

PUBLIC SERVICE COMMISSION OF MARYLAND

Offshore Wind Awardee Minority Business Enterprise and Community Benefit Agreement Compliance Report 2023

Submitted to the Maryland General Assembly
Annapolis, Maryland
Pursuant to the Clean Energy Jobs Act of 2019
§ 7-704.1 of Public Utilities Article,
Annotated Code of Maryland

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I. Introduction

The Clean Energy Jobs Act of 2019 (Senate Bill 516/House Bill 1158)¹ created a second application period (Round 2) for offshore wind (OSW) renewable energy credits (ORECs) in Maryland. The legislation also required the Public Service Commission (Commission) to report on the compliance of the awardees with the minority business enterprise (MBE) goals and community benefit agreement (CBA) requirements of OREC awards. Specifically, § 7-704.1 of the Public Utilities Article (PUA) requires the Commission to report on or before March 1 each year to the Governor, Senate Finance Committee, and House Economic Matters Committee on:

- (i) compliance by applicants with the minority business enterprise participation goals under subsection (d)(4) of this section;² and
- (ii) with respect to the community benefit agreement under subsection (e)(1) of this section:
 1. the availability and use of opportunities for local businesses and small, minority, women-owned, and veteran-owned businesses;
 2. the success of efforts to promote career training opportunities in the construction industry for local residents, veterans, women, and minorities; and
 3. compliance with the minority workforce goal under subsection (e)(1)(i)5 of this section.³

¹ Act of Maryland 2019, Chapter 757 (Senate Bill 516).

² Subsection (d)(4) of § 7-704.1 requires the OSW project developers to make serious, good faith efforts to solicit and interview minority investors and contractors and subcontractors that are minority business enterprises (“MBEs”).

³ Subsection (e)(1)(i)5 essentially requires that the use of “best efforts and effective outreach” to obtain, as a goal, the use of a workforce including minorities, to the extent practicable. The term “minority” as used in this statute refers to an individual who is a member of any of the groups listed in § 14-301(k) of the State Finance and Procurements Article.

As a condition of the Commission’s orders approving ORECs for OSW projects discussed in more detail below, awardees are required to file semi-annual compliance reports on their MBE goals and to notify the Commission within 30 days of executing their CBAs. This report contains the information reported through November 2022 for US Wind⁴ and through September 2022 for Skipjack.⁵

II. History of OSW in Maryland

In 2013, the General Assembly passed the Offshore Wind Energy Act⁶ establishing a carve-out for offshore wind energy under the Renewable Portfolio Standard (RPS) and an application and review process (Round 1) at the Commission for OSW projects seeking ORECs. The Commission established Case No. 9431 to review applications.⁷ On May 11, 2017, the Commission issued Order No. 88192 approving US Wind, Inc. (US Wind) and Skipjack Offshore Energy, LLC (Skipjack) for ORECs. Table 1 illustrates the project capacities, ORECs awarded, ratepayer impacts, and MBE goals of the Round 1 projects.

Table 1 Round 1 Summary

	Skipjack	US Wind
Project Capacity	120 MW	248 MW
ORECs (2012\$)	\$131.93	\$131.93
ORECs (#)	455,482	913,845
Total Residential Impacts	\$1.40 per month (combined Skipjack and US Wind)	
Total Non-Residential Impacts	1.4% annually (combined Skipjack and US Wind)	
MBE Goal	29%	15%

In 2021, the Commission established Case No. 9666 to review Round 2 applications.⁸ On December 17, 2021, the Commission issued Order No. 90011 approving US Wind and Skipjack

⁴ Maillog No. 300101.

⁵ Maillog No. 300146.

⁶ Acts of Maryland 2013, Chapter 3 (House Bill 226).

⁷ *In the Matter of the Applications of U.S. Wind, Inc. and Skipjack Offshore Energy, LLC for a Proposed Offshore Wind Energy Project(s) Pursuant to the Maryland Offshore Wind Energy Act of 2013.*

⁸ *Skipjack Offshore Energy, LLC and US Wind, Inc.’s Offshore Wind Applications under the Clean Energy Jobs Act of 2019.*

for additional ORECs. Table 2 illustrates the project capacities, ORECs awarded, ratepayer impacts, and MBE goals of the Round 2 projects.

Table 2 Round 2 Summary

	Skipjack	US Wind
Project Capacity	846 MW	808.5 MW
ORECs (2012\$)	\$71.61	\$54.17
ORECs (#)	3,279,207	2,513,752
Total Residential Impacts	\$0.88 per month (combined Skipjack and US Wind)	
Total Non-Residential Impacts	0.9% annually (combined Skipjack and US Wind)	
MBE Goal	29%	15%

Following the grant by the Commission of ORECs during the Round 2 solicitation in 2020, both OSW project developers subsequently filed notices with the Commission which delayed, by several years, the estimated commercial operation date (COD) of both OSW projects awarded in Round 1. On February 25, 2021, Skipjack reported a new COD for its revised OSW project schedule as being the second quarter of 2026, and on April 13, 2022, US Wind reported an updated COD of its OSW project schedule of December 2026.⁹ As of the date of this report, neither of the OSW projects has commenced construction, and both OSW projects are still awaiting the completion of their federal permitting. The main impact of the delay in the project schedules of both OSW projects is that the anticipated extensive contracting, employment, and spending associated with the construction of the OSW projects has yet to occur. Therefore, while the minority and MBE contracting goals during this pre-construction period of limited contracting and employment are currently being met by US Wind and Skipjack, a more complete gauge of the success of the OSW project’s programs in meeting these goals will only occur during the actual construction phase of the projects.

