

# MARYLAND OSW REGULATIONS WITH STAFF RECOMMENDATIONS

## **Title 20 Public Service Commission**

Subtitle 51 Electricity Suppliers

20.51.01 General Provisions.

### **1. Proposed 20.51.01.02(B)(1)**

**(1) “Administrator” means the person appointed as administrator for a qualified offshore wind project under COMAR 20.61.06.09.**

#### STAFF RECOMMENDATION

The defined term, administrator, is necessary for the addition of a new §B(10) in COMAR 20.51.02.02.

20.51.02 Administrative Provisions.

### **2. Proposed 20.51.02.02(B)(10)**

**(10) A statement confirming that upon the Commission granting a license to the electricity supplier under Regulation .09 of this chapter, the electricity supplier will notify each of the administrators appointed under COMAR 20.61.06.09 of its name, contact details and any other relevant administrative details that an administrator may require in order to efficiently invoice such electricity supplier as required by COMAR 20.61.06.11.**

#### STAFF RECOMMENDATION

This section modifies regulations setting out the application requirements for electricity suppliers by adding a new obligation for an entity that is applying for an electricity supplier license or that seeks to transfer an existing license. New §B(10) requires the entity to include in its application an affirmative statement that upon the grant of a license, it will notify the administrator of each escrow account established pursuant to Public Utilities Article (“PUA”) §7-704.2(c) of certain information necessary to permit the administrator(s) to invoice the electricity supplier for its offshore wind renewable energy credit (“OREC”) obligation. The administrator requires access to an accurate and complete list of electricity suppliers with OREC purchase obligations. This supplier’s notification provides the administrator with information about a newly licensed supplier and license transfers, which is required if the administrator is to accurately invoice electricity suppliers as well as effectively comply with reporting obligations to the Commission.

### 3. Proposed 20.51.02.08(K)

**K. The Commission may in its discretion require that an electricity supplier that will have an OREC purchase obligation deliver to the Commission, no later than 30 days prior to the year in which the offshore wind energy RPS takes effect, a performance bond or other form of collateral support in such amounts, from such providers and in such form as shall be determined by the Commission to secure the payment obligations of the electricity supplier under COMAR 20.61.06.**

#### STAFF RECOMMENDATION

This section modifies regulations concerning the financial integrity of electricity suppliers. Under currently effective regulations, the Commission requires an entity that is applying for an electricity supplier license to demonstrate its financial integrity or post a nominal bond of \$250,000. Should a supplier fail to comply with its OREC payment obligations, the current bonding requirements may not be adequate to cover a supplier who defaults on its OREC payment obligations. Instead, the financial obligation to the project for ORECs generated and delivered by it would be covered by funds that would otherwise be refunded to retail electric customers. Staff recommends that the Commission consider strengthening the financial integrity test, including consideration of the additional financial obligations created by the OREC purchase requirements, in a future proceeding.

20.51.03 Electricity Supplier License Requirements.

### 4. Proposed 20.51.03.05(A)

A. A licensee shall provide 60 days prior written notice to the Commission **and to the administrators appointed under COMAR 20.61.06.09** of an intention to cease providing services to all customers in:

- (1) The State;
- (2) A specified electric company service area; or
- (3) A specified customer class.

#### STAFF RECOMMENDATION

This section modifies regulations addressing an electricity supplier licensee's notice requirements concerning its intent to cease providing service to customers. The clause requires the electricity supplier licensee to also notify the administrator of each escrow account established pursuant to Public Utilities Article §7-704.2(c) of its intent to cease providing service to retail electric customers in a geographic location or to a specified class of customers. The administrator requires access to an accurate and complete list of electricity suppliers with OREC purchase obligations. This notification to the administrator will provide it with information about a supplier's intent to cease business operations in whole or in part, which is required by the

administrator to accurately invoice electricity suppliers as well as comply with reporting obligations to the Commission.

Subtitle 61 Renewable Energy Portfolio Standard Program

20.61.01 General

**5. Proposed 20.61.01.05(D)**

**D. An electricity supplier must purchase ORECs in accordance with COMAR 20.61.06.**

STAFF RECOMMENDATION

This section modifies regulations addressing types of Tier 1 renewable energy credits (“RECs”) and establishes electricity suppliers’ obligations to purchase ORECs, which are a type of Tier 1 REC, consistent with the requirements of PUA §7-704.2.

**6. Proposed 20.61.01.06(A)**

A. A supplier shall have a calendar year renewable energy portfolio consisting of renewable energy credits associated with Tier 1 renewable sources, including the required solar renewable energy credits **and the required offshore wind renewable energy credits,** and Tier 2 renewable sources.

STAFF RECOMMENDATION

This modified section of the regulations concerning electricity suppliers’ satisfaction of the State’s renewable energy portfolio standard (“RPS”) adds a clause to establish ORECs as part of the electricity suppliers’ RPS obligations.

**7. Proposed 20.61.01.06(B)**

B. A supplier shall satisfy Tier 1 REC requirements by submitting to the Commission the following:

(1) A summary of RECs associated with generation from any Tier 1 renewable source, excluding RECs associated with electricity derived from solar energy **and RECs associated with electricity derived from offshore wind energy;**

(2) A summary of RECs associated with electricity derived from solar energy;

(3) **A summary of RECs associated with electricity derived from offshore wind energy;**

~~[(3)] (4)~~ For each REC submitted under this regulation, a copy of the REC registration with GATS or documentation of a REC authorized under COMAR 20.61.03.03; and

~~[(4)]~~ **(5)** Certification that each REC used to meet the requirements of this regulation has not expired or been retired, transferred, or redeemed.

#### STAFF RECOMMENDATION

This section of the regulations addresses requirements for determining electricity suppliers' satisfaction of the State's RPS. Section B provides that electricity suppliers satisfy their Tier 1 REC requirements by submitting to the Commission a summary of purchased RECs. The modifications add ORECs to this section because ORECs are a type of REC that is included in suppliers' Tier 1 REC obligations.

### **8. Proposed 20.61.01.06(E)**

E. ~~Industrial Process Load Supplier Sales]~~ **Supplier sales to industrial process load and agricultural land owners.**

(1) **Supplier sales to industrial process load.**

~~[(1)]~~ **(a)** In calculating the renewable energy portfolio standard that contains industrial process load, the North American Industrial Classification System identification code shall govern the metered load to which the compliance fee **or offshore wind energy RPS, as applicable,** may apply.

~~[(2)]~~ **(b)** To ~~[apply]~~ **certify** for designation of a sale as industrial process load, a supplier shall ~~[use an industrial process load application form provided by the Commission.]~~ **submit to the Commission the following documents:**

**(i) a completed industrial process load application form available from the Commission; and**

**(ii) a certification from the supplier that it has confirmed the information described in §E(1)(c)(ii) of this regulation with its relevant electric company and that such information is accurate and complete.**

~~[(3)]~~ **(c)** An industrial process load application form shall include:

~~[(a)]~~ **(i)** The name, location, and North American Industrial Classification System identification code of each **customer or** facility for which industrial process load status is requested;

~~[(b)]~~ **(ii)** [A list containing each] **Each** account and meter number associated with each **customer or** facility for which industrial process load status is requested; and

~~[(c)]~~ **(iii)** A [list containing a] contact name, address, and telephone number for each account for which industrial process load status is requested.

**[(4)] (d)** The designation **of a sale** as industrial process load shall be effective when **filed** [granted, unless otherwise specified by Commission order].

**[(5)] (e)** Unless a waiver is granted under §F of this regulation, a supplier sale from industrial process load for which a Tier 1 renewable source REC, including RECs associated with electricity derived from solar energy **but excluding RECs associated with electricity derived from offshore wind energy**, has not been delivered shall be assessed a compliance fee under Public Utilities Article, §7-705, Annotated Code of Maryland.

**(2) Supplier sales to agricultural land owners.**

**(a) Suppliers serving a customer who is an owner of agricultural land and who files an Internal Revenue Service Form 1040, Schedule F, shall be exempted from the renewable energy portfolio standard that represents offshore wind energy for that customer's sales exceeding 3,000 kilowatt-hours of electricity in a month.**

**(b) To certify for designation of a sale as an exempted sale to an owner of agricultural land, a supplier shall submit to the Commission the following documents:**

**(i) a completed agricultural land owner application form available from the Commission that is accompanied by a statement from each customer listed on the application form certifying that that it files Internal Revenue Form 1040, Schedule F, to report farm income and expenses; and**

**(ii) a certification from the supplier that it has confirmed the information described in §E(2)(c)(ii) of this regulation with its relevant electric company and that such information is accurate and complete.**

**(c) An agricultural land owner application form shall include a list of:**

**(i) The name and location of each customer for which exempted agricultural land owner status is requested;**

**(ii) Each account and meter number associated with each customer for which exempted agricultural land owner status is requested; and**

**(iii) Contact name, address, and telephone number for each account for which exempted agricultural land owner status is requested.**

**(d) The designation of a sale to an exempted owner of agricultural land shall be effective when filed.**

**(3) Suppliers shall maintain records of sales to exempted industrial process load and owners of agricultural land adequate for electric companies to calculate refunds under COMAR 20.61.06.14.**

## STAFF RECOMMENDATION

This section of the regulations addresses requirements for electricity suppliers' satisfaction of the State's renewable energy portfolio standard. The changes to §E modify or establish new processes for electricity suppliers to qualify certain sales to industrial process loads and agricultural land owners as exempted from electricity suppliers' OREC purchase obligations. Under OWEA's modifications to PUA §7-703, sales in excess of 75,000,000 kWh per year of industrial process load to a single customer and sales in excess of 3,000 kWh per month to owners of agricultural land are exempted from portions of the RPS related to offshore wind. The current process to qualify as an exempted sale of industrial process load is now streamlined to allow the electricity supplier to self-certify the sales. A streamlined process is also established to identify exempted sales to owners of agricultural land. The self-certified designations are effective when filed with the Commission.

Section E(1)(e) is modified to exclude ORECs from sales from industrial process load for which a Tier 1 renewable resource REC has not been delivered. The Maryland Offshore Wind Energy Act of 2013 ("OWEA") does not establish a compliance fee that suppliers pay if they fail to deliver ORECs.

Section E(3) requires electricity suppliers to maintain records of sales to exempted industrial process load and owners of agricultural land in a manner that would permit electric companies to identify these exempted sales for the purposes of effectuating a reasonable distribution of refunds among electric customers.

20.61.04 Consumer Protection, Reporting, and Enforcement.

### 9. Proposed 20.61.04.01(B)

B. A supplier contract for the sale of electricity that is marketed as renewable or having the characteristics of a Tier 1 renewable source or Tier 2 renewable source shall include:

- (1) The RPS for each year covered by the contract of sale;
- (2) A statement that Tier 1 renewable source or Tier 2 renewable source RECs retired may be used to meet the supplier's RPS obligation for that particular sale; and
- (3) **Except as provided under Public Utilities Article, §7-705(b)(1), a**[A] statement that a supplier may meet its RPS obligation by paying a compliance fee to the Fund under Public Utilities Article, §7-705(b), Annotated Code of Maryland.

## STAFF RECOMMENDATION

This section of the regulations establishes certain obligations for electricity suppliers with respect to their renewable portfolio obligations. The clause added to §B(3) clarifies that an electricity supplier that fails to purchase the required amount of ORECs may not, as an alternative, pay a compliance fee to fulfill its OREC purchase obligation.

## 10. Proposed 20.61.04.01(D)

### D. Report Required.

(1) **Except as provided in §D(3) of this regulation, on**[On] or before April 1 of each year, a supplier shall file with the Commission a report of any activity under §A of this regulation on a form provided by the Commission.

(2) The supplier report required under §D(1) of this regulation shall include:

(a) Total retail sales of electricity marketed as renewable energy in Maryland by the supplier for the preceding calendar year; and

(b) Total RECs associated with sales of renewable energy in Maryland retired by the supplier during the preceding calendar year.

**(3) On or before April 30 of each year, a supplier shall file with the Commission a report of any activity under §A of this regulation that relates to retail sales of electricity marketed as having characteristics of offshore wind energy on a form provided by the Commission.**

### STAFF RECOMMENDATION

This section of the regulations establishes reporting obligations for electricity suppliers on their renewable portfolio obligations. The current regulations require electricity suppliers to file an annual report of their renewable portfolio obligations on April 1 of each year. Electricity suppliers will not have complete information on their OREC purchases by April 1. They purchase ORECs on a quarterly basis, using final sales data, and therefore they will not know their total OREC purchases for the calendar year until invoiced by the administrator in early April, as described by Regulation .11. This modification gives electricity suppliers additional time, up to 30 days, to report on their OREC purchases to the Commission.

## 11. Proposed 20.61.04.02(A)

A. **Except as provided under §B(3) and (15) of this regulation, on**[On] or before April 1 of each year, each supplier shall file with the Commission an RPS report covering all retail electricity sales in Maryland during the preceding calendar year.

### STAFF RECOMMENDATION

This regulation establishes reporting obligations for electricity suppliers on their renewable portfolio obligations. For the same reasons a modification to COMAR 20.61.04.01(D) is necessary, the clause added to §A excludes OREC purchases from the April 1 reporting obligation.

## 12. Proposed 20.61.04.02(B)

B. The supplier RPS report required under §A of this regulation shall be on a form provided by the Commission and include the:

(1) Supplier's total Maryland retail electricity sales;

(2) ~~[(Total)]~~ **Excluding exempted sales reported in §B(3) of this regulation, the total** exempt electricity sales by category, and, if appropriate, the identity of the customer to which an exemption applies;

**(3) On or before April 30 of each year, the total electricity sales exempted from the offshore wind energy RPS and the identity of the industrial process load and agricultural land owner customers to which the exemption applies;**

~~[(3)]~~ **(4)** Total Maryland retail electricity sales, by renewable source, marketed as renewable or having characteristics of a Tier 1 renewable source or Tier 2 renewable source equal to or greater than the supplier's RPS obligation;

~~[(4)]~~ **(5)** Total Maryland retail electricity sales, by renewable source, marketed as renewable or having characteristics of a Tier 1 renewable source or Tier 2 renewable source less than the supplier's RPS obligation and the average percentage of the Tier 1 renewable source and Tier 2 renewable source claim for the sales;

~~[(5)]~~ **(6)** Excluding Tier 1 solar RECs **and ORECs**, total number of Tier 1 renewable source RECs required to fulfill the supplier's RPS obligation;

~~[(6)]~~ **(7)** Total number of Tier 1 solar RECs required to fulfill the supplier's RPS solar obligation, and if applicable, a statement specifying whether the total number is the result of an approved delay under COMAR 20.61.01.04;

~~[(7)]~~ **(8)** Total number of Tier 2 renewable source RECs required to fulfill the supplier's RPS obligation;

~~[(8)]~~ **(9)** Excluding Tier 1 solar RECs **and ORECs**, the total number of Tier 1 renewable source RECs submitted by energy source as calculated under Public Utilities Article, §7-704, Annotated Code of Maryland;

**(10) On or before April 30 of each year, the total number of Tier 1 ORECs required to fulfill the supplier's offshore wind energy obligation and the number of Tier 1 ORECs purchased.**

~~[(9)]~~ **(11)** Total number of Tier 1 solar renewable source RECs submitted as calculated under Public Utilities Article, §7-704, Annotated Code of Maryland;



~~[(10)]~~ **(12)** Total number of Tier 2 renewable source RECs submitted by energy source as calculated under Public Utilities Article, §7-704, Annotated Code of Maryland;

~~[(11)]~~ **(13)** Excluding the Tier 1 solar **and offshore wind energy** renewable energy portfolio standard, the shortfall of RECs needed to meet the supplier's Tier 1 renewable source renewable energy portfolio standard;

~~[(12)]~~ **(14)** Shortfall of RECs needed to meet the supplier's Tier 1 solar renewable source renewable energy portfolio standard;

**(15) By April 30 of each year, the shortfall of RECs needed to meet the supplier's Tier 1 offshore wind energy renewable energy portfolio standard;**

~~[(13)]~~ **(16)** The shortfall of RECs needed to meet the supplier's Tier 2 renewable source renewable energy portfolio standard;

~~[(14)]~~ **(17)** If a shortfall in the number of RECs needed to meet the renewable energy portfolio standard is reported, the calculation of a compliance fee based on the total shortfall of Tier 1 renewable source and Tier 2 renewable source RECs, and less any fee waiver granted by the Commission under COMAR 20.61.01.06, including:

- (a) The total shortfall of Tier 1 renewable source RECs excluding RECs derived from solar energy multiplied by the Tier 1 compliance fee;
- (b) The Tier 1 renewable source RECs derived from solar energy multiplied by the Tier 1 solar compliance fee; and
- (c) The Tier 2 renewable source RECs multiplied by the Tier 2 compliance fee.

