

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## PUBLIC UTILITIES

### (a)

#### BOARD OF PUBLIC UTILITIES

#### Qualified Offshore Wind Projects

#### Proposed New Rules: N.J.A.C. 14:8-6.6 and 6.7

#### Proposed Amendments: N.J.A.C. 14:8-6.1 and 6.2

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra Chivukula, and Bob Gordon, Commissioners.

Authority: N.J.S.A. 48:2-13.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: QX18040466.

Proposal Number: PRN 2018-078.

Comments may be submitted through October 19, 2018, by e-mail in Microsoft Word format, or in a format that can be easily converted to Word, to: [rule.comments@bpu.nj.gov](mailto:rule.comments@bpu.nj.gov) or on paper to:

Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
ATTN: BPU Docket Number: QX18040466  
44 S. Clinton Ave., 3rd Floor, Suite 314  
PO Box 350  
Trenton, NJ 08625-0350

The agency proposal is as follows:

#### Summary

The New Jersey Board of Public Utilities (Board) proposes new rules and amendments to N.J.A.C. 14:8-6 to establish the offshore wind energy certificate (OREC) funding mechanism. The purpose of this rulemaking is to set forth the method and processes by which ratepayers will fund an offshore wind (OSW) project in accordance with all applicable laws, rules, Executive Orders, and Board Orders, and how all revenues earned from an OSW project will be delivered to ratepayers.

Under the existing rules, each supplier/provider that sells electricity to retail customers in New Jersey must ensure that the electricity it sells each reporting year in New Jersey includes at least the minimum percentage of OSW energy required for that energy year, as set by the Board, following the approval of a qualified offshore wind project (see N.J.A.C. 14:8-6.2). The proposed new rules describe the method by which suppliers will meet this obligation and how funds from the sale of ORECs will flow to the qualified offshore wind projects. The new rules and amendments also describe how revenues earned by offshore wind projects, including the sale of electricity, capacity, and other services, will be refunded to ratepayers as required under the 2010 Offshore Wind Economic Development Act (OWEDA), N.J.S.A. 48:3-87.1 et seq.

The new rules and amendments set forth the roles and responsibilities of each of the parties including suppliers, the suppliers' payment agent, and the electric distribution companies (EDCs), qualified offshore wind developers, and the OREC administrator. The OREC funding mechanism requires that: (1) all suppliers shall retire sufficient number of ORECs each year to meet the offshore wind renewable portfolio standard requirement set by the Board; (2) the EDCs shall serve as payment agent on behalf of the suppliers to facilitate the exchange of OREC payments from ratepayers to an OSW project and all revenues generated by an OSW project to ratepayers. The EDCs shall make monthly payments to the OSW project based on the number megawatt hours (MWhs) generated by the project and presented for payment; (3) Upon receipt of payment for ORECs, the qualified offshore wind developers shall transfer ORECs to suppliers via a PJM EIS GATs account and shall refund all revenues to ratepayers via the EDCs; and (4) an OREC administrator shall be jointly contracted by the EDCs to facilitate invoicing, payment, and verification that all obligations have been met. The OREC administrator shall conduct a true up twice a year to ensure compliance with the Renewable Portfolio Standards (RPS) offshore wind requirements.

The Board staff provided an opportunity for interested stakeholders to comment on a straw proposal of the proposed rule, which described these roles and responsibilities. The straw proposal and a notice of request for comments was distributed to all interested parties and posted on the Board's website on April 27, 2018. A public meeting was held on May 8, 2018, to provide interested stakeholders with an opportunity to provide written comments on or before May 18, 2018. Board staff posted all written comments on the Board's website and convened meetings with stakeholders to solicit additional input. Upon review and consideration of all comments and input received, the Board hereby submits this rulemaking to the Office of Administrative Law for publication in the New Jersey Register.

