

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Renee Manuel-Savage, Administrator Franchise Tax/Public Utility, State Department of Assessments and Taxation, 301 W. Preston Street, 8th Floor, Baltimore, MD 21201, or call 410-767-4185, or email to renee.manuel-savage@maryland.gov, or fax to 410-333-5873. Comments will be accepted through August 11, 2014. A public hearing has not been scheduled.

.04 Filing Forms and Additional Information.

A. — C. (text unchanged)

D. On or before March 15 annually, each company shall file with the Department a return detailing all operating and nonoperating revenues for the preceding calendar year. Each company shall attach to the return:

(1) [a] A check made payable to the Department for the remaining tax due for the period covered by the return[.]; and

(2) Financial statements and a copy of the company's annual report as submitted to the appropriate regulatory authorities.

E. If a company fails to file the return as required under this regulation, the Department will mail to the company a notice and demand for the return. If the return is not filed within 30 days of the mailing of the notice, the Department will estimate the company's operating revenues and assess an additional penalty of up to [20] 25 percent of the estimated tax liability.

F. Returns Filed Without Supporting Documents.

(1) If a company files a return but fails to include financial statements and a copy of the company's annual report as required in §D(2) of this regulation, the Department will mail to the company a notice and demand for the supporting documents. If the supporting documents are not filed within 30 days of the mailing of the notice, the Department will estimate the company's operating revenues and assess an additional penalty of up to 25 percent of the estimated tax liability.

(2) If, at the time of filing a return, a company's annual report has not been submitted to the appropriate regulatory authorities, the company shall furnish to the Department the date that it is due to be submitted. If the company's annual report is not filed with the Department within 30 days of the date that it is due to be submitted, the Department will mail to the company a notice and demand for the annual report. If the annual report is not filed within 30 days of the mailing of the notice, the Department will estimate the company's operating revenues and assess an additional penalty of up to 25 percent of the estimated tax liability.

[F.] G. — [G.] H. (text unchanged)

ROBERT E. YOUNG
Director

**Title 20
PUBLIC SERVICE
COMMISSION**

Notice of Proposed Action

[14-194-P]

The Public Service Commission proposes to:

(1) Amend Regulation .02 under **COMAR 20.51.01 General Provisions;**

(2) Amend Regulations .02 and .08 under **COMAR 20.51.02 Administrative Provisions;**

(3) Amend Regulation .05 under **COMAR 20.51.03 Electricity Supplier License Requirements;**

(4) Amend Regulations .03, .05, and .06 under **COMAR 20.61.01 General;**

(5) Amend Regulations .01 and .02 under **COMAR 20.61.04 Consumer Protection, Reporting, and Enforcement;** and

(6) Adopt new Regulations .01—.20 under a new chapter, **COMAR 20.61.06 Offshore Wind.**

This action was considered at a scheduled rule making meeting on May 8 and 12, 2014.

Statement of Purpose

The purpose of this action is to implement the Offshore Wind Energy Act of 2013. The regulations establish a process for the Commission to receive and evaluate offshore wind project applications. The regulations also establish an escrow account to facilitate the transfer of funds among electricity suppliers, retail electric customers, and a project owner.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The Offshore Winds Energy Act, and these regulations promulgated pursuant to the Act, impact the State, localities and small businesses, by creating a carve-out for energy derived from offshore wind development in the State Renewable Energy Portfolio Standard, and though the establishment of various funds and assessments to implement the Act.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
	A. On issuing agency:		
(1)	(R+)		\$2,000,000
(2)	(E+)		\$2,000,000
B. On other State agencies:			
(1)	(R+)		\$2,500,000
(2)	(E+)		\$2,500,000
C. On local governments:			NONE

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Unknown at this time
E. On other industries or trade groups:	(+)	Unknown at this time
F. Direct and indirect effects on public:		
(1)	(-)	\$1.50 per month residential surcharge in 2012
(2)	(-)	1.5% charge on non-residential accounts (annual)

