



Case 15-E-0302

Offshore Wind Standard

Offshore Wind Implementation Plan Proposal

(Date: TBD)

Filed by New York Energy Research and Development Authority

Table of Contents

1.	Introduction and Background	3
2.	Implementation of Offshore Wind REC Voluntary Sales	3
2.1	Long-Term Contracting.....	4
2.2	Annual Voluntary OREC Pre-Sale	4
2.2.1	Annual OREC Pre-Sale Eligible Purchasers.....	5
2.2.2	Annual OREC Pre-Sale Inventory	5
2.2.3	Annual OREC Pre-Sale Price	6
2.2.4	Annual OREC Pre-Sale Process.....	6
2.2.5	Annual OREC Pre-Sale Allocation	7
2.2.6	Annual OREC Pre-Sale Invoices	7
2.3	Annual OREC Re-Sale	7
2.4	OREC Transfers.....	8
2.5	Transferability	8
3.	Implementation of OREC Load Share Obligation.....	8
4.	Special Participation	8
5.	LSE CES-Obligation and Reconciliation	9
5.1	LSE OREC Obligation	9
5.2	LSE OREC Rate	9
5.2.1	Initial Compliance Year	10
5.2.2	Load Component	11
5.3	Load Modifier Rate	11
5.4	Notification/Publication	11
5.5	OREC Obligation Payment Determination	11
5.6	CES-Obligated LSE Reconciliation	12
5.7	NYSERDA Agreements with LSEs	12
6.	Reporting Requirements.....	12
7.	Appendix A: OREC Purchase and Sale Agreement.....	13

1. Introduction and Background

New York State’s climate agenda calls for an affordable and just transition to a clean energy economy that creates family-sustaining jobs, promotes economic growth through green investments, and directs a minimum of 35 percent of the benefits to disadvantaged communities. New York is advancing a suite of efforts to achieve an emissions-free economy by 2050, including in the generation, buildings, transportation, and waste sectors.

In January 2018, NYSDERDA filed an Offshore Wind Policy Options Paper that launched regulatory proceedings culminating in the New York State Public Service Commission’s (PSC) issuance of the Phase 1 Order in July 2018.¹ The Phase 1 Order adopted the goal to procure 2,400 MW of offshore wind capacity by 2030. NYSDERDA launched its inaugural solicitation for offshore wind (ORECRFP18-1) in November 2018.

In July 2019, the Climate Act was signed into law and specifies many clean energy development requirements, including 9,000 MW of offshore wind by 2035. The Climate Leadership and Community Protection Act (Climate Act) also calls for an orderly and just transition to clean energy that creates jobs and to continue fostering a green economy. In January 2020, NYSDERDA filed a petition with the Commission, which noted that NYSDERDA will file an Implementation Plan that includes a description of the Load Serving Entity (LSE) OREC obligations and the form LSE contract.² In April 2020, the PSC published an Order Authorizing Offshore Wind Solicitation which instructed NYSDERDA to procure at least 1,000 MW of additional offshore wind capacity.³

In July 2020, NYSDERDA launched its second offshore wind solicitation (ORECRFP20-1) to procure up to 2,500 MW of offshore wind. This solicitation also included a complementary port facility infrastructure investment program to unlock private investments and backed by New York State funding. In July 2022, NYSDERDA launched its third offshore wind solicitation (ORECRFP22-1). In June 2024, NYSDERDA announced finalized contracts for the Empire Wind 1 and Sunrise Wind projects as a result of the fourth competitive offshore wind solicitation (ORECRFP23-1). Both the Empire Wind 1 and Sunrise Wind projects are under construction, along with the South Brooklyn Marine Terminal. In July 2024, NYSDERDA issued its fifth competitive offshore wind solicitation (ORECRFP24-1). NYSDERDA’s competitive solicitations are critical steps for bolstering the State’s growing large-scale renewable energy industry and part of a sequential approach to develop New York’s renewable energy supply chain in coordination with renewable energy projects.

2. Implementation of Offshore Wind REC Voluntary Sales

NYSDERDA proposes to offer Offshore Wind Renewable Energy Certificates (ORECs) for sale to the voluntary market. Revenues from such sales would be applied to offset the costs of the Offshore Wind Program and

¹ Case 18-E-0071, *In the Matter of Offshore Wind Energy, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement*, (Issued July 13, 2018), p. 6.

² Case 18-E-0071, *In the Matter of Offshore Wind Energy, Petition Regarding Offshore Wind Procurement*, (Filed January 28, 2020), p. 12.

³ Case 18-E-0071, *In the Matter of Offshore Wind Energy, Order Authorizing Offshore Wind Solicitation in 2020*, (Issued April 23, 2020), p. 2.

thereby reduce the financial obligations of New York ratepayers.⁴ As detailed below, NYSERDA proposes an OREC voluntary sale process that is very similar to the PSC-approved Tier 1 Renewable Energy Certificate (REC) voluntary sale process detailed in the Phase 5 Implementation Plan.⁵ Utilizing this approach for Offshore Wind will also provide insight into the demand for ORECs as the voluntary market continues to evolve. NYSERDA proposes ORECs would be offered at no less than NYSERDA's own net-levelized cost to procure, including any PSC-approved administrative adder. Currently, NYSERDA submits to the PSC, on an annual basis, a request for CES administrative funding which may include an administrative adder for the program.

Potential voluntary purchasers may include various organizations from the higher education and municipal government sectors, as well as energy service companies (ESCOs), businesses from the commercial and industrial sectors, health care organizations and brokerage firms, among others. Considering feedback received, NYSERDA proposes a hybrid approach for the voluntary sale of ORECs would be best, including a long-term contracting option, an annual OREC Pre-Sale and an annual OREC Resale, all described in greater detail below. This approach has already been implemented with the sale of Tier 1 RECs to the voluntary market starting in July 2024.

