Agenda Date: 08/18/10
Agenda Item: 8D

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center – Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE OFFSHORE WIND REBATE PROGRAM FOR THE INSTALLATION OF METEOROLOGICAL TOWERS	)))	ORDER Docket No. EO08110971

Docket Nos.	Company
EO08121062	Fishermen's Energy of New Jersey, LLC – Request for Project Modification
EO08121064	Garden State Offshore Energy, LLC - Request for Project Modification

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes action taken by the Board of Public Utilities (Board) at a public agenda meeting held August 18, 2010 regarding the requests of two applicants for modification of prior program approvals.

BACKGROUND

At its October 3, 2008 public agenda meeting, the Board approved, pursuant to its Offshore Wind (OSW) Grant Solicitation, a grant award of $4 million to Garden State Offshore Energy (GSOE) for its proposed 350 megawatts (MW) for an OSW renewable generation facility. The Board emphasized that the approval of this grant was a first step. The Board noted that other meritorious proposals had been submitted and affirmed that it would continue to look for ways to support the development of OSW.

The Energy Master Plan (EMP), released on October 22, 2008, contained a goal of installing at least 1000 MW of OSW energy by 2012 and at least 3000 MW by 2020. Based on the need to develop programs to achieve the OSW goals in the EMP, and as a result of stakeholder comment as well as the Board's own policy statements, Staff reexamined the approach of proceeding with a single OSW project and developed a proposal for an OSW rebate program that would support multiple simultaneous projects. Staff's proposal was directed at the construction of meteorological towers to gather data necessary to support the development of (at least) 1000 MW of OSW.

Board Staff held public stakeholder meeting on November 12, 2008 to discuss the proposed 2009 renewable energy budget within New Jersey's Clean Energy Program. Among other program budgets, the stakeholders considered the possibility of budgeting $15.4 million for OSW. At its November 21, 2008 public agenda meeting, as memorialized in an Order dated November 26, 2008 in the above captioned docket, the Board authorized the initiation of an application process for a proposed OSW Rebate Program for the construction of meteorological towers to support the development of offshore wind projects. The Board initiated the application process in anticipation of and subject to approval of the proposed OSW Rebate Program and budget within the NJCEP.

At its December 16, 2008 public agenda meeting, as memorialized in an Order dated January 8, 2009, Docket No. EO07030203 ("2009 Budget Order"), the Board approved the proposed OSW rebate program as well as a budget in the amount of $12 million within the 2009 New Jersey Clean Energy Program.[1] The OSW rebate program was designed to offer rebates up to $4 million to eligible developers to encourage the installation of meteorological towers and related equipment. At its December 17, 2008 public agenda meeting, as memorialized in an Order dated January 8, 2009 in the above captioned dockets, the Board found that three applications fully conformed to all relevant requirements of the OSW rebate program and approved those applicants for rebates up to $4 million, based on the reasonable and prudent actual costs incurred. The Board noted that "[t]he amount of rebate is subject to modification" if, for example, a State college was able to obtain the necessary information sought by the three applicants at a reduced cost. Ultimately, the Board authorized Staff to issue commitment letters setting forth the terms and conditions of rebate approval for the three applicants: Bluewater Wind, GSOE, and Fishermen's Energy.

The rebate commitment letter was valid for a period of one year. Applicants were required to provide access to the New Jersey Department of Environmental Protection (NJDEP) and the United States Department of Interior's Mineral Management Service (MMS), which has since been renamed the Bureau of Ocean Energy Management (BOEM), so that NJDEP and BOEM could collect other, non-meteorological related data. Applicants were also required to "coordinate with the NJDEP and MMS concerning wind farm pre-construction ecological and environmental studies conducted from the meteorological tower to insure the studies meet the needs of NJDEP and MMS for wind farm permitting/leasing, and to expedite and standardize the data collection process." Rebate payments were not to be made until construction of the meteorological towers was completed and the Board had received all necessary documentation from the applicant.

