

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

|                                   |                       |
|-----------------------------------|-----------------------|
| IN THE MATTER OF THE OPENING OF ) |                       |
| NEW JERSEY’S THIRD SOLICITATION ) | DOCKET NO. QO22080481 |
| FOR OFFSHORE WIND RENEWABLE )     |                       |
| ENERGY CERTIFICATES (OREC) )      |                       |
| )                                 |                       |

**Invenergy Wind Offshore LLC’s Motion for a Stay of Order**

Invenergy Wind Offshore LLC (“Invenergy” or the “Company”) respectfully seeks an order from the Board of Public Utilities (“Board” or “BPU”) pursuant to N.J.A.C. 1:1-12.1 et seq. and N.J.A.C. 14:1-8.7(d) staying enforcement of the Board’s *Order Approving Leading Light Wind 2400 MW Project as a Qualified Offshore Wind Project* dated January 24, 2024 (the “Board Order”) until December 20, 2024 for the reasons explained in detail below and the Certification of James Shield supporting this request (the “Certification”).

**I. PRELIMINARY STATEMENT.**

In January 2024, the Board determined that Invenergy’s 2,400 MW Leading Light Wind Project (“LLW Project”) met the criteria to be deemed a Qualified Offshore Wind Project (“QOWP”) and issued the Board Order that is the subject of this Motion to Stay. As described in detail in the Certification, Invenergy developed its bid for the 2,400 MW LLW Project using a “turbine agnostic” approach that considered expected product offerings from all three major turbine manufacturers - GE Vernova (“GE”), Siemens Gamesa Renewable Energy (“SGRE”), and Vestas. Based on expectations for the turbine market at the time of the application submission, Invenergy reasonably believed that certain turbines expected to be manufactured by either GE or SGRE would be the most cost-effective options available. The Vestas offering was deemed to be unsuitable for the site for a variety of cost and technical factors. Invenergy took this flexible turbine manufacturer approach to ensure that if one manufacturer was unable to deliver on the quoted

turbine for the LLW Project, an alternative supplier would be available. Thus, Invenergy initially proposed to use GE equipment in its “base case” bid and SGRE equipment was proposed as the Company’s “alternate case.”<sup>1</sup> However, due to negative developments with the GE offering between the time of initial application submission in August 2023 and submission of Invenergy’s Best and Final Offer (“BAFO”) on December 15, 2023, SGRE equipment had become the “base case” equipment. Please see the Certification for a detailed discussion of how Invenergy developed its initial application submission and the factors it considered in its BAFO.

On January 24, 2024, the BPU issued the Board Order finding that the LLW Project was a QOWP. Approximately three weeks after the Board Order was issued in January of 2024, GE publicly announced it would not manufacture the offshore wind turbine Invenergy expected to use in the LLW Project. By the time of the formal GE announcement, Invenergy was already actively engaged in discussions with SGRE around the turbine supply proposal it had previously provided to Invenergy for the LLW Project. In June 2024, SGRE notified Invenergy that it was substantially increasing the cost of its turbine offering. As a result of these actions, Invenergy is currently without a viable turbine supplier for the LLW Project. Invenergy continues to engage in discussions with GE and SGRE to work to find a suitable alternative. Given the complexity of the LLW Project, and offshore wind projects generally, identification of viable equipment alternatives takes time—time the Board Order was not structured to allow.

Consequently, Invenergy files this Motion to Stay the operation of the Board Order until December 20, 2024, to provide Invenergy an additional period in which to engage with equipment manufacturers, explore cost-effective market options, and review those options with Board Staff and the Division of Rate Counsel. As discussed in detail herein, the Stay requested by Invenergy

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<sup>1</sup> See Leading Light Wind Application Narrative, August 4, 2023, Page 92.

is in the public interest in that it will permit the Company the time needed to address these unforeseen circumstances in a thorough and thoughtful manner. Invenenergy remains committed to bringing the economic and environmental benefits of offshore wind energy to the State of New Jersey and seeks the Board's assistance in the form of a Stay of the Board Order.