2.1 Long-Term Contracting

Through this proposal, NYSERDA would be able to enter into voluntary long-term contracts with creditworthy entities for the purchase of ORECs. The terms and conditions of the contracts would include, but would not be limited to contract length, OREC quantity, OREC price, and payment terms. The terms and conditions would be memorialized within the individual contracts. Under any voluntary long-term contract, participants would be required to purchase ORECs at no less than the NYSERDA net-weighted average cost to procure plus any administrative adder approved by the PSC for that compliance year. Any revenue NYSERDA receives from the long-term contracts would be recognized as Long-Term Contract Revenue for the purpose of the LSE OREC Obligation Reconciliation and, as such, would reduce the total cost of the OREC program to ratepayers. The OREC Reconciliation is discussed later in the Implementation Plan.

2.2 Annual Voluntary OREC Pre-Sale

NYSERDA recognizes that some entities may also want an alternative to long-term contracts. Therefore, NYSERDA proposes to offer an Annual Voluntary Pre-Sale of ORECs, covering a one-year period with a NYSERDA-projected OREC price. This sale derives its name from the fact that it would occur before the compliance year, thus offering voluntary purchasers an opportunity to secure OREC purchases for the upcoming compliance year.

Under this proposed process, NYSERDA would hold an Annual Voluntary Pre-Sale prior to the start of the next OREC compliance year. Through this Pre-Sale, NYSERDA would offer a percentage of the net expected OREC inventory for the following compliance year for sale. The length of the Pre-Sale period would be fourteen (14) days and proceed according to the OREC Pre-Sale Process Schedule as shown in Table 1

⁴ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Modifying Clean Energy Standard Tier 1 Obligations, (Issued April 20, 2023), p. 16.

⁵ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Phase 5 Implementation Plan, (Filed August 30, 2023).

below. NYSERDA would conduct Annual Voluntary Pre-Sales throughout the life of the OREC Program. NYSERDA would announce the quantity of ORECs available for sale, Pre-Sale price, and Pre-Sale process no later than July 15 each year through the end of the OREC program. If changes to the sale timing or duration are needed, NYSERDA proposes that the changes be filed with the Secretary of the PSC.

Table 1: Sample of Forward OREC Pre-Sale Process Schedule

Trading Period	Voluntary OREC Pre-Sale Offer Announcement	Voluntary OREC Pre-Sale Process Conclusion
YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days
YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days
YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days
YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days
YEAR	Between July 1, YEAR and July 15, YEAR	Announced Start Date+ 14 calendar days

2.2.1 Annual OREC Pre-Sale Eligible Purchasers

Voluntary purchasers including private businesses, such as commercial real estate companies, state entities, hospitals, universities, municipalities, and corporations and organizations such as non-profits with ESG goals, as well as LSEs and Community Choice Aggregations (CCAs) (collectively, “Purchasers”), would be eligible to participate in the proposed NYSERDA OREC Annual Pre-Sales. This proposed approach would be in alignment with the potential to mitigate OREC costs to ratepayers by supporting the sale of all ORECs purchased by NYSERDA in the voluntary market.

NYSERDA would hold informational sessions and webinars with specific details for potential purchasers prior to the proposed Annual Pre-Sale. These sessions and webinars would include details about the Pre-Sale and how potential purchasers would be able to register and participate. This is the current approach utilized to inform the market for the sale of Tier 1 RECs. It is anticipated that these efforts would increase due to the anticipated demand for ORECs.

2.2.2 Annual OREC Pre-Sale Inventory

The available inventory for proposed Annual Voluntary Pre-Sale would be the total expected OREC supply minus the quantity needed to fulfill OREC voluntary long-term purchase contracts multiplied by an eligible sale percentage (less than 100%), to help ensure that NYSERDA has sufficient ORECs to fulfill Voluntary ORECs Pre-Sale orders. NYSERDA would coordinate with New York State Department of Public Service (DPS) Staff to review the determination for the eligible sale percentage.

Example:

*Net Annual OREC Inventory = (Total Expected OREC Supply – Long-Term Contract Demand) * Eligible Sale Percentage*

Where:

Long-Term Contract Demand = The forecasted total number of ORECs for that year contracted under long-term contracts

2.2.3 Annual OREC Pre-Sale Price

The proposed Voluntary OREC Pre-Sale price would be based on the projected net-weighted average cost of ORECs after subtracting the voluntary long-term contract commitments, plus any PSC-approved administrative adder. NYSDERDA requests flexibility to transition to an auction process in the future. If approved, NYSDERDA would have the ability to pursue an auction mechanism that could include variable pricing. It is in the best interest of ratepayers for NYSDERDA to have the ability to pursue a potential auction structure that could meet the needs of the market, maximizes voluntary sales, and minimizes ratepayer obligations necessary to achieve the goals of the Climate Act and the CES. NYSDERDA would have the ability to both directly offer ORECs for Pre-Sale at the net-weighted average cost to procure or to conduct Pre-Sale auctions as described herein and would seek additional approval for other potential sale mechanisms once they are more fully developed. NYSDERDA would have the ability to implement a Pre-Sale auction structure that would sell at or above NYSDERDA's forecasted net-weighted average cost to procure ORECs for the upcoming compliance year. Under such a structure, the forecasted OREC price would serve as an auction reserve price for blocks of ORECs that voluntary Purchasers may bid on for a designated period. This auction mechanism would enable NYSDERDA to minimize ratepayer impacts from the program by maximizing the potential purchase price for ORECs.

Example:

Net Weighted Average Price = Net Annual OREC Overall Cost / Net Annual OREC Inventory

Where:

Annual OREC Overall Cost = Projected Total Overall Cost – Long-Term Contract Revenue

Net Annual OREC Inventory = (Total Expected OREC Supply – Long-Term Contract Demand)

NYSDERDA acknowledges that the actual weighted average cost of ORECs purchased by NYSDERDA during the calendar year may differ from its Pre-Sale projection. In determining the Pre-Sale price of ORECs, NYSDERDA would sum the projected cost and annual MWhs of compliant energy delivered by the OREC projects to calculate the projected weighted average cost. No reconciliations would be made for the Voluntary OREC Pre-Sale price to the actual weighted average price for purchasers participating in the Pre-Sale. Any revenue or deficit stemming from the Voluntary OREC Pre-Sale would be included during the annual compliance reconciliation process discussed later in this Implementation Plan. This is the same process used for Tier 1 REC Pre-Sale per the Phase 5 Implementation Plan.⁶

2.2.4 Annual OREC Pre-Sale Process

For the proposed Voluntary OREC Pre-Sale, NYSDERDA would announce to the market the timing of the Voluntary OREC Pre-Sale, as well as the following information:

- The OREC inventory available for the Pre-Sale;
- The Pre-Sale reserve price at which the ORECs would be offered;
- Potential minimum order quantity or block amounts.

