



Agenda Date: 12/7/22
Agenda Item: 8H

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE BOARD OF PUBLIC UTILITIES OFFSHORE WIND SOLICITATION 2 FOR 1,200 MW TO 2,400 MW – ATLANTIC SHORES OFFSHORE WIND 1, LLC)	ORDER APPROVING WAIVER
)	DOCKET NO. QO21050824

Parties of Record:

Julia Pettit, Esq., on behalf of Atlantic Shores Offshore Wind Project 1, LLC
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers the request submitted on February 10, 2022 by Atlantic Shores Offshore Wind Project 1, LLC (“Atlantic Shores” or “Petitioner”) regarding the financial reporting requirements related to its offshore wind project (“Project”) awarded by the Board on June 30, 2021 (“June 30, 2021 Order”) under Docket Nos. QO20080555 and QO21050824 (“Petition”).¹ The Petition specifically relates to Petitioner’s submission of unaudited financial statements through December 31, 2021 and to the requirements for submission of audited financial statements in all subsequent years thereafter.

¹ See In re the Opening of Offshore Wind Renewable Energy Certificate (OREC) Application Window for 1,200 to 2,400 Megawatts of Offshore Wind Capacity in Furtherance of Executive Order No. 8 and Executive Order No. 92; In the Matter of the Board of Public Utilities Offshore Wind Solicitation 2 for 1,200 to 2,400 MW – Atlantic Shores Offshore Wind 1, LLC, BPU Docket Nos. QO20080555 and QO21050824, Order dated June 30, 2021 (“June 2021 Order”).

BACKGROUND

On August 19, 2010, the Offshore Wind Economic Development Act (“OWEDA”) was signed into law.² OWEDA establishes offshore wind as a Class I renewable energy resource and directs the Board to establish an Offshore Wind Renewable Energy Certificate (“OREC”) program.³

Governor Murphy signed Executive Order No. 8 (“EO 8”) on January 21, 2018, establishing the nation’s most aggressive offshore wind (“OSW”) goal of 3,500 MW of OSW capacity by 2030.⁴ 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 2035.⁵ On September 21, 2022, Governor Murphy signed Executive Order No. 307 (“EO 307”), which expanded the State’s OSW goal to 11,000 MW by 2040.⁶

Following the passage of OWEDA, the Board adopted rules building upon the application requirements set forth in OWEDA and setting forth an application process and evaluation framework for OSW projects, found at N.J.A.C. 14:8-6.1 et seq. (“Board rules”).

The Board rules require that an application seeking approval as a qualified OSW project include “[a] commitment that audited financial statements shall be filed with the Board on a quarterly and annual basis.”⁷

On September 10, 2020, the Board released its “New Jersey Offshore Wind Solicitation #2, Solicitation Guidance Document, Application Submission for Proposed Offshore Wind Facilities,” (“Second Solicitation Guidance Document”). The Second Solicitation Guidance Document required applicants in response thereto to provide, an “Applicant Commitment Form,” pursuant to which the applicant commits to “file audited financial statements with the Board on a quarterly and annual basis,” should the applicant’s project be approved as a qualified OSW project.

While both the Board rules and the Applicant Commitment Form require the submittal of audited financial statements on a quarterly and annual basis, neither specifies the deadline for submittal of financial statements to be considered timely for an accounting period.

On February 10, 2022, Atlantic Shores filed the Petition with the Board. The Petition requested a waiver or amendment to reporting requirements contained in Board rule N.J.A.C. 14:8-6.5(a)(4)(v).

² See N.J.S.A. 48:3-87 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” (emphasis added). N.J.A.C. 14:8-1.2.

⁴ Exec. Order N. 8 (2018).

⁵ Exec. Order N. 92 (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.

⁶ Exec. Order N. 307 (2022).

⁷ N.J.A.C. 14:8-6.5(a)(4)(v).

In its Petition, Atlantic Shores requested authorization to submit an unaudited annual financial statement for the portion of their fiscal year commencing on September 1, 2021 and ending on December 31, 2021. Atlantic Shores indicates that audited annual financial statements would be filed in subsequent fiscal years as per the Board rules. Atlantic Shores also requested that unaudited financial statements be permitted in place of the audited financial statements on a quarterly basis through the 20-year OREC term agreed upon in the June 30, 2021 Order. In the Petition, Atlantic Shores noted that the requirement for submitting quarterly audited financial statements is not an industry standard and imposes a commercially unreasonable burden and hardship on the Project.⁸

Atlantic Shores further requested confirmation that submittal of annual audited financial statements shall be considered timely if provided to the Board no more than 90 days following the end of the fiscal year, and that submittal of unaudited quarterly financial statements shall be considered timely if provided to the Board no more than 60 days following the end of the applicable quarter.

