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EDITOR'S NOTE: RENEWABLE ENERGY

Victoria Prussen Spears

THE RELATIONSHIP BETWEEN VOLUNTARY AND COMPLIANCE RENEWABLE ENERGY MARKETS

Flossie Davis and Lynn Fountain

CHANGING COURSE: FERC ADOPTS NEW POLICY ON ITS CONSIDERATION OF CERTAIN CLIMATE IMPACTS IN REVIEWING PROPOSED INTERSTATE PIPELINE (AND LNG?) INFRASTRUCTURE

Brooksany Barrowes, Robert S. Fleishman, Nicholas Gladd, and Ammaar Joya

FERC PROMOTES GREATER PARTICIPATION OF DISTRIBUTED ENERGY RESOURCES AND DEMAND RESPONSE IN ENERGY MARKETS

Levi McAllister and Patrick R. Pennella

NEW YORK ISSUES FINAL RENEWABLE ENERGY SITING REGULATIONS TO STREAMLINE PERMITTING

M. Benjamin Cowan and Stephen Bright

ESG IN U.S. OFFSHORE WIND (AND NOT FOR THE REASON THAT YOU PROBABLY ARE THINKING)

J. Paul Forrester

THE GENUINE LINK AND THE FLAG STATE IN MARITIME LAW

Zaid Mahmoud Aladwan

Pratt's Energy Law Report

VOLUME 21

NUMBER 7

July–August 2021

Editor's Note: Renewable Energy

Victoria Prussen Spears

209

The Relationship Between Voluntary and Compliance Renewable Energy Markets

Flossie Davis and Lynn Fountain

211

Changing Course: FERC Adopts New Policy on Its Consideration of Certain Climate Impacts in Reviewing Proposed Interstate Pipeline (and LNG?) Infrastructure

Brooksany Barrowes, Robert S. Fleishman, Nicholas Gladd, and Ammaar Joya

221

FERC Promotes Greater Participation of Distributed Energy Resources and Demand Response in Energy Markets

Levi McAllister and Patrick R. Pennella

226

New York Issues Final Renewable Energy Siting Regulations to Streamline Permitting

M. Benjamin Cowan and Stephen Bright

230

ESG in U.S. Offshore Wind (and Not for the Reason That You Probably Are Thinking)

J. Paul Forrester

234

The Genuine Link and the Flag State in Maritime Law

Zaid Mahmoud Aladwan

240

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ESG in U.S. Offshore Wind (and Not for the Reason That You Probably Are Thinking)

*By J. Paul Forrester**

In this article, the author notes that recent offshore wind solicitations and executive orders have included social considerations.

Offshore wind (“OSW”) project development in the United States continues its rapid pace, and, in addition to the significant “E” (environmental) factors already present in such projects, several recent OSW solicitations undertaken and executive orders released during the COVID-19 pandemic have included specific “S” (social) factors.

OSW SOLICITATIONS

For example, New York’s most recent OSW solicitation¹ required:

3.2.8 Community Engagement and Prioritizing Disadvantaged Communities Through this solicitation, NYSERDA seeks to actively support the outcomes envisioned by New York’s State’s nation-leading climate legislation, the CLCPA,² including its target of delivering at least 35 percent of the overall benefits from New York State’s climate programs to Disadvantaged Communities. The Proposal must present a reasonable community engagement plan with a thoughtful approach to build Project support and respectfully respond to opposition. Proposers awarded a contract are encouraged to consult with NYSERDA before and during the implementation of their community engagement plans and will be required to update NYSERDA on their community engagement progress and plans in their quarterly progress reports. Thoughtful community engagement plans may include: a description and analysis of affected communities; a plan for regionally targeted education and marketing strategies that include advertisements and/or direct mailings, outreach events and activities such as exhibiting at local events, hosting open houses, and targeted engagement with local community groups. Community engagement plans

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¹ <https://portal.nyscrda.ny.gov/servlet/servlet.FileDownload?file=00Pt000000OPfCVEA1>.