The rebate application approved by the Board also includes a criterion stating that "in the event the construction of the meteorological tower is delayed by an event which is not within the reasonable control of the applicant, then applicant shall promptly notify the Board of such event and shall consult with Board Staff to determine whether a revised schedule is appropriate." On or about June 29, 2009 each of the applicants submitted a status report and extension request to Board Staff. The reports indicated that the delay in public release of federal regulatory requirements and the resultant delay in commencing construction meant that seasonal weather related concerns now existed to impede the ability of installation crews to safely install the meteorological towers. GSOE's June 26, 2009 letter stated explicitly that it would have required access to the site no later than March 2009 in order to safely install a meteorological tower in 2009; however, an exploratory interim lease was not ultimately awarded until June 2009. The

[1] The Board's approval of the 2009 programs and budgets for the NJCEP and the budget for the OSW Meteorological Tower Rebate Program were subject to State appropriations laws.

other parties similarly referenced delayed release of necessary federal permits and standards beyond specific time frames as the direct cause of their delay in commencing construction. At its August 19, 2009 public agenda meeting, as memorialized by Order dated September 16, 2009 in the above captioned dockets, the Board found that the status reports and justifications for an extension fully complied with the applicable program criterion. Therefore, the Board approved the extensions for a period of one year and authorized Staff to issue an extension to the applicants.

At its December 16, 2009 public agenda meeting, as memorialized in an Order dated December 17, 2009 in Docket No. EO07030203, the Board took action to approve the continuation of the $12 million budget for the OSW Rebate Program for the Installation of Meteorological Towers within the NJCEP for 2010.[2]

PROPOSALS FOR MODIFICATION

Fisherman's Energy and GSOE have requested the Board's determination that proposed modifications to their approach for offshore wind resource assessment meets the intent and requirements of the offshore wind rebate program.[3] Each of these applicants has proposed the use of a buoy-based system for meteorological and other data collection in lieu of their original plans for a structure fixed to the ocean floor. The claimed advantages of the proposed modifications include technology such as LIDAR (Light Detection and Ranging), which enables faster and more accurate measurements of wind resource data that is less expensive and less environmentally intrusive to deploy. These requests are discussed in further detail below.

On June 8, 2010, GSOE submitted a letter to the Board captioned as a "Request for MET Tower Rebate Program Eligibility Determination." GSOE sought clarification regarding whether its "floating wind resource collection system, meets the criteria for the . . . rebate awarded by the Board to GSOE on January 8, 2009." GSOE's request provides background on their proposal and a schedule of GSOE's claimed site assessment program costs. GSOE claims that the "alternate technology" would enable it to "expedite the collection of wind resource data" while also "sav[ing] the State of New Jersey a substantial amount of the allocated rebate." GSOE represents that the buoy-based system will allow it to reduce its rebate from the original $4 million approved by the Board to $3 million. Notwithstanding the foregoing, GSOE requests that the $3 million rebate also cover the cost it incurred performing the geological and geophysical analyses related to the meteorological station.

GSOE met with NJDEP and the BOEM to review its proposed modification. A letter from NJDEP's Gary Buchanan confirming that GSOE's plan meets the two stipulations from the Board's November 2008 Order was received on July 22, 2010. However, NJDEP clarified that GSOE's proposal was only acceptable and compliant with the stipulations provided that GSOE fulfill its Phase II proposed avian radar and marine mammal acoustic analysis prior to construction of the wind farm. By letter dated August 2, 2010, BOEM indicated that GSOE's planned modification "appears as though . . . [it] would be authorized by their lease," but reserved final determination until GSOE submitted a Project Plan for BOEM's review consistent with the terms of the lease. BOEM also noted certain concerns about the change in technology. BOEM had intended to utilize a meteorological tower off the coast of New Jersey to collect data.

[2] The Board's approval of the 2010 programs and budgets for the NJCEP and the budget for the OSW Meteorological Tower Rebate Program were subject to State appropriations laws.
[3] Bluewater Wind, the third rebate recipient, has not requested such a determination.

