

CHAPTER 178

AN ACT concerning offshore wind projects and amending P.L.2010, c.57.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P.L.2010, c.57 (C.48:3-87.1) is amended to read as follows:

C.48:3-87.1 Application to construct offshore wind project.

3. a. An entity seeking to construct an offshore wind project shall submit an application to the board for approval by the board as a qualified offshore wind project, which shall include, but need not be limited to, the following information:

(1) a detailed description of the project, including maps, surveys and other visual aides. This description shall include, but need not be limited to: the type, size, and number of proposed turbines and foundations; the history to-date of the same type, size and manufacturer of installed turbines and foundations globally; a detailed description of the transmission facilities and interconnection facilities to be installed; and a detailed implementation plan that highlights key milestone activities during the permitting, financing, design, equipment solicitation, manufacturing, shipping, assembly, in-field installation, testing, equipment commissioning, and service start-up;

(2) a completed financial analysis of the project including pro forma income statements, balance sheets, and cash flow projections for a 20-year period, including the internal rate of return, and a description and estimate of any State or federal tax benefits that may be associated with the project;

(3) the proposed method of financing the project, including identification of equity investors, fixed income investors, and any other sources of capital;

(4) documentation that the entity has applied for all eligible federal funds and programs available to offset the cost of the project or provide tax advantages;

(5) the projected electrical output and anticipated market prices over the anticipated life of the project, including a forecast of electricity revenues from the sale of energy derived from the project and capacity, as well as revenues anticipated by the sale of any ORECs, RECs, air emission credits or offsets, or any tradable environmental attributes created by the project;

(6) an operations and maintenance plan for the initial 20-year operation of the project that: details routine, intermittent, and emergency protocols; identifies the primary risks to the built infrastructure and how the potential risks, including but not limited to hurricanes, lightning, fog, rogue wave occurrences, and exposed cabling, shall be mitigated; and identifies specific and concrete elements to ensure both construction and operational cost controls. This operations and maintenance plan shall be integrated into the financial analysis of the project, and shall identify the projected plan for the subsequent 20 years, following conclusion of the initial 20-year operations, assuming any necessary federal lease agreements are maintained and renewed;

(7) the anticipated carbon dioxide emissions impact of the project;

(8) a decommissioning plan for the project including provisions for financial assurance for decommissioning as required by the applicable State and federal governmental entities;

(9) a list of all State and federal regulatory agency approvals, permits, or other authorizations required pursuant to State and federal law for the offshore wind project, and copies of all submitted permit applications and any issued approvals and permits for the offshore wind project;

(10) a cost-benefit analysis for the project including at a minimum:

(a) a detailed input-output analysis of the impact of the project on income, employment, wages, indirect business taxes, and output in the State with particular emphasis on in-State manufacturing employment;

(b) an explanation 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;

(c) an analysis of the anticipated environmental benefits and environmental impacts of the project; and

(d) an analysis of the potential impacts on residential and industrial ratepayers of electricity rates over the life of the project that may be caused by incorporating any State subsidy into rates;

(11) a proposed OREC pricing method and schedule for the board to consider;

(12) a timeline for the permitting, licensing, and construction of the proposed offshore wind project;

(13) a plan for interconnection, including engineering specifications and costs; and

(14) any other information deemed necessary by the board in order to conduct a thorough evaluation of the proposal. The board may hire consultants or other experts if the board determines that obtaining such outside expertise would be beneficial to the review of the proposal.

b. (1) In considering an application for a qualified offshore wind project, submitted pursuant to subsection a. of this section, the board shall determine that the application satisfies the following conditions:

(a) the filing is consistent with the New Jersey energy master plan, adopted pursuant to section 12 of P.L.1977, c.146 (C.52:27F-14), in effect at the time the board is considering the application;

(b) the cost-benefit analysis, submitted pursuant to paragraph (10) of subsection a. of this section, demonstrates positive economic and environmental net benefits to the State;

(c) the financing mechanism is based upon the actual electrical output of the project, fairly balances the risks and rewards of the project between ratepayers and shareholders, and ensures that any costs of non-performance, in either the construction or operational phase of the project, shall be borne by shareholders; and

(d) the entity proposing the project demonstrates financial integrity and sufficient access to capital to allow for a reasonable expectation of completion of construction of the project.

