



2021 State Agreement Approach Process Guidance Document

New Jersey Board of Public Utilities
44 S. Clinton Ave, Trenton, NJ

September 24, 2021

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1 OVERVIEW

To implement Governor Phil Murphy’s vision of making New Jersey a leading hub of offshore wind development and to meet the State’s aggressive clean energy goals, the Board of Public Utilities (“BPU” or “Board”) announced in November 2020¹ that it would work with PJM Interconnection, L.L.C. (“PJM”), to solicit electric transmission project proposal applications (“Applications”) to facilitate the integration of energy generated from offshore wind generation facilities in an effort to reach the State’s target goal of 7,500 megawatts (“MW”) of offshore wind capacity by the year 2035.

This Process Guidance Document (“Document”) builds upon the information PJM has already provided, including all related documents issued as part of its 2021 SAA Proposal Window to Support NJ OSW relating to the state agreement approach (“SAA”) request for transmission services (“Solicitation”), scheduled to close on September 17, 2021 (“Solicitation Closing Date”).²

PJM is working in conjunction with the BPU to facilitate the solicitation of Applications from qualified applicants (“Applicants”) in response to the Solicitation. This Document provides additional guidance to Applicants and other interested stakeholders relating to the process for consideration and evaluation of Applications.

2 TIMELINE AND MECHANICS OF THE SOLICITATION

2.1 SAA Solicitation Process Guidance

The Board is working collaboratively with PJM for purposes of this Solicitation. Accordingly, all Application submission materials and other related information are listed on the PJM Website. The PJM Website will host all documents for the Solicitation and will serve as the main point of contact between PJM, the Board, and interested Applicants. The PJM Website also includes instructions for submitting Application materials.

To ensure that all Applicants have the same information, PJM has posted SAA FAQs on the PJM Website.³ Written responses to frequently asked questions appear in that document and constitute official guidance. PJM has also provided written responses to additional questions submitted through the PJM Website. These inquiries, along with PJM’s responses to each, are posted on the PJM Website and are available to all Applicants.

¹ See Board Order, In the Matter of Offshore Wind Transmission, Docket No. QO20100630 (Nov. 18, 2020) (“SAA Board Order”).

² See, e.g., PJM, *2021 NJ OSW Transmission SAA Proposal Window Overview* (“SAA Proposal Window Overview”); PJM, *2021 SAA Proposal Window to Support NJ OSW: Option 1A* (“SAA Option 1A”); PJM, *2021 SAA Proposal Window to Support NJ OSW: Option 1B* (“SAA Option 1B”); PJM, *2021 SAA Proposal Window to Support NJ OSW: Option 2* (“SAA Option 2”); PJM, *2021 SAA Proposal Window to Support NJ OSW: Option 3* (“SAA Option 3”); PJM, *2021 NJ SAA Proposal Window Economic Analyses – Questions and Answers* (“SAA Economic Evaluation FAQ”); PJM, *2021 NJ SAA Proposal Window General FAQ – General Proposal Window Questions and Answers* (“SAA FAQ”); BPU, *Board of Public Utilities Offshore Wind Transmission Proposal Data Collection Form* (“BPU Supplemental SAA Bid Data Collection Form”) (collectively, “SAA Documents”). SAA Documents are available from the PJM Competitive Planning Process website, <https://pjm.com/planning/competitive-planning-process> (“PJM Website”).

³ See SAA FAQs, *supra* note 2.

Following the Solicitation Closing Date, PJM will review all Applications received in the Solicitation. PJM will also transmit the Applications to Board staff (“Staff”), pursuant to the confidentiality provisions described below. Staff’s informal review of the Applications will begin immediately upon receipt of the information.

After the Solicitation Closing Date, Staff will recommend that the Board initiate a docket to consider the Applications, beginning the Board and Staff’s formal evaluation. Staff anticipates that an Application submittal to PJM will constitute the bulk of the record that the Board will consider. However, Staff and/or PJM⁴ may ask Applicants certain clarifying questions for the record, so that Applicants can better explain or elaborate upon information that they have already submitted in their respective Applications (“Clarifying Questions”). Applicant responses to these Clarifying Questions are mandatory. Clarifying Questions from Staff, after the opening of the Board’s evaluation, will be issued directly through a single-purpose secure sharing site.⁵ Any Applicant requested to provide such answers must submit them for Staff’s review and consideration, in consultation with PJM (“Answers to Clarifying Questions”). Notably, an Applicant’s failure to respond to Clarifying Questions will constitute grounds for disqualification of its Application.

