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Lt. Governor

BRIAN O. LIPMAN
Director

September 23, 2022

Via Electronic Mail

Carmen D. Diaz, Acting Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: In the Matter of the Board Of Public Utilities Offshore Wind
Solicitation 2 for 1,200 to 2,400 MW - Atlantic Shores Offshore Wind
Project 1, LLC – Waiver Petition
BPU Docket No. QO21050824**

Dear Acting Secretary Diaz:

Please accept this letter on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) requesting that the Board remove the above referenced matter from the September 29, 2022 agenda and afford Rate Counsel sufficient time to review and comment on this matter. As explained further below, Rate Counsel was not afforded proper notice or time to comment, and respectfully requests that the Board allow time for Rate Counsel to submit its comments.

Consistent with the Order issued by the Board in connection with *In the Matter of the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic for a Temporary Waiver of the Requirements for Certain Non-Essential Obligations*, BPU Docket No. EO20030254, dated March 19, 2020, these documents are being electronically filed with the Secretary of the Board and with Atlantic Shores Project 1, LLC (“Atlantic Shores”). No paper copies will follow.

The current matter was initiated by a petition filed by Atlantic Shores on February 10, 2022. Although Rate Counsel was a party to the underlying proceeding, Atlantic Shores failed to serve Rate Counsel (or any other party to that matter) with the petition. On September 7, 2022, Board Staff forwarded a “courtesy copy” of the petition to Rate Counsel’s Director. Staff advised that the Board intended to move on the matter “shortly.” Rate Counsel advised it would further review, but did not seem to have a record of the petition. On September 14, 2022, as Rate Counsel clearly began a review of the petition, Rate Counsel asked Staff, “We are reviewing the petition to see if we want to file any comments. In the interim, it would be helpful to know if Staff served any discovery on this matter?” Ex. A (emphasis added). Board Staff responded later that day that it did not issue any discovery in the matter. Rate Counsel received no further correspondence from Board Staff on this matter.

On September 20, 2022, Rate Counsel filed a letter with the Board. Significantly, in that letter Rate Counsel stated, “Rate Counsel hereby advises it is currently reviewing the February 10 verified petition, determining the need for an expert consultant, and will be providing comments in this matter, following its review.” Ex. B.(emphasis added). On September 23, 2022, the Board published its agenda with this item listed as Item 8B. Rate Counsel was never advised of a deadline for comments nor was our letter stating we would be filing comments acknowledged by the Board.¹

It is well-established that fundamental due process requires notice and an opportunity to be heard. Moore v. Dep’t of Corr., 335 N.J. Super. 103, 108, (App. Div. 2000) (“Administrative due process is generally satisfied if the parties had adequate notice, a chance to know opposing

¹ Other than the fact that it was received.

evidence, and the opportunity to present evidence and argument in response.""). Here, Rate Counsel has been denied both.² By failing to serve Rate Counsel and moving the matter forward for the last seven months, Atlantic Shores and the Board deprived Rate Counsel of notice of the pending proceeding. By placing it on the agenda before Rate Counsel can file comments, the Board is depriving Rate Counsel of its opportunity to be heard. The Supreme Court has made clear that it is the Board's obligation to ensure that adequate notice to potentially interested parties has been provided. See *In re Provision of Basic Generation Serv. for Period Beginning June 1 2008*, 205 N.J. 339, 361 (2011) (insisting that the Board turn square corners in providing adequate notice and noting that the Board's failure to provide such notice and a meaningful opportunity for comment on a discretionary decision was reversible error). Rate Counsel explicitly advised that it intended to file comments in this matter. Board Staff did not state that there was a deadline to do so. Board Staff had over seven months to review the petition, Rate Counsel was afforded two weeks' notice of the petition and no notice that it would be placed on the Board's September 23rd agenda. Simply, Rate Counsel has been denied any due process in this matter to which this office is clearly a party.

² Rate Counsel is a statutory intervenor authorized to represent the interests of utility ratepayers. See N.J.S.A. 52:27EE-48

Carmen D. Diaz, Acting Secretary
September 23, 2022
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Rate Counsel respectfully requests that the Board remove this item from the September 23rd agenda and afford Rate Counsel an appropriate amount of time to review and comment on this petition. Anything less will deny Rate Counsel its fundamental due process rights. Thank you for your attention to this matter.

