) days of the EDCs' receipt of a final, non-appealable Disbursement Order, in accordance with their Load Share Allocation, the Verified Costs and (B) entitling the EDCs to full and timely recovery of such payment through their respective EDC Recovery Sources. Simultaneously with the submission of the Verification Filing, Petitioner shall notify the EDCs of the filing, the date of the filing, and the amount of Verified Costs being sought.

(d) Board Staff and Rate Counsel have thirty (30) days from receipt of the Verification Filing to review the Project costs, and take either action set forth in subsections (e) or (f) below.

(e) If Board Staff and Rate Counsel determine there is adequate supporting evidence from the Verification Filing that these Project costs were sufficiently documented and constitute Eligible Costs, then within forty-five (45) days of such determination, or as soon thereafter as possible, the Board shall issue the Disbursement Order with respect to all of the submitted Project costs as Verified Costs.

(f) If either Board Staff or Rate Counsel determine there is insufficient supporting evidence from the Verification Filing, either to determine that all, or a portion of, these Project costs were sufficiently documented, or that such Project costs constitute Eligible Costs, (i) Petitioner has fifteen (15) days to supply additional supporting documentation with respect to the disputed Project costs, and (ii) the undisputed Project costs qualify for a Disbursement Order (but within the new timeframe in subsection (g) below), with Board Staff or Rate Counsel, as applicable, enumerating such Verified Costs and amounts.

(g) Board Staff and Rate Counsel have fifteen (15) days from their receipt of Petitioner's revised Verification Filing (made pursuant to subsection (f)(i) above) with respect to the disputed Project costs to (i) determine whether they were sufficiently documented and constitute Eligible Costs, and if not, Board Staff or Rate Counsel, as applicable, shall notify Petitioner (and the other) of such continued deficiency, and thereupon, Petitioner shall be provided with an opportunity to respond, including the right to request a hearing, and (ii) provide notice of their recommendation of approval of Verified Costs, and the Board shall, within forty-five (45) days of such recommendation, or as soon thereafter as possible, issue a Disbursement Order stating, among other things, that the aggregate Verified Costs subject to the Disbursement Order shall be the sum of (A) the original Verified Costs (Section 3(f)(ii) above) and (B) that portion of the disputed Project costs for which a supplemental Verification Filing was made where Board Staff and Rate Counsel, based on the additional information and their

further review, determine that all or a portion of such formerly disputed Project costs were in fact sufficiently documented, constitute Eligible Costs, and therefore are deemed Verified Costs.

(h) A copy of the Disbursement Order (either subsection (e) or (g) above) shall be forwarded by Board Staff to each of Rate Counsel, the EDCs and Petitioner, and the EDCs shall pay Petitioner in accordance with the terms of such Disbursement Order (see subsection (c) for the Disbursement Order requirements, and subsection (e) or (g), as applicable, for determination of the Verified Costs to be paid by the EDCs in accordance with their Load Share Allocations pursuant to the Disbursement Order). Petitioner shall timely provide the EDCs with adequate payment instructions to receive funds (as required by the Disbursement Order) by wire transfer.

(i) Upon payment by the EDCs of their respective Load Share Allocation portion of the Verified Costs established and directed to be paid by the Board's Disbursement Order from any available source, the EDCs shall be entitled to full and timely recovery for all amounts so paid in accordance with applicable law through their respective EDC Recovery Sources.

#### **Section 4. Project Continuation.**

To the extent Petitioner sends the notice contemplated by Section 3(b)(ii)(B) hereof, then this Verification Process shall have no effect, as Petitioner will proceed with the Project without the need to be reimbursed for Project costs. Upon the delivery of such notice, Petitioner shall continue to be the beneficiary of all entitlements for the Project, including those set forth in the Stipulation and the Board order regarding same.

#### **Section 5. Miscellaneous.**

(a) Unless defined in Sections 1-5 of this Verification Process, all capitalized terms are defined in **Exhibit A** attached to this Verification Process.

(b) This Verification Process is governed by New Jersey law, with the same rights to jurisdiction as the Stipulation. This Verification Process is agreed to by Rate Counsel and Petitioner through their execution and delivery of the Stipulation. This Verification Process may be agreed to by the Board and Board Staff through the Board Order approving the Stipulation. If approved, the Board shall enforce this Verification Process, to the extent required to comply with the terms hereof.