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

- A(1). Identified specifically in legislation
- A(2). Estimated based on RFP to be awarded for expert consultants
- B(1). Identified specifically in legislation
- B(2). Identified specifically in legislation
- D. Fiscal Note
- E. Fiscal Note
- F(1). Identified in legislation
- F(2). Identified in legislation

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows. See fiscal note HB226, page 26.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to David J. Collins, Executive Secretary, Public Service Commission, William Donald Schaefer Tower, 6 St. Paul Street, Baltimore, MD 21202-6806, or call 410-767-8067. Comments will be accepted through August 11, 2014. A public hearing has not been scheduled.

Subtitle 51 ELECTRICITY SUPPLIERS

20.51.01 General Provisions

Authority: Public Utilities Article, §§2-121 and 7-507, Annotated Code of Maryland

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1) "Administrator" means the person appointed as administrator for a qualified offshore wind project under COMAR 20.61.06.09.
 - [(1)] (1-1)—(22) (text unchanged)

20.51.02 Administrative Provisions

Authority: Public Utilities Article, §§2-121 and 7-507, Annotated Code of Maryland

.02 Application Requirements.

- A. (text unchanged)
- B. The application shall contain at least the following information:
 - (1)—(9) (text unchanged)
 - (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.
 - C.—D. (text unchanged)

.08 Financial Integrity.

- A.—J. (text unchanged)
- 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.

20.51.03 Electricity Supplier License Requirements

Authority: Public Utilities Article, §§2-121 and 7-507, Annotated Code of Maryland

.05 Electricity Supplier License — Cessation of Business.

- 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)—(3) (text unchanged)
 - B. (text unchanged)

Subtitle 61 RENEWABLE ENERGY PORTFOLIO STANDARD PROGRAM

20.61.01 General

Authority: Public Utilities Article, §§2-121, 5-101, and 7-701—7-713, Annotated Code of Maryland

.03 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1) (text unchanged)
 - (1-1) "Administratively complete" means that the Commission has determined an application to contain the information described in §§D through N of COMAR 20.61.06.02.
 - (1-2) "Administrator" means the qualified financial institution appointed by a qualified offshore wind project to be the administrator of the escrow account, reserve account and administrator GATS account designated for that qualified offshore wind project as well as any account in substitution of these accounts, and shall include any replacement administrator appointed under §K or L of COMAR 20.61.06.09.

(1-3) “Administrator GATS account” means, with respect to a qualified offshore wind project, the account established by its administrator at GATS, into which a qualified offshore wind project shall transfer all of the ORECs invoiced by that project or into which PJM EIS shall transfer all ORECs created for that project pursuant to standing instructions given to PJM EIS pursuant to §G of COMAR 20.61.06.10.

[(1-1)](1-4) (text unchanged)

(1-5) “Application” means the information and materials describing a proposed offshore wind project submitted to the Commission as contemplated by Public Utilities Article, §7-704.1(a), Annotated Code of Maryland.

(1-6) “Application period” means the period of time, beginning and ending in accordance with §§(B)(3) and (B)(4) of COMAR 20.61.06.01, during which one or more OSW applicants may submit an application for approval of a proposed offshore wind project.

(1-7) “Approved OREC amount” means, with respect to a qualified offshore wind project, a fixed number of ORECs that the project may sell in any calendar year during the term of the OREC price schedule as approved by the Commission in its OREC order.

(1-8) “BOEM” means the Bureau of Ocean Energy Management.

(1-9) “Business day” means any day other than a Saturday, Sunday or any day on which the Commission or banks in the State are authorized by federal or state law to be closed.

[(1-2)](1-10)—(3) (text unchanged)

(3-1) “Electricity service attributes” means, for a qualified offshore wind project, all energy, capacity, and ancillary services associated with its creation of ORECs.

