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September 5, 2024

Re: IN THE MATTER OF THE OPENING OF NEW JERSEY'S THIRD SOLICITATION FOR OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES (OREC)

IN THE MATTER OF THE BOARD OF PUBLIC UTILITIES OFFSHORE WIND SOLICITATION 3 FOR 1,200 TO 4,000 MW – ATTENTIVE ENERGY LLC

BPU Docket Nos. QO22080481 & QO24010061

Agenda Date: September 4, 2024 – Agenda Item: 8D

To the Service List:

Please be advised that the New Jersey Board of Public Utilities' ("Board's") September 4, 2024 Order ("Order") issued in the matters noted above has been corrected on Page 6 to reflect a clarification of the beginning of the waiver term.

The Order now includes the clarification that the waiver of the requirement under N.J.A.C. 14:8-6.5(a)(4)(v) for Petitioner to submit audited quarterly financial statements begins on January 24, 2024 and continues throughout the 20-year OREC Term for the Project (as all such capitalized terms are defined in the Order). This is the only change to the issued Order, which has been re-distributed to the parties of record and the attached service list. This correction does not change or alter the Board's decision.

The corrected Order will be posted on the Board's website.

Sincerely,

A handwritten signature in cursive script that reads "Sherri L. Golden".

Sherri L. Golden
Board Secretary



Agenda Date: 9/4/2024
Agenda Item: 8D

STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

DIVISION/OFFICE

IN THE MATTER OF THE OPENING OF NEW JERSEY'S THIRD SOLICITATION FOR OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES (OREC))))))	ORDER APPROVING WAIVER DOCKET NO. QO22080481
IN THE MATTER OF THE BOARD OF PUBLIC UTILITIES OFFSHORE WIND SOLICITATION 3 FOR 1,200 TO 4,000 MW – ATTENTIVE ENERGY LLC)))))	DOCKET NO. QO24010061

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Adam S. Lurie, on behalf of Attentive Energy LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers the petition submitted on April 16, 2024 by Attentive Energy, LLC (“Attentive” or “Petitioner”) regarding waiver of certain financial reporting requirements related to its offshore wind project (“Project”) awarded by the Board on January 24, 2024 (“January 24, 2024 Order”) under Docket No. QO22080481 (“Petition”).¹ Specifically, Attentive requests 1) that it be permitted to submit unaudited quarterly financial statements instead of the audited quarterly financial statements required by N.J.A.C. 14:8-6.5(a)(4)(v), and 2) clarification of deadlines for its submission of quarterly and annual financial statements.²

¹ In the Matter of the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC); In the Matter of the Board of Public Utilities Offshore Wind Solicitation 3 for 1,200 to 4,000 MW – Attentive Energy, LLC, BPU Docket Nos. QO22080481, Order Approving Attentive Energy Two 1342 MW Project as a Qualified Offshore Wind Project, dated January 24, 2024 (“January 24, 2024 Order”); In the Matter of the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC); In the Matter of the Board of Public Utilities Offshore Wind Solicitation 3 for 1,200 to 4,000 MW – Attentive Energy, LLC, BPU Docket Nos. QO22080481 and QO24010061, Petition dated April 16, 2024.

² Petition at 1-2.

BACKGROUND

On August 19, 2010, the Offshore Wind Economic Development Act (“OWEDA”) was signed into law.³ 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.⁴

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 offshore wind (“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.”⁵

Governor Murphy signed Executive Order No. 8 (“EO 8”) on January 21, 2018, establishing the nation’s most aggressive OSW goal of 3,500 MW of OSW capacity by 2030.⁶ 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 2035.⁷ 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 2040.⁸ On February 15, 2023, Governor Murphy signed Executive Order No. 315 (“EO 315”), changing New Jersey’s renewable energy goal from 50 percent renewable energy by 2030 and 100 percent clean energy by 2050 to 100 percent clean energy by 2035.⁹

On March 6, 2023, with respect to its third OREC solicitation (“Third Solicitation”), the Board released its “New Jersey Offshore Wind Third Solicitation, Solicitation Guidance Document, Application Submission for Proposed Offshore Wind Facilities,” (“Third Solicitation Guidance Document”).¹⁰ The Third Solicitation Guidance Document required each Third Solicitation applicant (“Applicant”) in response thereto to provide, an “Applicant Commitment Form,” pursuant to which the Applicant commits to “file financial statements with the Board on a quarterly and

³ See OWEDA, N.J.S.A. 48:3-87.1 to -87.2, L. 2010, c. 57, eff. Aug. 19, 2010; amended by L. 2019 c. 440, §2, effective Jan. 21, 2020; L. 2021, c.178, §1, effective July 22, 2021; Electric Discount and Energy Competition Act, P.L. 1999, c. 23, N.J.S.A. 48:3-49 et seq.

⁴ 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.” N.J.A.C. 14:8-1.2 (emphasis added).

⁵ N.J.A.C. 14:8-6.5(a)(4)(v).

⁶ Exec. Order No. 8 (Jan. 31, 2018), 50 N.J.R. 887(a) (Feb. 20, 2018).

⁷ Exec. Order No. 92 (Nov. 19, 2019), 51 N.J.R. 1817(b) (Dec. 16, 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.

⁸ Exec. Order No. 307 (Feb. 15, 2023), 54 N.J.R. 1945(a) (Oct. 17, 2022).

⁹ Exec. Order No. 315 (Feb. 15, 2023), 55 N.J.R. 509(a) (March 20, 2023).

¹⁰ In the Matter of the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Order dated March 6, 2023 (“March 6, 2023 Order”).

annual basis” should the Applicant's project be approved as a qualified OSW project eligible to receive ORECs.¹¹

While both the Board rules and the Applicant Commitment Form require the submittal of 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 January 24, 2024, the Board approved Attentive's 1,342 MW Project as a QOWP.¹²

On April 16, 2024, Attentive filed the Petition with the Board.¹³ The Petition requested a waiver for reporting requirements contained in Board rule N.J.A.C. 14:8-6.5(a)(4)(v).¹⁴

In its Petition, Attentive requested authorization to file unaudited financial statements on a quarterly basis, in lieu of the current commitment to provide the Board audited financial statements on a quarterly basis, beginning on a retroactively effective date of January 24, 2024, the same date as the issuance of the January 24, 2024 Order, and running throughout the duration of the OREC term agreed upon in the January 24, 2024 Order.¹⁵ Attentive also requested confirmation from the Board 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.¹⁶ Additionally, Attentive requested Board confirmation that submittal of annual audited financial statements shall be considered timely if provided to the Board no more than 180 days following the end of the applicable fiscal year.¹⁷ In the Petition, Attentive noted that the requirement for submitting audited quarterly financial statements is not industry standard and imposes a commercially unreasonable burden of hardship on Petitioner.¹⁸

NEW JERSEY DIVISION OF RATE COUNSEL (“RATE COUNSEL”) COMMENTS

On June 7, 2024, Rate Counsel filed written comments on the Petition (“Rate Counsel’s Comments”).¹⁹ Rate Counsel’s Comments noted that in response to comments it received from OSW developers, 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

¹¹ Id., Third Solicitation Guidance Document at A3-1.

¹² January 24, 2024 Order.

¹³ See Petition.

¹⁴ Id. at 1, 7.

¹⁵ Id.

¹⁶ Id. at 2, 7.

¹⁷ Id.

¹⁸ Id. at 8.

¹⁹ In the Matter of the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC); In the Matter of the Board of Public Utilities Offshore Wind Solicitation 3 for 1,200 to 4,000 MW – Attentive Energy, LLC, BPU Docket Nos. QO22080481 and QO24010061, Rate Counsel Comments dated June 7, 2024.

[offshore wind] project will be able to obtain development and construction financing.”²⁰

Rate Counsel stated that “it does not appear that audited financial statements of Attentive would add a substantive degree of confidence in the financial fitness of the Petitioner.”²¹ Rate Counsel’s Comments stressed that when considering a waiver, it is important to adhere to the rules of OSW solicitations to ensure the goal of a competitive solicitation process. Rate Counsel stated it has “general concerns regarding the waiver of Offshore Wind Solicitation requirements after the bids have been submitted. Changing the bidders’ requirements following the close of bidding undermines the competitive contracting process as a whole.”²²

Rate Counsel questioned “under what basis the one hundred eighty-day request is made (to file annual audited financial statements no later than one hundred eighty days following the end of the applicable fiscal year).”²³ Rate Counsel noted “this time frame seems excessive if [Board] Staff is to timely provide a response if an issue arises with an audit.”²⁴

Rate Counsel also recommended that the Board establish a process for review, in the event that Attentive’s audited annual financial statements vary significantly from their unaudited quarterly financial statements.²⁵

Additionally, Rate Counsel expressed general concerns regarding the waiver of OSW solicitation requirements after bid submission, as requests such as that in the Petition effectively allows for post-bid modifications that allow a QOWP selected as a result of the bidding process to re-negotiate their bid by negotiating the actual requirements in the applicable Solicitation Guidance Document post-bid.²⁶

Finally, Rate Counsel’s comments stated “if the Board chooses to waive the audited quarterly financial statement requirement, it should reconsider enforcing the commitment in future solicitations or revising the regulations, because it may result in even better results in future solicitations and more competitive bids from more bidders.”²⁷

DISCUSSION AND FINDINGS

N.J.A.C. 14:8-6.5(a)(4)(v) requires 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[.]” Neither N.J.A.C. 14:8-6.5(a)(4)(v) nor the “Applicant Commitment Form” specifies any deadlines for submittal of audited financial statements. As detailed above, Attentive raises issues regarding submittal of audited financial statements on a quarterly basis

²² Id. at 6.

²¹ Id.

²² Id. at 7.

²³ Id.

²⁴ Id.

²⁵ Id. at 6.

²⁶ Id. at 7.

²⁷ Id. at 8.

through the 20-year OREC term set forth in the January 24, 2024 Order (“20-year OREC Term”).²⁸ To address Attentive’s concerns, a partial waiver of N.J.A.C. 14:8-6.5(a)(4)(v) is required.

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.²⁹

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 insofar as the financials requested would assist the Board as an indicator in evaluating whether 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 Attentive, the requirement for submitting quarterly audited financial statements is not an industry standard and imposes a commercially unreasonable burden of hardship on Petitioner.³⁰ In addition, Rate Counsel commented that in this particular case, it does not appear that audited financial statements “would add a substantive degree of confidence in the financial fitness of the Petitioner.”³¹

With respect to Rate Counsel’s statement that during the rulemaking process the Board rejected removing the audited financial requirements, the Board notes the Petition does not ask to eliminate all audited financial statements.³² In fact, Attentive makes a distinction between unaudited quarterly financial statements and annual audited financial statements, the latter of which Attentive intends to submit. The Board agrees that, under the circumstances, Attentive’s request to submit only annual audited financial statements 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 Attentive’s QOWP.

Rate Counsel also expressed concern with the request of establishing 180 days as timely for the submission of annual audited financial statements, stating that such time period is excessive for purposes of Board staff (“Staff” or “Board Staff”) being able to timely provide a response if there is an issue with an audit.³³ The Board shares in this concern. After examination of Petitioner’s request, and after consideration of Rate Counsel feedback, the Board determines that a 120 day deadline provides sufficient time for Attentive’s yearly audit to be completed. A 120 day period both addresses Rate Counsel’s concern and enables Board Staff to have sufficient time to identify any issues with Petitioner’s annual audited financials and to provide a timely response to those issues.

Rate Counsel also suggests that the Board establish a process for review in the event that

²⁸ January 24, 2024 Order. The 20-year OREC Term is specified in Attachment A of the January 24, 2024 Order. Id. at 45.

²⁹ EO 8.

³⁰ Petition at 8.

³¹ Rate Counsel Comments at 6.

³² Id.

³³ Rate Counsel’s Comments at 7.

Attentive's audited annual financial statements vary significantly from their unaudited quarterly financial statements. To address this concern, and ensure that the Board continues to receive sufficient financial information from Attentive, Board Staff shall reevaluate the waiver of the audited quarterly financial statements requirement for Attentive two (2) years following the effective date of this Order.

With respect to Rate Counsel's various comments directed at OSW solicitations in general, the Board notes that its determination as to the appropriateness of a waiver here is limited to the unique facts and circumstances of Attentive and its Petition. Rate Counsel's broader recommendations warrant consideration in the next rulemaking cycle for the Board rules or in response to a request for comment by the Board in relation to a future draft solicitation guidance document.

Consistent with the foregoing, 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. Specifically, the Board **HEREBY FINDS** good cause exists to waive the requirement under N.J.A.C. 14:8-6.5(a)(4)(v) for Petitioner to submit audited quarterly financial statements beginning on January 24, 2024 and continuing throughout the 20-year OREC Term for the Project and **HEREBY WAIVES** the requirement retroactive to January 24, 2024 and running throughout the duration of the 20-year OREC Term for the Project.

The Board further **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 Attentive two (2) years following the effective date of this Order.

The Board further **HEREBY FINDS** that a 120 day period after the end of the applicable fiscal year, from fiscal year 2024 forward, for Petitioner's submittal of annual audited financial statements throughout the 20-year OREC Term, is reasonable and shall constitute timeliness for purposes of such submittal. Except as specifically stated above, Petitioner remains otherwise obligated to comply with N.J.A.C. 14:8-6.5(a)(4)(v) and all other applicable Board regulations, including the Board rules.

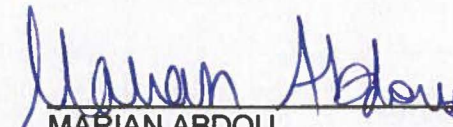
The effective date of this Order is September 11, 2024

DATED: September 4, 2024

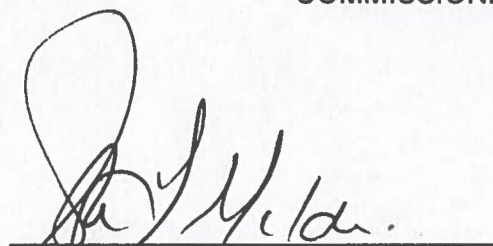
BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOLOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRIL L. GOLDEN
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 OPENING OF NEW JERSEY'S THIRD SOLICITATION FOR
OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES (OREC)

DOCKET NO. QO22080481

IN THE MATTER OF THE BOARD OF PUBLIC UTILITIES OFFSHORE WIND SOLICITATION
3 FOR 1,200 TO 4,000 MW - ATTENTIVE ENERGY LLC

DOCKET NO. QO24010061

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