⁹ Maillog Nos. 240177 and 233931. The OSW project applications approved in the 2020 Round 2 application period under the Clean Energy Jobs Act have CODs of 2026.

III. MBE Goals

As conditions of Order No. 88192 and Order No. 90011, both awardees are required to file semi-annual MBE compliance reports with the Commission. Included in the semi-annual reports are status updates on the various statutorily required MBE requirements and goals for US Wind and Skipjack. The requirements are largely the same for both Round 1 and Round 2. The most up-to-date information the Commission has received from the companies is summarized below.

a. MBE MOUs

Both awardees were required to sign memoranda of understanding (MOUs) with the Commission related to opportunities for MBE participation, minority investors, and workforce diversity within 90 days of Order No. 88192 and Order No. 90011. US Wind and Skipjack in coordination with the Commission's Consumer Affairs Division (CAD) developed, signed, and filed MOUs with the Commission on August 14, 2017.¹⁰ The MOUs signed during Round 1 satisfy Round 2 requirements. In addition, Skipjack filed an addendum to its MOU for Round 2 with its Q2 2022 quarterly progress report.¹¹ US Wind reports that it has identified and entered into negotiations with three potential minority investors and will continue discussions into the next reporting period. Skipjack reports that it has not sought investment for its projects, therefore, it has not solicited participation from minority investors.¹²

b. MBE Plans

Skipjack and US Wind were required to coordinate with the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and Office of the Attorney General (OAG) on MBE goals and plans within six months of Order No. 88192 and Order No. 90011. Both awardees were required to file the coordinated plans with the Commission.

¹⁰ Maillog Nos. 216489 and 216490.

¹¹ Maillog No. 241402.

¹² See 2022 US Wind and Skipjack Supplier Diversity Reports, Maillog Nos. 300101 and 300146.

Skipjack reports that it will follow the Round 1 MBE plan¹³ coordinated with GOSBA for its Round 2 project and filed updates in its Q2 2022 quarterly progress report accordingly.¹⁴ US Wind filed its Round 2 MBE plan on June 17, 2022.¹⁵

As discussed previously, both US Wind and Skipjack are in the pre-construction phase of development which is reflected in the level of employment of contractors and subcontractors for both developers. US Wind and Skipjack require prime contractors to create opportunities for MBE certified subcontractors, and both project developers have, as discussed in their filed supplier diversity reports, met with and sought out MBE owned firms and entered contractual arrangements with them. US Wind and Skipjack have, on a non-public basis, reported their levels of spending with diverse suppliers on a semi-annual basis in filings to the Commission.

c. MBE and Workforce Reporting

Order No. 88192 required both awardees to coordinate with the Director of CAD to develop MBE reporting templates and workforce diversity reporting templates within 90 days of Order No. 88192 and use those templates in the semi-annual MBE reports. Order No. 90011 required US Wind and Skipjack to review the templates created for Round 1 with the Director of CAD and update, if necessary, for Round 2.

US Wind and Skipjack coordinated with CAD to develop templates during Round 1 and subsequently reviewed them with the Director of CAD to make appropriate changes for Round 2.

d. Implement MBE Goals

Both awardees are required to make serious, good faith efforts to implement their MBE goals as conditions of both Order No. 88192 and Order No. 90011. Order No. 90011 required

¹³ Maillog No. 226110.

¹⁴ Maillog No. 241402.

¹⁵ Maillog No. 241145.

both awardees to use best efforts to obtain MBE contractors and subcontractors to the extent practicable as supported by a disparity study.

As of the most recent semi-annual reports, both companies report progress towards achieving their MBE goals. US Wind requires its general contractors to support the company's MBE goals. US Wind has an MBE Program Compliance Manager and Outreach Team to assist contractors in meeting the company's MBE goals. The company reports 13 MBEs are currently providing services to US Wind, an increase of 10 from the previous report, and the continued engagement with hundreds of additional MBE firms. US Wind also reports that it met with state and local agencies, companies, and MBEs and participated in workshops, conferences, and meetings as part of its outreach and workforce development efforts.

Skipjack uses a certified MBE to assist the company in achieving its MBE goals. The Company reports attending local MBE outreach events to meet with potential MBEs for its projects.

IV. CBA Implementation

CBAs were a new requirement for Round 2 awardees. Both companies are still working to finalize their CBAs. They are required to notify the Commission within 30 days of executing their CBAs. Neither developer has signed a CBA.¹⁶ While discussions have been held with several unions, no project labor agreements have been executed. US Wind reports that it has memorandums of understanding with several unions. US Wind is also working on implementing a small business incubator program.

¹⁶ See US Wind and Skipjack Fourth Quarter 2022 Progress Reports, Maillog Nos. 300638 and 300920.

V. Conclusion

The Commission appreciates the opportunity to provide the General Assembly with a status update on the compliance of US Wind and Skipjack with the MBE goals and CBA requirements of the Round 1 and Round 2 OREC awards. The awardees are working towards meeting the State's goals and will continue providing updates to the Commission on a semi-annual basis. The Commission will continue to monitor the progress of the OSW developers as the projects complete their permitting and move into the construction phase.