

New Jersey's Offshore Wind Economic Development Act: Laying the Groundwork for an Offshore Wind Powered Economy

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On August 19th, 2010, Governor Chris Christie of New Jersey signed into law the "Offshore Wind Economic Development Act" (OWEDA).¹ This law directs the New Jersey Board of Public Utilities (BPU) to create an offshore renewable energy certificate (OREC) program to require 1,100 megawatts (MW) of generation from offshore wind energy,² and authorizes the New Jersey Economic Development Authority (EDA) to provide financial assistance to qualified offshore wind developers and equipment manufacturers.³

New Jersey is the first state to incorporate offshore wind energy requirement into its renewable portfolio standard (RPS).⁴ The "Electric Discount and Energy Competition Act" established the state's first RPS in 1999, which included a renewable energy target of 6.5% for 2012.⁵ The act divided renewable resources into two classes.⁶ Class I resources include "electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated

¹ Michael Drewniak, *Governor Christie Signs Offshore Wind Economic Development Act to Spur Economic Growth, Encourage Energy as Industry*, NEWSROOM, STATE OF NEW JERSEY (Aug. 19, 2010), <http://www.state.nj.us/governor/news/news/552010/approved/20100819a.html>.

² Offshore Wind Economic Development Act, 2010 N.J. Laws 57 (to be codified as amended at N. J. Stat. Ann. §48:3-87(d)(4)).

³ *Id.* (to be codified as amended at N. J. Stat. Ann. § 26:2C-51(b)(1))

⁴ *New Jersey Incentives/Policies for Renewables & Efficiency*, DATABASE OF STATE INCENTIVES FOR RENEWABLES & EFFICIENCY (DSIRE), http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=NJ05R&re=1&ee=1 (last updated Aug. 23, 2010).

⁵ *New Jersey Renewable Energy Portfolio Standard Summary*, UNION OF CONCERNED SCIENTISTS, www.ucsusa.org/assets/documents/clean_energy/new-jersey.pdf (last updated May, 2008).

⁶ *Id.*

and harvested in a sustainable manner.”⁷ Class II resources include "electric energy produced at a resource recovery facility or hydropower facility,” provided the Commissioner of Environmental Potential verifies that the facility meets environmental standards.⁸

Initial RPS regulations did not create a carve-out for any individual source of renewable energy.⁹ However, in 2004 the BPU instituted a policy requiring the state’s RPS to contain at least 0.16% solar energy.¹⁰ In April of 2006, RPS projections were extended to require 22.5% renewable resources by 2021 as well as a 2.12% solar energy carve-out.¹¹ Subsequent legislation in January 2010 expanded the solar carve-out even further, aiming for 5,316 Gigawatt-hours (GWh) of solar energy during energy year 2026 (energy years run from June to May).¹² This carve-out was affected by means of a solar renewable energy certificate (SREC) program upon which the new OREC system was based.¹³ New Jersey’s adoption of the SREC model has since been followed by Pennsylvania, Delaware, Massachusetts, Ohio, and Maryland.¹⁴ As of October 1, 2010, New Jersey’s solar capacity was 200 MW.¹⁵

Now under the Offshore Wind Economic Development Act the BPU must likewise create an offshore wind renewable energy certificate (OREC) program requiring

⁷ Electric Discount and Energy Competition Act, 1999 N.J. Laws 23 (codified as N.J. Stat. § 48:3-51).

⁸ *Id.*

⁹ DATABASE OF STATE INCENTIVES FOR RENEWABLES & EFFICIENCY *supra* note 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *New Jersey Reaches Solar Energy Milestone*, NEW JERSEY TODAY (Oct. 1, 2010), <http://njtoday.net/2010/10/01/new-jersey-reaches-solar-energy-milestone/>.

¹⁵ *Id.*

at least 1,100 MW of generation from offshore wind projects.¹⁶ This must occur within 180 days of the law's enactment.¹⁷ While OWEDA does not specify what percentage of energy sold in the state must come from offshore wind, the percentage set by the BPU must be large enough to support at least 1,100 MW.¹⁸ In addition, offshore wind energy will be considered a Class I renewable and the carve-out will offset the state's RPS.¹⁹

Wind power purchases will be verified through the purchase of ORECs at yet to be determined prices.²⁰ Each OREC represents "the environmental attributes of one megawatt hour of electric generation from a qualified offshore wind project."²¹ In the event that not enough ORECs are available for purchase, the energy supplier will be required to pay "an offshore wind alternative compliance payment to the BPU."²²

Energy contributing to the offshore wind carve-out must come from "a wind turbine electricity generation facility in the Atlantic Ocean . . . connected to the electric transmission system in this State."²³ Several projects well positioned to satisfy these requirements have already entered preliminary stages of development in federal waters on the Outer Continental Shelf (OCS) off the New Jersey coast.²⁴ In June of 2010 the Minerals Management Service (MMS) issued the first leases for "offshore renewable energy technology testing and data collection" since the Energy Policy Act of 2005,

¹⁶ Offshore Wind Economic Development Act, 2010 N.J. Laws 57 (to be codified as amended at N. J. Stat. Ann. §48:3-87).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Offshore Wind Economic Development Act, 2010 N.J. Laws 57 (to be codified as amended at N. J. Stat. Ann. §48:3-87).