⁶ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Phase 5 Implementation Plan, (Filed August 30, 2023).

NYSERDA would use the New York Generation Attribute Tracking System (NYGATS) to collect orders from Purchasers that desire to participate in a Pre-Sale. NYSERDA may also evaluate whether an online auction tool should be implemented. Participating Purchasers would be required to agree to the terms and conditions of Pre-Sale when the order is submitted, i.e., at the point of sale.

2.2.5 Annual OREC Pre-Sale Allocation

Similar to the process that was approved by the PSC for Voluntary Tier 1 Sales and Tier 2 REC Re-Sale, NYSERDA would neither limit nor guarantee a minimum number of ORECs to purchasers participating in the Voluntary OREC Annual Pre-Sale process. The OREC Pre-Sale would be a voluntary process, and the ORECs would be purchased to, among other things, back voluntary products/obligations or sustainability claims. Purchases made during the Pre-Sale do not offset LSE compliance obligations under the OREC program.

NYSERDA would allocate the ORECs based upon the following:

- If the total demand for ORECs were to be below the expected Voluntary ORECs Pre-Sale inventory, each Purchaser would be allocated a quantity of ORECs equal to their order quantity; or
- If total demand were to be above the expected OREC inventory, each Purchaser would receive a pro-rata share of ORECs based upon their total order quantity.

2.2.6 Annual OREC Pre-Sale Invoices

Invoices would be distributed within approximately seven (7) business days from the end of each Pre-Sale period. The Purchasers' payment terms would be full payment within thirty (30) calendar days. If the full funds are not transferred to NYSERDA according to the payment terms, NYSERDA would reserve the right to cancel the Purchaser's order.

The proceeds from the annual Voluntary OREC Pre-Sale would be considered OREC annual revenue and included in the reconciliation process discussed later in this Implementation Plan.

2.3 Annual OREC Re-Sale

NYSERDA requests the ability to hold a Voluntary OREC Re-Sale at the end of each compliance year if there were sufficient demand for such and NYSERDA were to have a sufficient volume of ORECs. At this juncture, NYSERDA believes that the proposed Voluntary OREC Pre-Sale approach would meet the needs of both the prospective market participants and NYSERDA. It is possible that there could be additional sufficient demand for ORECs from voluntary Purchasers after the end of the calendar year. NYSERDA would consult with DPS Staff before initiating any such Voluntary Re-Sales.

If NYSERDA were to hold a Voluntary OREC Re-Sale, the ORECs would be priced at the actual weighted average price incurred by NYSERDA, plus any applicable administrative adder. NYSERDA would use the same sale methodologies for Re-Sale as it will for Pre-Sale as described above, with one substantive difference, i.e., NYSERDA would have the ability to design an auction process that would sell at or above NYSERDA's actual (rather than forecasted) net-weighted average cost to procure ORECs for the compliance year. This auction mechanism would enable NYSERDA to minimize ratepayer impacts from the program by maximizing the potential purchase volume and price for OREC for sale to the voluntary

market. Any revenue from the proposed Voluntary OREC Re-Sale will be treated as OREC annual sale revenue and included in the reconciliation process discussed later in this Implementation Plan.

2.4 OREC Transfers

Voluntary OREC transfers via NYGATS from NYSERDA to a voluntary Purchaser's NYGATS account would occur after the OREC compliance year is complete. This proposed process would occur for ORECs under long-term contracts, Annual Pre-Sale purchases, and Annual Re-Sale purchases. Account holders would have fourteen (14) days to accept the pending transfer from NYSERDA per the NYGATS Operating Rules.

2.5 Transferability

NYGATS account holders, including Voluntary Purchasers, would be allowed to transfer Voluntary OREC purchased from NYSERDA. ORECs could not be transferred outside of NYGATS which is consistent with other programs.

3. Implementation of OREC Load Share Obligation

The Offshore Wind Standard Order requires LSEs to purchase from NYSERDA their load share of the OREC purchased by NYSERDA annually.⁷ NYSERDA proposes the process would be based upon the "pay-as-you-go" model that was implemented by NYSERDA beginning with the PSC approval of the ZEC Implementation Plan.⁸ Under the "pay-as-you-go" model, a uniform wholesale per MWh charge would be applied to each LSE's actual wholesale load to calculate its monthly OREC obligation payments. Under this process, LSEs would be required to make payments to NYSERDA based on their load share and the quantity and cost of ORECs purchased by NYSERDA each year, less any sales made through the voluntary sales process described earlier in this Implementation Plan. This approach would ensure NYSERDA has the necessary funds to meet its contractual obligations to OREC suppliers while procuring ORECs to fulfill the goals of the CES.

4. Special Participation

The New York Power Authority (NYPA) and Long Island Power Authority (LIPA) are voluntary participants in the CES.

NYPA's activities support the achievement of the CES goals, including through operation of the state's large-scale hydropower assets, its development of transmission and new renewable resources, and by participating in the Zero Emissions Credit program.

LIPA supports the achievement of the CES goals through its own programs and by participating in some NYSERDA-administered CES programs. Similar to LIPA's participation in the Zero Emissions Credit Requirement (ZEC-R), LIPA may participate in OREC through established NYSERDA mechanisms. Voluntary participation in OREC, along with other CES tiers, allows for the equitable allocation of costs associated with the achievement of the Climate Act goals.

⁷ Case 18-E-0071, In the Matter of Offshore Wind Energy, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement, (Issued July 12, 2018), p.29.