## **II. RELEVANT FACTUAL BACKGROUND & PROCEDURAL HISTORY.**

On August 19, 2010, the New Jersey Offshore Wind Economic Development Act (“OWEDA”) was signed into law, amending and supplementing the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. OWEDA established, among other things, offshore wind as a Class I renewable energy resource under the Renewable Portfolio Standards (“RPS”), and directed the Board to establish an Offshore Wind Renewable Energy Credit (“OREC”) program requiring a percentage of the state's electric load to be supplied by offshore wind from QOWPs. A QOWP is defined as “. . . a wind turbine electric generation facility in the Atlantic Ocean and connected to the electric transmission system in this state and includes the associated transmission-related interconnection facilities and equipment, and approved by the Board pursuant to [N.J.S.A. 48:3-87.1].” N.J.S.A. 48:3-51.

On March 6, 2023, the Board approved and issued the Third Solicitation “Solicitation Guidance Document,” which provided the basis for the third round of applications for QOWPs. Applications for the Third Solicitation projects were to be submitted by June 23, 2023. On June 7, 2023, the Board extended the application due date to August 4, 2023. Invenenergy submitted its application for the Third Solicitation on August 4, 2023. On January 24, 2024, the Board found the LLW Project satisfied OWEDA's requirements to be deemed a QOWP and issued the Board Order.

On March 7, 2024, Protect Our Coast NJ, Inc., Defend Brigantine Beach, Inc., Suzanne

Moore, and Mike Dean (collectively, “Appellants”) filed an Appeal of the Board Order with the New Jersey Superior Court, Appellate Division. The Appeal transferred jurisdiction over the Board Order to the Appellate Division, with certain exceptions (including enforcement of the requirements imposed in the Board Order). On May 6, 2024, the Appellate Division entered an order remanding the Board Order to the Board for the opportunity to revise the Board Order. Ultimately, the Board did not revise the Board Order and the matter has been returned to the Appellate Division for adjudication.

Both before and after the Board Order was issued, significant developments have occurred in the offshore wind turbine market that impact the LLW Project. Given the long lead time between award and commercial operations, the LLW Project expected to use next generation turbine technology. Specifically, Invenergy initially proposed a “base case” using the Haliade-X 18 MW turbine (“18 MW Turbine”) that was to be developed and manufactured by GE (while retaining a clear openness to alternatives from similarly qualified turbine manufacturers). The 18 MW Turbine was expected to provide significant advantages over current generation turbines due to its larger size, resulting in fewer turbines and platforms, and creating opportunities for cost efficiencies and savings in labor, construction and maintenance costs.

The LLW Project team worked closely with both GE and SGRE as it developed and refined its application in the Third Solicitation. As originally proposed, the LLW Project would install 18 MW Turbines to provide 2,400 MW of delivered electricity. Shortly before the submission of Invenergy’s BAFO, however, the Company learned the 18 MW Turbine was unlikely to be available. Subsequently, Invenergy submitted its BAFO based on the use of a new SGRE turbine previously proposed by SGRE.

On February 15, 2024, GE made statements in a public filing with the United States

Securities and Exchange Commission (“SEC”) that going-forward it would center its offshore wind business around the Haliade-X 15.5 MW-250 turbine. See SEC Form 10 filing dated February 15, 2024 at page 111. With this decision, the LLW Project no longer had an alternative turbine option if the SGRE equipment was unavailable.

The LLW Project is not the only offshore wind project impacted by volatility in the equipment market. In New York, the New York State Energy Research and Development Authority (“NYSERDA”) cancelled three proposed wind projects being developed by Attentive Energy, Community Offshore Wind, and Excelsior Wind due, in large part, to their reliance on the 18 MW Turbine. In taking this action, NYSEDA noted that material modifications to project bids had occurred preventing the parties from coming to terms on the proposed projects. Consequently, NYSEDA closed the offshore wind solicitation, noting “GE Vernova’s offshore wind turbine product pivot away from the initially proposed 18 MW Haliade-X turbine platform to a 15.5/16.5 MW platform caused material changes to projects proposed into ORECRFP22-1. Given these developments, NYSEDA announced in April 2024 that the solicitation concluded and no final awards were made.” See NYSEDA announcement April 2024.

