

August 10, 2018

VIA EMAIL

RFI OSW-2018 Comments – Large Scale Renewables Team
New York State Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Re: Offshore Wind Request for Information

Dear Sir/Madam:

Attached please find the City of New York's response to the Offshore Wind Renewable Energy Credits Request for Information OSW-2018, issued by the New York State Energy Research and Development Authority on July 20, 2018. Please contact me if you have any questions.

Sincerely,

COUCH WHITE, LLP

Kevin M. Lang

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Attachment

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

AND

**NEW YORK STATE
ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**

In the Matter of Offshore Wind Energy

Case 18-E-0071

**RESPONSE OF THE CITY OF NEW YORK
TO THE OFFSHORE WIND PROGRAM
REQUEST FOR INFORMATION**

Dated August 10, 2018

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
AND
NEW YORK STATE
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In the Matter of Offshore Wind Energy

Case 18-E-0071

On July 20, 2018, the New York State Energy Research and Development Authority (“NYSERDA”) issued a Request for Information (“RFI”) to assist it in developing a formal solicitation for 800 MW of electric generation from offshore wind (“OSW”) turbines. The City of New York (“City”) provides the following responses to certain of the questions posed in the RFI.

Initially, the City offers the general comment that NYSERDA should remain cognizant that the needs and interests of consumers is of paramount importance, and any solicitation should not be designed in a manner that places the interests of OSW developers above those of consumers. Although the Public Service Commission (“Commission”) gave NYSERDA broad discretion in designing the solicitation, this matter remains subject to the Commission’s general oversight and should be guided by the statutory requirement that the rates charged to consumers must be just and reasonable.¹ In other words, while NYSERDA is seeking input from OSW developers on the terms and conditions that they desire, the developer preferences should not necessarily form the basis of the solicitation. Within the utility industry, many solicitations occur, and occur successfully, in which respondents must conform to the needs of the utility or other sponsor.

¹ Public Service Law §65(1).

Procurement Quantity

4. Should the 2018 RFP allow bidders to submit multiple bids with differing capacity or OREC quantities? Should this be a continuous range, or should specific discrete target quantities be prescribed by NYSERDA?

Response: NYSERDA should develop the solicitation to maximize flexibility and price discovery. This will best be accomplished if NYSERDA allows developers to include different pricing proposals as they deem appropriate. There need only be a requirement that the price be expressed on a \$/MWh basis to allow for proper comparisons during the bid evaluation process.

5. The Order notes that NYSERDA could award more than 800 MW in the first year alone to secure economic develop benefits or to accept low bid prices that take advantage of the expiring federal tax credits. What should the RFP include to promote these benefits?

Response: The Commission Order and NYSERDA have made clear that developers have the opportunity to propose larger projects. Accordingly, the solicitation need only specify that developers must demonstrate the tangible benefits for its proposal(s) (of any size).

Interconnection and Deliverability

6. Are there unique challenges associated with interconnection of offshore wind into downstate New York injection points in New York City and/or Long Island that should be taken into consideration when preparing the RFP? If yes, please identify the challenges.

Response: The RFP should seek details on the developers' plans for seeking recovery of interconnection costs so that the costs can equitably distributed across the State. NYSERDA should require that all OSW be directly connected into Zones J and K to provide maximum benefits to New York residents.

7. The Order requires that an eligible project must deliver its energy into the New York Control Area (NYCA), either by direct lead into New York or directly into an adjacent control area with transmission into NYCA (Order, p. 46).
 - a. Please specify the transmission service requirements and the transmission path from an adjacent control area to enable delivery into NYCA. What requirements should be included in the RFP to support NYSERDA's need to verify delivery into the NYCA?
 - b. For projects interconnected in a control area adjacent to NYCA but that deliver energy into NYCA, please describe the risks associated with such delivery. How should these risks be allocated? What options are available to proposers to manage such risks? Should the risk of curtailment be reflected in the contract? If so, how?

