



Agenda Date: 9/25/24
Agenda Item: 8F

STATE OF NEW JERSEY
Board of Public Utilities
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		<u>CLEAN ENERGY</u>
		<u>DIVISION/OFFICE</u>
IN THE MATTER OF THE OPENING OF NEW)	
JERSEY’S THIRD SOLICITATION)	ORDER GRANTING MOTION
FOR OFFSHORE WIND RENEWABLE)	FOR STAY
ENERGY CERTIFICATES (OREC))	
)	
IN THE MATTER OF THE BOARD OF PUBLIC)	DOCKET NO. QO22080481
UTILITIES OFFSHORE WIND SOLICITATION 3 FOR)	
1,200 TO 4,000 MW – INVENERGY WIND OFFSHORE)	
LLC)	DOCKET NO. QO24010060
)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Colleen Foley, Esq., on behalf of Invenergy Wind Offshore LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers the motion submitted on July 22, 2024 by Invenergy Wind Offshore LLC (“Invenergy”) regarding a request to stay, until December 20, 2024, enforcement of the Board’s Order Approving Leading Light Wind 2400 MW Project as a Qualified Offshore Wind Project issued on January 24, 2024 (“January 24, 2024 Order”) under Docket No. QO22080481 (“Motion”).¹

BACKGROUND

¹ See In the Matter of the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket Nos. QO22080481, Order dated January 24, 2024; In the Matter of the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Invenergy Wind Offshore LLC’s Motion for a Stay of Order, Motion dated July 22, 2024.

On August 19, 2010, the Offshore Wind Economic Development Act (“OWEDA”) was signed into law.² OWEDA establishes offshore wind (“OSW”) as a Class I renewable energy resource and directs the Board to establish an Offshore Wind Renewable Energy Certificate (“OREC”) program.³ OWEDA also establishes the application requirements for OSW projects to be considered eligible to receive ORECs.⁴ Additionally, OWEDA provides key factors the Board should consider when evaluating an OSW application in addition to the OREC price, including the economic impacts of projects, environmental benefits including greenhouse gas (“GHG”) reductions, and mitigation of environmental impacts, ratepayer impacts, economic guarantees, and factors contributing to the likelihood of success of the project.⁵ Ultimately, OWEDA mandates that all Qualified Offshore Wind Projects (“QOWP”) deliver a net economic and environmental benefit to the state. A cost-benefit analysis of each proposed OSW project must demonstrate that this threshold is met based upon both economic and environmental benefits.⁶

Governor Murphy signed Executive Order No. 8 (“EO 8”) on January 21, 2018, establishing the nation’s most aggressive OSW goal of 3,500 MW of OSW capacity by 2030.⁷ On November 19, 2019, Governor Murphy signed Executive Order No. 92 (“EO 92”), which increased the State’s OSW energy goal to 7,500 MW by 2035.⁸ Governor Murphy found that expanding the OSW goal will ensure that New Jersey can “meet the state’s goals of 50 percent renewable energy by 2030 and 100 percent clean energy by 2050, in addition to creating a significant number of good-paying jobs.”⁹

On January 27, 2020, Governor Murphy released the 2019 Energy Master Plan (“2019 EMP”).¹⁰ The 2019 EMP stressed the critical need for action to address the grave threat of climate change, providing a roadmap to achieve 100 percent clean energy by 2050, and an 80 percent reduction of GHG emissions from 2006 levels, as provided in the Global Warming Response Act (L. 2007, c.112, N.J.S.A. 26:2C-37 to 44).¹¹

On September 21, 2022, Governor Murphy signed Executive Order 307 (“EO 307”), which

² N.J.S.A. 48:3-87.1 to -87.2, L. 2010, c. 57, eff. Aug. 19, 2010; amended by L. 2019 c. 440, §2, effective Jan. 21, 2020; L. 2021, c.178, §1, effective July 22, 2021; Electric Discount and Energy Competition Act, L. 1999, c. 23, N.J.S.A. 48:3-49 et seq.

³ N.J.S.A. 48:3-51. “Class I renewable energy” means “electricity produced from solar technologies, photovoltaic technologies, *wind energy*, fuel cells powered by renewable fuels, geothermal technologies, wave or tidal action, small scale hydropower facilities with a capacity of three megawatts or less and put into service after July 23, 2012” N.J.A.C. 14:8-1.2. (emphasis added).

⁴ N.J.S.A. 48:3-87.1(a) and -87.1(b).

⁵ N.J.S.A. 48:3-87(a) and -87(d); N.J.S.A. 48:3-87.1(b).

⁶ N.J.S.A. 48:3-87.1(b)(1)(b).

⁷ Exec. Order No. 8 (Jan. 31, 2018), 50 N.J.R. 887(a) (Feb. 20, 2018).