~~[(15)]~~ **(18)** If a shortfall in the number of Tier 1 renewable source RECs needed to meet the renewable energy portfolio standard is associated with sales of industrial process load under COMAR 20.61.01.05E, the calculation of a compliance fee related to the shortfall attributable to sales of industrial process load; and

~~[(16)]~~ **(19)** Certification of the accuracy and veracity of the report.

#### STAFF RECOMMENDATION

This regulation establishes reporting obligations for electricity suppliers on their renewable portfolio obligations. The modifications to §B provide exemptions from the April 1 reporting obligation for information related to ORECs that is not yet available, but require that information to be reported separately, on or before April 30. The changes also exclude ORECs from certain calculations of Tier 1 RECs and establish separate reporting obligations for ORECs.

### 13. Proposed 20.61.04.02(C)

C. The reports due on or before April 1 and April 30 shall be accompanied by at least the following:

- (1) All documentation to support the data in the annual RPS report;
- (2) Any applicable financial hardship waiver with documentation of kilowatt-hours (kWhs) covered by the waiver for each customer and the total amount of compliance fees waived under COMAR 20.61.01.05;
- (3) List of all RECs used to meet the RPS, including the REC identification number or documentation of a REC created under COMAR 20.61.03.03;
- (4) Summary report of RECs that were retired during the reporting period;
- (5) Excluding Tier 1 solar RECs and ORECs, the total price of all Tier 1 renewable source RECs retired during the reporting period;
- (6) The total price of all Tier 1 solar renewable source RECs retired during the reporting period;
- (7) The total price of all Tier 1 ORECs retired during the reporting period;
- ~~[(7)]~~ (8) The total price of all Tier 2 renewable source RECs retired during the reporting period; and
- ~~[(8)]~~ (9) Proof of payment of any compliance fee due.

#### STAFF RECOMMENDATION

This conforming modification to the reporting requirements provides that electricity suppliers must supply certain information, whether by the report due April 1 or the report due April 30. The changes also exclude ORECs from certain calculations of Tier 1 RECs and establish separate OREC reporting obligations for electricity suppliers.

### 14. Proposed 20.61.06.01(A)

A. An OSW applicant shall comply with this regulation when submitting an application to the Commission for a proposed offshore wind project.

#### STAFF RECOMMENDATION

Regulation .01 establishes a process for prospective developers of offshore wind energy projects to submit an application for a project that is consistent with procedural requirements established

by OWEA §1, codified at PUA §7-704.1(a). Section A of this regulation requires an applicant to comply with the regulations governing the Commission's application process.

## **15. Proposed 20.61.06.01(B)**

B. An application submitted pursuant to Public Utilities Article, §7-704.1(a)(1), Annotated Code of Maryland, shall be submitted to the Executive Secretary.

(1) Upon receipt of an application by the Executive Secretary prior to the opening of an application period, the Commission shall determine within 30 calendar days whether that application is administratively complete.

(2) If the Commission determines that the application received under §(B)(1) of this regulation is not administratively complete, the Commission shall promptly notify the OSW applicant of any deficiencies and allow the OSW applicant to submit missing items or information, or both. Upon receipt of missing items or information, or both, the Commission shall again have 30 calendar days to determine whether that application is administratively complete.

(3) Upon the first determination that an application is administratively complete, the Commission shall open an application period establishing a period of time during which other persons may submit applications. The Commission shall provide notice specifying the closing date and time of the application period, after which the Commission shall not accept applications or material changes to previously submitted applications and any other information the Commission determines appropriate.

(4) The closing date of the application period shall be 180 calendar days after the Commission issues the notice to the public described by §B(3) of this regulation that it is accepting applications. The Commission may extend this closing date by one or more additional periods of 30 calendar days.

### **STAFF RECOMMENDATION**

OWEA, codified at PUA, §7-704.1(a), does not direct the Commission to open a procurement by a certain date, but instead it permits a developer to submit to the Commission an application for a project at any time after July 1, 2014, which is the date OWEA requires these regulations to become effective.

Section B of this regulation establishes the Commission's process for opening and closing the application period for developers to submit applications to the Commission. The regulations provide that the Commission shall open an application period upon receipt of an administratively complete application, *i.e.*, an application that contains the information set forth in Regulation .02, submitted to the Executive Secretary. Staff recommends that the Commission implement the requirement that an application be administratively complete because a developer could trigger an application period under §7-704.1 by submitting a "dummy" application. This is a meaningful risk because developers may submit more than one application for the same project

site. To address this potential risk, the regulations clarify that an application received, but that is not administratively complete, will not trigger the opening of the application period.

OWEA, codified at PUA §7-704(a)(ii), requires the application period to be open for at least 90 days. Staff recommends the regulations establish a 180-day application period. A 180-day period is likely to provide developers adequate time to prepare one or more applications. The Commission will need to extend the application period if the estimate of transmission upgrade costs that developers require to prepare the two-part OREC price is not available within a reasonable period of time after the application period opens. Staff recommends that the application period be extended by 30-day increments, meaning that extension must be at least 30 days, to provide developers greater certainty about the timing of their submissions. Staff recommends that developers have the opportunity to request an extension of the application period, whether by motion filed in a docket or by some other mechanism the Commission establishes.

For additional information about establishing an application period, the duration of the application period, the process for determining whether an application is administratively complete, and other relevant information, please see Levitan & Associates, Inc.'s report, Recommended Criteria and Process for Evaluation and Selection of Offshore Wind Applications (Apr. 4, 2014) ("Levitan Report") at 40-42.

## **16. Proposed 20.61.06.01(C)**

C. The Commission shall determine within 30 calendar days whether an application submitted during the application period is administratively complete. If the Commission determines the application is not administratively complete, the Commission shall notify the OSW applicant within that 30-day period of any deficiencies. The OSW applicant shall have an opportunity to submit missing items or information, or both, but only if the OSW applicant's submission occurs before the close of the application period.

### **STAFF RECOMMENDATION**

Section C provides the Commission with 30 days to review each application received to determine whether it is administratively complete. *See* Levitan Report at 42 (Step 2: application completeness review). If the Commission notifies a developer that its application is not administratively complete, the developer may provide the missing items or information -- but only during the application period. Because the opportunity to supplement is not available after the close of the application period, developers may elect to time the submission of an application on a schedule that provides them with an opportunity for supplementation.

## **17. Proposed 20.61.06.01(D)**

D. Upon the close of the application period, the Commission shall conduct a multi-part review to evaluate and compare the proposed offshore wind projects that it has determined to be administratively complete.

(1) The Commission shall first determine whether a proposed offshore wind project described in an application meets the minimum threshold criteria.

(a) An application for a proposed offshore wind project that does not meet the minimum threshold criteria shall not be eligible for further review.

(b) The Commission shall publish a list of OSW applicants who have submitted applications that the Commission has determined meet the minimum threshold criteria.

(2) For each application describing a proposed offshore wind project that the Commission determines meets the minimum threshold criteria, the Commission shall conduct a qualitative evaluation, then a quantitative evaluation, as described by §B of Regulation .03 of this chapter, to assess and compare proposed projects.

#### STAFF RECOMMENDATION

As described by the Levitan Report, Staff recommends that only applications that are administratively complete should be evaluated for compliance with the minimum threshold criteria, and only applications that meet the minimum threshold criteria should be evaluated on a qualitative basis. As §B of Regulation .03 explains, applications with poor qualitative scores may not be evaluated on a quantitative basis. *See generally* Levitan Report at 43-59 (describing Step 3: Minimum Threshold Criteria Screening and Step 4: Quantitative and Qualitative Evaluations).

#### **18. Proposed 20.61.06.01(E)**

E. The Commission may, at any time, issue questions to the OSW applicant on a confidential basis in order to facilitate its evaluation of the application. Information submitted by an OSW applicant shall become part of the application and responses containing confidential information shall be marked in accordance with §C of Regulation .02 of this chapter. Once the application period has closed, any information submitted in response to a Commission-issued question may not change the proposed OREC price schedule, the proposed OREC amount, or materially change other information or materials included in the application.

#### STAFF RECOMMENDATION

*See generally* Levitan Report at 46 (describing process for clarifying questions).

#### **19. Proposed 20.61.06.01(F)**

F. The Commission shall conduct a proceeding to provide an opportunity for interested parties to comment, consistent with applicable confidentiality laws and regulation.

## STAFF RECOMMENDATION

Section 6 of OWEA directs the Commission to establish proceedings for the purpose of providing a process that is open and transparent to interested parties and that also protects the confidentiality of each applicant's commercial information.

### **20. Proposed 20.61.06.01(G)**

G. Unless extended by mutual consent of the Commission and the OSW applicant, the Commission shall approve, conditionally approve, or deny an application within 180 calendar days after the close of the relevant application period.

## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704(b), requires the Commission to approve, conditionally approve, or deny an application within 180 days after the close of the application period. The time limitation may be extended if an applicant and the Commission agree to an extension.

### **21. Proposed 20.61.06.01(H)**

H. The Commission shall notify potential applicants prior to acceptance of applications of the Long-Term Composite Treasury Bond rate (or equivalent) that will be used as the nominal discount rate and the near-term average GDP Deflator (or equivalent) that will be used as the deflation rate to determine whether the OREC prices in the applicant's proposed OREC price schedule exceeds \$190 per megawatt hour (levelized in 2012 dollars) and whether the projected net rate impacts for residential and nonresidential customers, as described by Public Utilities Article, §7-704.1(e)(1)(ii) and (iii), Annotated Code of Maryland, will be exceeded.

## STAFF RECOMMENDATION

*See Levitan Report at 25, 40 (describing pre-application task to post the nominal discount rate and deflator).*

### **22. Proposed 20.61.06.01(I)**

I. The Commission may provide for one or more additional application periods.

## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA, §7-704.1(a)(3), provides the Commission with discretion to establish additional application periods. *See Levitan Report at 63 (additional round of OREC applications).*

**23. Proposed 20.61.06.02(A)**

A. An application shall contain at least the information and materials described in §§D through N of this regulation, but an OSW applicant may submit additional information or materials, or both. The Commission in its discretion shall determine whether the information and materials that an OSW applicant provides are sufficiently detailed to satisfy §§D through N of this regulation.

STAFF RECOMMENDATION

This regulation establishes the contents and other requirements of an application for an offshore wind project. *See* Levitan Report at 27-38 (establishing application requirements).

**24. Proposed 20.61.06.02(B)**

B. If an OSW applicant is unable to provide any of the information or materials described in §§D through N of this regulation at the time it submits an application, the application shall clearly identify information or materials, or both, that it is unable to provide and provide a clear plan that demonstrates how and when the OSW applicant will provide the information or materials, or both, that are unavailable before the close of the application period.

STAFF RECOMMENDATION

*See* Levitan Report at 27 (explaining that some application requirements described may not be available at the time that an application is submitted and applicants should describe when and how such information would become available).

**25. Proposed 20.61.06.02(C)**

C. An OSW applicant shall submit PIA exemption requests by clearly identifying and marking the relevant portions of its application and providing justification for its PIA exemption request for each instance. An OSW applicant shall certify in its application that it will hold the Commission harmless if the Commission independently determines that one or more portions of an application subject to one or more PIA exemption requests must be disclosed under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

STAFF RECOMMENDATION

*See* Levitan Report at 37-38 (recommending procedures to protect confidential information).

**26. Proposed 20.61.06.02(D)**

D. All graphs, charts, photographs, or other documents originally produced in color and included in the application shall be produced in color in the original and the copies. The OSW applicant shall comply with other submission requirements posted by the Commission.

STAFF RECOMMENDATION

*See Levitan Report at 39-40 (discussing pre-application requirements).*

**27. Proposed 20.61.06.02(E)**

E. An application shall include a signed and notarized statement by an officer of the OSW applicant attesting that (i) the officer has the authority to submit the application to the Commission; (ii) the application, including the proposed OREC price schedule and proposed OREC amount, shall remain binding until the expiration date; (iii) the information and materials contained in the application are accurate and correct; (iv) if the application is selected, the OSW applicant will work diligently and engage in a continuous development and construction program to achieve the project COD for the qualified offshore wind project.

STAFF RECOMMENDATION

Section E requires an officer to make certain representations and certifications pertaining to the submitted application. The officer must attest that he or she has authority to submit the application to the Commission and that the application, including the proposed OREC price schedule and proposed OREC amount, shall remain binding until the expiration date and the information and materials included in the application are accurate and correct. The officer must also attest that if the project is selected, the developer will work diligently and engage in a continuous development and construction program to achieve the project COD for the qualified offshore wind project.

**28. Proposed 20.61.06.02(F)**

F. An application shall include the following information:

(1) An organizational chart that shows:

(a) Complete ownership structure of the proposed project (including all parents, subsidiaries, and other affiliates that have direct or indirect management or voting control over the proposed project); and

(b) Any lenders or entities funding the proposed project, including those entities funding on a contingent basis; and

(c) If different from the proposed project, the relationship between the OSW applicant and the proposed project.



- (2) Legal name and type of business organization of each entity listed on the organizational chart described in §F(1)(a) of this regulation, including certificates of formation and certificates of good standing certificated by the relevant governmental authority for each entity and, if applicable, foreign qualification certificates or other evidence that the proposed project and the OSW applicant are qualified to do business in the State;
- (3) By-laws or operating agreement of each entity listed on the organizational chart described in §F(1)(a) of this regulation and relevant board resolution (or equivalent written consent) to submit an application;
- (4) Name, title, address, telephone number, email address, and curriculum vitae of each member of the OSW applicant's executive team and project team that will be responsible for the proposed project, demonstrating capability and expertise in, at a minimum, project management, development, financing, permitting, engineering, procurement, construction, operations, maintenance, decommissioning and other significant functions for ocean-based energy projects, utility-scale wind projects, or large scale generation projects;
- (5) For each entity that is, or has committed to, providing financing to the proposed project:
  - (a) The identity of the entity and a brief description of its business;
  - (b) Name, title, address, telephone number, and email address of the primary contact person;
  - (c) Most recent audited financial statements that use either generally accepted accounting principles or International Financial Reporting Standards; and
  - (d) Issuer or long-term senior unsecured debt ratings, or both, from at least one nationally recognized statistical ratings organization (if available);
- (6) Name, title, address, telephone number, and email address of the primary contact at any entity with which the OSW applicant has a contract or similar agreement to perform permitting, engineering, procurement, construction, operations, maintenance, decommissioning or similar functions for the proposed project;
- (7) Complete information about any current or prior business bankruptcies, defaults, disbarments, investigations, indictments, or any other actions against the OSW applicant and any member of the executive team, the project team, or key employee(s) of any company included in §F(1) of this regulation; and
- (8) Complete information about work performed by one or more entities included in §F(1) or (6) of this regulation that is similar to the proposed offshore wind project, including ocean-based energy projects, utility-scale wind projects, or other large scale generation projects.

## STAFF RECOMMENDATION

See Levitan Report at 28-29 (applicant background and contact information).