(2) In considering an application for a qualified offshore wind project, submitted pursuant to subsection a. of this section, the board shall also consider:

(a) the total level of subsidies to be paid by ratepayers for qualified offshore wind projects over the life of the project; and

(b) any other elements the board deems appropriate in conjunction with the application.

c. An order issued by the board to approve an application for a qualified offshore wind project pursuant to this section shall, at a minimum, include conditions to ensure the following:

(1) no OREC shall be paid until electricity is produced by the qualified offshore wind project;

(2) ORECs shall be paid on the actual electrical output delivered into the transmission system of the State;

(3) ratepayers and the State shall be held harmless for any cost overruns associated with the project; and

(4) the applicant will reimburse the board and the State for all reasonable costs incurred for regulatory review of the project, including but not limited to consulting services, oversight, inspections, and audits.

An order issued by the board pursuant to this subsection shall specify the value of the OREC and the term of the order.

An order issued by the board pursuant to this subsection shall not be modified by subsequent board orders, unless the modifications are jointly agreed to by the parties.

d. The board shall review and approve, conditionally approve, or deny an application submitted pursuant to this section within 180 days after the date a complete application is submitted to the board.

e. Notwithstanding any provision of P.L.2010, c.57 (C.48:3-87.1 et al.) to the contrary, the board may conduct one or more competitive solicitations for open access offshore wind transmission facilities designed to facilitate the collection of offshore wind energy from qualified offshore wind projects or its delivery to the electric transmission system in this State.

f. Notwithstanding the provisions of any other State law, rule, or regulation to the contrary, a qualified offshore wind project or an open access offshore wind transmission facility approved by the board pursuant to this section shall, after consultation with a municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof:

(1) have authority to place, replace, construct, reconstruct, install, reinstall, add to, extend, use, operate, inspect, and maintain wires, conduits, lines, and associated infrastructure, whether within, under, or upon the public streets, thoroughfares, or rights-of-way of any municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof, provided that the wires, conduits, lines, and associated infrastructure are located underground, except to the extent necessary as determined by the board.

Notwithstanding the provisions of any other State law, rule, or regulation to the contrary, no municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof, shall prohibit, or charge a fee for, the use of public streets, thoroughfares, or rights-of way for the purposes set forth in this subsection, other than a fee for a road opening permit, and the issuance of a road opening permit shall not be withheld, except for bona fide public safety reasons;

(2) be authorized to obtain easements, rights-of-way, or other real property interests on, over, or through any real property other than public streets, thoroughfares, or rights-of-way, owned by a municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof, that are reasonably necessary for the construction or operation of a qualified offshore wind project or an open access offshore wind transmission facility. If a qualified offshore wind project or an open access offshore wind transmission facility is unable to obtain an easement, right-of-way, or other real property interest from a municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof, after 90 days of a written request therefor to the applicable entity, the qualified offshore wind project or open access offshore wind transmission facility, as the case may be, may file a petition with the board seeking authority to obtain the easement, right-of-way, or other real property interest.

In considering a petition submitted pursuant to this paragraph, the board shall: conduct, or cause to be conducted, a public hearing in order to provide an opportunity for public input on the petition. Notice of the public hearing shall be given in a manner and form as determined by the

board in order to provide an opportunity for public input to be received on the petition. At a minimum, notice of the public hearing shall be provided to the news media, the owner of the real property subject to the petition, and the governing body and municipal clerk of the municipality and the clerk of the county in which the lands proposed to be conveyed are located. The notice of the public hearing shall provide the date, time, and location of the public hearing, identification of the project and property that is the subject of the petition, and any other information deemed appropriate by the board.

Following the public hearing and receipt of public comment on the petition, the board shall determine whether the requested easement, right-of-way, or other real property interest are reasonably necessary for the construction or operation of the qualified offshore wind project or open access offshore wind transmission facility.

