

ATTACHMENT 4¹

Proposed Non-Standard Terms and Conditions

A. DEFINED TERMS

Capitalized terms have the meaning ascribed to them in the Designated Entity Agreement, except as provided or modified below:

1. “BPU Board” means the New Jersey Board of Public Utilities.
2. “BPU Staff” means the Staff of the New Jersey Board of Public Utilities.
3. “Construction Costs” means any and all costs and expenses (including financing costs and expenses) directly or indirectly incurred by the Designated Entity to develop, construct, complete, start-up and commission the Project and place the Project in service in accordance with Scope of Work, including without limitation any such costs and expenses incurred by the Designated Entity in connection with the following, in each case as and to the extent contemplated by the Scope of Work:
 - a. obtaining permits and other governmental approvals for the Project,
 - b. acquiring land and land rights for the Project,
 - c. performing any environmental assessments or environmental mitigation activities in connection with the Project,
 - d. designing and engineering the Project,
 - e. procuring any equipment, supplies and other materials required to complete construction of the Project and place the Project in service, and
 - f. otherwise performing or completing any and all development and construction-related activities required in connection with the Project as part of Scope of Work including but not limited to all site clearing, equipment assembly and erection, testing and commissioning activities contemplated by the Scope of Work, whether performed directly by Designated Entity or by one or more third parties retained by Designated Entity (without regard to whether such third parties are affiliated or non-affiliated).
4. “Construction Cost Amount” shall mean [REDACTED] Dollars (\$ [REDACTED]).
5. “Construction Cost Cap Amount” means the sum of (i) the Adjusted Construction Cost Amount, as determined in accordance with Section F.1 in this Schedule E, *plus* (ii) Uncontrollable Costs.
6. “Cost of Debt” means [REDACTED] percent ([REDACTED]%).

¹ Subject to completion/modification by Applicant.

7. “Expected In-Service Date” means the Project completion date bid by the Designated Entity on which Project (x) is to be capable of accepting electric cables and other infrastructure form offshore wind generators designated by the Board, and (y) can be placed-in-service for purposes of operation.
8. “Initial Operation” shall mean the date on which: (i) the Project is completed, (ii) Designated Entity provides formal engineering documentation and certification from a licensed third-party engineer as to the integrity and completeness of the Project, based on standard industry requirements, including duct banks, cable vaults, HDD bores, conduits, and any submarine exit points, to the Board in an informational filing, and (iii) the Designated Entity certifies to Transmission Provider, following BPU Board review and approval, that the Project (x) is capable of accepting electric cables and other infrastructure form offshore wind generators designated by the Board, and (y) can be placed-in-service for purposes of operation.
9. “Initial Operation Date” means the date on which Initial Operation is achieved.
10. “Order” means the [REDACTED], issued by the Board on [REDACTED].
11. “Return on Equity” means, exclusive of any FERC-approved adders and incentives, [REDACTED] percent ([REDACTED]%).
12. “Transmission Provider” shall mean PJM Interconnection, L.L.C.
13. “Uncontrollable Costs” means those additional Construction Costs, if any, above the Adjusted Construction Cost Amount which are incurred by the Designated Entity solely as a result of one or more events of Uncontrollable Force.
14. “Uncontrollable Delay” means any delay in achieving the Initial Operation Date on or before the Expected In-Service Date that occurs solely as a result of one of more events of Uncontrollable Force.
15. “Uncontrollable Force” means any occurrence or event (1) that is beyond the reasonable control of the Party claiming Uncontrollable Force, (2) which is not caused by the act or omissions of such Party or the failure of such Party to perform its obligations under this Agreement, and (3) which

such Party has been unable to avoid or overcome by the exercise of due diligence or commercially reasonable efforts.

Notwithstanding the foregoing, Uncontrollable Force shall not include (1) strikes and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming Uncontrollable Force or its affiliates or subcontractors unless the strike is part of a more widespread or general strike extending beyond the Party, affiliate or subcontractor, (2) unavailability, late delivery or failure of equipment or materials, unless the Party claiming Uncontrollable Force can point to an independent event of Uncontrollable Force causing such unavailability, late delivery or failure, (3) a Party's economic hardship or financial inability to perform under this Agreement, (4) delays in transportation, other than resulting from transportation accidents, perils at sea or delays in transportation resulting from (i) closure of roads or other transportation routes (including on-shore or nautical routes) by governmental authorities or (ii) an independent event of Uncontrollable Force to which the Party claiming Uncontrollable Force can point, (5) any delay in obtaining, inability or failure to obtain, suspension, non-renewal or cancellation of any governmental approval to the extent caused by the claiming Party's failure to timely submit a final, complete permit application, renew such governmental approval, or provide any requested responses thereto in accordance with Good Utility Practice, (6) subsurface conditions or environmental contamination at the Project Site that are not caused by Designated Entity, its affiliates or its contractors or subcontractors, but the locations of which are either specifically identified in the studies, reports and assessments provided or reasonably available to Designated Entity, or that were evident or could have been reasonably identified by Designated Entity, or (7) a failure of performance or material increase in cost that is due to an affected Party's own negligence, intentional wrongdoing, or failure to exercise due diligence or use commercially reasonable efforts.

D. COST CONTAINMENT / CONSTRUCTION SCHEDULE

1. Adjusted Construction Cost Amount

This mechanism adjusts the Construction Cost Amount to reflect the change in input costs due to inflation across a number of specified indices prior to the Effective Date of this Agreement. Any change in the Construction Cost Amount as a result of this inflation adjustment will be limited to 15%; that is, capital costs subject to the cost containment mechanism will be neither increased nor decreased more than 15%, even if a larger adjustment is indicated by the index values.

The inflation adjustment mechanism is calculated as below:

$$CapCost_{inf} = CapCost_{base} \times \sum \frac{Index_{M,i}}{Index_{I,i}} \times F_i$$

Where,

- $CapCost_{inf}$ is the Adjusted Capital Cost Amount;
- $CapCost_{base}$ is the Construction Cost Amount;
- $Index_{M,i}$ is the average index value for cost component i over the three months prior to and after the Effective Date;
- $Index_{I,i}$ is the average index value for cost component i over the twelve months prior to **March 27, 2024**; and
- F_i is the fraction associated with cost component i , set out in Table 1 below.

Table 1: Fractions Associated with Price Components

Price Component	F Value	Index
Fixed	0.25	N/A
Labor	0.25	BLS Employment Cost Trends Data Series CES2000000003 Average hourly earnings of all employees, construction, seasonally adjusted
Ready-Mix Concrete	0.25	BLS PPI Data Series WPU13330101A: PPI commodity data for Ready-mix Concrete, Northeast Region
Construction Equipment Rental and Leasing	0.25	BLS PPI Data Series PCU5324125324121: PPI industry data for Other Heavy Machinery Rental and Leasing: Construction Equipment Rental and Leasing

2. Cost of Capital Commitments

a. Return on Equity (“ROE”)

Designated Entity agrees to cap its return on equity for the Project at the lower of: (i) the Return on Equity, plus any FERC-approved incentives or adders, or (ii) the amount approved by FERC for use in the formula rate of the Designated Entity (the “ROE Cap”).

b. Capital Structure

The capital structure to be used by Designated Entity during construction of the Project shall be [REDACTED] percent (equity) and [REDACTED] percent (debt), and on and after the Project Completion Date shall be [REDACTED] percent (equity) and [REDACTED] percent (debt).

3. Construction Cost Cap

The recovery by Designated Entity of any Construction Costs shall be adjusted as follows (each such adjusted amount, an “Adjusted ROE Cap”):

a. For Construction Costs not exceeding the Construction Cost Cap Amount, Designated Entity shall be entitled to recovery at the ROE Cap.

b. For Construction Costs exceeding and up to one hundred ten percent (110%) of the Construction Cost Cap Amount, Designated Entity shall be entitled to recovery at the average of the ROE Cap and the Cost of Debt.

c. For Construction Costs exceeding one hundred ten percent (110%) of the Construction Cost Cap Amount, Designated Entity shall be entitled to recovery at the Cost of Debt.

4. Operation and Maintenance

Designated Entity shall operate and maintain the Project in compliance with applicable law, the Scope of Work, the PJM Tariff, Good Utility Practice, and the provisions of this Agreement.

5. Project Availability

Designated Entity shall ensure that the Initial Operation Date occurs on or before the Expected In-Service Date, subject to extension only for Uncontrollable Delay.

a. Late Completion

In the event the Initial Operation Date occurs after the Expected In-Service Date, as such date may be extended as a result of Uncontrollable Delay, the recovery by Designated Entity of its Construction Costs shall be subject to adjustment as follows. For the avoidance of doubt, the adjustments set forth below are in addition to any other adjustments set forth in this Agreement.

For each ninety (90) day period, or portion thereof, that the Initial Completion Date occurs after Expected In-Service Date, each Adjusted ROE Cap applicable to the Construction Costs (as set forth in Section D.3 above) shall be decreased by 35-basis points; provided, however, in no event shall the such Adjusted ROE Cap, as further adjusted in this Section D.5.a, be reduced to less than the Cost of Debt. By way of example only, if such a delay lasted for 135 days, each applicable Adjusted ROE Cap would be further reduced by 70-basis points (that is, 35-basis points for the first 90-day period, and an additional 35-basis points for the second 90-day period).

b. Early Completion

In the event the Initial Completion Date occurs prior to the Expected In-Service Date, each Adjusted ROE Cap shall be further adjusted as follows. For delivery between 30-120 days in advance of the Expected In-Service Date, a 25 basis-point incentive adder will be available; for delivery 121+ days in advance of the Expected In-Service Date, a 50 basis-point incentive adder will be available for the Project.