⁸ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Clean Energy Standard Zero Emissions Credit (ZEC) Implementation Plan, (Filed August 3, 2018).

NYSERDA, LIPA, and Staff are currently discussing whether LIPA will elect to participate in the Off-Shore Wind (OSW) obligation, as LIPA already does with respect to the ZEC program. To the extent that LIPA agrees to participate, NYSERDA will treat LIPA in a similar manner as IOUs and in the Tier 1 program. Specifically, NYSERDA is aware that LIPA procures RECs through its power purchase agreements with the South Fork offshore wind generator. NYSERDA proposes to “purchase” these RECs from LIPA and add these offshore RECs to the ORECs purchased by NYSERDA to determine the total OREC obligation for all LSEs. This approach allows LIPA to receive credit for their purchase of RECs from the offshore generator, and for the cost of ORECs to be shared amongst all jurisdictional ratepayers, as the environmental attributes these RECs represent are a shared societal benefit. This approach is consistent with the other programs of the CES. NYSERDA proposes to consult with DPS Staff when determining the purchase price. LIPA would then be required to participate as an LSE and purchase its load ratio share of the ORECs NYSERDA procures. This proposed process is in alignment with the OSW Order. If LIPA elects to participate in the OSW obligation as described, NYSERDA and LIPA would contract for the purchase of the ORECs by NYSERDA from LIPA to effectuate the new process. LIPA also has the option to retain its RECs from the South Fork project and/or purchase ORECs from NYSERDA through a long-term contract or the annual sales. LIPA and NYSERDA, in consultation with DPS Staff, would contract as necessary to reflect the approach that LIPA may choose.

5. LSE CES-Obligation and Reconciliation

This section includes NYSERDA’s proposal to reconcile LSE obligations under the proposed load share framework set forth in this Implementation Plan. This proposed approach is very similar to the processes currently utilized for reconciliation of other CES Tiers. NYSERDA would execute form contracts with LSEs, as set forth in Appendix A to this petition, that would memorialize the LSE load share obligation requirements described below.

5.1 LSE OREC Obligation

This section addresses how each LSE’s initial OREC obligation would be calculated and how LSEs would remit OREC obligation payments. Under the proposed method, a uniform wholesale per MWh charge would be applied to each LSE’s actual wholesale load to calculate their monthly OREC obligation payments. This “pay-as-you-go” payment methodology was originally adopted through the ZEC Implementation Order.⁹ It would provide NYSERDA with necessary operating liquidity to continue to purchase ORECs and provides LSEs with a more uniform payment structure.

5.2 LSE OREC Rate

Each year, NYSERDA would determine, in collaboration with DPS Staff, the dollar per MWh charge (LSE OREC Rate) owed by each LSE for the next compliance year of the OREC program. The LSE OREC Rate would be used by all LSEs and NYSERDA to determine the monthly payment an LSE would be responsible for making to NYSERDA. The LSE OREC Rate would be a wholesale rate that would be applied to the wholesale load data NYSERDA receives from the New York Independent System Operator (NYISO).¹⁰ The

⁹ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Approving Zero-Emissions Credit Implementation Plan with Modifications, (Issued September 20, 2019).

¹⁰ It should be noted that the LSE OREC Rate is based on wholesale purchases and not retail sales; the wholesale rate must be adjusted to account for delivery losses that occur between the LSE’s wholesale purchases from the NYISO and retail sales to customers.

cost component of the LSE OREC Rate would be based on the total forecasted cost for NYSERDA to purchase ORECs, including any administrative adder. The load component of the LSE OREC Rate would be based on statewide forecasted load. The LSE OREC Rate to be paid by each LSE for the compliance year would be calculated according to the following formula:

$$\text{LSE OREC Rate} = (\text{NYSERDA's estimated total cost to procure OREC} - \text{Long-Term Contract Revenue} - \text{OREC Annual Pre-Sale Revenue}) / \text{Forecasted statewide electric load}^{11}$$

The proposed “pay-as-you-go” payment methodology relies on an LSE’s monthly wholesale load requirements for their retail customers. NYSERDA would utilize Version 1¹² of the total LSE load data, as settled by the NYISO each month, as a basis for each LSE’s monthly payment to NYSERDA.

An LSE’s monthly OREC payment obligation would be calculated using the LSE OREC Rate, the number of MWh the LSE served using the NYISO Version 1 load data, and a Load Modifier Rate, according to the following formula:

$$\text{LSE OREC monthly payment obligation} = (\text{LSE OREC Rate}) * (\text{LSE's Version 1 MWh}) * (\text{Load Modifier Rate})$$

A final reconciliation would occur in June after the close of each year as described later in this Implementation Plan.

The proposed cost component of the LSE OREC Rate would be the cost for NYSERDA to procure ORECs plus any PSC-approved administrative adder less any revenue made through the voluntary sale process. It should be noted that NYSERDA ORECs can vary in both quantity and price, which introduces a degree of uncertainty. NYSERDA recognizes that with the implementation of index-priced RECs, there could be a variation between the forecasted OREC price and the actual price NYSERDA pays for ORECs. NYSERDA would review the OREC cost estimate forecast with DPS Staff to ensure concurrence, in an effort to minimize the variation between the estimated cost and the actual cost that could be utilized in the annual OREC reconciliation. In short, the cost component of the LSE OREC rate is the estimated cost NYSERDA would be expected to incur to purchase ORECs during the compliance period. Any discrepancies between projected costs and actual costs would be settled during the annual reconciliation process discussed later in this Implementation Plan.

5.2.1 Initial Compliance Year

NYSERDA recognizes that the first OREC project to come online could do so late in a calendar year, which may be prior to the commencement of the purchase and sale obligations under the OREC Form Agreement, creating a stub year. NYSERDA proposes that NYSERDA’s cost to purchase any ORECs generated in that stub year could be included in the calculation of the LSE ORECs Rate and reconciliation for the *following* year rather than including it in the LSE ORECs Rate and/or the reconciliation of costs for the year the project begins operation. NYSERDA proposes that the ORECs associated with the stub year be retired by NYSERDA on behalf New York State ratepayers due to the timing associated with the NYGATS

¹¹ Forecasted statewide electric load is an estimate by NYSERDA and DPS Staff based on information from the NYISO’s *Load & Capacity Data Report (NYISO Gold Book)*. <https://www.nyiso.com/documents/20142/2226333/2023-Gold-Book-Public.pdf>

¹² NYISO Version 1 load data is part of the NYISO settlement process. This is the initial monthly billing period data from the NYISO.

settlement process.

