



Agenda Date: 12/14/11
Agenda Item: 8E

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF)	ORDER ON EXTENSION OF
FISHERMEN'S ATLANTIC CITY WIND FARM, LLC)	TIME FOR APPLICATION
FOR THE APPROVAL OF THE STATE WATERS)	REVIEW AND MOTION TO
PROJECT AND AUTHORIZING OFFSHORE WIND)	INTERVENE
RENEWABLE ENERGY CERTIFICATES – REQUEST)	
FOR EXTENSION OF TIME FOR APPLICATION)	
REVIEW)	DOCKET NO. EO11050314V

Parties of Record:

Stephen B. Pearlman, Esq., Inglesino, Pearlman, Wyciskala & Taylor LLC, on behalf of Fishermen's Atlantic City Windfarm, LLC
Stefanie A. Brand, Director, New Jersey Division of Rate Counsel
Phillip J. Passanante, Esq., on behalf of Atlantic City Electric Company
Marc B. Lasky, Esq., on behalf of Jersey Central Power & light Company
Alexander C. Stern, Esq., on behalf of Public Service Electric & Gas Company
Susan J. Vercheak, Esq., on behalf of Rockland Electric Company

BY THE BOARD:

BACKGROUND/PROCEDURAL HISTORY

On August 19, 2010, Governor Chris Christie signed into law the Offshore Wind Economic Development Act ("The Act"), P.L. 2010, c. 57, which amends and supplements the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. On February 10, 2011, the Board of Public Utilities ("Board") adopted N.J.A.C. 14:8-6.1 et seq., providing an application process and a framework under which the Board will review any application and ultimately approve, conditionally approve, or deny the application.

By Order dated May 16, 2011, in Docket No. EO11050290V, the Board opened an application window for 30 days for offshore wind projects in New Jersey territorial waters pursuant to N.J.S.A. 48:3-87.2. Fishermen's Atlantic City Windfarm, LLC ("FACW" or "the applicant"), submitted the only application to the Board on May 19, 2011.

Upon receipt of the application, Board staff immediately began the administrative review process pursuant to N.J.A.C. 14:8-6.4 *et seq.* The initial review uncovered administrative deficiencies which were outlined in letters to the applicant on June 2, 2011 and June 13, 2011. The applicant responded to the administrative deficiencies with written submissions on June 8, 2011 and June 14, 2011. Staff then determined that the application was administratively complete as of June 14, 2011, and provided such notice to FACW on June 22, 2011.

Extension of Time

Pursuant to the Act, the Board has 180 days to conduct its review, and to approve, conditionally approve, or deny the application. N.J.S.A. 48:3-87.1(d). Pursuant to N.J.A.C. 14:8-6.3 and 6.4, the 180-day period for the Board's review began to run on June 14, 2011, when staff determined that FACW's application was administratively complete. Hence, the Board's review period was set to expire on December 11, 2011, unless the applicant consented to an extension of time. By letter dated November 23, 2011, the applicant consented to an initial additional 60 days of review, beyond the initial 180 days which placed the requirement to act no later than February 8, 2012.

By letter dated December 13, 2011, the applicant consented to an additional extension which places the requirement for the Board to act at no later than March 21, 2012.

Offshore Wind Reimbursement Fund

Pursuant to N.J.S.A. 48:3-87.1(c)(4), an applicant is required to "reimburse the board and the State for all reasonable costs incurred for regulatory review of the project, including but not limited to consulting services, oversight, inspections, and audits." Pursuant to N.J.A.C. 14:8-6.5(a)(15), the Board has determined that the initial deposit for reimbursement for each application is \$100,000, with additional funds to be submitted as necessary and determined by Board Staff.

Because the reimbursement funds pay the OSW consultant, retained under State contract, the Department of Treasury ("Treasury") has advised staff that the initial reimbursement funding is State revenue and therefore needs to be deposited in an authorized State account. Hence, the reimbursement funding cannot be held by an applicant in an escrow account for the benefit of the State as set forth in the regulation. Nevertheless, the ultimate purpose of the reimbursement fund remains in effect.

Staff recommends that the Board waive compliance with N.J.A.C. 14:8-6.5(a)(15) to the extent that it requires an applicant to create an escrow account. Instead, FACW should be required to place the required \$100,000 reimbursement fund on deposit with the State and, if necessary, additional amounts as directed by staff.

Motion to Intervene

By letter dated October 17, 2011, Atlantic City Electric, Jersey Central Power & Light Company, Public Service Electric & Gas Company and Rockland Electric Company (collectively "the EDCs") filed a joint motion to intervene in the above referenced proceeding pursuant to N.J.A.C. 1:1-16.3.

The motion asserts that any decision by the Board with respect to the above referenced application could potentially have precedential effect and other impacts on both the EDCs and their customers. Specifically, the motion contends that the Board's determination could impact the BGS auction process, the EDCs revenues, and the collection of associated non-bypassable charges. The motion also suggests that the Board's decision may include a determination on the amount offshore wind renewable energy certificates ("OREC") and the nature of the funding mechanism for the project independent of the public stakeholder process currently underway. The motion further claims that the approval of this application may impose other obligations and/or responsibilities on the EDCs and/or their customers and therefore the EDCs have a vested interest in the outcome of the application.

