

DEVELOPERS SUBMIT UNSOLICITED REQUESTS FOR WIND LEASES OFFSHORE MASSACHUSETTS AND NEW YORK

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Energy Alert

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On March 10, 2017, the U.S. Department of Interior's Bureau of Ocean Energy Management (BOEM) posted four unsolicited applications for wind project leases on the Outer Continental Shelf. PNE Wind U.S.A., Inc. has filed three lease applications, two for [offshore Massachusetts](#) and one for [offshore New York](#). Separately, Statoil Wind US LLC filed a lease application for [offshore Massachusetts](#).

The developers' lease requests, particularly the overlapping requests for offshore Massachusetts, indicate continued interest and growing competition in the U.S. offshore wind sector. The quickening pace of activity in the U.S. offshore wind market, including completion of [Deepwater Wind's Block Island offshore wind farm](#) and today's [auction process](#) for offshore North Carolina, suggests that offshore wind projects may become a more important part of the U.S. power generation portfolio in the coming years. In addition, the unsolicited application for offshore New York and the federal government's response may provide an early indication as to the Trump Administration's position on offshore wind development going forward. Increased activity and a new administration in the White House present opportunities to engage on this issue and shape the policies that will govern the federal offshore leasing program for the next four or eight years, or beyond.

BACKGROUND

BOEM is charged with managing energy development on the U.S. Outer Continental Shelf (OCS), for both traditional energy resources and renewable energy projects alike. The agency discharges this responsibility for renewable energy projects via its leasing process outlined in the Code of Federal Relations at [30 C.F.R. Part 585](#). BOEM's rules set out a comprehensive site evaluation, lease auction, project management, and decommissioning program for renewable energy projects on the OCS.

To date, BOEM has completed twelve offshore wind commercial leases and one research lease.^[1] BOEM has issued commercial leases to four lessees for offshore Massachusetts: Cape Wind, Bay State Wind, Offshore MW, and Deepwater Wind New England (joint lease offshore Massachusetts and Rhode Island). Separately, BOEM has concluded a provisional lease with Statoil Wind for a site offshore New York.^[2] The Massachusetts auction in January 2015, lasted two rounds and the New York auction in December 2016, lasted 33 rounds, suggesting growing interest and competition for lease blocks on the eastern seaboard.

UNSOLICITED LEASE APPLICATIONS

Following these competitive lease auctions, both Statoil Wind and PNE Wind submitted unsolicited applications to lease OCS lands offshore Massachusetts for wind power projects. In addition, PNE Wind also filed an application for a potential lease area offshore New York.

For the offshore Massachusetts lease proposals, BOEM has stated that it will proceed with the competitive leasing process outlined in the agency's regulations. BOEM notes that because both Statoil Wind and PNE Wind are qualified to hold an OCS lease and both companies nominated the same area for lease, BOEM has determined that there is competitive interest for this OCS land. BOEM's next steps will be to publish its leasing process in the *Federal Register*, including identifying the lease areas for environmental analysis, issuing a Proposed Sale Notice with a 60-day public comment period, and a Final Sale Notice at least 30 days before the lease sale.

In contrast, BOEM states that it will consider whether to move forward with PNE Wind's application for offshore New York. If the agency determines that it will move forward with PNE Wind's application, BOEM will issue a public notice to determine whether there is competitive interest in the proposed lease area. BOEM's regulations allow the agency discretion to review unsolicited lease applications on a case-by-case basis. The rules do not require that the agency formally evaluate the application. BOEM may exercise its discretion to grant an unsolicited application following issuance of a Determination of No Competitive Interest and additional inter-agency coordination.

IMPLICATIONS

The key takeaway from these filings is that, as a new presidential administration assumes control over the Interior Department and BOEM, interest in U.S. OCS leasing for wind energy projects remains strong despite relatively low fuel prices for hydrocarbon-based power generation. These lease applications suggest that the suite of subsidies and other incentives supporting offshore wind development at federal and state levels, including in [Massachusetts](#) and [New York](#), continue to encourage developers to think creatively as to how they can access this growing market.

In addition, PNE Wind's unsolicited application for offshore New York offers an early opportunity to gauge the Trump Administration's support for offshore wind projects. Given U.S. President Donald Trump's [past skepticism](#) regarding offshore wind, industry players are unsure of the Trump Administration's support for offshore wind development, notwithstanding Secretary of the Interior Ryan Zinke's endorsement of an "all of the above" energy strategy during his confirmation hearing. BOEM's response to the unsolicited lease application may illustrate the Trump Administration's level of support for offshore wind.

The next indicator for the strength of the U.S. offshore wind market will come from today's OCS auction for [offshore North Carolina](#). Following a lease auction in New York that attracted a winning bid of more than \$42 million, industry watchers will closely monitor the outcome of the North Carolina auction to determine whether the sector will maintain its rapid growth. Recognizing that the specific characteristics for the North Carolina proposed lease and auction will differ from those in the New York auction, the strong showing of interest in the North Carolina auction, as demonstrated by the nine companies qualified to participate in the auction, may keep momentum building for the offshore wind sector in the United States.

Notes:

[1] BOEM Lease Areas Shapefile, <https://www.boem.gov/BOEM-Lease-Areas-Metadata/> (last visited Mar. 15, 2017).

[2] In denying a preliminary injunction, the U.S. District Court for the District of Columbia recently held that BOEM complied with the National Environmental Policy Act when it relied on an environmental assessment and finding of no significant impact ("EA/FONSI") to issue Statoil Wind's provisional lease for offshore New York. *Fisheries Survival Fund, et al. v. Jewell, et al.*, Case No. 16-cv-2409 (D.D.C. Feb. 17, 2017). This decision clears one potential obstacle for Statoil and helps reduce the risk of similar challenges to BOEM's determinations to approve leases that allow project evaluation and design to move forward. Responses on the merits to the challengers' claims are due by May 8, 2017.

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