



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

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

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
James Boyd, Jr., Esq., on behalf of Attentive Energy LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers the Motion submitted on January 23, 2025 by Attentive Energy LLC (“Attentive” or “Attentive Energy”) regarding a request to Stay the enforcement and suspend the obligations, until January 24, 2026, of two specific requirements included in the Board’s Order approving Attentive Energy’s 1,342 Megawatt (“MW”) Project as a Qualified Offshore Wind (“OSW”) Project (“QOWP”) issued on January 24, 2024 (“January 24, 2024 Order”) under Docket No. QO22080481 (“Motion”).¹

BACKGROUND

On March 6, 2023, with respect to its third Offshore Wind Renewable Energy Certificate (“OREC”) solicitation (“Third Solicitation”), the Board released its “New Jersey Offshore Wind Third

¹ See In re the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket Nos. QO22080481, Order Approving Attentive Energy Two 1,342 MW Project as a Qualified Offshore Wind Project, dated January 24, 2024; In re the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Attentive Energy LLC’s Motion for a Limited Stay of Order, dated January 23, 2025 (“Motion to Stay” or “Motion”).

Solicitation, Solicitation Guidance Document, Application Submission for Proposed Offshore Wind Facilities” (“Third Solicitation Guidance Document”).² Applications for Third Solicitation OSW projects were to be submitted by June 23, 2023.³ On June 7, 2023, the Board extended the application due date to August 4, 2023.⁴

On August 4, 2023, applications were received from four OSW developers, including Attentive’s application for its 1,342 MW Project.

On January 24, 2024, following a detailed and thorough review of the applications submitted, the Board approved the Attentive Energy’s 1,342 MW Project (“Attentive Project” or “Project”) proposed by Attentive as a QOWP to receive OSW ORECs, as defined in OWEDA.⁵

As described in the January 24, 2024 Order, the Board determined that the Project will result in significant generation of clean energy to combat climate change while also establishing a robust, diverse supply chain that will result in significant benefit to New Jersey’s economy, and that will create a significant number of good-paying, green economy jobs.⁶ The Attentive Project was found to be in alignment with New Jersey’s public policies and goals as articulated above. The January 24, 2024 Order details a number of obligations including but not limited to the Terms and Conditions described in Attachment B of the January 24, 2024 Order.⁷

On or about March 5, 2024, a group of litigants, which were not parties to and did not participate in the proceedings before the Board in Docket No. QO22080481 leading to the January 24, 2024 Order, filed a notice of appeal in the Appellate Division of the Superior Court of New Jersey, which challenged the January 24, 2024 Order (“Appeal”). The Appeal was assigned Docket No. A-1973-23 and is pending at the time of this Order.

On April 24, 2024, pursuant to the requirements of the January 24, 2024 Order, Attentive paid the first 50% of the \$15,000,000 associated with New Jersey’s Research and Monitoring Initiative (the “RMI Fee”).

On July 22, 2024, Attentive submitted its compliance filing to the Board. Although the filing was submitted on time, Board Staff requested that Attentive provide additional information related to the Commitment Security in a supplemental compliance filing.

On or about January 20, 2025, President Donald Trump issued several executive orders that have directly impacted the OSW industry. The executive orders direct, among other things: 1) an indefinite pause on OSW development until the outcome of a review and assessment of relevant

² In re the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Order dated March 6, 2023.

³ Third Solicitation Guidance Document at 6.

⁴ In re the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Order dated June 7, 2023 (“June 7, 2023 Order”).

⁵ January 24, 2024 Order; OWEDA, N.J.S.A. 48:3-87.1 to -87.2, L. 2010, c. 57, eff. Aug. 19, 2010; amended by 2019 c. 440, §2, eff. Jan. 21, 2020; 2021, c.178, §1, eff. July 22, 2021. The nameplate capacity of the awarded project may be different than the awarded capacity.

⁶ January 24, 2024 Order.

⁷ Ibid.

federal permitting and approval processes,⁸ and 2) a pause on certain Inflation Reduction Act (“IRA”) and Bipartisan Infrastructure Law (“BIL”) funding.⁹ The issuance of these executive orders has caused a great deal of confusion and uncertainty for OSW projects, such as the Attentive Project, that have yet to obtain all required federal permits necessary to reach construction and operation or are reliant on federal funding or tax benefits.