### **29. Proposed 20.61.06.02(G)**

G. An application shall include the following information about the proposed offshore wind project:

- (1) A general description of the proposed offshore wind project, including but not limited to site plan, location, number of turbines, nameplate capacity, area, typical distance to shore, typical water depths, general seabed description, main competing uses, and sensitive areas;
- (2) General maps showing turbine layout, landfall and grid interconnection points, and construction layout site;
- (3) A wind resource and energy yield assessment at planned hub height with supporting data in an industry-standard report with expected gross (at generator terminals) and net (at PJM billing meter) annual energy production, including a breakdown of energy losses as well as turbine technical availability (scheduled and forced outages), uncertainty estimates of the net annual energy production at confidence intervals (P5, P10, P50, P90, and P95), and hourly energy production profiles by month (12x24 matrices) for a typical year;
- (4) Wind turbine technology with turbine manufacturer, model, performance history, track record in offshore wind applications, physical dimensions and weight, hub height, rotor diameter, and nameplate capacity, design standard, turbine certification status under applicable standards and guidelines such as those developed by the International Electrotechnical Commission, service life, and design life information;
- (5) Foundation and support-structure descriptions that include explanations of why the foundation and support structures are appropriate for the site, as well as climatology information that includes wind, wave, and current data;
- (6) A description of the electrical collection system and connection to the transmission grid that includes the location and description of any onshore and offshore substations, inter-array and export power cables, interconnection route, landfall and facilities (including rights of way), interconnection plans, status of the interconnection request submitted to PJM, schedule for completing the interconnection studies, and electrical one-line diagram of the facility up to the interconnection point;
- (7) Site-control status and plan to acquire and ensure site control for the operating term, interconnection and right-of-way status (or plans), and status of discussions with BOEM and other relevant entities;
- (8) A general description of balance of plant components that includes any meteorological mast, communication system, and supervisory control and data acquisition system;

- (9) A procurement and construction plan that includes the following, with milestones:
- (a) all steps from commencement of procurement and construction to testing and project COD of the proposed project;
  - (b) a contracting strategy and construction organizational chart;
  - (c) a description of laydown, storage, and assembly areas;
  - (d) the OSW applicant's plan to promote the prompt, efficient, and safe completion of the proposed project (particularly with regard to the construction and maintenance of the project in accordance with Public Utilities Article, §7-704.1(d)(1)(ix), Annotated Code of Maryland);
  - (e) plans to comply with The Merchant Marine Act of 1920; and
  - (f) a framework for a construction period health and safety plan;
- (10) An operations and maintenance plan with a schedule of principal operations and maintenance activities, locations of specific ports with operations and maintenance facilities, and estimated operations and maintenance labor divided between specialized out-of-state and in-state labor;
- (11) A permitting and approvals plan with a detailed matrix listing all required federal, state, and local environmental and regulatory permits and approvals, and setting out the schedule for obtaining the permits and approvals. This should include plans to obtain a certificate of public convenience and necessity for a proposed qualified submerged renewable energy line and plans to conduct an environmental review in compliance with applicable statutes, such as the National Environmental Policy Act, and that include a description of the types of studies (physical, biological and socio-economic) to be performed. Plans should demonstrate compliance with the Endangered Species Act, Migratory Bird Treaty Act, and Marine Mammal Protection Act, applicable BOEM regulations and guidelines for surveying natural resources (including, but not limited to avian species, benthic habitats, fish, marine mammals, and sea turtles), local/state regulations, and the Coastal Zone Management Act, as applicable;
- (12) A decommissioning plan that demonstrates the safe and environmentally responsible removal and disposal of the turbine structures, offshore electrical substation and other offshore facilities, and interconnection facilities, particularly those located in State waters and on State lands; a comprehensive estimate of facility and interconnection decommissioning costs; and assurance that adequate funding shall be available for complete decommissioning of the proposed project, including a detailed explanation of how adequate funding shall be assured.

#### STAFF RECOMMENDATION

*See Levitan Report at 29-31 (project description).*

### **30. Proposed 20.61.06.02(H)**

H. An application shall include a project COD and a proposed timeline for the proposed offshore wind project's development and critical path schedule that includes milestones for site assessment, engineering, permitting, turbine certification, financing, procurement, manufacturing, construction, testing and commissioning commercial operation dates, and delivery term;

#### STAFF RECOMMENDATION

*See Levitan Report at 29, 31-32 (project description and commercial operations date).*

### **31. Proposed 20.61.06.02(I)**

I. An application shall indicate whether the proposed project's nameplate capacity is larger than required to provide the aggregate proposed OREC amount for the term of the proposed OREC price schedule. If the proposed project's nameplate capacity exceeds the capacity required, and the OSW applicant submits a two-part OREC price as described by §M of this regulation, the application shall include a methodology for determining a reasonable allocation of the transmission upgrade costs to be included in the OREC price. The OSW applicant shall have the burden of demonstrating that its proposed allocation methodology is fair and in the interest of ratepayers.

#### STAFF RECOMMENDATION

A developer may propose to build an offshore wind project that is larger than needed to supply its proposed OREC amount in order to achieve economies of scale. Section I requires the developer to provide information about the size of its project relative to the proposed OREC amount. In addition, this section requires a developer that submits a two-part OREC price to submit a proposal to apportion a share of transmission upgrade costs into the OREC price. *See Levitan Report at 35.*

### **32. Proposed 20.61.06.02(J)**

J. An application shall include the following commercial information related to the proposed offshore wind project:

- (1) OSW applicant's plan for engaging small businesses;
- (2) Subject to Regulation .06 of this chapter, OSW applicant's plan for compliance with the Minority Business Enterprise Program for the construction, manufacturing, and maintenance phases of the proposed offshore wind project;
- (3) OSW applicant's plan for the use of skilled labor, especially for the construction and manufacturing components of the project, including outreach, hiring, or referral systems, or all of

these, that are affiliated with registered apprenticeship programs under Labor and Employment Article, Title 11, Subtitle 4, Annotated Code of Maryland;

(4) OSW applicant's plan for using an agreement designed to ensure the use of skilled labor and to promote the prompt, efficient, and safe completion of the project particularly with regard to the construction, manufacturing, and maintenance of the proposed offshore wind project; and

(5) OSW applicant's plan to provide for compensation to its employees and subcontractors consistent with wages outlined in State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland.

#### STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704.1(c)-(d), establishes certain commercial considerations for developers of an offshore wind project. Regulation L identifies the application requirements or evaluation criteria specified by OWEA. *See also* Levitan Report at 32-33 (Maryland business impacts).

### **33. Proposed 20.61.06.02(K)**

K. An application shall include the following financial information related to the proposed offshore wind project:

(1) Detailed financial analysis of the proposed project, including:

(a) a pro forma income statement, balance sheet and cash flow projection covering the development period, construction period and operating term during the term of the proposed OREC price schedule, with detailed revenues and expenses;

(b) description and estimated benefits of any State or federal grants, rebates, tax credits, loan guarantees or other similar benefits received by the proposed project; and

(c) estimated internal rate of return and return on equity;

(2) Proposed offshore wind project balance sheet at project COD with all capital expenditures broken down by major cost category;

(3) Proposed capital structure identifying equity investors, sources of debt, any other sources of capital, and written demonstration of equity and debt funding commitments, which include the following:

(a) For an OSW applicant that is seeking equity investors in a proposed offshore wind project:

- (i) Documentation of the OSW applicant's serious, good-faith efforts to solicit and interview a reasonable number of minority investors, which shall include a demonstration of the OSW applicant's coordination with the Governor's Office of Minority Affairs; and
- (ii) A confidential statement listing the names and addresses of all minority investors interviewed and whether or not any of those investors have purchased an equity share in the proposed offshore wind project; or
- (b) For an OSW applicant that is not seeking equity investors in a proposed offshore wind project, a statement from that OSW applicant affirming that it is not seeking equity investors in the proposed offshore wind project;
- (4) Year-by-year spending projections of expenses and capital expenditures by five- or six-digit NAICS code extending through the term of the proposed OREC price schedule and divided into four categories: (i) in-State labor, (ii) in-State non-labor, (iii) out-of-State labor, and (iv) out-of-State non-labor;
- (5) Detailed matrix, supported by documentation, demonstrating that the OSW applicant has applied for all current eligible State and federal grants, rebates, tax credits, loan guarantees, or other programs available to offset the cost of the proposed project or provide tax advantages;
- (6) Affirmative statement of the OSW applicant's commitment to use best efforts to apply for all eligible State and federal grants, rebates, tax credits, loan guarantees, and other similar benefits as those benefits become available and to agree to pass along to retail electric customers 80 percent of the value of any State or federal grants, rebates, tax credits, loan guarantees, or other similar benefits received by the proposed project and not included in the application;
- (7) Affirmative statement that the OSW applicant will execute a memorandum of understanding with the Commission that requires the OSW applicant to make serious, good-faith efforts to interview minority investors in any future attempt to raise venture capital or attract new investors to the qualified offshore wind project;
- (8) Affirmative statement of the OSW applicant's commitment to deposit \$6,000,000 into the Maryland Offshore Wind Business Development Fund, which shall consist of an initial deposit of \$2,000,000 within 60 days of the Commission's approval of a proposed offshore wind project, \$2,000,000 within one year after the initial deposit, and \$2,000,000 within two years after the initial deposit; and
- (9) Affirmative statement by the OSW applicant that it will hold harmless the retail electric customers, OREC purchasers, and the State for any cost overruns associated with the proposed offshore wind project.

#### STAFF RECOMMENDATION

*See Levitan Report at 33-34 (financial information).*

### **34. Proposed 20.61.06.02(L)**

L. An application shall include a cost-benefit analysis that covers the following items and the assumptions and data that the OSW applicant used to generate each item:

- (1) An input-output analysis describing the in-state impact on income, employment, wages, and state and local taxes, with particular emphasis on effects on manufacturing employment in the State, as well as the complete set of data and assumptions that the OSW applicant used to generate the input-output analysis;
- (2) An analysis describing expected employment impacts in the State (expressed as full-time equivalent positions), including expected type and duration of employment opportunities, the expected salary range of positions, and other effects resulting from, for example, in-state construction, operations, maintenance, and equipment purchases, and supported by detailed documentation, including any binding commitments;
- (3) An analysis describing the in-state business impacts of the proposed offshore wind project;
- (4) An analysis describing anticipated environmental and health impacts related to construction, operation and decommissioning of the proposed offshore wind project, including direct emissions impacts created by the proposed offshore wind project related to carbon dioxide, oxides of nitrogen, sulfur dioxide, particulates and mercury emissions (in each case, expressed in terms of the number of tons of emissions abated per annum), as well as other relevant environmental and health impacts to the citizens of Maryland;
- (5) An analysis describing any other impacts on residential, commercial, and industrial retail electric customers over the life of the proposed offshore wind project;
- (6) An analysis describing the long-term effect of the proposed offshore wind project on wholesale energy, capacity, and ancillary services markets administered by PJM that includes analysis of contributions to regional system reliability, fuel diversity, competition, transmission congestion, and other power market benefits;
- (7) An analysis describing any other benefits to the State created by the proposed offshore wind project, such as in-state construction, operations, maintenance, and equipment purchases; and
- (8) Other relevant considerations that the OSW applicant elects to include.

#### **STAFF RECOMMENDATION**

*See Levitan Report at 34-35 (project analyses).*

### **35. Proposed 20.61.06.02(M)**

M. An application shall include a proposed OREC price schedule for the proposed offshore wind project's electricity service attributes that is subject to the following requirements:

(1) The proposed OREC price schedule shall consist of either a:

(a) Two-part OREC price in which the first component is expressed as either a single firm price for each calendar year or a series of firm prices for each calendar year and the second component is expressed as a single firm price for each calendar year subject to a true-up based upon any change between the Commission's estimated cost of transmission upgrades and PJM's actual upgrade cost as specified in the executed Interconnection Service Agreement, for a total OREC price up to and not exceeding \$190 per megawatt hour (levelized in 2012 dollars) and subject to the projected net rate impact caps for residential and nonresidential customers, as described by Public Utilities Article, §7-704.1(e)(1)(ii) and (iii), Annotated Code of Maryland; or

(b) One-part OREC price, expressed as either a single firm price for each calendar year or a series of firm prices for each calendar year, that is not subject to true-up, up to and not exceeding \$190 per megawatt hour (levelized in 2012 dollars) and subject to the projected net rate impact caps for residential and nonresidential customers, as described by Public Utilities Article, §7-704.1(e)(1)(ii) and (iii), Annotated Code of Maryland;

(2) The unit of OREC price on the proposed OREC price schedule must be on a dollars (\$) per delivered OREC (MWh) hour basis by calendar year; and

(3) All proposed OREC price schedules shall propose OREC prices for each calendar year for an initial term of up to 20 years commencing on the estimated project COD and an additional schedule of OREC prices for each of the five calendar years immediately following the end of the initial term to cover potential delays in project COD.

#### STAFF RECOMMENDATION

*See Levitan Report at 35-36 (proposed OREC price schedule).*

### **36. Proposed 20.61.06.02(N)**

N. An application shall include a proposed OREC amount that is a quantity, expressed as a single annual number on a megawatt hour per calendar year basis and fixed for the proposed term of the project's proposed OREC price schedule, and that is accompanied by the expected generation confidence level associated with that proposed OREC amount.

#### STAFF RECOMMENDATION

*See Levitan Report at 36-37 (proposed OREC amount).*



**37. Proposed 20.61.06.02(O)**

O. An applicant may submit more than one application for any proposed project or more than one proposed OREC price schedule and related proposed OREC amount for the same application. If an applicant submits multiple proposed OREC price schedules and related proposed OREC amounts, each proposed OREC price schedule and related proposed OREC amount together with its related application will be treated as a separate application. All applications will be treated as mutually exclusive.

STAFF RECOMMENDATION

*See Levitan Report at 27.*

**38. Proposed 20.61.06.03(A)**

A. An application must demonstrate the proposed offshore wind project meets the following minimum threshold criteria, as specified:

- (1) The proposed offshore wind project complies with Public Utilities Article, §7-701(k)(1) and (2), Annotated Code of Maryland;
- (2) The term of the proposed OREC price schedule is not longer than 20 years, and commences no earlier than January 1, 2017;
- (3) The OREC price on the proposed OREC price schedule do not exceed \$190 per megawatt hour in levelized 2012 dollars, as measured using a nominal discount rate equal to the long-term composite Treasury Bond rate (or equivalent) and a deflation rate equal to the near-term average GDP Deflator (or equivalent), notified by the Commission to potential OSW applicants;
- (4) Demonstration that the proposed project, including the associated transmission-related interconnection facilities, will be constructed using commercially proven components and equipment available to the OSW applicant;
- (5) Demonstration that the project COD is reasonable in light of the permitting, technical, construction, operational, and economic challenges generally faced by offshore wind project developers; and
- (6) Evidence of site control or demonstration of a feasible plan to obtain site control.

STAFF RECOMMENDATION

*See Levitan Report at 43-46 (minimum threshold criteria screening).*

### **39. Proposed 20.61.06.03(B)**

B. For each application that meets the minimum threshold criteria, the Commission shall conduct independent qualitative and quantitative analyses that considers the criteria enumerated in Public Utilities Article, §7-704.1(d)(1)(i) through (xiii), Annotated Code of Maryland.

(1) The qualitative analysis shall use a ranking system to identify applications with characteristics that contribute to the likelihood of successful development and to the net economic, environmental, and health benefits to the State.

(a) The following factors shall be considered as part of the qualitative analysis:

(i) Qualifications of the OSW applicant's project team, including but not limited to experience in project development, environmental permitting, engineering and construction, operations, maintenance and financing;

(ii) Project characteristics, including but not limited to project design (for example, demonstration that turbine layout is consistent with best practices for optimal output and maintainability), turbine technology (for example, commercial availability, certification status, compatibility with project service life, warranties), foundation and support structure (for example, suitability for site conditions, design standards), converter station and interconnection (for example, appropriateness of equipment for site, turbine ratings, and number of turbines; reasonableness of interconnection and delivery points; interconnection designs consistent with best practices), and reasonableness of claimed net capacity and annual energy output;

(iii) Financial plan, including but not limited to completeness and reasonableness of the plan, financial strength of the developer, sources of debt and equity and firmness of commitments, plan for addressing cost overruns and other development risks, evidence of best efforts to identify and access State or federal grants, rebates, tax credits, loan guarantees or other similar benefits available to the proposed project and future commitments to seek out future benefits;

(iv) Demonstration of site control such as a BOEM lease or, alternatively, adequacy of plan for obtaining site control, as well as arrangements for interconnection right-of-way;

(v) Project COD and schedule, including but not limited to reasonableness of the proposed schedule (acknowledging, for example, weather delays), construction plan (reasonableness of plan and level of detail, for example, port, storage, lay-down and staging-areas, as well as evidence of consistency with procurement plan, supply chain descriptions, and contracting strategy), and testing and commissioning plan;

(vi) If applicable, the reasonableness of the proposed transmission upgrade cost allocation methodology, taking into account whether the proposed methodology fairly serves the interest of ratepayers;

(vii) Operations and maintenance plan, including but not limited to reasonableness of proposed management plan and mitigation strategies and evidence of unique requirements in the

context of a large offshore wind facility (for example, port, maintenance vessel, staffing, spare parts supplies);

(viii) Decommissioning plan, including but not limited to quality and completeness of plan, and assurance of available funding to decommission the plant, interconnection facilities and associated equipment;

(ix) Transmission improvements, including but not limited to quality and completeness of analysis, and consideration of benefits created by associated transmission and distribution upgrades such as improved reliability or reduced congestion;

(x) OSW applicant's input-output analysis required by Public Utilities Article, §7-704.1(c)(3)(i), Annotated Code of Maryland, including completeness of descriptions and documentation, verifiability of model inputs and reasonableness of outputs, and extent to which the analysis demonstrates positive net economic benefits to the State;

(xi) OSW applicant's analysis of the net environmental and health impacts to the State including impacts during construction, operation and decommissioning of the proposed project, including completeness of descriptions and documentation, verifiability of model inputs and reasonableness of outputs, and extent to which the analysis demonstrates positive net environmental and health benefits to the State;

(xii) Extent to which OSW applicant's proposed project will assist in meeting the renewable energy portfolio standard, considering the expected generation confidence level associated with the proposed OREC amount;

(xiii) Unique attributes that distinguish a proposed project from another;

(xiv) Adequacy of the OSW applicant's plan demonstrating engagement of small and minority businesses, commitment to the use of skilled labor, and labor compensation plan; and

(xv) Evidence of serious, good-faith efforts to solicit participation of minority investors, should the proposed project have sought capital investment, and evidence of serious, good-faith commitment to solicit minority investors in future attempts to raise capital;

(b) The qualitative analysis may result in the elimination from further consideration of an application that the Commission determines represents a significant risk of not achieving successful commercial operation or is not likely to provide net economic, environmental, and health benefits to the State.