² Namely, the New York State Climate Leadership and Community Protection Act (2019).

should seek to describe how the Proposal offers benefits related to economic development and the creation of local jobs, reduced energy burden, avoided health costs, added climate resiliency, avoided environmental costs/added enviro benefits, low-income and Environmental Justice population participation, avoided social costs. Community engagement plans may also comprise community benefits agreements and opportunities to build not only community opportunity and capacity in regard to the Project's development, construction, and operations but also opportunities to build community equity in a project and where all such community expenditures would constitute eligible economic benefit claims to support a project's evaluation under this RFP (see Section 3.3). Community engagement plans should also demonstrate alignment with the CLCPA and this solicitation's stated prioritization of benefits, including job creation, to Disadvantaged Communities.

Similarly, New Jersey's 2020 OSW solicitation³ required the following:

Subsection 3.16 **Economic Development Plan** (14:8:6.5. (a).11)

The Economic Development Plan should provide detail and a narrative description of the applicant's plan for investments in infrastructure, supply chain, workforce development, and other offshore wind cluster-building programs, and the associated economic benefits for the State. The intent here is not to create an additional set of requirements, but to provide an opportunity for the applicant to provide context for its cost-benefit analysis, outline other expected economic development impacts not captured in the cost-benefit analysis (i.e., impacts that are difficult to quantify), and show how the developer and proposed project plan can attain and deliver the economic benefits described in the application as required under N.J.A.C 14:8-6.5.

The Economic Development Plan should thus reflect and summarize the economic impacts of the proposed project over 20 years as noted in the project's Cost-Benefit Analysis with a focus on investments and impacts in five key areas of economic development: (a) blue-collar workforce development, (b) white-collar workforce development, (c) marshaling ports, (d) manufacturing ports, and (e) O&M ports. The Plan should clearly differentiate what are the direct, indirect, and

³ <https://njoffshorewind.com/first-solicitation/solicitation-documents/Guidance-Documents-Full-Version-with-appendicies.pdf>.

induced impacts on both jobs and output, and provide rationale for supporting assumptions. Consistent with N.J.A.C 14:8-6.5 (11), The Economic Development Plan should include details of the location, type and salary of employment opportunities to be created by the project with job totals expressed as full-time equivalent positions assuming 1,820 hours per year.

For reference, the cost benefit analysis under N.J.A.C 14:8-6.5.(a).(11) requests that net economic benefits for the state be calculated to include at a minimum:

In-State impacts or benefits that need to be included in the cost-benefit analysis include, but are not limited to:

1. Employment;
2. Wages;
3. Indirect business taxes; and
4. Output, with a "particular emphasis" on manufacturing employment. Output refers to the sales of sectors or industries that would be supplying the offshore wind project with materials (such as turbines, steel and cement for support structures, wire for transmission cables) and services (such as construction and installation services, as well as engineering, legal, finance, and other professional services);

In addition, The Economic Development Plan can include descriptions of other programs, initiatives, or support that the applicant is committing to, but which may be difficult to quantify in the Cost Benefit Analysis. Examples of these sorts of efforts could include:

1. Bringing offshore wind R&D into the State (private or with universities)
2. Catalyzing an offshore wind cluster in New Jersey
3. Actively attracting other supply chain companies to locate in NJ (or supporting State government in these efforts)
4. Participating in/sponsor offshore wind 'ecosystem building' activities (e.g., conferences, supplier networking, start-up company mentorship)
5. Partnering with local universities, community colleges, or K-12 education
6. Participation in workforce development programs
7. Providing investment or technical assistance in industry infrastructure development

8. Other corporate responsibility commitments

The Economic Development Plan shall also propose consequences if claimed benefits do not materialize, and the employment impact may become conditions of any OREC award.

Applicants shall also provide information on any State grants or other subsidies from the New Jersey Economic Development Authority or other agencies associated with the proposed wind project that was included as part of the project cost-benefit analysis.