(c) The Signatory Parties agree that this Verification Process sets forth the entire understanding of these matters without reference to any other agreement or document (note that this shall not preclude Petitioner, in any way, from following procedures or taking actions not contemplated by this Verification Process in order to attempt to secure the USDOE Grant and the ITC).

(d) The Signatory Parties agree not to challenge any provision of this Verification Process, unless some provision of this Verification Process is not being applied or implemented properly or in accordance with the terms hereof. It is the intent of the Signatory Parties that Petitioner's lenders advancing funds for Project costs eligible to be reimbursed under this Verification Process are third party beneficiaries of the provisions of the Stipulation governing the Verification Process.

(e) All notices required by this verification process shall be in writing and sent by hand delivery, overnight delivery, or certified mail. E-mail or fax notification must be followed up by hard copy, but shall be effective from the date of electronic transmittal if in fact received. Any of the following notice parties may update their official notice addresses below by sending a notice to such effect to each of the other notice parties.

Board:

New Jersey Board of Public Utilities  
44 South Clinton Avenue 9th Floor  
P.O. Box 350  
Trenton, New Jersey 08625-3300

Attention: Kristi Izzo, Secretary  
Fax: (609) 777-3348  
Email: [Kristi.Izzo@bpu.state.nj.us](mailto:Kristi.Izzo@bpu.state.nj.us)

Rate Counsel:

Division of Rate Counsel  
140 East Front Street - 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Attention: Stefanie A. Brand, Director  
Felicia Thomas-Friel, Deputy Rate Counsel  
Fax: (609) 292-2923  
Email: [sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)  
[ftomas@rpa.state.nj.us](mailto:ftomas@rpa.state.nj.us)

EDCs:

Consolidated Edison Company of NY, Inc.  
Law Department, Room 1815-S  
4 Irving Place  
New York, NY 10003



Attention: Susan J. Vercheak, Esq., Assistant General Counsel  
Fax: (212) 677-5850  
Email: [vercheaks@coned.com](mailto:vercheaks@coned.com)

Atlantic City Electric Company  
500 North Wakefield Drive – 92DC42  
P.O. Box 6066  
Newark, DE 19714-6066

Attention: Philip J. Passanante, Esq., Associate General Counsel  
Fax: (302) 429-3801  
Email: [Philip.Passanante@pepcoholdings.com](mailto:Philip.Passanante@pepcoholdings.com)

Jersey Central Power & Light Company  
300 Madison Avenue  
Morristown, New Jersey 07962-1911

Attention: Mark A. Mader, Director, Rates and Regulatory Affairs  
Fax: (973) 644-4243  
Email: [mamader@firstenergy.com](mailto:mamader@firstenergy.com)

Public Service Electric and Gas Company  
PSEG Services Corporation  
80 Park Plaza, T5G  
Newark, NJ 07102

Attention: Alexander C. Stern  
Fax: (973) 430-5983  
Email: [Alexander.Stern@pseg.com](mailto:Alexander.Stern@pseg.com)

Petitioner:

Fishermen's Atlantic City Windfarm, LLC  
1616 Pacific Avenue  
Atlantic City, New Jersey 08401

Attention: Chris Wissemann, CEO  
Fax: (609) 350-7481  
Email: [Chris.wissemann@fishermensenergy.com](mailto:Chris.wissemann@fishermensenergy.com)

With copies to:

Gabel Associates  
417 Denison Street  
Highland Park, NJ 08904

Attention: Steven Gabel, President  
Fax: (732) 296-0799  
Email: [steven.gabel@gabelassociates.com](mailto:steven.gabel@gabelassociates.com)

Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, NJ 07054-3715

Attention: Stephen B. Pearlman, Esq.  
Fax: (973) 887-2700  
Email: [spearlman@iandplaw.com](mailto:spearlman@iandplaw.com)

FirstEnergy Corp.  
76 South Main Street  
Akron, Ohio 44308

Attention: Arthur E. Korkosz, Esq.  
Fax: (330) 384-3875  
Email: [korkosza@firstenergy.com](mailto:korkosza@firstenergy.com)

**INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, L.L.C**  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054  
(973) 947-7111  
Attorneys for Petitioner,  
Fishermen's Atlantic City Windfarm, LLC