ATTENTIVE’S MOTION TO STAY

On January 23, 2025, Attentive filed a Motion to Stay the enforcement and suspend the obligations of two specific requirements included in the Board’s January 24, 2024 Order.¹⁰ The Motion to Stay requested that the Board stay the enforcement and suspend the following obligations: 1) Attentive’s initial Commitment Security requirements enumerated in the Board’s January 24, 2024 Order, which is the first 50% of its Commitment Security for the Commercial Operation Date (“COD”) commitment (“COD Commitment”) (i.e., \$33,550,000) that was due to be posted on January 24, 2025, and 2) the second unpaid portion of the RMI Fee requirements enumerated in the Board’s January 24, 2024 Order, which is a payment of \$3,750,000 that was due to be posted on January 24, 2025.¹¹

In the Motion, Attentive summarizes the requirements included in the Board’s January 24, 2024 Order, which mandate that Attentive: 1) submit a compliance filing with the Board within 180 days of the effective date of the Board’s January 24, 2024 Order (i.e., July 22, 2024), 2) post the first 50% of its Commitment Security for the COD Commitment within one year of the effective date of the Board’s January 24, 2024 Order (i.e., January 24, 2025), which totals \$33,550,000, and 3) pay the first 50% of the \$15,000,000 RMI Fee within 90 days of the effective date of the Board’s January 24, 2024 Order and the remaining 50% of the RMI Fee in equal annual installments on the anniversary of the Board’s January 24, 2024 Order over a two year period (i.e., \$3,750,000 on January 24, 2025, and \$3,750,000 on January 24, 2026).¹²

In its Motion, Attentive described that since the submission of the original compliance filing, there have been multiple unexpected external events that need to be addressed in the supplemental compliance filing, such as 1) delays associated with the Prebuild Infrastructure (“PBI”) solicitation and ultimate selection of a PBI developer, 2) delays or unanticipated changes associated with common infrastructure other than the PBI, and 3) delays associated with anticipated federal permitting timeline for the Attentive Project.¹³

In its Motion, Attentive asserts that staying the enforcement and suspending the obligations of the two specific requirements in the Board’s January 24, 2024 Order will provide: 1) the necessary time for Attentive and the Board to consider and address the unexpected external events in the supplemental compliance filing, 2) 180 days for the Board to consider and approve the

⁸ Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government’s Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (Jan. 20, 2025)

⁹ Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 20, 2025)

¹⁰ Motion to Stay.

¹¹ Id. at 3-4.

¹² Id. at 2.

¹³ Id. at 5-7.

supplemental compliance filing in advance of the initial Commitment Security being posted by Attentive (or its parent companies), and 3) the necessary time for Attentive (or its parent companies) to secure the approved financial instruments from the approved and acceptable financial institutions after the Board approves the supplemental compliance filing.¹⁴

In its Motion, Attentive emphasizes that it is not seeking a Stay of the entire January 24, 2024 Order, but instead only requesting a limited Stay of two specific requirements.¹⁵ Attentive further emphasizes that it remains committed to developing the Project and bringing the economic and environmental benefits of OSW energy to the State of New Jersey. As such, Attentive represents that it will continue to meet all other January 24, 2024 Order requirements.¹⁶

In its Motion, Attentive cites N.J.A.C. 14:1-8.7(d) which states that a Stay of a Board order “will be granted only for good cause shown.”¹⁷ Attentive also describes the four criteria set forth in Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982), which must be addressed by the movant in order for a Stay to be granted. These four criteria, criteria used for a preliminary injunction, include the following:

1. Immediate and irreparable harm if a Stay is not granted;
2. The legal right underlying the movant’s claim is well-settled;
3. 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.

Attentive submits that, although it must satisfy each factor, the factors may be viewed in a “less rigid” fashion where a Stay is sought merely to preserve the status quo, and a court, or the Board here, may place less emphasis on one factor “if another greatly requires” the issuance of a Stay to preserve the status quo.¹⁸ Attentive also contends that the Board must consider the public interest when an issue of significant public interest is implicated by a request for a Stay.

Attentive asserts that there is more than sufficient “good cause” shown for the Board to Stay the two requested Board Order requirements. Attentive says that it, as well as the State and its citizens, will suffer immediate and irreparable harm if the Stay is not granted.¹⁹ Attentive submits that it has a well settled legal right to proceed with the Project and has already succeeded on the merits, because the Board authorized it to proceed with the Project consistent with OWEDA.²⁰ Finally, Attentive says that the balancing of equities weighs in its favor because the matter is of significant public importance and the public has an interest in ensuring the Project proceeds in order to achieve the maximum benefits possible for ratepayers and deliver on the economic

¹⁴ Id. at 3.