BOEM also indicated that, without a fixed meteorological tower, GSOE "may not be able to collect certain bird and bat data" and "strongly encouraged" GSOE to contact the United States Fish and Wildlife Service to discuss that agency's needs.

On July 14, 2010, revised July 21, 2010 and again revised August 1, 2010, Fisherman's Energy submitted a "Request for Equivalency Determination and Modification to BPU Docket No. EO08121062 for the Use of Alternative Technologies to Collect Meteorological Data by Fishermen's Energy of New Jersey, L.L.C" along with several attachments and a proposed form of Order. The July 21 request provides background on their project, describes accomplishments to date, details proposed project modifications (utilizing horizontal and vertical LIDAR), and notes activities undertaken in coordination with DEP and the BOEM. Notably, Fisherman's July 21 request seeks to "utilize up to the $4M rebate to procure, deploy and validate two different innovative wind assessment technologies." Fisherman's clarified in its August 1 letter that "[n]otwithstanding the fact that our first costs cannot be reduced below $4 million, Fisherman's Energy proposes to limit its BPU rebate to $3,850,000 providing an additional immediate cost savings of $150,000." Fisherman's claims that no cost associated with its work toward permitting a fixed meteorological tower is included in the rebate modification request.

Fisherman's has also met with NJDEP and the BOEM to review its proposed modification. Fisherman's July 21 request stated its belief that "sufficient environmental monitoring data can be obtained from equipment mounted on floating buoys." A letter was received on July 22, 2010 from NJDEP's Gary Buchanan confirming that Fisherman's plan complies with the one stipulation from the Board's November 2008 Order and generally complies with the second stipulation. NJDEP expressed concern that the project lacked radar for bird and bat detections in the lease areas. NJDEP stated that Fisherman's project would fully comply with the second stipulation provided that planned and appropriate data is later collected to fill in gaps before construction of the wind farm. Maureen Bornholdt with BOEM reported meeting with Fisherman's Energy on June 30, 2010 and indicated that the planned modification "appears as though . . . [it] would be authorized by their lease." Nevertheless, BOEM reserved final determination until Fisherman's submitted a Project Plan for BOEM's review consistent with the terms of the lease. BOEM also noted certain concerns about Fisherman's proposed change in technology. As noted above, BOEM had intended to utilize one or more of the meteorological towers to collect data, but noted that "Fisherman's Energy has indicated that it would collect any necessary environmental information required for permitting." BOEM also indicated that, without a fixed meteorological tower, Fisherman's Energy "may not be able to collect certain bird and bat data." Therefore, BOEM also "strongly encouraged" Fisherman's Energy to contact the United States Fish and Wildlife Service to discuss that agency's needs.

Fisherman's July 21 request states that, in the event the Board does not approve Fisherman's request, it seeks an extension of its existing rebate commitment. Fisherman's August 1 letter represents that some project installation will take place before October 2010. Finally, Fisherman's Energy "requests that it be reimbursed for costs of each component, upon submission of adequate documentation to BPU Staff of component installation and commissioning."

At the August 4, 2010 Board meeting, the Board directed staff to seek public comment on the two applicants' proposed changes. The Board sought comments addressing the advantages and disadvantages of changing the meteorological data collection methods from a fixed approach to one utilizing buoys. Staff then issued a request for public comment on Friday August 6, 2010 via the various listservers used by the New Jersey Clean Energy Program, the

Board's website, and the New Jersey Clean Energy Program website. The notice generally described the proposals and attached the correspondence from NJDEP and BOEM. Comments were accepted until Friday, August 13, 2010 at 5pm and could be submitted electronically.

PUBLIC COMMENTS

Comments were received from Dennis Stacey, AXYS Technologies Inc. ("AXYS"); Dr. Michael Margulis, Lockheed Martin Coherent Technologies ("LMCT"); Robert Gibbs, GSOE; Miguel Payano, Occidental Development ("Occidental") ; Erich Stephens, OffshoreMW ("OffshoreMW"); and Felicia Thomas-Friel, Esq., NJ Division of Rate Counsel ("Rate Counsel"). Fisherman's Energy submitted a proposed form of Order as a comment.