Applicants will have a maximum of ten days to provide Staff with Answers to Clarifying Questions from Staff, although Staff reserves the right to establish a shorter response period. Applicants will respond to PJM’s Clarifying Questions in writing, and in accordance with the PJM Operating Agreement. Staff may also schedule interviews with Applicants to further address any information in the Application, original Clarifying Questions, or to seek additional detail from an Applicant regarding the Answers to Clarifying Questions that the Applicant provided (“Additional Clarifying Responses”). PJM may attend these interviews. These interviews are mandatory for all Applicants requested to participate in such interviews with Staff. A court reporter will be present at all interviews and will generate an accurate record of all items discussed, and copies of these transcripts will be shared with PJM. Notably, if Staff requests an interview with an Applicant, that Applicant’s failure to interview with Staff will constitute grounds for disqualification of its Application.

All Answers to Clarifying Questions and/or Additional Clarifying Responses will be considered part of the record, and shall collectively constitute “Supplemental Information.” All Supplemental Information submitted to the Board and Staff through the single-purpose secure sharing site must also be sent to PJM.

During the Board’s formal evaluation, Staff anticipates providing stakeholders with an opportunity to review and provide comments on the Applications. Upon PJM’s completion of its reliability evaluation and other analyses as described in the SAA Documents, PJM will transmit its analysis, including any recommendations, to the Board. Based on the Applications, Supplemental Information, stakeholder comments, and any PJM recommendations, Staff will make a recommendation to the Board. As described in the SAA Documents, the Board will then determine whether any SAA projects represent sufficient value for New Jersey customers (“Board Decision”). The Board may select for implementation in full some,

⁴ PJM will issue Clarifying Questions through their existing Operating Agreement process, and may begin doing so after the Solicitation Closing Date. Clarifying Questions from Staff will commence after the opening of the Board’s formal evaluation.

⁵ As described further below, Applicants will be required to re-file Supplemental Information previously submitted to PJM to the Board.

none, or all of the projects as described in the Applications, or, in the Board’s discretion, may select only certain portions of such proposed projects,.

Staff anticipates that it will utilize the following SAA Application review schedule. Staff anticipates providing an updated schedule to interested parties at a later date, depending on the nature and complexity of the Applications submitted.

Table 3. Solicitation Evaluation Process

Event	Date/Timeframe
PJM Receipt of Applications (Solicitation Closing Date)	September 17, 2021
PJM Review of Received Project Proposals	Q3 2021 – Q3 2022
Board Evaluation Begins	Q1 2022
Stakeholder Meeting	Q2 2022
Interviews with Applicants	Q1 – Q2 2022
Submission and Review of Supplemental Information	Ongoing
Formal Board, Staff, Consultant Review of Applications	Q1 – Q3 2022
Board Decision	Q3 – Q4 2022

2.2 Communications with Commissioners and Staff

Communications with Staff and Board Commissioners will be limited after the Solicitation Closing Date. At that point, all communications between Applicants and Staff will be formally logged and conducted pursuant to the rules set forth in this Document, as Staff may amend them from time to time.

Additionally, the Board’s rules of practice prohibit Applicants and Board Commissioners from discussing ongoing solicitations or topics directly related to an ongoing solicitation. For the purposes of the SAA Solicitation, Staff views the prohibition on discussions as beginning on the Solicitation Closing Date (i.e., September 17, 2021) until the Board Decision is issued. While discouraged during the pendency of the SAA Solicitation, Applicants may request the Board’s Office of General Counsel to review a Commissioner(s) meeting request on matters unrelated to the Solicitation. Applicants may continue to communicate with other agencies, with Rate Counsel, and with Staff in the normal course of business.

2.3 Confidentiality of Applications

All materials filed through the PJM Website and provided by PJM to the Board are public documents and are therefore subject to the good government sunshine laws of the State of New Jersey. However, confidential information the Board requests from PJM is subject to exclusions from the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (“OPRA”).⁶ In 2012, the Board determined that information which “includes commercially sensitive details of the transmission and generation markets in the PJM region, and contains details that could provide unfair competitive advantages to other market participants” is captured “under the exemptions to the OPRA provided in N.J.S.A. 47:1A-1.1 for trade secrets and proprietary commercial or financial information.”⁷ The January 2012 Order, therefore, directed all records

⁶ I/M/O Protection Of Market Sensitive And Commercial Information Provided To The Board Pursuant To Certain Confidentiality Agreements, Docket No. EO12010025 (January 28, 2012) (“January 2012 Order”).

⁷ *Id.* at 2.

the Board sought from PJM pursuant to Authorized Commission status⁸ “be treated as confidential and all requests for access be denied.”⁹ The scope of this exemption was clarified pursuant to the subsequent Confidentiality Certification filed by the Board pursuant to Operating Agreement § 19.14.4(a)(i),¹⁰ which explained that “all PJM/IMM Confidential Information” is exempt from OPRA disclosure.