This proposed rule is submitted in furtherance of implementing Governor Murphy's Executive Order No. 8 (2018), which explicitly calls upon the Board to fully implement the OWEDA in order to meet the State's goal of 3,500 megawatts of offshore wind capacity by 2030, to proceed with a solicitation of 1,100 megawatts of offshore wind capacity and to finalize the rules for an OREC funding mechanism in support of that goal and the solicitation.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed amendments and new rules to the RPS rules will have a positive social impact for New Jersey by supporting the generation of zero emission electricity from nearby offshore wind projects that will help reduce greenhouse gases and other environmental pollutants. The rulemaking reduces risk and administrative costs for ratepayers and suppliers associated with achieving the offshore wind carve-out. The relative impact, however, will depend on Board approval of offshore

wind projects and the amount of energy produced. Actual social benefits associated with each proposed project will be calculated and evaluated as part of the OREC application process. Once approved and operational, offshore wind will reduce greenhouse gases and other pollutants stemming from fossil fuel generation including CO<sub>2</sub>, sulfur dioxide, and nitrogen dioxide. If fully implemented, the OREC funding mechanism will also reduce risk associated with offshore wind project financing and, thus, facilitate the transition to clean sources of energy and overall reduction of emissions and the social impacts associated with those emissions.

#### **Economic Impact**

The proposed amendments and new rules will impact rate payers and utilities as the rulemaking requires that utilities establish a surcharge on ratepayers for the cost of the ORECs. However, these costs will be offset, because all of the revenues paid to the wind project must be refunded to the ratepayers. The OREC costs will also be offset by the net economic benefits associated with each project related to the local supply chain benefits and jobs created by the project. Actual economic benefits associated with each proposed project will be calculated and evaluated as part of the OREC application process. Under OWEDA and per the OREC application rules at N.J.A.C. 14:8-6, Offshore Wind Projects must demonstrate a net-economic benefit for the State in order to be qualified to receive ratepayer support in the form of ORECs.

#### **Federal Standards Statement**

No Federal standards analysis is required because the proposed amendments and new rules are not proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

#### **Jobs Impact**

The proposed amendments and new rules to the RPS rules are designed to encourage the development of new Class I renewable energy sources in the State and the development of a clean energy economy. The rulemaking is critical to the investment in New Jersey's Class I resources in general, and offshore wind in particular, and will result in the creation of new jobs associated with the development, construction, and operation of the offshore wind projects. A typical utility scale offshore wind project of 1,000 megawatts creates approximately 1,000 jobs per year during a two-year-to-three-year construction cycle, and another 100 permanent jobs to support the 25-year life of a typical offshore wind farm.

#### **Agriculture Industry Impact**

The Board does not expect any direct agriculture industry impact from the proposed amendments and new rules other than those associated with the reduction of greenhouse gases to mitigate the effects of climate change.

#### **Regulatory Flexibility Statement**

The proposed amendments and new rules will not impose any recordkeeping, reporting, or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. is a business that has fewer than 100 full-time employees, of which no regulated entity so qualifies.

#### **Housing Affordability Impact Analysis**

The proposed amendments and new rules will have no impact on the affordability of housing in New Jersey and will not evoke a change in the average costs of housing as the rulemaking describes the flow of funding and does not determine the cost of offshore wind, the OREC price, the impact of proposed offshore wind projects to ratepayers nor housing affordability.

#### **Smart Growth Development Impact Analysis**

The proposed amendments and new rules should not have any significant impact on smart growth and will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rulemaking describes the flow of funding and does not determine the impact of proposed offshore wind projects to smart growth initiatives.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Board has evaluated the proposed amendments and new rules and determined that they will not have an impact on pretrial, detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 6. QUALIFIED OFFSHORE WIND PROJECTS

#### 14:8-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and 14:4-1.2.

“**Annual OREC allowance**” means the Board-approved maximum number of ORECs for which a qualified OSW project can be paid during each year of its qualification life.

“**Annual OREC allowance schedule**” means the schedule included in each qualified OSW project’s OREC Order, representing the scheduled amount of ORECs that the project may submit to the OREC payment agent for payment for each month of the year, with the monthly amounts totaling to equal the annual OREC allowance. A project may exceed its monthly allocation due to higher production or output, as long as it does not exceed the annual OREC allowance.

“**Annual total projected load**” means the State’s total load in the energy year immediately preceding the year during which suppliers must meet their OREC obligation and is used in calculating the OREC purchase percentage.

“**Commercial operations date (COD)**” means the date upon which a qualified OSW project, which is interconnected to the transmission system in New Jersey, begins to generate power for which it is eligible to receive ORECs.

“**Energy year (EY)**” means the 12-month period from June 1st through May 31st and shall be numbered according to the calendar year in which it ends (for example, EY 2019 runs from June 1, 2018 through May 31, 2019).