(2) The quantitative analysis shall measure the impact of a proposed project and, as applicable, a combination of proposed projects, expressed in monetary terms.

(a) The quantitative analysis of the projected net rate impacts for an average Maryland retail electric customer based on an annual consumption of 12,000 kilowatt hours and nonresidential retail electric customers shall include consideration of the proposed OREC price schedule

(including the proposed additional OREC prices for a further period of five years referenced in §M(3) of Regulation .02 of this chapter) and proposed OREC amount, the value of energy, capacity, and ancillary services generated by the proposed project, the value of avoided Tier 1 REC costs, and any consequential impacts on wholesale market energy, capacity, ancillary service, and REC prices, to determine the following:

- (i) Whether the projected net rate impact for applicable classes exceeds the limitations established in Public Utilities Article, §7-704.1(e)(1)(ii) and (iii), Annotated Code of Maryland; and
- (ii) The forecasted net rate impact to ratepayers over the initial term of the proposed project;
- (b) The quantitative analysis of the economic impacts on Maryland associated with the proposed project shall assess the projected impact of the proposed project on in-state income, employment, taxes, and local spending associated with the project lifecycle including construction, operations, maintenance, and equipment purchases.

#### STAFF RECOMMENDATION

*See Levitan Report at 47-59 (discussing the qualitative and quantitative analyses).*

#### **40. Proposed 20.61.06.03(C)**

C. Subject to §(B)(1)(b) of this regulation, the Commission shall rank proposed projects (and combinations of proposed projects, if applicable) based on the qualitative and quantitative evaluation described by §B of this regulation. The Commission shall not approve an application that does not meet the requirements of Public Utilities Article, §7-704.1(e)(1)(i) through (iv), Annotated Code of Maryland.

#### STAFF RECOMMENDATION

*See Levitan Report at 59-62 (discussing the qualitative and quantitative analyses).*

#### **41. Proposed 20.61.06.03(D)**

D. The Commission shall evaluate all applications received by it prior to the end of the application period and apply the same evaluation criteria to each application without discrimination among the applications.

#### STAFF RECOMMENDATION

Section D states that each application timely submitted to the Commission shall be evaluated on a nondiscriminatory basis using the same evaluation criteria. The provision is intended to clarify that an application submitted early in the process will be evaluated using the same process as later-submitted applications.

#### **42. Proposed 20.61.06.03(E)**

E. The Commission order approving an application shall be conditional upon completion of the following:

(1) The Commission and the applicant execute a memorandum of understanding by which the OSW applicant agrees to make serious, good-faith efforts to interview minority investors in any future attempts to raise venture capital or attract new investors to the qualified offshore wind project;

(2) As described fully by §B of Regulation .06 of this chapter, the OSW applicant and the Governor's Office of Minority Affairs, in consultation with the Office of the Attorney General, establish a clear plan for setting minority business enterprise participation goals and procedures for the proposed offshore wind project; and

(3) Any other conditions the Commission determines to be appropriate.

#### **STAFF RECOMMENDATION**

Section 1 of OWEA, codified at PUA §7-704.1(d)(4)(ii), and OWEA §3, codified at PUA §7-704.1(e)(3)(iii), establishes that the Commission's approval of a developer's application must be conditioned on the execution of a memorandum of understanding and an agreed-upon plan for setting minority business enterprise goals.

As described by the Levitan Report, the Commission may also issue an order conditioned on various events. *See, e.g.,* Levitan Report at 48 (obligation to make certain investments), 62 (agreement to make adjustments necessary to conform to statutory rate caps).

#### **43. Proposed 20.61.06.04**

A. The Commission shall verify that representatives of the United States Department of Defense and the maritime industry have had the opportunity, through the federal leasing process, to express concerns regarding project siting.

#### **STAFF RECOMMENDATION**

OWEA, codified at PUA §7-704.2(d)(3), directs the Commission to verify that representatives of the United States Department of Defense and the maritime industry have had the opportunity, through the federal leasing process, to express concerns regarding project siting.

#### **44. Proposed 20.61.06.05(A)**

A. Within 60 days after the Commission approves the application of a proposed offshore wind project, the qualified offshore wind project shall deposit \$2,000,000 into the Maryland Offshore Wind Business Development Fund.

## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704.1(g), obligates a developer of a project that has been approved by the Commission in an OREC order to deposit a total of \$6,000,000 into the Maryland Offshore Wind Business Development Fund. The developer is required to make three payments of \$2 million, with the initial deposit to be made within 60 days of project approval. The second and third payments are within one and two years of the initial deposit. Staff recommends that the payment obligation trigger upon approval of the application, *i.e.*, issuance of an OREC order; However, there may be factual circumstances where the Commission's conditional approval of the application tolls the payment obligation.

### **45. Proposed 20.61.06.05(B)**

B. Within one year after the initial deposit under §A of this regulation, the qualified offshore wind project shall deposit an additional \$2,000,000 into the Maryland Offshore Wind Business Development Fund.

## STAFF RECOMMENDATION

See comment to §A of this regulation above.

### **46. Proposed 20.61.06.05(C)**

C. Within two years after the initial deposit under §A of this regulation, the qualified offshore wind project shall deposit an additional \$2,000,000 into the Maryland Offshore Wind Business Development Fund.

## STAFF RECOMMENDATION

See comment to §A of this regulation above.

### **47. Proposed 20.61.06.05(D)**

D. The qualified offshore wind project shall notify the Commission within 30 calendar days after each deposit due date whether timely and full payment has been made or not, and if not, an explanation for failure to make the payment.

## STAFF RECOMMENDATION

Section D of this regulation requires the project to report compliance with its payment obligation.

**48. Proposed 20.61.06.05(E)**

E. Failure to make any of the payments required by §§A through C of this regulation shall be deemed a violation of the OREC order, entitling the Commission to take actions as it deems appropriate.

STAFF RECOMMENDATION

Section E of this regulation establishes that the Commission may take action for failure to make payments as OWEA requires.

**49. Proposed 20.61.06.06(A)**

A. To the extent practicable and permitted by the United States Constitution, the qualified offshore wind project shall comply with the State's Minority Business Enterprise Program.

STAFF RECOMMENDATION

Section 3 of OWEA, codified at PUA §7-704.1(e)(3), establishes that the developer of a qualified offshore wind project must comply with the State's Minority Business Enterprise Program to the extent practicable and permitted by federal law.

**50. Proposed 20.61.06.06(B)**

B. The Commission may not approve an application until the Governor's Office of Minority Affairs, in consultation with the Office of the Attorney General, and the OSW applicant have established a clear plan for setting reasonable and appropriate minority business enterprise participation goals and procedures for each phase of the qualified offshore wind project, as required by Public Utilities Article, §7-704.1(e)(3)(iii), Annotated Code of Maryland.

STAFF RECOMMENDATION

Section 3 of OWEA, codified at PUA §7-704.1(e)(3), establishes that the Commission may not approve an application until a plan to set reasonable and appropriate minority business enterprise participation goals has been established by the developer and the Governor's Office of Minority Affairs, in consultation with the Office of the Attorney General.

**51. Proposed 20.61.06.06(C)**

C. This regulation is effective through June 30, 2016.

## STAFF RECOMMENDATION

Section 3 of OWEA, codified at PUA §7-704.1(e)(3), expires on June 30, 2016. Section C of this regulation establishes that this regulation .06 will no longer be effective upon expiration of OWEA §3.

### **52. Proposed 20.61.06.07(A)**

A. (1) The Commission shall establish the offshore wind energy RPS under Public Utilities Article, §7-703(b), Annotated Code of Maryland. That determination shall be based on projected annual creation of ORECs by qualified offshore wind projects.

(2) The Commission shall establish the offshore wind energy RPS on a forward-looking basis at least three years in advance. If the Commission issues additional OREC orders, it shall at such time adjust the offshore wind energy RPS, on a forward looking basis at least three years in advance, taking into account the number of ORECs projected to be generated by all projects. In establishing the offshore wind energy RPS, the Commission shall include a surplus determined by it in its discretion, to accommodate reasonable forecasting errors in estimating overall electricity sales in the State.

## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-703(b) and §7-704.2(a)(1), requires the Commission to establish the offshore wind energy RPS based on the projected annual creation of ORECs by one or more qualified offshore wind projects. Section (A)(1) provides that the Commission shall establish the offshore wind energy RPS in a manner consistent with the statutory requirement.

OWEA's PUA §§7-704.2(a)(2)-(3) requires that the offshore wind energy RPS be established on a forward-looking basis and with a surplus to account for higher-than-forecasted electricity sales in the State. As provided by section (B)(2), Staff recommends that the Commission establish the RPS three years or more in advance. Staff understands that supply contracts offered by competitive electricity suppliers are typically of three years-duration or less. Three years is a reasonable interpretation of the phrase "sufficiently in advance" and provides electricity suppliers sufficient time to set competitive rates offered to retail customers based on the cost of purchasing ORECs, without triggering change-of-law provisions in their retail sales contracts. A three-year requirement permit sufficient time to allow electricity suppliers' existing contracts to expire and will allow the cost of purchasing ORECs to be appropriately reflected in future prices that electricity suppliers charge their customers.

### **53. Proposed 20.61.06.07(B)**

B. Subject to §C of this regulation, the Commission, in its discretion, may adjust the offshore wind energy RPS in a given year to accommodate a shortfall of ORECs in one or more earlier years that is the result of the variation between the quantity of ORECs calculated from the offshore wind energy RPS and the quantity of ORECs approved by OREC orders for the same period.



## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704.2(a)(4)(ii), requires the Commission to adopt regulations establishing a mechanism by which the Commission can adjust the OREC purchase obligation to account for a shortfall of ORECs vis-a-vis one or more OREC orders. Section B provides a mechanism for the Commission to make such adjustments.

### **54. Proposed 20.61.06.07(C)**

C. Any positive adjustments, or negative adjustments arising as a result of the application of §B of this regulation, to the offshore wind energy RPS shall be on a forward-looking basis and shall be determined at least three years in advance of the calendar year in which that RPS requirement is to take effect.

## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704.2(a)(3), requires that positive adjustments to the offshore wind energy RPS be made on a forward-looking basis “sufficiently in advance” to allow OREC purchasers to reflect the offshore wind energy RPS obligation in their prices to retail customers. As described above, Staff recommends the Commission interpret “sufficiently in advance” as a three-year period. Staff recommends that this three-year period apply to negative adjustments that may arise if there is a shortfall of ORECs in one or more earlier years that is the result of the variation between the quantity of ORECs calculated from the offshore wind energy RPS and the quantity of ORECs approved by OREC orders for the same period. Staff believes it is appropriate to apply a three-year forward looking condition to negative adjustments to avoid providing windfalls to electricity suppliers who may have already adjusted their rates to customers upwards on a three-year forward-looking basis and are collecting the higher rates for a three-year period.

### **55. Proposed 20.61.06.08(A)**

A. The Commission shall establish the OREC purchasers’ obligation to purchase ORECs for each year that the offshore wind energy RPS is in effect on a forward-looking basis and at least three years in advance of the calendar year in which that OREC purchase obligation is to take effect to allow OREC purchasers to reflect the costs of ORECs in retail prices offered to its customers.

## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704.2(a)(4)(i), requires that the OREC purchase obligation be established “sufficiently in advance” for electricity Suppliers to price ORECs into their retail sales contracts. As described above, Staff recommends that the phrase “sufficiently in advance” be interpreted as a three-year time period. Section A provides that the Commission will establish electricity suppliers’ purchase obligations three years in advance.

## **56. Proposed 20.61.06.08(B)**

B. Each OREC purchaser shall meet its OREC purchase obligation by purchasing the necessary number of ORECs from one or more escrow accounts established under this chapter.

### **STAFF RECOMMENDATION**

Section 1 of OWEA, codified at PUA §§7-704.2(b)-(c), requires electricity suppliers to purchase ORECs to satisfy the offshore wind energy RPS established by OWEA's PUA §7-703(b).

Section B makes clear that electricity suppliers are required to purchase ORECs in an amount sufficient to meet their statutory obligations and are required to purchase the ORECs from one or more administrators, who are administering one or more escrow accounts that are created under this chapter.

## **57. Proposed 20.61.06.08(C)**

C. (1) If, pursuant to §M(1)(a) of Regulation .02 of this chapter, a project has provided a two-part OREC price for its proposed OREC price schedule, then as soon as possible following the execution of its Interconnection Service Agreement, and if the project determines that any change between the Commission's estimated cost of transmission upgrades and PJM's actual upgrade cost as specified in the executed Interconnection Service Agreement requires that the second component of the OREC price be adjusted upwards, the project shall submit to the Commission a replacement OREC price schedule that reflects the final OREC price for each calendar year of the OREC price schedule, as adjusted in compliance with the limitations set forth in the proviso to §M(1) of Regulation .02 of this chapter, accompanied by an explanation of the requested adjustment, and this replacement OREC price schedule shall be deemed to be the OREC price schedule for the project for the term of its OREC order.

(2) In assessing whether the adjusted OREC price schedule submitted by the project under §C(1) of this regulation complies with the limitations set forth in the proviso to §M(1) of Regulation .02 of this chapter, the Commission shall use in its determination the same factors and economic or financial model (including any numerical inputs) used by it at the time it evaluated and approved the project's application other than the change in PJM's actual transmission upgrade cost described above.

### **STAFF RECOMMENDATION**

Section C addresses adjustments to the OREC price schedule, which affect the price at which electricity suppliers purchase ORECs. A developer that submits an application has the option of proposing an OREC price schedule that contains either a one-part OREC price or two-part OREC price, as provided by §M(1)(a) of Regulation .02 of this chapter. A schedule containing a one-part OREC price is not subject to any further adjustments if it is subsequently determined that the transmission upgrades costs exceed the amount assumed by the developer in its application. A schedule containing two-part OREC price, however, is subject to adjustment. If it is subsequently determined that the actual transmission upgrades costs exceeds the proxy

transmission upgrade cost provided by the Commission, the OREC price is adjusted subject to the price or rate impact caps in OWEA's PUA §7-704.1(e)(1).

Under Paragraph (1) of this section, upon completing the adjustments and assuming that the OREC price following such adjustments does not exceed the OWEA price or rate impact caps identified above, the project is required to submit a replacement OREC price schedule (reflecting such adjustments) to the Commission and this replacement OREC price schedule will be the OREC price schedule that is applicable to the project for the term of its order.

Paragraph (2) of this section makes it clear that when the Commission evaluates the updated OREC price schedule to ensure compliance with the price and rate impact caps identified above, it will use the same models and metrics with which it tested the originally submitted OREC price schedules for purposes of assessing compliance with the OWEA price and rate impact caps.

### **58. Proposed 20.61.06.09(A)**

A. A qualified offshore wind project shall appoint an administrator, selected by that project and acceptable to the Commission, to establish for that project an escrow account, a reserve account and other accounts required by this chapter.

