

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
S.P. 142 - L.D. 336

An Act To Encourage Research To Support the Maine Offshore Wind Industry

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §3210-H is enacted to read:

§3210-H. Floating offshore wind research array; project labor agreements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Floating offshore wind research array project" or "research array" means a project undertaken by an entity to develop a floating offshore wind energy system for the purpose of conducting research on such systems pursuant to 30 Code of Federal Regulations, Part 585 and is located seaward of territorial waters.

B. "Labor organization" means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

C. "Project labor agreement" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project or portion of a construction project, wherever such construction occurs, and is an agreement described in 29 United States Code, Section 158(f).

2. Project labor agreements. When requiring the negotiation of, or directing an investor-owned transmission and distribution utility to enter into, a long-term contract pursuant to section 3210-C or any other provision of law with an entity for capacity, energy or renewable energy credits associated with the development of a floating offshore wind research array project, or obligating funds pursuant to such a contract, the commission shall require the use of a project labor agreement, to be negotiated and executed by the entity seeking the long-term contract in accordance with this section.

A. The project labor agreement must be negotiated in good faith and executed prior to the effective date of a long-term contract for a research array.

B. A project labor agreement reached pursuant to this section must:

(1) Bind all contractors and subcontractors to the terms of the agreement through the inclusion of appropriate provisions in all relevant solicitation and contract documents;

(2) Provide for the invitation of all contractors and subcontractors to bid on contracts without regard to whether the employees of the contractor or subcontractor are members of a labor organization or parties to a collective bargaining agreement;

(3) Contain guarantees against strikes, lockouts and similar disruptions;

(4) Contain terms that are consistent with orders issued by the commission;

(5) Set forth mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(6) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety and health; and

(7) Fully conform to all relevant state and federal statutes, rules and regulations.

C. Nothing in this section may be construed to:

(1) Require the commission to require a project labor agreement on projects or in connection with contracts not governed by this section;

(2) Preclude the use of a project labor agreement in circumstances not covered by this section;

(3) Require contractors or subcontractors to enter into a project labor agreement with any particular labor organization;

(4) Impair or otherwise affect authority granted by law to the commission; or

(5) Prohibit in a project labor agreement the reasonable use of key employees by contractors and subcontractors who are not members of a labor organization or parties to a collective bargaining agreement.

D. Notwithstanding any provision of law to the contrary, agreements and contracts entered into pursuant to this section are not subject to the competitive bid requirements in Title 5, section 1825-B.

E. This section must be implemented consistent with applicable law. This section does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State, its departments, agencies or entities or its officers, employees or agents.

Sec. 2. Long-term contract in the public interest; coordination with state policy. The Legislature finds that a long-term contract for a term of no less than 20 years between an investor-owned transmission and distribution utility and New England Aqua Ventus, LLC for capacity, energy and renewable energy credits generated from a floating offshore wind research array to be located in the Gulf of Maine with a capacity up to 144 megawatts effectuates the policies, goals and mandates in the Maine Revised Statutes, Title 35-A, section 3202, subsection 1 and section 3404 and Article 6, Sections 1.8 and 1.9 of

the Maine Aqua Ventus power purchase agreement approved by the Public Utilities Commission and is in the public interest and in furtherance of the following:

1. Meeting the requirements of Title 35-A, section 3210 and chapter 34-A;
2. Achieving the wind energy goals contained in Title 35-A, chapter 34;
3. Achieving the greenhouse gas emissions reduction levels established in Title 38, section 576-A;
4. Implementing the recommendations of the State's climate action plan, developed pursuant to Title 38, section 577;
5. State energy policy with due consideration of the energy equity context of these energy policies, including, in particular, the economic circumstances and opportunities of Maine's socially vulnerable counties as highlighted in the February 2021 report of the Governor's Energy Office, State of Maine Renewable Energy Goals Market Assessment;
6. The Maine Offshore Wind Initiative overseen by the Governor's Energy Office;
7. The State's decision to seek a federal Department of the Interior, Bureau of Ocean Energy Management lease of federal waters to construct and operate a research array to scientifically determine means to protect the Gulf of Maine ecosystem, critical species and habitats and traditional marine users from imprudent offshore wind development;
8. State laws that seek to make the State an international hub for floating offshore wind development and fabrication, including but not limited to: Public Law 2007, chapter 661; Public Law 2009, chapter 270; Public Law 2009, chapter 615; and Resolve 2019, chapter 87; and
9. A memorandum of understanding between the State and New England Aqua Ventus, LLC requiring New England Aqua Ventus, LLC to seek a long-term contract from the Public Utilities Commission, to assist the State, upon request, in preparing and securing approval of a lease of federal waters in the Gulf of Maine and in complying with resulting lease obligations and to seek a power purchase agreement for a floating offshore wind research array, as defined in the Title 35-A, section 3210-H, through the commission.

Sec. 3. Commission action. Within in 9 months of receiving a petition from New England Aqua Ventus, LLC or its designated affiliate for a long-term contract for capacity, energy or renewable energy credits to be generated from a floating offshore wind research array project, as defined in the Maine Revised Statutes, Title 35-A, section 3210-H and referred to in this section as “the research array,” with a capacity of up to 144 megawatts designed, permitted and operated by New England Aqua Ventus, LLC in accordance with the terms of a lease in federal waters from the federal Department of the Interior, Bureau of Ocean Energy Management, the Public Utilities Commission shall order the negotiation of, and direct an investor-owned transmission and distribution utility to enter into, a long-term contract for at least 20 years with New England Aqua Ventus, LLC or its designated affiliate if the commission determines the contract furthers the objectives of this Act and is in the public interest.

