



October 27, 2022

VIA E-MAIL directed to OSWCablesAssessment@nyserda.ny.gov

Attn: NYSERDA Offshore Wind Team
New York State Energy Research and Development Authority
17 Columbia Circle
Albany, New York 12203

Re: **2022 Offshore Wind Cable Corridor Constraints Assessment
Request for Information (RFI 5166)
Joint Comments of the New York Offshore Wind Alliance and the American Clean
Power Association**

Dear NYSERDA team:

Please accept the following comments of the New York Offshore Wind Alliance (“NYOWA”) and the American Clean Power Association (“ACP”) on the Draft Offshore Wind Cable Corridor Constraints Assessment (“Draft Assessment”) posted to the New York Energy Research and Development Authority (“NYSERDA”) website on August 30, 2022.

NYOWA is a diverse coalition of the world’s leading developers of offshore wind, national environmental organizations, and organized labor who have joined together to support the robust and responsible development of New York’s offshore wind industry. NYOWA’s specific goal is to ensure the timely and responsible development of offshore wind in the Atlantic Ocean off the coast of New York State, at a level necessary to contribute to New York’s mandate for a 100% emissions-free grid by 2040. NYOWA is an initiative of the Alliance for Clean Energy New York.

ACP is a national renewable energy trade association that unites the power of offshore wind, onshore wind, solar, storage, and transmission companies. ACP has convened the New York Bight leaseholders to collectively engage on recent activities specific to New York Bight and is coordinating closely with NYOWA on renewable energy development in the state.

NYOWA and ACP have followed this effort closely and appreciate this opportunity to provide feedback as NYSERDA continues this important effort. Offshore wind cable siting and routing is critical to the success of full lease utilization of the northeastern U.S. Wind Energy Areas, including the New York Bight, and is critical to enabling the State of New York to reach its statutory mandate of 9 GW by 2035 under the Climate Leadership and Community Protection

Act (“CLCPA”). Now that the Offshore Wind Cable Corridor Constraints Draft Assessment (“Draft Assessment”) has been issued, our organizations offer these responses in accordance with the RFI and request that NYSERDA consider potential implications of this effort as it finalizes its review of these issues and issues its Final Assessment. As discussed herein, our key requests are as follows:

- NYSERDA should further clarify and reinforce that the Draft Assessment is to be used as an informational tool that stakeholders can reference in future transmission planning, siting, and policy making, but is not to be applied deterministically to avoid or favor defined cable routes that may be identified in project-specific applications. NYOWA and ACP respectfully request that NYSERDA specify in the Final Assessment that it is solely intended to provide basic information concerning potential transmission cable routes which each developer must then refine with comprehensive design and permitting information specific to its project in its respective federal and State permitting processes.
- Similarly, NYSERDA should scrutinize the Draft Assessment’s treatment of minimization and mitigation measures to ensure that it does not imply a generic application, override state and federal permitting reviews, or serve as a substitute for specific measures that are customized to address unique impacts identified through site specific investigations.
- We would encourage NYSERDA to meet with members of NYOWA and ACP to address more detailed technical issues not reflected in these comments.

I. Introduction

In its January 2022 Power Grid Study Order, the New York Public Service Commission (“Commission”) correctly emphasized the critical need for efforts to address transmission cable routing limitations and for the coordinated development of feasible siting solutions and directed NYSERDA and its own department staff (“DPS Staff”) to file a progress report on these efforts.¹ Prior to this Order’s issuance, NYSERDA had already begun its initiative to assess these issues and had sought input from stakeholders on the approach it had defined.²

Notably, the January 2022 Power Grid Order generated a number of impactful developments that have occurred while NYSERDA’s assessment has been underway. First, in

¹ See NYPSC Case 20-E-0197, *et al.*, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order on Power Grid Study Recommendations (issued and effective January 20, 2022) (hereinafter, “January 2022 Power Grid Order”) at 17, 41.

² See New York State Energy Research and Development Authority, Offshore Wind Cable Corridor Constraints Assessment Framework, RFI 4944, available at: <https://www.nyserda.ny.gov/Funding-Opportunities/Closed-Funding-Opportunities/2022>. NYOWA and ACPA jointly filed comments in response to the December 2021 RFI on February 14, 2022.