5.2.2 Load Component

The proposed approach would place additional importance on load forecasting, as such forecasts would be used to determine the LSE OREC Rate. If actual statewide load were to be less than the forecasted statewide load used to determine the LSE OREC Rate, NYSERDA would be short in its collections to purchase ORECs. Conversely, if the actual statewide load were to exceed the forecasted statewide load, excess funds would be collected by NYSERDA from LSEs.

To provide further process transparency, NYSERDA and DPS Staff would use a published forecast, such as the New York Control Area Baseline Energy and Demand Forecasts that reflects impacts of energy savings programs & behind-the-meter generation, which is published annually in the NYISO's *Load and Capacity Data*, commonly referred to as the Gold Book, as the basis of determining the statewide load component.

5.3 Load Modifier Rate

Each of the IOUs and some of the municipal utilities have load modifiers which are added to their NYISO Version 2 reported load. As part of the ZEC Implementation Plan, NYSERDA conferred with the affected entities and determined that a load modifier rate could be used to adjust their monthly payments to NYSERDA. An annual load modifier rate, based on load modifier generation data from the previous year, would also be applied in this proposal. In consultation with NYSERDA and DPS Staff, affected LSEs would calculate their load modifier rate prior to the start of each compliance year. Applying the load modifier rate would better estimate the affected entities load, with the goal of reducing reconciliation amounts.

5.4 Notification/Publication

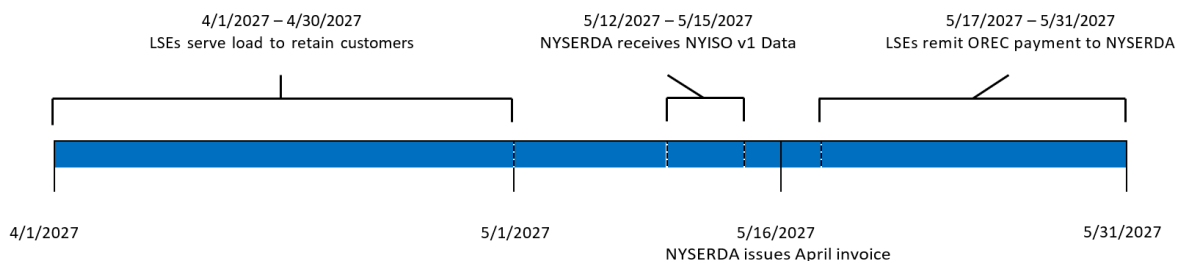
NYSERDA would notify each LSE of the LSE OREC Rate for the upcoming calendar/compliance year as well as any load modifier adjustments and a load modifier rate, if applicable, after it has been calculated by NYSERDA and DPS Staff. This notification would occur after PSC approval of any NYSERDA administrative adder for the compliance year but at least by November 1 prior to the start of the compliance year. NYSERDA would also publish the LSE OREC Rate on the NYSERDA website.

5.5 OREC Obligation Payment Determination

The proposed OREC obligation payment determination would utilize the “pay-as-you-go” payment methodology developed under the ZEC Implementation Plan.¹³ This process relies on an LSE’s monthly wholesale load requirements for their retail customers. NYSERDA would utilize Version 1 of the total LSE load data, as settled by the NYISO each month, as a basis for each LSE’s monthly payment to NYSERDA. NYSERDA typically receives monthly load data from the NYISO on or around the 15th day of the following month. NYSERDA would then determine the LSE’s OREC monthly payment obligation to NYSERDA using the formula specified and issue an invoice as depicted in Figure 1. LSEs would submit their payment to NYSERDA within fifteen (15) days from the issuance of the invoice. This proposed “pay- as-you go” method would likely result in LSEs having a varying payment obligation each month.

¹³ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, *Final Zero Emissions Credit Implementation Plan*, (Issued November 14, 2019), p. 2.

Figure 1: Timeline for LSE Payment Obligation



5.6 CES-Obligated LSE Reconciliation

The following proposed reconciliation process would occur after the OREC compliance year ends on December 31 each year. NYSERDA would reconcile financial obligations to OREC contracted suppliers. Next, NYSERDA would offset the total financial obligation to OREC contracted suppliers with any OREC Long-Term Contract Revenue, as well as any OREC Annual Pre-Sale or Re-Sale revenue, to determine the net LSE financial obligation. NYSERDA would reconcile the funds collected from each LSE to the net LSE financial obligation necessary to meet their requirement based on the Version 2 load data that is provided from the NYISO and recorded in NYGATS. This load would be adjusted for load modifiers. This reconciliation would account for the actual adjusted statewide load, the actual number of OREC purchased by NYSERDA, the actual price paid by NYSERDA for those OREC, and any OREC revenue from the long-term or annual voluntary sales. NYGATS account holders, including LSEs, would not be allowed to transfer OREC transferred from NYSERDA for compliance purposes as a result of the reconciliation process.

5.7 NYSERDA Agreements with LSEs

NYSERDA would establish new agreements with LSEs to reflect the terms of the issued Order. The contracts would be modified as needed in subsequent years. An OREC Form Agreement is attached to this Implementation Plan as Appendix A. NYSERDA proposes that all LSEs be required to accept the agreement within sixty (60) days of an Order by the Public Service Commission approving this Implementation Plan. NYSERDA would inform LSEs regarding acceptance procedures within thirty (30) days of filing the Final Implementation Plan.

6. Reporting Requirements

ORECs will henceforth be included in NYSERDA's CES progress reports to DPS, including the biennial review, NYSERDA's quarterly and annual financial administrative reporting, and other applicable filings.¹⁴

¹⁴ Case 18-E-0071, *In the Matter of Offshore Wind Energy*, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement, (Issued July 12, 2018), p. 63.

