April 8, 2022

Gregory Lampman
NYSERDA Offshore Wind Program Director
17 Columbus Circle
Albany, NY. 12203

RE: Draft ORECRFP 2022-1 Comments

Submitted via Email to NYSERDA-OSW@levitan.com

Dear Mr. Lampman,

Please accept the following comments of the American Clean Power Association ("ACP")[1] on New York State Energy Research and Development Authority ("NYSERDA") request for comments on the DRAFT ORECRFP22-1 (ORECRFI22-1) in preparation for release of the third offshore wind solicitation, which will procure Offshore Wind Renewable Energy Certificates ("ORECS") associated with 2,000 to 4,600 megawatts of offshore wind generation.

ACP strongly supports this effort to help support New York State funding in pursuit of New York State's goal of developing 9,000 megawatts of offshore wind energy by 2035. ACP's comments are limited to NYSERDA's treatment and interpretation of New York's newly effective Buy American Public Service Law ("PSL 66-r") in the ORECRFP22-1 Preliminary Determination Memorandum.[2] ACP agrees with NYSERDA's preliminary finding that due to lack

[1] ACP is the national trade association representing the renewable energy industry in the United States, bringing together over 1,000 member companies, 120,000 members, and a national workforce located across all 50 states with a common interest in encouraging the deployment and expansion of renewable energy resources. By uniting the power of wind, solar, storage, and transmission companies and their allied industries, we enable the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system. ACP members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, renewable energy supporters, utilities, marketers, customers, and their advocates. Additional information is available at http://www.cleanpower.org.

[2] PSL 66-r requires that "any public entity, in each contract for construction, reconstruction, alteration, repair, improvement or maintenance of a covered renewable energy system which involves the procurement of a renewable energy credits agreement by a public entity," use domestically produced and fabricated structural steel and iron, unless the head of the of the applicable state agency constructing the project "determines that the provisions would not be in the public interest, would result in unreasonable costs, or that obtaining such steel or iron in the United States would increase the cost of the contract by an unreasonable amount, or such iron or steel, including without limitation structural iron and structural steel cannot be produced or made in the United States in sufficient and reasonably available quantities and of satisfactory quality." PSL §66-r (4).

of availability and increased costs it would not be in the public interest to require that projects be required to domestically source all structural iron and steel subject to PSL 66-r in ORECRFP22-1. ACP also applauds NYSERDA's decision to support the development of a domestic supply chain for offshore wind through a number of requirements and incentives in its Offshore Wind Program, including economic benefits evaluation points dedicated to the sourcing of domestic iron and steel—including both structural and non-structural components.

I. Comments

In Section 3 of the Memorandum, NYSERDA states that it is "not clear" whether PSL 66-r(4)(a) applies to purchase and sale agreements ORECS, due to the fact that they do not constitute contracts for "construction, reconstruction, alteration, repair, improvement or maintenance" of a renewable energy facility. In fact, for the reasons discussed below, it seems clear that the requirement for steel and iron purchase requirements were not meant to apply to such activities—where the government is not engaging in the construction of a project.[3]

The plain language of the steel and iron requirement in PSL 66-r(4)(a) explicitly applies to a public entity's contract for construction activities: "Any public entity, in each contract for construction. . . . of a covered renewable energy system which involves the procurement of a renewable energy credits agreement by a public entity. . . shall ensure that such contract shall contain a provision."[4] In other words, the OREC Purchase and Sale Agreements that will be entered into with awardees under from ORECRFP22-1 are for the purchase and sale of ORECs and do not constitute contracts "for construction."

[3] "'Public entity' shall include, but shall not be limited to, the state, a local development corporation as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-for-profit corporation law, a municipal corporation as defined in section one hundred nineteen-n of the general municipal law, an industrial development agency formed pursuant to article eighteen-A of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, and any state, local or interstate or international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities. N.Y. Pub. Serv. Law § 66-r(2).

[4]

In addition, the labor requirements in Section 66-r(3) are clearly drafted to apply to ORECs,[5] stating that they apply to the "owner" of a covered renewable energy system that contracts with a public entity to sell renewable energy credits.[6] If the iron and steel requirements were meant to apply to ORECs, rather contracts for construction, it is clear the legislature knew how to draft language to make that clear. Put simply, if the legislature had intended such a result with respect to the domestic content requirements, it would have expressed it in the same way it did regarding the labor requirements.