More recently, Invenergy has been advised of cost changes in the SGRE equipment. As described in the Certification, these changes are material and newly proposed costs differ significantly from previously proposed cost estimates. The upshot of these developments is that the LLW Project does not have a workable equipment solution at this time, but the Company remains in active discussions with turbine manufacturers. Invenergy has filed this Motion in an effort to obtain additional time in which to work with turbine manufacturers in order to deliver the LLW Project to New Jersey consumers.

### III. LEGAL ARGUMENT.

#### A. Legal Standard Governing a Request for a Stay Pending Appeal.

Pursuant to N.J.A.C. 14:1-8.7(d), a stay of a Board order “will be granted only for good cause shown.” N.J.A.C. 14:1-8.7(d). A stay should be granted when the movant can demonstrate:

- (1) immediate and irreparable harm if a stay is not granted;
- (2) the legal right underlying the movant’s claim is well-settled;
- (3) there is 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.

Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982).

Each of the foregoing factors must be clearly and convincingly shown, but a “court may take a less rigid view than it would after a final hearing when the interlocutory injunction is merely designed to preserve the status quo.” See Waste Mgmt. of N.J., 399 N.J. Super. at 520 (citation omitted); McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007). Thus, because the decision to grant a stay is “based on an appropriate exercise of sound judicial discretion,” that discretion permits a court, or the Board in this instance, to “place less emphasis on a particular Crowe factor if another greatly requires the issuance of the [stay]” when the concern is to preserve the status quo. Waste Mgmt. of N.J., 399 N.J. Super. at 520 (citing N.J. State Bar Ass’n v. Northern N.J. Mortgage Assocs., 22 N.J. 184, 194 (1956)).

The Board must also consider the public interest when an issue of significant public importance is implicated by a request for a stay. McNeil v. Legislative Apportionment Comm’n, 176 N.J. 484, 484 (2003). The Appellate Division has explained that courts, “in the exercise of their equitable powers, ‘may and frequently do, go much farther to both give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are

involved.” Waste Mgmt. of N.J., Inc. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520-21 (App. Div. 2008) (quoting Yakus v. United States, 321 U.S. 414, 440 (1944)).

**B. Invenergy Satisfies the Criteria for a Stay of the Board Order.**

***1. Invenergy and the State of New Jersey and its Citizens will Suffer Immediate and Irreparable Harm if the Board does not Issue a Stay.***

Invenergy and the State of New Jersey and its citizens will suffer immediate and irreparable harm if the Board does not issue a stay. First, if Invenergy is not provided with additional time to secure the appropriate turbines, the LLW Project will not be able to progress in a timely manner. As a result, the significant environmental and economic benefits of the LLW Project will be compromised. In turn, the State of New Jersey and its citizens will be denied the benefit of the bargain that the Board has made with Invenergy and the State’s goals to effectuate clean energy will be significantly delayed.

Second, if the Board Order is not stayed temporarily, Invenergy will be obligated to comply with certain requirements imposed by the Board Order – including the significant financial obligations outlined in the Order and triggered by submission of its Compliance Filing – without certainty that it can secure an economically and technically viable turbine solution. Obligating Invenergy to proceed with the LLW Project before a workable alternative has been determined means that Invenergy is unable to reasonably calculate the monetary value of the loss that it may incur as a result of being required to make certain payments or the potential inability to meet certain Critical Milestones set forth in the Board Order.