#### STAFF RECOMMENDATION

OWEA's PUA §7-704.2(b) directs the Commission to establish an escrow account and rules and procedures to securely transfer ORECs and associated revenues, and PUA §7-704.2(c)(2) contemplates establishment of a reserve account.

This regulation requires a qualified offshore wind project to appoint an administrator (for Commission approval) to establish these accounts.

The regulations also require that the administrator be a "qualified financial institution" that satisfies, among other criteria, a tangible net worth test of at least \$150,000,000 and have requisite experience in the administration of custodial and escrow accounts. These criteria ensure that an administrator of significant credit quality and reputation in the market is selected. To avoid potential conflicts of interest between the administrator and the project, the administrator may not be an employee of the project, an affiliate of the project or an employee of any entity affiliated with the project. The administrator may not have any ownership share in any project and must not be providing financing (whether in the form of debt, equity or any combination or derivation thereof) to any project.

### **59. Proposed 20.61.06.09(B)**

B. In selecting its administrator, the relevant qualified offshore wind project shall seek bids from two or more qualified financial institutions for the scope of work required by this chapter and other scope of work as may be determined by the project; provided, however the project shall not be bound to select the institution that provides the lowest bid but may adopt other criteria that it deems fit in making its selection.

## STAFF RECOMMENDATION

A project is required to seek bids from more than one potential administrator to ensure that competitive bids are obtained. Certain administrators may not quote the lowest price but may be very well qualified to be an administrator under OWEA. This section recognizes that price will not be the only criteria used to select qualified administrators.

### **60. Proposed 20.61.06.09(C)**

C. No later than 360 days prior to the to the estimated project COD (or, if the Commission has been notified by the project pursuant to §B of COMAR 20.61.06.16 of one or more delays in the estimated project COD, 360 days prior to the new estimated project COD), a qualified offshore wind project shall propose an administrator to the Commission for approval. That proposal shall be accompanied by all necessary and relevant documents to evidence the qualification of that administrator, in compliance with the provisions of these regulations, and the ability of that administrator to carry out the duties and obligations set forth in these regulations, as well as information evidencing that the project sought bids from two or more qualified financial institutions and the reasons the project selected the entity that it is proposing to the Commission.

## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704.2(b), grants the Commission the power to supervise the escrow account, which includes the administrator-selection process.

This regulation requires that a project proposes an administrator for Commission approval at least 360 days in advance of the estimated project COD (or in the event of delays, 360 days in advance of the new estimated project COD). In order to facilitate the Commission's approval process, this section requires the project to deliver to the Commission copies of all documents evidencing the administrator's qualifications and also evidence that the project has sought bids from more than one qualified financial institution.

### **61. Proposed 20.61.06.09(D)**

D. The Commission shall notify the qualified offshore wind project of its approval or rejection of the administrator proposed by the project within 60 days of the submission by the project and, in the case of a rejection, the Commission shall provide the reasons for the rejection. In the case of a rejection, the qualified offshore wind project shall select an alternative administrator for approval by the Commission within 30 days of that rejection or, if it is unable to do so within 30 days, cooperate with the Commission to appoint a mutually acceptable administrator no later than 90 days prior to April 1 of the year in which the offshore wind energy RPS takes effect. In determining the acceptability of an institution to be an administrator, the

Commission, may, in its discretion consider other factors or qualifications that it deems relevant without requiring that all of the qualifications set forth in the definition of “qualified financial institution” be met.

#### STAFF RECOMMENDATION

Continuing the Commission’s supervisory role that OWEA’s PUA §7-704.2(b) grants, and recognizing that a project’s financing may depend on the establishment of an escrow account and appointment of an administrator, this section ensures timely selection and approval of an administrator by the Commission.

Staff recognizes that certain institutions are uniquely suited to the role of administrator, notwithstanding their inability to meet all of the requirements of a qualified financial institution. In this situation, Staff recommends that the Commission considers other factors that may be compelling to the selection of the administrator. This section gives the Commission flexibility to waive one or more of the qualified financial institutions criteria in the event that the Commission determines that other factors should also be relevant.

#### **62. Proposed 20.61.06.09(E)**

E. Subject to the provisions of §§A, B, C, and D of this regulation, each project shall appoint an administrator no later than 90 days prior to April 1 of the year in which the offshore wind energy RPS takes effect.

#### STAFF RECOMMENDATION

This section requires that in all cases an administrator must be appointed at least 90 days in advance of the date the first invoice is scheduled to be issued to electricity suppliers. This is designed to ensure that an administrator will have sufficient time to establish the necessary escrow account, reserve account and any accounts at PJM GATS (to facilitate the transfer of ORECs) in advance of the date that moneys are to be received from the sale of electricity, capacity and ancillary attributes by the project and in advance of the date that invoices are to be issued to electricity suppliers in respect of ORECs that are created by the project.

#### **63. Proposed 20.61.06.09(F)**

F. If the Commission has issued OREC orders applicable to more than one qualified offshore wind project, each project (or its designee) shall propose its own administrator for Commission approval, which may be the same entity as that previously approved by the Commission for one or more other projects.

#### STAFF RECOMMENDATION

If the Commission issues OREC orders authorizing more than one qualified offshore wind project, this section requires that each project appoint its own administrator. Staff recommends that each administrator be required to establish a separate escrow account for each project to

prevent commingling of funds among projects. Separate escrow accounts will also facilitate transparent accounting and ease of audit. A different administrator may be appointed for each project or the projects may appoint one administrator for all projects, but in all cases Staff recommends that separate escrow accounts, reserve accounts and PJM GATS accounts be maintained for each project.

#### **64. Proposed 20.61.06.09(G)**

G. All written contractual arrangements entered into between an administrator, the relevant qualified offshore wind project and other relevant parties and the interpretation thereof shall be governed by laws of the State of Maryland and the forum for disputes shall be the courts of the State of Maryland or, if applicable, the United States District Court for the District of Maryland. The parties may agree to submit disputes to an arbitration tribunal mutually agreed among them and submit to arbitration rules and procedures as the parties deem appropriate, provided, that any arbitration must include the participation of the Commission.

#### **STAFF RECOMMENDATION**

This section requires that the project and the administrator select the laws of the State of Maryland to govern the contractual agreements between them. It also requires that the courts of the State of Maryland or the federal courts (*i.e.*, the United States District Court for the District of Maryland) be selected as forum for any disputes under the agreements. Since OWEA was enacted by the Maryland legislature and the project will be constructed off the coast of the State of Maryland, it is appropriate that the law of the State should govern contractual arrangements entered into pursuant to OWEA. In addition, this section gives the parties the flexibility to submit to arbitration any such disputes, avoiding potentially lengthy litigation. Most form contracts for administrator functions contain dispute-resolution clauses that should meet the requirements in this section.

#### **65. Proposed 20.61.06.09(H)**

H. The fees and expenses of its administrator shall be paid by the project and may, without duplication of amounts paid to the administrator in respect of fees and expenses, be deducted by the project's administrator from the amount payable to the project in respect of its OREC invoice in accordance with §G of Regulation .11 of this chapter.

#### **STAFF RECOMMENDATION**

An administrator's fees are to be paid by the project and, if necessary, deducted from the amount owed to the project under its OREC invoice. Staff recommends this mechanism to ensure prompt payment to an administrator and avoid potential interruptions to the proper administration of the accounts established by the administrator for failure to pay the administrator's fees.

## **66. Proposed 20.61.06.09(I)**

I. Each administrator and the relevant qualified offshore wind project may agree to other terms and conditions as are customarily applicable to escrow, account administration and custodial arrangements so long as those terms and conditions are not prohibited by the provisions of this chapter and OWEA. Within 30 days of its entering into definitive documents with its administrator, each qualified offshore wind project shall submit to the Commission copies of executed versions of those documents, together with a summary of their principal terms and conditions, including any provisions that are in addition to those required by this chapter.

### **STAFF RECOMMENDATION**

This section permits the project and the administrator to agree to other terms that reflect commercial market terms as long as these terms are not prohibited by OWEA and these regulations.

Section 1 of OWEA, codified at PUA §7-704.2(b), requires the Commission to exercise a supervisory role over the administrator. To facilitate the Commission in this role, the project is required to deliver copies of the documents entered into by a project and an administrator on a timely basis following execution by the parties. The summary that the project is required to provide pursuant to this Section will assist the Commission in understanding the principal terms of the documents.

## **67. Proposed 20.61.06.09(J)**

J. The Commission shall have regulatory oversight over each administrator to ensure proper administration of the relevant escrow account, reserve account and administrator GATS account, including ensuring that invoices issued to the projects and to the OREC purchasers are accurate and properly issued and that payments made by OREC purchasers, payments made to qualified offshore wind projects and rebates paid to or on behalf of the State's retail electric customers are consistent with the terms of the Commission's OREC orders and the provisions of this chapter. Each qualified offshore wind project and its administrator shall keep proper books and records of all transactions associated with the execution and administration of the OREC order and related OREC price schedule that will be subject to inspection and audit by the Commission. No later than 90 days following the end of each calendar year, each qualified offshore wind project shall cause its administrator to submit a report to the Commission, in the form as shall be approved by the Commission, summarizing the transactions associated with its administration of the relevant escrow account, reserve account, administrator GATS account and related OREC price schedule, including details of all fees and expenses paid to that administrator for the same period. The Commission may seek further information in relation to or clarification of any item on the administrator's report as it deems prudent.

## STAFF RECOMMENDATION

This section reinforces the Commission's supervisory role over the administrator to ensure the proper administration of the accounts established by the administrator for each project, the proper issuance of invoices, the proper collection of payments from electricity suppliers and distribution of rebates to the State's retail electric customers.

This section ensures that the documents and information that the Commission requires to exercise its supervisory role are available for its review. Each project and its administrator are responsible for summarizing this information in an annual report, in a form that the Commission shall approve. Since a project is responsible for the fees and expenses of its administrator, any fees or costs associated with providing and summarizing this information, including the time expense associated with responding to follow-up requests for documents or information from the Commission, would be for the account of the project.

### **68. Proposed 20.61.06.09(K)**

K. The Commission has the authority to notify and require that a qualified offshore wind project replace its administrator within 90 days of the Commission's request if the Commission determines that the administrator has ceased to be a qualified financial institution, has failed to carry out its duties and obligations in accordance with law and the provisions of this chapter, has engaged in gross negligence or willful misconduct in carrying out its duties or obligations or has been negligent in the management and use of funds entrusted to it. If the relevant qualified offshore wind project fails to replace its administrator within the period specified above, the Commission may remove the project's administrator and appoint a replacement administrator in its place. All costs and expenses incurred by the Commission in doing so shall be invoiced to, or made for the account of, the project and paid by the replacement administrator as a third-party expense, by deducting these amounts from monies that would otherwise be paid to the project in respect of its OREC invoice under §G of Regulation .11 of this chapter.

## STAFF RECOMMENDATION

This section provides an enforcement mechanism for the Commission with respect to an administrator. It recognizes that while the regulations provide for ample information about an administrator and the terms of its proposed agreement with a project, the Commission may elect, and should have the power, to require the project to remove an administrator if it ceases to be a qualified financial institution or has demonstrated that it has failed to carry out its duties, has engaged in gross negligence, willful misconduct (including fraud) or has been negligent with the funds entrusted to it. This is a customary standard applicable to administrators of escrow and custodial accounts. If the project fails to remove the administrator within 90 days after request by the Commission, the Commission may remove the administrator and appoint an alternative in its place. The costs of replacing the administrator to the project will be for the account of the project and will be deducted from amounts otherwise payable by the administrator to a project in respect of its invoice for ORECs.



**69. Proposed 20.61.06.09(L)**

L. A project may seek the approval of the Commission for removal and replacement of its administrator for any one or more of the reasons specified in §K of this regulation or for cause as specified in the contractual agreements entered into between the project and the administrator. In seeking the Commission's approval, the project shall submit to the Commission evidence that the administrator has ceased to be a qualified financial institution, evidence of any of its misconduct or other reasons for the removal of the administrator. The project shall submit to the Commission for approval a replacement administrator with evidence of such administrator's qualifications in compliance with the provisions of this chapter and the expected timeline for the replacement to take effect. If at the time of such proposed removal, the project shall have any outstanding debt facilities or shall have received equity investments from one or more unaffiliated entities, the project shall also submit to the Commission written confirmation from each of these entities (or their authorized representative or agent) that it has either approved the removal of the administrator and its replacement or waived its right to so approve. Any removal and replacement of an administrator under this section shall be at the sole cost and expense of the relevant project.

**STAFF RECOMMENDATION**

A project may request the Commission's approval to remove its administrator for the reasons specified in this section. This section provides the Commission with documentary evidence to determine whether to approve removal and replacement of the administrator. It also ensures that any existing creditors of the project have approved the proposed removal of the administrator, which might otherwise be an event of default under the project's facilities. A replacement administrator proposed by the project is required to meet the qualified financial institutions criteria specified by the regulations. Furthermore, this section makes clear that any costs associated with replacement of the administrator under this section will be for the account of the project.

**70. Proposed 20.61.06.09(M)**

M. Upon a project acquiring actual knowledge that its administrator is no longer a qualified financial institution or has engaged in gross negligence or willful misconduct in carrying out its duties or obligations or has been negligent in the management and use of funds entrusted to it, the project shall promptly notify the Commission in writing of the same and reference §K of this regulation.

**STAFF RECOMMENDATION**

The project is required to notify the Commission if it has actual knowledge that its administrator is no longer a qualified financial institution.

**71. Proposed 20.61.06.10(A)**

A. Subject to the provisions of this regulation, a project may deliver an OREC invoice to its administrator no more frequently than on a monthly basis.

STAFF RECOMMENDATION

A project that wishes to be paid for ORECs that it generates may deliver an invoice to its administrator no more frequently than once a month.

**72. Proposed 20.61.06.10(B)**

B. During the initial year in which the offshore wind energy RPS takes effect and so long as project COD shall have occurred with respect to a qualified offshore wind project, the project may deliver the first OREC invoice to its administrator no earlier than the first five business days of the second calendar month immediately following the end of the generation month in respect of which ORECs associated with that project are created by PJM EIS. Thereafter, each OREC invoice may be delivered by a project to its administrator within the first five business days of the beginning of each calendar month during the term of an OREC price schedule.

STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7.704-1(f)(iv)(1), specifies that a project may not be paid for an OREC until electricity supply is generated by that project.

Section B makes it clear that a project may only issue an invoice to its administrator after it has achieved project COD; that is, the project has been commissioned and is generating electricity.

The first invoice may not be issued under the second month following the generation month. Therefore, if the project has generated electricity in the month of January, it may not issue the invoice until the beginning of March. This delay is to accommodate the administrative process within PJM which does not record final ORECs in the project's GATS account until the last day of the month following the generation month. After this first invoice is issued, the project may issue invoices to its administrator on a monthly basis.

Staff notes that the project with a COD early in the calendar year could potentially send an OREC invoice to its Administrator prior to invoices being issued by the Administrator to the OREC purchasers. Under the mechanism set out above and in COMAR 20.61.06.11(B), a project could issue its first invoice to its Administrator during the first five business days of March of the initial year in which the offshore wind energy RPS takes effect, whereas the first invoice from the Administrator to OREC purchasers would not be sent until the first five business days in April of that year. At such time, the only revenues, if any, that will have been deposited in the Escrow Account are revenues from the sale of energy, capacity and ancillary services from the project in the markets operated by PJM. Therefore, there may at that time be insufficient funds in the Escrow Account to pay the project's OREC invoice in full and the project will have taken this possible shortfall into account. Any shortfall as a result will be paid

on the next monthly invoice payment date (and every payment date thereafter until the shortfall is eliminated) from PJM revenues described above and also from payments received from OREC purchasers in respect of invoices issued to it.

Staff considered whether to require projects to issue their OREC invoices on a quarterly basis to match the in-flows of cash from the OREC purchasers who are billed quarterly by the Administrator. After some consideration, Staff recommends that projects be permitted to invoice and transfer ORECs on a monthly basis. This “sweep” mechanism permits projects to reduce their operating capital financing costs because they are paid more frequently for produced ORECs from funds that are available in the Escrow Account. Staff concludes that it is more efficient to use these funds, which are PJM revenues deposited to the escrow account, for project operations rather than to have funds remain unutilized until a quarterly payment date, and anticipates that such efficiencies are expected to lower the cost of the offshore wind program for retail electric customers.

