

ORDER NO. 87945

IN THE MATTER OF THE
APPLICATIONS OF US WIND, INC. AND
SKIPJACK OFFSHORE ENERGY, LLC
FOR A PROPOSED OFFSHORE WIND
PROJECT(S) PURSUANT TO THE
MARYLAND OFFSHORE WIND ENERGY
ACT OF 2013

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9431

Issue Date: December 16, 2016

To: Parties of Record and Interested Persons

On December 14, 2016, the Public Service Commission (“Commission”) held a pre-hearing conference in this matter to establish a procedural schedule for this proceeding and to address any other pending preliminary matters. Representatives from US Wind, Inc. (“US Wind”) and Skipjack Offshore Energy, LLC (“Skipjack”) (together, the “Applicants”); the Office of People’s Counsel (“OPC”); and the Commission’s Technical Staff (“Staff”) appeared at the pre-hearing conference for this matter, as well as representatives for the entities seeking to intervene in the proceeding.¹ The following petitions to intervene were filed on or before December 12, 2016 and considered as part of the pre-hearing conference: the Maryland Energy Administration (“MEA”); the Maryland Department of Natural Resources’ Power Plant Research Program (“PPRP”); Atlantic Grid Development, LLC (“Atlantic Grid”); Southern Maryland Electric Cooperative (“SMECO”); Potomac Electric Power Company (“Pepco”), Delmarva Power & Light Company (“Delmarva Power”), and Baltimore Gas and Electric Company

¹ Representatives for all of the entities that filed a petition to intervene, with the exception of the Retail Energy Supply Association and the Chesapeake Physicians for Social Responsibility, appeared at the pre-hearing conference as well.

(“BGE”); Wharf and Dock Builders, Pile Drivers and Divers, Local Union No. 179, of the Northeast Regional Council of Carpenters, of the United Brotherhood of Carpenters and Joiners of America (“LU 179”); Chesapeake Physicians for Social Responsibility; the Retail Energy Supply Association (“RESA”); Sierra Club and the Maryland League of Conservation Voters (“Sierra/MDLCV”); and the Business Network for Offshore Wind (“the Network”). On December 13, 2016 a petition to intervene was filed by Ironworkers Local Union #16 of the International Association of Bridge, Structural & Ornamental Ironworkers, Reinforcing Rodman, Riggers, Machinery Movers & Glaziers (“LU 16”).

At the pre-hearing conference, the Commission adopted a procedural schedule for the matter, except for a schedule for the public hearings. The Commission determined that two public hearings will be held prior to the evidentiary hearings – one in Anne Arundel County, Maryland and the other in Worcester County, Maryland. The Applicants are therefore directed to work with the Executive Secretary to schedule the dates and specific locations for two public hearings to be held in the aforementioned areas. The Commission also granted Petitions to Intervene filed by the following persons: MEA; PPRP; the Network; RESA; Chesapeake Physicians for Social Responsibility; Sierra/MDLCV; SMECO; BGE; Delmarva Power; and Pepco (collectively, along with US Wind, Skipjack, OPC and Staff, the “Parties”). Petitions to intervene for the following organizations were held in abeyance pending notification to the Commission that counsel has been retained: Atlantic Grid, LU 16, and

LU 179.²

Further, the Commission found that a discovery procedure, as proposed by the parties and as modified at the preliminary hearing, was appropriate and was adopted in this case. As noted at the pre-hearing conference, the Applicants have developed protective agreements specific to their companies, which must be duly executed by any party to the case seeking access to materials, pleadings, or discovery that is deemed confidential. With respect to the report filed by the Commission's independent consultant in this matter, Levitan & Associates, Inc. ("LAI"), parties to the case may access the confidential version of the LAI report after duly executing the individual protective agreements sponsored by US Wind and Skipjack.³ Discovery commenced immediately on Wednesday, December 14, 2016 for all parties to this proceeding.⁴

- Responses to discovery requests served by February 15, 2017 are due within ten business days of service, and any objections to discovery requests must be served within five business days.
- Responses to discovery requests served after February 15, 2017 and up to March 2, 2017 are due within seven business days of

² COMAR 20.07.01.0(A) states that, "[a]ll parties, except individuals appearing in their own behalf, shall be represented by attorneys-at-law, who are duly admitted and enrolled to practice before the Court of Appeals of this State when the Commission is performing a quasi-judicial function as distinguished from a legislative, executive, or a ministerial function." As noted at the preliminary conference in this matter, no parties expressed an objection to the petitions to intervene filed by Atlantic Grid, LU 16, and LU 179, pending retention of counsel. Once counsel has been retained pursuant to the regulation, Atlantic Grid, LU 16, and LU 179 must file a formal notice to the attention of the Commission's Executive Secretary.

³ The Maryland Offshore Wind Energy Act of 2013 directed the Commission to contract for the services of independent consultants and experts to assist in the evaluation and comparison of a potential applicant(s)' proposed offshore wind project. In compliance with this directive, the Commission retained a team led by Levitan & Associates, Inc. The Commission notes that LAI is not a party to the case, and therefore not subject to discovery. The LAI report, however, may be entered into evidence during the evidentiary hearings, and if so, representatives of LAI will be made available for cross-examination.

⁴ Discovery of material marked "confidential" is contingent on the party executing the individual protective agreements sponsored by US Wind and Skipjack.

service, and any objections to discovery requests must be served within three business days.