⁸ Exec. Order No. 92 (Nov. 19, 2019), 51 N.J.R. 1817(b) (Dec. 16, 2019). This Executive Order, signed by Governor Murphy on November 19, 2019, changed the State’s OSW goal to 7,500 MW by 2035. All other provisions of EO8 remained in full force and effect.

⁹ Id.

¹⁰ BPU, 2019 New Jersey Energy Master Plan: Pathway to 2050, https://nj.gov/bpu/pdf/publicnotice/NJBPU_EMP.pdf.

¹¹ 2019 EMP; EO 315.

expanded the State's OSW goal to 11,000 MW by 2040.¹² On March 30, 2023, Executive Order No. 315 ("EO 315") increased the EO92 target from 50 percent renewable energy by 2030 and 100 percent clean energy by 2050 to 100% clean energy by 2035.¹³

On March 6, 2023, with respect to its third OREC solicitation ("Third Solicitation"), the Board released its "New Jersey Offshore Wind Third Solicitation, Solicitation Guidance Document, Application Submission for Proposed Offshore Wind Facilities" ("Third Solicitation Guidance Document").¹⁴ Applications for Third Solicitation OSW projects were to be submitted by June 23, 2023.¹⁵ On June 7, 2023, the Board extended the application due date to August 4, 2023.¹⁶ On August 4, 2023, applications were received from four OSW developers, including Invenergy's application for the Leading Light Wind Project.

The Board evaluated the applications for the Third Solicitation against multiple factors set forth in OWEDA and the rules at N.J.A.C 14:8-6 et seq. These factors were distilled into six evaluation criteria defined in the Third Solicitation Guidance Document and based on the overarching goals of New Jersey's OSW policy as described below:

- Contributing to a stronger New Jersey economy by anchoring an offshore wind supply chain in the state;
- Combating global climate change to protect New Jersey and also to protect New Jersey's natural resources;
- Providing added reliability for the transmission network and transmission rate relief for ratepayers; and
- Achieving all of this at the lowest reasonable cost and risk to New Jersey ratepayers.¹⁷

On January 24, 2024, following a detailed and thorough review of the applications submitted, the Board approved the Leading Light Wind 2,400 MW project ("LLW Project" or "Project") proposed by Invenergy as a QOWP to receive OSW ORECs, as defined in OWEDA.¹⁸

As described in the January 24, 2024 Order, the Board determined that the Project will result in

¹² Exec. Order No. 307 (Feb. 15, 2023), 54 N.J.R. 1945(a) (Oct. 17, 2022).

¹³ Exec. Order No. 315 (Feb. 15, 2023), 55 N.J.R. 509(a) (March 20, 2023).

¹⁴ In the Matter of the Opening of New Jersey's Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Order dated March 6, 2023.

¹⁵ Third Solicitation Guidance Document at 6.

¹⁶ In the Matter of the Opening of New Jersey's Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Order dated June 7, 2023 ("June 7, 2023 Order").

¹⁷ June 7, 2023 Order at 31; Third Solicitation Guidance Document at 44.

¹⁸ The nameplate capacity of the awarded project may be different than the awarded capacity. Invenergy submitted a 2,400 MW project with and without an energy storage component. The LLW Project awarded herein is the 2,400 MW project without the energy storage component and with cost sharing as submitted as part of Invenergy's best and final offer ("BAFO"), an item requested from all Applicants on October 27, 2023. For additional information about Invenergy's BAFO, see January 24, 2024 Order at 18, "Information Relied Upon in Evaluation of Applications."

significant generation of clean energy to combat climate change while also establishing a robust, diverse supply chain that will result in significant benefit to New Jersey's economy, and that will create a significant number of good-paying, green economy jobs.¹⁹ The LLW Project was found to be in alignment with the New Jersey's public policies and goals as articulated above. The January 24, 2024 Order details a number of obligations including but not limited to the Terms and Conditions described in Attachment B of the January 24, 2024 Order.²⁰

On or about March 5, 2024, a group of litigants, which were not parties to and did not participate in the proceedings before the Board in Docket No. QO22080481 leading to the January 24, 2024 Order, filed a notice of appeal in the Appellate Division of the Superior Court of New Jersey, which challenged the January 24, 2024 Order ("Appeal"). The Appeal was assigned Docket No. A-1973-23 and is pending at the time of this Order.