IN RE PETITION OF FISHERMEN'S  
ATLANTIC CITY WINDFARM, LLC FOR  
THE APPROVAL OF THE STATE WATERS  
WIND PROJECT AND AUTHORIZING  
OFFSHORE WIND RENEWABLE ENERGY  
CERTIFICATES

**STIPULATION ON  
JOINT RECORD OF EXHIBITS**

BPU Docket No. EO11050314V

**APPEARANCES:**

**Stephen B. Pearlman, Esq., Inglesino, Pearlman, Wyciskala & Taylor, LLC,**  
Attorneys for Petitioner, Fishermen's Atlantic City Windfarm, LLC

**Stefanie A. Brand, Director, New Jersey Division of Rate Counsel, Felicia Thomas-Friel, Esq., Deputy Rate Counsel, Henry M. Ogden, Esq., Assistant Deputy Rate Counsel,**  
Attorneys for the New Jersey Division of Rate Counsel

**John J. Hoffman, Acting Attorney General of New Jersey, Veronica Beke, Carolyn McIntosh and Alex Moreau, Deputy Attorneys General, Attorney for Staff of the New Jersey Board of Public Utilities**

**TO THE HONORABLE NEW JERSEY BOARD OF PUBLIC UTILITIES:**

This matter having been opened to the New Jersey Board of Public Utilities (hereinafter, the "Board") by way of an Initial Petition dated May 19, 2011 followed by an Amended

Application filed on June 1, 2012 by Fishermen's Atlantic City Windfarm, LLC ("FACW" or "Petitioner"), for an offshore wind project in New Jersey territorial waters pursuant to N.J.S.A. 48:3-87.1 et seq. The Signatory Parties include FACW, the New Jersey Division of Rate Counsel ("Rate Counsel"), and Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric & Gas Company, and Rockland Electric Company (the Intervening EDCs)(collectively, the "Signatory Parties"), do hereby jointly recommend that the Board adopt the following joint list of pre-marked exhibits as the record in this matter for the reasons stated within this Stipulation. This Stipulation may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

#### **PROCEDURAL HISTORY**

The Signatory Parties acknowledge the procedural history as set forth in the Board's May 29, 2013 Order on Extension of Time for Application Review, BPU Docket No. EO11050314V.

#### **STIPULATION**

The Signatory Parties jointly seek that all pre-marked exhibits named herein be considered as the full record pursuant to N.J.A.C. 1:1-15.1, consistent with each party's obligation to present legally competent evidence in support of findings of fact to be determined by the Board pursuant to N.J.A.C. 1:1-15.5(b).

Accordingly, the Signatory Parties agree that the following list of pre-marked exhibits, including but not limited to FACW project reports and pre-filed testimony, collectively comprise all parties' cases-in-chief and the entire record in this matter. The parties further agree that the listed items comply with N.J.A.C. 1:14-15.1(a), N.J.A.C. 1:1-15.8(c), and N.J.A.C. 1:1-15.6, to

the extent that each is applicable. The Signatory Parties further stipulate that all pre-marked exhibits herein offered by any party were copied to all parties in this matter pursuant to N.J.A.C. 14:1-15.7, in full or redacted form consistent with any remaining claims to confidentiality of information presented by Petitioner pursuant to N.J.A.C. 14:1-12.1. The Signatory Parties agree to abide by their continuing obligation to update and correct any and all relevant information pertaining to the application, as soon as such information becomes known or available until the Board determines the record is closed.

1. FACW's Amended Application, filed on June 1, 2012 (except where otherwise noted), consisting of:
  - a) Verified Amended Application (P-1);
  - b) Pre-Filed Direct Testimony Exhibit 1 of Chris Wissemann;
  - c) Pre-Filed Direct Testimony Exhibit 2 of Chris Wissemann;
  - d) Pre-Filed Direct Testimony Exhibit 3 of Chris Wissemann;
  - e) Pre-Filed Direct Testimony Exhibit 4 of John Porter;
  - f) Pre-Filed Direct Testimony Exhibit 6 of Chris Wissemann;
  - g) Pre-Filed Direct Testimony Exhibit 7 of Bill Shore;
  - h) Pre-Filed Direct Testimony Exhibit 8 of Chris Wissemann;
  - i) Pre-Filed Direct Testimony Exhibit 9 of Steve Gabel;
  - j) Pre-Filed Direct Testimony Exhibit 10 of Michael Markus;
  - k) Pre-Filed Direct Testimony Exhibit 11 of Chris Wissemann;
  - l) Pre-Filed Direct Testimony Exhibit 12 of Steve Gabel;
  - m) Pre-Filed Direct Testimony Exhibit 13 of Chris Wissemann;
  - n) Pre-Filed Direct Testimony Exhibit 14 of Chris Wissemann;
  - o) Pre-Filed Direct Testimony Exhibit 15 of Steve Gabel;

