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Locke Lord QuickStudy: Winds of Change: Biden Administration Releases Plan to Accelerate Offshore Wind Energy ?

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On March 29, the Biden Administration unveiled the broad strokes of a comprehensive, multi-agency plan to “accelerate and deploy offshore wind energy and jobs” in furtherance of President Biden’s twin priorities of fighting climate change and rebuilding America’s infrastructure. The ambitious plan aims to deploy 30 gigawatts (30,000 megawatts) of offshore wind generation capacity by 2030. Utilizing a “whole of government” approach, the plan involves coordinated action by the Departments of Interior, Energy and Commerce to open new lease sales on the continental shelf while protecting biodiversity and promoting co-use.

Combined with the adoption of a new 30% investment tax credit to qualifying offshore wind projects in the December 2020 stimulus bill, and the IRS’ extension of the continuity requirement of the production tax credit from four years to ten for offshore wind projects, the plan creates significant growth opportunities for both established developers and developers involved in the offshore wind energy research and development space. Development of the target generation capacity is expected to power up to 10 million homes and avoid 78 million metric tons of carbon dioxide emissions, while spurring more than \$12 billion per year of new capital investment and creating 77,000 new jobs in the offshore wind industry and supporting communities by 2030.

Charting the Course

The plan provides a number of specific, coordinated action items that will be implemented by the relevant Departments to achieve the 30 GW goal. Among them:

- Designation of a new high priority Wind Energy Area in the New York Bight, between Long Island and New Jersey
- New offshore wind lease sales from the Department of Energy (“DOE”) Bureau of Ocean Energy Management (“BOEM”)
- Completing review of at least 16 Construction and Operations Plans (“COPs”) by 2025, which could lead to approval of more than 19 GW of offshore wind generation
- Announcement of a Notice of Intent (“NOI”) to prepare an Environmental Impact Statement (“EIS”) for Ocean Wind, a 1,100 MW offshore project located in New Jersey, which would be just the third commercial-scale offshore wind farm in the U.S.

- Initiation of National Environmental Policy Act (“NEPA”) reviews for up to ten additional projects by year-end, in addition to the previously announced reviews for the Vineyard Wind project in Massachusetts and the South Fork project in Rhode Island
- Availability of \$230 million of grant funding through the Department of Transportation Maritime Administration’s Port Infrastructure Development Program
- Availability of \$3 billion of debt capital from the DOE’s Loan Programs Office Title XVII Innovative Energy Loan Guarantee Program
- Awards of \$18 million for 15 selected offshore wind research and development projects through the National Offshore Wind Research and Development Consortium (“NOWRDC”), a partnership between the DOE and the New York State Energy Research and Development Authority (“NYSERDA”)
- Announcement of a first-of-its-kind data-sharing partnership between offshore wind developer Ørsted and the Department of Commerce’s National Oceanic and Atmospheric Administration (“NOAA”) to fill gaps in ocean mapping and science in areas leased by Ørsted

Scanning the Horizon

Offshore wind in the U.S. has been attracting significant investment since the Obama Administration. However, it has faced numerous headwinds including an inefficient regulatory process at BOEM, lack of federal subsidies needed to help the industry achieve scale, opposition from fisherman and other stakeholders concerned about interference with their traditional activities, and various legal and logistical obstacles such as the lack of Jones Act compliant vessels available for installation of offshore wind components. Much of the progress that had been taking place stalled under the Trump Administration, with Vineyard Wind’s NEPA review held back for a programmatic review of cumulative industry impacts, ultimately leading Vineyard Wind to withdraw its application and then resubmit it after President Biden’s election.

With the recent adoption of the investment tax credit for offshore wind and the significant regulatory, financial, and of course political support established with this new coordinated, comprehensive plan, many of the most significant obstacles that have kept commercial-scale offshore wind projects stuck in drydock have now been alleviated or soon will be. In addition, the plan should help clear the way for the many state-lead offshore wind initiatives, in particular NYSERDA’s Offshore Wind Master Plan, which will benefit from the creation of the New York Bight Wind Energy Area as we discuss in a companion Quick Study to follow.

Of course, as with any plan that involves regulatory action by multiple federal agencies, it remains to be seen whether DOI, DOE, DOC and the other relevant agencies will be able to get their ducks in a row such that the backlog of projects can actually begin moving through the process and into construction. In addition to the regulatory uncertainties, there are certain to be challenges from the fishing industry and other stakeholders concerned about their own interests. Although the plan includes \$1 million in grant funding to better understand the impacts of offshore wind on fisheries, fishing interests will likely consider that amount paltry in comparison to the incentives provided for wind turbine construction and financing. Litigation over components of the plan, individual projects, or both is virtually assured. Nevertheless, the plan represents a bold step by the Biden Administration that shows it is serious about achieving President Biden’s climate change and infrastructure goals.

Locke Lord has been involved in the permitting and financing of some of the earliest offshore wind projects in the U.S. For further information regarding these issues, please contact the authors.

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