New Jersey finds irreparable harm exists in every situation where it is difficult to ascertain the monetary value of a loss to a business. J.H. Renarde, Inc. v. Sims, 312 N.J. Super. 195, 203 (Ch. Div. 1998) (citing Nat’l Starch & Chem. Corp. v. Parker Chem. Corp., 219 N.J. Super. 158, 163 (App. Div. 1987)). Further, in Crowe, the Supreme Court of New Jersey held that “severe

personal inconvenience can constitute irreparable injury justifying the issuance of [extraordinary] relief”” such as a stay. 90 N.J. at 133 (citation omitted). Invenergy also faces the risk of irreparable harm because if the Board Order is not stayed – and Appellants succeed with their appeal – any funds that Invenergy is obligated to provide under the Board Order will be “forfeited” and either “committed to the development of offshore wind infrastructure in New Jersey, or returned to ratepayers, at the Discretion of the Board.” See, Board Order at pg. 50.

Thus, under that set of facts, there is a real risk that Invenergy will be unable to recover these funds from any source. See, e.g., Davenport v. N.J. Bd. of Pub. Utils., No. 18-13687, 2019 WL 13257848, at \*4 (D.N.J. Oct. 30, 2019). The fact that Invenergy is now experiencing severe challenges in its ability to proceed with its obligations under the Board Order, and that it faces potentially unquantifiable economic losses in the event that a stay is not issued, constitutes irreparable harm under New Jersey law. See Crowe, 90 N.J. at 133; ITServe All., Inc. v. Scalia, No. 20-14604, 2020 WL 7074391, at \*9 (D.N.J. Dec. 3, 2020) (“[I]n instances where the injured parties cannot recover monetary damages after the fact, even purely economic harm is considered irreparable.”).

## **2. *Invenergy’s Legal Right to a Stay is Well-Settled under OWEDA.***

The second element in Crowe counsels that “temporary relief should be withheld when the legal right underlying [the] claim is unsettled.” 90 N.J. at 133 (citation omitted). That is not the case in this matter. Here, Invenergy’s right to relief is well-settled and set forth under OWEDA, N.J.S.A. 48:3-87.1 to -87.2. OWEDA “authorizes the BPU to ‘review and approve, conditionally approve, or deny an application submitted’ for an offshore wind energy project.” In re Fishermen’s Atlantic City Windfarm, A-3932-13T3, 2015 WL 3454540, at \*2 (App. Div. May 29, 2015) (quoting N.J.S.A. 48:3-87.1(d)). “OWEDA sets forth the information that must be included in an application as well as the factors that the BPU is to consider in reviewing an application.”



Fishermen's, 2015 WL 3454540, at \*2 (citing N.J.S.A. 87.1(a), (b), and (c)). Invenergy complied fully with the requirements of OWEDA and the Board's implementing regulations, and provided a detailed and comprehensive proposal to the Board.

Here, the Board carefully examined Invenergy's "turbine agnostic" application and found that the LLW Project met the criteria to be deemed a QOWP. In reaching this conclusion, the Board followed its own detailed regulations and the requirements of OWEDA. Moreover, while the Board Order is the subject of a separately filed appeal, it is notable that Appellants in that matter have not sought to stay the development of the LLW Project or the operation of the Board Order. Therefore, there should be no question as to Invenergy's legal right to proceed with the LLW Project.

**3. *Invenergy Has Already Succeeded on the Merits.***

Invenergy has already succeeded "on the merits" under OWEDA and the corresponding Board regulations as a result of the Board's approval of the LLW Project application. As indicated above, the language of OWEDA and the Board's regulations are clear. Upon the Board's determination that the LLW Project is a QOWP, Invenergy has a right to develop the LLW Project. The LLW Project was developed and proposed on the basis that the LLW Project would utilize a "turbine agnostic" approach. Invenergy adopted this approach in response to significant uncertainty and volatility in the market for wind turbines. Now, however, through no fault of Invenergy's, equipment challenges have materialized and the LLW Project must consider alternative market solutions. As described in the Certification, Invenergy is actively engaged in pursuing that process now. Given these facts, a Stay is both appropriate and reasonable to permit Invenergy to address the impact of equipment challenges on the LLW Project.