As it appears NYSERDA plans to apply the substance of PSL 66-r to the contracts to be awarded under ORECRFP22-1, even though the statute does not mandate such an outcome, we provide comment on the substantive preliminary assessment that NYSERDA provides regarding the domestic content requirements.

A. Structural Elements

ACP agrees with NYSERDA's conclusion in the Preliminary Determination Memorandum that New York's Buy American requirement applies only to the *structural* elements of an offshore wind project. We also agree that structural elements do *not* include components that are operational by nature—i.e., core to the function of producing electricity. However, ACP disagrees with NYSERDA's conclusion that wind towers are structural elements, as opposed to components of the generation equipment.

In characterizing these components as structural elements, NYSERDA oversimplifies the role that they play in generating electricity. For example, while wind towers clearly provide structural value, they also provide the same value that NYSERDA uses to distinguish them from

[5] "The commission shall require that the owner of the covered renewable energy system, or a third party acting on the owner's behalf, as an ongoing condition of any renewable energy credits agreement with a public entity, shall stipulate to the fiscal officer that it will enter into a labor peace agreement with at least one bona fide labor organization either where such bona fide labor organization is actively representing employees providing necessary operations and maintenance services for the renewable energy system at the time of such agreement or upon notice by a bona fide labor organization that is attempting to represent employees who will provide necessary operations and maintenance services for the renewable energy system employed in the state."

[6]

nonstructural components: core to producing electricity. Unlike girders in infrastructure projects, a wind tower houses major electronic components of wind turbine that are crucial to generation of electricity—components that do not support the wind turbine structure. Moreover, the height of the tower is crucial to getting hub heights need for generating increased electricity and capacity.[7] If the tower was a pure structural element, as NYSERDA has defined it, the tower height would be irrelevant to such levels and would only need to be tall enough to prop up a nacelle and blade assembly. In this way, wind towers can easily be distinguished from what New York State has considered to be structural components (e.g., girders) that are designed *only* to provide structural support to a constructed asset.

Distinguishing load-bearing components from components of an electricity generation system that may have some structural element is consistent with the way New York State has treated other structures that house electronic components. For instance, New York State's Department of Transportation (which has similar Buy American requirements for public works projects) limits its categorization of structural steel elements to girders and similar construction materials,[8] distinguishing these structural elements from products that may include a structural element in their electrical system—such as a traffic signal or a street lamp.[9] Other states have also used similar reasoning to distinguish between steel elements that house electric components and those that are purely structural.[10]

[7] Available at https://www.businesswire.com/news/home/20110211005482/en/GE-Completes-Acquisition-of-Next-Generation-Wind-Turbine-Tower-Technology; NREL Report ("Reducing the cost of realizing taller towers is critical to capturing the value of higher wind speeds at higher above ground levels as well as for increasing the viability of wind power in all regions of the country."). https://www.nrel.gov/docs/fy19osti/73629.pdf.

[8] Design Specifications for Structural Steel, https://www.dot.ny.gov/main/business-center/engineering/cadd-info/drawings/bridge-detail-sheets/sg-structural-steel.

[9] Design Specification for Traffic Signals, https://www.dot.ny.gov/main/business-center/engineering/cadd-info/drawings/standard-sheets-us/680

[10] For instance, under Texas's Buy American statute, the statute specifically notes that "electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system, necessary for operation or concealment are not considered to be iron or steel products and are exempt from the requirements of [the Act.]."Section 2252.202. An electrical system includes all equipment, facilities, and assets owned by an electric utility, as that term is defined in Section 31.002, Utilities Code. Tex. Gov't Code Ann. § 2252.203.

For the reasons above, we urge NYSERDA to revise the definition of "structural" to distinguish between structural components, like girders, that only function to provide support to the constructed asset, and the offshore wind generation system—all parts of which are crucial to the function of producing energy, such as the tower.

