



August 13, 2021

Luke Feinberg
Office of Renewable Energy
Bureau of Ocean Energy Management
45600 Woodland Road
Sterling, Virginia 20166

Re: Atlantic Wind Lease Sale 8 (ATLW-8) for Commercial Leasing for Wind Power on the Outer Continental Shelf in the New York Bight—Proposed Sale Notice
Docket No. BOEM-2021-0033

Dear Mr. Feinberg,

The state of New Jersey once again commends the Bureau of Ocean Energy Management (BOEM) on the recent progress with offshore wind development in the United States, and in particular, the announcement of the final Wind Energy Areas in the New York New Jersey Bight (NYNJ Bight) and the initiation of the leasing process for those areas.

Under the leadership of Governor Phil Murphy, New Jersey's development of offshore wind energy, together with other clean and renewable energy sources, is critical to confronting climate change and building a clean energy economy. As a state with one of the most ambitious offshore wind goals in the nation, New Jersey is on the path to generating 7,500 MW from offshore wind by 2035 and achieving a 100% clean energy transition by 2050. New Jersey's Energy Master Plan projects that offshore wind will supply 23% of the state's clean energy by 2050. The development of the NYNJ Bight lease areas is a critical factor for New Jersey in achieving these goals.

BOEM has identified certain issues as particularly important in developing this lease sale and encourages comments on how to address these issues through lease terms or stipulations. On behalf of the State of New Jersey, the Board of Public Utilities (NJBP), Department of Environmental Protection (NJDEP), and the Economic Development Authority (NJEDA), we

respectfully submit these responses to the “Questions for Stakeholders” within the Proposed Sale Notice (PSN) for the NYNJ Bight Wind Energy Areas:

Questions for Stakeholders

a. *Number, size, orientation, and location of the proposed lease areas. In this PSN, BOEM proposes eight Lease Areas in the NY Bight. BOEM is seeking feedback on the proposed number, size, orientation, and location and welcomes comments on which Lease Areas, if any, should be prioritized for inclusion, or exclusion, from this lease sale or future lease sales.*

i. *Lease area size: During the April 2021 NY Bight Intergovernmental Task Force meeting, BOEM received a comment suggesting that the proposed Lease Areas should be combined to create larger (~160,000 acres) Lease Areas which would capture greater economies of scale. BOEM seeks comments regarding the preferred lease area size and if additional acreage beyond what is proposed is needed for commercial viability.*

At the April 2021 Task Force meeting, New Jersey proposed that combining lease areas C and D, and lease areas E and F, in the Hudson South Wind Energy Area would allow for more flexibility in project design and achieve economies of scale in larger generation projects thus reducing the per MW cost of projects. New Jersey continues to recommend this for consideration by BOEM. However, we are also sensitive to the need for competition and for the opportunity to include a more diverse group of leaseholders, and therefore we support the number, size, and location of the lease areas as proposed in the PSN.

New Jersey is concerned however with the revisions to the Hudson South – A area recently proposed in the *Department of Defense Update - BOEM New York Bight Renewable Energy Leasing* dated July 16, 2021 (DOD Update). Removing the 25,778 acres (designated as area y in the DOD Update) results in two areas available for lease of 12,170 acres (area x) and 47,808 acres (area z). Using the BOEM capacity factor of 0.012 MW/acre, these areas have a potential capacity of only 146 MW and 574 MW, respectively. Even considering the conservative capacity factor and the potential availability of larger turbines in the near future, we do not believe that these areas will be commercially viable for competitive offshore wind projects. We urge BOEM to continue to work with DOD to 1) minimize the size of the exclusion area (area y); 2) relocate the DOD activities to an area outside of the proposed lease areas; and/or 3) reconfigure the Hudson South proposed lease areas and/or transit corridors to produce lease areas that will yield at least 800 MW in capacity.

- b. *Transit corridors: BOEM has proposed an orientation of Lease Areas in the Hudson South WEA that includes vessel transit corridors. BOEM welcomes comments on transit corridor attributes and the degree to which they meet potential users' needs. Specifically, does the proposed orientation (length, width, etc.) facilitate continuance of existing uses? If not, (a) what are the additional costs of utilizing the proposed transit corridors, and (b) what orientation would better balance any competing needs of renewable energy developers and existing users? BOEM asks commenters to submit technical and scientific data in support of their comments.***

New Jersey is pleased to see BOEM's incorporation of transit corridors as the proposed lease areas are planned. In addition to any recommendations made by the United States Coast Guard (USCG), we recommend continued engagement with stakeholders and cooperating agencies on this issue to ensure that the location, orientation, and sea space of the corridors align with the needs of the various ocean users. As areas of conflict with Department of Defense and USCG tug and tow lanes are changed or removed, particularly in the Hudson South Lease Area, New Jersey strongly encourages BOEM to work with stakeholders again to identify the most beneficial locations for transit corridors. The input of ocean users is critical in determining the location of transit corridors.

