



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL.
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

BRIAN O. LIPMAN
Director

August 8, 2024

Via Electronic Mail

Honorable Sherri Golden, Secretary
Board of Public Utilities
44 South Clinton Avenue, 1th Floor
P.O. Box 350
Trenton, NJ 08625-0350
board.secretary@bpu.nj.gov

**Re: In the Matter of The Opening Of New Jersey's Third Solicitation For
Offshore Wind Renewable Energy Certificates (OREC)
Invenergy Wind Offshore LLC/Leading Light Wind 2,400 MW Project
Motion to Stay
BPU Docket No. QO22080481**

Dear Secretary Golden:

Please accept this response on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") of non-opposition to the above-referenced Motion to Stay ("Motion") filed on July 22, 2024 by Invenergy Wind Offshore LLC ("Invenergy" or the "Company") regarding its Qualified Offshore Wind Project ("QOWP"), Leading Light Wind ("LLW") 2,400 megawatt ("MW") Project.

Invenergy is seeking 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 "Leading Light Board Order") until December 20, 2024.

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 comments are being electronically filed with the Secretary of the Board and with the LLW Project. Paper copies will not follow this submission.

Background

On March 6, 2023, the Board issued its Third Offshore Wind ("OSW") Solicitation.¹ Interested developers were encouraged to submit an Application to the Board to build an OSW facility.² The Board also released the Third Solicitation Guidance document ("Solicitation Guidelines") which included all Application requirements, guidance on the preparation of the Application, standards and assumptions to be used in preparing an Application, a schedule, and key dates.³

In response to the Third Solicitation, the Board received Applications from four developers, Atlantic Shores Offshore Wind Project 2, LLC, Attentive Energy LLC, Community

¹ In The Matter Of The Opening Of New Jersey's Third Solicitation For Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481 (Mar. 6, 2023) .

² In The Matter Of The Opening Of New Jersey's Third Solicitation For Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481 (Mar. 6, 2023) .

³ New Jersey Offshore Wind Third Solicitation, Solicitation Guidance Document (March 6, 2023)(available at <https://njoffshorewind.com/third-solicitation/solicitation-documents/Final-Solicitation-Guidance-Document-with-attachments.pdf>).

Offshore WindNJ 1, LLC, and Invenergy.⁴ Invenergy submitted its application for the Third Solicitation on August 4, 2023.⁵ On January 24, 2024, the Board found the Leading Light Project meets or exceeds all of the standards for a QOWP as set forth in N.J.S.A. 48:3-87.1 et seq. and N.J.A.C. 14:8-6.5 et seq.⁶

Board Order And Performance Guarantees

The Board Order provided that Petitioner was subject to additional terms and conditions as part of its eligibility to be deemed a QOWP.⁷ This included significant financial guarantees pursuant to a Compliance Filing, which must include a “detailed description and copy of the proposed financial instrument(s) to be used to secure Invenergy’s commitments.” Invenergy’s commitments include \$120,000,000 in security commitments, as well as, multiple other funding commitments. The Board Order also stated that, in the event that “the LLW Project fails to timely meet its funding commitments, the Board may establish proceedings to modify the OREC price in alignment with the 90/10 shortfall mechanism described in this Order.”⁸

In the Motion, Invenergy asserts that it developed its bid for the 2,400 MW Leading Light Project working “closely with both GE Vernova (“GE”) and Siemens Gamesa Renewable Energy (“SGRE”) as it developed and refined its application in the Third Solicitation.”⁹ The Invenergy solicitation included 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

⁴ I/M/O The Board of Public Utilities Offshore Wind Solicitation 3 for 1,200 to 2,400 MW - the Leading Light Wind 2,400 MW Project, BPU Docket No. QO22080481, January 24, 2024 (LLW Project Award Order) at 12-13.

⁵ Motion to Stay at 3.

⁶ LLW Project Award Order at 36.

⁷ LLW Project Award Order at 36.

⁸ LLW Project Award Order Attachment B at 57

⁹ Motion to Stay at 4.

similarly qualified turbine manufacturers).¹⁰ Invenergy used a “turbine agnostic” approach that considered expected product offerings from all three major turbine manufacturers - GE, SGRE, and Vestas.¹¹

Before the submission of Invenergy’s Best and Final Offer (“BAFO”), however, Invenergy states that it learned the 18 MW Turbine from GE was unlikely to be available. Invenergy submitted its BAFO based on the use of a new SGRE turbine previously proposed by SGRE.¹²

On February 15, 2024, GE announced in a public filing with the United States Securities and Exchange Commission (“SEC”) that it would center its offshore wind business around the Haliade-X 15.5 MW-250 turbine.¹³ Invenergy states “[w]ith this decision, the LLW Project no longer had an alternative turbine option if the SGRE equipment was unavailable.”¹⁴

Invenergy asserts that it was recently advised of cost changes in the SGRE equipment which they describe as material, and the newly proposed costs differ significantly from previously proposed cost estimates.¹⁵ Invenergy claims that they do “not have a workable equipment solution at this time, but the Company remains in active discussions with turbine manufacturers.” Invenergy asserts the Motion is “an effort to obtain additional time in which to

¹⁰ Motion to Stay at 4.