### **73. Proposed 20.61.06.10(C)**

C. Each OREC invoice shall state the number of ORECs created by PJM EIS for that project for the applicable generation period covered by that invoice (but excluding any ORECs created during any generation periods previously included in OREC invoices submitted to the administrator) and shall be accompanied by a copy of a statement or statements from PJM EIS confirming that the ORECs referenced in the OREC invoice have been created for the project. The OREC invoice shall also state the dollar amount due to that project for the ORECs referenced in the OREC invoice. That dollar amount shall be equal to the product of the number of ORECs created by PJM EIS for that project during the relevant period and the applicable OREC price set forth in the project’s OREC price schedule, less (1) any deductions the project is required to make in accordance with Regulation .13 of this chapter, (2) any deductions on account of the administrator’s fees and expenses as contemplated by §H of Regulation .09 of this chapter, and (3) any deductions contemplated by §K or L of Regulation .09 of this chapter.

#### **STAFF RECOMMENDATION**

Staff recommends that each invoice delivered by a project to its administrator be clear and verifiable. Accordingly, §C states clearly the information that is required to be disclosed in an OREC invoice delivered by a project to its administrator, including the delivery of a statement from PJM EIS confirming the number of ORECs created for the project for the relevant generation month covered by the invoice. This section also sets out the mathematical formula for calculating the amount payable by the administrator to the project. The information provided by the project as described above will enable the administrator to verify that the mathematical computations of the price payable for the ORECs delivered by the project and to ensure that the number of ORECs stated in the invoice have in fact been delivered. This section also clarifies that certain costs are to be allocated to the project and deducted from the amount owed under its OREC invoice, if necessary.

**74. Proposed 20.61.06.10(D)**

D. Each administrator shall be responsible for confirming the accuracy of the computations and number of ORECs created as set forth in the OREC invoices delivered to it by comparing that number of OREC set forth in the PJM EIS statements referred to above and the number set forth in the OREC invoices and shall, if it considers necessary, request further information from the project or PJM EIS, or both (but only if that information is customarily provided by PJM EIS at that time) in assisting it to make that determination.

STAFF RECOMMENDATION

Staff recommends that an administrator be required to verify the accuracy of an OREC invoice submitted to it, prior to making payment. This section establishes the administrator's obligation to confirm the accuracy of the OREC invoice and to confirm that payments to a project from the escrow account or reserve account are for the correct amount(s).

**75. Proposed 20.61.06.10(E)**

E. Subject to §G of Regulation .11 of this chapter, if the administrator determines under §D of this regulation that the OREC invoice submitted to it does not contain any error or inaccuracy, it shall approve and pay the OREC invoice within ten business days of receipt of that invoice. If the administrator determines under §D of this regulation that the OREC invoice submitted to it does contain errors or inaccuracies, then it shall inform the project of the same and request that the project correct the error or inaccuracy prior to making payment under the OREC invoice.

STAFF RECOMMENDATION

As explained above, an administrator is required to confirm the accuracy of the OREC invoice submitted to it by the project. Once it has completed its verification and confirmed that there are no errors or inaccuracies in the invoice, then the administrator is required to pay the invoice within ten business days of the date of the invoice.

If the administrator determines that the OREC invoice does contain errors or is inaccurate then it is required to inform the project of such errors and inaccuracies and request a corrected invoice from the project prior to making payment to the project.

**76. Proposed 20.61.06.10(F)**

F. Each qualified offshore wind project shall, for the term of its OREC price schedule, provide irrevocable instructions to PJM EIS to accept all instructions in connection with that project's GATS account from the administrator, until instructed otherwise by the administrator and the qualified offshore wind project.

## STAFF RECOMMENDATION

In order for a project to receive ORECs it is required to open an account at PJM EIS's Generation Attributes Tracking System (or "GATS"). PJM EIS measures the generation output of the project and creates an OREC for each megawatt hour of generation. These ORECs are credited to the project's GATS account. During the term of the OREC price schedule, Staff recommends that the project be required to instruct PJM EIS to accept all instructions regarding the project's GATS account from the administrator. The purpose of this is to enable the administrator to exercise control over the ORECs and efficiently administer their transfer and delivery to electricity suppliers who are OREC purchasers. These instructions should be irrevocable until PJM EIS is informed otherwise by the administrator and the project.

### **77. Proposed 20.61.06.10(G)**

G. Each qualified offshore wind project shall provide irrevocable standing instructions to PJM EIS to automatically deposit in the administrator GATS account all ORECs (or RECs associated with electricity derived from offshore wind energy) created for the project and the administrator shall, if required by PJM EIS, accept the deposit of ORECs (or RECs, as relevant) in accordance with the rules of the PJM EIS until the end of the term of the project's OREC price schedule. The project shall not, while the standing instructions remain in effect, take any steps to cancel or modify the standing instructions other than informing PJM EIS of a change in the administrator in the event the administrator is replaced under §K or L of Regulation .09 of this chapter. At the end of the term of the project's OREC price schedule, the administrator shall terminate the standing instructions and instruct PJM EIS to accept all future instructions regarding the RECs created for that project directly from the project (or another person as the project may designate).

## STAFF RECOMMENDATION

Section G is designed to facilitate the transfer of ORECs generated by a project to the administrator, for further allocation by the administrator to electricity suppliers with OREC purchase obligations. Under the operating rules of PJM EIS, there are two methods for transferring ORECs from the project to the administrator. The first method requires the project to initiate the transfer each time that it issues an OREC invoice and wishes to transfer ORECs associated with that invoice to the administrator. The second method requires the project to provide irrevocable instructions to PJM EIS to make such transfers automatically into the administrator's GATS account. Once irrevocable instructions have been given, no further actions of the project are required in order to effect future transfers of ORECs. Staff recommends that the second method of transfer be adopted as it would mitigate any risk (including any risk that may arise from a bankruptcy of the project) that ORECs are not transferred to the administrator when required.

The project is not permitted to revoke the above standing instructions until the end of the term of the OREC price schedule.

At the end of the term of an OREC price schedule, the administrator and the project may jointly inform PJM EIS of their desire to terminate the irrevocable instructions.

#### **78. Proposed 20.61.06.10(H)**

H. Each administrator shall, no later than 15 days after the transfer of ORECs in respect of an OREC invoice to the administrator GATS account and payment of the relevant OREC invoice by the administrator, transfer the relevant number of those ORECs from the administrator GATS account to the GATS account of each OREC purchaser. The number of ORECs transferred by the administrator to the GATS account of each OREC purchaser will equal the aggregate dollar value of the OREC purchase payments made by that OREC purchaser for the relevant quarterly period divided by the aggregate dollar amount of all invoices sent to OREC purchasers by that administrator for the same period, multiplied by the number of ORECs created for the relevant project by PJM EIS for the same period and delivered to the administrator's GATS account; *provided that*, notwithstanding the above, the number of ORECs delivered to an OREC purchaser shall not exceed a number determined by dividing the OREC purchase payments made by that OREC purchaser for that quarter by the OREC price for that project for the relevant year.

#### STAFF RECOMMENDATION

This section provides the mechanism for the calculation and timely transfer of ORECs to the electricity suppliers in satisfaction of the offshore renewable energy RPS and as contemplated by OWEA's PUA§7-704.2(c)(1). This section ensures that each supplier will receive a pro-rata share of the ORECs delivered to the administrator's GATS account based on the amount paid by a supplier relative to all amounts paid by all suppliers. The proviso to this section ensures that a supplier does not receive more ORECs than it has paid for and is intended to minimize any risk that a supplier that may be in financial distress receives more ORECs than the amount it has paid to the administrator.

#### **79. Proposed 20.61.06.11(A)**

In addition to the duties of the administrator set forth elsewhere in this chapter, each administrator shall have the duties and obligations set forth in this regulation.

A. Each administrator shall establish and maintain a segregated escrow account, reserve account and GATS account for each qualified offshore wind project that appoints it to be the administrator.

#### STAFF RECOMMENDATION

OWEA's PUA §§7-704.2(b) and 7-704.2(c)(2) contemplate the existence of an escrow account and reserve account, respectively. These accounts and a separate administrator GATS account will be established by an administrator of each project. These accounts ensure the secure and

transparent transfer of revenues and ORECs among the parties that OWEA's PUA §7-704.2(b) requires. In addition, the segregation of these accounts from each other and from all other accounts avoids commingling of funds and enables clear and transparent accounting of the movement of funds collected from electricity suppliers and from PJM revenues and the subsequent payment of OREC invoices to the project entitled to them. The separate GATS account for the administrator ensures that the administrator has complete control over the receipt and transfer of ORECs to electricity suppliers who have purchased them to satisfy their offshore wind energy RPS obligations.

## **80. Proposed 20.61.06.11(B)**

B. The administrator shall send an invoice to each OREC purchaser on a quarterly basis. The first invoice shall be issued by the administrator within the first five business days of the calendar quarter commencing in April of the initial year in which the offshore wind energy RPS takes effect. Thereafter, each invoice shall be delivered by the administrator to each OREC purchaser within the first five business days of the beginning of each calendar quarter, during the term of an OREC price schedule. Each invoice will require an OREC purchaser to pay an amount that is equal to the product of:

- (1) the OREC price for the relevant project for the relevant year within the term of its OREC price schedule, and
- (2) the OREC purchaser's final electricity sales data in megawatt-hour terms computed as (A) the sum of (a) the final electricity sales data in megawatt-hour terms reflective of applicable adjustments and reconciliations conducted pursuant to the PJM settlement process for the sales period immediately preceding the invoice date corresponding to those adjustments and reconciliations plus (b) in the case of electricity suppliers that have retail electric customers that purchase "behind the meter" generation (as defined by PJM), the final electricity sales to those customers as measured by the electricity suppliers, minus (B) sales specifically excluded under Public Utilities Article, §7-703, Annotated Code of Maryland, and
- (3) the offshore wind energy RPS, expressed as a percentage, determined by the Commission under §A of Regulation .07 of this chapter, and
- (4) the fraction equal to the number of ORECs that the relevant project is authorized to sell in that year divided by the total number of ORECs authorized to be sold by the Commission for all projects in that year.

### **STAFF RECOMMENDATION**

OWEA's PUA §7-704.2(c)(2)(ii) specifies that electricity suppliers be invoiced based on final electricity sales data reported by PJM, less any sales exempted under OWEA's PUA §7-703(b)(3) to agricultural land owners and certain industrial process load.

This section specifies that the first invoice to electricity suppliers may not be delivered before the first five business days in April of the year in which the offshore wind energy RPS takes effect.

The reason for this is that PJM does not report “final” sales data for a generation month until the end of the 60th day following the generation month. During this time period certain adjustments are made by the electric companies to account for certain line, transmission and other losses and any incorrect meter readings. Therefore, April is the first month during the year of commencement of the offshore wind energy RPS that final electricity sales data is available for a generation month (*i.e.*, January). In order to capture final electricity sales data consistent with the requirements of OWEA, Staff recommends that quarterly invoices be issued to electricity suppliers.

This section also sets out the formula that would enable an administrator to calculate the payment obligation of each electricity supplier that is required to purchase ORECs.

### **81. Proposed 20.61.06.11(C)**

C. Within two business days of the reconciliations described in §B(2) of this regulation being conducted and made available by PJM, each OREC purchaser shall calculate and deliver to the administrator the final electricity sales data necessary to satisfy §B(2) of this regulation, together with a copy of the relevant PJM report evidencing the relevant electricity sales (other than in respect of the “behind the meter” sales to retail electric customers described in §B(2) of this regulation which shall be separately provided to the administrator by the relevant OREC purchaser) and its methodology for calculating its final electricity sales data that complies with §B(2) of this regulation.

#### STAFF RECOMMENDATION

As explained above, OWEA’s PUA §7-704.2(c)(2)(ii) requires that the OREC purchase obligation be “based on final electricity sales data as reported by the PJM Interconnection.” This section sets the obligation for reporting the final electricity sales data on the electricity suppliers who are required to deliver such information to the administrator within 2 business days of the reconciliations conducted by PJM as described above. For electricity suppliers who have customers who purchase “behind the meter” generation from them, the “behind the meter” electricity sales data is required to be added to the reconciled sales data reported by PJM so that their total sales is not understated.

### **82. Proposed 20.61.06.11(D)**

D. Each OREC purchaser shall pay the invoice issued to it under §B of this regulation to the administrator for deposit into the escrow account within ten business days of the date of that invoice.

#### STAFF RECOMMENDATION

OWEA’s PUA §704.2(c)(1) requires that electricity suppliers purchase ORECs, but it does not specify the payment dates for such purchased ORECs or other details. Staff appreciates that timely payment of an administrator’s invoices is essential to funding the escrow account and, by extension, to a project’s cash flow. Staff recommends giving electricity suppliers a period of ten



business days to make payment to ensure timely payment while allowing OREC purchasers sufficient time to administer payments.

**83. Proposed 20.61.06.11(E)**

E. Electricity Supplier Information -- Updates to the Administrator's Records.

(1) No later than 15 days before the end of each calendar quarter during which the offshore wind energy RPS is in effect, each electric company shall provide to each administrator the name, address, email address and other related information of each electricity supplier in its territory and updates as applicable.

(2) Upon receipt of the contact information for the OREC purchasers from the electric companies, the administrator shall:

(a) Determine whether there are any new OREC purchasers since the end of the previous calendar quarter;

(b) Gather the information it requires to issue an OREC invoice under §B of this regulation; and

(c) Issue OREC invoices in accordance with §B of this regulation to any new OREC purchasers.

**STAFF RECOMMENDATION**

This section requires electric companies to provide information to an administrator about electricity suppliers within its territory. This ensures that an administrator will be able to send timely invoices to any new electricity suppliers in the State. Electric companies are required to provide quarterly updates to the administrator with regard to suppliers in their territories, and the administrator uses this information to confirm that its invoicing function is up-to-date.

**84. Proposed 20.61.06.11(F)**

F. Each administrator shall provide to each electricity supplier its electronic funds transfer information, and otherwise coordinate with electricity suppliers (or their designees) to permit electronic transfers of OREC purchase payments. Each electric company shall provide electronic funds transfer information to the administrator to enable it (or its designee), to make electronic transfers of payments contemplated by §G(4) of this regulation.

**STAFF RECOMMENDATION**

The regulations contemplate payments both to an administrator for invoices issued by it to electricity suppliers and from an administrator, for OREC invoices delivered to it by its project. The administrator is also required to pay rebates to retail electric customers. This section

requires up-to-date electronic funds transfer information from all of the parties to facilitate the payments that have to be made, as described above.

## **85. Proposed 20.61.06.11(G)**

G. On each date that the administrator is required to pay the qualified offshore wind project for the amounts invoiced under Regulation .10 of this chapter, the administrator shall withdraw the amounts from its escrow account and apply those amounts in accordance with §G(1) through (4) of this regulation (and in the following order of priority):

(1) Prior to making the transfers specified in §G(2), (3) and (4) of this regulation, apply all amounts on deposit in the escrow account to pay the project an amount up to the aggregate balance remaining unpaid under any previously issued OREC invoices that have been approved by the administrator under §E of Regulation .10 of this chapter (less the administrator's pre-agreed periodic fees and documented reasonable third-party expenses (including any costs and expenses invoiced to the project by or on behalf of the Commission in connection with §K of Regulation .09 of this chapter), any amounts required to be deducted pursuant to §§C and D of Regulation .13 of this chapter and any amounts required to be deducted pursuant to §E of Regulation .16 of this chapter);

(2) After giving effect to §G(1) of this regulation, apply all amounts remaining on deposit in the escrow account to pay the project amounts due on that payment date under an OREC invoice issued by that project pursuant to Regulation .10 of this chapter;

(3) After giving effect to §G(1) and (2) of this regulation, transfer to the reserve account all amounts remaining in the escrow account up to an aggregate amount equal to six months average OREC projected revenue for the concurrent calendar year; and

(4) Subject to §H of this regulation, and after giving effect to §G(1), (2), and (3) of this regulation, but no earlier than the 30th day of the immediately following calendar year, transfer all amounts remaining in that escrow account to the electric companies, in accordance with the relative market share of those companies (in megawatt hours), for subsequent allocation, in accordance with Regulation .14 of this chapter, to its retail electric customers (excluding sales to industrial process load and sales to agricultural land owners that an electricity supplier has certified to the Commission pursuant to §E of Regulation .06 of this chapter).