¹⁵ Id. at 2, 3.

¹⁶ Id. at 4.

¹⁷ Id. at 7.

¹⁸ Id. at 8 (citing Waste Mgmt. of N.J., Inc. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App Div. 2008)).

¹⁹ Id. at 11.

²⁰ Id. 12-13.

benefits for communities and other stakeholders.²¹ Absent a Stay maintaining the status quo, those benefits will be at risk, and thus the granting of a Stay is consistent with the public interest.

FILED COMMENTS

On February 3, 2025, the New Jersey Division of Rate Counsel (“Rate Counsel”) submitted comments in response to Attentive’s Motion.²² Rate Counsel asserted that, in addition to a stay of the enforcement of two enumerated solicitation award requirements, Attentive is seeking : 1) authorization for additional time to consider and address the unexpected external events in the supplemental compliance filing, 2) authorization that the Board will commence its consideration and approval of the supplemental compliance filing 180 days in advance of the initial Commitment Security being posted by Attentive Energy (or its parent companies), and 3) authorization for additional time for Attentive (or its parent companies) to secure the approved financial instruments from the approved and acceptable financial institution after the Board approved the supplemental compliance filing.²³

While Rate Counsel stated that it “does not oppose additional time to consider and address unexpected external events,” Rate Counsel claimed that Attentive has not met its burden for a stay because Rate Counsel believes that Attentive’s payments could be made while there is continued discussion regarding the outstanding issues and suggests the Board require Attentive to post a bond or place the funds in an escrow account.²⁴

In addition, Rate Counsel noted its disagreement with Attentive’s claim that “it meets the standard for a stay set forth in Crowe.²⁵ Rate Counsel claimed that an irreparable injury is not shown because Attentive’s assertions are speculative and argued that it is not in the public interest to allow Attentive to delay payment because this “shifts the financial risk away from Attentive” to the State and the public.²⁶

Finally, Rate Counsel expressed concerns about the “frequent post-award alteration to the Board’s solicitation process.” Rate Counsel cautioned the Board “against continued indulgence of post-award modifications for bids, because they provide no tangible benefit to ratepayers and are detrimental [to] the integrity of the bidding process.”²⁷

On February 10, 2025, the Jersey Strong Coastal Coalition (the “Coalition”), which is not a party to this matter, submitted comments objecting to the Motion to Stay or any further Stay for the Attentive project. The Coalition echoed Rate Counsel’s objections, and cited the January 24, 2024 Board Order requirements regarding compliance filings, posting of financial guarantees, and terms for schedule relief.

²¹ Id. 13-14.

²² See In re the Opening of New Jersey’s Third Solicitation for Offshore Wind Renewable Energy Certificates (OREC), BPU Docket No. QO22080481, Rate Counsel Comments dated February 3, 2025 (“Rate Counsel’s Comments”).

²³ Id. at 2.

²⁴ Id. at 3, 13.

²⁵ Id. at 10.

²⁶ Id. at 10-12.

²⁷ Id. at 13.

DISCUSSION AND FINDINGS

Attentive's Motion to Stay requests that the Board issue an order staying the enforcement and suspending the obligations of two specific requirements included in the Board's January 24, 2024 Order through January 24, 2026. As detailed below, the Motion is granted in order to maintain the status quo and uphold the public interest reflected in the Board's January 24, 2024 Order. The January 24, 2024 Order remains in full force and effect and no amendments are being made through today's action, which is limited to temporary enforcement relief due to the circumstances as presented by Attentive.

In evaluating this Motion, the Board is guided by the administrative code and case law described above. The Board notes that evaluating the propriety of a stay requires the Board to exercise "sound judicial discretion" and that courts may place less emphasis on one of the Crowe criteria if another "greatly requires the issuance of the [stay]" when the concern is to preserve the status quo.²⁸ The Board is also cognizant that, in the context of an issue of significant public importance, in addition to the "traditional factors," a court or agency must also consider the public interest as "most paramount."²⁹

Here, the Board finds that the Stay requested in the Motion implicates a matter of significant public importance, as detailed in "Background" above. Accordingly, the Board places primary emphasis on the public interest in its consideration of the Motion.

The public's interest, in the context of the requested Stay, is in reaping the benefits of the Attentive Project which formed the basis of the Board's January 24, 2024 Award Order, or at least preserving the status quo and the opportunity to do so. The Board finds that granting the Motion would support the ongoing development of the Attentive Project, allow Attentive adequate time to consider and address unexpected external events which impact the Project's timeline and approach to reaching completion, and would allow the Attentive and the Board to address these uncertainties in the supplemental compliance filing. Doing so would protect the public's interest in reaping the benefits of the Project.