New Jersey Division of Rate Counsel (“Rate Counsel”) Comments

On October 31, 2022, Rate Counsel filed written comments on the Petition.⁹ Rate Counsel’s Comments noted that the Board rejected removing audited financial requirements from its rules under N.J.A.C. 14:8-6.5 because “the Board needs to have a high degree of confidence that the [offshore wind] project will be able to obtain development and construction financing.”¹⁰

Rate Counsel recommended that because Atlantic Shores is utilizing the balance sheets of its parent companies, the Board should investigate whether audited financial statements from those companies would satisfy the requirement under the Board’s rules.¹¹

Rate Counsel also recommended that the Board establish process for review, in the event that Atlantic Shores’ audited annual financial statements vary significantly from their unaudited quarterly financial statements.¹² Rate Counsel also expressed concerns regarding the waiver of Offshore Wind Solicitation requirements after bids have been submitted. According to Rate Counsel, the wavier of any such requirements post-bidding could “undermine the competitive contracting process.”¹³

Finally, Rate Counsel’s Comments stated that if the Board chooses to waive the audited quarterly financial statement requirement for Atlantic Shores, then the Board should reconsider enforcing

⁸ See In the Matter of the Board of Public Utilities Offshore Wind Solicitation 2 for 1,200 to 2,400 MW – Atlantic Shores Offshore Wind 1, LLC, BPU Docket No. QO21050824, Petition dated February 10, 2022, at 10.

⁹ See In the Matter of the Board of Public Utilities Offshore Wind Solicitation 2 for 1,200 to 2,400 MW – Atlantic Shores Offshore Wind 1, LLC, BPU Docket No. QO20150824, Rate Counsel Comments dated October 31, 2022 (“Rate Counsel’s Comments”).

⁷ Id. at 5.

¹¹ Id. at 6.

¹² Id.

¹³ Id.

this commitment in the future, or should consider revising the regulations to remove other requirements that may be burdensome and a barrier to entry for certain prospective bidders.¹⁴

DISCUSSION AND FINDINGS

N.J.A.C. 14:8-6.5(a)(4)(v) requires that Atlantic Shores maintain “[a] commitment that audited financial statements shall be filed with the Board on a quarterly and annual basis.” This Board rule, along with the “Applicant Commitment Form,” does not specify any deadlines for submittal of financial statements.

Atlantic Shores has indicated that they do not expect their internal procurement process to result in retaining an auditor until Q4 2022, and, as a result, the Petitioner will be unable to submit audited financial statements for the 2021 fiscal year. Atlantic Shores maintains that annual audited financial statements will be submitted in all subsequent years of its OREC term.

The issues Petitioner raises present issues regarding submittal of audited financial statements for the 2021 fiscal year as well as issues regarding submittal of audited financial statements on a quarterly basis through the 20-year OREC term. Petitioner’s request to waive the Board rules, which establish clear and unambiguous requirements for filing financial statements with the Board, necessitates a waiver of the Board rule regarding qualified offshore wind projects (“QOWPs”), specifically N.J.A.C. 14:8-6.5(a)(4)(v). The process for the waiver of a Board rule is set forth in N.J.A.C. 14:1-1.2(b), which states that “[i]n special cases, and for good cause shown, the Board may . . . relax or permit deviations from these rules.” Id. Accordingly, the Board must balance Petitioner’s interest as an OSW developer against the State’s interest to achieve the goals of OWEDA in a timely and secure manner.¹⁵

The intent of N.J.A.C. 14:8-6.5(a)(4)(v), among other things, is to serve as a check on a QOWP the Board selected insofar as the financials requested would assist the Board as an indicator in evaluating whether that a QOWP was timely proceeding with its construction schedule and whether the QOWP, once operational, was reasonably performing, without financial issues of concern. The intent of N.J.A.C. 14:8-6.5(a)(4)(v) was not to serve as an onerous hurdle that would place additional, non-industry-standard financial requirements on a Board-selected QOWP. According to Atlantic Shores, the requirement for submitting quarterly audited financial statements is not an industry standard and imposes a commercially unreasonable burden and hardship on the Project.

