**MD OSW Regulations - Proposed Questions for OSW Stakeholders**

As the State of Maryland Public Service Commission (“PSC”) plans for Round 2 of its offshore wind (“OSW”) procurement program, ensuring consistency with the 2019 Clean Energy Jobs Act (“CEJA”) and other applicable laws, the Staff of the Commission (“Staff”) seeks informal stakeholder and general pubic feedback regarding its program. Certain of these questions are directed at OSW market participants, and others to broader audiences. Responses to the questions posed in this document will be considered by Staff and their consultants, and will inform the drafting of updates to the relevant Code of Maryland Regulations provisions, which will be noticed for formal public comment.

Staff thanks all respondents for their participation in this process.

1. Prior OSW Procurement Process

The Maryland General Assembly passed the Offshore Wind Energy Act of 2013, which was signed into law on April 9, 2013. The PSC established OSW procurement regulations under Rulemaking 51 to implement that Act the following year. The first OSW application was submitted on January 28, 2016, was determined to be “administratively complete”, and the 180-day Application Period commenced on February 25, 2016. A second application was submitted on August 23, 2016, requiring the Application Period to be extended to make an administrative completion determination and complete the evaluations.

Once the applications were accepted as administratively complete, they were checked to ensure minimum threshold criteria were satisfied per Code of Maryland Regulations (“COMAR”) 20.61.06.03.A – that is, (i) the projects satisfied the “Qualified Offshore Wind Project” definition; (ii) the OREC price schedule term did not exceed 20 years and commenced no earlier than January 1, 2017; (iii) the proposed OREC price schedule did not exceed $190/MWh (levelized 2012$); (iv) they would be constructed using commercially proven components and equipment; (v) the project expected commercial operating date (“COD”) was reasonable; and, (vi) the applicants maintained site control or presented a feasible plan to obtain site control. Next, the price and non-price portions of the applications were evaluated and a report was provided to the PSC; a redacted version was released to the public.

The PSC conducted a pre-hearing conference in Case No. 9431 on December 14, 2016, accepted direct and supplemental direct testimony from the applicants by January 4, 2017 and from interested parties by February 15, held a status conference on March 9, held hearings March 13-28 plus two public hearings in Berlin and Annapolis, and accepted written briefs by April 13. Order No 88192 was issued on May 11, 2017 that selected the US Wind and Deepwater Skipjack OSW projects and specified OREC prices and conditions for approval.

1. How might the multi-step process (determination of administrative completeness, satisfaction of minimum threshold criteria, quantitative and qualitative evaluation, PSC hearings) be improved within the requirement of the CEJA and other applicable law?
2. Were any of the minimum threshold criteria per COMAR 20.61.06.03.A structured in a way that impacted bidding or price?
3. What could have been done differently to improve the overall process?
4. Other east coast states have recently completed OSW procurements?
5. What lessons should Maryland learn from those states’ procurements?
6. How can certain aspects of those structures be adopted by the PSC to improve its program within the scope of the applicable statutory provisions?
7. What other considerations should the PSC take into account when updating its OSW regulations for the next procurement round?

2. Current PSC Regulations

The PSC’s OSW procurement regulations currently in effect as provided in Subtitle 61 of Chapter 20 of the COMAR reflect the Offshore Wind Energy Act of 2013. The 2019 CEJA requires certain updates to the current OSW procurement regulations.

1. What aspects of the current regulations are reasonable and appropriate, and which parts should be improved upon?
2. In addition to the updates required by the CEJA, what additional updates should the PSC consider to the OSW procurement regulations?

3. Price Cap and Net Ratepayer Impact Caps

Maryland’s Offshore Wind Energy Act of 2013 established a $190/MWH (2012 $) levelized price cap and net ratepayer impact caps of $1.50/month (2012 $) for residential customers over the 20-year OREC term assuming an annual consumption of 12,000 kWh/year and 1.5% for non-residential customers over the 20-year OREC term. Net ratepayer impacts included the expected reduction in wholesale market energy and capacity prices. The two selected projects were found to satisfy these caps individually and collectively. Under the CEJA, the net ratepayer impacts are $0.88/month (2018$) for residential customers and 0.9% for non-residential customers for the Round 2 OSW procurement.