At the same time, contrary to Rate Counsel's assertions, the Board finds that temporarily staying enforcement of these specific obligations does not impose any costs on ratepayers or require the State to bear any financial risk related to the Attentive Project. In particular, ratepayers will not have any monthly bill impacts until the Attentive Project is generating and injecting power into the State's transmission system and will not pay any costs if the Project does not become operational.

The Board therefore finds that the public interest strongly weighs in favor of granting the Motion to Stay.³⁰ The Board emphasizes that its identification of the public interest and the potential for

²⁸ Waste Mgmt., 399 N.J. Super. at 520.

²⁹ McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 484 (2003); see also Garden State Equality v. Dow, 216 N.J. 314, 321 (2013); New Jersey Election Law Enforcement Comm'n v. DiVincenzo, 445 N.J. Super. 187, 196 (App. Div. 2016).

³⁰ While the Board places "paramount" importance on the public interest in deciding this Motion, McNeil, 176 N.J. at 484, the Board also finds that consideration of the Crowe factors supports granting this Stay. In particular, the balance of the hardships weighs heavily in favor of granting the stay for the reasons described with respect to public interest, and it is appropriate to weigh this factor most heavily in this Order preserving

irreparable harm and its balancing of the hardships herein is specific to the unique circumstances posed by the current juncture in the development of New Jersey's OSW industry.

The Board also acknowledges that the executive orders signed by President Donald Trump on January 20, 2025 may affect the financial outlook for OSW projects and their ability to obtain necessary federal permits and approvals. These executive orders provide further good cause to grant Attentive's Stay request while the industry monitors the evolving situation.

The Board also acknowledges Rate Counsel's generalized concern that post-award modifications to Board orders could undermine the competitive solicitation process, which is meant to drive down costs for ratepayers. To that end, when submitting a bid under a competitive solicitation, the Board cautions that OSW developers must continue to expect to comply with all Board regulations, and the terms of any applicable solicitation, bid commitment, and Board order. To be clear, granting the Motion does not amend the January 24, 2024 Order.

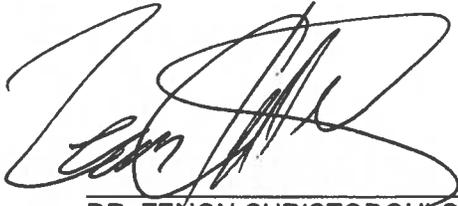
In summary, following careful review of Attentive's Motion to Stay, and having thoroughly considered Board Staff's recommendations, the Board **HEREBY FINDS** that the requests in the Motion to Stay are reasonable. The Board **HEREBY GRANTS** the Motion, *nunc pro tunc*, as of January 23, 2025 and **HEREBY STAYS** enforcement of the two requirements from the January 24, 2024 Order identified in the Motion: 1) Attentive's initial Commitment Security requirements, which is the first 50% of its Commitment Security for the COD Commitment (i.e., \$33,550,000) that was due to be posted on January 24, 2025, and 2) the second unpaid portion of the RMI Fee requirements, which is a payment of \$3,750,000 that was due to be posted on January 24, 2025. The Board **HEREBY AFFIRMS** that the stay of enforcement granted by this Order will end on January 24, 2026.

the status quo. See Waste Mgmt., 399 N.J. Super. at 520. In addition, although Rate Counsel correctly notes that mere financial harm does not typically support a finding of irreparable harm, the Board in this instance is cognizant that financial harm on top of the other uncertainties and challenges facing the OSW industry as a whole could jeopardize the Project, and a loss or significant delay to the project would cause irreparable harm to the State and the public as well as the Project. Finally, while the Board finds its weighing of the foregoing factors sufficient to grant the Stay, the Board notes that Rate Counsel did not object to Attentive's arguments with respect to its legal right to relief and likelihood of success on the merits and agrees with Attentive that the Project is in compliance and has a legal right to proceed under the January 24, 2024 Order and OWEDA.

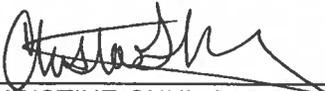
The effective date of this Order is April 23, 2025.