7. Appendix A: OREC Purchase and Sale Agreement

OFFSHORE WIND RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT

This Agreement (the “Agreement”) is made as of [_____] (“Effective Date”) by and between the New York State Energy Research and Development Authority, a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203 (“NYSERDA”), and the Load Serving Entity entering this Agreement (“LSE Buyer”). NYSERDA and LSE Buyer are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

RECITALS:

WHEREAS, the New York State Public Service Commission (“PSC”) through its “Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement”¹⁵ (“Phase 1 Order”) established the Offshore Wind (OSW) Standard and

WHEREAS, the Phase 1 Order directs NYSERDA to administer a competitive Request for Proposals (“RFP”) for the purchase of Offshore Wind RECs (ORECs) (defined below) from eligible generating facilities; and

WHEREAS, the Phase 1 Order authorizes NYSERDA to enter into agreements with eligible facilities receiving competitive awards under the OSW RFP; and

WHEREAS, the Phase 1 Order directed that each LSE purchase ORECs from NYSERDA at a uniform wholesale per MWh charge in an amount based upon each LSE Buyer’s proportional load share; and

WHEREAS, the [_____] ¹⁶ approved this form of agreement for the procurement of ORECs by LSEs from NYSERDA; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, which the Parties agree is sufficient, and the Parties, intending to be legally bound, agree as follows:

ARTICLE 1: DEFINITIONS

1.1 Definitions. In addition to any other terms defined herein, the following terms shall have the meaning ascribed to them below:

- (a) “Administrative Adder” means the total dollar amount, of any adder or other charge approved by the Commission to be paid by LSEs to NYSERDA in their purchases from NYSERDA of ORECs.
- (b) “Agreement” means this Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement, including Exhibits A ([Standard Terms and Conditions for All NYSERDA Agreements](#)); B ([NYSERDA Prompt Payment Policy Statement](#))¹⁷; all of which are incorporated herein and made part hereof.

¹⁵ Case 18-E-0071, *In the Matter of Offshore Wind Energy, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement*, (Issued July 12, 2018).

¹⁶ Reference will be to the order approving the implementation plan, if and when approved.

¹⁷ Available at: <https://www.nyserdanyc.gov/Funding-Opportunities/Standard-Forms-and-Agreements>

- (c) “Annual OREC Obligation Amount” shall be calculated as an amount equal to the sum of (i) the Total OREC Net Expenditure plus any approved (ii) Administrative Adder, multiplied by (iii) the LSE Buyer Load Share. Restated as a formula, Annual OREC Obligation Amount = (i + ii) * iii
- (d) “Annual OREC Quantity” shall be calculated as the quantity of ORECs equal to the product of (i) the Total Annual NYSERDA Retained ORECs multiplied by the (ii) LSE Buyer Load Share.
- (e) “Compliance Year” shall mean January 1 to December 31 of each year during which NYSERDA is purchasing ORECs.
- (f) “Annual Settlement Payment” shall mean the final settlement payment due to either LSE Buyer or NYSERDA as calculated at the end of each Compliance Year pursuant to Section 2.7.
- (g) “Energy Services Company” or “ESCO” means any eligible competitive energy services company operating in New York State pursuant to the Uniform Business Practices approved by the PSC.
- (h) “Load Modifier” means the adjustment made by certain LSEs to account for the fact that NYISO data may not accurately capture the load in New York State served by those LSEs due to some of such load being served other than through the NYISO wholesale market.
- (i) “Load Modifier Projection” means the estimated Load Modifier, if any, applicable to the LSE Buyer as determined by NYSERDA each Compliance Year in accordance with the Clean Energy Standard (CES) Orders¹⁸ based on information provided by LSE Buyer.
- (j) “Load Serving Entity” or “LSE” means any entity or individual that sells retail commodity electricity supply to an end-use customer located in New York State, including any ESCO and each electric distribution company regulated by the PSC, serving in their roles as electric commodity supplier of last resort, jurisdictional municipal utilities, community choice aggregators not otherwise served by an ESCO, customers purchasing power directly from NYISO, and Long Island Power Authority (“LIPA”) and the New York Power Authority (“NYPA”) to the extent LIPA and NYPA have voluntarily agreed to act as LSEs.
- (k) “LSE Buyer Load Share” means the percentage of the total electric energy load in New York State that is served by LSE Buyer, incorporating any adjustment to NYISO load share data based on the LSE Buyer’s Load Modifier (if applicable), during such Compliance Year.
- (l) “LSE OREC Rate” means the per MWh charge used by all LSEs and NYSERDA as calculated by the formula adopted in the [_____] ¹⁹ and as posted on NYSERDA’s website, including any administrative adder approved by the Commission.
- (m) “Monthly Obligation Payment” means the monthly payment due from LSE Buyer to NYSERDA,

¹⁸ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard, (Issued August 1, 2016), as modified further through a series of Orders under Case 15-E-0302 including Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard, (Issued October 15, 2020).

¹⁹ Reference will be to the order approving the implementation plan, if and when approved.

calculated as the product of (i) the wholesale load served by LSE Buyer, in MWh, for the applicable month based on NYISO Version 1 data or such other data generally used by NYGATS for similar purposes at such time, as adjusted by the Load Modifier Projection, if any applicable to the LSE Buyer, multiplied by (ii) the LSE OREC Rate.