If the board determines that the requested easement, right-of-way, or other real property interest are reasonably necessary for the construction or operation of the qualified offshore wind project or open access offshore wind transmission facility, the board shall issue an order approving the acquisition of the requested easement, right-of-way, or other real property interest, and notwithstanding the provisions of any other State law, rule, or regulation to the contrary, such order shall effectuate the qualified offshore wind project's or the open access offshore wind transmission facility's property interest and shall be recorded by the appropriate county recording officer at the request of the qualified offshore wind project or open access offshore wind transmission facility. Upon recording of an order pursuant to this paragraph that concerns land preserved for recreation and conservation purposes, as defined in section 3 of P.L.1999, c.152 (C.13:8C-3), the entity constructing the qualified offshore wind project or the open access offshore wind transmission facility, as the case may be, shall be: considered the legal or record owner of the property interest; and subject to the rules and regulations adopted by the Department of Environmental Protection concerning the conveyance, diversion, or disposal of lands preserved for recreation and conservation purposes. The entity constructing the qualified offshore wind project or the open access offshore wind transmission facility shall be responsible for the restoration and maintenance of the area of land subject to an order pursuant to this paragraph. Payment of fair compensation for the easement, right-of-way, or other real property interest shall be made to the appropriate entity pursuant to the procedures set forth in the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.). The acquisition of an easement, right-of-way, or other real property interest pursuant to this paragraph shall not be subject to any public bidding requirements.

If an order issued by the board pursuant to this paragraph concerns an easement, right-of-way, or other real property interest located on, over, or through land preserved for recreation and conservation purposes, as defined in section 3 of P.L.1999, c.152 (C.13:8C-3), the entity constructing the qualified offshore wind project or open access offshore wind transmission facility shall: pay fair market value for the easement, right-of-way, or other real property interest to the owner of the preserved land; and provide funds to the Department of Environmental Protection's Office of Green Acres, established pursuant to section 24 of P.L.1999, c.152 (C.13:8C-24), a local government unit, or a qualifying tax exempt nonprofit organization, as defined in section 3 of P.L.1999, c.152 (C.13:8C-3), for the acquisition of three times the area of preserved land within the easement, right-of-way, or other real property interest subject to the board's order in additional land for recreation and conservation purposes within the same county within three years after the board's order pursuant to this paragraph. Any compensation for preserved land received pursuant to this paragraph shall be used for the acquisition of land for recreation and conservation purposes, as defined in

section 3 of P.L.1999, c.152 (C.13:8C-3), and may, in the discretion of the Commissioner of Environmental Protection and the State House Commission, be found to satisfy the compensation requirements of the rules and regulations adopted by the Department of Environmental Protection concerning the conveyance, diversion, or disposal of lands preserved for recreation and conservation purposes; and

(3) be authorized to file a petition with the board seeking a determination that all municipal or county approvals, consents, or affirmative filings with other public entities required to construct or operate a qualified offshore wind project or an open access offshore wind transmission facility are preempted and superseded, upon a finding by the board that such municipal or county approvals, consents, or affirmative filings are reasonably necessary for the construction or operation of the qualified offshore wind project or the open access offshore wind transmission facility. If the board makes a determination pursuant to this paragraph preempting a municipal or county action that is a condition of the issuance of a permit or other approval of the Department of Environmental Protection or any other department or agency of the State, then notwithstanding the provisions of any other State law, rule, or regulation to the contrary, the department or agency, as applicable, may act without prior municipal or county approval, consent, or affirmative filing. To the extent that a municipal or county approval, consent, or affirmative filing involves the acquisition of an easement, right-of-way, or other real property interest, the procedures set forth in paragraph (2) of this subsection shall apply.

g. A qualified offshore wind project or an open access offshore wind transmission facility approved by the board pursuant to this section shall be deemed to be an electric power generator for the purposes of section 10 of the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-19), and the qualified offshore wind project or open access offshore wind transmission facility may proceed in accordance with the decision of the board, notwithstanding any provision of the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-19), or any ordinance, rule, or regulation adopted pursuant thereto, to the contrary; provided that the board determines: (1) that, for the purposes of the qualified offshore wind project or the open access offshore wind transmission facility, the electric power generator described in a petition filed with the board is necessary for the service, convenience, or welfare of the public, or that the qualified offshore wind project or the open access offshore wind transmission facility will provide a net benefit to the environment of the State; and (2) that no alternative site is reasonably available to achieve an equivalent public benefit.

2. This act shall take effect immediately.

Approved July 22, 2021.