“**Generation attribute tracking system (GATS)**” means the environmental and emissions attribute tracking system for electric generation that is administered by PJM Environmental Information Services (EIS).

“**Offshore wind administrative cost**” means the reasonable costs incurred by the EDCs in serving as payment agent and for contracting the OREC administrator, which shall be recoverable by the EDCs.

“**Offshore wind alternative compliance payment (OACP)**” means a payment made on behalf of a supplier during annual true up due to insufficient OREC supply that shall be equal to the price of an OREC.

“**Offshore wind facility qualification life**” means, for any qualified offshore wind generation facility, the period beginning on the commercial operation date (COD) when the facility is authorized to operate under this subchapter and ending on the conclusion of the energy year that is 20 years after the date of authorization to operate. An offshore wind facility’s qualification life applies to the facility itself, and to each piece of equipment included in the facility, regardless of any interruption in the offshore wind facility’s operation; or of any disassembly, relocation, sale, or transfer of any piece of equipment included in the facility.

“**OREC administrator**” means the independent entity jointly contracted by EDCs to oversee and verify all OREC transactions, the refund of all revenues to ratepayers, and annual compliance with the OSW Renewable Portfolio Standard (RPS) obligation.

“OREC payment agent” means the electric distribution company that shall facilitate the transfer of funds pursuant to this subchapter.

“OREC purchase percentage” means the percentage of load for which all suppliers must purchase and retire ORECs, or receive an OACP credit, per this program, as set forth in the OSW carve-out.

“OREC purchase price” means the amount that must be paid for an OREC through this program as established by the Board for each project for each energy year.

“OREC qualification life” means the eligibility period of an OREC. ORECs are eligible to be applied toward the OSW RPS carve-out during the energy year in which they are produced, and the following two energy years, pursuant to the Offshore Wind Economic Development Act, N.J.S.A. 48:3-87.1 et seq.

“OREC surcharge” means a non-bypassable surcharge on ratepayers, to be set annually by the Board, and collected by the EDCs to cover the OREC costs.

“OREC Transaction Management Agreement” means a uniform agreement entered into between each qualified OSW project and the OREC administrator. This OREC Transaction Management Agreement shall serve as the detailed management plan or “operating manual” describing how the OREC administrator will oversee and report out on all OREC transactions and shall require Board approval before going into effect.

“OWEDA” means the Offshore Wind Economic Development Act, N.J.S.A. 48:3-87.1 et seq.

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

“Supplier” means basic generation service (BGS) suppliers and third-party suppliers.

“Term” means the period after the COD, during which ORECs may be generated, priced, and sold by a qualified OSW project.

14:8-6.2 Offshore wind renewable portfolio standards requirements

(a)-(f) (No change.)

(g) The offshore wind carve-out to the RPS schedule is as follows:

1. The OSW carve-out shall establish for each energy year:

i. The total number of MWhs that the Board has authorized as eligible to receive ORECs;

ii. Annual RPS requirement or OSW purchase percentage set as a percentage of retail sales a supplier must cover by purchasing ORECs; and

iii. The OREC purchase price that each individual qualified OSW project has been authorized to receive in OREC Orders in effect for the energy year.

2. The OSW carve-out shall:

i. Become effective in the first energy year in which the first approved OSW project’s commercial operations date falls, and then be adjusted by the Board on an annual basis to reflect subsequent projects;

ii. Continue for each energy year during which any qualified OSW project is operational, up to and including the energy year in which the last qualified OSW project reaches the end of its term as established in its OREC order;

iii. Be published annually by the Board no less than three months prior to the BGS auction;

iv. Be set and maintained by the Board in order to ensure that sufficient revenues from suppliers, or designated payment agent, are received by the qualified OSW projects for ORECs generated up to each project’s approved OREC allowance;

v. Account for any payments made in excess of a project’s approved OREC allowance and these payments shall be refunded to ratepayers;

vi. Require the OREC administrator to advise the Board on an annual basis to determine if the OREC purchase percentage is set too high or too low and needs to be reset to meet the annual OREC allowance;

vii. Require the OREC administrator to advise the Board on an annual basis, the amount of the surcharge to be collected by each

EDC in order to meet the annual OREC allowance for each qualified offshore wind facility; and

viii. Be evaluated annually, and adjusted if necessary, by the Board to ensure sufficient OREC purchase percentage, including adjustments needed to account for any new OREC orders issued in the previous year and changes to the annual total projected load.