- (n) “NYGATS” means the New York Generation Attribute Tracking System, the tracking system that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported and consumed within New York State, as a basis for creating tradable generation attribute certificates, including ORECs.
- (o) “NYGATS Operating Rules” means the rules governing the operation of the NYGATS by NYSERDA and its designated NYGATS Administrator, and the participation in and use of the NYGATS by users. The Operating Rules describe how the system is operated and delineate the roles, requirements and responsibilities of all parties.²⁰
- (p) “NYISO” means the New York Independent System Operator.
- (q) “New York State Public Service Commission” or “PSC” means the commission duly authorized to operate in New York State pursuant to Articles 1 and 2 of the Public Service Law.
- (r) “Offshore Wind RECs (ORECs)” means renewable energy certificates generated by NYGATS representing the environmental attributes associated with electrical energy produced by OREC eligible electric generation sources. Each OREC represents the environmental attributes associated with one (1) megawatt-hour of electrical energy.
- (s) “Total Annual NYSERDA Retained ORECs” means the total number of ORECs purchased by NYSERDA during the Compliance Year minus the number of ORECs sold by NYSERDA during such Compliance Year.
- (t) “Total OREC Net Expenditure” shall mean the total dollars expended by NYSERDA to purchase ORECs during the Compliance Year minus all revenues received by NYSERDA from Voluntary Sales of ORECs during such Compliance Year. If NYSERDA purchases ORECs from a project that comes online in the year prior to the commencement of the purchase and sale obligations pursuant to Section 2.6, the Total OREC Net Expenditure of the immediately following Compliance Year (i.e., the first Compliance Year in which such purchase and sale obligations apply) shall include the total dollars expended by NYSERDA to purchase those ORECs.²¹
- (u) “Voluntary Sales” means any sales of ORECs by NYSERDA other than those made for purposes of Offshore Wind compliance.

ARTICLE 2: PURCHASE AND SALE OF ORECS

- 2.1 **Procurement.** Subject to the terms and conditions of this Agreement, (a) NYSERDA agrees to sell to LSE Buyer, and LSE Buyer agrees to purchase from NYSERDA, the Annual OREC Quantity of ORECs in

²⁰ Available at: <https://www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents>

²¹ Note to Draft: As described in Section 5.2.1. of the Implementation Plan, costs associated with ORECs generated during a stub year will be included in the costs for the following year.

each Compliance Year and (b) LSE Buyer agrees to pay the Annual OREC Obligation Amount for such ORECs. LSE Buyer shall pay the Monthly Obligation Payment each month in accordance with the provisions below, and the Parties shall carry out the settlement and reconciliation process described in Section 2.7 each Compliance Year.

- 2.2 Transfer. Upon conclusion of the settlement and reconciliation process described in Section 2.7, NYSERDA will transfer in NYGATS to LSE Buyer, ORECs for which LSE Buyer has provided payment to NYSERDA for purposes of the Offshore Wind Standard compliance in accordance with this Agreement.
- 2.3 Monthly Invoicing. NYSERDA will provide invoices to the LSE Buyer on a monthly basis for the Monthly Obligation Payment.
- 2.4 Monthly Payments. Payments in the amount of the Monthly Obligation Payment shall be due to NYSERDA within fifteen (15) days of the invoice date. Any and all payments due to NYSERDA shall be made by wire/ACH payment using electronic banking information provided by NYSERDA. When making payment, LSE Buyer shall include the Customer ID that NYSERDA previously sent to LSE Buyer by e-mail and available in NYGATS.
- 2.5 Taxes/Fees. NYSERDA shall pay any taxes or other fees, if any, imposed on the creation of ORECs in NYGATS.
- 2.6 Term. The purchase and sale obligations under this Agreement shall commence in Compliance Year 202[7] and remain in effect until the date on which all of NYSERDA's obligations to purchase ORECs pursuant to agreements entered into in accordance with ORECs of the Offshore Wind Standard have expired or been terminated.
- 2.7. Annual Settlement. After the required data becomes available following each Compliance Year, the Parties will undertake the following on a timely basis:
 - (a) NYSERDA shall calculate LSE Buyer's Annual OREC Obligation Amount for each Compliance Year based on the NYISO Version 2 of the LSE load data or such other data generally used by NYGATS for similar purposes at such time.
 - (b) Should the aggregate amount of Monthly Obligation Payments paid by LSE Buyer in a Compliance Year exceed the Annual OREC Obligation Amount for that Compliance Year, NYSERDA shall pay LSE Buyer the difference between such amounts.
 - (c) Should the aggregate amount of Monthly Obligation Payments paid by LSE Buyer in a Compliance Year be less than the Annual OREC Obligation Amount for that Compliance Year, LSE Buyer shall pay NYSERDA the difference between such amounts.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

- 3.1 NYSERDA Representations and Warranties. NYSERDA hereby represents and warrants to LSE Buyer as follows:
 - (a) NYSERDA has and, at all times during the Term will have, all necessary power and authority to execute this Agreement and to perform its obligations hereunder.

- (b) The execution of and performance under this Agreement by NYSERDA has been duly authorized by all necessary action and does not violate any of the terms or conditions of NYSERDA governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to NYSERDA. This Agreement constitutes the valid and binding obligation of NYSERDA enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.
- (c) There is no pending or (to NYSERDA's knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects NYSERDA's ability to perform its obligations under this Agreement.
- (d) The OREC payments made by LSE Buyer to NYSERDA hereunder shall be made for compliance under the Phase 1 Order including the [_____] ²².
- (e) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NYSERDA EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

3.2 LSE Buyer Representations and Warranties. LSE Buyer hereby represents and warrants to NYSERDA as follows:

- (a) LSE Buyer is duly organized, validly existing and in good standing and has the requisite power and authority to own, lease and operate its properties and to carry on its business as being conducted on the Effective Date. LSE Buyer has, and at all times during the Term will have, all necessary power and authority to execute this Agreement and to perform its obligations hereunder.
- (b) The execution of and performance by LSE Buyer under this Agreement has been duly authorized by all necessary action and does not violate any of the terms or conditions of LSE Buyer's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to LSE Buyer. This Agreement constitutes the valid and binding obligation of the LSE Buyer enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.
- (c) There is no pending or (to LSE Buyer's knowledge) threatened litigation or administrative proceeding against LSE Buyer that materially and adversely affects LSE Buyer's ability to perform its obligations under this Agreement.
- (d) LSE Buyer has, and at all times during the Term will use reasonable efforts to maintain, the financial capability to perform its obligations hereunder.

²² Reference will be to the order approving the implementation plan, if and when approved.

