

17 April, 2020

Michelle L. Phillips, Secretary
Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Doreen Harris
Vice President of Large-Scale Renewables
New York State Energy Research & Development Authority (NYSERDA)
17 Columbia Circle
Albany, NY 12203-6399

RE: Case No. 18-E-0071 – In the Matter of Offshore Wind Energy

Dear Secretary Phillips and Ms. Harris:

I am writing on behalf of New York’s Offshore Wind Environmental Technical Working Group (E-TWG)¹ pursuant to the 2018 Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement, which required consideration of “additional requirements, taking into account the Technical Working Group product” in the Phase 2 proceeding. The E-TWG requests that the Commission and NYSERDA carefully consider the recommendations put forward by the E-TWG’s Specialist Committees regarding potential environmental best management practices (BMPs). Members of the E-TWG have indicated that these are important topics for consideration in offshore wind procurements, and that inclusion of these BMPs as requirements in the next Order and/or solicitation could benefit both wildlife conservation and the offshore wind industry².

The E-TWG is made up of advisory members, including offshore wind energy developers and non-governmental organizations, and observer members from state and federal agencies. Observer members provide expertise and technical input but are not directly involved in making recommendations to the State. Under the direction of the E-TWG, two volunteer Specialist Committees (hereafter ‘Committees’) were formed in April 2019 to provide input on offshore wind development practices to measure, understand, and mitigate impacts on 1) marine mammals, and 2) birds and bats. Like the E-TWG, the Committees are made up of a range of interested stakeholders, including resource managers, scientists, and environmental permitting specialists for offshore wind energy developers. The Committees have met regularly for almost a year, and have contributed a substantial amount of volunteer time, effort, and expense to develop initial recommendations.

The E-TWG as a whole has reviewed the recommendations of the committees, and hereby recommends that the PSC and NYSERDA carefully consider including recommendations described here in the 2020

¹ www.nyetwg.com; BRI is under contract to NYSERDA to serve as the technical lead for the E-TWG

² The views and opinions expressed herein do not necessarily state or reflect those of the United States government or any agency thereof, not any state government or agency thereof.

Order and/or solicitation. The complete Committee recommendations are presented in documents on the E-TWG website (www.nyetwg.com/specialist-committees), and will be updated as discussions continue.

In relation to these recommendations, the E-TWG would like to emphasize several points:

- Recommendations were designed to help ensure offshore wind energy is developed in an environmentally responsible, yet practical, way. Requirements in procurements must not run contrary to federal regulations or be impractical to implement. The Committees have indicated, and the E-TWG agrees, that any recommendations adopted by the State as requirements must maintain sufficient flexibility to be adjusted or reconciled with federal guidance in good faith with NYSERDA, should such adjustments be necessary in response to evolving circumstances and new information, or to maintain project feasibility and practicability.
- *The recommended measures represent a first phase in developing broader recommendations for the industry.* The Committees will continue to develop additional recommendations and adjust existing recommendations in response to changes in best practice for the industry. The current interim version of the recommendations should not be considered a comprehensive list.
- *The Committees began discussions on a range of initial topics of varying divisiveness and conservation importance.* As a result, several topics identified as high priority from the standpoint of minimizing impacts are currently not represented in the recommendations (for example, see pages BB14, MM6, and MM15³ from the respective Committee summary documents).

A summary of recommendations with a large degree of Committee consensus is provided below. For each Committee's recommendation topics, we have also briefly summarized key points of Committee discussion. However, the E-TWG strongly urges review of the respective Committee documents (www.nyetwg.com/specialist-committees), which include the full recommendations as well as more detailed information on the degree of Committee consensus and key points of discussion. For ease of reference, the page number of the relevant document is noted for each recommendation topic below.

Recommendations for Birds and Bats

- *Reducing Effects from Lighting on Birds and Bats (pg. BB8).* The Committee has indicated that reduction of lighting on turbines, substations, and other infrastructure could help reduce attraction- and disorientation-related impacts to birds and bats. However, it was noted that lighting conditions must remain safe for workers, vessels, and aircraft. Offshore wind developers on the Committee stressed the need for flexibility in technologies to be used for this purpose (e.g., sensors, automation, etc.), to ensure that efforts to reduce lighting impacts are not overly prescriptive.
- *Avian Perching Deterrents (pg. BB11).* Committee members agreed that physical deterrents to perching should be implemented only if there is demonstrated risk at the site (e.g., perching and roosting on infrastructure is a common occurrence). The Committee felt that physical deterrents are relatively well-tested and practicable to implement after a wind farm has been built.
- *Pre- and Post-Construction Monitoring for Birds and Bats (pg. BB16).* The Committee agreed that pre- and post-construction monitoring is needed to inform our understanding of impacts and adaptive management of future projects, and that it should be designed in such a way that it improves our understanding of the impacts of offshore wind energy development on birds and bats. This includes identifying specific questions and taxa on which to focus monitoring efforts for each development project. These questions may focus on collisions, displacement, or other

³ The two letters before the page number refer to the Committee document in which the recommendation topic may be found. "MM" = Summary of Discussions from the Marine Mammal Specialist Committee; "BB" = Summary of Discussions from the Bird and Bat Specialist Committee; and "JD" = Summary of Joint Discussions from Specialist Committees on Regional Research and Monitoring.

effects, as deemed appropriate for each project site; in recognition of the current state of technological development for effective collision monitoring offshore, however, the Committee expressed the need to incorporate flexibility into the recommendation around collision-related monitoring options.