3. The OREC administrator shall conduct a true up twice annually at six months and at 12 months and no later than 120 days after the close of each energy year during each year of supplier obligations, to ensure compliance and provide the Board recommendations for any adjustments to the OSW purchase percentage and OSW carve-out.

4. Any adjustment to the OSW purchase percentage and OSW carve-out schedule shall be made at least three years in advance of the applicable energy year. Adjustments to the Class I requirements, necessitated by a change in the OSW requirement percentage, shall be made in tandem and three years in advance.

5. Suppliers shall:

i. Meet the OSW carve-out requirement by obtaining ORECs from each qualified OSW project in sufficient amounts as verified by the OREC administrator;

ii. Set up a PJM-EIS GATs account to receive ORECs from qualified OSW projects on a quarterly basis through the OREC administrator; and

iii. Retire ORECs from qualified OSW projects on an annual basis in order to meet the OSW carve-out obligation, in the same manner they would retire other types of RECs to meet other RPS obligations.

14:8-6.6 Funding mechanism [(Reserved)]

(a) Once the Board has approved an offshore wind project under this subchapter, the qualified OSW project shall be funded through an Offshore Wind Renewable Energy Certificate (OREC) as set forth in this subsection and in accordance with the following fundamental principles:

1. A Board Order that approves a qualified OSW project shall be binding and enforceable on all parties referenced therein;

2. The total annual OREC allowance for a qualified OSW project, once approved by the Board, shall not be subject to reduction or modification during the term of each OREC order unless otherwise agreed to by both parties;

3. A developer of a qualified OSW project shall be eligible to receive the full amount of the cost to build and operate an OSW project for 20 years subject to the terms and conditions of the Board Order;

4. Qualified OSW projects shall only be entitled to OREC revenues for megawatt hours (MWhs) actually generated over the 20-year term delineated in the Board Order, and shall have no recourse against the Board, the suppliers, the EDCs, the OREC administrator, or the ratepayers for any additional payments;

5. ORECs from a qualified offshore wind project shall have a qualification life of three years, including the year it was generated and the following two years, thus, allowing ORECs to be banked for future use; and

6. All revenues generated by an OSW project shall be returned to ratepayers.

(b) The Board Order granting approval of a qualified OSW project, pursuant to the provisions of N.J.A.C. 14:8-6.5 for designation as a qualified OSW project, shall conform to the provisions of this section and shall include, but not be limited to:

1. A commercial operations date (COD) after which ORECs may be generated, priced, sold, or otherwise attributed to the project;

2. The annual OREC allowance expressed as the total number of MWhs for which a project may be eligible to receive payment of ORECs. This amount shall be based on the total installed capacity of the project, projected capacity factor, and total number of hours of operation per year and any other factors identified by the applicant, consistent with this subchapter;

3. An OREC schedule showing the scheduled amount of ORECs that a project may submit for payment for each month of the year,

with the total monthly scheduled amounts equal to the annual OREC allowance;

4. A qualified offshore wind project may not exceed the annual OREC allowance in any given year. Any unmet OREC allowances in a given year may be carried forward to the next year;

5. A requirement that the qualified OSW project comply with the standard participation agreement with the OREC administrator. The standard participation agreement and any subsequent modifications shall be developed by the OREC administrator and approved by the Board;

6. A requirement that all project revenues are refunded to ratepayers;

7. A calculated OREC surcharge for the OSW project, using the anticipated in-service or COD date, based on the OREC price of each approved OSW project multiplied by the annual OREC production in MWhs and divided by the total forecasted load of EDCs plus any applicable sales tax;

8. A directive to each EDC to serve as payment agent on behalf of the suppliers in the EDC's territory;

9. A requirement that the project report annually to the OREC administrator and to the Board on actions taken by the developer to maximize production and revenues;

10. A requirement that the project reports to the policies that may be adopted by the Board to help reduce future OREC pricing and the total ratepayer impact;

11. Annual reporting requirements to ensure RPS compliance and to facilitate the OREC administrator's annual true up to ensure that all obligations have been met;

12. A fixed, flat OREC price for the proposed term or a fixed price for every contract year pursuant to this section;

13. An approved decommissioning plan; and

14. An approved plan for the OSW project, if it is not decommissioned immediately at the conclusion of the approved 20-year term of OREC funding.