EXECUTIVE ORDERS

President Biden's Executive Order on Tackling the Climate Crisis at Home and Abroad⁴ notably includes the requirement of Section 207 thereof that:

The Secretary of the Interior shall review siting and permitting processes on public lands and in offshore waters to identify to the Task Force steps that can be taken, consistent with applicable law, to increase renewable energy production on those lands and in those waters, with the goal of doubling offshore wind by 2030 while ensuring robust protection for our lands, waters, and biodiversity and creating good jobs. In conducting this review, the Secretary of the Interior shall consult, as appropriate, with the heads of relevant agencies, including the Secretary of Defense, the Secretary of Agriculture, the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, the Secretary of Energy, the Chair of the Council on Environmental Quality, State and Tribal authorities, project developers, and other interested parties. The Secretary of the Interior shall engage with Tribal authorities regarding the development and management of renewable and conventional energy resources on Tribal lands.

And the stated policies in Sections 217 and 219 that:

Sec. 217. Policy. It is the policy of my Administration to improve air and water quality and to create well-paying union jobs and more opportunities for women and people of color in hard-hit communities, including rural communities, while reducing methane emissions, oil and brine leaks, and other environmental harms from tens of thousands of former mining and well sites. Mining and power plant workers drove the industrial revolution and the economic growth that followed, and have been essential to the growth of the United States. As the

⁴ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

Nation shifts to a clean energy economy, Federal leadership is essential to foster economic revitalization of and investment in these communities, ensure the creation of good jobs that provide a choice to join a union, and secure the benefits that have been earned by workers.

. . . In addition, such work should include efforts to turn properties idled in these communities, such as brownfields, into new hubs for the growth of our economy.

And:

Sec. 219. Policy. To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern. That means investing and building a clean energy economy that creates well paying union jobs, turning disadvantaged communities—historically marginalized and overburdened—into healthy, thriving communities, and undertaking robust actions to mitigate climate change while preparing for the impacts of climate change across rural, urban, and Tribal areas. Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.

In addition, New Jersey Governor Phil Murphy's Executive Order 221⁵ stated that the state's policy is:

[T]o take aggressive climate action by reducing the emissions of climate pollutants on an economy-wide basis, charting a just and equitable transition away from our reliance on fossil fuels while building a stronger and fairer economy fueled by clean and renewable energy, protecting and promoting the resilience of New Jersey's communities from the current and anticipated impacts of climate change through planning and regulation, investing in climate solutions that create new economic opportunity and broadly shared prosperity, and furthering

⁵ <https://d31hzhk6di2h5.cloudfront.net/20210216/63/d5/45/47/41b160487f5a65688f17ec6a/EO-221.pdf>.

the promise of environmental justice and ensuring equity in the course of fulfilling each of these objectives. . . .

And, despite the growth in green jobs and the likely robust future demand for a well-trained green workforce, that:

[T]he green workforce has historically lacked diversity, with disproportionate race and gender gaps across sectors of the green economy, including gaps in, but not limited to, clean energy production, energy efficiency, and water infrastructure and system operations. . . .

And, as a result thereof, that:

[T]he transition to a green economy provides New Jersey with a unique opportunity to establish a holistic and coordinated job creation strategy that drives sustainable economic growth and development, avoids and adjusts for potential worker displacement while providing for appropriate workforce support and resources should it occur, and prioritizes equity, diversity, inclusion, and environmental and economic justice. . . .

In a proposed sale notice (“PSN”) by the Bureau of Ocean Energy Management (“BOEM”) for eight offshore wind leases in the New York Bight issued on June 11, 2021, BOEM also seeks feedback on several lease stipulations that will reaffirm its commitment to create good-paying union jobs and engage with all stakeholders and ocean users. Some of these potential stipulations include:

- A requirement to make every reasonable effort to enter into a project labor agreement covering the construction of any project proposed for the lease area.
- A requirement to include a stakeholder and ocean user engagement summary as part of a lessee’s progress reporting requirements. This summary would describe existing ocean users in the New York Bight, engagement activities with those users during the reporting period and a description of efforts to minimize any conflict between the existing users and the lessee. This provision is intended to strengthen current fisheries’ communication requirements and improve coordination between the lessee and fishing communities early in the planning of proposed wind facilities.
- Mechanisms to provide benefits to underserved communities and investments in a domestic supply chain, consistent with the goals and objectives of the Outer Continental Shelf Lands Act.

LOOKING AHEAD

It is likely that similar social considerations will find their way into other public infrastructure solicitations and policies.