- c. The Order adopted the energy delivery requirement employed by NYSERDA in its Renewable Energy Standard RFPs (Order, p. 46, fn. 45). Are there revisions to that requirement that would assist developers in obtaining financing, or in estimating the cost of delivery?

Response: There is an ongoing dispute at the FERC regarding the allocation of certain transmission upgrade costs in PJM between PJM and New York. If an OSW developer obtains firm transmission rights into New York, it could become responsible for a share (and perhaps a large share) of the PJM transmission costs. Such additional costs could materially change the economics of the project. Such risks could be avoided if the OSW project(s) connect directly to New York City and/or Long Island. Indeed, the City urges NYSERDA to utilize the flexibility given it by the PSC and revise the interconnection requirement to require a direct connection to the New York Control Area. If a developer decides to interconnect in another region, it should be solely responsible for any risks and costs that arise because of such decision. Further, as noted above, NYSERDA should require that all OSW be directly connected into Zones J and K to provide maximum benefits to New York residents.

8. With respect to capacity attributes of projects:

- a. What transmission arrangements would have to be made in ISO-NE or PJM to facilitate the long-term delivery of capacity to NYCA? What requirements should be included in the RFP for NYSERDA to evaluate the feasibility of delivery of capacity to NYCA?
- b. For projects interconnected in a control area adjacent to NYCA but that deliver capacity into NYCA, please describe the risks associated with such delivery. How could these risks be allocated? What options are available to proposers to manage such risks?

Response: As discussed above, project costs could increase for interconnections that occur in other regions. To avoid the potential for any such concerns, NYSERDA should require that all OSW be directly connected into Zones J and K to provide maximum benefits to New York residents.

9. What level of detail should proposers be required to provide to demonstrate the reasonableness of their transmission cost estimates for HVDC or AC export cables, interconnection, and/or transmission system upgrades (if needed) included in their bid prices?

Response: The developers should provide an engineering analysis, performed by an engineering firm with relevant experience and expertise, that describes the locations, method(s) of construction, equipment quantities and types (*e.g.*, miles of conductor and ducts, switches, breakers, transformers), construction schedules, and interconnection considerations for the proposed transmission facilities – offshore and onshore and required as part of the NYISO’s interconnection process – and the

estimated cost of the equipment, installation, and any land required to be obtained. The source and justification of the cost estimates should be provided.

10. How should NYSERDA consider a strategic partnership between an offshore wind developer and a transmission owner in project viability or other award determinations? Are there reliability, economic, and/or operational benefits associated with such a strategic partnership as it pertains to “wet transmission,” i.e., onshore substation, offshore substation and export cable?

Response: 70% of the bid weighting is based on cost. Accordingly, NYSERDA should consider whether such partnerships lead to lower costs and great efficiencies. Because this solicitation is only the first phase in a larger effort, NYSERDA also should consider whether a partnership could lead to lower costs for future phases.

Bid Price Evaluation

16. How should the Benefit Cost Analysis Framework set forth in Case 14-M-0101 (Reforming the Energy Vision) be applied or otherwise refined in the 2018 RFP regarding price evaluation?

Response: Section 65(1) of the Public Service Law requires that the rates charged to utility customers be just and reasonable. One method of satisfying this statutory mandate is to ensure that programs customers are required to fund be cost-effective. Accordingly, the Benefit-Cost Analysis Framework developed in the REV proceedings for use to measure the cost-effectiveness of new technologies and supply resources should be applied to OSW in the same manner it is, and has been, applied to other types of supply resources. Doing so should help to assess the prices proposed by OSW developers and determine whether they are reasonable. Additionally, OSW has the potential of improving air quality in New York City by reducing reliance on in-City fossil-fueled generating facilities (provided the OSW interconnects into Zone J). The Benefit-Cost Analysis Framework should accommodate on the benefit side the contributions of OSW projects, as applicable, to improving air quality and its concomitant health benefits and addressing environmental justice concerns.