- *Nearshore and Onshore Siting to Reduce Impacts to Birds and Bats (pg. BB12)*: Committee members agreed that siting and construction of nearshore and onshore project components for offshore wind farms should be conducted in such a way as to avoid sensitive habitat and natural areas, and to develop in already disturbed areas when possible, in order to mitigate potential impacts to bird and bat species. Committee members recognized the importance of flexibility in approach, however, as the available methods for avoiding or minimizing impacts to key habitats are often constrained by site conditions.

Recommendations for Marine Mammals

- *Instructing Vessel Crews and Providing Reference Materials to Reduce Marine Mammal Collision Risk (pg. MM9)*: To enhance crew member awareness and help reduce collision risk for marine mammals, Committee members agreed that all vessel crew members should be briefed in the identification of marine mammals, regulations and best practices for avoiding vessel collisions, and a clear process for reporting marine mammal observations.
- *Monitoring for Marine Mammals During Noise-generating Activities (pg. MM12)*: Committee members agreed that exclusion, clearance, and monitoring zones should be maintained around noise-generating activities to help measure and mitigate potential noise-related effects on marine mammals. They agreed that monitoring should take an integrated approach, including the use of acoustic, visual, and other methods as appropriate, and be designed to maximize detection probability and address site-specific conditions and risks. Committee members noted that monitoring plans must not be incompatible with federal mitigation and monitoring requirements for each project site. Committee members compromised on the degree to which specific monitoring approaches are detailed in this recommendation; the remaining area of disagreement is around whether pre-activity timing requirements for “clearing” a zone of animals should be the same for all taxa, or vary depending on species’ conservation status.
- *Mitigation for Pile-driving Noise During Periods of Poor Visibility (pg. MM13)*: Most Committee members agreed that to the extent compatible with practicability and worker safety, pile driving should not commence during poor visibility conditions such as darkness, fog, and heavy rain, unless an alternative mitigation monitoring plan that does not rely on visual observation has been determined to be effective. Some Committee members felt that this recommendation is not protective enough, however; as Committee discussions continue on this topic, additional information will be added to the summary document on the E-TWG website.
- *Reporting Observations of North Atlantic Right Whales and Dead or Distressed Marine Mammals (pg. MM14)*: Committee members agreed that observations of all right whales and dead, entangled, or distressed marine mammals should be communicated to federal authorities as soon as is practicable, and no later than 24 hours after occurrence. The only area of less than complete agreement was around how soon is “practicable” (e.g., within two hours if possible).
- *Incorporating Expert Input into Stakeholder Consultations for Environmental Mitigation Plans (pg. MM15)*: Committee members agreed that environmental mitigation plans for construction and operations should be developed in consultation with knowledgeable stakeholders. In addition to E-TWG representatives, who are already required to be involved in these State consultations (via the Phase 1 Procurement Order), external input from entities with relevant technical expertise should be incorporated, as needed, to inform discussions.

A Joint Recommendation from Both Specialist Committees

- *Regional Collaboration and Monitoring (pg. JD4)*: Both the marine mammal and bird and bat Committees agreed that future state offshore wind procurements should require successful bidders to contribute funds to support regional environmental research and coordination, which is essential to 1) improve our understanding of the effects of offshore wind energy development on wildlife, including cumulative changes to populations and ecosystems, and 2) inform adaptive management of future development. Committee members also agreed that, in principle, such regional science efforts are distinct from mitigation measures that may be required on a project-by-project basis. The only area of less than complete agreement was around who should be involved in determining regional priorities for funding (please see the “Joint Committee Recommendation” document for more information).

In conclusion, the E-TWG believes that common-sense, stakeholder-vetted requirements to minimize the environmental effects of offshore wind energy development can support State efforts to advance the timely and environmentally responsible development of offshore wind energy while reducing uncertainty for developers.

We appreciate this opportunity to comment on PSC’s Notice Soliciting Comments. E-TWG and Committee members would be happy to provide more detail on these recommendations upon request.

Sincerely,



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New Jersey Board of Public Utilities
New Jersey Department of Environmental Protection
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New York Department of State
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