(4) (text unchanged)

(4-1) “Escrow account” means, with respect to each qualified offshore wind project, a financial account established at and by that project’s administrator for, among other purposes, receiving payments of OREC purchase payments from OREC purchasers and proceeds of sale of electricity service attributes, and from which transfers will be made to a qualified offshore wind project to pay for ORECs invoiced by that project under COMAR 20.61.06.10.

(4-2) “Estimated project COD” means, with respect to a qualified offshore wind project, the date on which project COD is projected to occur, as specified in the project’s application.

(4-3) “Executive team” means the officers identified in an OSW applicant’s by-laws or operating agreement and any other person authorized to speak for or act on behalf of the OSW applicant.

(4-4) “Expiration date” means the earlier of the date on which the Commission notifies the OSW applicant that its application has not been accepted and 181 days after the close of the application period, which expiration date may be extended by mutual consent of the Commission and the OSW applicant.

[(4-1)](4-5)—(5) (text unchanged)

(5-1) “GATS Account” means, with respect to a qualified offshore wind project, an account established pursuant to GATS into which renewable energy generation from that qualified offshore wind project will be reported, and based upon which PJM EIS will create ORECs for that qualified offshore wind project, including any replacement account from time to time that may be required by any change in the operating rules of PJM EIS.

(5-2) “Generally accepted accounting principles” means accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect in the United States as of the relevant date of determination.

(5-3) “Generation capacity resource” has the meaning stated in the Reliability Assurance Agreement among load serving entities in the region operated by PJM.

(6) (text unchanged)

(6-1) “Interconnection service agreement” means the agreement for interconnection for the project as a generation capacity resource providing for capacity interconnection rights between the project, PJM, and the applicable transmission owner, as may be amended from time to time.

(6-2) “International electrotechnical commission” means the international standards organization that prepares and publishes standards for electrical, electronic and related technologies.

(6-3) “International financial reporting standards” means the financial accounting standards developed by the International Accounting Standards Board that are in effect as of the relevant date of determination.

[(6-1)](6-4)—[(6-2)](6-5) (text unchanged)

(6-6) “Major cost category” means the major capital expenditures of a proposed offshore wind project incurred during development and construction phases, including but not limited to permitting, legal and consulting costs, site and meteorological assessment, ship or barge leases, wharfage fees, construction labor, foundations, support structures, wind turbines, capitalized interest, and owner’s costs.

(6-7) “Maryland Offshore Wind Business Development Fund” means the fund of the same name established under State Government Article, §9-20C-03, Annotated Code of Maryland.

(6-8) “Minimum threshold criteria” means the criteria listed in §A of COMAR 20.61.06.03.

(6-9) “Minority” means an individual who is a member of any of the groups listed in State Finance and Procurement Article, §14-301(j)(1)(i), Annotated Code of Maryland.

(6-10) “Minority Business Enterprise Program” means the program established under State Finance and Procurement Article, Title 14, Subtitle 3, Annotated Code of Maryland.

[(6-3)](6-11)—(7) (text unchanged)

(7-1) “North American Industry Classification System” or “NAICS” means the standard developed by the Office of Management and Budget and used by federal statistical agencies to classify businesses for the purposes of collecting, analyzing and publishing statistical data.

(7-2) “Offshore wind energy RPS” means the offshore wind energy component of the RPS established pursuant to §A of COMAR 20.61.06.07.

(7-3) “OREC” has the meaning stated in Public Utilities Article, §7-701, Annotated Code of Maryland.

(7-4) “OREC invoice” means a monthly invoice delivered by a qualified offshore wind project under COMAR 20.61.06.10 to its administrator setting forth (a) the number of ORECs created for that project by PJM EIS in the project’s GATS account for the second generation month immediately preceding the invoice date and in respect of which a PJM EIS statement setting forth the number of ORECs created as at the last day of the month immediately preceding the invoice date is available and (b) the dollar amount due for the ORECs under that invoice; provided that, an OREC invoice shall not include ORECs in respect of which the project shall have previously invoiced the administrator.

