

## Vistra 2022 Legislative Proposal: Senate Bill 526/House Bill 622 Electricity - Offshore Wind Renewable Energy Credits

### **Introduction**

Vistra has identified, through our work at the Public Service Commission (PSC), a statutory change that will benefit the Maryland Offshore Wind Program, Maryland consumers, and wholesale and retail suppliers. This change should not be controversial and should be widely supported by legislators as well as agency/industry/consumer advocate stakeholders. The legislation has been introduced by Senator Feldman (SB 0526) and Delegate Brooks (HB 0622)

### **Proposed Changes**

Vistra proposes to modify the Offshore Wind Requirement by moving the purchase of ORECs from a supplier obligation to a utility line-item. Offshore Wind Renewable Energy Credits (OREC) compliance costs should be recovered by electric utilities through a non-bypassable charge. Currently, the statute places the obligation on both wholesale and retail suppliers to collect the cost of OREC compliance from customers. In the proposed change, the electric utilities will collect payment through a non-bypassable charge and then, subsequently, make OREC payments to the OSW project administrators. The escrow accounts will continue to be administered by a qualified financial institution which will track payments and the delivery of ORECs, but rather than receive ratepayer payments from the many electric suppliers active in the state, the electric utilities will make the deposits.

Simply put, in our clarifying language, the bill would strike suppliers from this collection process and replace them with the electric utilities. A 2020 proceeding at the PSC (source below) highlighted the need for this clarification. Delays in Offshore Wind projects demonstrated the flaws in the current construct and how those flaws would unnecessarily drive prices higher than necessary. This correction would add certainty for the market. The utilities are not likely to oppose this change as this will be a line item on the bill, similar to other statutorily required charges like the Electric Universal Service Program and EmPOWER Maryland. Furthermore, this change will provide for greater price transparency for Maryland consumers.

### **Overview of Existing Law**

Maryland passed the original Renewable Portfolio Standard (RPS) law in 2004 (SB 869). The General Assembly has amended this legislation, largely to continue to advance Maryland's commitment to renewable energy, in 2007, 2008, 2010, 2011, 2012, 2013, 2017, 2019, and 2021. In 2019, specifically, the Clean Energy Jobs Act increased the total RPS compliance obligation to 50% by 2030, increased the solar carve-out to 14.5%, and added a second round of offshore wind procurement for a minimum of 1,200 MW.

Importantly, the objective of Maryland's RPS is to recognize and develop the benefits associated with a diverse collection of renewable energy resources. The State's RPS Program does this by recognizing the environmental and consumer benefits associated with renewable energy. The RPS Program requires electricity suppliers to meet a prescribed minimum portion of their retail

electricity sales with various renewable energy sources, which have been classified within the RPS Statute as Tier 1 and Tier 2 renewable sources. The program is implemented through the creation, sale, and transfer of Renewable Energy Credits (RECs). RECs are created by a variety of projects. Electricity suppliers can either generate their own RECs through developing qualified projects or buy and trade RECs in the marketplace to meet their compliance obligation. The development of renewable energy sources is further promoted by requiring electricity suppliers to pay a financial penalty for failing to acquire sufficient RECs to satisfy their RPS obligation. The penalty is used to support the creation of new Tier 1 renewable sources in the State.

Also, the Maryland General Assembly passed the Offshore Wind Energy Act of 2013 (HB 226), which was signed into law on April 9, 2013. In this legislation, the PSC was directed to establish an obligation for Offshore Wind Renewable Energy Credits (OREC) on a forward-looking basis. The legislation also directed the PSC, in its project approval process, to specify the OREC price schedule, duration of the OREC pricing schedule, number of ORECs the project may sell each year. This means that the cost of compliance with the offshore wind obligation is fixed by the PSC, not market-driven, which is distinctly different from the traditional REC market where quantities are based on project capacity and prices are generally set by the market. The OREC program is most similar to other statutorily-required programs like the Electric Universal Service Program and the EmPOWER Maryland energy efficiency program where charges are best suited for collection by the utilities from customers on a non-bypassable basis.

The PSC was also directed to adopt regulations that established the OREC purchase obligation sufficiently in advance to allow OREC purchasers to reflect OREC costs in retail prices offered to consumers and a mechanism to adjust the RPS obligation 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 RPS obligation and the quantity of ORECs approved in the PSC order for the same years.

The PSC established Offshore Wind (OSW) procurement regulations under Rulemaking 51 to implement that Act the following year. In its OSW procurement regulations, the PSC established a payment mechanism in which escrow accounts would be established for each OSW project. The escrow accounts will be administered by a qualified financial institution, track the delivery of ORECs, receive ratepayer payments from the State's electric suppliers and make OREC payments to the OSW project. The escrow accounts will also true-up OREC payments if the actual construction cost or the receipt of grants and tax credits are different than submitted.