Respectfully,

By: */s/ Brian Lipman*
Brian O. Lipman
Director, Division of Rate Counsel

Exhibits

cc: Service List
Carol Artale, Esq., BPU (Electronic mail)
Kimberly Diamond, BPU (Electronic mail)
Amanda Davila, BPU (Electronic mail)
Anissa Torres, BPU (Electronic mail)
Patrick Holzbaaur, BPU (Electronic mail)
Karlito Almeda, BPU (Electronic mail)
Angelita Flores, BPU (Electronic mail)
Earl Pierce, BPU (Electronic mail)

EXHIBIT A

From: [Diamond, Kimberly \[BPU\]](#)
To: [Lipman, Brian \[RPA\]](#)
Cc: [Artale, Carol \[BPU\]](#); [Ferris, Jim \[BPU\]](#); [Dillon, Kevin \[BPU\]](#); [Wand, David \[RPA\]](#); [Caroselli, Maura \[RPA\]](#); [Youchak, Paul \[LPS\]](#)
Subject: RE: For Your Interest - Petition of Atlantic Shores Offshore Wind re: Financial Reporting Matters, BPU Docket No. QO21050824
Date: Wednesday, September 14, 2022 12:28:23 PM
Attachments: [image013.png](#)
[image019.png](#)
[image020.png](#)
[image021.png](#)
[image022.png](#)
[image023.png](#)
[image024.png](#)

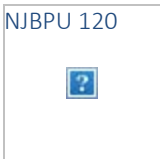
Hi, Brain.

We reviewed the petition in this matter and did not have any questions; we were satisfied with the information provided in the filing. Accordingly, Staff did not think discovery was necessary in this matter.

Hope this helps.

Regards,
Kim

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From: Lipman, Brian [RPA] <blipman@rpa.nj.gov>
Sent: Wednesday, September 14, 2022 11:19 AM
To: Diamond, Kimberly [BPU] <Kimberly.Diamond@bpu.nj.gov>
Cc: Artale, Carol [BPU] <Carol.Artale@bpu.nj.gov>; Ferris, Jim [BPU] <Jim.Ferris@bpu.nj.gov>; Dillon, Kevin [BPU] <Kevin.Dillon@bpu.nj.gov>; Wand, David [RPA] <dwand@rpa.nj.gov>; Caroselli, Maura [RPA] <mcaroselli@rpa.nj.gov>
Subject: RE: For Your Interest - Petition of Atlantic Shores Offshore Wind re: Financial Reporting Matters, BPU Docket No. QO21050824

We are reviewing the petition to see if we want to file any comments. In the interim, it would be helpful to know if Staff served any discovery on this matter? Please include Maura Caroselli and David Wand on any offshore wind correspondence.

thanks,

Brian

From: Diamond, Kimberly [BPU] <Kimberly.Diamond@bpu.nj.gov>
Sent: Wednesday, September 07, 2022 5:01 PM
To: Lipman, Brian [RPA] <blipman@rpa.nj.gov>
Cc: Artale, Carol [BPU] <Carol.Artale@bpu.nj.gov>; Ferris, Jim [BPU] <Jim.Ferris@bpu.nj.gov>; Dillon, Kevin [BPU] <Kevin.Dillon@bpu.nj.gov>
Subject: RE: For Your Interest - Petition of Atlantic Shores Offshore Wind re: Financial Reporting Matters, BPU Docket No. QO21050824

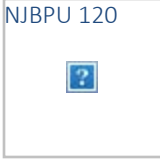
Hi, Brian.

Okay – sounds good. Please let me know if there is anyone else from Rate Counsel beside you that should be added to the Service List for this matter.

Thanks.

Regards,
Kim Diamond

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From: Lipman, Brian [RPA] <blipman@rpa.nj.gov>
Sent: Wednesday, September 7, 2022 4:59 PM
To: Diamond, Kimberly [BPU] <Kimberly.Diamond@bpu.nj.gov>
Cc: Artale, Carol [BPU] <Carol.Artale@bpu.nj.gov>; Ferris, Jim [BPU] <Jim.Ferris@bpu.nj.gov>; Dillon, Kevin [BPU] <Kevin.Dillon@bpu.nj.gov>
Subject: RE: For Your Interest - Petition of Atlantic Shores Offshore Wind re: Financial Reporting Matters, BPU Docket No. QO21050824

Thank you Kim. I'll check with the others in my office, but I don't recall seeing this before.