April 2022, Consolidated Edison Company of New York, Inc. (“Con Edison”) filed its Brooklyn Clean Energy Hub proposal which, if approved, would directly influence the routing of cables into New York City.³ In July 2022, NYSERDA issued its third solicitation to secure Offshore Wind Renewable Energy Credits (“OREC”) from offshore wind generation facilities, ORECRFP22-1, which, as explained in more detail below, includes a number of provisions that are inter-related with these efforts and requires proposers to submit their proposals by January 26, 2023.⁴ Third, beginning in August 2022, a number of other developers made a series of hub proposals for offshore wind (“OSW”) generation facilities connecting to New York City Points of Interconnection (“POIs”) that, if approved, would encourage different cable routings.⁵

On August 30, 2022, NYSERDA issued the Draft Assessment together with Request for Information (“RFI”) RFI 5166, its request for information seeking industry input on a series of questions concerning the scope and nature of the work completed in this initiative to date.⁶ In its Draft Assessment, NYSERDA notes that the Final Assessment, which it intends to issue by December 30, 2022, “may inform what actions New York State may consider,” to ensure the benefits of OSW generation are maximized while minimizing impacts on “activities and infrastructure.”⁷

NYOWA and ACP appreciate this opportunity to provide feedback now that the Draft Assessment has been issued and offer these responses in accordance with the RFI. As NYOWA and ACP noted in our initial comments that we submitted concerning this initiative, bulk transmission studies conducted to date in the NYPSC Power Grid Proceeding have revealed potential major space, system, geographic and routing constraints making the sustained and orderly development of required additional bulk transmission facilities essential. The Draft Assessment, which relies on a desk-top approach to provide a higher level, generic analysis, takes a step forward to further capture the issues that must be addressed. In addition, the Draft Assessment reflects that the Cable Working Group has been constituted and has begun to provide important agency input into these efforts. NYOWA and ACP appreciate the work completed to date to provide these high-level assessments and look forward to engaging the Cable Working Group on the policy implications of this Draft Assessment.

³ See NYPSC Case 20-E-0197, *supra*, Consolidated Edison Company of New York, Inc., “Petition for Approval for Brooklyn Clean Energy Hub” (filed April 15, 2022) (hereinafter, “Con Edison Hub Petition”). In its Petition, Con Edison asserts its proposed hub would accommodate the full 6,000 MW of offshore wind generation that has been designated for New York City in the bulk transmission studies conducted in this proceeding.

⁴ New York State Energy Research and Development Authority, Purchase of Offshore Wind Renewable Energy Credits, Request for Proposals, ORECRFP22-1 (issued July 27, 2022) (hereinafter “ORECRFP22-1”), available at <https://www.nyserd.ny.gov/Funding-Opportunities/Current-Funding-Opportunities>.

⁵ NYSERDA and Department of Public Service Staff Webinar, held September 28, 2022. Available at: <https://www.youtube.com/watch?v=xEt-GcDJ6-8> (full presentation) and <https://www.nyserd.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Transmission-NY-Electricity-Grid> (materials).

⁶ Per NYSERDA, it issued RFI 5166 seeking comments on the Draft Offshore Wind Cable Corridor Constraint Assessment (hereinafter “Draft Assessment”) to “better understand the constraints of siting cables in New York State” and “enhance planning and coordination.” (See New York State Energy Research and Development Authority, Offshore Wind Cable Corridor Constraints Assessment (RFI 5166) (hereinafter “RFI”), available at: [Offshore Wind Cable Corridor Constraints Assessment \(RFI 5166\) \(ny.gov\)](https://www.nyserd.ny.gov/Offshore-Wind/Cable-Corridor-Constraints-Assessment-(RFI-5166)-(ny.gov))).

⁷ See NYSERDA RFI at 1.