- (e) LSE Buyer is an Account Holder as defined in the NYGATS Operating Rules.

ARTICLE 4: EVENTS OF DEFAULT

- 4.1 Events of Default. For purposes of and during the Term, each of the following shall constitute an event of default ("Event of Default") by a Party:
- (a) if a Party materially breaches any or all of its obligations as described in this Agreement and such breach is not cured within fifteen (15) Business Days of written notice of such breach from the other Party;
 - (b) if any representation or warranty made by a Party in Article 3 of this Agreement proves to have been misleading or false in any material respect when made; and/or
 - (c) if a Party:
 - (i) makes an assignment or any general arrangement for the benefit of its creditors;
 - (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it;
 - (iii) otherwise becomes bankrupt or insolvent (however evidenced); or
 - (iv) becomes unable to pay its debts as they become due.

ARTICLE 5: REMEDIES UPON DEFAULT

- 5.1 Remedies. Upon an Event of Default, the non-defaulting Party may (a) terminate this Agreement upon written notice to the defaulting Party, (b) withhold any payments due in respect of this Agreement, (c) set off any payments due against any other credits or payments under other agreements between the Parties, (d) withhold the transfer of ORECs to the defaulting Party, and/or (e) exercise its legal rights to secure payment of amounts due and owing to the non-defaulting Party by the defaulting Party. Notices by LSE Buyer pursuant to this section shall be served on NYSERDA and the PSC. NYSERDA may enforce this Agreement and pursue the collection of any unpaid portion of the Monthly Obligation Payment, Annual Settlement Payment or any other amounts due to NYSERDA under this Agreement by referring the matter to the New York State Attorney General or by any other legal means.
- 5.2 Exclusive Remedy. The remedies set forth in this Article 5 shall be the sole and exclusive remedies of the respective parties in the event of a default, and a party's liability shall be limited as set forth in this section. All other remedies or damages at law are hereby waived.
- 5.3 Limitation of Liability. In the event of a default, the defaulting party's liability shall be limited as set forth herein. In no event shall any other liability be incurred by either Party for any obligations that arise under this Agreement, including (but not limited to) liability for consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise.

ARTICLE 6: NOTICES

- 6.1 Notices.
- (a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (1) via certified or registered United States mail, return receipt requested;
- (2) by personal delivery;
- (3) by expedited delivery service; or
- (4) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

To LSE Buyer:	At address, electronic mail addresses confirmed through prior communications
To NYSERDA:	NYSERDA Attn: Office of the General Counsel 17 Columbia Circle Albany, New York 12203-6399 Email address: ceslegal@nyserda.ny.gov
With a copy to:	NYSERDA Attn: Large Scale Renewables 17 Columbia Circle Albany, New York 12203-6399 Email address: ces@nyserda.ny.gov

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt of an email acknowledgement of receipt.
- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

6.2 The addresses for notice and payment specified in Section 6.1 may be changed from time to time by written notice by either Party to the other Party without amendment of this Agreement.

ARTICLE 7: MISCELLANEOUS

- 7.1 Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, or strikes. In the event that such failure or delay occurs, the claiming Party shall notify the other Party of the occurrence thereof as soon as possible, shall use reasonable efforts to resume performance as soon as possible, and shall regularly consult with the other Party during the pendency of the force majeure event. In the event that the force majeure event lasts more than forty-five (45) days, NYSERDA may terminate this Agreement with no further obligation or liability to LSE Buyer other than to transfer to LSE Buyer for OREC compliance purposes any ORECs for which

LSE Buyer has made payment prior to termination.

- 7.2 Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced.
- 7.3 Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.
- 7.4 Forward Contract. Each Party represents and warrants to the other that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, that this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be “contractual rights” as provided for in 11 U.S.C. § 556 as that provision may be amended from time to time.
- 7.5 Assignment. Except as specifically provided otherwise in this Section 7.5, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the LSE Buyer’s rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA. Such consent shall not be unreasonably withheld. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity’s creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment.
- 7.6 Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the LSE Buyer and, excepting any OSW reconciliation process provided for by prior agreement, supersedes all prior agreements and understandings relating to the subject matter hereof, including but not limited to any prior agreement between the parties regarding the purchase and sale of ORECs. Except as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such amendment, modification, change, waiver, discharge or termination is sought.
- 7.7 All Legal Provisions Deemed Included. It is the intent and understanding of LSE Buyer and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Seller, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

- 7.8 Governing Law/Venue. This Agreement shall be governed by, and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. The parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby shall be brought exclusively in a United States District Court or New York State Court located in Albany, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.
- 7.9 Intentionally left blank.
- 7.10 Headings. The Article and Section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.
- 7.11 No Third Party Beneficiaries. Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.
- 7.12 Freedom of Information Law. Seller acknowledges that NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6); 21 NYCRR Part 501. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof for numerous reasons, including but not limited to protected material that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." If NYSERDA receives a request from a third party for information or a document received from Seller and which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations (21 NYCRR Part 501).
- 7.13 Claim of Confidentiality. Information of any tangible form including any document that LSE Buyer wishes to be protected from disclosure to third parties, including this Agreement must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA. Notwithstanding the foregoing, NYSERDA shall be permitted to report to the New York State Department of Public Service through its Records Access Officer seeking confidential treatment as appropriate, as to the amounts received from LSE Buyer for OREC purchases as against the total due each month and on LSE Buyer's compliance or noncompliance, generally, with the terms of this Agreement.
- 7.14 Electronic Execution. LSE Buyer acknowledges, confirms and agrees that any signature (including any electronic symbol or process attached to, or associated with, this standard Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement or other record and adopted by LSE Buyer with the intent to sign, authenticate or accept such contract or record hereto or to any other certificate, agreement or document necessary to this transaction shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and the parties hereby waive any objection to the contrary.

[Signature Page Follows]

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

Signature: _____

Name:

Title:

LSE BUYER

Signature will be set forth in a separate signature page.

[Signature Page Follows]

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

Signature: _____

Name:

Title:

LSE BUYER

Signature will be set forth in a separate signature page.