

September 7, 2023

VIA ELECTRONIC MAIL

Secretary of the Board
New Jersey Board of Public Utilities
board.secretary@bpu.nj.gov
Attention: Hon. Sherri L. Golden

**Re: Petitioner's Reply to Atlantic Shores Offshore Wind LLC's
Motion to Dismiss, 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**

Dear Secretary Golden:

The Law Office of Thomas Stavola Jr. LLC represents Dr. Robert Stern and Save Long Beach Island, Inc. ("Save LBI") in the hereinabove captioned matter. Atlantic Shores Offshore Wind LLC submitted a Motion to Dismiss, dated August 29, 2023, in response to Save LBI's Petition submitted August 17, 2023.

Please find enclosed for filing, on behalf of Save LBI, a Letter Brief in Reply to Atlantic Shores Offshore Wind LLC's Motion to Dismiss.

I hereby certify that copies of the within Reply to Motion to Dismiss have this day been transmitted to all persons on the attached Service List via electronic mail. No paper copies will follow.

Thank you for your consideration.

Very truly yours,

/s/ Thomas Stavola Jr. Esq.
Thomas Stavola Jr. Esq.

Enclosure
Ecc: Service List



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September 7, 2023

VIA ELECTRONIC MAIL

Secretary of the Board
New Jersey Board of Public Utilities
board.secretary@bpu.nj.gov
Attention: Hon. Sherri L. Golden

Re: Reply Brief In Opposition to Atlantic Shores Offshore Wind LLC's Motion to Dismiss 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

Dear Secretary Golden:

Please accept this letter brief in reply to the Motion to Dismiss submitted by Atlantic Shores Offshore Wind LLC.

I. Argument

A. Petitioner's request is properly within the jurisdiction of the New Jersey Board of Public Utilities

Atlantic Shores contends that Save LBI's Petition should be denied due to the fact that hearings are purportedly inapplicable to the Board's OREC application process, and both the statute and implementing regulations of the NJ Offshore Wind Redevelopment Act (pertinent provisions codified at N.J.S.A § 48:3-87.1 et seq.) do not explicitly provide for hearings. Atlantic Shores concludes, therefore, that no hearings are permitted. This is in error.



N.J.S.A. § 48:2-13 sets forth the scope of the NJ Board of Public Utility's ("BPU") jurisdiction. Therein, in (d), it provides in pertinent part:

“The board shall also maintain the necessary jurisdiction with regard to the production of electricity and gas to assure the reliability of electricity and gas supply to retail customers in the State as prescribed by the board or any other federal or multi-jurisdictional agency responsible for reliability and capacity in the State (emphasis added).”

As such, in view of the fact that Atlantic Shores Offshore Wind LLC is ostensibly a producer of electricity for the State of New Jersey, and the BPU maintains jurisdiction over the production of electricity, Save LBI properly invoked the BPU's jurisdiction. None of the exclusions in the other statutory subsections of N.J.S.A. § 48:2-13 are applicable to the electricity generated by way of offshore wind. Atlantic Shores intends to produce electricity through offshore wind power, and this electricity will then be transmitted through the State of NJ. The Board's procedures permit a party such as Save LBI to petition for a hearing on any matter within its jurisdiction.

Atlantic Shores' assertion that none of the OWEDA, OWEDA regulations, or Second Solicitation Document explicitly provide for hearings in connection with



OREC applications is irrelevant and mischaracterizes jurisdiction. Those statutes and regulations do not need to explicitly state that hearings are possible in connection with OREC applications (i.e., the absence of such language is not dispositive of the matter), as N.J.S.A. § 48:2-13 applies by default and governs the BPU's jurisdiction. And N.J.S.A. § 48:2-13(d) clearly applies to situations such as the OREC applications given the relationship of OREC applications to the production of electricity.

Thus, Save LBI's petition requesting the BPU's rehearing on this matter is legally appropriate given it falls within the purview of the Board.

B. Petitioner seeks a reduction of OREC pricing by way of the legally incorrect cost-benefit analysis conducted by BPU under § 48:3-87.1

Atlantic Shores avers that the Petitioner cannot obtain their request for relief through the submission of their Petition to the BPU, as the OREC order cannot be altered absent Atlantic Shores' consent. Atlantic Shores incorrectly frames what Petitioner challenges here. The statutory conditions precedent for the grant of the OREC order is a determination by the BPU that:



1. “the cost-benefit analysis, submitted pursuant to paragraph (10) of subsection a. of this section, demonstrates positive economic and environmental net benefits to the State.” N.J.S.A. § 48:3-87.1(b)(1)(b).
2. “the financing mechanism is based upon the actual electrical output of the project, fairly balances the risks and rewards of the project between ratepayers and shareholders.” N.J.S.A. § 48:3-87.1(b)(1)(c).

The determination that the Atlantic Shores’ bid satisfied the requirements of N.J.S.A. § 48:3-87.1(b)(1)(b) – (c) was an evaluation conducted by the BPU. The gravamen of Save LBI’s Petition is that the BPU violated the statutory provisions of N.J.S.A. § 48:3-87.1(b)(1)(b) through their findings that the Atlantic Shores’ bid produces a cost/benefit ratio greater than 1.0 and that the proposed OREC pricing results in a fair balance of financial risks and rewards between NJ ratepayers and Atlantic Shore shareholders. Thus, this was an action of the BPU itself, and is squarely within their purview. The requested relief of OREC pricing reduction is a function of, and flows from, a proper cost-benefit analysis and establishment of a fair balance of financial risk conducted pursuant to N.J.S.A. § 48:3-87.1(b)(1)(b) – (c).

Our Petition maintains and demonstrates that neither statutory requirement is met by the Board’s order. Under the associated OREC pricing, the net economic and environmental benefits to the state are both negative, and the excessive Internal Rate



of Return (IRR) being realized by Atlantic Shores shareholders is not an equitable balance with NJ rate payers.

While the statute provides that an OREC order cannot be modified unless jointly agreed to by the parties, the OREC order stipulated to is in direct violation of the statute and the implementing regulations which require a demonstration of net environmental and economic benefits. N.J.A.C. 14:8-6.5(a)(11).

Accordingly, Atlantic Shores improperly frames the challenge advanced by Petitioner, namely, that the proper, legally required cost-benefit analysis and evaluation of the balance of financial risks and rewards be conducted by BPU under the governing statutory and regulatory provisions, which would result in a more equitable distribution of financial risk and reward between the ratepayers of NJ and Atlantic Shores.

II. Conclusion

The motion to dismiss by Atlantic Shores improperly construes jurisdiction, and incorrectly characterizes Save LBI's arguments. Save LBI seeks nothing more than to be heard on a matter of vital economic and environmental importance to our constituents. We are confident that the Board will grant us this right. In view of the above, Petitioner Save LBI respectfully requests that the Board deny Atlantic Shores Offshore Wind LLC's Motion to Dismiss.



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Date: September 7, 2023

Respectfully Submitted,

/s/ Thomas Stavola, Jr., Esq.
Thomas Stavola, Jr., Esq.