II. Information Requested by NYSERDA

NYOWA and ACP have structured our comments based on the questions posted by NYSERDA and offer these considerations to NYSERDA on whether the Draft Assessment will meet the goals stated. Our collective comments do not include technical corrections identified by members' reviews. As NYSERDA works to finalize this Assessment, we respectfully request that it meet with our members to discuss these technical corrections.

a. Does the Draft Assessment accurately capture and describe the constraints and opportunities in a manner that is efficient and complete? Do the minimization and mitigation measures address the range of conditions and issues?

Based upon the awards issued under NYSERDA's two past offshore wind generation solicitations, over 4,000 MW of offshore wind generation must be interconnected to the New York bulk power system in New York City and Long Island. Pursuant to the requirements of the CLCPA, a total of 9,000 MW of offshore wind generation must be operational by 2035. This generation also must be interconnected in New York City and Long Island with the current expectation that 6,000 MW of the CLCPA's mandate will be integrated with the onshore grid in New York City.

In its RFI, NYSERDA seeks input to confirm "the accuracy and accessibility of the Assessment."⁸ To that end, NYSERDA has specifically asked the industry to comment on, among other things, whether (i) the Draft Assessment accurately captures and describes the constraints and opportunities presented by transmission cable routing considerations in a manner that is efficient and complete; and (ii) whether the minimization and mitigation measures address the range of conditions and issues.⁹ Below, NYOWA and ACP offer some feedback on the scope and nature of the Draft Assessment and the effect that the Final Assessment may be given.

As a threshold matter, it is critical to recognize the limitations inherent, by their very design, in these types of analyses. As the Assessment itself establishes, because the analyses conducted are not project-specific, it cannot incorporate the siting considerations that each project will face specific to the route it has chosen, nor can it meaningfully quantify impacts or identify the mitigation measures that must be tailored to address those impacts. Likewise, because a number of other initiatives have occurred while the Draft Assessment has been under development, the Draft Assessment does not – indeed, could not – adequately account for a series of additional considerations that will affect the development of offshore wind generation in New York.

Thus, subject to the need for its further development as detailed herein, while the Final Assessment should be considered as a significant compendium of data on a range of cable siting constraints as New York proceeds with its nation-leading offshore wind generation development efforts, it cannot and should not be used determinatively in permitting proceedings or in

⁸ *Id.*, cover page.

⁹ *Id.* at 2.

NYSERDA’s review of the proposals submitted in response to ORECRFP22-1. To avoid future misapplication of the study, NYOWA and ACP respectfully request that NYSERDA specify in the Final Assessment that it is solely intended to provide basic information concerning potential transmission cable routes which each developer must then refine with comprehensive design and permitting information specific to its project in its respective federal and State permitting processes.

i. Timing Issues

As mentioned above and addressed in more detail below, the Draft Assessment contains desktop level data and, as such, can only provide a very general guide to developers who must then complete the significant work of accurately capturing environmental characteristics and proposing mitigation measures specific to their respective projects. Given the transmission and interconnection requirements set forth in ORECRFP22-1 coupled with the January 26, 2023 deadline for proposal submissions, proposers simply cannot await the Final Assessment’s issuance to address these issues, nor can the Final Assessment offer detailed guidance given the scope of work conducted thereunder.¹⁰

ii. Procedural Issues

On the one hand, the Draft Assessment forthrightly identifies its limitations. For example, the Draft Assessment specifies that it does not identify complete routes, address how the cables in State waters will be connected, consider alternative routes or assess the viability of POIs identified.¹¹ Likewise, the Draft Assessment specifies that its content is not intended to substitute for any of the studies required by any of the State agencies nor is it binding in any way on any State or federal agency.¹² Yet in stark contrast to these limitations, the Draft Assessment nevertheless includes recommendations regarding mitigation measures.¹³

While NYOWA and ACP appreciate the attention and coordination devoted to these potential issues, it must be acknowledged that these issues fall within the province of the decision-making authority of the Commission and other agencies, such as the Department of Environmental

¹⁰ While NYSERDA is projecting to issue the Final Assessment by 27 days before proposals are due, the practical reality is proposals are under development now making the issuance of the Final Assessment at year end months too late to be used in any meaningful way by proposers even if much more detailed analyses had been incorporated as part of this initiative. Agencies relying on this information is not the only concern; for example, low, medium and high designations like those set forth in the Draft Assessment, based as they are on incomplete analysis, can cause confusion and unnecessary delay in the permitting processes that will follow project awards made by NYSERDA in this solicitation.