(c) The Board shall direct each EDC to serve as payment agent on behalf of the suppliers in each EDC territory to facilitate the transfer of OREC funding payments from ratepayers to offshore wind developers. As payment agent, each EDC shall:

1. File with the Board a tariff no later than 180 days prior to the COD date to collect a non-bypassable OREC surcharge to be assessed as a distribution charge that will be sufficient to meet each supplier's OREC obligation;

2. Implement the ratepayer surcharge based on the Board-approved total annual OREC allowance multiplied by the OREC price, and expressed as a per kilowatt hour (kWh) charge to be collected from all ratepayers on behalf of the suppliers;

3. The amount of the OREC surcharge shall be set by the Board annually, and shall become effective on the first day of each energy year, and shall be equal to the forecast revenue requirements of all OREC purchases divided by the total of estimated sales for each EDC, and shall include all applicable taxes and fees;

4. Begin collecting the OREC surcharge four months in advance of the OSW project COD to ensure that adequate funds will be available to complete the initial OREC payment to the OSW developer;

5. Establish separate accounts for each OSW project to ensure that OREC funds for an OSW project are collected and dedicated to each OSW project individually and shall not be intermingled with any other OSW project;

6. Make monthly OREC payments to OSW developers based on the actual number of MWhs produced by the OSW project, until the total annual OREC allowance approved by the Board Order has been reached;

7. Facilitate and execute the transfer of all revenues generated by an OSW project from the OSW developer to the ratepayers as directed by this section and in accordance with N.J.S.A. 48:3-87.1;

8. Provide detailed, monthly accounting reports to the OREC administrator of all transactions, account balances, and any other information requested by the Board or the OREC administrator related to the obligations identified in this section;

9. Participate in any and all true up proceedings, to be conducted by the OREC administrator, as prescribed by the Board; and

10. File with the Board annually for recoverable charges for the administrative fees incurred as payment agent and for the OREC administrator fees.

(d) The Board shall direct the EDCs to enter into a joint contract to retain an OREC administrator. The contract shall be competitively bid to ensure the most efficient and cost competitive price for ratepayers. The OREC administrator shall:

1. Be independent of any supplier, EDC, or qualified OSW developer, affiliate, investor, and/or employee;

2. Serve as the sole administrator for accounting, compliance, invoicing, and other administrative matters related to or arising from the OREC obligations of qualified OSW facilities pursuant to OWEDA;

3. Notify the EDCs at the beginning of each energy year the total offshore wind carve-out obligation and total surcharge on ratepayers to be collected consistent with the Board Order, as well as the amount to be collected for each qualified offshore wind project and to be held in a separate account;

4. Facilitate all transactions between ratepayers, suppliers, EDCs, and OSW developers;

5. Develop a payment tracking and verification system, subject to Board approval, to track all transactions that shall account for, at a minimum:

i. All payments due by EDCs on behalf of suppliers to OSW developers;

ii. All project revenues from OSW developers to be refunded to ratepayers through the EDCs;

iii. All project revenues held by OSW developers in a reserve account;

iv. All ORECs held in PJM EIS GATs accounts for transfer from OSW developers to suppliers;

v. The final retirement of all ORECs by suppliers in compliance with the RPS offshore wind carve-out;

vi. Supplier load data from PJM in order to confirm each supplier's annual OREC obligation;

vii. EDC load data in order to confirm each EDC's relative share of the annual OREC obligation and ratepayer surcharge;

viii. OSW production data from OSW developers and PJM in order to confirm project performance and all associated revenues in the form of ORECs and project revenues;

ix. All project revenues including PJM revenues paid to the project for energy, capacity and ancillary services as well as any penalties incurred by the project.

x. The monthly transfer of ORECs from qualified OSW projects to a PJM-EIS GATS account managed by the OREC administrator and the transfer of all project revenues to EDCs for refund to ratepayers;

xi. The transfer of ORECs on a quarterly basis via a PJM-EIS GATS account to the suppliers;

xii. Receipt of payment by a qualified OSW project for its annual OREC allowance, based on actual generation and at the price and quantities established in their OREC order issued by the Board;

xiii. Receipt of all project revenues by EDCs for which ratepayers are entitled to a refund;

xiv. Refunds of all project revenues to ratepayers; and

xv. All ORECs that have been banked by OSW developers to meet the supplier obligations in any given year;