AXYS Technologies is a subcontractor to Fisherman's Energy in their proposed plan for a buoy-based met data collection facility, although it notes that Fisherman's is proposing the use of multiple technologies. AXYS asserts that this platform combines a proven NAVY Nomad style buoy with a vertical LIDAR unit; the entire configuration being designed for offshore wind measurement applications. AXYS claims that this technology will reduce, over time, the cost of offshore wind monitoring, subsequent to validation. The validation program coordinated by Rutgers University and Garrad Hassan, will purportedly remove any favorable vendor influence and ultimately may produce the most useful and bankable met-data outside of building an expensive met-tower. AXYS forecasts favorable results after testing its LIDAR system against met-mast data. AXYS further asserts the offshore "field" test will provide the validation needed for acceptance by project financial lenders.

Lockheed Martin Coherent Technologies is also a subcontractor to Fisherman's Energy in their proposal for buoy-based meteorological data collection. LMCT claims they are a leader in wind measurement technology with a long history of proven, innovative solutions. LMCT is proposing to apply its horizontal scanning LIDAR for the meteorological data collection. LMCT asserts the LIDAR technology has been deployed at over 20 airports worldwide and in military applications and has proven to provide critical wind hazard information for approaching and departing aircraft. The technology is capable of obtaining real-time wind resource assessment data for offshore wind farms, but has not yet been used with the "validation, creativity and thought process seen in the Fishermen's Energy program." LMCT claims that an added benefit of the horizontal scanning LIDAR technology is the ability to provide detailed wind resource data in real-time over multiple locations. LMCT asserts that their long-range, horizontal LIDAR promises to reduce, over time, the cost of offshore wind monitoring, subsequent to validation. LMCT concludes that by combining offshore systems with land-based validation points, meaningful results will occur.

GSOE, in their comments to the Board, rely to the June 8, 2010 submission that proposed the SeaZephIR™, floating wind resource collection system, as well as the NJDEP and BOEM letters discussed above. GSOE reaffirms its commitment to conduct all necessary environmental resource monitoring associated with obtaining further regulatory approvals. GSOE asserts that the SeaZephIR™ will provide avian and bat acoustic monitoring, salinity, wave, temperature and other valuable environmental resource data. GSOE is aware that if the proposed project modification is granted it may be required to collect further environmental data in future phases. GSOE highlights the benefits of the SeaZephIR™ technology and its ability to collect a broader range of wind resource data to that of mechanical anemometer readings. The system will provide GSOE a head start on data collection activities while providing the flexibility of being able to move the SeaZephIR™ around the project site to assess multiple areas. Lastly,

GSOE asserts that the SeaZephIR™ will have less environmental impact given that its mooring system rests on the ocean floor rather than being driven into the ocean floor like fixed-platform foundations.

OffshoreMW is seeking to develop a 350MW offshore wind facility approximately 14 miles east of Brigantine and submitted an unsolicited lease application to the BOEM in January 2010. OffshoreMW asserts that the delay in the installation of the three meteorological towers provides an opportunity for the Board to re-evaluate how the $12 million allocated to support offshore wind data collection can best be utilized and recommends that the Board allow the extensions provided in its September 16, 2009 Order to lapse in order to do so. The commenter contends that, if the Governor signs the Offshore Wind Economic Development Act, a serious developer – who has received its Offshore Renewable Energy Credit (OREC) approval from the Board – should be willing and able to commit the funding necessary to install a meteorological tower and the risks associated with funding this project would no longer fall on the ratepayer. OffshoreMW also asserts as part of the OREC process, the Board will need to evaluate the reasonableness of the costs proposed by developers and that a transparent evaluation of costs and benefits will be mandated, rendering a proprietary claim to wind resource data moot. OffshoreMW references the completion of the Ocean Wind Power Ecological Baseline Study (Baseline Study) to demonstrate the effectiveness and value of boat-based surveys carried out over a long period and recommends that the Board re-evaluate the relative benefit of such data versus radar data from what it characterizes as a small number of very limited sites. The commenter also contends that continuing the same type of surveys as used in the Baseline Study over a longer period would make the Baseline Study more valuable. In conclusion, OffshoreMW proposes that the Board convene a stakeholder process, in the context of the responsibilities to be delegated to it under the Offshore Wind Economic Development Act, to consider the following questions: how many publicly funded meteorological platforms are really needed to facilitate an offshore wind industry in New Jersey; are there ecological resource study methods that might better facilitate permitting for a larger number of projects; who should have access to any data generated; and are there further opportunities for cost-sharing with developers who receive an OREC approval.