¹¹ See Draft Assessment at 1-2 through 1-3; see also 3-1 (noting “a specific OSW cable could impact any of these resources as well as other resources not considered in this Assessment Report” and acknowledging that a thorough review is required under the Article VII process); see also NYPSC Case 20-E-0197, *supra*, “Progress Report on Offshore Wind Cable Routing Coordination” (issued by NYSERDA and DPS Staff, dated September 1, 2022) (hereinafter, “Progress Report”) at 6 (acknowledging need for “site-specific analysis and engineering strategies in design and construction for the unique conditions in many locations”).

¹² See, e.g., *Draft Assessment* at 1-4 (establishing need to secure Article VII certificate from New York Public Service Commission).

¹³ See *id.* at 3-5 (e.g., recommending mitigation measures to address marine geology constraints to serve as “high value habitat”); see also *id.* at 3-15 (identifying mitigation to address impacts on potential historic resources); see also Progress Report at 6 (“presenting” minimization and mitigation measures for each resource).

Conservation (DEC) and the Department of State. No Final Assessment issued by NYSERDA can dictate the level of impacts identified or mitigation required in any federal or State permitting processes.

The minimization and mitigation language presented in the Draft Assessment has taken the language of several complete and draft Certificates, developed through a confidential Settlement Negotiation Process as set forth in 16 NYCRR 3.9 (d) and language shoehorned for a broader scope. As presented, the implication is that this minimization and mitigation language can be accepted whole cloth as if it is likely to be adopted, an approach that would abdicate the authority of federal and State agencies with jurisdiction over these issues and is otherwise impermissible given the confidential process of drafting a Certificate, where each minimization and mitigation measure proposal is carefully considered and drafted to be a site and project specific basis.

Finally, the Assessment specifies that a stated goal of this work product is to “inform potential future policy actions”. The Draft Assessment does not, at this time, specifically identify potential policies that are in conflict, nor does it propose new policies that could support offshore wind development. We understand that the Cable Study Group will address these matters in a subsequent phase of this effort. However, it should be noted that the Draft Assessment mentions policies for mitigation that are in direct conflict with New York State Law. For example, “Wetland Banking Credits”, and a request for “Establishing a Trust solely for protecting, restoring and improving aquatic habitats” are specifically mentioned, even though these are in in direct conflict with Article 24 of the New York Environmental Conservation Law. NYOWA and ACP request that NYSERDA correct these conflicts when the Final Assessment is prepared and clearly state that minimization and mitigation measures will be determined on a project-specific basis through required agency reviews and determinations.

iii. Federal & State Regulatory Considerations

Each proposer will invest significant time and resources to prepare its respective studies to support its permit applications, which it must complete at a far more granular level than the information in the Draft Assessment. Once an Article VII certificate is issued, proposers must subsequently prepare construction and mitigation plans which must be approved. Detailed studies will be required under the National Environmental Policy Act (“NEPA”) process and New York regulatory processes, which include the Department of State’s Coastal Zone Management processes and the Commission’s Article VII transmission siting requirements.¹⁴ Moreover, jurisdiction over the permitting process for the project components located in federal waters lies

¹⁴ The National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982); and its associated regulations at 40 C.F.R. parts 1500-1508; New York State Public Service Law Sections 120 et. seq. (Article VII); New York State Executive Law Sections 910 et seq. (CZMA). Massachusetts conducted a similar Assessment of Constraints. While several potential routes were explored in that Assessment document, upon detailed analysis by developers, none of the proposals could be constructed. This resulted in significant effort and expense by proposers spent countermanding the findings of the State, including the need to perform alternatives analysis to allow for siting. See “Offshore Wind Transmission Study Final Report”, Massachusetts Clean Energy Center (September 2014).

with the Bureau of Ocean Energy Management (“BOEM”). The Draft Assessment details State-level outreach and coordination but makes no reference to communications with BOEM.

