

ALERTS AND UPDATES

The Windy State: New Jersey Approves Offshore Wind Legislation

September 2, 2010

The New Jersey Legislature recently enacted landmark legislation aimed at supporting the growth of the offshore wind industry in the state and encouraging development of carbon-free energy production. On August 19, 2010, N.J. Gov. Chris Christie signed into law the Offshore Wind Economic Development Act (OWEDA), designed to encourage private companies to develop wind farms in the Atlantic Ocean off the coast of New Jersey. By so doing, Governor Christie created the possibility of realizing a key element of his energy policy announced in April 2010—the use of renewable energy produced by New Jersey workers and facilities—to create a stronger state economy.

A potential benefit of offshore wind projects is that the availability of wind-generated power may help in meeting the need for new power sources. Offshore wind generation, once it has been constructed, not only can offer clean energy, but also can provide energy independence and the ability to generate power without procuring costly fuels.

New Jersey is among the leading U.S. states, after California, in producing electricity from solar generation—achieved by implementing solar renewable energy certificates (SRECs). With this new legislation, New Jersey appears to be jump-starting an avenue for further growth of its renewable energy industry by creating offshore-wind renewable energy certificates (ORECs), similar in concept to SRECs.

Key Elements of the Legislation

The principal features of the act include:

1. The creation of ORECs, which will be issued by the New Jersey Board of Public Utilities (BPU). Each OREC would represent the environmental attributes of one megawatt-hour of electric generation.
2. The only wind generators eligible for ORECs are wind-turbine electricity-generation facilities sited in the Atlantic Ocean, connected to the electric transmission system in New Jersey.
3. The BPU is tasked, within 180 days, with developing regulations to establish an offshore wind-renewable-energy certificate program.
4. All electricity suppliers in New Jersey—including basic generation service providers—are required to purchase and sell to retail customers offshore wind-generated electricity equal to not less than a percentage to be mandated by the BPU. That percentage would reflect the total projected OREC production of all qualified offshore wind projects approved by the BPU for 20 years from the projects' commercial operation start dates. If there are insufficient ORECs available, the electricity supplier is required to make a proportional offshore wind-alternative compliance payment.
5. While the specific percentage of offshore wind energy to be sold by New Jersey suppliers was not mandated by the act, at a minimum, the percentage adopted by the BPU must support at least 1,100 megawatts of generation from offshore wind.
6. The BPU is authorized to accept applications for offshore wind-generation projects and to establish criteria for information required to be submitted by the applicant for use in the BPU's review of such applications, including, *inter alia*, financing methods; projected electrical output and anticipated market prices for the power over the life of

the project; revenues expected from the sale of ORECs, RECs, air emission credits, etc.; expected carbon emissions and environmental benefits; and an analysis of the impact on residential and industrial ratepayers over the life of the project.

7. The statute authorizes the New Jersey Economic Development Authority (EDA) to provide up to \$100 million in tax credits for offshore wind-energy facilities. For any facility, the EDA is authorized to issue credits up to 100 percent of the capital costs of the project invested after the effective date of OWEDA.

Potential Impacts

Wind-Generation Developers and Related Businesses

Privately held wind developers, especially those that are already considering building wind farms off the coast of New Jersey, may benefit from the implementation of ORECs and tax credits, both of which can enhance the ability to finance offshore generation projects. While developing projects requires addressing complex financial-planning issues, construction planning and contracting for both the wind generation and the transmission—as well as numerous state and federal regulatory issues—the newly enacted statute is likely to provide an immediate market for the power by requiring that a percentage of power sold in New Jersey comes from offshore wind.

Jobs, Service Industries, Professionals

Gaining necessary approvals, siting, planning, performing studies, financing, engineering, handling legal matters, accounting, contracting, procuring, constructing, interconnecting, operating and maintaining offshore wind projects may involve many workers, service providers and professionals, which have the potential to benefit New Jersey's economy.

Ratepayers and Taxpayers

Despite the fact that the offshore projects will be privately financed, some have expressed concern that the statute has the potential to increase the cost of electricity in New Jersey, due to the need to construct transmission facilities to bring offshore wind power to the electricity grid. In addition, tax credits and ORECs may increase the cost of electricity and the burden on New Jersey taxpayers.

Once the BPU issues OWEDA regulations for comment, ratepayers, such as representatives of commercial and industrial customers and the Division of Rate Counsel on behalf of the public, are anticipated to comment on proposed regulations and may recommend limiting any projected increases in utility rates linked to OWEDA.

The balance of benefits and drawbacks is not unique to offshore wind power, and the implementation of OWEDA is now required by law.

About Duane Morris

Duane Morris will continue to monitor developments and plans to issue a further *Alert* once these regulations are issued.

For Further Information

If you have any questions about this *Alert* or would like information, please contact [Phyllis J. Kessler](#), any [member](#) of the [Renewable Energy and Sustainability Practice Group](#) or the attorney in the firm with whom you are regularly in contact.