Occidental Development asserts that the requests for modification of the plans for the wind measuring towers are being submitted late, since these applicants received an extension in September of 2009. Occidental characterizes the change as both a request for a further extension and a radical modification from the original requirements referenced in the original 2008 offshore wind rebate application and worksheet. Occidental also expresses concern that this new approach would be unfair to BOEM, because "BOEM staff conveyed . . . that without the installation of a fixed bed structure such as a meteorological tower, the developer may be unable to collect data that will be necessary to inform environmental reviews of their future commercial project . . . . " Occidental questions the need to have two distinct phases, when the rigid platform serves all the intended purposes. Occidental further finds the proposed modification to the Met Tower project unfair to those who participated in 2008 for the Meteorological Tower Rebate Program and states that its own proposal for a rigid platform and not radar or LIDAR was due in part to its having been advised that the proposed rigid platform was part of the requirements of the rebate. Occidental contends that the documents provided do not warrant additional extensions of time or modifications and argues that the standard forms of contract and the terminology commonly employed in that context must be discussed in any consideration of the proposed modification in the interests of the public and the goals for renewable energy. The commenter believes that since a de facto extension of the expired first extension would be granted by an approval of the requested modification, the reason for the

delay, whether the delay was "in the critical path", and whether the developer was responsible for the delay must be considered.

Rate Counsel stresses the importance of receiving a cost benefit comparison of the original proposal to the proposed project modification from each developer, stating that the ratepayers are entitled to a complete accounting of how the $4 million provided through rates for offshore meteorological testing is being spent. In addition, Rate Counsel notes that the proposed modification may not provide all of the ecological information needed to assess the impacts of an offshore wind facility and that Staff has acknowledged, in the Request for Public Comments, that an additional system may have to be installed at a later date to collect this information. The cost of this additional system has not been provided in the request for project modification which, Rate Counsel asserts, may leave ratepayers open to future additional costs. The commenter further notes that not all documentation referenced in the correspondence among the developers, Staff, the NJDEP and BOEM has been provided and that no reason for the expedited comment period were provided. Rate Counsel requests that the Board defer its decision on this matter until more detailed information is provided by the developers. In the alternative, Rate Counsel requests that the Board provide approval contingent upon the Board receiving a certified cost benefit analysis from the developers within 30 thirty days of project modification approval and that monthly status reports be required.

RESPONSE: Staff appreciates the public comments submitted by the several commenters.

Staff recognizes that the advantages of the proposed project plans include a promise of a broader and more robust set of wind resource data available in a more timely and cost effective manner as well as less environmental impacts and less onerous federal permitting requirements. The potential disadvantages of the proposals stem from the lack of a structure fixed to the ocean floor and the delay in environmental data collection.

Since the exact technologies, methodologies and standards required by federal or state environmental regulators for securing permits to construct commercial wind facilities are site specific and not currently known, any further analysis of potential costs or risks, as requested by Rate Counsel, from a change to buoy-based system of wind measurement from a fixed structure would be speculative and would likely defeat the timeliness and erode the cost savings of these proposals. Both GSOE and Fisherman's have acknowledged the fact that each prospective developer of commercial wind in state or federal waters must comply with the pre-construction permitting requirements of all applicable State and Federal agencies. In addition, both applicants have identified cost-savings associated with the proposed modifications. Staff intends to ensure that ratepayers realize a saving and reduce the previous rebate to $3 million in recognition of the cost savings associated with reasonable buoy-based data collection.