(7-5) “OREC order” means an order issued by the Commission pursuant to this chapter and Public Utilities Article §7-704.1(f) that, among other things, approves a proposed offshore wind energy project, its related OREC price schedule, the duration of the OREC price schedule and the approved OREC amount.

(7-6) “OREC price” means, with respect to a qualified offshore wind project and each calendar year during the term of its

OREC price schedule, the price for an OREC for each relevant calendar year set forth in its OREC price schedule approved by the Commission under the project's OREC order and, following any adjustment as contemplated by § C of COMAR 20.61.06.08, the final adjusted OREC price for each relevant calendar year referenced in a replacement OREC price schedule submitted to the Commission under that regulation.

(7-7) "OREC price schedule" means, with respect to a qualified offshore wind project, the price schedule for ORECs for:

(a) An initial term of up to 20 years commencing from estimated project COD; and

(b) An additional schedule of prices for ORECs for each of 5 years immediately following the end of the initial term to accommodate potential delays in project COD, as approved by the Commission under the project's OREC order and includes any replacement OREC price schedule submitted to the Commission pursuant to §C of COMAR 20.61.06.08.

(7-8) "OREC projected revenue" means, with respect to a qualified offshore wind project, that amount of annual OREC revenues in any given calendar year during the term of an OREC price schedule equal to the product of the OREC price for that year and the approved OREC amount for the same period.

(7-9) "OREC purchase obligation" means, the obligation of the OREC purchasers to purchase ORECs from one or more escrow accounts to satisfy the offshore wind energy component of the renewable energy portfolio standard established by the Commission under Public Utilities Article, §7-703(b), Annotated Code of Maryland.

(7-10) "OREC purchase payment" means, with respect to an OREC purchaser, the aggregate dollar amount paid by it in each calendar quarter (commencing with the calendar quarter beginning on April 1 of the initial year in which the offshore wind energy RPS takes effect), for deposit in one or more escrow accounts for the purchase of ORECs pursuant to the Commission's OREC order, OWEA, and this chapter.

(7-11) "OREC purchaser" means an electricity supplier that is obligated to purchase ORECs by Public Utilities Article, §7-703(d), Annotated Code of Maryland.

(7-12) "OSW applicant" means a person submitting an application for a proposed offshore wind project.

(7-13) "OWEA" means the Maryland Offshore Wind Energy Act of 2013, as amended from time to time.

(7-14) "Permitted investments" means one or more investment funds operating under an exemption under Rule 2a-7 of the Investment Company Act of 1940, as amended, the investments in which consist exclusively of direct, non-callable obligations (including "strips") of the United States of America, guaranteed by its full faith and credit, and interests in such other investment funds.

(8) (text unchanged)

(8-1) "PJM" means PJM Interconnection, L.L.C. or its successor.

(8-2) "PJM EIS" means PJM Environmental Information Services, Inc. or its successor.

(9) (text unchanged)

(9-1) "PJM revenues" means amounts payable to a qualified offshore wind project for its sale of electricity service attributes to markets administered by PJM.

(9-2) "Project" means a qualified offshore wind project.

(9-3) "Project commercial operation date" or "project COD" means, with respect to a qualified offshore wind project, the date on which the project satisfies the requirements for demonstrating commercial operation required by its Interconnection Service Agreement, as may be amended, modified or supplemented from time to time.

(9-4) "Project team" means the key individuals whom an OSW applicant hires or contracts with to lead the development, financing, permitting, engineering, procurement, construction, operations, maintenance, decommissioning and other significant functions for a proposed offshore wind project.

(9-5) "Proposed offshore wind project" or "proposed project" means an offshore wind project described in an application that is submitted for Commission approval as a qualified offshore wind project.

(9-6) "Proposed OREC amount" means, with respect to a proposed offshore wind project, a fixed annual number of renewable energy certificates that the proposed project proposes to sell as ORECs during the term of the proposed OREC price schedule.