### **STAFF RECOMMENDATION**

This section describes the priority of the application of funds that an administrator makes from the escrow account or reserve account, as applicable, on a quarterly basis. In order of priority, it provides for (i) payment of amounts due under previous OREC invoices that remain unpaid (less certain costs, fees, and expenses), (ii) payment of amounts due to a project under its quarterly OREC invoice, (iii) funding of the reserve account in an amount up to the average OREC projected Revenue for six months, and (iv) annual payment to the electric companies of all amounts to be rebated to each electric company's retail electric customers, as required by OWEA's PUA §7-704.2(c)(3)(ii). This priority of payment balances the need for the timely

payments to a project (as well as provisions for a reserve account as contemplated by OWEA) with the statutory requirement of rebates to retail electric customers.

**86. Proposed 20.61.06.11(H)**

H. In the event of any shortfall in any of the payments required to be made on any payment date under each of §G(1), (2) and (3) of this regulation, that shortfall shall be paid on the next monthly payment date from funds subsequently deposited in the escrow account, in the order of priority set forth in §I of this regulation until the shortfall is eliminated, prior to applying any funds towards the payment set forth in §G(4) of this regulation.

STAFF RECOMMENDATION

This section clarifies that if there should be insufficient funds in the escrow account to make the payments required by the priority of payments described above, then any shortfall will be paid from funds available in the escrow account on the next payment date until any shortfall is eliminated.

**87. Proposed 20.61.06.11(I)**

I. Each project, together with its administrator, may apply to the Commission for a modification or variation to the above order of payment in the event that it is determined to be commercially required by investors in or financiers to the project but, subject to §H of this regulation, in no event shall that modification or variation result in the refund described in §G(4) of this regulation being made to or on behalf of retail electric customers any less frequently than annually.

STAFF RECOMMENDATION

This section provides the Commission with the flexibility to account for any terms of a project's financing arrangement that may require modification of the waterfall of payments. However, it confirms that the rebate to retail electric customers described above is a statutory requirement and cannot be waived and so long as the reserve account is topped-up to an aggregate equal to six months project OREC revenues for a project, the rebates to retail electric customers must be made on an annual basis.

**88. Proposed 20.61.06.11(J)**

J. Subject to the priority of payments set forth in §G of this regulation and any variations as may be agreed under §I of this regulation, after project COD has occurred and so long as the administrator has approved the OREC invoice under §E of Regulation .10 of this chapter, the administrator shall disburse payment in full to the relevant qualified offshore wind project for its OREC invoice issued under §A of Regulation .10 of this chapter regardless of whether OREC purchasers have paid on-time or in-full. Funds held in the reserve account shall be available for that payment in the event that there are insufficient funds in the escrow account for that purpose.

STAFF RECOMMENDATION

This section fulfills one of the fundamental purposes of the escrow account that OWEA establishes, which is to ensure timely payments to a developer regardless of whether each OREC purchaser has paid for the ORECs it is obligated to purchase. It confirms that the reserve account contemplated by OWEA’s PUA §7-704.2(c)(2) is available to ensure timely payments to a project when escrow account funds are not available.

**89. Proposed 20.61.06.11(K)**

K. Each administrator may invest or reinvest any or all monies in the reserve account in permitted investments.

STAFF RECOMMENDATION

Customary commercial terms typically provide for an administrator, escrow agent, or custodian to invest moneys held by it in “permitted investments” that are generally regarded as safe liquid investments. The regulations define “permitted investments” to mean a regulated money market fund that invests primarily in U.S. government securities. This balances the need for funds availability with the need to prudently invest funds in a reserve account in relatively safe investments.

**90. Proposed 20.61.06.11(L)**

L. Each administrator shall issue a late-payment notice to a delinquent OREC purchaser within three days past the payment due date. If payment is not received within ten days after the late-payment notice, that administrator shall refer the matter to the Commission, notifying the relevant qualified offshore wind project. All late payments shall incur a late-payment fee as required by §M of this regulation. All late-payment fees shall be paid to the administrator for deposit into the escrow account and applied in accordance with §G of this regulation.

STAFF RECOMMENDATION

An administrator oversees payments from OREC purchasers and is responsible for notifying an OREC purchaser that an account is past due. However, when an account is delinquent after ten days, an administrator refers the matter to the Commission for further action. Staff recommends

that all overdue payments be made subject to a late payment fee to provide an incentive to the OREC purchasers to make timely payment.

**91. Proposed 20.61.06.11(M)**

M. Any late payment fee shall be computed from the date on which payment under an invoice delivered by an administrator to an OREC purchaser under §B of Regulation .11 of this chapter is due until the date of payment at an average prime rate for each calendar quarter on all amounts due and unpaid. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's "Selected Interest Rates" (Statistical Release H. 15) (or its replacement publication, if any), for the fourth, third, and second months preceding the first month of the calendar quarter. The late payment fee required to be paid under this regulation shall be compounded quarterly.

STAFF RECOMMENDATION

This section sets out the methodology that references a commonly used interest rate for determining the late payment fee described above.

**92. Proposed 20.61.06.11(N)**

N. The administrator shall provide quarterly reports to the Commission of any delinquent OREC purchaser and the number of days that payment(s) from any delinquent OREC purchaser have been or historically overdue.

STAFF RECOMMENDATION

This report allows the Commission to enforce payment of the OREC purchase obligation and fulfill its supervisory role over the transfer of OREC revenues under OWEA's PUA §7-704.2(b).

**93. Proposed 20.61.06.11(O)**

O. Any ORECs not transferred pursuant to §H of Regulation .10 of this chapter as a result of failure by one or more electricity suppliers to pay its invoice on its due date, shall be held in the administrator GATS account for transfer to the account of any OREC purchaser that makes payment in full beyond the date that payment is due in respect of any calendar quarter. Any ORECs for the applicable calendar quarter that have not been transferred after 18 months as a result of failure by one or more electricity suppliers to pay its invoice on its due date, shall be sold by the administrator as a Tier 1 renewable source with revenues for those sales deposited into the escrow account, unless otherwise instructed by the Commission.

STAFF RECOMMENDATION

This section ensures allocation of ORECs to the accounts of OREC purchasers who make timely payment. Any ORECs not allocated is available to be distributed to electricity suppliers who

subsequently make payment. Any ORECs still remaining unallocated at the end of 18 months will be sold by the administrator as a Tier 1 renewable resource and revenues from such sale will be deposited in the escrow account and applied for payment in accordance with the priority of payment set out in §G of this regulation.

**94. Proposed 20.61.06.12(A)**

A. Each qualified offshore wind project shall sell all of its electricity service attributes in the markets operated by PJM.

STAFF RECOMMENDATION

This section reinforces the PUA §7-704.2(c)(3)(i) requirement that each project sell all energy, capacity, and ancillary services into the markets operated by PJM.

**95. Proposed 20.61.06.12(B)**

B. All proceeds from those sales that are associated with the ORECs that a project is authorized to sell under its OREC order (net of fees and charges imposed by PJM) shall be paid to the project's related escrow account to be applied in accordance with the order of priority set forth in §G of Regulation .11 of this chapter, and any amounts remaining under §G(4) of Regulation .11 of this chapter shall be held in trust by such project's administrator for the benefit of retail electric customers. The relevant project shall agree to this declaration of trust in the agreement that it enters into with its administrator with respect to payment of those funds.

STAFF RECOMMENDATION

This section establishes that all of the proceeds from sale of the energy, capacity and ancillary services that are associated with the creation of ORECs for a project are to be deposited in the escrow account and to be applied in accordance with the order of priority under COMAR 20.61.06.11(G). Each project agrees that excess amounts are to be held in trust in the escrow account for rebate to ratepayers under OWEA's PUA §7-704.2(c)(3)(ii).

**96. Proposed 20.61.06.12(C)**

C. Each qualified offshore wind project shall instruct PJM or the purchaser of the project's electricity service attributes, with copies of these instructions provided to the Commission, to deposit proceeds from the sale of that project's electricity service attributes associated with those ORECs during the term of the project's OREC price schedule, net of fees and charges imposed by PJM, to the escrow account.

STAFF RECOMMENDATION

See Staff Recommendation for COMAR 20.61.06.12(B).

**97. Proposed 20.61.06.12(D)**

D. The project shall not have any property interest in the escrow account, the administrator GATS account, the reserve account or the funds or RECs deposit therein, as relevant, except the right to receive payment from such accounts in accordance with the provisions of this chapter and the express property rights to the excess electricity service attributes, RECs derived the excess electricity service attributes and the proceeds from the sale thereof provided for in Regulation .15 of this chapter.

**STAFF RECOMMENDATION**

Staff carefully considered the risks that may arise in the event of a bankruptcy of the developer and the potential for such bankruptcy to subject the funds held in the escrow account or reserve account to the “automatic stay” provisions of the United States Bankruptcy Code. This section makes it clear that a project does not have any property rights in any of the accounts (or the funds or ORECs deposited in such accounts) that an administrator creates for that project except the right to receive payment in accordance with the provisions of the regulations and the express property rights in respect of excess electricity service attributes described in Regulation .15, the RECs created thereby and the proceeds from the sale thereof. By ensuring that the project does not have any property rights in the account and the funds or ORECs deposited in them, the regulations significantly mitigate the risk that a project’s trustee-in-bankruptcy could claim to have rights over such accounts or funds or ORECs therein.

**98. Proposed 20.61.06.13(A)**

A. As described by §J of Regulation .02 of this chapter, the qualified offshore wind project shall pass along to ratepayers no less than 80 percent of the value of all state or federal grants, rebates, tax credits, loan guarantees and other similar benefits that the project receives that were not included at the time the project submits its application.

**STAFF RECOMMENDATION**

OWEA’s PUA §7-704.1(c)(8)(ii) requires that a project commit to passing along to ratepayers 80% of the value of any state or federal grants, rebates, tax credits, loan guarantees, or other similar benefits without the need for subsequent approval by the Commission. Any such funds received as of the date of a project’s application will be included in determining a project’s proposed OREC price. This section ensures that 80% of the value of any such grants, rebates, tax credits, loan guarantees or other similar benefits that are actually received by the project but not included in the project’s application also be passed along to ratepayers as OWEA requires.

**99. Proposed 20.61.06.13(B)**

B. No later than 30 days following the end of each calendar year, each qualified offshore wind project shall provide to the administrator and the Commission a complete account of all benefits received from state or federal grants, rebates, tax credits, loan guarantees and other similar benefits not included in the project's application and received by the project during the preceding year.

STAFF RECOMMENDATION

As explained above, a project is required to pass along 80% of the value of federal or state grants, rebates, tax credits, loan guarantees or other similar benefits that are actually received by the project but not included in the project's application. This section requires the project to report to the Commission annually information about any such benefits received by it in any preceding calendar year

**100. Proposed 20.61.06.13(C)**

C. The project shall deduct 80 percent of the value of the state or federal grants, rebates, tax credits, loan guarantees and other similar benefits received during the preceding year, as reported by the project pursuant to §B of this regulation, from the OREC invoice submitted to the administrator for the current calendar year under §A of Regulation .10 of this chapter.

STAFF RECOMMENDATION

This section and the following section provide a simple mechanism by which a project can return the statutorily required value of state or federal funds to ratepayers, without having to make separate cash payments to the escrow account.

**101. Proposed 20.61.06.13(D)**

D. The value of the benefits required to be deducted under §C of this regulation shall be deducted from the first OREC invoice submitted to the administrator by the project for the current calendar year and, if the value of the benefits required to be deducted above exceed the amount of the OREC invoice, any balance in the value of these benefits shall be deducted from the second OREC invoice and each OREC invoice thereafter until the full amount of the value of the benefits required to be deducted shall have been fully deducted from the OREC invoices delivered by the project to the administrator.

STAFF RECOMMENDATION

See Staff Recommendation to COMAR 20.61.06.13(C).



## **102. Proposed 20.61.06.13(E)**

E. Each administrator shall specifically identify all of the following information in the annual report that it submits to the Commission under §J of Regulation .09 of this chapter:

- (1) Total value of all state or federal grants, rebates, tax credits, loan guarantees and other similar benefits that each qualified offshore wind project reports that it has received during the previous calendar year; and
- (2) Amount in dollars that the project deducted from OREC invoices submitted that represents 80 percent of the value of all state or federal grants, rebates, tax credits, loan guarantees and other similar benefits that each qualified offshore wind project received during the preceding calendar year, as reported by that project.

### STAFF RECOMMENDATION

This section requires that the administrator report and summarize the value of state or federal benefits that the project reports it has received, the dollar amounts it received and the methods it used to deduct 80% of the value of such funds from its OREC invoice. This section provides information to the Commission to assist it in evaluating a project's compliance with OWEA's PUA §7-704.2(c)(3)(i).

## **103. Proposed 20.61.06.13(F)**

F. The project shall maintain books and records related to its receipt of state or federal grants, rebates, tax credits, loan guarantees and other similar benefits that were not included at the time of the project's application. The Commission shall have the right to inspect those books and records and, at its discretion, order adjustments to the project's OREC invoices as necessary to fulfill the requirement in §A of this regulation.

### STAFF RECOMMENDATION

Although OWEA requires a project to return 80% of the value of state or federal funds without the need for any subsequent approval by the Commission, this section ensures that, if the Commission wishes to confirm a project's compliance, the relevant books and records are available for inspection.

## **104. Proposed 20.61.06.14(A)**

A. Each electric company shall submit a proposal for approval by the Commission describing the methodology that it proposes to use in calculating and refunding or crediting the amounts paid to it under §G(4) of Regulation .11 of this chapter to its retail electric customers.

## STAFF RECOMMENDATION

This section ensures that electric companies have procedures in place to comply with the requirements of OWEA's PUA §7-704.2(c)(3)(ii). Since each electric company's business and operations are unique to itself, Staff recommends that each electric company be required to propose to the Commission for approval its methodology for refunding and crediting its retail electric customers for amounts that are required to be rebated to such customers.

### **105. Proposed 20.61.06.14(B)**

B. Each electric company shall, within 90 days of receipt from the administrator, refund or credit the amounts paid to it under §G(4) of Regulation .11 of this chapter to its retail electric customers in accordance with the methodology that is approved by the Commission.

## STAFF RECOMMENDATION

This section mandates the rebate to ratepayers contemplated by OWEA's PUA §7-704.2(c)(3)(ii) and requires that any such rebates be paid within 90 days of receipt by the electric companies in accordance with the methodology approved by the Commission, as described above.

### **106. Proposed 20.61.06.14(C)**

C. Each electric company may, from time to time, submit an alternative proposal to the Commission describing an alternative methodology for carrying out its obligations under §A of this regulation. If the alternative methodology is approved by the Commission, the electric company shall apply the alternative methodology in carrying out its obligations under §A of this regulation.

## STAFF RECOMMENDATION

Staff recommends that an electric company be given the flexibility to propose an alternative methodology for implementing rebates in the event that the methodology previously proposed by the electric company proves to be inefficient or difficult to implement.

### **107. Proposed 20.61.06.15(A)**

A. Legal title and beneficial ownership of an OREC shall vest in the project at the moment such OREC is created by PJM EIS and deposited in the project's GATS account.

## STAFF RECOMMENDATION

Section A clarifies that legal title and beneficial ownership of each OREC created by the project shall vest with the project at the time that such OREC is created by PJM EIS and is credited to the project's GATS account.

### **108. Proposed 20.61.06.15(B)**

B. If, after satisfying its obligations to deliver the number of ORECs that it is authorized to sell under its OREC order in any given calendar year, a project determines that the electricity service attributes generated by the project is in excess of that required for the delivery of ORECs in that calendar year, the excess electricity service attributes and any RECs associated with it shall, subject to §C of this regulation, remain the property of the project.

#### STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704.2(c)(4), instructs the Commission to develop regulations to provide for the transfer and expiration of ORECs created by a project, when the number of ORECs exceeds the project's annual OREC amount.

Section B clarifies that when the project produces more electricity service attributes (*i.e.*, the energy, capacity and ancillary services associated with the creation of an OREC) than is needed for the creation of ORECs to satisfy its annual OREC delivery requirement, such attributes remain the property of the project.

### **109. Proposed 20.61.06.15(C)**

C. A project that has excess electricity service attributes shall notify the administrator of its intent to elect one of the following:

(1) Deposit the ORECs associated with the excess electricity service attributes in the administrator GATS account to be made available to the administrator for delivery to OREC purchasers in the following one or more calendar years in which the offshore wind energy RPS remains in effect; or

(2) Sell the RECs derived from the excess electricity service attributes as Tier 1 renewable sources that satisfy the RPS.

