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Locke Lord QuickStudy: BOEM Proposes to Go Another Round in the Gulf of Mexico in 2024, With Some Twists

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In the world of offshore wind, the Bureau of Ocean Energy Management's ("BOEM") Gulf of Mexico region is known for its independent streak. The proposed sale notice (PSN)^[1] for its second Gulf of Mexico wind sale in two years lives up to this reputation, with some surprising proposals tailored to several unique challenges that the offshore wind industry faces in the region.

The PSN is significant first and foremost because it puts to bed any speculation as to whether BOEM will hold a Gulf of Mexico wind sale in 2024. The PSN proposes the sale of four leases of roughly 100,000 acres each—two from the Galveston Wind Energy Area (WEA) that went unsold in the August 2023 sale, and two culled from WEAs between Galveston and the Lake Charles lease that RWE purchased in the first sale. Given that these proposed Lease Areas are all close to what has become BOEM's "target lease size" of 100,000 acres, it seems unlikely that BOEM will significantly reduce the size of individual leases in the final sale notice (FSN). Additionally, unlike the last Gulf of Mexico PSN,^[2] this PSN doesn't indicate that BOEM is seriously considering reducing the number of leases for sale.

Time will tell whether this Gulf of Mexico lease sale will generate more interest than the previous sale, which took place in August 2023. That sale was uncharacteristically brief, with only two bidders participating. BOEM might be anticipating more participation this time around, as the results of the August 2023 lease sale may lead developers to believe they can acquire a lease for much less than they thought was possible last time. Further, the State of Louisiana has issued two leases in state waters in the meantime, significantly expanding the market in the region.

BOEM is also proposing changes that appear to be aimed at making Gulf of Mexico leases more attractive to developers. First, BOEM proposes to scrap the "one-lease-per-bidder" rule and allow single bidders to bid on—and win—multiple leases at once.^[3] Notably, this will require bidders to decide before the auction whether they plan to seek multiple leases and submit that number of bid deposits.^[4]

Second, BOEM proposes to insert new language in the standard lease in the Gulf of Mexico to explicitly reference green hydrogen.^[5] The typical BOEM lease describes a project as wind turbine generators plus associated resource collection (e.g., meteorological buoys), substations, and cables. However, new language in Addendum A of the proposed standard lease would significantly expand the "Description of the Project":

[a] project to produce or support production, transportation, storage or transmission of energy (including electricity and, potentially, hydrogen or other energy products) using wind turbine generators, including any associated resource assessment activities, located on the Outer Continental Shelf in the leased area as well as installation of associated offshore support platforms (e.g., substations, electrolyzers, storage facilities), inner array cables, and associated infrastructure (e.g., cables, pipelines, and appurtenances).

This new language, if included in the final lease, would eliminate any ambiguity as to whether a lessee could site a hydrogen electrolyzer (or battery storage units) adjacent to their wind turbines. It would also harmonize leases with a recent amendment to OCSLA clarifying that BOEM may issue leases for the siting of energy storage on the Outer Continental Shelf.^[6]

Most other aspects of the second Gulf of Mexico wind sale would remain consistent with the first. For instance, BOEM proposes to offer the same 17% bidding credit for investments in supply chain or workforce development and 8% credit for payment into a regional fisheries compensation fund.^[7] BOEM appears to have landed on a *de facto* 25% cap on bidding credits. Given the likelihood of lower sale prices than in other regions, however, BOEM should consider bigger percentages in order to increase the amount of credit money available for supply chain, workforce, and/or fisheries compensation.

Comments on the PSN and qualifications materials for bidders are due to BOEM no later than May 20, 2024.

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[1] [Gulf of Mexico Wind Lease Sale \(GOMW-2\) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore in the Gulf of Mexico— Proposed Sale Notice](#), 89 Fed. Reg. 20234 (Mar. 21, 2024)

[2] [Proposed Sale Notice for Commercial Leasing for Wind Power Development on the Outer Continental Shelf in the Gulf of Mexico \(GOMW-1\)](#), 88 Fed. Reg. 11939 (Feb. 24, 2023)

[3] PSN at Section IV(k).

[4] PSN at Section V.

[5] PSN at Section IV(m).

[6] 43 U.S.C. 1337(p)(1)(C).

[7] PSN at Section XII.

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