1. Did the caps lead to any specific outcomes for Maryland?
2. Are the net ratepayer impact caps for Maryland’s Round 2 OSW procurement (per the 2019 Clean Energy Jobs Act) reasonable, too lenient, or too restrictive?
3. Do you expect the potential Round 2 to lead to similar or different outcomes as the Round 1 caps?

4. OREC Bid Price Format

Commission consultants developed Excel-based spreadsheet price forms for OSW developers to enter their year-by-year OREC price bids. The spreadsheet included an instructions page, automatically calculated the levelized price based on discount and inflation rates approved by the PSC, and notified the user if the levelized price exceeded the $190/MWh (2012 $) levelized price cap. Each developer had a chance to test the spreadsheet in advance to get comfortable with it. The spreadsheet form had two options: a one-part bid in which the developer would absorb any cost of transmission upgrades and a two-part bid in which the second bid part would be adjusted pro-rata from the PSC’s estimated cost of transmission upgrades to PJM’s actual cost.

1. Were the spreadsheet instructions clear?
2. Was the spreadsheet user-friendly?
3. Did you have any problems entering data or submitting the OREC price form?
4. How could the price form have been improved?
5. If you were a bidder, did you choose to submit a one-part or two-part bid? Why?
6. Are transmission upgrades a significant risk factor?
7. Should future OSW solicitations also have one-part and two-part bid options?
8. Is there another, preferred price adjustment mechanism to handle unknown transmission upgrade costs?
9. Was there any question about the calculation accuracy or spreadsheet integrity?
10. Do you have other suggestions to improve the OREC bid price format?

5. Quantitative Evaluation Process

After OSW applications were determined to be “administratively complete” and minimum threshold criteria were satisfied, the price and non-price (see below) portions of the applications were evaluated The quantitative evaluation included independent forecasts by the PSC’s consultant of impacts to wholesale market energy and capacity prices along with avoided air emissions to ensure comparability between the projects.

1. Were the forecasts of market power price impacts and avoided air emissions submitted by bidders useful?
2. Were the independent forecasts of market power price impacts and avoided air emissions prepared by the PSC’s consultant useful?
3. Were the independent forecasts a better basis than the bidders’ forecasts to compare the two OSW projects?
4. How might you improve the key assumptions or calculation methods used by the PSC’s consultant?
5. Were any aspects of the quantitative evaluation unclear or lacking in transparency?
6. Do you have any suggestions to improve the quantitative evaluations for the Round 2 OSW procurement?

6. Qualitative Evaluation of Non-Price Criteria (including MBE participation and workforce development)

The PSC evaluated non-price criteria on a qualitative basis using a color-coding scheme for evaluations that were good, fair (met expectations), poor, or unsatisfactory. The non-price criteria included (i) project team experience, (ii) project characteristics and design, (iii) financial plan & strength and obtaining grants & tax credits, (iv) site control and interconnection ROW, (v) project COD and delay risks, (vi) transmission upgrade cost allocation, (vii) O&M plan, (viii) decommissioning plan, (ix) transmission improvements, (x) in-state economic benefits, (xi) quality of env’l & health analysis and net environmental & health impacts, (xii) meeting Maryland’s RPS target, (xiii) unique attributes of project and conditions to pursue development, (xiv) small and minority business engagement, (xv) minority investor solicitation, (xvi) ratepayer cost impacts and risk, and (xvii) quality of electric market analysis and impacts on wholesale electric market.

1. How would you improve the qualitative evaluation?
2. Do you consider any of these qualitative criteria demonstrably more or less important than others?
3. Did the qualitative evaluation give sufficient weight to MBE participation, workforce development, or other criteria?
4. What are the advantages and disadvantages of not weighting the quantitative and qualitative evaluations into a combined score?