6. The OREC administrator shall set up a PJM-EIS GATs account to facilitate the transfer of ORECs from the OSW developers to suppliers;

7. Conduct a true up two times each energy year at six months and at 12 months of the energy year. The 12-month true up shall be completed and submitted to the Board no later than 90 days after the close of the energy year in accordance with this subchapter to ensure compliance with the OSW RPS and to advise the Board in a technical capacity of any necessary modification to the OSW carve-out and annual RPS percentage three years out;

8. Reasonable administrative costs related to the OREC administrator shall be recoverable by the EDCs. An accounting of such costs will be provided by the EDCs in writing on an annual basis to Board staff and rate counsel. Board staff and Rate Counsel shall submit any objections within 60 days; and

9. Any changes proposed by the OREC administrator to a Board-approved system shall be submitted to the Board for approval.

(e) Offshore wind developers, for each qualified OSW project, in addition to any other responsibilities that may be required in the Board Order, shall:

1. Take all reasonable efforts and due diligence to maximize revenues from the qualified OSW project;

2. Establish and maintain a PJM-EIS GATS account to track and document the number of ORECs generated, transferred, and retired.

i. The PJM-EIS GATS account shall serve as the basis of verification of the issuance of one OREC for each MWh of electricity that is generated by the qualified OSW project;

3. Account for all ORECs held in the qualified OSW project's GATS account, which shall be the sole and exclusive property of such approved project and may be transferred to the OREC administrator on behalf of suppliers at the discretion of the project owner;

4. At the end of each month, each OSW developer shall provide to the OREC administrator proof of all ORECs that were issued into their GATS account in that month;

5. At the end of each month, each OSW developer shall submit an invoice to each of the EDCs, who act as the designated payment agent for suppliers, for payment of ORECs. The monthly invoice shall detail the total number of MWhs generated by the project that month and the number ORECs available for sale multiplied by the approved OREC price. The invoice shall also include notice of all project revenues generated that month and due to be refunded to ratepayers;

6. The OREC administrator shall be copied on all monthly invoices sent to the EDCs for payment;

7. A qualified offshore wind project may submit ORECs for payment based on its actual monthly production up to the approved annual OREC allowance. It may exceed the scheduled monthly allowance in a given month, but may not exceed the annual OREC allowance in a given year;

8. A qualified offshore wind project may carry forward any unmet OREC allowances in a given month to the following month; and

9. A qualified offshore wind project may carry forward any unmet annual OREC allowance in a given year to the next year.

(f) Offshore wind developers shall be responsible for the collection and transfer of all project revenues on behalf of ratepayers as follows:

1. A qualified OSW project shall return all revenues associated with the OSW project to ratepayers;

2. All project revenues shall be held in an interest bearing account to be distributed to ratepayers as set forth under this section;

3. A qualified OSW project may hold project revenues including, but not limited to, PJM revenues, which include all revenues paid to the OSW developers by PJM for the sale of electricity, capacity, and ancillary services to the grid, for a period of three months;

4. If held, PJM revenues shall at the expiration of three months, and upon confirmation of receipt by the OSW project of OREC payment for the corresponding MWhs, then be released for refund to ratepayers on a continuing, monthly basis. Any unmet OREC obligation may be covered by the PJM revenues contingent upon at least 10 days prior notice to the OREC administrator;

5. The qualified OSW project shall provide a monthly accounting to the OREC administrator of all project revenues received, held, and distributed;

6. The OREC administrator shall verify that all project revenues not used for an approved use, are refunded to ratepayers;

7. PJM revenues shall be available for use by the qualified OSW project to:

i. Cover the monthly OREC obligation until full payment is made;

ii. Cover OREC payments during the resolution of an event of EDC default, under-payment, or non-payment by the payment agent;

iii. Upon receipt of payment for ORECs, all PJM revenues associated with the OREC are due to be paid with interest to EDCs for refund to ratepayers; and then

iv. For any purpose deemed necessary, during the period in which they are held in an interest bearing account pending payment for the related ORECs, to ensure that all qualified OSW projects receive their full approved OREC revenues on a timely basis, including, but not limited to, covering seasonal mismatches between OREC purchases and OREC production.

