



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF NAUTILUS OFFSHORE)
WIND, LLC - CONSIDERATION OF THE)
STATE WATER WIND PROJECT AND)
OFFSHORE WIND RENEWABLE ENERGY)
CERTIFICATE)
DOCKET NO. QO18080843)

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Stephen B. Pearlman, Esq., Nautilus Offshore Wind, LLC
Alexander Hemsley, III, Esq., on behalf of the International Union of Operating Engineers
Albert G. Kroll, Esq., on behalf of New Jersey Laborers-Employers Cooperation and Education Trust
Aaron Kleinbaum, Esq., on behalf of National Wildlife Federation & NJ Audubon

BY PRESIDENT FIORDALISO:

BACKGROUND

On August 19, 2010, Governor Chris Christie signed into law the Offshore Wind Economic Development Act ("The Act" or "OWEDA"), codified at N.J.S.A. 48:3-87.1 and 48:3-87.2. This Act set forth the basic understanding of the State's offshore wind policy, and authorized the application of a 25MW facility off the coast in State waters.

On January 31, 2018, Governor Phil Murphy issued Executive Order 8, directing the State and its entities to take the steps necessary to implement OWEDA. On May 23, 2018, Governor Murphy signed P.L. 2018, c. 17 into law, requiring the New Jersey Board of Public Utilities ("Board") to establish an Offshore Renewable Energy Credit ("OREC") program of no less than 3,500 MW. Then, on May 30, 2018, Governor Murphy also signed S1217 into law (P.L. 2018, c. 21), amending N.J.S.A. 48:3-87.2, and requiring the Board to accept an application for a small scale qualified wind energy project. The Board must also make a final determination on such application within 90 days of the date that a complete application is filed with the Board.

On August 1, 2018, Nautilus Offshore Wind, LLC ("Nautilus") filed a petition, ("Petition") pursuant to N.J.S.A. 48:3-87.2, seeking approval of a proposed offshore wind facility 2.8 miles off the coast of Atlantic City ("Project"). Nautilus seeks to have the facility found to be a

qualified offshore wind facility and thus eligible for ORECs for a period of 20 years. Nautilus also requests approval by the Board in November to facilitate construction and other elements of the project. Nautilus claims that this project is in full compliance with all statutory and regulatory requirements, is fully permitted, and is ready to begin construction upon the Board's approval.

In addition to the basic approval of the offshore wind facility, Nautilus also seeks, among other things, the transfer of the project from Nautilus to EDF Renewables, Inc. ("EDFR") as part of this review.

By Order dated September 17, 2018, the Board retained the Nautilus Petition for hearing and, pursuant to N.J.S.A. 48:2-32, designated President Joseph L. Fiordaliso as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings, and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the Board Order directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by September 26, 2018.

1. MOTIONS

This Order will first address all Motions as they will inform the remainder of this Order.

New Jersey Laborers-Employers Cooperation and Education Trust Motion to Intervene or Participate

New Jersey Laborers-Employers Cooperation and Education Trust ("NJLECET") filed a motion to intervene on September 26, 2018.

NJLECET is a 501(c)(3) nonprofit labor management fund, representing more than 25,000 laborers in New Jersey. NJLECET's membership comprises local unions engaged in the construction and the heavy highway construction industry.

NJLECET contends that the Project would have a direct beneficial impact on job creation for NJLECET's membership. Participation in the State Waters "laboratory," will enhance NJLECET's membership's competitiveness in the burgeoning wind power construction market. Further, NJLECET asserts that the long-term efficiencies contemplated by New Jersey's increased use of wind power would improve energy efficiency to developers of private and commercial properties, who are represented by NJLECET.

NJLECET affirms that it will abide by the schedule set for the proceeding and will coordinate with other similarly-situated parties to coordinate its representation. Lastly, NJLECET insists that its intervention will not cause undue delay or confusion.

International Union of Operating Engineers Local 825 Motion to Intervene or Participate

The International Union of Operating Engineers ("IUOE") filed a motion to intervene on September 26, 2018.

IUOE principally located in Springfield, New Jersey, is comprised of approximately 7,000 members that perform work on a variety of construction projects including the construction of

wind power facilities, as well as the assembly, operation, maintenance, and repair of equipment, vehicles, and other amenities associated with wind power facilities.

IUOE contends that it will be substantially, specifically, and directly impacted by the outcome of these proceedings as the project is expected to employ the equivalent of 600 workers for a year during construction as well as additional jobs during the operation and maintenance. IUOE additionally asserts that its interests cannot be adequately represented or protected by any other party, thus, the IUOE's full participation in this proceeding will contribute to the development of a complete record for consideration by the Board.

NJLECET affirms that it will abide by all scheduling orders in this proceeding.

National Wildlife Federation and New Jersey Audubon Society Motion to Intervene

The National Wildlife Federation ("NWF") and the New Jersey Audubon Society ("NJAS") filed a motion to intervene on September 26, 2018.