7. Accommodation of OSW Construction Delays

The PSC approved two projects (per Order No. 88192 of May 11, 2017), each with an “approved OREC price schedule [that] shall not exceed a levelized OREC price of $131.93 (2012$), using a price escalator of 1.0%.” This pricing structure allows the 20-year OREC prices to increase with each year of delay subject to the levelized price cap.

1. Was allowing the OREC price to increase with delays, provided the levelized price is unchanged, a good or bad idea?
2. Was this OREC price adjustment mechanism appropriate in light of the state of the OSW industry at that time?
3. Should this OREC price adjustment mechanism be adopted in future OSW procurements?

8. Payment Mechanism / Escrow Accounts

In its OSW procurement regulations, the PSC established a payment mechanism in which escrow accounts would be established for each OSW project. The escrow accounts will be administered by a qualified financial institution, will track the delivery of ORECs, receive ratepayer payments from the State’s electric suppliers and energy and capacity revenues from PJM, and will make OREC payments to the OSW project. The escrow accounts will also true-up OREC payments if the actual construction cost or the receipt of grants and tax credits are different than submitted. The escrow account administrator will also administer reserve accounts and Generator Attribute Tracking System (“GATS”) accounts.

1. Will these escrow accounts (and associated reserve and GATS accounts) fulfill their intended function?
2. How should the accounts be changed?
3. How should the PSC amend the regulations regarding the payment and transfer of ORECS, specifically the mechanics of payments into and out of the escrow accounts and the associated reserve and GATS accounts within the limits of the COMAR § 7-704.2?

9. Pre-Bid Meetings

The PSC held a series of meetings for the Round 1 OSW procurement to review the overall procurement schedule, application requirements, the quantitative and qualitative evaluation criteria, the OREC bid price form, and answer questions from potential bidders and other stakeholders.

1. When and with what frequency should pre-bid meetings take place?
2. What content should be covered by these meetings and how can they be of most use to all parties participating?

10. Community Benefit Agreement

The PSC’s Order No. 88192 included community benefit provisions in the List of Conditions for each project appended to the Order. Under the CEJA, a separate community benefit agreement is required that:

“1. promotes increased opportunities for local businesses and small, minority, women-owned, and veteran-owned businesses in the clean energy industry;

2. ensures the timely, safe, and efficient completion of the project by facilitating a steady supply of highly skilled craft workers who shall be paid not less than the prevailing wage rate determined by the Commissioner of Labor and Industry under Title 17, Subtitle 2 of the State Finance and Procurement Article;

3. promotes safe completion of the project by ensuring that at least 80% of the craft workers on the project have completed an Occupational Safety and Health Administration 10-hour or 30-hour course;

4. promotes career training opportunities in the construction industry for local residents, veterans, women, and minorities;

5. provides for best efforts and effective outreach to obtain, as a goal, the use of a workforce including minorities, to the extent practicable; and

6. reflects a 21st-century labor-management approach based on cooperation, harmony, and partnership.”[[1]](#footnote-1)

Staff seeks stakeholder input on what terms and conditions the community benefit agreement should contain to meet these statutory directives.

1. What regulations should the Commission promulgate to ensure accountability and what penalties, if any, should be levied for non-compliance?
2. How can the State best ensure that fair labor and just transition principles are incorporated into its program and procurements, to ensure the most benefit for workers and historically disadvantaged communities?

11. PJM Market Rules

Any generation facility in the PJM market that wants to sell energy or capacity resources into the wholesale markets must adhere to rules covering interconnection, pricing, operations, and other topics. PJM has recently expanded its Minimum Offer Pricing Rules (“MOPR-ex”) that govern the capacity bid price of new generation entrants; these MOPR-ex rules may be amended in the future.

1. How should the PSC regulations best accommodate PJM’s wholesale market rules, including any MOPR-ex rules that may affect OSW participation in PJM’s capacity market?
2. How should net ratepayer impacts be evaluated given the uncertainty
3. How do developers account for this risk in their bids?

12. What other considerations should the Staff take into account when proposing updates to the Maryland offshore wind program regulations, and proceeding to it next round of offshore wind procurement?

1. PUA §7-7-41.1(e)(i). [↑](#footnote-ref-1)