(9-7) "Proposed OREC price schedule" means, with respect to a proposed offshore wind project, the price schedule described in §M of COMAR 20.61.06.02 setting a price or a series of calendar year prices for the electricity service attributes and the environmental attributes associated with the creation of ORECs.

(9-8) "Proposed qualified submerged renewable energy line" means a proposed transmission line, as described by Public Utilities Article, §7-208, Annotated Code of Maryland.

(9-9) "Public Information Act exemption request" or "PIA exemption request" means, with regard to a portion or portions of an application, a request by an OSW applicant to exempt certain information from a third-party request under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

(9-10) "Qualified financial institution" means a financial institution formed under the laws of the United States of America with an office in the State of Maryland, that satisfies all of the following criteria:

(a) It has, at the time of selection, a tangible net worth of no less than \$150,000,000;

(b) It has a reputable and established division that demonstrates significant experience in carrying out custodial, escrow or account administration services for customers;

(c) It is not an employee of any qualified offshore wind project, an affiliate of that project or an employee of any entity affiliated with any qualified offshore wind project;

(d) It is not an entity that holds any ownership share in any qualified offshore wind project; and

(e) It is not an entity that is providing financing (whether in the form of debt, equity or any combination or derivation thereof) to any qualified offshore wind project; provided that, if the Commission shall have, as contemplated by §D of COMAR 20.61.06.09, determined that factors other than those specified above are relevant in determining whether a proposed administrator qualifies as a qualified financial institution, these other factors and any of the above factors that the Commission considers applicable, shall be deemed to constitute the criteria for determining whether an administrator has ceased to be a qualified financial institution for the purposes of §§K and L of COMAR 20.61.06.09.

(9-11) "Qualified offshore wind project" has the meaning stated in Public Utilities Article, §7-701, Annotated Code of Maryland.

(9-12) "Reliability Assurance Agreement" means the PJM Interconnection, L.L.C. agreement approved by the Federal Energy Regulatory Commission.

(10)–(13) (text unchanged)

(13-1) "Reserve account" means, with respect to a qualified offshore wind project, the account established by an administrator into which funds from the escrow account of a project up to an aggregate amount equal to the six-month average of OREC projected revenue for that project for the relevant calendar year during the term of its OREC price schedule shall be deposited as contemplated by §G of COMAR 20.61.06.11.

(13-2) “Retail electric customer” has the meaning stated in COMAR 20.51.01.02.

(13-3) “Small business” has the meaning stated in State Finance and Procurement Article, §14-501, Annotated Code of Maryland.

(13-4) “Term” means, with respect to a qualified offshore wind project, the period covered by its OREC price schedule, not exceeding 20 years commencing from project COD, as approved by the Commission in the relevant OREC order; provided that, if project COD occurs later than five years immediately following the estimated project COD, the term of an OREC price schedule shall commence in year six of the schedule described in clause (a) of the definition of “OREC price schedule” and extend for the term approved by the Commission in the same OREC order.

(14)—(17) (text unchanged)

.05 Solar REC Purchases and Offshore Wind Energy REC Purchases.

A.—C. (text unchanged)

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

.06 Satisfaction of Renewable Energy Portfolio Standard.

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.

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) (text unchanged)

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

[(3)](4)—[(4)](5) (text unchanged)

C.—D. (text unchanged)

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] 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 [granted, unless otherwise specified by Commission order] filed.

[(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.

F.—G. (text unchanged)

20.61.04 Consumer Protection, Reporting, and Enforcement

Authority: Public Utilities Article, §§2-121, 5-101, 7-507, and 7-701—7-713, Annotated Code of Maryland

.01 Consumer Protection.

A. (text unchanged)

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)—(2) (text unchanged)

(3) [A] Except as provided under Public Utilities Article, §7-705(b)(1), 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.