- p) Testimony Exhibit 16 of Aaron Morrow;
- q) Testimony Exhibit 17 of Nancy Mantell;
- r) Testimony Exhibit 18 of Jerome Guillet;
- s) Testimony Exhibit 19 of Steve Gabel;
- t) Pre-Filed Direct Testimony Exhibit 20 of Chris Wissemann;
- u) Pre-Filed Direct Testimony Exhibit 21 of Chris Wissemann;
- v) Pre-Filed Direct Testimony Exhibit 22 of Chris Wissemann;
- w) Pre-Filed Direct Testimony Exhibit 23 of Chris Wissemann;
- x) Testimony Exhibit 24 of Chris Wissemann, filed October 18, 2012;
- y) Testimony Exhibit 26 of Chris Wissemann, filed March 8, 2013;
- z) Testimony Exhibit 27 of Chris Wissemann, filed March 8, 2013;
- aa) Appendix A;
- bb) Appendix B;
- cc) Appendix C;
- dd) Appendix D;
- ee) Appendix E.

2. Confidential discovery requests and responses RCR-PF2-1 through RCR-PF2-57  
(Responsive Documents Bates Stamped FACW00001 through FACW00468)(P-37).
3. Confidential discovery requests and responses RCR-PF2-58 through RCR-PF2-109
  - a) Responsive Documents Bates Stamped FACW000469 through FACW001016
4. Discovery request and response RCR-PF2-110
  - a) Responsive Documents Bates Stamped FACW001017 through FACW001050
5. Confidential discovery requests and responses RCR-PF2-111 through RCR-PF2-168

- a) Responsive Documents Bates Stamped FACW001051 through FACW001131
6. Discovery requests and responses NJBPU-Econ-17 through NJBPU-Econ-19
7. Discovery request and response RCR-PF2-169
  - a) Responsive Documents Bates Stamped FACW001128 through FACW001131
8. Confidential discovery requests and responses NJBPU-Econ 20 through NJBPU-Econ-21
9. Confidential discovery requests and responses RCR-PF2-170 through RCR-PF2-191
  - a) Responsive Documents Bates Stamped FACW001132 through FACW001363
10. Discovery requests and responses RCR-PF2-192 through RCR-PF2-220
  - a) Responsive Documents Bates Stamped FACW001697 through FACW001717
11. Discovery requests and responses RCR-PF2-221 through RCR-PF2-233
  - a) Responsive Documents Bates Stamped FACW001718 through FACW001726
12. Discovery requests and responses RCR-PF2-234 through RCR-PF2-235
  - a) Responsive Document Bates Stamped FACW001727
13. Discovery requests and responses NJBPU-Econ-22 through NJBPU-Econ-31
  - a) Responsive Documents Bates Stamped FACW001495 through FACW001696
14. Confidential discovery requests and responses NJBPU-Econ-32 through NJBPU-Econ-38
  - a) Responsive Documents Bates Stamped FACW001728 through FACW001920
15. Confidential discovery requests and responses FACW-BPU-1 through FACW-BPU-54
16. Confidential discovery requests and responses FACW-RC-1 through FACW-RC-125
17. Confidential discovery requests and responses RCR-PF2-171 through RCR-PF2-191
  - a) Responsive Documents Bates Stamped FACW001364 through FACW001494
18. CD of confidential spreadsheets produced for discovery by FACW since June 1, 2012
19. Expert Report of Boston Pacific/OutSmart filed on December 17, 2012