NWF is a national organization of more than 6 million members and supporters including more than 20,000 members and supporters in New Jersey. NWF's Mission is to unite all Americans to ensure wildlife thrives in a rapidly changing world. NJAS is a privately supported, not for profit statewide membership organization that currently has more than 18,000 members throughout New Jersey and more than 60 year-round employees on its staff. NJAS's mission is to foster environmental awareness and a conservation ethic among New Jersey's citizens through its focus on the protection of New Jersey birds, mammals, other animals and threatened species.

NWF and NJAS (together "Movants") contend that Governor Murphy's Administration, the BPU, and the Movants share the goal of advancing responsibly developed offshore wind energy. However, the extent to which the State of New Jersey accomplishes this goal will have a direct impact on the Movants and their members. Movants further contend that given the Project's probable impacts on wildlife, BPU's decision on this Project could set a negative precedent for potential future offshore wind projects in New Jersey. Movants and their members have a material interest in ensuring that BPU considers their concerns about this Project's probable impacts to wildlife as the outcome of this proceeding will have several substantial, specific and direct impacts on the Movants and their members. Movants assert that they possess specific knowledge and expertise that will help build a full record for the Board's consideration.

Movants assert that their intervention will not cause undue delay as they will abide by the schedule and other rulings made by the BPU, they will limit their submissions and testimony to the topics relevant (as determined by the BPU) to wildlife protection and energy policy, and Movants will work with all parties to ensure an efficient hearing process, and avoid duplication of efforts, confusion or any other delays.

Nautilus Opposition to the Motion to Intervene by the National Wildlife Federation and New Jersey Audubon Society

On October 1, 2018, Nautilus filed a Brief in Opposition to the Motion to Intervene by Movants.

Nautilus presents a number of arguments. Of the most significant is the claim that Movants' position, by its very nature, is not a legal position in this proceeding, but is instead a policy objection to any and all development of near-shore offshore wind. As such, Nautilus claims that Movants' intervention should be denied because nothing on the topic can be decided in this

Petition; the opportunity for those issues was before the Legislature, not the Board. Nautilus further argues that since Movants' focus is primarily on generic wildlife protection and the location of offshore wind projects, they not only fail to constructively add to the scope of the case, Movant's involvement would distract and cause confusion and delay.

2. DISCUSSIONS AND FINDINGS

Motions to Intervene

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

After consideration of the arguments, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3, that the participation of the New Jersey Laborers-Employers Cooperation and Education Trust, the International Union of Operating Engineers Local 825, and jointly National Wildlife Federation and New Jersey Audubon Society in this matter is likely to add constructively to the case without causing undue delay or confusion. Nautilus's argument concerning the position by the Movants as to objecting to location of the offshore wind farm is not persuasive, in that the trier of fact can and will restrict consideration of any position to this application alone. Accordingly, I **HEREBY GRANT** the motions to intervene.

Further, I **HEREBY DIRECT** all intervenors to abide by the schedule previously set in this proceeding. With respect to pre-filed testimony, I **HEREBY DIRECT** that all intervenors may submit testimony no later than 12:00 noon on October 9, 2018.

3. NATURE OF PROCEEDINGS

Through this proceeding, Nautilus seeks Board approval of a State waters offshore windfarm project, requesting that the Board issue an Order determining, among others things, that the proposed project be a "qualified offshore wind project" for all purposes of OWEDA.

4. **PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES**

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No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

5. **SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING**

None at this time.

6. **STIPULATIONS:**

The Staff of the Board of Public Utilities, the Division of Rate Counsel and Nautilus have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

7. **SETTLEMENT:**

Parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

8. **AMENDMENTS TO PLEADINGS:**

None at this time.

9. **DISCOVERY AND DATE FOR COMPLETION:**

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4, superseded as appropriate by any schedule issued or amended by the Board or the presiding officer.

10. **ORDER OF PROOFS:**

Nautilus has the burden of proof. The hearings will be conducted by topic, and within each topic, the hearings will be conducted in the following order:

First – Nautilus

Second – Rate Counsel

Third - Intervenors

Fourth – Board Staff

11. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

12. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

13. **ESTIMATED NUMBER OF FACTS AND EXPERT WITNESSES:**

Any party substituting witnesses shall identify such witnesses within five (5) days of determining to replace a witness, and in no event later than five (5) days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

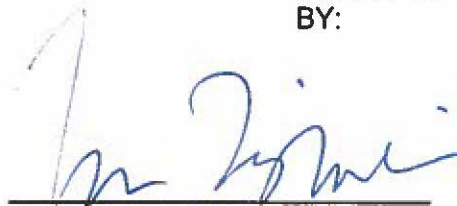
14. **SPECIAL MATTERS:**

None at this time.

This Order shall be effective on October 3, 2018.

DATED: 10/3/18

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT

In the Matter of the Petition of Nautilus Offshore Wind, LLC for the Approval of the State Waters Wind Project and Authorizing Offshore Wind Renewable Energy Certificates

BPU Docket No. QO18080843

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