19. NYSERDA will use a maximum acceptable bid pricing metric in the solicitation (Order, p. 42). What factors should and should not be considered in setting the maximum acceptable bid price?

Response: To avoid unnecessary competition among the States seeking the development of OSW – and avoid such competition resulting in consumers paying more than necessary for OSW – NYSERDA should impose as a ceiling the price set by the recent Massachusetts OSW solicitation.

21. Are there other provisions that are consistent with the structure of the order that would, if included in the RFP, allow for more competitive pricing?

Response: Because there is limited experience with OSW development in this country, NYSERDA should allow developers to provide as an alternative bid (if they so desire) a different pricing scheme that could result in lower costs for consumers. The propriety of any Index OREC, or any Fixed Price OREC, can best be tested by comparing it to what the market is willing to pay or accept.

22. NYSERDA retains the authority to reject all bids (Order, p. 43). What factors other than the maximum acceptable bid metric should be considered when determining whether to select or reject bids?

Response: NYSERDA also should consider the degree of risks being borne by the developers versus consumers, and how the costs are likely to change if there are delays in the permitting and/or construction phases – especially if consumers are burdened with such additional costs. Other considerations should include the developers’ ability to construct the projects timely and within their proposed budgets.

Economic Benefits

23. In addition to project-specific spending and job creation in New York State, the Order encourages investment in enabling supply chain and infrastructure in New York, and commitments to offshore wind industry and supply chain stimulating activities that create real, persistent and sustainable institutional or labor capabilities in New York State, and that lower the cost of future offshore wind projects (Order, pp. 52-53).

- a. What documentation of such commitments should be required in the RFP to demonstrate real and verifiable investments in these categories?
- b. How should NYSERDA evaluate whether any investment is likely to lower the cost of future offshore wind projects?

Response: In addition to evaluating the soundness and reasonableness of the proposed economic benefits, NYSERDA can utilize Letters of Intent or Memorandums of Understanding as indicators of commitment to local workforce and economic development partners. NYSERDA also should consider the developers’ respective demonstrated track records of creating or strengthening offshore wind ecosystems in other areas. Further, NYSERDA should specify requirements for ongoing reporting of employment metrics, such as number of jobs created, job type, wage data, or workforce safety conditions and compliance, to verify that the proposed commitments continue to be met.

24. In accordance with the Order’s guidance to include a local content provision in the evaluation criteria (Order, p. 52), NYSERDA may require that proposers file an Economic Benefits Plan (EB Plan), to demonstrate its commitments. The purpose of this EB Plan is (i) to explain and justify the proposer’s claims, and (ii) to help evaluators consider the viability of claims. What information should be required in an EB Plan to support scoring of:

- a. Supply chain and supportive infrastructure investments?
- b. Opportunities for New York State businesses to bid on project expenditures?
- c. Enabling investments in activities, *e.g.*, workforce development, R&D, other?

Response: NYSERDA should request that the EB Plan include an economic analysis that identifies which aspects of the supply chain can be reasonably handled by existing New York State businesses and workforce. This analysis should specify the dollar amount and percentage of total investment expected to be handled by New York State firms. The EB Plan also should include a specific workforce plan component that outlines how and where the respondents intend to source labor and build clear career pipelines for job growth in New York State. Effective EB Plans should identify partnerships with workforce partners (such as intermediaries and local workforce development boards), universities, research institutions, and other relevant stakeholders in the state.

Further, each developer should be required to provide an estimate of the number of new jobs that would be created in New York, and particularly in New York City, by its proposed project. The numbers should be separated into management and union positions, construction (*i.e.*, temporary) and permanent jobs, job type, and approximate salary ranges for different job types,

25. NYSERDA may establish a minimum requirement in the RFP to provide opportunities to New York State firms for project-related expenditures. Options include (i) requiring that opportunities for contracts be communicated to a New York State vendor list maintained by NYSERDA, and (ii) requiring that each proposer provide opportunity for New York State firms to bid on contracts representing some percentage of total project costs.
- a. What categories of expenditures are reasonable to apply such a requirement to?
 - b. With respect to approach (ii), please comment on the practicality of such a requirement; what level of demonstration would be required; what is a reasonable specified percentage of total project costs to require; and what exceptions would it be reasonable to include.