With respect to Rate Counsel’s statement that the Board rejected removing the audited financial requirements, the Board notes the Petition does not ask to eliminate all audited financial statements. In fact, Atlantic Shores makes a distinction between unaudited quarterly financial statements and annual audited financial statements, the latter of which Atlantic Shores intends to submit. This process can adequately balance the involved interests; the Petitioner will not be burdened by non-industry standards, and the Board can continue to evaluate the financial progress of the QOWP.

Rate Counsel also expressed concerns regarding the waiver of Offshore Wind Solicitation requirements after bids have been submitted. According to Rate Counsel, the waiver of any such

¹⁴ Id. at 7.

¹⁵ Exec. Order N. 8 at ¶ 1 (2018).

requirements post-bidding could “undermine the competitive contracting process.”¹⁶ Offshore wind developers must continue to expect that they must comply with all Board regulations when submitting a bid under a competitive solicitation.

Rate Counsel’s Comments stated that if the Board chooses to waive the audited quarterly financial statement requirement for Atlantic Shores, then the Board should reconsider enforcing this commitment in the future, or should consider revising the regulations to remove other requirements that may be burdensome and a barrier to entry for certain prospective bidders. Additionally, Rate Counsel suggested that the Board consider establishing a process for review of Atlantic Shores’ annual financial statements to ensure that they do not vary significantly from the unaudited quarterly financial statements. The Board believes these recommendations are best considered in the context of the next rulemaking cycle, which is the appropriate time where all aspects of the reporting requirements may be reviewed. To ensure that the Board continues to receive sufficient financial information from Atlantic Shores, Board Staff shall reevaluate the waiver of the audited quarterly financial statements requirement for Atlantic Shores two (2) years following the effective date of this Order.

Following careful review of the Petition and Rate Counsel’s Comments, and having thoroughly considered Board Staff’s recommendations, the Board **HEREBY FINDS** that the requests in the Petition are reasonable. The Board **HEREBY WAIVES** the requirement under N.J.A.C. 14:8-6.5(a)(4)(v) for Petitioner to submit audited financial statements for fiscal year 2021, **HEREBY FINDS** it acceptable for Petitioner to submit an unaudited financial statement for 2021 only, and **HEREBY FINDS** that a 90 day period after the end of the applicable fiscal year, from fiscal year 2022 forward, for submittal of annual audited financial statements throughout the 20-year term of the OREC for the Project is reasonable.

The Board further **HEREBY WAIVES** the requirement under N.J.A.C. 14:8-6.5(a)(4)(v) for Petitioner to submit audited quarterly financial statements throughout the 20-year term of the OREC for the Project,¹⁷ **HEREBY FINDS** Petitioner’s request to submit unaudited quarterly financial statements to be reasonable, and **HEREBY FINDS** that a 60 day period after the end of each applicable quarter constitutes timeliness for submittal of unaudited quarterly financial statements. The Board **HEREBY DIRECTS** Petitioner to submit unaudited quarterly financial statements within 60 days after the end of the applicable quarter. The Board **HEREBY DIRECTS** Board Staff to reevaluate the waiver of the audited quarterly financial statements requirement for Atlantic Shores two (2) years following the effective date of this Order.

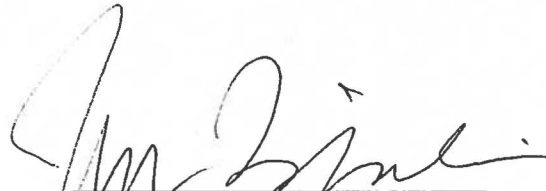
¹⁶ Id.

¹⁷ June 2021 Order, at 25.

The effective date of this Order is December 14, 2022.

DATED: December 7, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



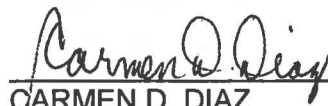
DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST: 

CARMEN D. DIAZ
ACTING 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 BOARD OF PUBLIC UTILITIES OFFSHORE WIND SOLICITATION
2 FOR 1,200 MW TO 2,400 MW – ATLANTIC SHORES OFFSHORE WIND 1, LLC

DOCKET NO. QO21050824

SERVICE LIST

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