C. (text unchanged)

D. Report Required.

(1) [On] *Except as provided in §D(3) of this regulation, 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) (text unchanged)

(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.*

.02 Annual Report Required.

A. [On] *Except as provided under §B(3) and (15) of this regulation, 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.*

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

(1) (text unchanged)

(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)—[(4)](5) (text unchanged)

[(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)—(8) (text unchanged)

[(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)—[(10)](12) (text unchanged)

[(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) (text unchanged)

(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)—[(14)](17) (text unchanged)

[(15)](18) *If a shortfall in the number of Tier 1 renewable source [RECs] ORECs 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) (text unchanged)

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

(1)—(4) (text unchanged)

(5) *Excluding Tier 1 solar RECs and ORECs, the total price of all Tier 1 renewable source RECs retired during the reporting period;*

(6) (text unchanged)

(7) *The total price of all Tier 1 ORECs retired during the reporting period;*

[(7)](8)—[(8)](9) (text unchanged)

20.61.06 Offshore Wind

Authority: Public Utilities Article, §§2-121, 7-704.1, and 7-704.2, Annotated Code of Maryland

.01 Application Process.

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

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.*

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.*

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 Regulation .03B of this chapter, to assess and compare proposed projects.*

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 Regulation .02C 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.

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

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.

H. Prior to acceptance of applications, the Commission shall notify potential applicants 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 price 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.

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

.02 Application Requirements.

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.

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.

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.

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.

E. An application shall include a signed and notarized statement by an officer of the OSW applicant attesting that:

(1) The officer has the authority to submit the application to the Commission;

(2) The application, including the proposed OREC price schedule and proposed OREC amount, shall remain binding until the expiration date;

(3) The information and materials contained in the application are accurate and correct; and

(4) 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.

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) Bylaws 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.

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.

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;

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.

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.

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:
 - (a) In-State labor;
 - (b) In-State non-labor;
 - (c) Out-of-State labor; and
 - (d) 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 1 year after the initial deposit, and \$2,000,000 within 2 years after the initial deposit;
- (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; and

- (10) Affirmative statement that the OSW applicant will use commercially reasonable efforts to sell its electricity service attributes to the PJM markets.
- 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, including impacts on the affected marine environment based on publicly available information, 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.
- 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) 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.

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.

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.

.03 Evaluation Criteria.

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.

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, including impacts on the affected marine environment based on publicly available information, 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;

(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;

(xvi) OSW applicant's analysis of impacts on residential, commercial, and industrial retail electric customers, including consideration of whether the analysis properly reflects proposed OREC pricing and unique character of the applicant's pricing proposal; and

(xvii) OSW applicant's analysis of long-term changes to the wholesale electric market associated with the project, including consideration of the quality of analysis showing contributions to regional system reliability, fuel diversity, competition, transmission congestion, and other benefits.

(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 Regulation .02M(3) 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.

(3) The independent analysis of the environmental and health benefits on Maryland associated with the proposed project, quantitatively expressed in tons of avoided air emissions and qualitatively expressed in terms of health impacts associated with avoided air emissions and impacts on the affected marine environment based on publicly available information.

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.

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.

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

(1) The Commission and the OSW 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 Regulation .06B 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.

.04 Project Site Concerns.

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.

.05 Contribution to Maryland Offshore Wind Business Development Fund.

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.

B. Within 1 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.

C. Within 2 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.

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.

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.

.06 Compliance with Minority Business Enterprise Program.

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.

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.

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

.07 Offshore Wind Energy Component of Renewable Energy Portfolio Standard.

A. The Commission shall establish the offshore wind energy RPS under Public Utilities Article, §7-703(b), Annotated Code of Maryland, and that determination:

(1) Shall be based on projected annual creation of ORECs by qualified offshore wind projects; and

(2) Shall be made 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.

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.

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.

.08 Establishing the OREC Purchase Obligation and Replacement OREC Price Schedule.

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 3 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.

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.

