



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Post Office Box 350  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CLEAN ENERGY

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 – REQUEST )  
FOR EXTENSION OF TIME FOR APPLICATION )  
REVIEW )

ORDER ON EXTENSION OF  
TIME FOR APPLICATION  
REVIEW

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 THE BOARD:

BACKGROUND/PROCEDURAL HISTORY

On August 19, 2010, Governor Chris Christie signed into law the Offshore Wind Economic Development Act ("The Act"), P.L. 2010, c. 57, which amends and supplements the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. On February 10, 2011, the Board of Public Utilities ("Board") adopted N.J.A.C. 14:8-6.1 et seq., providing an application process and a framework under which the Board will review any application and ultimately approve, conditionally approve, or deny the application.

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, on May 19, 2011, the only application to the Board.

Upon receipt of the application, Board staff immediately began the administrative review process pursuant to N.J.A.C. 14:8-6.4 et seq. The initial review uncovered administrative deficiencies which were outlined in letters to the applicant on June 2, 2011 and June 13, 2011. The applicant responded to the administrative deficiencies with written submissions on June 8, 2011 and June 14, 2011. Staff then determined that the application was administratively complete as of June 14, 2011, and provided such notice to FACW on June 22, 2011.

### Extension of Time

Pursuant to the Act, the Board has 180 days to conduct its review, and to approve, conditionally approve, or deny the application. N.J.S.A. 48:3-87.1(d). Pursuant to N.J.A.C. 14:8-6.3 and 6.4, the 180-day period for the Board's review began to run on June 14, 2011, when staff determined that FACW's application was administratively complete. Hence, the Board's review period was set to expire on December 11, 2011, unless the applicant consented to an extension of time. By letter dated November 23, 2011, the applicant consented to an initial additional 60 days of review, beyond the initial 180 days, which placed the requirement to act no later than February 8, 2012. By letter dated December 13, 2011, the applicant consented to an additional extension, which placed the requirement for the Board to act on or before March 21, 2012. By order dated December 15, 2011, Docket No. EO11050314V, the Board ordered that the review period be extended to March 21, 2012. By letter dated February 6, 2012, the applicant consented to an additional extension of time, which required the Board to act on FACW's application on or before April 11, 2012. By order dated February 10, 2012, Docket No. EO11050314V, the Board ordered that the review period be extended to April 11, 2012.

By letter dated March 2, 2012, FACW requested an additional extension of the review period until October 31, 2012. Additionally, FACW has agreed to provide an amended application by April 20, 2012, in order to respond to the evaluation reports by Boston Pacific Company, the Board's consultant, and Acadian Consultants, consultant for the Division of Rate Counsel.

### Offshore Wind Reimbursement Fund

Pursuant to N.J.S.A. 48:3-87.1(c)(4), an applicant is required to "reimburse the board and the State for all reasonable costs incurred for regulatory review of the project, including but not limited to consulting services, oversight, inspections, and audits." Pursuant to N.J.A.C. 14:8-6.5(a)(15), the Board has determined that the initial deposit for reimbursement for each application is \$100,000, with additional funds to be submitted as necessary and determined by Board staff.

Because the reimbursement funds are used to pay the OSW consultant, retained under State contract, the Department of Treasury ("Treasury") has advised staff that the initial reimbursement funding is State revenue and therefore needs to be deposited in an authorized State account. Hence, the reimbursement funding cannot be held by an applicant in an escrow account for the benefit of the State as set forth in the regulation. Nevertheless, the ultimate purpose of the reimbursement fund remains in effect.

The amended application to be provided by FACW will require that the OSW consultant, Boston Pacific Company, conduct additional evaluation of the project. Therefore, staff recommends that the Board waive compliance with N.J.A.C. 14:8-6.5(a)(15) to the extent that it requires an applicant to create an escrow account. Instead, FACW should be required to place \$92,268.10 into a reimbursement fund on deposit with the State to cover the additional cost of Boston Pacific's review.

FINDINGS and DISCUSSION

The Board has carefully considered staff's recommendations and **HEARBY FINDS** that FACW has consented to extend the time for the Board's review of its application. The extension until October 31, 2012 represents a fair and reasonable extension and is in the public interest. The Board **HEREBY ORDERS** that the review period to consider the above referenced application has been extended to October 31, 2012. Additionally, the Board **HEREBY ORDERS** that FACW submit an amended application to the Board on or before April 20, 2012.

Concerning the OSW reimbursement fund, the Board **HEREBY FINDS** that the language in N.J.A.C. 14:8-6.5(a)(15) regarding escrow accounts shall be waived to the extent that it requires applicants to establish, submit proof of, place additional amounts into, or replenish an "escrow account." This limited waiver is procedural in nature and does not waive any substantive provision in the regulation.

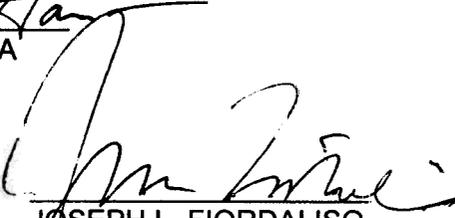
Pursuant to N.J.S.A. 48:3-87.1(c)(4), the Board may recover reasonable costs related to its review of an OSW application, including but not limited to consulting services. The Board has no basis to believe that the amount set by regulation is inappropriate or otherwise inapplicable to the current situation, and accordingly **HEREBY DIRECTS** applicants to place \$92,268.10 into a reimbursement fund on deposit with the State. In addition, staff is **HEREBY AUTHORIZED** to require the applicant to place additional amounts on deposit in the OSW reimbursement fund consistent with N.J.S.A. 48:3-87(c)(4), as necessary. Beyond this, the Board **FURTHER FINDS** that the applicable regulations shall control.

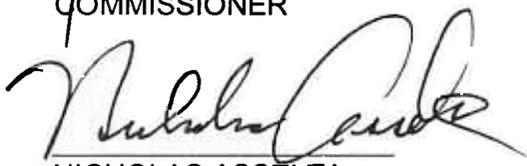
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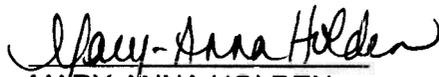
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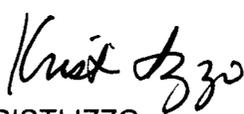
  
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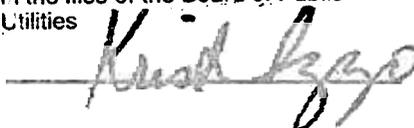
  
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I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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OFFSHORE WIND RENEWABLE ENERGY CERTIFICATES – REQUEST FOR EXTENSION  
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