¹¹ Motion to Stay at 1.

¹² Motion to Stay at 4.

¹³ Motion to Stay at 5 (citing the SEC Form 10 filing dated February 15, 2024 at page 111).

¹⁴ Motion to Stay at 5.

¹⁵ Motion to Stay at 5 and Certification of James Shield, Vice President, Invenergy Wind Offshore LLC, July 22, 2024.

work with turbine manufacturers in order to deliver the LLW Project to New Jersey consumers.”¹⁶

Notwithstanding, its stated commitment to build this project, on July 22, 2024, Invenergy filed a motion with the Board pursuant to N.J.A.C. 1:1-12.1 et seq. and N.J.A.C. 14:1-8.7(d), seeking an Order 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 “Leading Light Board Order”) until December 20, 2024.

Comments

Rate Counsel does not object to the stay requested by Invenergy. In its Motion, Invenergy asserts that it meets the legal standard governing a request for a stay pending appeal as set forth in Crowe v. De Gioia 90 N.J. 126, 132-33 (1982). However, because Rate Counsel does not object, Rate Counsel will not comment on whether Invenergy has met that standard.¹⁷

Rate Counsel, however, continues to have concerns about the frequent post-award alterations to the Board’s offshore wind solicitation process. The Board’s competitive solicitation process must ensure all bidders are subject to the same rules. Changing the bidders’ requirements following the close of bidding undermines the competitive process as a whole. While Rate Counsel does not oppose Invenergy’s Motion for an Order to Stay, Rate Counsel

¹⁶ Motion to Stay at 5.

¹⁷ The Board has previously denied similar motions to stay on the basis that “mere monetary loss alone does not constitute irreparable harm” or where the movant has failed to substantiate it “would be unable to make such payments.” In The Matter Of The Investigation Regarding Local Exchange Competition For Telecommunications Services; In The Matter Of The Board's Investigation Regarding The Status Of Local Exchange Competition In New Jersey, BPU Dkt Nos. TX95120631 and TX98010010 (December 3, 2002) (citing Morton v. Beyers, 822 F.2d 364, 372 (3rd Cir. 1987)).

does have concerns post-award modifications of Board Orders in general. Whether the post modification award seeks to affect the OREC price, a company's exposure to liability, or add additional work, granting these requests impermissibly affords the winning bidder a competitive advantage over other bidders, completely subverting the competitive process. It is unknown if potential bidders would have proposed bids even more advantageous to New Jersey residents and the State's electric ratepayers if they had known that conditions, such as the timing of financial commitments, could be altered post-award. The Board previously held that "the diversity in OSW developers . . . will create robust competition, which will drive down the cost of future solicitations."¹⁸ Post-award bid modifications undermines that goal.

Changing the bidders' requirements following the close of bidding undermines the competitive contracting process as a whole. Already frequent waiver requests are setting a precedent where the bid received is not the bid, but merely a foot in the door to negotiate the actual deal post-award. The Board's indulgence of post-award modifications for bids has fostered an environment where promises made as part of a bid are not binding, which erodes the goals of a competitive solicitation process and is detrimental to ratepayers who will ultimately be the ones asked to pay for the ORECs awarded pursuant to these solicitations.

¹⁸ I/M/O 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 (Jun. 30, 2021) ("Atlantic Shores Award Order").

Hon. Sherri Golden, Secretary

August 8, 2024

Page 7

While Rate Counsel consents to this motion, we caution the Board to be wary of so many post-award changes to bids, as it will detrimentally harm the competitiveness of the bidding process. A non-competitive process is harmful to the State's offshore wind goals and detrimental to ratepayers.

Respectfully,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

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

DW

No enclosure

c: Service List (*via electronic copy*)

**OffShore Wind Third Solicitation
Invenergy Waiver Motion
BPU Docket No. QO22080481**

SERVICE LIST

Sherri Golden, Secretary
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625
Board.Secretary@bpu.nj.gov

Robert Brabston, Esq.
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Robert.Brabston@bpu.nj.gov

Carol Artale, Esq.
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Carole.Artale@bpu.nj.gov

Stacy Peterson
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Stacy.Peterson@bpu.nj.gov

Taryn Boland
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Taryn.Bolland@bpu.nj.gov

Benjamin Witherell, Ph. D.
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Benjamin.Witherell@bpu.nj.gov

Henry Gajda
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Henry.Gajda@bpu.nj.gov

Kim Diamond
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Kimberly.Diamond@bpu.nj.gov

Charles Gurkas
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Charles.Gurkas@bpu.nj.gov

