

ORDER NO. 89342

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: November 13, 2019

ORDER GRANTING MOTION, IN PART, AND DIRECTING STAFF REVIEW

On October 4, 2019, the Retail Energy Supply Association (“RESA”) filed with the Maryland Public Service Commission (“Commission”) a Motion to direct U.S. Wind, Inc. (“U.S. Wind”) and Skipjack Offshore Energy, LLC (“Skipjack”) to provide public notice of any changes or delays in the expected commercial operation dates (“CODs”) of their respective offshore wind projects. RESA’s Motion also requested that the Commission find that electric suppliers are not required to pay for offshore wind renewable energy credits (“ORECs”) before an offshore wind project begins operating, and to waive any Commission regulations that could be interpreted as inconsistent with that finding. Finally, RESA’s Motion requests that the Commission modify the current OREC price schedule to ensure that it goes into effect upon commercial operation of an approved offshore wind project, and not before. For the reasons discussed below, the Commission grants in part, and denies in part, RESA’s Motion. The Commission grants RESA’s request that U.S. Wind and Skipjack be required to provide public notice of any changes or delays in the expected commercial operation dates of their respective offshore

wind projects. However, the Commission finds RESA's request that existing Code of Maryland Regulation ("COMAR") provisions be waived is premature at this time. Therefore, RESA's Motion on that issue is denied. The Commission also denies RESA's request to modify the existing OREC price schedule.

BACKGROUND AND PARTY POSITIONS

RESA's October 4, 2019 Motion raises concerns with the scheduled CODs of the two offshore wind projects approved by the Commission in this proceeding in Order No. 88192. Specifically, RESA indicates that the projects may be delayed and that if so, suppliers, including RESA members, may be required to purchase ORECs in advance of the CODs of the projects, in contravention of the intent of the Maryland Offshore Wind Energy Act of 2013 ("the Act.") Accordingly, RESA requests that the Commission issue an order: (1) directing U.S. Wind and Skipjack to provide public notice of any changes or delays in their expected CODs; (2) holding that, under the Act, electric suppliers and their customers are not required to pay for ORECs before an offshore wind project begins operating and, if necessary, waiving any COMAR provisions that may require OREC payments before an offshore wind project becomes operational; and (3) modifying the current OREC price schedule to ensure that it goes into effect no sooner than the commercial operation of an approved offshore wind project.

In support of its Motion, RESA states that "it appears that construction of the U.S. Wind project approved in this proceeding has been delayed."¹ RESA notes, for example, that U.S. Wind submitted a filing notifying the Commission of changes regarding the

¹ RESA Motion at 3.

commercial availability of its preliminarily-chosen wind turbine (the 4 megawatt Siemens SWT-4.0-130) and confirming that its turbine selection process is not yet complete. Nevertheless, RESA states that it is unaware of any notification by U.S. Wind or Skipjack that the CODs of their respective projects have been delayed, as required by COMAR 20.61.06.18(B)(4). Although RESA observes that the Act prohibits OREC payments from being made before an offshore wind project becomes operational, RESA argues that “it appears that the Commission’s regulations could be interpreted to require suppliers to pay for ORECs before an offshore wind project is operational.”² For example, RESA cites to COMAR 20.61.06.16, which it argues could allow the appointment of an administrator who would bill suppliers for “pre-operational payments” for ORECs in accordance with the Commission-approved OREC price schedules, even if the project’s COD is delayed. Moreover, although RESA acknowledges that COMAR 20.61.06.16 provides a mechanism whereby pre-operational OREC payments would be escrowed and redistributed to retail customers through their respective suppliers, RESA argues that no payments should be made until electric supply is being generated by an offshore wind project. Assuming that the COD of the U.S. Wind project has been delayed, RESA asks that the Commission enter an order clarifying that electricity suppliers and their customers will not be charged for ORECs before the U.S. Wind or Skipjack projects become operational.³ Finally, RESA asks that the Commission modify the current OREC price schedule to ensure that it goes into effect no earlier than the (delayed) COD of the U.S. Wind or Skipjack project.