Staff recognizes Occidental's comments citing the original application process for participating in the offshore wind meteorological tower rebate program and questioning the delayed execution schedule. The Board established the Offshore Wind Rebate Program to advance commercial wind development activity, but many factors related to that development are beyond the control of the Board and the developers. For example, the ability to collect wind resource data toward construction of a commercial wind project in federal waters on the Outer Continental Shelf is regulated by BOEM. Therefore, eligibility to participate in the offshore wind meteorological tower rebate program required that applicants had secured an Interim Lease designation from the MMS (now BOEM). Delay by the MMS (now BOEM) in issuing the guidelines for conducting wind resource assessment in the Interim Lease areas motivated the Board in August 2009 to issue extensions on the rebate commitments.

In addition, a fixed structure, as noted by Occidental, was originally a substantive part of the application process and may eventually be required by federal or state environmental regulators to monitor or measure the abundance of other ocean resources. Occidental and Rate Counsel have expressed concern that the requested programmatic changes, to allow for buoy-based data collection, will limit the amount of environmental data collected and possibly cost ratepayers more when the applicants pursue a second phase. The Board has already recognized the ratepayer benefits of this program by approving the application process in November 2008, approving the program in the 2009 Budget Order, and continuing funding for the program in 2010. Staff does not intend to reevaluate the ratepayer benefits at this time. In addition, Staff notes that one of the three applicants has not proposed following the buoy-based approach, but will, at this time, continue with a fixed structure. It is unclear whether these applicants' proposals to use buoy-based structures will impede their ability to fulfill the federal government's requirement for other environmental data or whether a second phase will be necessary. Both applicants have expressed their intent to satisfy BOEM and NJDEP's requests for environmental data, a requirement that has been in place with BOEM's implementation of the Energy Policy Act of 2005.

Staff notes that, as of the date of Board action, the Offshore Wind Economic Development Act had passed both houses and awaits signature. Staff supports the proposed OREC program, but notes that implementation of the legislation may take time. Staff recognizes the importance of further advancement of the regulatory framework as urged by OffshoreMW and encourages OffshoreMW's participation in any OREC rulemaking proceeding. However, as discussed above, the need for early OSW resource measurement data collection remains imperative – and, as such, continues to serve as the policy supporting this program. The data collected will not only benefit the developer/applicants who retain direct ownership but is also expected to provide demonstrable local experience and an opportunity to supplement wind resource assessment activities proposed by Rutgers University and budgeted within the New Jersey Clean Energy Program. It should also be noted that, pursuant to the Board's November 2008 Order, the public does have access to data collected.

Staff also notes that only Fisherman's has sought extension and that request was an alternative to the buoy-based proposal. Staff does not intend to recommend extensions for either project at this time. Staff believes that the applicants should be able to complete installation of the buoy-based systems during the term of their current rebate commitments.

STAFF RECOMMENDATIONS

The Board established an offshore wind rebate program to assist with the cost of wind resource assessment and other resource monitoring within the BOEM's Interim Lease areas to further the goals for offshore wind in the Energy Master Plan. Staff initially proposed the development of the OSW Rebate Program to support the collection of data necessary to further support the development of (at least) 1000 MW of OSW. Staff has reviewed the comments submitted as well as the two requests to modify their approach to wind resource assessment and ecological resource monitoring within the program. Staff considers these requests to comport with the spirit of the OSW Rebate Program. Staff further recognizes that these requests present innovative techniques, which may reduce time requirements, costs, and risks for the benefit of ratepayers.