C. If, pursuant to Regulation .02M(1)(a) 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 upward or downward, 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 Regulation .02M(1)(a) 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.

D. 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 Regulation .02M(1)(a) 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.

.09 Appointment of Escrow Administrator.

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.

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.

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.

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.

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.

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.

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.

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 Regulation .11G of this chapter.

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.

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.

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 Regulation .11G of this chapter.

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.

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.

.10 Qualified Offshore Wind Project Invoices; Payment and Transfer of ORECs.

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.

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 5 business days of the beginning of each calendar month during the term of an OREC price schedule.

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 Regulation .09H of this chapter; and

(3) Any deductions contemplated by Regulation .09K or L of this chapter.

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.

E. Subject to Regulation .11G 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 10 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.

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.

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 Regulation .09K or L 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).

H. Each administrator shall, no later than 15 days after the deposit 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.

.11 Invoicing of OREC Purchasers and Administrator's Responsibilities.

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.

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 5 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 5 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.

C. Within 2 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.

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 10 business days of the date of that invoice.

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.

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.

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 Regulation .10E 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 Regulation .09K of this chapter), any amounts required to be deducted pursuant to Regulation .13C and D of this chapter and any amounts required to be deducted pursuant to Regulation .16E 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).

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 §G of this regulation until the shortfall is eliminated, prior to applying any funds towards the payment set forth in §G(4) of this regulation.

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.

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 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.

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

L. Each administrator shall issue a late-payment notice to a delinquent OREC purchaser within 3 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.

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 Regulation .11B 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.

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.

O. Any ORECs not transferred pursuant to Regulation .10H 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.

.12 Payment of PJM Revenues and Trust for Benefit of Ratepayers.

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

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 charged 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 Regulation .11G of this chapter, and any amounts remaining under Regulation .11G(4) 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.

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.

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.

.13 Value to Ratepayers of State or Federal Funds and Benefits.

A. As described by Regulation .02K(6) 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.

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.

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 Regulation .10 of this chapter.

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.

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.

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.

.14 Refunds Distributed by Electric Companies.

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.

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.

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.

.15 Transfer and Expiration of Excess Electricity Service Attributes.

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.

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.

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.

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.

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.

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.

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.

H. 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.

I. 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.

.16 Project Commencement of Operations.

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.

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.

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 Regulation .09K 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).

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 Regulation .05B of this chapter and in making the computations required under Regulation .05B of this chapter, the administrator shall use the OREC prices for the OREC price schedule described in clause (a) of the definition of "OREC price schedule."

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 Regulation .11G(1)–(4) of this chapter (except to the extent modified pursuant to Regulation .11I 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).

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 3-year period commencing on the date the previously determined obligations were to take effect.

G. If the new estimated project COD will not occur before the end of 5 years after the original estimated project COD or if BOEM terminates the offshore wind project's lease, 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.

H. The Commission may withdraw this order if the project:

- (1) Is unable to obtain rights to a BOEM lease site;
- (2) Declares bankruptcy; or
- (3) Is unable to demonstrate to the Commission that it has diligently pursued and engaged in a continuous development and construction program to achieve project COD.

.17 Extension of OREC Price Schedule Beyond the Term.

A. Each qualified offshore wind project shall report all of the following information to the Commission within 2 years before the expiration of the term of an OREC price schedule:

(1) Anticipated PJM revenues for the project for the 5-year period immediately following expiration of the term of the OREC price schedule; and

(2) Anticipated project operating costs for the project for the 5-year period immediately following expiration of the term of the OREC price schedule.

B. Each qualified offshore wind project shall report all of the following information to the Commission within 2 years of expiration of an additional 5-year term extended under Public Utilities Article, §7-704.2(d), Annotated Code of Maryland:

(1) Anticipated PJM revenues for the project for the 5-year period immediately following expiration of the 5-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 5-year period immediately following expiration of the 5-year term extended under Public Utilities Article, §7-704.2(d), Annotated Code of Maryland.