It is important that the Draft Assessment not be used to limit or otherwise restrict the expansive federal review process for offshore wind projects that must take place under the Outer Continental Shelf Lands Act (“OCSLA”) and NEPA, as well as related federal permitting reviews. BOEM is preparing a Programmatic Environmental Impact Statement (“PEIS”) for the New York Bight lease areas.¹⁵ The PEIS will consider a regional analysis of the six lease areas, analyze affected regional environment, and establish a framework for tiering of project-specific environmental analyses. The PEIS will identify, analyze, and adopt (if appropriate) programmatic avoidance, minimization, mitigation, and monitoring measures for the New York Bight lease areas. The intent of this effort is to comprehensively, efficiently, and effectively address these siting considerations to provide predictability and consistency to cooperating agencies, partners, and developers.

In order to construct an offshore wind project in the Outer Continental Shelf, a leaseholder must submit a Construction and Operations Plan (“COP”) to BOEM and the U.S. Department of the Interior, (“DOI”) for review and approval based on standards set forth in OCSLA. In addition, because the federal authorization process is subject to NEPA, there must also be a corresponding NEPA review of the COP for each lease offshore of New York. There are also other federal permitting requirements, such as under the Marine Mammal Protection Act (“MMPA”) and the National Historic Preservation Act (“NHPA”). All of these reviews will include an evaluation of the installation, design, and location of both offshore and onshore cables.

As a result, it will be imperative that NYSERDA and other state agencies do not apply the assessment to identify options or alternatives in the development of a specific offshore wind project as the multiple federal review processes may reach different conclusions that could conflict with recommendations in the assessment. In light of this federal overlay, it is encouraging to see the language in the assessment stating that it would not “[s]ubstitute for or prescribe any analysis of alternative routes required as part of any regulatory review process...” Indeed, the State has jurisdictional control and permitting responsibilities involving State waters and subsea areas, coastal areas, and onshore areas, that overlap with certain federal reviews. As discussed in our initial set of comments on the Draft Assessment framework, given the dual roles of state and federal government, it will be imperative that there be coordination and collaboration between the State and federal agencies to achieve a well-integrated approach in assessing impacts, developing alternatives, and conducting reviews for offshore wind projects. Similarly, the availability and collection of data to conduct evaluations should also be managed to the extent feasible to avoid duplication of effort and in a manner that fosters alignment of methodologies.

- b. Consider the design and layout of the Draft Assessment, particularly the figures and key findings and recommendations. Are these user-friendly tools for information transfer? What additional presentation formats might be helpful?***

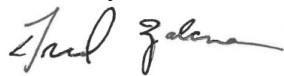
¹⁵ [New York Bight | Bureau of Ocean Energy Management \(boem.gov\)](#) & [BOEM New York Bight Programmatic Environmental Impact Statement \(PEIS\) and Consultation Overview](#)

NYOWA, ACP, and our members appreciate the extensive amount of data, reports, and information that NYSERDA and its contractor have compiled in the Draft Assessment. Given that this report is a comprehensive desktop analysis and will be important for leaseholders to integrate into their respective COP if routing into New York, NYOWA and ACP recommend that NYSERDA provide data layers and reports into a publicly accessible portal. This will ensure continuity and potentially streamline New York State agencies' reviews of COPs and future developer bids in NYSERDA solicitations.

III. Conclusion

NYOWA and ACP appreciate the opportunity that has been given to offshore wind stakeholders to comment on the Draft Assessment. To ensure the intent of this initiative is met and to ensure that these important resources can be swiftly interconnected with minimal disruption to both the activities occurring in New York's navigable waters and existing infrastructure, we urge NYSERDA to specify in the Final Assessment that the information contained therein is intended as a reference document developed at a high-level, generic basis to provide a foundation for the extensive federal and State permitting reviews required to certificate offshore wind generation facilities to meet the electric needs of New Yorkers in accordance with CLCPA mandates.

Sincerely,



On behalf of ACP/NYOWA

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