Staff recommends Board approval of the two pending requests to modify prior OSW Rebate Program approvals and allow for the installation of a buoy-based system. However, Board Staff makes its recommendation subject to the following conditions:

1. The rebate may not exceed $3 million per applicant, based on the reasonable and prudent actual cost incurred for wind resource assessment and ecological resource monitoring.
2. Applicants may be reimbursed for the cost of each necessary component of the total project, prior to completion of the total project, upon submission of adequate documentation showing that the date of installation, commissioning, and payment of the necessary component occurred prior to January 11, 2011.
3. Applicants may be reimbursed for the cost of reasonable and prudent geotechnical and geophysical work completed by the applicants to support the installation of a meteorological tower previously approved.
   3.1. Applicants seeking rebate payment must submit documentation showing that work was completed prior to the date of this Order.
   3.2. Applicants seeking rebate payment must submit such geotechnical and geophysical data to the Board, and may seek protection of any proprietary data subject to the Board's rules pursuant to the Open Public Records Act at N.J.A.C. 14:1-12.1 .
4. Expenditures for which the applicant seeks rebate payment must be fully itemized and supported by itemized invoices.
5. All documentation necessary for rebate payment must be received by Board Staff no later than February 11, 2011.

No further extensions are recommended at this time.

If the foregoing recommendations are approved, Staff intends to review with stakeholders, in the context of the 2011 New Jersey Clean Energy programs and budget development proceeding, the potential reallocation of unexpended funds from this program budget to other programs within the New Jersey Clean Energy Program.

DISCUSSION AND FINDINGS

Upon review of these requests, comments, and Staff's recommendations, the Board **FINDS** that the proposed modifications to the meteorological data collection plans present both advantages and disadvantages.

The Board's policy supporting the OSW Rebate Program is discussed in detail above. The intent of the OSW Rebate Program was not to fund research or technology demonstration projects. Therefore, the Board does not believe it is a reasonable or appropriate use of these ratepayer funds to verify or validate new technology or new approaches as Fisherman's Energy proposes.

The Board notes that its initial approval of these applicants' rebates placed them on notice that rebates may be modified if the necessary data could be collected at lower cost to ratepayers. At the time, the Board was considering whether a State college could assist the applicants' collection of data. If that had been the case, rebates would have been reduced to reflect the applicants' actual cost. The Board is now presented with a similar situation: more data may be collected at a reduced cost using a buoy-based system. Indeed, the Board **HEREBY FINDS** that GSOE has shown that cost savings, as great as $1 million, may be achieved through the reasonable and prudent use of LIDAR technology associated with a buoy-based system. Given

the legislative directives in N.J.S.A. 48:3-60a(3), the Board **HEREBY CONCLUDES** that it is appropriate to limit ratepayer subsidy in the form of rebates in this program to a maximum of $3 million, notwithstanding Fisherman's claim to only be able to reduce its cost by $150,000.

The program, as previously approved, has reserved rebate payment until total project construction and all necessary documentation was submitted by the applicant. The Board notes that Staff now recommends modifying the procedure for rebate payment to allow for reimbursement for the cost of each necessary component of the total project prior to completion of the total project, as requested by Fisherman's Energy. Staff intends to rely on adequate documentation showing that the date of installation, commissioning, and payment of each necessary component, in part, because installation of a buoy-based system may be installed in a very short period of time – unlike a meteorological tower. Staff's recommendation to pay these rebates in increments, rather than as a lump sum upon total project completion, will also provide some relief to these applicants during difficult economic times, perhaps not fully realized when the OSW Rebate Program was developed. The Board also notes that this procedural change in the timing of rebate payment aligns the OSW Rebate Program with some other rebate and grant programs, which allow for incremental payments upon installation and payment of equipment prior to total project completion.

In addition, the Board concurs with Staff's recommendation that reasonable and prudent geotechnical and geophysical work completed by the applicants on the basis of the Board's prior approval of a meteorological tower previously approved may still be recovered. The Board does not intend to deter the applicants from pursuing a more cost-effective approach, such as the buoy-based system. On the other hand, however, the Board supports the applicants' submission of such geotechnical and geophysical data to the Board as a public document if the applicant seeks reimbursement from ratepayers.

The Board also understands that the applicants' rebates will expire in January 2011 and Staff does not, at this time, recommend further extension of those rebates. If the applicants are unable to meet their deadlines, further consideration by the Board will be necessary.

