

Novel Law, Deep Pockets Create 'Element of Significant Uncertainty'

"Gov. Murphy wants to line the whole coast with these, which is shocking, considering the coastal economy is one of the [state's] major sources of revenue," said Bruce Afran, the Princeton attorney representing the plaintiffs.

May 06, 2024 at 04:49 PM

[Environmental Law](#)

Charles Toutant

A New Jersey appeals court has been asked to overturn the state's approval of a plan to construct up to 200 wind turbine generators off the state's coast.

Gov. Phil Murphy has set ambitious goals for the development of clean energy alternatives, but litigation by local opponents to the development of offshore wind resources could curtail his plans.

A coalition of local groups has asked the Appellate Division to find that an approval granted to the Atlantic Shores I and Atlantic Shores II projects on April 1 fails to consider evidence in the record showing the project will bring harm to the fishing industry, marine species and the sea floor.

The appellants claim the approval was arbitrary, capricious and relies on future unknown measures to combat harm to the ecology, the economy and to species.

According to the appellants, the state Department of Environmental Protection acted outside its statutory delegation when it found the Atlantic Shores I and II projects complied with the state's Coastal Zone Management Act.

The appellants asserted that the state relied on factors not included in the CZMA and bearing no direct relation to it, such as the state's renewable power goals, they said in a court filing.

"Gov. Murphy wants to line the whole coast with these, which is shocking, considering the coastal economy is one of the [state's] major sources of revenue," said Bruce Afran, the Princeton attorney representing the plaintiffs. "And so it's almost a suicidal play to build these and damage that economy, because many people may not choose to come if they're going to go to the beach and stare at hundreds of wind turbines."

The state has named Atlantic Shores Offshore Wind as the developer of the Atlantic Shores I and II projects. That company is a 50-50 venture between Shell New Energies US and EDF-RE Offshore Development of Columbia, Maryland.

A spokesman for the state DEP, Lawrence Hajna, declined to comment on the Atlantic Shores litigation.

Afran said the three groups he represents in the appeal—Save Long Beach Island, Defend Brigantine Beach and Protect Our Coast NJ—are made up of homeowners and owners of hotels, restaurants and fishing businesses in the areas impacted by the Atlantic Shores I and II projects.

The Long Beach Island group is opposed to the project as proposed but is prepared to consider a project farther out at sea, while the other two groups are opposed to offshore wind turbines generally, Afran said.

Atlantic Shores I is off the shore at Atlantic City and Atlantic Shores II is off of Long Beach Island, Afran said.

The appeal follows a setback in late 2023 for the state’s plans to harness the wind to generate power when Ørsted, a Danish company that agreed to develop two other New Jersey offshore wind projects, pulled out of those projects. The Ørsted projects, known as Ocean Wind I and Ocean Wind II, now appear to be in limbo.

The departure of Ørsted came after Protect Our Coast NJ and Defend Brigantine Beach, two of the groups that brought the appeal in the Atlantic Shores I and II appeals, filed a suit against the state. That suit claimed that tax credits the state provided to Ørsted, amounting to as much as \$1 billion, violated a state ban on special grants to a single entity, said Afran.

That prompted Ørsted to withdraw from the project, Afran said. Ørsted said in a statement that it pulled out due to “macroeconomic factors, including high inflation, rising interest rates and supply chain constraints.”

Afran and his clients are also attempting to shut down two other wind projects which are much farther from the shoreline. The first, which is 47 miles from the Atlantic City coast, is to be developed by a company called Invenergy, based in Chicago. The other, to be located 42 miles from the coast near Seaside Heights, is being developed by Attentive Energy, a joint venture of Corio Generation of London and TotalEnergies, a French oil company.

In the Invenergy and Attentive Energy cases, Afran and his clients have challenged the award of subsidies to the developers by the Board of Public Utilities. The BPU has asked the Appellate Division to send the cases back to the BPU for revisions to the terms of the contract, Afran said.

“I don’t think any of these developers can count on winning,” Afran said. “These are novel areas of the law, and I don’t think anyone can predict the answer. So it’s going to lend an element of significant uncertainty.”

Amos Gern, Esq.
Starr Gern Davison & Rubin, PC
[105 Eisenhower Pkwy.](#)
[Roseland, NJ 07068](#)
e-mail: agern@starrgern.com
Tel. 973-403-9200 / Cell 973-432-6131
Fax. 973-226-0031