² RESA Motion at 5.

³ RESA Motion at 9.

Several parties filed comments in support of RESA’s Motion. WGL Energy Services, Inc. (“WGL Energy”) notes that U.S. Wind has not provided any notice of change to its COD in its Annual Development Progress Reports for 2018 or 2019, despite recently stating that it has not finalized turbine selection for the project. WGL Energy further argues that COMAR 20.61.06.16 stands “in direct conflict” with the requirements of the Act.⁴ Exelon Corporation (“Exelon”) states that RESA’s Motion raises important questions regarding how the Commission’s regulations “will work in practice, and whether they are consistent with the statute.”⁵ Exelon further claims that the pre-operational billings authorized pursuant to COMAR “cannot be squared” with the statutory language of the Act. Potomac Electric Power Company, Delmarva Power & Light Company, and Baltimore Gas and Electric Company (collectively, “the Exelon Companies”) provided separate comments in support of RESA’s Motion. The Exelon Companies argue “it would be fundamentally unfair for the customers of the Exelon Companies ... to bear the cost of non-existent ORECs from wind projects that have not yet commenced operation.”⁶ Maryland’s Office of People’s Counsel (“OPC”) also filed comments supporting RESA’s request that U.S. Wind and Skipjack provide public notice of any changes or delays in their expected CODs. Nevertheless, OPC does not support waiver of any regulations until the new CODs are known and parties are provided with an opportunity to comment.⁷

Both offshore wind projects filed comments relating to RESA’s Motion as well. U.S. Wind states that it has no objection to making a public filing informing the

⁴ WGL Energy Comments at 3.

⁵ Exelon Comments at 2.

⁶ Exelon Companies Comments at 2.

⁷ OPC Comments at 3.

Commission and interested persons of the status of its project and estimated COD, with the caveat that the estimate “is subject to change, and such change could be frequent and sudden.”⁸ U.S. Wind further states that it does not oppose any clarification of the Commission’s regulations, but has always understood the controlling law to be “that a payment may not be made for an OREC, and thus no OREC payment is due, until electricity supply is generated by the project.”⁹ Finally, U.S. Wind argues that no modification to the OREC price schedule is necessary at this time, given that no project delay has been announced and that existing COMAR provisions address delays should they occur. Skipjack, in contrast, argues that RESA’s Motion should have been raised through an appeal of Rulemaking 51,¹⁰ which established Commission regulations regarding offshore wind, or in the case of modification to the OREC price schedule, at the time Commission Order No. 88192 was issued.¹¹ Skipjack further asserts that RESA’s Motion is unnecessary, in that existing COMAR provisions require projects to update the Commission on modifications, including project delays.

Finally, Staff filed comments opposing RESA’s Motion. Staff argues that multiple COMAR provisions already require offshore wind projects to report modifications to the Commission, obviating the need for the remedies requested in RESA’s Motion. Staff notes that recent U.S. Wind and Skipjack updates addressing turbine selection did not announce a change in CODs, indicating that the projects are on schedule. Regarding RESA’s request for clarification that suppliers will not be obligated

⁸ U.S. Wind Comments at 1.

⁹ U.S. Wind Comments at 2.

¹⁰ See Administrative Docket RM 51: *Revisions to COMAR 20.51 and COMAR 20.61 – Renewable Energy Portfolio Standard Program – Offshore Wind.*

¹¹ Skipjack Comments at 2.

to purchase ORECs prior to the operation of the offshore wind projects, Staff argues that the Act, related COMAR provisions, and the Commission’s Order No. 88192 already unequivocally make that point. Staff concludes that “[i]t is unclear why RESA needs an additional statement of this restriction on payment for ORECs in a new Commission order.”¹²

COMMISSION DECISION

Existing Commission regulations require an offshore wind project to provide notice of any changes or delays to expected project COD. For example, COMAR 20.61.06.18B provides that: “Any material change to the qualified offshore wind project shall be reported to the Commission within 30 days of the date of that decision...” Material changes are further defined to include the project commercial operation date.¹³ Additionally, COMAR 20.61.06.16A requires projects to provide periodic updates, including “whether the project is on schedule to meet its estimated project COD...,” while COMAR 20.61.06.16B requires projects facing delays to “provide the Commission with a new estimate of the project COD.” U.S. Wind and Skipjack have provided updates to the Commission regarding changes in turbine models, as required by Commission regulations, but have not publically announced any change in project COD. Nevertheless, given the importance of these projects to Maryland, and given that the change in turbine models has caused concern to stakeholders about possible delays, the Commission directs U.S. Wind and Skipjack to file with the Commission a public notice updating the expected COD of their respective projects.

