



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF)	FIFTH AMENDED
FISHERMEN'S ATLANTIC CITY WIND FARM, LLC)	PREHEARING ORDER
FOR THE APPROVAL OF THE STATE WATERS)	
PROJECT AND AUTHORIZING OFFSHORE WIND)	
RENEWABLE ENERGY CERTIFICATES)	DOCKET NO. EO11050314V

Parties of Record:

Stefanie Brand, Director, Division of Rate Counsel
Stephen B. Pearlman, Esq., Inglesino, Pearlman, Wyciskala & Taylor LLC, on behalf of
Fishermen's Atlantic City Windfarm, LLC
Phillip J. Passanante, Esq., on behalf of Atlantic City Electric Company
Marc B. Lasky, Esq., on behalf of Jersey Central Power & Light Company
Alexander C. Stern, Esq., on behalf of Public Service Electric & Gas Company
Susan J. Vercheak, Esq., on behalf of Rockland Electric Company

BY PRESIDENT ROBERT M. HANNA:

By Order dated May 16, 2011, in Docket No. EO11050290V, the Board opened an application window for 30 days for offshore wind projects in New Jersey territorial waters pursuant to N.J.S.A. 48:3-87.2. Fishermen's Atlantic City Windfarm, LLC ("FACW" or "the applicant"), submitted the only application to the Board on May 19, 2011. Board Staff determined that the application was administratively complete as of June 14, 2011.

By Order dated December 15, 2011, the Electric Distribution Companies (Atlantic City Electric, Jersey Central Power & Light Company, Public Service Electric & Gas Company and Rockland Electric Company, collectively "EDCs") were granted intervenor status.¹

¹ The October 24, 2012 scheduling order contained a typographical error. The date the Board granted intervenor status to the Electric Distribution Companies was December 15, 2011, not December 14, 2012.

By Order dated January 18, 2012, the Board retained this matter for review and hearing, and as authorized by N.J.S.A. 48:2-32, designated me as the presiding officer to rule on all motions that arise during the proceedings and modify any schedules that may be set as necessary to secure just and expeditious determination of the issues.

An initial prehearing order was approved on February 15, 2012. By Order dated March 12, 2012, the Board granted FACW's request to submit an amended application by April 20th. On April 2, 2012, however, FACW informed the Board that it could not meet the April 20th deadline and requested an additional extension until June 1, 2012, to submit an amended application. By Order dated April 12, 2012, the Board granted FACW's request to submit an amended application on or before June 1, 2012 and extended the review period for the application to December 31, 2012. FACW submitted an amended application on June 1, 2012 ("Amended Application").

A prehearing teleconference was held on June 27, 2012, during which the parties agreed to a revised procedural schedule to accommodate the extended review period. Through correspondence dated August 13, 2012, and supplemented on August 17, 2012, FACW requested that the BPU "temporarily discontinue" evaluation of FACW's Amended Application until September 17, 2012, so that it could reassess its application and consider potential modifications. Rate Counsel and BPU consented to the suspension of review.

On August 28, 2012, the first amended prehearing order was issued, granting a suspension of the procedural schedule through September 17, 2012 and directing the parties to confer and provide the advising Deputy Attorney General with a proposed amended schedule no later than September 21, 2012. The order also directed FACW to provide a written statement of its assessment and the content of any proposed revisions to its Amended Application, on or before September 17, 2012. On September 17, 2012, FACW advised the Board that it had completed its re-evaluation of the Amended Application and concluded that no changes to the Amended Application were necessary. FACW further agreed to obtain a report from PricewaterhouseCoopers (PwC) verifying the financial standing of XEMC, the manufacturer of the turbines named in the Amended Application. Additional financial documentation, including information from PwC, was submitted by FACW on October 18, 2012.

A status conference was held among the parties and the advising Deputy Attorney General on September 20, 2012, during which a proposed amended schedule was discussed and agreed upon. The second amended hearing order in this matter was issued on October 24, 2012, which included the revised procedural schedule. On November 20, 2012, the Board extended the review period for the application to April 30, 2013.

Following super storm Sandy in early November 2012, the parties advised that the storm and its aftermath significantly hindered their ability to comply with October 24, 2012 schedule. The parties proposed and agreed to an amended procedural schedule which was memorialized in the third amended procedural schedule issued on November 30, 2012.

Following the submission of the expert reports on December 17, 2012, pursuant to the procedural schedule, the Department of the Treasury ("Treasury") informed Board staff that a contract modification would be needed in order for Boston Pacific Company to perform services in support of the remaining items listed in the procedural schedule.

A status conference was held among the parties and the advising Deputy Attorney General on January 4, 2013, during which Board staff informed the parties of the need to temporarily suspend the procedural schedule pending Treasury's approval of a modification to Boston Pacific's contract. Treasury's approval was granted on January 23, 2013.

A subsequent status conference was held on February 8, 2013, during which the parties discussed additional amendments to the procedural schedule. By February 12, 2013, the parties had consented to a new procedural schedule, which was memorialized in the fourth amended pre-hearing order issued on March 7, 2013. In part, the procedural schedule required the parties' experts to submit their responses to FACW's discovery requests no later than Monday, March 11, 2013.

FACW March 8, 2013 Filing

On March 8, 2013, one business day before the expert responses to FACW's discovery were due, FACW submitted new documents to the Board including: 1) Confidential Testimony Exhibit 26 (Pre-filed Direct Testimony of Chris Wissemann, Update to the New Jersey Expenditures from the Project); and 2) Confidential Testimony Exhibit 27 (Pre-filed Direct Testimony of Chris Wissemann, Update to Proposed OREC Price). FACW characterized the filing as an update to their June 1, 2012, Amended Application and indicated that it would submit rebuttal testimony on March 25, 2013, consistent with the timeline set forth in the procedural schedule.

Considering the nature of the filing, on March 13, 2013, the advising Deputy Attorney General requested the parties to advise the hearing officer on whether an extension of the procedural schedule was required. Staff and Rate Counsel submitted responses on March 18, 2013. FACW submitted its reply on March 20, 2013. The Intervenor did not take a position.

In staff's March 18, 2013 letter, staff explained that FACW's submission contained "significant and material changes to the project" that would require additional analysis by staff's expert. Although staff ultimately indicated that they could comply with the procedural schedule without an extension of time, staff asserted that FACW's delay was "substantial and unwarranted." According to staff, FACW had indicated in early February 2013 that the company needed a final Board decision by June 30, 2013, in order to have sufficient lead-time to begin construction by December 31, 2013, and remain eligible for the federal Investment Tax Credit ("ITC").² Staff observed that FACW transmitted the filing to the Board "sixty-four days following the enactment of the Fiscal Cliff bill and thirty-five days following the representations by FACW that the ITC would significantly benefit the proposed project."

Rate Counsel indicated that FACW's March 8th filing "so fundamentally alters FACW's petition that it should be considered a new application." Rate Counsel explained that the filing contained a new OREC price, new assumptions, new project costs, new expenditures, and other new information such that the amended application was fundamentally altered. As an alternative to the Board considering the filing to be a new application, Rate Counsel requested eight weeks to conduct additional discovery and submit a written surrebuttal.

² The ITC was signed into law on January 3, 2013, as a part of the American Taxpayer Relief Act of 2012 (the "Fiscal Cliff bill").

FACW's March 20, 2013, reply to staff and Rate Counsel contends that the filing "complies with its obligations to update the record as new information becomes available." FACW highlights the perceived benefits of the Department of Energy (DOE) Grant and ITC, without addressing the delay in supplying such information. Ultimately, FACW consented to a four-week extension of the procedural schedule.

On or about April 1, 2013, the parties held a conference call and consented to extend the procedural schedule by four weeks. FACW confirmed its consent via correspondence dated April 10, 2013.

Findings and Conclusions

Considering the representations of staff and Rate Counsel, I find that FACW's March 8, 2013, filing is so substantial that it cannot properly be reviewed under the schedule set forth in the fourth amended prehearing order. Notwithstanding the benefits that FACW claims would redound to the project due to the ITC and the DOE grant, FACW has provided no adequate explanation for delaying its submission for sixty-four days following the enactment of the Fiscal Cliff bill and thirty-five days following the representations by FACW that the ITC would significantly benefit the proposed project. Although staff initially represented that it did not require additional time to review the filing, all parties ultimately agreed that an extension of four weeks would be fair and reasonable.

The schedule is hereby amended as follows:

FACW Responses to Discovery	April 22, 2013
Written Surrebuttal	May 8, 2013
Hearing Dates:	May 13 and 14, 2013 44 S. Clinton Ave., Trenton Merit Board Room 9:30 a.m.
	May 15 and 17, 2013 44 S. Clinton Ave., Trenton Multi-Purpose Room, 1st Flr. 9:30 a.m.
Post Hearing Briefs Filed simultaneously by all parties	June 5, 2013
Rebuttal Briefs	June 14, 2013
Board Action	July 31, 2013

Upon due consideration, I HEREBY ADOPT the revised schedule. In addition, the prior prehearing orders are amended as follows:

1. EXHIBITS

Exhibits may be moved into this contested case after notice to the parties and an opportunity for response. Initial exhibit lists shall be exchanged among the parties no later than May 3, 2013, with a copy provided to the advising Deputy Attorney General. Final exhibit lists shall be submitted to the Hearing Officer no later than May 9, 2013. Exhibit lists may be amended without prejudice during the hearing, at the discretion of the Hearing Officer after an opportunity for response by other parties.

Parties are encouraged to agree on, and pre-mark the exhibits to be included in the record of this proceeding to the fullest extent possible.

During the hearing, no exhibit will be marked for identification or introduced into evidence unless three copies are provided to the undersigned Hearing Officer and one copy to each party, unless otherwise agreed.

2. ESTIMATED NUMBER OF WITNESSES

Initial witness lists shall be exchanged among the parties no later than May 3, 2013, with a copy provided to the advising Deputy Attorney General. Final witness lists shall be submitted to the Hearing Officer no later than May 9, 2013. There shall be no substitution of witnesses without prior notice to the parties and an opportunity for response.

All other aspects of the prior procedural orders shall remain in effect. This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: *April 18, 2013*

BY:


ROBERT M. HANNA

IN THE MATTER OF THE PETITION OF FISHERMEN'S ATLANTIC CITY WIND FARM, LLC
FOR THE APPROVAL OF THE STATE WATERS PROJECT AND AUTHORIZING
OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES
DOCKET NO. EO11050314V

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