1. In ordering the negotiation of the contract, the commission shall:
 - A. Utilize the process for the negotiated purchase of capacity, energy and renewable energy credits under Title 35-A, section 3210-C except that the commission shall invite

the Office of the Public Advocate, the Governor's Energy Office and transmission and distribution utilities to participate in negotiations;

B. Employ, at the expense of New England Aqua Ventus, LLC or the developer, any expert consultants necessary to assist in negotiations. Expert consultants hired pursuant to this subsection must be employed by the United States Department of Energy, National Renewable Energy Laboratory or a similar entity expert in worldwide cost estimation for floating offshore wind commercialization and with specific knowledge of the VoltumUS foundation design, and the commission shall use that advice; and

C. Direct the parties to determine the lowest reasonable cost to ratepayers, that is sufficient to enable the financing, construction and operation of the research array by New England Aqua Ventus, LLC or its affiliate, in a manner that is consistent with the lease issued by the federal Department of the Interior, Bureau of Ocean Energy Management and any final agreement between New England Aqua Ventus, LLC or its affiliate and the State.

2. If the commission directs the parties to enter into a long-term contract, the commission shall require that the contract requires New England Aqua Ventus, LLC or its affiliate to:

A. Maintain an office and project leadership staff in the State;

B. Use port facilities designated by the State for the organization, fabrication, launch and maintenance of the research array;

C. Operate, at the direction of the State, an open platform for research on the prudent development of offshore wind energy generation in the Gulf of Maine;

D. Establish and operate an integrated manufacturing and assembly facility in the State to manufacture required VoltumUS or similar hulls for the research array;

E. Make commercially reasonable efforts to attract design and manufacturing facilities to the State for other floating offshore wind energy generation project components;

F. Make commercially reasonable efforts to employ in-state design, manufacturing and maintenance firms and workers in an amount that is at least equal to 50% of contracts for those services; and

G. Construct the research array pursuant to a project labor agreement in accordance with Title 35-A, section 3210-H that is negotiated with the developer and a qualified labor organization to promote efficiency and economy in state procurement of research on renewable energy development, including the development of offshore wind energy generation seaward of territorial waters.

3. If the commission directs the parties to enter into a long-term contract, the commission shall ensure any pricing structure adopted for capacity, energy or renewable energy credits:

A. Represents the lowest reasonable cost to ratepayers, while ensuring the pricing structure is sufficient to enable the financing, construction and operation of the research array by New England Aqua Ventus, LLC or its affiliate, in a manner that is consistent with the lease issued by the federal Department of the Interior, Bureau of Ocean Energy

Management and any final agreement between New England Aqua Ventus, LLC or its affiliate and the State;

B. Was reached with the advice of expert consultants employed in accordance with subsection 1, paragraph B;

C. Supports prompt commercial pursuit of the research array lease, development of research plans and initiation of development and construction actions;

D. Recognizes and accommodates the commercial challenges in long-term cost estimation for large marine energy infrastructure and permits power purchase agreement capacity, energy and renewable energy credit prices to be adjusted based on changing costs prior to the final investment decision by New England Aqua Ventus, LLC or its affiliate and the commission, employing state of the art marine commercial cost estimation and control mechanisms such as indexing and inflation adjustment mechanisms; and

E. Considers, for levelized cost of energy comparison purposes, the needed and expected role of floating offshore wind energy generation in accomplishing the State's transition to beneficial electrification and the role of the research array in advancing that transition.

In determining the appropriate duration for a long-term contract entered into pursuant to this section, the commission shall consider what duration is adequate to allow the research array to be designed, permitted, constructed and operated in conformance with the terms of the lease of federal waters issued by the federal Department of the Interior, Bureau of Ocean Energy Management.

The State and New England Aqua Ventus, LLC shall negotiate in good faith and make best efforts to enter into a final operating agreement before a lease is issued by the federal Department of the Interior, Bureau of Ocean Energy Management. If the State and New England Aqua Ventus, LLC fail to enter into a final operating agreement before a lease is issued by the Bureau of Ocean Energy Management, nothing in this section precludes the State through the Governor's Energy Office from designating an entity other than New England Aqua Ventus, LLC to negotiate a long-term contract with an investor-owned transmission and distribution utility for capacity, energy and renewable energy credits generated from a research array as directed by the commission.

Sec. 4. Study of infrastructure related to offshore wind energy generation.

The Public Utilities Commission, in consultation with the Governor's Energy Office and the Office of the Public Advocate and with input from the public and interested stakeholders, by February 1, 2022, shall submit one or more reports to the Joint Standing Committee on Energy, Utilities and Technology. The report or reports must include information regarding options for the technology, location and creation of transmission infrastructure related to the development of offshore wind energy generation in the Gulf of Maine and transmission solutions proposed or built in other states and countries. The report or reports must include ways to protect species, habitats, the environment and traditional marine users from imprudent development while encouraging efficient transmission investment. The report or reports must recommend public and private transmission financing and ownership structures and include any necessary legislation to achieve the State's climate policy objectives. The committee may report out legislation to the Second Regular Session of the 130th Legislature based on the report or reports.