¹² Staff Comments at 6.

¹³ COMAR 20.61.06.18B(4).

Regarding RESA’s request for clarification that suppliers are not required to pay for ORECs prior to an offshore wind project becoming operational, existing law is clear. Public Utilities Article (“PUA”), *Annotated Code of Maryland*, § 7-704.1(f)(1)(iv) provides that “a payment may not be made for an OREC until electricity supply is generated by the offshore wind project.” Furthermore, COMAR 20.61.06.10B prohibits a project from invoicing for ORECs until after the project’s COD. The Commission order authorizing the U.S. Wind and Skipjack projects specifically provides that OREC payments shall not be made “until and unless electricity is generated by the Qualified Offshore Wind Project.”¹⁴ The conditions contained in that order further state that “[n]o payment may be made for an OREC until electricity supply is generated by the Qualified Offshore Wind Project.”¹⁵ Despite the clarity of these provisions, RESA and several other parties to this proceeding have raised concern that certain Commission regulations (most notably COMAR 20.61.06.16) may be inconsistent with the principle that offshore wind projects are prohibited from invoicing for or receiving ORECs prior to project operation.

Accordingly, the Commission directs Staff to review the Commission’s offshore wind regulations to ensure that no COMAR provision is inconsistent with PUA § 7-704.1(f)(1)(iv). Staff’s review should be part of a larger evaluation of Commission actions necessary to implement the Clean Energy Jobs Act of 2019.¹⁶ In particular, Staff should review and propose updates to Commission offshore wind regulations in light of the provisions of the Clean Energy Jobs Act, as well as lessons learned from the first

¹⁴ Order No. 88192 at 72.

¹⁵ Order No. 88192, App. A Condition 25 (U.S. Wind), and App. B Condition 26 (Skipjack).

¹⁶ Chapter 757.

offshore wind procurement, which led to the Commission's selection of the U.S. Wind and Skipjack projects in Order No. 88192. In light of this decision, it would be premature for the Commission to waive any existing COMAR provisions at this time. Accordingly, the Commission denies RESA's Motion on that issue.

The Commission also declines to grant RESA's request to modify the existing OREC price schedule to ensure that it goes into effect upon commercial operation of an approved offshore wind project. Current COMAR provisions allow for an adjustment to the Renewable Portfolio Standard OREC obligation, but only if the COD is projected to occur later than 730 days after the original estimated project COD.¹⁷ Given that neither U.S. Wind nor Skipjack has provided notice of any modification regarding project COD, RESA's request is premature.

IT IS THEREFORE, this 13th day of November, in the year Two Thousand Nineteen, by the Public Service Commission of Maryland,

ORDERED: (1) That the Motion of the Retail Energy Supply Association ("RESA") to direct U.S. Wind, Inc. and Skipjack Offshore Energy, LLC to provide public notice of any changes or delays in the expected commercial operation dates of their respective offshore wind projects is granted;

(2) That Staff is directed to review existing Commission offshore wind regulations to ensure that no COMAR provision is inconsistent with the general principle found in PUA § 7-704.1(f)(1)(iv) that a payment may not be made for an OREC until electricity supply is generated by the offshore wind project, and Staff is additionally directed to review and propose updates to Commission offshore wind regulations in light

¹⁷ COMAR 20.61.06.16F.

of the provisions of the Clean Energy Jobs Act and lessons learned from the first offshore wind procurement; and

(3) That RESA's requests to waive certain Commission regulations and to modify the current OREC price schedule are denied as premature.

By the Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary