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Locke Lord QuickStudy: New York Bight Auction Represents Next Step for Offshore Wind, but Headwinds Remain

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On January 12, 2022, the Bureau of Ocean Energy Management (“BOEM”) announced its first offshore-lease auction in over three years. The auction will take place on February 23, and will award leases for over 488,000 acres in the New York Bight, an area off the coast of New York and New Jersey. The New York Bight announcement follows several other recent state and federal actions also aimed at facilitating the expansion of the nascent but rapidly growing U.S. offshore wind industry. While these developments are encouraging and the momentum surrounding offshore wind is undeniable and growing, it is not all smooth sailing, and significant challenges do remain for developers and the auction itself.

New York Bight Auction

BOEM’s February 23 auction will be for six leases in the New York Bight. This sets a record for the most leases available in a single auction and the parcels up for lease could create 7 GW of offshore wind energy that would power nearly 2,000,000 homes. This a key next step in a years-long process to capture the benefits from a significant amount of clean, renewable wind energy near the country’s largest metropolitan area.

In 2018, as a lead-up to this auction, BOEM requested information on over 1,700,000 acres in the NY Bight. The agency then identified roughly 807,000 acres of Wind Energy Areas in 2021 and, after BOEM’s further review of scientific data as well as input from the commercial fishing industry and others, BOEM set up next month’s much-anticipated auction with lease areas ranging from 43,000 to 125,000 acres.

In response to feedback, BOEM will only allow a bidder to win a maximum of one lease at the auction. Additionally, the leases signed by winners of the New York Bight auction have a number of new and modified obligations compared with previous leases. The new provisions relate to (1) reporting requirements, (2) endangered species, including telemetry tracking of certain birds and bats, (3) surface structure layout, (4) transmission planning, and (5) labor projects agreements as well as the development of a domestic supply chain that can support the growing U.S. offshore wind industry.

Maximizing economic development and U.S. manufacturing from offshore wind has been a national focus. Many

states procuring offshore wind power have tied their solicitation to a developer's economic development initiatives. The leases for New York Bight reinforce that goal. The leases will require the developer to make every reasonable effort to enter into a project labor agreement for the construction of their project. The developer must also explain how it will help grow the U.S.-based supply chain for the offshore wind industry, and the leases will allow a developer to reduce its operating fee by millions of dollars if at least four of eight component parts the developer uses are manufactured, or in one instance assembled, in the U.S.

Recent State-Level and Federal Activity

The NY Bight lease auction comes shortly after a flurry of recent activity by states on the eastern seaboard also seeking to promote and facilitate the growth of offshore wind. As discussed in [our recent QuickStudy](#), in mid-December the states of Massachusetts and Maryland procured a combined 3,200 MW of offshore wind power. Then in late December, the U.S. Department of Transportation awarded Port Infrastructure Development Program Grants for tens of millions of dollars to the Port of Albany in New York and the Portsmouth Marine Terminal in Virginia. The grants will help facilitate those ports' ability to advance the offshore wind industry.

In January, the activity has continued. On January 5, New York Governor Kathy Hochul announced a \$500 million investment in the ports, manufacturing, and supply chain infrastructure for the offshore wind industry. A week later, on January 12, the Massachusetts Legislature held a hearing on Governor Charlie Baker's bill that would make a \$750 million dollar investment to spur the next phase of clean energy innovation and help advance the offshore wind industry. Also on January 12, the Department of Energy released its Offshore Wind Strategies report that outlines ways to maximize the effectiveness, reliability, and sustainability of the U.S. offshore wind industry. Then, on January 14, two days after the announcement on the New York Bight auctions, Equinor and BP announced that they had finalized their contracts with the New York State Energy Research and Development Authority for the Empire Wind 2 and Beacon Wind 1 projects that were procured in early 2021 and will provide nearly 2,500 MW of wind power.

Potential Headwinds

The flurry of state activity reflects the strong demand for renewable energy along the eastern seaboard, where a lack of available land and numerous siting challenges constrain the development of utility-scale onshore projects. The New York Bight auction will provide a significant boost to the growing industry, and will likely drive a new round of private and public investment that will continue to drive growth and economic development. That being said, significant challenges to successfully permitting and constructing offshore wind projects remain, including supply-chain issues, permitting and environmental compliance, and constraints imposed by Jones Act requirements, to name a few. Even the New York Bight auction itself faces a challenge. BOEM faces a pending suit in D.C. federal court that seeks to reverse its decisions to designate parts of the New York Bight as a Wind Energy Area, on the basis that BOEM's decision to forego National Environmental Policy Act (NEPA) analysis of the proposed Wind Energy Area until after leases are issued and specific project plans are submitted by the leaseholders was improper. Potential bidders and the industry at large will be watching this case closely in the lead-up to the auction, as an adverse decision could delay the auction, or if coming after the auction is completed, could potentially invalidate or suspend leases until the NEPA process is completed. However, any

delay that may result from this suit is likely to be only temporary, and the New York Bight auction is almost certain to mark the next phase in the growth of offshore wind in the U.S.

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