- Responses to discovery requests after March 2, 2017 are due within four business days and any objections to discovery requests must be served within one business day of service.
- No discovery requests by the parties shall be filed after the close of business on March 8, 2017.
- Electronic service of discovery requests, responses and documents is sufficient so long as the recipient acknowledges actual receipt, which the responding party should obtain and maintain, and hard copies shall be made available if electronic service is not successful.
- The parties should consult with each other and attempt in good faith to resolve all disputes prior to making an objection and again prior to filing a motion seeking relief from the Commission. In the event parties are unable to resolve a dispute, the aggrieved party may file a motion for relief within three business days from service of the written objection. The opponent shall respond to the motion within two business days of service of the motion. The motion and response shall be letter format, and shall each be limited in length to three single-spaced pages with a 12-point or greater font. The letters must specify the dates and times of all consultations for the purpose of resolving the dispute. The parties shall contact the

Executive Secretary via phone or email to schedule a hearing, if necessary, and shall provide the Executive Secretary an electronic copy of the motion and response.

Lastly, the Commission briefly took up several pending preliminary matters at the pre-hearing conference, which are resolved by this Order. With respect to the Motion to Disqualify the November 30, 2016 Application of Skipjack Offshore Energy, LLC (“Motion to Disqualify”) filed by US Wind, the Commission directed Skipjack to file its response on or before December 30, 2016. The intervening parties may file in support or opposition to the Motion on or before January 9, 2017. At this stage, no changes to the discovery or procedural schedule delineated by this Order are affected by Skipjack’s pending response.

The Commission also took under advisement the Public Information Act (“PIA”) exemption requests submitted by both Applicants as part of their respective applications. Pursuant to COMAR 20.61.06.02(C), an offshore wind applicant must clearly identify and mark the relevant portions of its application, as well as provide justification for each instance, in submitting the PIA exemption request. In identifying the confidential materials contained in its application, Skipjack asserted that disclosure of the marked materials would expose trade secrets, confidential commercial and financial information, or confidential geological or geophysical information.⁵ Similarly, US Wind identified the confidential portions of its application that contain sensitive commercial and/or financial information.⁶ Further, the Applicants included the required certification that the Commission will be held harmless if the Commission independently determines that one

⁵ ML#205907: *Skipjack Offshore Energy, LLC Application for Offshore Wind Project* (Nov. 30, 2016).

⁶ ML#205809: *US Wind, Inc. - Application for Offshore Wind Project* (Nov. 30, 2016).

or more portions of an application subject to one or more PIA exemption requests must be disclosed under State Government Article, Title 10, Subtitle 6, *Annotated Code of Maryland*. Thus, the Commission finds that the Applicants have satisfied the regulatory requirements enumerated in COMAR 20.61.06.02(C) and therefore grant the PIA exemption requests made by both US Wind and Skipjack.

IT IS THEREFORE, this 16th day of December, in the year Two Thousand Sixteen by the Public Service Commission of Maryland;

ORDERED: (1) That Skipjack is directed to file its response to US Wind's Motion to Disqualify on or before December 30, 2016, and the intervening parties may file in support or opposition to the Motion on or before January 9, 2017;

(2) That the PIA exemption requests filed by US Wind and Skipjack, pursuant to COMAR 20.61.06.02(C), are granted;

(3) That Parties shall file pleadings in this proceeding as follows:

- (a) US Wind and Skipjack shall file Direct and/or Supplemental Direct Testimony by January 4, 2017;
- (b) Parties, other than the Applicants, shall file Reply / Direct Testimony by February 15, 2017;
- (c) All Parties shall file Rebuttal Testimony by March 2, 2017;
- (d) Initial briefs shall be filed by April 12, 2017; and
- (e) Reply briefs shall be filed by April 26, 2017.

An original and 17 paper copies, and an electronic copy⁷, of the pleadings shall be submitted to David J. Collins, Executive Secretary, Maryland Public Service Commission, William Donald Schaefer Tower, 6 St. Paul Street, Baltimore, Maryland 21202. Five of the paper copies shall be three-hole punched. All pleadings shall be filed with a 12-point or greater font.

(4) That the Parties shall abide by the discovery procedure set forth in this Order;

(5) That evidentiary hearings are scheduled as follows:

- (a) March 13, 2017, beginning at 10:00 a.m.;
- (b) March 14, 2017, beginning at 10:00 a.m.;
- (c) March 15, 2017, beginning at 10:00 a.m.;
- (d) March 16, 2017, beginning at 10:00 a.m.;
- (e) March 17, 2017, beginning at 10:00 a.m.;
- (f) March 20, 2017, beginning at 10:00 a.m. [if needed];
- (g) March 21, 2017, beginning at 10:00 a.m. [if needed];
- (h) March 22, 2017, beginning at 1:00 p.m. or ½ hour after completion of the Administrative Meeting, whichever is later [if needed];
- (i) March 23, 2017, beginning at 10:00 a.m. [if needed]; and
- (j) March 24, 2017, beginning at 10:00 a.m. [if needed].

Parties may provide live Rejoinder Testimony during their witnesses' appearances at the evidentiary hearings. The Commission reserves the right to revise the hearing schedule, as needed; and

⁷ The Commission encourages persons to submit the electronic copy of a filing through the Commission's E-file system, which is available via the Commission's website.

(4) That US Wind and Skipjack are directed to contact the Executive Secretary to establish the dates and locations for the public hearings in this matter.

By Direction of the Commission,

/s/ David J. Collins

David J. Collins
Executive Secretary