
Infrastructure Series: Momentum Builds for Offshore Wind Energy Development in the United States

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This is the eighth issue of WilmerHale's 10-in-10 Infrastructure Series. In this series, our attorneys share insights on current and emerging issues affecting infrastructure project developers in the United States. Attorneys from various practice groups at the firm offer their take on issues ranging from permitting reform to financing to litigation, and share their insights from working with clients in a variety of infrastructure sectors, from water infrastructure to energy development to infrastructure development on tribal lands. This client alert was also published by [Law360](#).

The beginning of 2018 has offered signs of a renewed push to expand development of offshore wind generation along the US Atlantic coast. Recent announcements from the Department of the Interior, in the broader context of the federal government's initiatives to streamline project permitting and reduce regulatory burdens, indicate an increased focus on offshore wind. Actions by Atlantic states further reflect that policy push and preview significant opportunities for offshore wind investment and development.

Department of the Interior Advances Offshore Wind Initiatives

At the April 6 International Offshore Wind Partnering Forum, Secretary of the Interior Ryan Zinke delivered a speech that called for increased offshore wind development along the US Atlantic coast. Stressing the significant growth potential for the US offshore wind industry, Secretary Zinke laid out the Trump Administration's plans to offer new offshore wind leases along the coasts of Massachusetts, New Jersey and New York. Around the same time as his speech, the Department of the Interior's Bureau of Ocean Energy Management (BOEM) released three separate Federal Register notices that aligned with the strategy Secretary Zinke announced. Each BOEM notice initiates a public comment period, making the next month and a half a critical time for interested stakeholders to register their views and help shape the policy and upcoming development opportunities for offshore wind.

- **Proposed Path for Atlantic Offshore Wind Development.** On April 6, BOEM invited public comment on “all aspects of its proposed path forward” for offshore wind development on the Atlantic coast.¹ In its announcement, BOEM articulated certain factors that the agency will use to identify which areas along the Atlantic coast are most conducive to wind

generation. BOEM noted that the “proposed path” is a part of “the Administration's all-of-the-above energy policy.”² BOEM is seeking public comments through May 21.

- **Call for New Leasing Offshore New Jersey and New York.** On April 11, BOEM issued a Call for Information and Nominations for four proposed lease areas in the New York Bight—an area between New Jersey and Long Island.³ BOEM is soliciting nominations from companies interested in the proposed leasing areas, as well as information “on the potential for wind energy development in the Call Area.”⁴ The public comment period runs through May 29.
- **Proposed Lease Sale Offshore Massachusetts.** On April 11, BOEM published a Proposed Sale Notice (PSN) for two new lease areas off the coast of Massachusetts.⁵ The proposed lease areas would open roughly an additional 140,000 acres to offshore wind development. Stakeholders have until June 11 to submit comments, as well as the “qualification materials” that must be submitted by any company that wishes ultimately to bid on the leases. After the public comment period closes, and once BOEM has reviewed the comments submitted, the agency will issue a Final Sale Notice (FSN). There is no mandatory deadline for the FSN, but in previous lease sales, the period between the close of the public comment period on the PSN and the issuance of the FSN lasted four or five months. After the FSN is issued, BOEM will conduct an auction to award the leases. BOEM estimates the auction will be approximately 45 days after the FSN, but in any event, it must be at least 30 days after the FSN.

Federal Efforts to Streamline Permitting of Offshore Wind Projects

In addition to the opening of new leasing areas, federal agencies are taking steps to streamline the federal review of proposed offshore wind projects once a lease has been granted. Last week, the Department of the Interior and a dozen other agencies committed to a [One Federal Decision](#) framework for permitting large infrastructure projects—including offshore wind projects. Other federal agencies that play key roles in offshore wind projects, including the Department of Commerce and Department of Energy, signed on to the Memorandum of Understanding (MOU) establishing the One Federal Decision framework as well. The signatories commit to perform their respective reviews concurrently, based on a jointly developed project schedule, and to prepare a single environmental review document and record of decision.

The One Federal Decision MOU follows several related announcements by the Department of the Interior, including an August 31, 2017 Secretarial Order that establishes an ambitious one-year and 150-page target for environmental impact statements prepared by the Department's bureaus. The Department is also undertaking a comprehensive review of existing policies and regulations to identify—and reform—unnecessarily burdensome regulations.

Meanwhile, on January 12, 2018, BOEM issued draft guidelines for the use of a Project Design Envelope approach to facilitate the review of Construction and Operations Plans (COPs) for offshore wind projects. Under this approach, developers would have the option to describe a “reasonable range of project designs”—such as a range of foundation types, turbine sizes, different candidate ports and different options for installing and siting required transmission—in a COP for BOEM's

review. The Project Design Envelope approach could be taken before all of a lessee's design decisions have been made, or where a lessee intends to develop its lease in phases, by describing the reasonable parameters for later development phases. The approach is intended to allow maximum project design flexibility while minimizing the need for additional federal approvals. BOEM is soliciting comments on the draft guidelines and intends to publish a final guidance document later this year.

State Efforts Support Offshore Wind Development

At the state level, several recent initiatives have also emerged to promote offshore wind development along the Atlantic coast. For example, in January, several New York State agencies issued a master plan charting a course to meet Governor Andrew Cuomo's goal of building 2,400 megawatts (MW) of offshore wind energy projects by 2030. The state's Public Service Commission is now considering the recommendations in the master plan, after which it will begin a bidding process for the first round of projects. Those steps are expected to be completed by the end of 2018.

In New Jersey, Governor Phil Murphy announced plans to bring 3,500 MW of offshore wind online by 2030. That is the largest goal set by any state in the US, and it appears to signal a change in the cautious approach that New Jersey has taken to offshore wind development to date. Meanwhile, on April 12, the New Jersey legislature passed a bill (S1217) calling for the Board of Public Utilities (BPU) to reconsider a 24 MW project proposed by Fishermen's Energy (recently acquired by EDF Renewable Energy). The project was initially rejected by the BPU for cost concerns.

In Connecticut, the Department of Energy and Environmental Protection issued a request for proposals (RFP) for clean energy projects. Developers of offshore wind projects were eligible to submit proposals for up to 825,000 MWh/year—which translates to a total capacity of about 200 MW. Responses to the RFP were due April 2; the winning bids will be announced in June.

Conclusion

The first quarter of 2018 left little doubt that the momentum for establishing a US offshore wind industry is only increasing. In his speech to the International Offshore Wind Partnering Forum, Secretary Zinke stressed what he views as a unique growth potential for the industry. The combination of federal and state policy support, coupled with the Trump Administration's commitment to streamlining federal permitting, presents an important opportunity for offshore wind developers.

¹ <https://www.gpo.gov/fdsys/pkg/FR-2018-04-06/pdf/2018-07106.pdf>

² <https://www.boem.gov/press04042018/>.

³ <https://www.gpo.gov/fdsys/pkg/FR-2018-04-11/pdf/2018-07445.pdf>

⁴ <https://www.boem.gov/NY-Bight/>.

⁵ <https://www.gpo.gov/fdsys/pkg/FR-2018-04-11/pdf/2018-07379.pdf>

Authors



H. David Gold

SPECIAL COUNSEL

 david.gold@wilmerhale.com

 +1 617 526 6425