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**COMMENTS REGARDING NYSERDA'S
DRAFT RFP FOR PHASE 1 OFFSHORE WIND SOLICITATION
(RFP) No. ORECRFP18-1
PROVIDED BY THE
NEW YORK OFFSHORE WIND ALLIANCE**

October 5, 2018

Introduction

The New York Offshore Wind Alliance (“NYOWA”) is an initiative of the Alliance for Clean Energy New York (“ACE NY”) and consists of a broad and diverse coalition of thirty partner organizations, whose collective mission is to promote policies that will lead to the development of offshore wind in the Atlantic Ocean off the coast of New York State. NYOWA is guided by a Steering Committee that includes ACE NY, Deepwater Wind, Orsted, Equinor, the National Wildlife Federation, the Natural Resources Defense Council, Sierra Club and the University of Delaware’s Special Initiative on Offshore Wind.

NYOWA appreciates the opportunity to provide feedback on the draft Request for Proposal for the Phase 1 procurement of up to 800 MW or more of offshore wind. We applaud NYSERDA’s work on the Draft RFP and deeply appreciate its commitment and extraordinary efforts to issue a final RFP this fall. Doing so will ensure that New York residents reap the economic and environmental benefits of being a leader in the development of offshore wind and ratepayers will reap the benefits of expiring federal tax credits. Further, we appreciate NYSERDA’s extensive public engagement on the Draft RFP, the Offshore Wind Master Plan, the Offshore Wind Options Whitepaper and particularly its responsiveness to many of the suggestions that NYOWA offered in its August 10th submission to NYSERDA’s Request for Information.

NYOWA strongly supports the mandate developed by the PSC pursuant to the Clean Energy Standard proceeding by which 50 percent of New York’s electrical generation is to be provided by renewable resources by 2030 and its commitment to achieving 2,400 megawatts (MW) of offshore wind capacity by that date, which is embodied in its July 12th Offshore Wind Order. As noted in previous comments to the PSC, we don’t believe the State can achieve its renewable energy standard without realizing the 2,400 MW offshore wind goal. Finally, we applaud Governor Cuomo’s national leadership on clean energy and his continued recognition of the significant role offshore wind will play in achieving the State’s energy, economic and environmental goals.

The Draft RFP is detailed, comprehensive and overall an excellent body of work and we appreciate NYSERDA soliciting comments that will help improve the final product. A number of NYOWA’s member organizations will be submitting comments with specific recommendations in that vein. NYOWA has two principle areas of concern with the Draft RFP and strongly urge NYSERDA to consider a number of critical changes that will lead to a more effective partnerships between project developers and organized labor and reduce the time from contract awards to project completion. NYOWA comments are focused on two sections of the Draft RFP, Project Labor Agreements (Section 2.2.2) and Consultation with New York State Agencies (Section 2.2.3).

Section 2.2.2 Project Labor Agreements

NYOWA supports and is committed to making a good faith effort to put Project Labor Agreements (PLAs) in place for all onshore construction-related activities. As noted in our June 4th comments to the PSC¹, we recognized the important role that Project Labor Agreements (“PLA”) can play in project construction, installation, logistics and other activities that may be executed with local labor and we support the utilization of skilled trades on project scopes where the local labor pool possesses the necessary skills. However, the Draft RFP construct raises several serious concerns and a number of practical problems for New York’s first round of large-scale offshore wind projects, including the following issues:

1. The point in a project’s lifecycle at which a PLA can be definitively established;
2. The standard of review applied by NYSERDA in determining the developer’s compliance with this requirement;

¹ PSC Proceeding 18-E-0071, Comments submitted by NYOWA and the American Wind Energy Association, June 4, 2018, Pages 7-8.

3. The scope of work to be addressed in the PLAs for projects contracted in New York's first offshore wind solicitation; and
4. The number of PLAs a project will enter into and the parties thereto.

As it relates to Issue 1, Section 2.2.2 of the Draft RFP requires developers, as a condition of contract award, to enter into good faith negotiations with the appropriate labor organizations within 30 days of a contract award and to complete the same by December 31, 2019. While we support the intent behind this requirement, its wording is structurally inconsistent with project development practices. It is highly likely that projects contracted in this RFP, which doesn't anticipate final contracts until June 2019, will *not* have completed equipment selection, installation work break down structures, permitting, onshore site control, interconnection and other aspects of project design that are necessary for negotiating a PLA by December 31, 2019. Section 2.2.2 (and the corresponding contractual provision at Section 18.11) should be clarified to establish that the developer has discharged its obligation by entering into good faith negotiations with the goal of executing a PLA or PLAs for the covered construction. As currently drafted, the standard of review applied by NYSERDA is ambiguous. On the one hand, Section 2.2.2 imposes an obligation on the developer to commit to *good faith negotiations* with appropriate representatives of the organized trades, covering all construction activities. As noted above, NYOWA supports this requirement. However, Section 2.2.2 goes on to provide that "the successful Proposer shall be responsible for the *finalization* of a PLA with the appropriate labor organization(s) on terms satisfactory to NYSERDA" (italics added), suggesting that the obligation can only be discharged by the production of an agreed-upon PLA meeting NYSERDA's standards of adequacy. We urge NYSERDA to consider clarifying this section and make clear that if contract awardees bargain in good faith throughout the process, but do not attain agreement, their contract with the State is not in jeopardy.

Typically, contractual commitments are not made for major scopes of work until permits have been secured and a Final Investment Decision is taken by senior management. To the extent PLAs will be based on construction plans embodied in the approved Construction and Operation Plan (COP), which may occur months, if not years, after the date certain specified in the Draft RFP for execution of a PLA, this milestone is both arbitrary and potentially out of sync with the developer's milestone schedule. The Final RFP should clarify that NYSERDA's review of good faith negotiation start not earlier than 30 days after the developer receives final permits. Further, the Final RFP should make clear that if contract awardees bargain in good faith throughout the process, but do not attain agreement, their contract with NYSERDA is not in jeopardy.

As it relates to Issue 2, we are highly concerned that the requirements for the scope of a PLA do not account for the current lack of a supply chain for offshore wind in New York and, as a result, are so overly broad as to potentially make compliance impossible. The current definition of “covered construction” encompasses all relevant scopes of project construction, irrespective of whether capable New York-based infrastructure and labor exist. To be clear: this is not a question of union vs. non-union. It is an irrefutable fact that New York State and the United States do not currently possess all of the deep-water ports, manufacturing infrastructure, vessels and experienced contractors that will be required to construct this first round of projects. As an example, we are highly concerned that the definition is overbroad insofar as it captures scopes to be performed offshore. At present, there is no U.S.-constructed, flagged and manned vessel that complies with the Jones Act. Consequently, there is a high likelihood that for the Phase 1 procurement, installation vessels will originate from Europe or the Gulf Coast, equipped with their own crews. At the current level of maturity of the supply chain in the US, the developer cannot dictate to a vessel operator who will undertake this work. While we stand in lock-step with labor in attracting such infrastructure and skills to New York, prudence and commercial realities require that the scope of the requirement for the work executed under PLAs be limited to that for which adequate contractors and adequate facilities are currently available. The final RFP should make clear that the contract awardee can offer a justification for why certain scopes have been excluded within the PLA.

As it relates to Issue 3, the current Draft RFP only contemplates a single PLA with the developer that would govern all construction work done across all contractors and all unions. This requirement is not consistent with how America’s only operating offshore wind farm was constructed. In the case of the Block Island Wind Farm, PLA-type documents were executed between individual contractors and local unions in Rhode Island. While some developers may anticipate executing PLAs directly with labor councils, other may not, and instead choose to use the same approach that was successfully implemented previously for the only offshore wind farm in America. Accordingly, we urge NYSERDA to provide flexibility to allow for developers to either (a) execute PLAs themselves or (b) require that each of their prime contractors enter into PLAs with the appropriate labor bodies. In each case, the resulting PLA or PLAs would be required to contain NYSERDA’s required terms, to be detailed in the Final RFP. This modified PLA requirement would be more compatible with typical development processes and would allow unions and contractors to develop more specific PLAs that satisfy their own needs as well as those satisfactory to NYSERDA.

Consultation with New York State Agencies

The Draft RFP would require contract awardees to submit a draft Site Assessment Plan (SAP) and Construction and Operation Plan (COP) to a variety of state agencies prior to submitting such plans to the Bureau of Ocean Energy Management (BOEM). Further, the Draft RFP would provide the agencies with 30 days to provide the contract awardees with comments on the draft plans and then require the contract awardees to be available "...to meet or engage..." with those agencies in an attempt to resolve any issues prior to submission of the plans to BOEM. NYOWA fully supports the concept of consultation with appropriate state agencies, but the process laid out in the Draft RFP would add a minimum of 6 to 12 months to an already lengthy, multi-year process and unnecessarily delay project review and project construction. As an alternative, we urge NYSERDA to consider requiring contract awardees to consult with state agencies at least 30 days prior to the submission of a SAP and COP to BOEM and, if applicable, prior to the submission of an Article VII application to the Public Service Commission. During that consultation, the contract awardees should be required to provide a detailed accounting of how the mitigation measures outlined in the Environmental and Fisheries Mitigation Plans are included in SAP, COP and, if applicable, the Article VII submissions. Copies of the SAP and COP would be provided the state agencies at the time they are submitted to BOEM, thereby streamlining the process and providing for coordinated review. Attached in Appendix A please find specific, recommended amendments to Section 2.2.3.

Conclusion

Thank you again for the opportunity to provide input on the Draft RFP. NYOWA members, developers, environmental and labor organizations, will all be working closely in the coming days and months to help ensure that New York's first offshore wind solicitation is successful. We trust that the recommendations contained herein will be useful in crafting the final RFP and we look forward to reaching yet another major milestone toward New York's clean energy future. If you have any questions, please don't hesitate to contact me.

Submitted by:

A handwritten signature in black ink, appearing to read "Joe Martens", written in a cursive style.

**Joseph Martens
Director**