THE MOTION

On July 22, 2024, Invenergy filed the Motion. The Motion requests that the Board maintain the status quo by staying enforcement of the January 24, 2024 Order and suspending all obligations imposed by the Board therein, including, but not limited to, the payment of all fees, submission of binding compliance filings, and the PJM queue application through December 20, 2024.²¹

In its Motion, Invenergy described negative developments related to the supply and costs of wind turbine generators that occurred during the Third Solicitation application process and following the January 24, 2024 Order. Invenergy's initial application made use of a wind turbine "agnostic" approach that would have enabled Invenergy to use various potential options from three turbine manufacturers, GE Vernova ("GE"), Siemens Gamesa Renewable Energy ("SGRE"), and Vestas. At the time of application, Invenergy determined the Vestas offering unsuitable due to cost and technical factors. Invenergy identified the GE Haliade-X 18 megawatt wind turbine as preferred and a SGRE turbine as its backup. On February 15, 2024, GE publicly announced that it would not be manufacturing the wind turbine Invenergy had anticipated using.²² Following this announcement, in June of 2024, Invenergy asserts in its Motion that it received notification from SGRE that the wind turbine costs for the SGRE option would be substantially increased. As a result of these developments, Invenergy states that it no longer has a viable wind turbine supplier for the LLW Project and requires additional time to engage with wind turbine manufacturers to identify a cost-effective wind turbine option for the LLW Project.

In its Motion, Invenergy cites N.J.A.C. 14:1-8.7(d) which states that a stay of a Board order "will be granted only for good cause shown."²³ Invenergy also describes the four criteria set forth in Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982), which must be addressed by the movant in order for a stay to be granted. These four criteria, criteria used for a preliminary injunction, include the following:

¹⁹ January 24, 2024 Order.

²⁰ Id.

²¹ Motion at 10-11.

²² See GE Vernova LLC SEC Form 10 filing (February 15, 2024) <https://www.sec.gov/Archives/edgar/data/1996810/000119312524037526/d542465dex991.htm> at 111, Motion to Stay at 4.

²³ Motion at 6.

1. Immediate and irreparable harm if a stay is not granted;
2. The legal right underlying the movant's claim is well-settled;
3. A reasonable probability that the movant will succeed on the merits; and
4. The balance of the equities in granting a stay weighs in the movant's favor.

Invenergy submits that, although it must satisfy each factor, the factors may be viewed in a "less rigid" fashion where a stay is sought merely to preserve the status quo, and a court, or the Board here, may place less emphasis on one factor "if another greatly requires" the issuance of a stay to preserve the status quo.²⁴ Invenergy also contends that the Board must consider the public interest when an issue of significant public interest is implicated by a request for a stay.²⁵

Invenergy asserts that it has satisfied the criteria and thus its Motion should be granted by the Board. Invenergy says that it, as well as the State and its citizens, will suffer irreparable harm absent a stay because the LLW Project will not progress in a timely manner, compromising the expected significant environmental and economic benefits of the LLW Project.²⁶ Invenergy submits that it has a well settled legal right to proceed with the LLW Project and has already succeeded on the merits, because the Board authorized it to proceed with the LLW Project consistent with OWEDA.²⁷ Finally, Invenergy says that the balancing of equities weighs in its favor because the matter is of significant public importance and the public has an interest in ensuring the LLW Project proceeds in order to realize the expected environmental and economic benefits.²⁸ Absent a stay maintaining the status quo, those benefits will be at risk, and thus the granting of a stay is consistent with the public interest.²⁹

NEW JERSEY DIVISION OF RATE COUNSEL ("RATE COUNSEL") COMMENTS

On August 8, 2024, Rate Counsel submitted comments of "non-opposition" in response to Invenergy's Motion.³⁰ Rate Counsel does not object to the stay sought by Invenergy's Motion. Rate Counsel elected not to comment on Invenergy's assertions that it has satisfied the four criteria set forth in Crowe.

Rate Counsel expressed concern that, in general, post-award modifications to Board Orders could

²⁴ Motion at 6 (citing Waste Mgmt. of N.J., Inc. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App Div. 2008)).

²⁵ Id. (citing McNeil v. Legislative Apportionment Comm'n, 176 N.J. 484, 484 (2003))

²⁶ Motion at 7.

²⁷ Id. at 8-9.

²⁸ Id. at 9-11.

²⁹ Id. at 9-10 (citing PENPAC, Inc. v. Morris Cnty. Mun. Utils. Auth., 299 N.J. Super. 288, 294 (App. Div. 1997) (granting stay of award of public bid contract "due to the public interest involved" and noting that "[t]he goal is that through competitive bidding the public interest in achieving the most economic result will best be served."); Palamar Constr., Inc. v. Pennsauken, 196 N.J. Super. 241, 245 (App. Div. 1983)).

³⁰ See In re the Opening of New Jersey's Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Rate Counsel Comments dated August 8, 2024 ("Rate Counsel's Comments").

undermine the competitive solicitation process meant to drive down costs for ratepayers. While Rate Counsel consented to Invenergy's Motion, it cautioned "the Board to be wary of so many post-award changes to bids, as it will detrimentally harm the competitiveness of the bidding process."³¹

DISCUSSION AND FINDINGS

The Motion requests that the Board issue an order staying enforcement of the January 24, 2024 Order and suspending all obligations listed therein through December 20, 2024. As detailed below, the Motion is granted in order to maintain the status quo and to uphold the public interest reflected in the Board's January 24, 2024 order.³² The order remains in full force and effect and no amendments are being made through today's action, which is limited to temporary enforcement relief due to the circumstances as presented by the petitioner.