Response: NYSERDA should not include prescriptive requirements for specific expenditure categories. Rather, NYSERDA should set a target percentage (suggested or mandatory) of investments designated for New York State firms and allow the developers to propose plans for meeting the target. The dollar amount and percentage of expected in-state expenditures can be compared across proposals. This will maximize flexibility for developers to propose innovative approaches to strengthen local industries and allow NYSERDA to assess the proposed economic impacts to the State.

Separately, NYSERDA should encourage developers to maximize opportunities for New York State minority- and women-owned business enterprises (“MWBEs”). It is now common for governmental procurements in New York, and especially for construction projects, that developers commit to using MWBEs to some degree. NYSERDA should apply the same or similar requirements and require that the

successful developer agree to use such MWBE for a portion of the work. The approach to setting the MWBE percentage should be similar to that used for other large-scale construction projects. Additionally, NYSERDA should require that developers commit to using local labor to the maximum extent possible.

26. In accordance with the Order, NYSERDA is interested in conveying greater weight to those expenditures and investments that (i) create persistent institutional or labor capabilities in NYS, and (ii) lower the cost of future offshore wind projects (Order, pp. 52-53). Please comment on:
- a. The proposed approach;
 - b. What information may be reasonable to use as the basis for assigning such additional weight; and
 - c. How much additional weight is appropriate to assign to expenditures or investments that create such benefits.

Response: The City generally supports NYSERDA's preference for investments that create long-term capabilities in New York State and lower cost of future OSW projects. Proposals should include information on the number, type, and wage level for estimated jobs created; clear plans and investments for on-the-job training, workforce skills training, and certification/credentialing; and initiatives that cultivate career pathways to grow the OSW industry in New York State over time. NYSERDA should consider assigning additional weight to job quality by requiring or encouraging prevailing wage requirements for applicable sectors

27. NYSERDA may establish penalties or other contractual repercussions, such as those used in its Renewable Energy Standard Tier 1 solicitations, which reduce the contract price in proportion to any shortfall below 85% of the economic benefits claimed, based on the independent audit of benefits realized during the first three years of commercial operations. Here, NYSERDA is considering: (i) reducing the contract price in proportion to the shortfall; (ii) requiring seller to make additional investment to make up a shortfall; or (iii) requiring seller to submit a payment in proportion to a shortfall to fund related activities. Please comment on these alternative approaches.

Response: Reducing the price paid to the successful developer for the electricity it produces will not provide the same value as the economic benefits that are not provided. For example, price reductions do not properly compensate for jobs that are not created in the metropolitan New York area, nor would they be equivalent to the benefits lost if a developer commit to locating back office operations in the New York City area but then fails to do so. Economic development can have secondary, tertiary, and other impacts, and it would be very difficult to properly value all such impacts. Further, while the economic developments benefits mostly would be localized in the downstate area, price reductions would be socialized across the State. In other words, the value received by downstate consumers from the price reductions would not match the value that could have been produced from the economic benefits.

In contrast, providing a payment to New York City equivalent to the shortfall in the economic benefits could be an appropriate penalty/incentive mechanism. If the developers will be obligated to provide the economic benefits they committed to provide in their proposals, or the cash equivalent of those benefits, such an obligation likely would provide an appropriate incentive and inducement for the selected developer(s) to follow through with their commitments. This approach would ensure that the State, and the City and/or Long Island, would receive the value contemplated when the developer(s)' proposals were selected and the developer(s) were awarded OSW contracts. As the cash payments would serve as substitutes for direct economic benefits, the payments should go to the municipalities that would have received the economic benefits.