²² *Id.*

²³ *Id.*

²⁴ Nicholas Pardi, *Fact Sheet: Proposed Outer Continental Shelf Renewable Energy Limited Leases Off the Shores of Delaware and New Jersey*, BUREAU OF OCEAN ENERGY MGMT., REGULATION & ENFORCEMENT, <http://www.boemre.gov/ooc/press/2009/FactSheet.htm> (last updated Sept. 17, 2010).

which gave the MMS the power to grant leases for wind power development research.²⁵

The MMS granted leases to Bluewater Wind, Fishermen’s Energy, and Deepwater Wind.²⁶ Four of the five sites are located off the coast of New Jersey.²⁷

To construct an offshore wind project, OWEDA requires that wind developers submit an application to the Board including, among other information, the project’s projected electrical output and market prices, environmental benefits and impacts, as well as “an analysis of the potential impacts on residential and industrial ratepayers of electricity rates.”²⁸ To further encourage industry participation, OWEDA amends Title 26, Chapter 2C of the New Jersey Code, which allocates sixty percent of the state’s “Global Warming Solutions Fund” for EDA use in funding energy efficiency projects.²⁹ The EDA may now provide “grants and other forms of financial assistance to commercial, institutional, and industrial entities . . . to develop qualified offshore wind projects” as well as “financial assistance to manufacturers of equipment associated with qualified offshore wind projects.”³⁰ OWEDA also supplements the “Urban Transit Hub Tax Credit Act” to allow the EDA to provide up to \$100 million in tax credits to offshore wind developers, provided they are able to demonstrate that the project “will yield a net positive benefit to the state.”³¹

OWEDA is one of several steps New Jersey has taken in recent years to secure its position at the forefront of offshore wind development. On October 5, 2007, the BPU

²⁵ *Id.*

²⁶ Lorraine McCarthy, *Preliminary Data Shows Offshore Wind Energy Has Little Impact on State’s Environment*, 41 ENV’T. REP. CURRENT DEV. (BNA) 1428 (June 25, 2010).

²⁷ *Id.*

²⁸ Offshore Wind Economic Development Act, 2010 N.J. Laws 57 (to be codified as amended at N.J. Stat. Ann § 48:3-87.1(a)(10)(d)).

²⁹ *Id.* (to be codified as amended at N.J. Stat. Ann. §26:2C-51 (b)(1)).

³⁰ *Id.*

³¹ *Id.* (to be codified as amended at N.J. Stat. Ann. § 34:1B-209.4(a)).

issued a “Solicitation for Proposals to Develop Off-Shore Wind Renewable Energy Facilities Supplying Electricity to the Distribution System Serving New Jersey.”³² The solicitation promised a competitive incentive and financing program consisting of \$19 million paid out to grantees over five years.³³ Out of the five applicants, Garden State Offshore Energy (a joint venture between PSEG Renewable Generation and Deepwater Wind) was awarded funding.³⁴ The BPU also issued funding to Fisherman’s Energy and Bluewater Wind³⁵ by way of a rebate program for the construction of meteorological towers off the New Jersey coast.³⁶

Laying the ground work for what would be come OWEDA’s offshore wind requirements, in October of 2008, Governor Jon Corzine released the New Jersey Energy Master Energy Plan, which not only called for an extension of New Jersey’s RPS to 30% by 2020, a goal slightly beyond OWEDA projections, but also called for offshore wind generation of 1000 MW by 2012, a goal which OWEDA aims to surpass.³⁷ On June 8, 2010, New Jersey Governor Chris Christie signed a Memorandum of Understanding (MOU), hatched by ten states on the Atlantic seaboard with the United States Department of the Interior, to create the Atlantic Offshore Wind Energy Consortium.³⁸ The consortium is designed to “facilitate federal-state cooperation and coordination for the

³² *Solicitation for Proposals to Develop Off-Shore Wind Renewable Energy Facilities Supplying Electricity to the Distribution System Serving New Jersey*, N.J.’S CLEAN ENERGY PROGRAM (Oct. 5, 2007), www.njcleanenergy.com/files/file/OSW_Final_Solicitation100507final.pdf.