**4. *The Balance of the Equities Weighs in Invenergy's Favor.***

This matter deals with issues of significant public importance: renewable, clean energy and offshore wind. The citizens of New Jersey have a public interest in ensuring that the LLW Project (and any qualified offshore wind project) proceeds consistent with the requirements of OWEDA and the criteria established in the application approved by the Board in the LLW Order. In short, Invenergy must be given the opportunity to pursue its “turbine agnostic” approach so that the Company can ultimately provide the environmental and economic benefits of offshore wind to the citizens of New Jersey. See, e.g., 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.”) (citation omitted); Palamar Constr., Inc. v. Pennsauken Twp., 196 N.J. Super. 241, 245 (App. Div. 1983) (same).

Here, the Board conducted a detailed and thorough competitive process and New Jerseyans should get the benefit of that process. Invenergy simply requires a few additional months to evaluate its market options and determine what alternative arrangements can be made for LLW Project equipment.

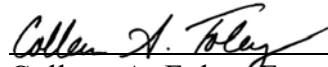
Without the benefit of the requested stay, Invenergy is faced with making a decision which ultimately does not benefit anyone if it must be made now. The LLW Project requires time to determine how it can address the significant equipment challenges it faces. This work must be completed to ensure the LLW Project remains viable. The Board Order, however, contains a series of obligations and benchmarks that cannot be met at this time due to the material changes introduced by the turbine suppliers. The only option to maintain the viability of the LLW Project is to stay the Board Order and suspend all obligations under the Board Order for a period of time. Accordingly, the Board should maintain the status quo and stay the Board Order until December

20, 2024. Further, for the avoidance of doubt, Invenergy specifically requests that its obligations under the Board Order, including, but not limited to, the payment of all fees, submission of binding compliance filings, and the PJM queue application, be stayed during the pendency of this Motion and for the period ending December 20, 2024. Finally, Invenergy proposes to confer with Board Staff and Rate Counsel as to a revised schedule should the Board grant the relief requested herein.

#### **IV. CONCLUSION.**

For the foregoing reasons, Invenergy Wind Offshore LLC respectfully requests that the Board stay the Board Order until December 20, 2024 as discussed herein.

Respectfully submitted,



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**CERTIFICATION IN SUPPORT OF MOTION TO STAY**

**James Shield**, of full age, certifies as follows:

1. I am Vice President for Invenergy Wind Offshore LLC (“Invenergy”), the Movant in the foregoing Motion to Stay (“Motion”). I am duly authorized to make this Certification on behalf of Invenergy.

2. I hereby certify that I have read the annexed Motion, and the matters and things contained therein and this supporting Certification are true to the best of my knowledge, information, and belief. I am aware that, if any of the statements made by me in this Certification are willfully false, I am subject to punishment.

3. In support of Invenergy’s Motion, I provide the information set out below.

4. The LLW Project team was actively engaged in the New Jersey Board of Public Utilities (“Board”) Third Offshore Wind Solicitation process. Among the steps taken by the LLW Project team was to contact manufacturers of wind turbines and to request binding equipment proposals. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. The equipment manufacturers market was generally aware of the requirements imposed by the Board in its Third Offshore Wind Solicitation because the draft solicitation guidance document had been published in late 2022.

6. [REDACTED]

7. [REDACTED]

8. [REDACTED]

9. [REDACTED]

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10. [Redacted text block]

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16. [Redacted]

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[Redacted]

[REDACTED]

17. [REDACTED]

[REDACTED]



18. Invenenergy continues to work with wind turbine suppliers to refine and improve the cost of equipment and is hopeful that a workable solution can be found. These discussions, however, take time and the Company cannot comply with the obligations imposed by the Board Order without incurring significant harm in the form of the payment of millions of dollars in non-refundable fees and other financial obligations, and the filing of a binding compliance filing that seeks to bind Invenenergy to completion of the LLW Project. These harms can be avoided with the requested stay.

By: James Shield  
James Shield, Vice President

Dated: July 22, 2024