- c. *Benefits to Underserved Communities: The January 20, 2021, Executive Order 13985 "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" directs advancement of equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. The January 27, 2021, Executive Order 14008 "Tackling the Climate Crisis at Home and Abroad" includes the goal of doubling offshore wind by 2030 while creating good jobs and ensuring robust protection for our lands, waters, and biodiversity. To the extent that it is consistent and allowable within BOEM's statutory authority and applicable laws, BOEM is considering lease stipulations to direct benefits to underserved communities and to better develop the workforce needed to design, construct, operate, and maintain offshore wind farms. BOEM is soliciting information to develop lease stipulations concerning, but not be limited to: i. Workforce training and development. ii. contracting with and supporting the development minority- and women owned businesses. iii. programs that promote and deliver environmental justice. The stipulations could, for example, mandate or encourage the use of instruments, with plan reporting requirements to show compliance. Alternatively, BOEM may offer incentives in the form of auction credits or credits towards rent and operating fee obligations for investment in the aforementioned categories where appropriate. These incentives could be in the form of a credit for the amount invested in existing State-run programs with similar goals or the establishment of new programs where appropriate. BOEM invites comment on the appropriate mechanisms, evaluation metrics, and valuation of these additional lease requirements.***

Commenters are encouraged to describe how these, or similar measures would further development of the proposed Lease Areas and the purposes of OCS Lands Act and provide references to any studies that support their recommendations.

New Jersey is committed to ensuring that the benefits of offshore wind development extend to all of the State's residents, with a particular focus on developing programs and pathways that increase workforce development and ensure that environmental improvements reach underserved or overburdened communities. New Jersey applauds BOEM for its focus in this area, as this aligns with our state focus on environmental justice under Governor Murphy's leadership. New Jersey's Environmental Justice Law, enacted in 2020, finds that all New Jersey residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment; that, historically, New Jersey's low-income communities and communities of color have been subject to a disproportionately high number of environmental and public health stressors, including pollution from numerous industrial, commercial, and governmental facilities located in those communities; and that, as a result, residents in the State's overburdened communities have suffered from increased adverse health effects. As we develop more clean, renewable energy in New Jersey, we will do so in a way that drives benefits to underserved communities in our state.

Broadly, New Jersey supports the use of mechanisms that further promote contracting with, and supporting the development of, small, minority-, and women-owned businesses. We are also broadly supportive of utilizing the leasing process to further promote and deliver environmental justice. Given this, New Jersey provides the following perspectives for BOEM's consideration:

- Any mechanisms implemented through the leasing process should harmonize with state policies and priorities and should not be in conflict with state economic development strategies; many of the states across the East Coast wind belt, such as New Jersey, are already implementing aggressive efforts to increase diversity, equity, and inclusions in the future offshore wind industry and address the realities of environmental inequity.
- Any mechanisms implemented should be designed such that new lease holders are not at a disadvantage compared to existing lease holders that have already established relationships, mechanisms and programs that address underserved or overburdened communities.
- BOEM could support state-based mechanisms that prioritize the hiring of or Contractual set-asides for disadvantaged business enterprises (DBEs) for state-level projects. If an intervention such as this were utilized, we recommend

ensuring robust reporting, utilizing liquidated damages for non-performance, and being sufficiently clear on “good faith” provisions. Such liquidated damages could be used to fund underserved community business engagement and environmental justice programs at the State-level (perhaps by allocating funds based upon each State’s share of the committed megawatt pipeline on the East Coast or allowing states to receive funds if a lease area has associated with a particular State such as through the awards of a project contract). Alternatively, some mixture of lease stipulations and credits would be a reasonable approach to support these equity-driven industry initiatives:

- A reasonable minimum requirement for spending on workforce engagement, underserved business community engagement, and environmental justice initiatives (sized based on bid prices) would help to create certainty of funding for such programs at the state and local level. Again, funds could potentially be allocated back to implementation partners either based on a scoring formula (i.e., based on project commitments in the future or to-date) or on an application basis. The downside of using this approach alone is that it does not create incentive for lease winners to continue to invest further in these areas.
- Therefore, we suggest BOEM consider pairing bid requirements with the ability to further reduce rent payments (up to some additional percentage) through credits earned by funding State and local workforce engagement, underserved business community engagement, and environmental justice initiatives. State and local entities would be able to provide information on such transfers to support documentation of the credits. The downside of using credits alone would be that these commitments might appear optional and there would be a lack of certainty in funding streams until after lessors made public commitments.
- In addition, bonding capacity is often cited as the largest barrier holding back DBEs from working on larger contracts. BOEM may consider allowing firms to defer rent payments equal to an amount put into a Bonding Support Reserve Fund. This fund would be held by the lessor and could be utilized by its sub-contractors to reduce the bonding capacity requirements for contracts with DBEs. If the DBEs did not perform, the lessors and their sub-contractors could utilize these funds to cover any losses or address schedule impacts. If the DBEs do perform, these funds could be paid back to BOEM without penalty or interest after they are no longer needed for the Bonding Support Reserve Fund. It is worth noting that direct Bonding Readiness support and technical assistance programs are already a key aspect of state and local DBE programs and could be funded directly as well.

- In all circumstances, BOEM should look for ways for any commitments made through the lease rental process to be separate from, and not considered by the states when lessors are applying for project-based renewable energy credits or power purchase agreements. That is, it is counterproductive to create a pool of benefits and then have lessors use that as leverage when bidding into individual states. Instead, these benefits could be considered outside of traditional local engagement commitments made by lessors in state solicitations.
- In all circumstances where BOEM imposes these requirements, BOEM should include metrics to evaluate the impact of the funding and the success or failure of the initiative.
- New Jersey further recommends that, despite provisions that BOEM may include in the lease stipulations, the states continue to be able to impose other conditions and requirements in their solicitation processes based on the states' specific needs and programs. In New Jersey's most recent solicitation, we required the applicant's economic development plan include "Planned in-State spending that will support environmental justice communities by providing jobs, grants, training programs, or environmental benefit projects to address historical and cumulative impacts in economically disadvantaged communities, along with an explanation of the nexus between the spending and the Application."

In addition, applicants were asked to provide their commitments for "Participation in workforce development programs, including apprenticeship programs, particularly for environmental justice communities." Finally, in future solicitations, we also expect to include a requirement for applicants to include social support programs when addressing workforce development. Any workforce development plans should include mentorship and certification support and assistance for DBEs to ensure they are able participate in the offshore wind projects fully. Considerations should also be given to the number of DBEs that are doing business as a primary versus secondary contractor and/or supplier, and any mentorship program should address any disparities between the two.

- d. Creating a Domestic Supply Chain: To the extent that it is consistent and allowable within BOEM's statutory authority and applicable laws, BOEM is also considering mechanisms such as lease stipulations, auction credits or credits towards rent and operating fee obligations that would incentivize a durable, domestic supply chain conducive to prompt and orderly development of the Lease Area and renewable energy development on the OCS. Commenters are encouraged to describe how these or similar measures would further development of the proposed Lease Areas and the purposes of OCS Lands Act and provide references to any studies that support their recommendations*

New Jersey is fully committed to establishing a sustainable and durable local domestic supply chain in the state that will support the offshore wind industry. New Jersey has already made significant advancements in this area through its procurements and through other state policies and programs. Broadly, New Jersey supports the use of mechanisms that further promote localization of manufacturing and assembly. Given this, New Jersey provides the following perspectives for BOEM's consideration:

- A format similar to above with lease stipulations paired with credits would be a reasonable mechanism to approach local supply chain development supports.
- Any stipulations should be focused on localizing a percentage of the supply, as compared to a whole project or to a component or aspect of a project. In all circumstances, the offshore wind turbine supply chain is likely to be highly globally integrated, and strict local content requirements may reduce competition and lead to higher long-term prices. Percentage-based programs provide more commercial flexibility for lessors and their supply chain partners.
- Stipulations should also protect the interest of market expansion and competition, (i.e., avoid market concentration, by not creating stipulations that would preference developers that already have lease area contracts over new market entrants).
- BOEM may consider directing such stipulations or credits to focus on reducing the marginal increases in cost between using an international supplier compared to a newer domestic supplier. These additional costs are often associated with the fact that pricing is less competitive during a ramp-up period of a production facilities lifecycle.
- Additionally, stipulations or credits could be used to support more direct infusions of cash funding into the upfront capital expenses of building new (and expanding) production facilities. Credit should focus on transactions that have some degree of arms-length and do not dramatically constrain the facility's ability to sell to other customers. Deals where the lessor retains equity or provides financing

instead of cash funding (i.e., a grant) should be handled carefully as to not overly enrich the lessor (e.g., if a lessor provided financing, perhaps BOEM would only defer rent payments vs. accept them as a credit).

- Similar to the disbursement considerations for the above equity and workforce initiatives, BOEM could consider how such requirements would integrate with state-level solicitations. It would seem undesirable to increase state competition over these potential funding pools/benefits.
- As an alternative, a portion of the lease payments could be re-directed into a Supply Chain Development Fund that could be distributed back to local States based on a formula or based on project applications.

e. Native American Tribes, Ocean User, and Stakeholder Engagement: In an effort to require early and regular lessee engagement with affected stakeholders, BOEM is proposing a lease stipulation that would require lessees to provide a semi-annual (i.e., every six months) progress report that summarizes engagement with ocean users potentially affected by proposed activities on the lease or proposed project easement. The progress report would identify and describe: All of the existing users; the lessee's engagement with those users; efforts to avoid, minimize or mitigate any conflict between the existing users and the lessee; and any planned next steps to engage those users and address identified conflicts. The lease stipulation specifically would require coordination with the fishing industry and consideration of potential conflicts prior to proposing a wind turbine layout in the COP. BOEM seeks comment on this concept generally, as well as comment on the contents and timing of such reports.

As BOEM is aware, stakeholder input is critical to the successful planning and development of offshore wind. We encourage BOEM to require regular, transparent, communication with; and solicitation of feedback from; the various stakeholder groups that may be impacted by the new lease areas in the NYNJ Bight. Regular reporting of progress by developers on stakeholder engagement will be a useful tool for the states as well and should be shared with the regulatory agencies in a timely manner in order to ensure that the results of the reporting are understood and incorporated into our processes, where appropriate. In addition to the ocean users who may face conflicts related to offshore wind development, we also recommended that engagement with New Jersey based environmental organizations be included in the reporting requirements. BOEM should require a stakeholder engagement plan with particular processes and protocols and hold participants accountable. Further, as we have mentioned in the past, it is especially important that BOEM and the developers engage deeply with New Jersey's commercial fishing industry. Our fishing communities and seafood industries are important parts of our New Jersey identity, and crucial components of our state's economy.

f. Limits on number of lease areas per bidder: BOEM recognizes the dramatic increase in market demand for offshore renewable energy development opportunities and the associated potential for

higher lease sale prices. BOEM is proposing to allow each qualified entity to bid for only one lease in any given round and to ultimately acquire only one lease area from the auction. To the extent it reduces competition for individual leases, this would tend to decrease the overall bonus bids. However, a larger number of lessees would tend to increase competition for future energy procurements and drive down the cost of electricity to ratepayers. Additionally, BOEM sees value in increasing the pool of lessees to potentially have more diverse representation of developers. However, BOEM has also contemplated allowing an entity to bid for (and win) up to two lease areas. BOEM is seeking feedback on the proposed one-lease-area per bidder scheme and how different leasing scenarios may influence the advisability of such a limitation (e.g., number of lease areas offered, size of lease areas, etc.).

At the April 2021 Task Force meeting, New Jersey offered its support for a 2-area per bidder limit if 8 lease areas are offered, and a 1-area/bidder limit if less than 8 lease areas are offered. However, we are sensitive to the need for competition and for the opportunity to include a more diverse group of leaseholders, and therefore we support the 1-area per bidder proposal in the PSN.

g. Coordinated Engagement: BOEM has received feedback that the potential addition of eight new OCS wind lessees burdens stakeholders that have limited resources and that are already seeking to engage with existing lessees. BOEM seeks comment on methods to improve coordination and engagement among lessees, Federally recognized Tribes, ocean users, and stakeholders. Specifically, BOEM is soliciting input on how to improve the frequency, duration, sustainability, and collaborative engagement among these parties, as well as the preferred form it should take (in-person, webinar, facilitated meeting, etc.). BOEM recognizes its responsibility under Executive Order 13175 to conduct Government-to-Government consultations with Tribal governments. Any coordinated engagement between Federally recognized Tribes and lessees that may be required in a future lease would be in addition to BOEM's responsibilities. To illustrate the intent of this question, one possible lease term to facilitate coordinated engagement could be to require lessees to hold coordination meetings at regular intervals throughout the year (i.e., quarterly, bi-annually, annually, etc.). These meetings would not substitute for Government-to-Government meetings between Tribes and Federal agencies. During these meetings, lessees would share information and updates about their activities with Federally recognized Tribes and stakeholders and solicit feedback/input from the Tribes about the lessee activities.