#### 14:8-6.7 Annual true up

(a) Concurrent with the RPS compliance report required by N.J.A.C. 14:8-2.11, but no sooner than October 1st following the end of each energy year, an annual true up shall be conducted by the OREC administrator, suppliers, qualified OSW projects, and EDCs, with the oversight of the Board, consisting of the following:

1. Verification of supplier OREC obligation.

i. Each supplier's total annual OREC obligation is calculated based on actual retail sales and the OSW carve-out.

ii. Suppliers shall acquire additional OREC purchases or OACP credit, as necessary, to comply with the OSW carve-out.

iii. If, during the annual true up, the Board determines that a supplier did not meet its OREC obligation, the Board shall initiate whatever action necessary to ensure compliance, in accordance with existing RPS rules.

iv. If a supplier exits the New Jersey market because of bankruptcy or any other reason, the Board shall ensure that the OREC obligation is met for any energy delivered by that supplier, and that any supplier that steps into the exiting supplier's energy delivery obligations also meets the corresponding OREC obligations or the obligation shall be equally redistributed among all suppliers in the following energy year;

2. Verification of the annual OREC allowance.

i. Each qualified OSW project's total OREC submission for the energy year is confirmed as not exceeding its annual OREC allowance under its OREC order and consistent with the projects performance. Monthly OREC allowances may be exceeded, as long as the total OREC allowance is not exceeded.

ii. If it is determined that a qualified OSW projects did not meet its annual OREC allowance, it has the opportunity to submit any ORECs from the current year or banked ORECs to make up the short fall as part of the annual true up, but has no recourse if it does not have the ORECs to provide;

3. Verification of all project revenues.

i. Qualified OSW projects shall confirm or demonstrate to the OREC administrator that all project revenues have been delivered to the EDCs, which are to be refunded to ratepayers, with appropriate exceptions.

ii. Qualified OSW projects shall immediately make up any PJM revenue shortage to the EDCs to be refunded to ratepayers, except to the extent the OSW project retained PJM revenues for an allowable use such as reserve fund;

4. When an OSW project has reached the end of its 20-year term during the energy year, the Board shall confirm that all PJM reserves associated with, or necessary for, the project ending its 20-year term have been submitted to the EDCs to be refunded to ratepayers;

5. The EDCs shall submit as part of their annual SBC filings, the revenues received from the OSW developers as verified by the OREC administrator to be credited to the SBC for the benefit of ratepayers or otherwise credited to the ratepayers as directed by the Board. The OREC administrator shall compare these filings with the annual OREC administrator reports to ensure that all revenues

due to ratepayers were provided to the EDCs and that all of those revenues have been credited to the ratepayers as directed by the Board;

6. The OREC administrator shall review and report on all OREC administrator transactions and accounts, including those that took place during the annual true up. All reports or findings of this review shall be provided to the Board, each of the EDCs, Rate Counsel, and shall be made available to the public on a website;

7. The OREC administrator, in consultation with the Board shall, at the end of the annual true up, conduct a review of the OSW carve-out and annual ratepayer surcharge amount and, if necessary, recommend adjustments to the OSW carve-out and the ratepayer surcharge;

8. All adjustments to the RPS shall be made three years in advance, if at the end of the annual true up it is determined that:

i. All qualified OSW projects have submitted no more than their annual OREC allowance, but have ORECs remaining; and

ii. All suppliers have met their OSW carve-out requirement through the purchase of ORECs. Qualified OSW projects may hold any ORECs for an additional two years or sell the ORECs for Class I RPS compliance;

9. Adjustments to the OSW purchase percentage if set too low, within 30 days following the receipt of a notice of insufficient OREC demand by the OREC administrator, EDC, or a qualified OSW project, the Board shall direct the OREC administrator to adjust the OSW purchase percentage;

10. If the OREC administrator determines that there are not enough ORECs in a given year to meet the suppliers' obligation, and there are no banked ORECs available, the OREC administrator may direct the EDCs, as the suppliers' payment agent, to make OACP payments to satisfy the RPS; and

11. The qualified OSW project shall retain ownership of any excess ORECs. The qualified OSW project, at its sole discretion, may use excess ORECs in either of the following ways:

i. Hold the excess ORECs in order to submit them to the EDC for payment in a future month or year in which the project might have a production deficit; or

ii. Apply the excess ORECs toward the OSW carve-out during the OREC lifetime.