.18 Reporting Requirements.

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 Regulation .02H of this chapter, until the project achieves project COD.

B. Any material change to the qualified offshore wind project shall be reported to the Commission within 30 days of the date of that decision and the Commission shall decide, in its discretion, whether further action is necessary, including but not limited to:

- (1) The capacity of the project;
- (2) The turbine model;
- (3) The design of the foundation or support structure;
- (4) The project COD; and
- (5) The decommissioning plan.

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.

.19 End of Term.

A. Upon either the termination of the term of an OREC price schedule or if further extensions of 5-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 5-year terms, the Commission may instruct the project to cause the administrator to distribute all funds remaining in 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 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.

.20 Severability.

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.

DAVID J. COLLINS
Executive Secretary
Public Service Commission

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

21.11.14 American-Manufactured Goods and Services — Preference

Authority: State Finance and Procurement Article, §12-101, Annotated Code of Maryland; [Ch. 593, Acts of 2010; Chs. 314, Acts of 2011] *Chs. 437 and 438, Acts of 2013*

Notice of Proposed Action

[14-211-P]

The Board of Public Works proposes to adopt new Regulation .04 under **COMAR 21.11.14 American-Manufactured Goods and Services — Preference**. This action was considered at a public meeting held on April 30, 2014, notice of which was published pursuant to State Government Article, §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to implement the procurement preference for American-manufactured goods.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Mary Jo Childs, Procurement Advisor, Board of Public Works, 80 Calvert St, Room 117, Baltimore, MD 21401, or call 410-260-7335, or email to maryjo.childs@maryland.gov, or fax to 410-974-5240. Comments will be accepted through August 11, 2014. A public hearing has not been scheduled.

.04 American-Manufactured Goods.

A. In this regulation, the following terms have the meanings indicated.

B. Terms Defined.

(1) “American-manufactured goods” means goods that are manufactured or assembled in the United States;

(2) “Emergency life safety and property safety goods” means any goods when provided for the installation in, as part of, or as an addition to a system designed to:

(a) Prevent, respond to, alert regarding, suppress, control, or extinguish an emergency or the cause of an emergency that threatens life or property; or

(b) Assist in evacuation in the event of an emergency that threatens life or property.

(3) “Emergency life safety and property safety goods” includes:

(a) Systems or items for or relating to:

- (i) Fire alarms;
- (ii) Fire sprinklers;
- (iii) Fire suppression;
- (iv) Fire extinguishing;
- (v) Security;
- (vi) Gas detection;
- (vii) Intrusion detection;
- (viii) Access control;
- (ix) Video surveillance and recording;
- (x) Mass notification;
- (xi) Public address;
- (xii) Emergency lighting;
- (xiii) Patient wandering;
- (xiv) Infant tagging; and
- (xv) Nurse call;

(b) Information technologies and telecommunications products and technologies that are used for the purposes listed in §B(2) of this regulation.

(4) “Goods” means tangible or movable personal property other than money or investment securities.

(5) “Information technologies and telecommunications products and technologies” means electronic information processing hardware or software used to generate, acquire, store, transform, process, retrieve, utilize, make available, transmit, or manipulate information or hardware or software used in the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means.

(6) “Public work” means a structure or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that:

- (a) Is constructed for public use or benefit; or
- (b) Is paid for wholly or in part by public money.

(c) “Public work” does not include, unless let to a contract, a structure or work whose construction is performed by a public service company under order of the Public Service Commission or other public authority regardless of:

- (i) Public supervision or direction; or
- (ii) Payment wholly or in part from public money.

(7) “Reasonably available quantities” means at least 90 percent of the goods procured by the public body are available within the public body’s delivery schedule.

(8) “Substantially less quality” means not in compliance with applicable safety and durability standards including warranty terms.

(9) “Unreasonable amount” means more than 5 percent over the lowest financial proposal or bid offering goods manufactured or assembled outside the United States.