B. Timing on Public Interest Review

ACP supports NYSERDA's interpretation of PSL 66-r as requiring the assessment as to whether the domestic content requirement is in the public interest review to be a contemporaneous analysis of the availability, cost, and quality of structural steel and iron and made prior to each procurement, as well as included in the procurement itself the time of issuance of the solicitation. Further, NYSERDA is not required to forecast whether such materials may be available during the development phase of selected projects; or as some have advocated, to substitute this statutory framework with an analysis that would apply to individual project developers based on the availability of the covered materials at the time such materials are to be procured.

Because the OREC prices are set at this stage of the process, not at the time selected proposers take bids for construction of the project, the determination as to whether the requirement to use U.S. iron and steel will apply must also be made at this stage so that pricing committed to by proposers can appropriately reflect the determination. Offshore wind technology is still evolving, and any additional requirements that would limit the ability to build out projects would impose intolerable regulatory risk, requiring developers to incur millions of dollars in development costs before having an understanding of whether they would be subject to the Buy American requirements on some of the most significant cost drivers of a project. This higher risk premium would be priced into bids and ultimately borne by ratepayers.

C. Manufacturing Capacity for Offshore Wind Projects

ACP concurs with NYSERDA's review of the status of U.S. manufacturing capability in meeting the needs of the emerging U.S. offshore wind industry:

- The domestic capacity to produce steel plates used in the fabrication of monopiles simply does not exist at this time. As NYSERDA's analysis notes, no U.S. steel producer is offering steel plates remotely close to the thickness and strength to support commercially available offshore wind turbines.[11]

- Other ancillary structural steel components are currently produced by U.S.-based manufacturers; however, these come at a significant price premium.

In addition to these preliminary findings of NYSERDA, ACP has found that there are additional structural components that cannot be made domestically, including:

- Offshore wind flanges, which are forged seamless rings, that facilitate the connection between towers and monopile foundations and are a critical structural component. Currently, there are only three global manufacturers that can produce eight meter diameter flanges, and domestic seamless flange capability stops at a five meter diameter.

- Large castings for hubs (where the blades of the rotor connect) and bedplates cannot be produced in the US because no supplier/foundry can produce iron ore components of the required size and quality. Onshore castings weigh 15 plus tons but offshore castings weigh significantly more at 60 plus tons.

In light of these domestic supply chain limitations and NYSERDA's mandate under the Climate Act to include the deployment of 9GW of offshore wind by 2035 (as well as its requirement to assess all procurement design decisions that may affect the cost to ratepayers or the viability of offshore wind projects), ACP agrees with NYSERDA's decision to forego the mandatory use of structural iron or steel components. We also agree with NYSERDA that the appropriate policy response is not to mandate non-existent or prohibitively expensive products—an approach that runs significant risk of stalling project development, jeopardizing New York's ambition to be the U.S. hub of offshore wind manufacturing, costing family sustaining union jobs in the many trades outside steel manufacturing and fabrication, and hamstringing the state's ability to hit its nation-leading climate targets.

[11] It is worth noting that the Advisian report on which NYSERDA relied assumes a 10-MW turbine. Given the rapid evolution of offshore wind generation technologies and economies of scale, this is likely an extremely conservative and already dated assumption. This generation capacity class is already being eclipsed by larger systems offered or planned by all the major OEM's.

Rather, NYSERDA has smartly opted to incentivize the procurement of domestically manufactured steel products. ACP agrees that this "carrots rather than sticks" approach is warranted under the circumstances and is the most cost-effective and efficient means of ramping up a U.S.-based manufacturing capability. Specifically, ACP supports awarding additional economic benefits scoring to projects that commit to U.S. steel manufacturing. In addition, we recommend that NYSERDA earmark a portion of its $500 million in supply chain incentive funding to foster the goals of the New York Buy American requirements, by leveraging private investment in dedicated production lines or offering to buy-down the unit cost of the first tranche of U.S.-manufactured products.

II. Conclusion

ACP supports the objective of encouraging the development of a vibrant, U.S.-based steel and iron sector that can cost-effectively meet the needs of the burgeoning offshore wind industry. In light of the current domestic steel and iron manufacturing capacity limitations, and the statutory constraints, we agree with NYSERDA that the Buy American provisions of the Public Service Law should not be made effective for this bid round. Going forward, the agency should continue to support market entry through incentives (e.g., receiving additional scoring credit in the category of economic benefits) rather domestic content requirements.

Regards,

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