## TRANSPORTATION

### (a)

#### DIVISION OF MULTIMODAL SERVICES

#### BUREAU OF AERONAUTICS

#### Licensing of Aeronautical Activities

#### Proposed Amendments: N.J.A.C. 16:55-3.2, 6.1, and 6.2

Authorized By: Diane Gutierrez-Scaccetti, Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 6:1-29, 6:1-43, 6:1-44, 27:1A-5, and 27:1A-6.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2018-073.

Submit written comments by October 19, 2018, to:

Paul F. Sprewell  
Administrative Practice Officer  
New Jersey Department of Transportation  
PO Box 600  
Trenton, NJ 08625-0600  
Fax: (609) 530-4638

Submit electronically at [njdotRules@dot.state.nj.us](mailto:njdotRules@dot.state.nj.us).

This rule may be viewed or downloaded from the Department's website at <http://www.state.nj.us/transportation/about/rules/proposals.shtm>.

The agency proposal follows

#### Summary

The rules found at N.J.A.C. 16:55 govern aeronautical activities required to be licensed in the State of New Jersey. The activities are generally conducted at locations away from an airport and include aerial advertising, aerial application of fertilizers for agricultural uses, aerial mosquito control, and operation of parachute centers. The Department of Transportation (Department) proposes amendments necessary to clarify provisions related to banner towing and to update contact information and to provide information related to appeals and contested cases.

The proposed amendments are as follows:

N.J.A.C. 16:55-3.2(a)lviii is proposed for amendment to clarify the provisions related to banner towing both on and off an airport. Applicants are now required to submit a scaled area photograph in addition to a sketch of the proposed banner pickup and drop area(s) for locations both on and off airports. Several of the airports governed by this rule cannot support banner tow operations at the airport itself due to changes in the location of banner tow areas. In one instance, hangers were built where the pickup and drop off areas were located. New areas were chosen that the Department determined caused safety concerns. For locations off an airport, the sketch and photograph must include depictions of any obstructions within 500 feet of the pickup and drop areas. The location may be inspected by the Bureau and may require FAA approval to determine suitability.

N.J.A.C. 16:55-6.1(a) is proposed for amendment to simplify language and to delete language related to court reporters, as such is unnecessary. N.J.A.C. 16:55-6.1(b) is proposed for amendment to add contact information. N.J.A.C. 16:55-6.1(c) is proposed for amendment to clarify the informal hearing process. Proposed new N.J.A.C. 16:55-6.1(d) is added to provide that applicants and licensees will be notified in writing if a request for a hearing is denied. Recodified N.J.A.C. 16:55-6.1(e) is proposed for amendment for clarity. Existing N.J.A.C. 16:55-6.1(e), (f), (g), and (h) are proposed for deletion because the processes are no longer completed under current Department policy. Proposed new N.J.A.C. 16:55-6.1(f) is added to establish that the licensee or applicant will receive a written decision within 30 calendar days of the informal hearing. Recodified N.J.A.C. 16:55-6.1(g) is proposed for amendment for clarity. Proposed new N.J.A.C. 16:55-6.1(h) is added to establish provisions for appeals of the decisions from informal hearings.

N.J.A.C. 16:55-6.2(a) is proposed for amendment to clarify language. Proposed new N.J.A.C. 16:55-6.2(b), (c), (d), and (e) set time limits for the supplying of the judges initial decision, exceptions to the decision, response to the exceptions, and final written agency action. Existing subsection (b) is recodified as new subsection (f).

This notice of proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5, since the Department is providing a 60-day comment period for this notice.

#### Social Impact

The proposed amendments promote public confidence in the State by demonstrating the State's responsibility in ensuring aviation safety. The rules establish standards commensurate with the needs of public safety, the safety of persons operating or using aircraft, and the safety of persons and property on the ground.

#### Economic Impact

The economic impact of maintaining public safety for the conduct of aeronautical activities cannot be specifically determined. However, accidents and injuries are prevented by these safety measures, thus decreasing potential medical costs and property damages. In addition, promotion of aeronautical activities has the potential to generate revenue for the State's economy. The proposed amendments will have a positive economic impact. License applicants may incur costs relating to the requirement for scaled aerial photographs.

#### Federal Standards Statement

The proposed amendments are governed by State law. The rules meet, but do not exceed, any Federal law, standards, or requirements. Therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1994), P.L. 1995, c. 65, is not required.