By letter dated October 26, 2011, the applicant informed the Board that it does not oppose the motion but asserts that any granting of the motion must be accompanied by conditions to maintain timely review of the application and to protect the applicant's confidential information and trade secrets. The applicant's conditions for the granting of the motion include: maintaining the current schedule for the review of the application to ensure the viability of the project; requiring the EDCs to participate as one combined entity; barring the EDCs from conducting further discovery; protecting confidential information and trade secrets by redacting materials not relevant to the EDCs; and not permitting the EDCs to participate in negotiations regarding OREC pricing.

By letter dated November 1, 2011, the EDCs responded to the conditions set forth by the applicant. The EDCs agreed to abide by whatever schedule has been set for the proceeding and to be bound by the Board's procedures governing confidentiality and trade secret information.

The EDCs objected to the condition that they participate as a single entity. They asserted that they are different entities with different management, different concerns and different counsel and the Board has well established precedent in situations where interveners hold similar but distinct interests. The EDCs agreed to work jointly to avoid repetition and undue delay to the extent possible. The EDCs also maintain that it is premature to curtail discovery but agree to seek answers to inquiries that have not yet been asked while complying with the established application review schedule. They also agreed, for the purpose of this motion only, not to participate in negotiations regarding the OREC pricing.

FINDINGS AND DISCUSSION

The Board has carefully considered staff's recommendations and **HEREBY FINDS** that FACW has consented to extend the time for the Board's review of its application. The extension until March 21, 2012 represents a fair and reasonable extension and is in the public interest. The Board **HEREBY ORDERS** that the review period to consider the above referenced application has been extended to March 21, 2011.

Concerning the OSW reimbursement fund, the Department of the Treasury has determined that the OSW reimbursement fund of \$100,000 constitutes State revenue because it is collected for the purpose of paying an OSW consultant who provides service to the BPU. The Board recognizes that all such reimbursement funds must be placed in an authorized State account, and cannot be held by the OSW applicant in an escrow account for the benefit of the State. Therefore, the Board **HEREBY FINDS** that the language in N.J.A.C. 14:8-6.5(a)(15) regarding

escrow accounts shall be waived to the extent that it requires applicants to establish, submit proof of, place additional amounts into, or replenish an "escrow account." This limited waiver is procedural in nature and does not waive any substantive provision in the regulation.

Pursuant to N.J.S.A. 48:3-87.1(c)(4), the Board may recover reasonable costs related to its review of an OSW application, including but not limited to consulting services. The Board has no basis to believe that the amount set by regulation is inappropriate or otherwise inapplicable to the current situation, and accordingly **HEREBY DIRECTS** applicants to place the entire \$100,000 reimbursement fund on deposit with the State. Beyond this, the Board **FURTHER FINDS** that the applicable regulations shall control.

Last, in ruling on a motion to intervene, N.J.A.C. 1-16.3(a) requires that the decision-maker consider the following factors:

- 1) the nature and extent of the moving party's interest in the outcome of the case,
- 2) whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case,
- 3) the prospect for confusion and delay arising from inclusion of the party, and
- 4) other appropriate matters.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, Order, I/M/O the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106 (June 8, 2005).

Upon review of the EDCs' motion to intervene and the subsequent responses, the Board **HEREBY FINDS** that the EDCs meet the standard for intervention in this particular matter. FACW's application has preceded the Board's adoption of regulations concerning the OREC funding mechanism. As such, the Board's decision may impact issues related to the EDCs' interests and the nature of the funding mechanism, as they relate to FACW's application. The impact of such decision on the EDCs is sufficient to merit their intervention in the current application. If the Board had already adopted regulations concerning the OREC funding mechanism, the Board's analysis of the instant motion might be different.

Additionally, the Board **HEREBY FINDS** that the EDCs' response dated November 1, 2011 sufficiently complies with the conditions set forth by the applicant by letter dated October 26, 2011. The EDC's response also limits their intervention request by indicating that they not participate in the OREC pricing negotiations.

Therefore, the Board **HEREBY GRANTS** the motion, subject to the requirements that the EDCs 1) abide by the schedules for the proceeding set by the Board; 2) comply with the Board's procedures governing confidentiality including, but not limited to, the non-disclosure agreement executed by the parties regarding review of FACW's application; 3) abstain from participating in negotiations regarding OREC pricing; and 4) commit to working cooperatively,

to the fullest extent possible, with the other parties. FACW's request to require the EDCs to participate as one entity, and limit the scope of the EDCs' discovery is HEREBY DENIED pursuant to the conditions set forth above. Additionally, the Board HEREBY GRANTS the applicant's request to protect confidential trade information and trade secrets by redacting materials not relevant to the EDC's.

DATED: 12/15/11

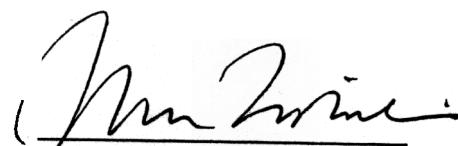
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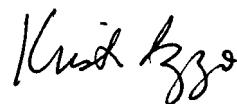


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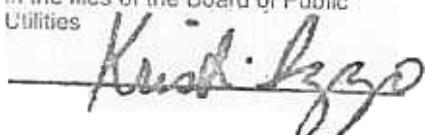


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:


KRISTI IZZO
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 PETITION OF FISHERMEN'S ATLANTIC CITY WIND FARM, LLC
FOR THE APPROVAL OF THE STATE WATERS PROJECT AND
AUTHORIZING OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES –
REQUEST FOR EXTENSION OF TIME FOR APPLICATION REVIEW
BPU DOCKET NO. EO11050314V

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