20. Expert Report of Acadian/David Dismukes, Ph.D. filed on December 17, 2012
21. FACW Pre-Filed Rebuttal Testimony Exhibits 1 through 9, filed on March 25, 2013, consisting of:
  - a) Exhibit 1 Testimony of Chris Wissemann;
  - b) Exhibit 2 Testimony of Chris Wissemann;
  - c) Exhibit 3 Testimony of Steve Gabel;
  - d) Exhibit 4 Testimony of Christopher Hart;
  - e) Exhibit 5 Testimony of John Porter;
  - f) Exhibit 6 Testimony of Rudolph Hall;
  - g) Exhibit 7 Testimony of Melissa Haugh;
  - h) Exhibit 8 Testimony of Stanley White;
  - i) Exhibit 9 Testimony of Daniel Bernadett;
22. Surrebuttal Testimony filed on May 8, 2013, consisting of:
  - a) Boston Pacific/OutSmart;
  - b) Acadian/David Dismukes.
23. Letter from Department of Energy Assistant Secretary Danielson to N.J. Board of Public Utilities President Hanna and Commissioners Fiordaliso, Fox and Holden on May 1, 2013 regarding FACW.
24. Staff Letter by Gertsman, J. to Pearlman, S./FACW - Turbine Selection dated 6/25/2012 (S-28)
25. FACW Letter by Pearlman, S. to Staff - Turbine Selection dated 7/3/2012 (S-29)
26. Staff Letter by Gertsman, J. to Pearlman, S. - Turbine Selection dated 7/13/2012 (S-30)
27. FACW Letter by Pearlman, S. to Board President, Hanna, R. - Request to Suspend Review dated 8/17/2012 (S-31)
28. FACW Letter by Pearlman, S. to Board President, Hanna, R. - Update dated 9/17/2012 (S-32)



29. XEMC Group Organization Chart (S-33)
30. XEMC Fishermen's Organizational Chart (S-34)
31. Letter by Pearlman, S./FACW re Rebuttal Exh. 3 - Optimized Project C-B Analyses, IDC Calculations, and PJM Load Forecast 2013 dated 4/17/2013 (S-35)
32. Confidential discovery requests and responses RCR-PF2-46 to RCR-PF2-47 (8/3/2012) (S-1)
33. Rutgers Institute of Marine and Coastal Sciences - Final Report for the Period of Performance 14 Apr 2011-13 Apr 2013 dated April 30, 2013 at [http://marine.rutgers.edu/~nstrands/bpu/RU\\_BPU\\_Offshore\\_Study\\_Final\\_Report\\_ARB\\_May5\\_FINAL.pdf](http://marine.rutgers.edu/~nstrands/bpu/RU_BPU_Offshore_Study_Final_Report_ARB_May5_FINAL.pdf) (S-36)
34. The following documents relate to FACW's original Application dated February 9, 2011, which was amended and superseded in its entirety by FACW's Amended Application dated June 1, 2012, and are provided to the extent relevant at the discretion of the Board:
  - a. Staff Letter to Pearlman, S./FACW - Administratively Deficient Application Notice dated 6/2/2011 (S-2)
  - b. FACW Revised Response - Att. 7 - Environment, Health and Safety Plan; Att. 8 - Fishermen's Energy Offshore Wind Turbine Jacket Structure (Proposed) dated 6/2/2011 (S-3)
  - c. Fishermen's Energy, USA Report by Ramboll dated May, 2011 - Atlantic City Offshore Windfarm Design MetOcean Data (Petition Supplement No. 1) dated 6/7/2011 (S-4)
  - d. FACW Revised Response - Att. 2 - Microsoft Project Plan; Att. 3 - Presentation for Interested Parties; Att. 4 - Rabobank Indication of Interest and Term Sheet; Att. 5 - Siemens Term Sheet dated 6/7/2011 (S-5)
  - e. FACW Revised Response to Staff's 6/2/2011 Letter dated 6/8/2011 (S-6)
  - f. Pearlman, S. Letter to Staff enclosing Petition Supplement No. 1 dated 6/7/2011 (S-7)
  - g. FACW Revised Response - Att. 6 - FACW Draft Operations and Maintenance Plan dated 6/8/2011 (S-8)
  - h. Staff Letter to Pearlman, S./FACW - Initial Application Review Period Conclusion Notice dated 6/13/2011 (S-9)