Based on the findings in the January 2012 Order and subsequent Confidentiality Certification, the Board is an Authorized Commission.¹¹ Pursuant to the PJM Operating Agreement,¹² Authorized Commissions are entitled to receive confidential information, which shall not be disclosed except by FERC order.

The evaluation process will take a two-part approach to confidentiality. During the pendency of PJM’s Review of Received Project Proposals, the Board and Staff will access unredacted proposals as Confidential Information through PJM’s Operating Agreement provisions. Any information received from PJM will be maintained as confidential under the PJM Operating Agreement. Thereafter, when the Board begins its own evaluation, Applicants will be expected to make an additional filing to the Board, as described below. It is also expected that PJM will submit its findings and recommendation to the Board.

In order to create a sufficient record for the Board’s evaluation, all Applicants will be required to submit public (redacted) and confidential (unredacted) versions of their Applications and Supplemental Information with the Board per the Board’s Rules of Practice and Procedure governing submission of confidential materials, N.J.A.C. 14-1-12.1, et seq., and OPRA. Staff understands there is two separate submittal templates Applicants will use to submit a complete Application, the PJM Application Submittal Template on the PJM Website and the BPU Supplemental SAA Bid Data Collection Form. Applicants should submit a public and confidential versions of both of these submission documents to the Board, in addition to public and confidential versions of any Supplemental Information provided to PJM. Further details on the form of this filing, including a filing deadline, will be forthcoming when the Board’s formal evaluation begins.

In developing confidential versions of the BPU Supplemental SAA Bid Data Collection Form, the PJM Application Submittal Template, and any Supplemental Information, Applicants must include a statement identifying each type of data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, and explaining the basis for the proposed redaction. Assertions that the entire application and/or prices are exempt from public disclosure under OPRA, the common law, or the U.S. Copyright Act are overbroad and will not be honored. **If an Applicant elects not to seek confidential**

⁸ See *id.* (“The Board HEREBY FINDS that the information it seeks that will be provided by the IMM and/or PJM pursuant to the Form of Certification, falls under the exemptions to the OPRA provided in N.J.S.A. 47:1A-1.1 for trade secrets and proprietary commercial or financial information, as well as for information that, if disclosed, would give an advantage to competitors or bidders.”).

⁹ *Id.* at 3.

¹⁰ See Letter from the BPU to the Federal Energy Regulatory Commission (“FERC”) re: Confidentiality Certification of the BPU (February 3, 2012), Document Accession #: 20120208-5135 (February 8, 2012), at 2 (“Confidentiality Certification”)(“The BPU further directed the Board’s custodian of records to treat all PJM/IMM Confidential Information as confidential, to exempt it from disclosure under OPRA, and to deny all requests for access to such information.”)(emphasis added).

¹¹ See “Authorized Persons Schedule – New Jersey,” at <https://www.pjm.com/committees-and-groups/state-commissions>, listing BPU personnel authorized to receive confidential data per PJM’s Operating Agreement.

¹² PJM Operating Agreement § 18.17.4.

treatment of their Applications in their initial submittals, the entirety of the Application may be subject to public release.

In addition, as part of the submission to the Board described herein, Applicants must include its commitment to providing in any contract the non-discrimination language required by N.J.S.A. 10:5-33.¹³ Further, to facilitate public transparency, any winning Applicant will be required to make additional materials in their bid publicly available post-Board Decision, including, but not limited to, all materials necessary for members of the public to understand the Applicant's commitments to jobs, economic development, environmental and fisheries protection, and other commitments. While there may be limited instances where material may remain confidential post-Board Decision, the Board will look to the guidance provided by the Division of Purchase and Property ("DPP") regarding the release of formal procurements as persuasive authority. The DPP rules state, in pertinent part, that "[a]fter the opening of sealed proposals, all information submitted by bidders in response to a solicitation of proposals is considered public information ... except ... as may be exempted from public disclosure by the Open Public Records Act" N.J.A.C. 17:12-1.2(b)-(c).

Staff notes that it may elect to share confidential portions of the Application with other New Jersey government entities, including, but not limited to, Rate Counsel, the Department of Environmental Protection, and the Economic Development Authority, during the evaluation period or post-award.

¹³ See N.J.S.A. 10:5-33. The specific language that needs to be provided is as follows: "During the performance of this contract, the contractor agrees as follows: a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause; b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex; c. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment." Bidders are required to comply with the requirements of P.L.1975, c.127.