29. The Order recognizes that the development of offshore wind creates the potential for high-quality employment opportunities and therefore presents a significant potential benefit to New York State. What measures or arrangements do you consider the most efficient and effective ways to:
- a. Ensure that the maximum potential high-quality employment opportunities are available to New Yorkers?
 - b. Ensure that a properly trained, highly-skilled and qualified workforce is available to fill the various labor needs throughout the duration of the project?
 - c. Ensure opportunities for the participation of New York small businesses?

Response: NYSERDA should incentivize creation of high-quality jobs by requiring or encouraging prevailing wage requirements for applicable sectors. Proposals should demonstrate commitments to working with local workforce development boards and details on the types of skills, certifications, and trainings that New York residents will need to access a range of jobs in the offshore wind industry.

Eligibility/Contract Provisions

35. To encourage the greatest participation by offshore wind developers, what specific considerations should be made in defining eligibility and threshold requirements, bid flexibility, and other procurement mechanics?

Response: There should be minimum financial requirements to ensure that any developer selected has the resources necessary to proceed with the project and to obtain financing for it. There also should be some requirement that the developer demonstrate its ability to construct large-scale projects offshore. This requirement should not be overly restrictive, however, as this is a nascent industry in the United States. Ownership of a BOEM license should not be an eligibility requirement because that would make the pool of eligible developers far too limited. With respect to bids, as discussed above, NYSERDA should allow developers to submit alternative, non-conforming bids if they provide greater value and lower costs to consumers than the conforming bids. The developers should not be permitted to dictate the eligibility and threshold requirements.

36. NYSERDA has the discretion to determine additional eligibility requirements for participation in the solicitation beyond those defined in the Order (Order, p. 46).
- a. Are there additional eligibility requirements that should be included in the solicitation? If so, what are the (dis)advantages of imposing such eligibility requirements on proposers?

Response: As noted above, NYSERDA should require that all OSW be directly connected into Zones J and K to provide maximum benefits to New York residents. The advantage of doing so is that the OSW will be counted as capacity in Zones J and K and will directly reduce the need to rely on fossil-fueled generating facilities in New York City and Long Island, thereby directly helping to achieve the State's public policy goals. Contrary to an assertion made at the OSW technical conference, interconnections into other regions will not provide the same type or level of benefits to New York City and Long Island.

37. NYSERDA will have discretion in fixing specific contract terms between 20 and 25 years (Order, p. 41). Should NYSERDA require proposers to submit offers for one or more specified terms, or allow respondents to propose a term length?

Response: Some amount of price discovery is appropriate in this matter. NYSERDA should require pricing at one specified term to allow for direct comparisons between proposals, but it should also allow developers to provide alternate pricing for a shorter or longer provided the alternative provides greater value (*e.g.*, a lower overall price or a lower unit price).

40. The Order states that “[i]f NYSERDA awards a contract using the Index OREC method, the contract will specify conditions that may trigger a reversion to the Fixed OREC method and price that was bid” (Order, p. 40).
- a. How should this provision be included in the contract?
- b. What conditions could trigger the reversion?
- c. Should there be a limited timeframe within which such a reversion must be exercised?

Response: NYSERDA should learn from the history of long-term fixed price energy contracts in New York and not repeat the same mistakes. The last time such contracts were used, New York consumers paid billions of dollars in excess and unnecessary costs for power. In this matter, the conversion from an Index OREC to a Fixed OREC should occur only if a project is otherwise going to shut down and a determination is made that the continued operations of the project is critical to preserving the reliability of the New York electric system or the most cost-effective way of achieving the State's public policy goals. No conversion should occur for the purpose of stabilizing or increasing the profits for any developer.

CONCLUSION

The City is a strong proponent of the State’s efforts to encourage the development of OSW in New York. The City appreciates the opportunity to provide these comments and help NYSERDA develop an OSW solicitation that properly places the interests of the consumers and the State first and which is likely to result in multiple cost-effective proposals.

Respectfully submitted,

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Dated: August 10, 2018
Albany, New York

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