³³ *Id.*

³⁴ *New Jersey*, U.S. OFFSHORE WIND COLLABORATIVE, <http://www.usowc.org/states/nj.html> (last updated July 2010).

³⁵ *Id.*

³⁶ Offshore Wind Rebate Program for the Installation of Meteorological Towers, N.J. Bd. Pub. Util., Dkt. No. EO08110971 (Nov. 26, 2008), *available at* <http://www.njcleanenergy.com/files/file/Board%20Orders/11-21-08-8A.pdf>.

³⁷ ENERGY MASTER PLAN COMM., *New Jersey Energy Master Plan*, (October 2008), www.state.nj.us/emp/docs/pdf/081022_emp.pdf.

³⁸ *Memorandum of Understanding*, THE ATLANTIC CONSORTIUM (June 8, 2010), www.boemre.gov/ooc/PDFs/AtlanticConsortiumMOU.pdf.

efficient, expeditious, orderly, and responsible development of the significant wind resources of the Outer Continental Shelf (OCS).”³⁹ The MOU notes that “achieving 20% of the nation’s energy from wind energy by 2030 will require fifty-four gigawatts (GW) of offshore wind,” and encourages each participant in the consortium to formulate an action plan outlining future efforts to achieve consortium goals.⁴⁰

Weeks after the MOU signing, the New Jersey Department of Environmental Protection’s Office of Science released a report asserting that wind energy projects constructed three to twenty miles off the coast of New Jersey would pose minimal impact to the surrounding environmental.⁴¹ Pursuant to recommendations made by New Jersey’s Blue Ribbon Panel on Development of Wind Turbine Facilities in Coastal Waters, the twenty-four-month long study⁴² examined the distribution, abundance, and migratory patterns of birds, fish, marine mammals, and turtles in a 1,360 square nautical mile area off New Jersey’s coast.⁴³

While supporters of the law believe the programs established by OWEDA will create jobs and spur economic growth in the state’s industrial sector by bringing offshore wind developers and manufactures associated with offshore wind projects into the state, concerns remain over the extent to which project costs will be passed on to ratepayers. Opposing the measure, the New Jersey Business and Industry Association estimates an additional cost to ratepayers of \$7 billion to \$14 billion over the next twenty years.⁴⁴

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ McCarthy, *supra* note 26.

⁴² *Office of Science*, STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.nj.gov/dep/dsr/ocean-wind/index.htm> (last updated July 29, 2010).

⁴³ McCarthy, *supra* note 26.

⁴⁴ Bryan T. Murray, *N.J. Officials Say Offshore Wind Will Cost Ratepayers \$5B*, NJ.COM, http://www.nj.com/news/index.ssf/2010/06/nj_officials_say_off-shore_win.html (last updated June 24, 2010, 9:38 AM).

Prior to the Bill Signing, the NJ Assembly's Budget Committee's report on the fiscal impact of the bill noted that too many indeterminate factors exist to make a thorough fiscal assessment practical.⁴⁵ The limited fiscal analysis that was carried out by the Legislative Budget and Finance Office noted that costs would definitely increase for electric power suppliers as a result of the OREC purchase requirement, and that some of these costs would be passed on to ratepayers.⁴⁶ The fiscal analysis in fact raised more questions than it answered, chiefly among them: "how will the price of ORECs be determined; what will be their ultimate market value; and how much of their cost would be incurred by ratepayers?"⁴⁷ The law itself does not stipulate the price of ORECs.⁴⁸ Moreover, the percentage of energy sold in the state that would amount 1,100 MW of offshore wind energy is not defined by OWEDA.⁴⁹

While questions over the law's fiscal impact remain, OWEDA undoubtedly represents an unprecedented effort to centralize domestic renewable energy production at the state level. Whether or not OWEDA will stand as a model for other states along the Atlantic seaboard remains to be seen. Supporters certainly hope that August 23rd will prove to be a watershed moment for job growth in the state and offshore wind a long-lasting source of fuel for New Jersey's green economy.

⁴⁵ ASSEMB. BUDGET COMM., STATEMENT TO ASSEMB., STATE OF N.J., ASSEMB. NO. 2873, 214TH LEG. (June 24, 2010), *available at* http://www.njleg.state.nj.us/2010/Bills/A3000/2873_S1.PDF.

⁴⁶ LEGIS. BUDGET & FINANCE OFFICE, LEGIS. FISCAL ESTIMATE, STATE OF N.J., ASSEMB. NO. 2873, 214TH LEG. (July 23, 2010) *available at* www.njleg.state.nj.us/2010/Bills/A3000/2873_E1.PDF.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*