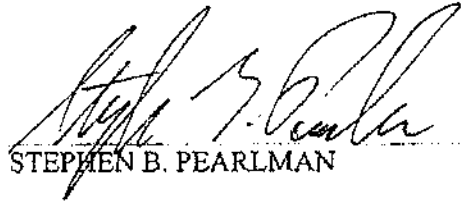
- i. Staff Letter to Pearlman, S./FACW - Administratively Complete Application Notice dated 6/22/2011 (S-10)
- j. FACW Petition, Supplement No. 3(a) - XEMC Group Introduction dated 7/12/2011 (S-11)
- k. FACW Petition, Supplement No. 3(a) - FACW Letter to Board Secretary, Izzo, K. - Supplement No. 3(a) dated 7/12/2011 (S-12)
- l. FACW Petition, Supplement No. 3(a) - Update pursuant to N.J.A.C. 14:8-6.5(a)(2ii - Designation of XEMC as turbine supplier dated 7/12/2011 (S-13)
- m. FACW Petition, Supplement No. 3(a) - Update pursuant to N.J.A.C. 14:8-6.5(a)(2ii - Designation of XEMC as turbine supplier dated 7/12/2011 (S-14)
- n. FACW Petition, Supplement No. 3(a) - SBP cover letter & FACW cover memo explaining supplement dated 7/12/2011 (S-15)
- o. FACW Petition, Supplement No. 3(a) - 5 Agreements with XEMC entities & FACW entities, redacted re provisions unrelated to State Waters Project dated 7/12/2011 (Includes: XEMC NE/FACW - Participation Agreement dated 6/24/2011; FACW-XEMC Loan Agreement dated 6/24/2011; Fishermen's Energy-FACW Holding-XEMC LLC Units Purchasing Agreement dated 6/24/2011; Addendum to Fishermen's-XEMC Agreements dated 6/24/2011; Pledge Agreement dated 6/24/2011)(S-16)
- p. FACW Petition, Supplement No. 3(a) - Submissions from FACW counsel, Ballard Spahr and Nixon Peabody, plus a power point in .pdf re XEMC Wind Turbine Series Technology dated 7/12/2011 (Includes: Ballard Spahr - Memorandum dated 8/2/2011 - Redactions in XEMC Transaction Documents; Ballard Spahr - Letter dated 7/12/2011 to FACW; Ballard Spahr - Memorandum dated 8/2/2011 - XEMC Responsibility for Warranty and Service Obligations; Nixon Peabody - Letter dated 7/11/2011 by Cheng, D. to Cohen, D., FACW Business Review of XEMC Group & XEMC Wind Power Presentation on Technology Introduction of XEMC Wind Turbine Series) (S-17)
- q. FACW Petition, Supplement No. 3(a) - .pdf power point on XEMC information dated 7/12/2011 (S-18)
- r. FACW's Additional Supplemental Update - Impact of XEMC's Participation to the FACW Filing dated 8/1/2011 (S-19)
- s. FACW Letter by Cohen, D. to DEP Commissioner Martin, R. dated 8/1/2011 (S-20)
- t. XEMC - Letter by Zhou, J., Chairman to Board dated 8/3/2011 (S-21)

- u. Staff Letter by Sheehan, K. to Pearlman, S./FACW - Expedited Review dated 8/12/2011 (S-22)
- v. FACW Responses to Rate Counsel and Staff's Verbal Concerns Raised During a 8/16/2011 FACW-Staff Meeting dated 8/16/2011 (S-23)
- w. MottMacDonald Letter by McLeay, K. to Staff - Type Certification dated 8/31/2011 (S-24)
- x. FACW Responses to Issues Surrounding Certification Raised at the August 30, 2011 Meeting with Staff and Rate Counsel - Type Certification dated 9/1/2011 (S-25)
- y. ABS Consulting Letter by Behrendt Ibsøe, J. to FACW - Type Certification dated 10/3/2011 (S-26)
- z. Staff Letter by Sheehan, K. to Pearlman, S./FACW - Staff Recommendation Status dated 10/7/2011 (S-27)

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INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, LLC  
Attorneys for Petitioner,  
Fishermen's Atlantic City Windfarm, LLC

By: \_\_\_\_\_

  
STEPHEN B. PEARLMAN

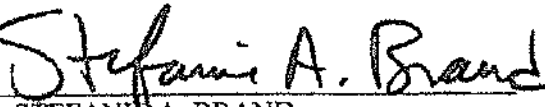
JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Staff of the New Jersey Board of  
Public Utilities

By: \_\_\_\_\_

  
VERONICA BEKE  
Deputy Attorney General

NEW JERSEY DIVISION OF RATE COUNSEL

By: \_\_\_\_\_

  
STEFANIA A. BRAND  
Director, N.J. Division of Rate Counsel

Date: June 27, 2013

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