Kira Lawrence
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Kira.Lawrence@bpu.nj.gov

Farhana Raman
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Farhana.Rahman@bpu.nj.gov

Veronique Oomen
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Veronique.Oomen@bpu.nj.gov

Bailey Wild
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Bailey.Wild@bpu.nj.gov

Earl Thomas Pierce
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Earl.Pierce@bpu.nj.gov

Kevin Dillon
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Kevin.Dillon@bpu.nj.gov

Jack Streppone
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Jack.Streppone@bpu.nj.gov

Justin Kohley
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Justin.Kohley@bpu.nj.gov

Katharine Perry
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Katharine.Perry@bpu.nj.gov

David Apy, DAG
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
David.Apy@law.njoag.gov

Terel Klein, DAG
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Terel.Klein@law.njoag.gov

Maura Caroselli
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
mcaroselli@rpa.nj.gov

David Dismukes, Ph.D.
Acadian Consulting Group
5800 One Perkins Place Drive
Building 5, Suite F
Baton Rouge, LA 70808
daviddismukes@acadianconsulting.com

Elizabeth Lange
NJ Department of Environmental
Protection
P.O. Box 420
Trenton, NJ 08625
elizabeth.lange@dep.nj.gov

Sara Wilmer
Levitan & Associates, Inc.
20 Custom House Street, Suite 830
Boston, MA 02110
sw@levitan.com

Daniel Runyan
Invenergy Wind Offshore LLC
1 South Wacker Drive, Suite 1800
Chicago, IL 60606
DRunyan@invenergy.com

Daren Eppley, DAG
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Daren.Eppley@law.njoag.gov

Brian Lipman
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
blipman@rpa.nj.gov

Lisa Littman, Esq.
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
llittman@rpa.nj.gov

Megan Brunatti
NJ Department of Environmental
Protection
P.O. Box 420
Trenton, NJ 08625\
megan.brunatti@dep.nj.gov

Richard Levitan
Levitan & Associates, Inc.
20 Custom House Street, Suite 830
Boston, MA 02110
rll@levitan.com

Aaron Geschiere
Invenergy Wind Offshore LLC
1 South Wacker Drive, Suite 1800
Chicago, IL 60606
AGeschiere@invenergy.com

Christopher Orzel
Invenergy Wind Offshore LLC
1 South Wacker Drive, Suite 1800
Chicago, IL 60606
COrzel@invenergy.com

Pamela Owen, DAG
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Pamela.Owen@law.njoag.gov

T. David Wand, Esq.
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
dwand@rpa.nj.gov

Debora Layugan
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
dlayugan@rpa.nj.gov

Katherine Nolan
NJ Department of Environmental
Protection
P.O. Box 420
Trenton, NJ 08625
katherine.nolan@dep.nj.gov

Ellen Cool
Levitan & Associates, Inc.
20 Custom House Street, Suite 830
Boston, MA 02110
egc@levitan.com

Wes Jacobs
Invenergy Wind Offshore LLC
1 South Wacker Drive, Suite 1800
Chicago, IL 60606
WJacobs@invenergy.com

Sarah Smoler, Esq.
Invenergy Wind Offshore LLC
1 South Wacker Drive, Suite 1800
Chicago, IL 60606
SSmoler@invenergy.com

Colleen Foley, Esq.
Saul Ewing LLP
One Riverfront Plaza
1037 Raymond Blvd., Suite 1520
Newark, NJ 09102
colleen.foley@saul.com

Courtney Schultz, Esq.
Saul Ewing LLP
One Riverfront Plaza
1037 Raymond Blvd., Suite 1520
Newark, NJ 09102
Courtney.schultz@saul.com

Philip Passanante, Esq.
Atlantic City Electric Company
500 N. Wakefield Drive
P.O. Box 6066
Newark, DE 19714
philip.passanante@pepcoholdings.com

Heather Hall
Pepco Holdings, LLC
500 N. Wakefield Drive
P.O. Box 6066
Newark, DE 19714
heather.hall@pepcoholdings.com

James Meehan, Esq.
Jersey Central Power & Light Co.
300 Madison Avenue
P.O. Box 1911
Morristown, NJ 07960
jameehan@firstenergycorp.com

John L. Carley, Esq.
Con Edison Co. of NY Law Dept.
4 Irving Place
New York, NY 10003
carleyj@coned.com

Matthew M. Weissman, Esq.
PSEG Services Corporation
80 Park Plaza, T5B
P.O. Box 570
Newark, NJ 07102
Matthew.Weissman@pseg.com

Stacey M. Mickles, Esq.
Public Service Electric & Gas
80 Park Plaza, T5G
P.O. Box 570
Newark, NJ 07102-4194
stacey.mickles@pseg.com

Bernard Smalls
PSEG Services Corporation
80 Park Plaza, T5G
PO Box 570
Newark, NJ 07102
bernard.smalls@pseg.com