The stay requested by the Motion implicates a matter of significant public importance, which is thoroughly detailed in "Background" above. The public's interest, in the context of the requested stay, is in reaping the benefits of the LLW Project, or at least preserving the status quo and the opportunity to do so. The Board emphasizes that, in considering the Motion, its identification of the public interest is specific to the current juncture in the development of New Jersey's offshore wind industry, which is itself a unique circumstance.

The Board has specifically considered the consequences, for the parties and the public, of both granting and not granting the Motion. In the absence of a stay, the LLW Project "will not be able to progress in a timely manner," which risks the loss of the environmental and economic benefits of the LLW Project.³³ Denial would result in Invenergy and the LLW Project having insufficient time to engage in meaningful negotiations with wind turbine manufacturers and the ability to identify in a timely manner a cost-effective wind turbine option, a necessary element of an OSW project. Absent a stay, Invenergy must contemplate whether it is possible to continue development of the LLW Project, given the deterioration of the LLW Project economics.³⁴ A discontinuation of project development would in turn undermine the State's ability to meet its clean energy goals and reap the environmental and economic benefits related to the LLW Project.

By contrast, granting the Motion would enable the ongoing development of the LLW Project and preserve the public's interest in reaping the benefits of the Project. The Board notes that no opposition has been filed to the Motion and there is nothing in the record pointing to hardship caused by granting the Motion.

The Board also acknowledges Rate Counsel's generalized concern that post-award modifications

³¹ Id.

³² In evaluating this Motion, the Board is guided by the administrative code and case law described above. The Board notes that in evaluating the propriety of a stay courts may place emphasis on one of the Crowe criteria if another "greatly requires the issuance of the [stay]" when the concern is to preserve the status quo. Waste Mgmt. of N.J., Inc., 399 N.J. Super. at 520). The Board is also cognizant that in the context of an issue of significant public importance, in addition to the "traditional factors," a court or agency must also consider the public interest as "most paramount[.]" Id. (citing McNeil, 176 N.J. at 484); see also Garden State Equality v. Dow, 216 N.J. 314, 321 (2013); New Jersey Election Law Enforcement Com'n v. DiVincenzo, 445 N.J. Super. 187, 196 (App. Div. 2016).

³³ Motion at 7.

³⁴ Motion at 10-11.

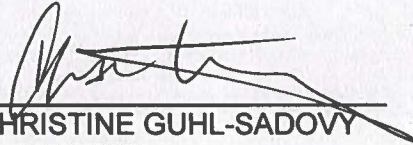
to Board orders could undermine the competitive solicitation process, which is meant to drive down costs for ratepayers. To that end, when submitting a bid under a competitive solicitation, the Board cautions that OSW developers must continue to expect to comply with all Board regulations, and the terms of any applicable solicitation, bid commitment, and Board order. To be clear, granting the Motion does not amend the January 24, 2024 Order.

In sum, following careful review of the Motion and Rate Counsel's Comments, and having thoroughly considered Board Staff's recommendations, the Board **HEREBY FINDS** that the requests in the Motion are reasonable. The Board **HEREBY GRANTS** the Motion and **HEREBY STAYS** enforcement of the January 24, 2024 Order, thereby suspending all obligations of the January 24, 2024 Order during the stay, which the Board **HEREBY AFFIRMS** will end on December 20, 2024.

The effective date of this Order is September 25, 2024.

DATED: September 25, 2024

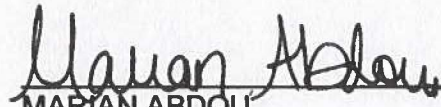
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BY:



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DR. ZENON CHRISTODOULOU
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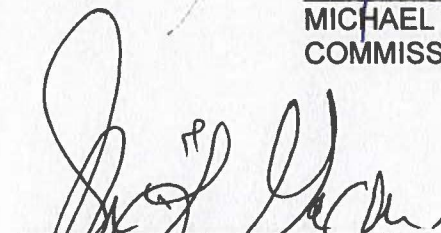


MARIAN ABDOU
COMMISSIONER



MICHAEL BANGE
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ATTEST:



SHERRIL L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE OPENING OF NEW JERSEY'S THIRD SOLICITATION FOR
OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES (OREC)

DOCKET NO. QO22080481

IN THE MATTER OF THE BOARD OF PUBLIC UTILITIES OFFSHORE WIND SOLICITATION
3 FOR 1,200 TO 4,000 MW - INVENERGY WIND OFFSHORE LLC

DOCKET NO. QO24010060

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