DATED: April 23, 2025

BOARD OF PUBLIC UTILITIES
BY:



DR. ZENON CHRISTODOULOU
COMMISSIONER

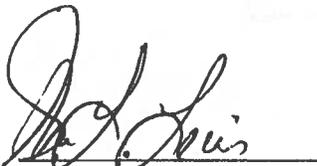


CHRISTINE GUHL-SADOVY
PRESIDENT



MARIAN ABDOU
COMMISSIONER

ATTEST:



SHERRIL LEWIS
BOARD SECRETARY

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

FINAL VOTE ON AGENDA ITEM 8H, APRIL 23, 2025

Commissioner Christodoulou	Yes	
Commissioner Bange		No
Commissioner Abdou	Yes	
President Guhl-Sadovy	Yes	

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

SERVICE LIST

Attentive Energy LLC

12 East 49th Street, 11th Floor
New York, NY 10017

Caroline Tkachuk
Caroline.tkachuk@totalenergies.com

Christen Wittman
Christen.wittman@totalenergies.com

Murray Greene
murray.greene@totalenergies.com

Linklaters LLP
1290 Avenue of the Americas
New York, NY 10104

Adam S. Lurie
adam.lurie@linklaters.com

Division of Rate Counsel
140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

T. David Wand, Esq., Managing Attorney
dwand@rpa.nj.gov

Maura Caroselli, Esq., Managing Attorney
mcaroselli@rpa.nj.gov

Lisa Littman, Esq.
llittman@rpa.nj.gov

Debora Layugan, Esq.

New Jersey Board of Public Utilities

44 South Clinton Avenue, 1st Floor
Trenton, NJ 08625-0350

Sherri Lewis, Board Secretary
board.secretary@bpu.nj.gov

Robert Brabston, Esq., Executive Director
robert.brabston@bpu.nj.gov

Taryn Boland, Chief of Staff
taryn.boland@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Kira Lawrence, Senior Policy Advisor
kira.lawrence@bpu.nj.gov

Office of the General Counsel

Elsepth Hans, Deputy General Counsel
elspeth.hans@bpu.nj.gov

Alexander Cary, Legal Specialist
alexander.cary@bpu.nj.gov

Division of Clean Energy

Veronique Oomen, Director
veroique.oomen@bpu.nj.gov

Katharine Perry, Deputy Director
katharine.perry@bpu.nj.gov

Jack Streppone, Offshore Wind Project

dlayugan@rpa.nj.gov

New Jersey Division of Law

Department of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Daren Eppley, Section Chief, DAG
daren.eppley@law.njoag.gov

Pamela Owen, Assistant Section Chief, DAG
pamela.owen@law.njoag.gov

Terel Klein, DAG
terel.klein@law.njoag.gov

David Apy, Assistant Attorney General
david.apy@law.njoag.gov

Public Service Electric & Gas

PSEG Services Corporation
P.O. Box 570
80 Park Plaza, T-5
Newark, NJ 07101

Joseph Accardo
joseph.accardoJr@pseg.com

Matthew Weissman, Esq.
matthew.weissman@pseg.com

Aaron I. Karp, Esq.
aaron.karp@pseg.com

Jersey Central Light & Power

Jersey Central Power & Light Co.
300 Madison Avenue
Morristown, NJ 07962

Timothy McHugh, Esq.
tmchugh@firstenergycorp.com

Viktor Lackmann, Esq.
vlackmann@firstenergycorp.com

Michael J. Martelo
mmartelo@firstenergycorp.com

Manager
jack.streppone@bpu.nj.gov

Kevin Dillon, Offshore Wind Project Manager
kevin.dillon@bpu.nj.gov

Earl Thomas Pierce, Administrative Analyst
earl.pierce@bpu.nj.gov

Office of the Economist

Dr. Ben Witherell, Chief Economist
benjamin.witherell@bpu.nj.gov

Farhana Rahman
farhana.rahman@bpu.nj.gov

New Jersey Department of Environmental Protection

401 East State Street
Trenton, NJ 08608

Megan Brunatti
megan.brunatti@dep.nj.gov

Katherine Nolan
katherine.nolan@dep.nj.gov

Elizabeth Lange
elizabeth.lange@dep.nj.gov

Atlantic City Electric

Atlantic City Electric Co. – 89KS
P.O. Box 231
Wilmington, DE 19899

Neil Hlawatsch
neil.hlawatsch@ExelonCorp.com

Rockland Electric Company
Consolidated Edison Co. of NY
Law Department, Room 1815-S
4 Irving Place
New York, NY 10003

John L. Carley, Esq.
carleyj@coned.com