In light of the foregoing, and upon its review of the several documents before it, the Board **CONCLUDES** that Staff's recommendations are reasonable and **HEREBY APPROVES** them. The Board further **AUTHORIZES** the Staff to reissue approval letters with these revised terms and conditions to Fishermen's Energy and Garden State Offshore Energy. Issuance of a rebate commitment and payment through this program do not constitute further Board approval of a wind farm or other approval necessary for or related to OSW development.

The Board **DIRECTS** Staff to review with stakeholders, in the context of the 2011 program and budget development for the New Jersey Clean Energy Program, the potential use of any anticipated unexpended funds from this program budget within the New Jersey Clean Energy Program.

This Order only modifies the OSW Rebate Program for Fisherman's Energy and GSOE as recommended by Board Staff and approved above. All other provisions in the Board's prior Orders including, but not limited to, the provisions that require the applicants' cooperation with BOEM and NJDEP, shall remain in full effect. Whenever prior Orders reference meteorological towers, the same shall be read to allow for buoy-based systems if an applicant's request is approved by the Board.

Although not subject to this Order, the Board encourages Staff to work with Bluewater Wind in order to determine its ability to fulfill its current program requirements or an alternative approach such as reviewed in this Order.

DATED: 9/16/10

BOARD OF PUBLIC UTILITIES
BY:

LEE A. SOLOMON
PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

DISSENTING OPINION OF COMMISSIONER ELIZABETH RANDALL

I dissent from the majority ruling because I do not support changing the terms of the Offshore Wind ("OSW") Rebate Program to allow for partial reimbursement for the cost of projects prior to completion of the total projects. I believe that the private developers should receive no rebate until and unless the projects are completed.

The OSW Rebate Program, as originally conceived and approved by the Board, was designed so that developers would receive no rebate payments, and ratepayers would bear no risk, until their projects were complete. The November 26, 2008 Order implementing the Program stated that, "Rebate payments, if any, would not be made until construction of the meteorological towers is completed." This message is reiterated later in the same Order, where it is noted that:

The modified criterion [of allowing developers to still qualify for the rebate if construction was delayed by an event beyond their control] underscores the fact that since the rebate is payable only upon completion of a tower, no rebate or fraction of a rebate would be payable for a project halted prior to completion.

Likewise, the rebate commitment letters issued to the developers, Fisherman's Energy of New Jersey, LLC ("FERN"), Garden State Offshore Energy, LLC ("GSOE") and Bluewater Wind of New Jersey, LLC in January, 2009, unequivocally state "To receive the rebate payment, the meteorological station installation must be completed."

On August 1, 2010, FERN distributed a letter to the Office of Clean Energy asking that the rebate payments be accelerated to allow for incremental reimbursement as opposed to having to wait for payment until completion of the project. The request to modify the payment of the rebate was not discussed at the Board's August 4, 2010 meeting. On that date, however, the Board did discuss a request by FERN and GSOE to change the information-gathering technology from a fixed meteorological station approach to one using a buoy system. Supporting this equipment change, but believing it to be a substantive modification of the Board's prior order, the Board directed staff to seek public comment in advance of the August 18, 2010 Board meeting.

The Request for Public Comment issued on August 6, 2010, sought input on the proposals to collect OSW data via buoys as opposed to fixed stations. It further stated that "Rebates are payable upon completion of a tower with no rebate or fraction of a rebate payable for a project halted prior to completion."

On August 18, 2010, the Board considered the public comments regarding the change in technology, and voted to modify the program. Had this been the only program modification, I would have supported the change, but the Board also modified the OSW Rebate Program to allow for accelerated reimbursement as requested in the August 1, 2010 letter from FERN.

It is my view that the developers who were awarded these rebates should be able to demonstrate sufficient financial strength such that they are able to finance these projects without incremental financing from the ratepayers. While the ratepayers will ultimately pay for the successful construction of these data gathering devices, they are first entitled to get the benefit of the finished product.

ELIZABETH RANDALL
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

IN THE MATTER OF THE OFFSHORE WIND ORDER REBATE PROGRAM FOR THE INSTALLATION OF METEOROLOGICAL TOWERS

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