#### STAFF RECOMMENDATION

Implementing OWEA's PUA §7-704.2(c)(4), section C provides the project with the option to "bank" or "merchandize" excess ORECs, but the project must notify the administrator of its preference. The project may bank the excess ORECs, so those ORECs will be sold to OREC purchasers in future years. The project may alternatively merchandize the ORECs by selling such RECs as a Tier 1 renewable source. *See Levitan Report at 12, 22 (describing same).*

### **110. Proposed 20.61.06.15(D)**

D. If a project notifies its administrator under §C of this regulation of its intent to deposit ORECs associated with excess electricity service attributes in the administrator GATS account for delivery in future years, all revenues from the sale of electricity service attributes associated

with those ORECs shall be deposited in the administrator's escrow account and be applied in accordance with the provisions of this chapter. The ORECs associated with excess electricity service attributes deposited in the administrator GATS account shall be transferred by the administrator to OREC purchasers to satisfy future OREC delivery obligations of the relevant project, prior to delivering new ORECs created for the project in future years.

#### STAFF RECOMMENDATION

If a project elects to bank the excess ORECs, then Section D establishes the procedures for transfer of associated electricity service attributes revenues to the escrow account. These revenues will be distributed in accordance with the priority of payments set forth in §G of Regulation .11. Section D also instructs the administrator to follow a first-in-first-out process and transfer the earlier-created ORECs to electricity suppliers before transferring more recently created ORECs to electricity suppliers.

#### **111. Proposed 20.61.06.15(E)**

E. If a project notifies its administrator under §C of this regulation of its intent to market and sell RECs derived from the excess electricity service attributes as Tier 1 renewable sources that satisfy the RPS, the project shall notify the administrator to transfer those RECs that have been deposited into the administrator GATS account to the GATS account of the project, the purchaser or purchasers identified by the project (or another account as the project may designate) and all proceeds of the sale shall be for the account of the project.

#### STAFF RECOMMENDATION

If a project elects to merchandize the excess ORECs, then the administrator shall transfer those ORECs, which had been previously deposited by standing order into the administrator's GATS account pursuant to Regulation .10(G), to the accounts of the project or purchasers identified by the project. The regulations clarify that proceeds from the associated sale shall be the property of the project.

#### **112. Proposed 20.61.06.15(F)**

F. A project may sell all of the excess electricity service attributes that are not associated with the ORECs that it elects (or is deemed to elect) to deposit in the escrow account in any manner it deems appropriate and the proceeds from these sales shall be for the account of the project.

#### STAFF RECOMMENDATION

This Section permits the project to sell electricity service attributes that are not associated with the ORECs that it has elected (or is deemed to have elected) to bank in the escrow account in any

manner it deems appropriate. All proceeds from such sale are for the account of the project and not to be refunded to ratepayers.

### **113. Proposed 20.61.06.15(G)**

G. If a project does not give the required notice to its administrator under §C of this regulation within 30 days of the end of the relevant calendar year, the project shall be deemed to have elected to have those excess ORECs deposited in the administrator GATS account.

#### STAFF RECOMMENDATION

Section G establishes the default option for the treatment of ORECs produced by the project that exceed the annual OREC amount as the banking option described above.

### **114. Proposed 20.61.06.15(H)**

H. (1) If at the end of the term of an OREC price schedule and no further extensions of the OREC price schedule are granted under Public Utilities Article, §7-704.2(d), Annotated Code of Maryland, there shall remain in the administrator GATS account any excess ORECs, those excess ORECs shall be retired and any revenues from the sale of its electricity service attributes shall be paid to the electric companies for distribution to its retail electric customers in accordance with Regulation .14 of this chapter.

(2) If the Commission elects to extend the term of the OREC price schedule pursuant to the provisions of Public Utilities Article, §7-704.2(d), Annotated Code of Maryland, any excess ORECs remaining in the administrator GATS account shall be held in the account for future delivery to satisfy future delivery obligations of the project. These ORECs shall be delivered prior to delivery of any new ORECs created for the project during the extended term.

#### STAFF RECOMMENDATION

Section H directs that, if no extension of the OREC price schedule is granted by the Commission under OWEA's PUA §7-704.2(d), any excess ORECs remaining shall be retired and the revenues from the sale of associated electricity service attributes be distributed to electric companies for the purpose of providing refunds to electric customers.

### **115. Proposed 20.61.06.16(A)**

A. Each project shall provide periodic updates to the Commission regarding the status of the development of project as required by COMAR 20.61.06.18, including and whether the project is on schedule to meet its estimated project COD as notified to the Commission in the project's application.

## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §§7-703 and 7-704.2(a), establishes that the Commission shall implement the RPS by establishing the percentage amount that is to be derived by offshore wind energy. The Commission sets the offshore wind component of the RPS considering the project's COD and annual projected sales of ORECs. Sections A and B require reporting by the qualified offshore wind project to ensure that the Commission has current information on the project COD and project schedule. If the project does not report changes to COD in a timely manner the Commission may set the RPS earlier than needed, unnecessarily triggering an OREC purchase obligation for electricity suppliers and a rebate obligation for electric companies.

### **116. Proposed 20.61.06.16(B)**

B. If, based on facts and circumstances available at that time, a project determines that it is not reasonably expected to be able to meet its original estimated project COD, the project shall inform the Commission of its determination and provide the Commission with a new estimate of the project COD.

## STAFF RECOMMENDATION

For the reasons explained above, §B requires the project to inform the Commission if it is not expected to be able to meet the estimated project COD and to provide a new estimate of the project COD.

### **117. Proposed 20.61.06.16(C)**

C. If the project gives the Commission the notice described in §B of this regulation after the Commission has established the RPS standard and the OREC purchase obligation to take effect in the year that estimated project COD is projected to occur, the qualified offshore wind project must appoint its administrator prior to April 1 of the year in which the offshore wind energy RPS takes effect. The administrator shall be instructed to establish an escrow account but not a reserve account for the purpose of receiving OREC purchase payments and applying the payments received in accordance with the priority of payments below until the qualified offshore wind project certifies (together with a certificate from an independent engineer confirming the same) to the administrator and the Commission that project COD has occurred:

- (1) Prior to making the transfers specified in §C(2) of this regulation, withdraw from that escrow account, for the account of such administrator, its pre-agreed periodic fees and documented reasonable third-party expenses (including any costs and expenses invoiced to the administrator by or on behalf of the Commission in connection with §K of Regulation .09 of this chapter); and
- (2) After giving effect to §C(1) of this regulation, but no earlier than the 30th day of the immediately following calendar year, transfer all amounts remaining in the escrow account to the electric companies, in accordance with the relative market share of those companies (in megawatt hours), for subsequent allocation, in accordance with Regulation .14 of this chapter, to

its retail electric customers (excluding retail electric customers specifically excluded pursuant to Public Utilities Article, §7-703, Annotated Code of Maryland).

#### STAFF RECOMMENDATION

Section C addresses the situation where the project COD is delayed after the Commission has established the RPS for offshore wind energy and the related OREC purchase obligations. As the comments to COMAR 20.61.06.07 explain, Staff understands that competitive electricity suppliers will set rates offered to retail customers based on the cost of purchasing ORECs, and those rates are generally locked in for a duration of three years. Upon receiving notice that a project has been delayed after the RPS and OREC purchase obligations have been established, the electricity suppliers' contract prices have already been set to take into account OREC costs. Cancelling the RPS provides windfalls to competitive suppliers that are charging higher prices in anticipation of OREC obligations that never materialize.

Sections C and D propose a process that refunds money collected by electricity suppliers to meet their OREC obligations. Section C directs the project to appoint an administrator and instructs the administrator to establish an escrow account for the purpose of receiving payments from electricity suppliers. The administrator invoices and collects payments from electricity suppliers who are OREC purchasers, and refunds collections (less fees) to electric companies for distribution back to customers.

#### **118. Proposed 20.61.06.16(D)**

D. If an administrator is appointed under §C of this regulation, then the administrator shall issue invoices to OREC purchasers in accordance with the procedure described in §B of Regulation .05 of this chapter and in making the computations required under §B of Regulation .05, the administrator shall use the OREC prices for the OREC price schedule described in clause (a) of the definition of "OREC price schedule."

#### STAFF RECOMMENDATION

Section D directs the administrator to issue invoices and collect payments from OREC purchasers.

#### **119. Proposed 20.61.06.16(E)**

E. Upon the occurrence of project COD, the project shall instruct the administrator to establish a reserve account and all monies deposited into the escrow account shall be applied in accordance with §G(1) through (4) of Regulation .11 of this chapter (except to the extent modified pursuant to §I of Regulation .11 of this chapter); provided however, the aggregate fees and expenses paid to the administrator under §C(1) of this regulation shall be deducted from the first OREC invoice submitted by the project to the administrator (and if necessary to cover any shortfall, each subsequent OREC invoice submitted by the project to the administrator until the shortfall is eliminated).

## STAFF RECOMMENDATION

Section E provides that the project, once operational, shall pay for the fees charged by the administrator for collections and refunds during the period before the project achieved commercial operation, as described by §§C and D.

### **120. Proposed 20.61.06.16(F)**

F. If the new estimated project COD is projected to occur later than 730 days after the original estimated project COD, the Commission shall adjust the offshore wind energy RPS and the OREC purchase obligation, on a forward looking basis at least three years in advance to take such delay into account but no such adjustment shall modify any previously determined offshore wind energy RPS or the OREC purchase obligation until the lapse of the three-year period commencing on the date the previously determined obligations were to take effect.

## STAFF RECOMMENDATION

Section F instructs the Commission to adjust the RPS, on a forward looking basis at least three years in advance, should the project be delayed at least two years from the originally estimated project COD.

### **121. Proposed 20.61.06.16(G)**

G. If the new estimated project COD will not occur before the end of five years after the original estimated project COD, the Commission may revoke the OREC order and any OREC price schedule previously issued by it to the project and adjust the offshore wind energy RPS and the OREC purchase obligation under §C of this regulation.

## STAFF RECOMMENDATION

In the event that project delays are excessive (that is, delays exceed five years), §G provides the Commission with a mechanism to revoke the OREC order and the price schedule, and to make appropriate adjustments to the RPS for offshore wind and corresponding changes to OREC purchase obligations.

### **122. Proposed 20.61.06.17(A)**

A. Each qualified offshore wind project shall report all of the following information to the Commission within two years before the expiration of the term of an OREC price schedule:

- (1) Anticipated PJM revenues for the project for the five-year period immediately following expiration of the term of the OREC price schedule; and
- (2) Anticipated project operating costs for the project for the five-year period immediately following expiration of the term of the OREC price schedule.



## STAFF RECOMMENDATION

Section 1 of OWEA, codified at PUA §7-704.2(d)(1), provides the Commission with the option to extend the twenty-year term of electricity suppliers' OREC purchase obligation (the "OREC term") by exercising up to two five-year options. Section A establishes a reporting obligation for the qualified offshore wind project and requires that it submit, within two years before the expiration of the OREC term, five years of projected revenue and cost data and a proposed OREC price schedule. The projected cost and revenue data provided by the project would be used by the Commission to verify the proposed OREC price schedule, if included in the project's filing, for the additional five-year term and to determine whether it will exercise the option to extend the OREC term. If it decides to exercise the option and the project does not include a price schedule or proposes a noncompliant price schedule, the Commission shall set a price schedule consistent with the statutory formula.

### **123. Proposed 20.61.06.17(B)**

B. Each qualified offshore wind project shall report all of the following information to the Commission within two years of expiration of an additional five-year term extended under Public Utilities Article, §7-704.2(d), Annotated Code of Maryland:

(1) Anticipated PJM revenues for the project for the five-year period immediately following expiration of the five-year term extended under Public Utilities Article, §7-704.2(d), Annotated Code of Maryland; and

(2) Anticipated project operating costs for the project for the five-year period immediately following expiration of the five-year term extended under Public Utilities Article, §7-704.2(d), Annotated Code of Maryland.

## STAFF RECOMMENDATION

As described above, the Commission may extend the term of electricity suppliers' OREC purchase obligation by exercising a second five-year option. Section B establishes a reporting obligation for the qualified offshore wind project and requires that it submit, within two years before the expiration of the prior-exercised additional five-year option term, five years of projected revenue and cost data and a proposed OREC price schedule. The projected cost and revenue data provided by the project would be used by the Commission to verify the proposed OREC price schedule, if included in the project's filing, for the additional five-year term and to determine whether it will exercise the option to extend the OREC term. If the Commission decides to exercise the option and the project does not include a price schedule or proposes a noncompliant price schedule, the Commission shall set a price schedule consistent with the statutory formula.

#### **124. Proposed 20.61.06.18(A)**

A. The qualified offshore wind project shall file annual reports with the Commission each year subsequent to issuance of the OREC order containing updated information required by §H of Regulation .02 of this chapter, until the project achieves project COD.

#### STAFF RECOMMENDATION

This regulation establishes an annual reporting obligation for each project subsequent to project award and until the project achieves commercial operation. The information to be reported includes the project COD as well as a timeline for the proposed offshore wind project's development and critical path schedule that includes milestones for site assessment, engineering, permitting, turbine certification, financing, procurement, manufacturing, construction, testing and commissioning commercial operation dates, and delivery term.

#### **125. Proposed 20.61.06.18(B)**

B. Any material change to the qualified offshore wind project, including but not limited to (i) the capacity of the project, (ii) the turbine model, (iii) the design of the foundation or support structure, (iv) the project COD, and (v) the decommissioning plan, shall be reported to the Commission within 30 days of the date of that decision. The Commission shall decide, in its discretion, whether further action is necessary.

#### STAFF RECOMMENDATION

This regulation establishes an obligation on the project to promptly report to the Commission every material change affecting the project. For instance, changes to planned project capacity, turbine model, foundation or support structure design, project COD, and decommissioning plan. This obligation continues throughout the 20 year term of the project as well as any five-year options exercised by the Commission.

#### **126. Proposed 20.61.06.18(C)**

C. The qualified offshore wind project shall supply the Commission with submissions made to BOEM and other state and federal agencies related to the development, permitting, engineering, construction and decommissioning of the project.

#### STAFF RECOMMENDATION

This regulation establishes an obligation on the project to provide the Commission with copies of submissions to BOEM and other state and federal agencies concerning the development, permitting, engineering, construction and decommissioning phases.

## **127. Proposed 20.61.06.19**

(A) Upon either the termination of the term of an OREC price schedule or if further extensions of five year terms are granted by the Commission pursuant to Public Utilities Article, §7-704.2(d), Annotated Code of Maryland, at the conclusion of the final term of such five-year terms, the Commission may instruct the project to cause the administrator to distribute all funds remaining the escrow account and reserve account to the electric companies for refund to their retail electric customers in accordance with Regulation .14; provided that the following shall have occurred:

(1) the administrator shall have paid to the project all amounts owing to is under any OREC invoice issued by the project to the administrator that does not contain any error or inaccuracy and terminated all standing instructions given to PJM or PJM EIS in favor of the administrator;

(2) the administrator shall have paid to the project all amounts that it is entitled to pursuant to Regulation .15 of this chapter and transferred to the project all RECs to which it is entitled under Regulation .15 of this chapter;

(3) any excess ORECs held in the administrator GATS account shall be sold and proceeds thereof be paid to the electric companies for refund to their retail electric customers in accordance with Regulation .14 of this chapter;

(4) the administrator shall have complied with any other administrative duties and obligations in connection with the escrow account, reserve account, and the administrator GATS account as the Commission may require; and

(5) the administrator shall have submitted to the Commission a final report and full accounting of all the amounts paid to and from the escrow account and reserve account, all sale or retirement of excess ORECs from the administrator GATS account and application of proceeds thereof and any other information as may be requested by the Commission.

(B) Upon the distribution of funds remaining in the escrow account and reserve account in accordance with §A of this regulation, the escrow account and reserve account with respect to the project shall be closed.

### **STAFF RECOMMENDATION**

This regulation establishes a process for closing down the escrow account and the reserve account at the end of the term or by the Commission's direction.

## **128. Proposed 20.61.06.20**

If any part of the regulations in this chapter is found to be invalid by a court of competent jurisdiction or its application to any person or circumstances is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of these regulations.

## STAFF RECOMMENDATION

This regulation is a severability provision and its purpose is to preserve as much of the regulations as possible in the event that a part of the regulations in this chapter are struck as unlawful.