Brian

From: Diamond, Kimberly [BPU] <Kimberly.Diamond@bpu.nj.gov>
Sent: Wednesday, September 07, 2022 4:29 PM
To: Lipman, Brian [RPA] <blipman@rpa.nj.gov>
Cc: Artale, Carol [BPU] <Carol.Artale@bpu.nj.gov>; Ferris, Jim [BPU] <Jim.Ferris@bpu.nj.gov>; Dillon, Kevin [BPU] <Kevin.Dillon@bpu.nj.gov>
Subject: For Your Interest - Petition of Atlantic Shores Offshore Wind re: Financial Reporting Matters, BPU Docket No. QO21050824

Hi, Brian.

I hope you are doing well.

For your interest, I am providing you with a copy of the Feb. 10, 2022 Petition, [In the Matter of the Board of Public Utilities Offshore Wind Solicitation 2 for 1,200 to 2,400 MW – Atlantic Shores Offshore Wind Project 1, LLC](#), BPU Docket No. QO21050824. This Petition relates to the Petitioner's request to waive the requirement under N.J.A.C. 14:8-6.5(a)(4)(v) to submit audited annual and quarterly financial statements, and to grant Petitioner relief in the form of finding it acceptable for

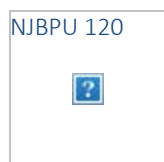
Petitioner to submit unaudited financials for fiscal year 2021 only, submit unaudited quarterly financial statements within a 60-day period following the end of each applicable quarter from fiscal year 2022 forward throughout the 20-year term of the OREC, and submit audited financials within 90 days after year-end from fiscal year 2022 forward throughout the 20-year term of the OREC.

I am sending this Petition to you at this time because it is unclear whether it was sent to Rate Counsel at the time of its original filing. Accordingly, we wanted to provide you/your team with a courtesy copy. Please also be aware that the BPU will be issuing a Board Order regarding this Petition shortly, so we wanted to give you a heads-up in advance regarding same.

Hope this helps. Please contact me if I may be of further assistance regarding this matter.

Regards,
Kim Diamond

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EXHIBIT B



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September 20, 2022

Via Electronic Mail

Carmen D. Diaz, Acting Secretary
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44 South Clinton Avenue, 1st Floor
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**Re: In the Matter of the Board Of Public Utilities Offshore Wind
Solicitation 2 FOR 1,200 TO 2,400 MW - ATLANTIC SHORES
OFFSHORE WIND PROJECT 1, LLC – Waiver Petition
BPU Docket No. QO21050824**

Dear Acting Secretary Diaz:

The New Jersey Division of Rate Counsel (“Rate Counsel”) provides the following update regarding the above-referenced matter. On February 10, 2022, Atlantic Shores Offshore Wind Project 1, LLC (“Atlantic Shores”) filed a verified petition requesting waiver of certain financial reporting commitments it made in applying for approval to be a qualified offshore wind project under N.J.A.C. 14:8-6.3. Rate Counsel was never served with a copy of the February 10 verified petition.

On September 7, 2022, Board Staff forwarded a “courtesy copy” to the Director of Rate Counsel, because it was unclear whether Rate Counsel has been served, and also advised that the New Jersey Board of Public Utilities planned to issue an Order regarding the February 10 verified petition “shortly.” Rate Counsel understands that Board Staff did not propound any discovery on the verified petition.

Rate Counsel hereby advises it is currently reviewing the February 10 verified petition, determining the need for an expert consultant, and will be providing comments in this matter, following its review. If you have any questions or concerns, please contact me at dwand@rpa.nj.gov.

Carmen D. Diaz, Acting Secretary
September 20, 2022
Page 2

Thank you for your attention to this matter.

Very truly yours,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ David Wand
T. David Wand, Esq.
Deputy Rate Counsel

c: Stephen B. Pearlman, Esq., Pearlman & Miranda LLC (via electronic mail)
Adam L. Peterson, Esq., Pearlman & Miranda LLC (via electronic mail)
Julia Pettit, Esq., Atlantic Shores Offshore Wind, LLC (via electronic mail)
Robert Brabston, Esq., Board of Public Utilities (via electronic mail)
Carol Artale, Esq., Board of Public Utilities (via electronic mail)

In the Matter of the Board of Public
Utilities Offshore Wind Solicitation 2
For 1,200 To 2,400 MW - Atlantic
Shores Offshore Wind Project I, LLC
BPU Docket No. QO21050824

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