New Jersey strongly supports the inclusion of lease provisions to require coordinated engagement with stakeholders. As previously noted, stakeholder input is critical to the successful planning and development of offshore wind. Therefore, the details of such coordination, such as frequency, duration, and format should be determined based upon the input and needs of the ocean users and lessees.

h. Prescribed Layouts: Should BOEM consider prescribing uniform and aligned turbine layouts for Lease Areas, especially in the Hudson South WEA? Does the establishment of uniform turbine layouts negate the need for established transit corridors?

New Jersey acknowledges benefit in certain instances to BOEM imposing a prescribed layout requirement. However, each lease area and each state's needs and requirements are unique and should be considered individually. Therefore, NJ supports a requirement for leaseholders to collaborate if they have a shared border, and a requirement to work with the commercial and recreational fishing industries to identify transit corridors through the turbine arrays that have the least impacts on fishing and transit. In line with the progress reporting discussed in "e" above, developers should be required to document comments received about turbine layout and how those comments and conflicts were addressed. If rows are not aligned in adjacent leases, a setback requirement that is consistent with the needs of commercial and recreational fishermen, as well as the shipping industry, should be considered for each leaseholder. Further, this question raises the issue of collaboration amongst the leaseholders. And while it is important that those that have a shared border coordinate regarding turbine layout and navigation, New Jersey also recommends a more collaborative process among leaseholders generally. As the United States builds its offshore wind industry, we have the ability to continuously improve upon the planning and process, and BOEM should require leaseholders to do this collectively.

i. Rent: BOEM is seeking feedback on a proposal to simplify the calculation for rental fees—specifically, rental fees for portions of the lease area not yet authorized for commercial operations. For leases issued in previous sales, rent is computed using a fraction of the total nameplate capacity of the project that is not yet in operation. The simplification would divide the area authorized for commercial operations into acreage that is "generating" and "non-generating" and use the "non-generating" acreage as the basis for the rental calculation.

New Jersey has no comment on this issue at this time.

j. Industry Standards for Environmental Protection: Are there new industry standards (*e.g.*, technology standards, vessel standards, etc.) for environmental protection for any phase of development that BOEM should consider?

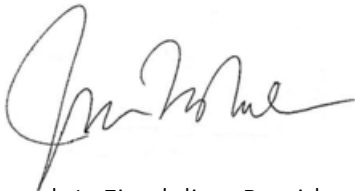
BOEM should consider the best available data in determining technology standards to apply to offshore wind projects as they are developed. The industry is rapidly evolving in the United States, and as new information and data is gathered, it should be applied where appropriate in order to avoid and minimize impacts to natural resources and conflicts with ocean users; and ensure the efficient and safe operation of turbines and associated offshore wind infrastructure. The work being funded by the National Offshore Wind Research and Development Consortium, with a goal to advance offshore wind

technology and drive innovation, should be leveraged to ensure that as projects are designed, they are applying the newest and most effective industry standards. Additionally, New Jersey is currently developing its Research and Monitoring Initiative as part of the second solicitation. Based on the research and findings that may be obtained as part of that initiative, new industry standards may be developed in the future. Further, the NJDEP is exploring innovative ways to address construction emissions and offset credits and will discuss with BOEM as these ideas are advanced.

New Jersey greatly appreciates BOEM's consideration of these comments and looks forward to further discussions regarding the topics above as the Final Sale Notice is developed. There are significant considerations to be made and additional collaboration is warranted between BOEM, the states, stakeholders, and developers.

Our agencies further look forward to continuing to work with BOEM as you prepare to lease areas for offshore wind development in the NYNJ Bight.

Respectfully,

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

Joseph L. Fiordaliso, President
New Jersey Board of Public Utilities

A handwritten signature in blue ink, appearing to read 'Shawn M. LaTourette', written in a cursive style.

Shawn M. LaTourette, Commissioner
New Jersey Department of Environmental Protection

A handwritten signature in blue ink, appearing to read 'T. Sullivan', with a stylized, cursive script.

Tim Sullivan, Chief Executive Officer
New Jersey Economic Development Authority