Under the Maryland Public Utilities Article, the Commission has broad authority to promulgate new rules and regulations, relying on the Maryland General Assembly to set policy and make course corrections when needed (Maryland Code, Public Utilities § 7-510).

### **Proposed Language**

Vistra recommends that the statute be updated to change the OREC compliance structure from the current supplier-by-supplier purchase and retirement obligation to a PSC-approved structure whereby the electric utilities assess charges to electricity customers for OREC purchase and retirement costs to comply with the OREC component of the RPS. A non-bypassable charge structure is consistent with the way OSW RPS compliance costs are recovered in other jurisdictions (e.g., New Jersey and Massachusetts). The OREC creation, purchase, sale, and pricing are all regulated by the Commission, so there is no “market” for ORECs, like there is for other RECs. Given the fully regulated nature of ORECs, offshore wind regulations should be updated to a more administratively efficient structure whereby electric utilities manage the OREC purchases and retirements associated with their electric distribution customers, passing through the costs of compliance.

As a point of reference, we offer that the legislature consider a structure similar to that used by New Jersey in Subchapter 6 (Qualified Offshore Wind Projects) of Chapter 8 (Renewable Energy And Energy Efficiency) of Title 14 (Public Utilities) of the New Jersey Administrative Code. Specifically, the funding mechanism in N.J.A.C. § 14:8-6.6 requires EDCs to act as the payment agent on behalf of competitive suppliers and implement a ratepayer surcharge for OREC purchases to be collected from all ratepayers on behalf of the suppliers. The EDCs enter into a joint contract with a single OREC administrator that handles accounting, compliance, invoicing, and other administrative matters relating to or arising from the OREC obligations of qualified OSW facilities.

In summary, Vistra believes that a structure similar to that adopted in New Jersey where (1) the EDCs manage OREC purchase, retirement, and cost recovery on behalf of competitive suppliers; and (2) there is a single OSW administrator that coordinates with each of the EDCs and each approved offshore wind project to handle OREC purchase, sale, and retirement for RPS compliance, would be much more efficient than Maryland’s current program structure for all stakeholders, including customers, utilities, suppliers, OSW developers and project owners, OREC escrow account administrators, and Public Service Commission. In order to correct this issue, changes will need to be made relating to regulations within the Public Service Commission Title in the Code of Maryland Regulations (COMAR - Title 20). The applicable subtitle is “61. Renewable Energy Portfolio Standard Program”; specifically, “Chapter 20.61.06. Offshore Wind”.

### **Why This Matters**

In the absence of such a clarification and/or modification, considerable uncertainty will remain in the competitive market regarding an administrator being appointed and collecting payments in the year in which the offshore wind energy RPS takes effect. The first round of offshore wind projects were expected to come online as early as 2021. Project developers have experienced significant delays in the permitting process, pushing commercial operation dates out many years. Suppliers responsible for the OREC obligation do not have certainty into when the projects will come online and therefore trigger OREC payments. This means suppliers are left to guess when they should start collecting payment to meet the obligations which creates uncertainty in the market. Ultimately, this uncertainty potentially harms ratepayers and the wind industry by

creating higher pricing. By transitioning to charges through the utility, Maryland can ensure that only the actual compliance costs and no more are being collected from ratepayers beginning in the year the projects become operational.

### **Additional Reading**

“Electric Supplier Seeks Modification Of Maryland Offshore Wind Payment Obligation, Schedule” (*Energy Choice Matters*, February 19, 2020)

<http://www.energychoicematters.com/stories/20200220ac.html>

Public Service Commission Case #9431: IN THE MATTER OF THE APPLICATIONS OF US WIND, INC. AND SKIPJACK OFFSHORE ENERGY, LLC FOR A PROPOSED OFFSHORE WIND PROJECT(S) PURSUANT TO THE MARYLAND OFFSHORE WIND ENERGY ACT OF 2013

### *About Vistra*

Vistra is a Fortune 275 integrated retail electricity and power generation company based in Irving, Texas; active in 20 states and the District of Columbia (including six of the seven competitive wholesale markets in the U.S. and markets in Canada and Japan). Vistra has 5 million residential, commercial, and industrial retail customers and is the largest competitive residential electricity provider in the country. The company has over 50 renewable energy plans and is a large purchaser of wind power. Vistra is also the largest competitive power generator in the U.S. with a capacity of approximately 39,000 megawatts powered by a diverse portfolio, including natural gas, nuclear, solar, and battery energy storage facilities. In an October investor event Vistra announced a strategic shift of investments to work toward a carbon-free carbon portfolio. The company is currently constructing a 400-MW/1,600-MWh battery energy storage system in Moss Landing, California, which will be the largest of its kind in the world when it comes online.