Luke Feinberg

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Office of Renewable Energy Programs
Bureau of Ocean Energy Management
45600 Woodland Road, VAM-OREP
Sterling, VA 20166

Comments on Docket No. BOEM-2021-0033: Atlantic Wind Lease Sale 8 (ALTW-8) for Commercial Leasing for Wind Power on the Outer Continental Shelf in the New York Bight—Proposed Sale Notice

Dear Mr. Feinberg:

The American Clean Power Association ("ACP")[1] and the Mid-Atlantic Renewable Energy Coalition Action ("MAREC Action")[2] appreciate the opportunity to provide these comments on the Atlantic Wind Lease Sale 8 (ALTW-8) New York Bight Proposed Sale Notice ("PSN").[3] Our organizations collectively represent and work with the vast majority of offshore wind development companies that are involved in the offshore wind business regionally and across the United States.

I. Introduction

BOEM should be commended for facilitating active engagement with stakeholders related to the PSN, including by circulating in advance the New York Bight

[1] ACP is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and utilization of renewable energy solutions including land-based and offshore wind energy resources in the United States. ACP's more than 1,000 member companies include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, utilities, marketers, customers, and others. The views and opinions expressed in this filing do not necessarily reflect the position of each of ACP's members.

[2] MAREC Action is a nonprofit organization that was formed to help advance the opportunities for renewable energy development primarily in the region where the Regional Transmission Organization, PJM Interconnection, operates. MAREC Action's footprint includes New Jersey and nine other jurisdictions in the region. MAREC Action members include utility scale wind (including offshore wind) and solar developers, wind turbine manufacturers and non-profit organizations dedicated to the growth of renewable energy technologies.

[3] 86 Fed. Reg. 31,524 (June 14, 2021)("PSN").

Wind Energy Area Identification Memorandum ("ID Memo") and the Draft Proposed Sale Notice Summary ("PSN Summary"). The U.S. now has a total offshore wind pipeline of over 28 gigawatts in federal lease areas issued to date.[4] The addition of BOEM's proposed New York Bight lease areas will be critical to ensure the U.S. can comfortably achieve the Administration's 30 GW by 2030 target for offshore wind, and will open substantial opportunities for large-scale clean energy development needed to reach net-zero power sector emissions.

We largely support the analysis and rationale used in the PSN to develop WEAs for auction in the New York Bight and the accompanying auction structure, lease stipulations, and other proposals for efficiently and expeditiously leasing the areas in the New York Bight area. BOEM has generally achieved its goal of identifying the offshore locations that are most suitable for wind energy development in the New York Bight, while taking into consideration other ocean users and uses. In fact, commercial and recreational fishing, maritime navigation, and Department of Defense ("DoD") activities have all been accounted for, and potential impacts have influenced the location of the proposed lease areas—appropriately balancing these factors to minimize potential space-use conflicts. We appreciate that the proposed lease areas in the PSN explicitly avoided the most significant impacts to these ocean uses, while acknowledging the ability of potential future mitigation measures to address any remaining impacts as these lease areas are characterized and developed.

We appreciate BOEM's attempts to provide more certainty in the leasing process by removing certain offshore wind lease areas before the PSN where uncertainty regarding navigational concerns exist and deferring the auction of those until BOEM can provide more certainty for stakeholders. BOEM should hold an auction for the eight areas identified in the PSN, including Hudson North. To the fullest extent possible, we also urge BOEM to identify designation of transit lanes, or other general navigation

[4] ACP, *U.S. Offshore Wind Industry Status Update*, (2021) available at https://cleanpower.org/wp-content/uploads/2021/02/ACP_FactSheet-Offshore_Final.pdf.

considerations, and include them in the issuance of the FSN for these areas—and not thereafter.

The PSN is helpful for stakeholders to better understand the basic principles and major decision points that BOEM is considering as it develops a FSN for the New York Bight in many ways, and it generally provides a greater level of certainty for future project risks and opportunities. This, in turn, will help to better inform decisions for industry participants with respect to investments needed to support supply chains prior to submission of Construction and Operations Plans ("COPs"). However, BOEM has proposed certain lease stipulations that are new to this particular PSN and lease sale (not included in prior lease sales) that potentially add substantial uncertainty and deter participation in this leasing process. These include stipulations typically determined much later in the leasing process that, if applied at this stage, could lead to substantial delay or even project cancellation.

We do support certain aspects of the proposed auction in the PSN that have already been conducted in other lease sales. For instance, we support a parallel single auction (not phased or bifurcated) of all the lease areas identified by BOEM in the PSN—conducted in an ascending bidding structure as proposed in the PSN. Specifically, BOEM should hold one single auction in 2021 for all eight proposed lease areas, at the specified scope (size, shape, design) currently outlined in the PSN.[5] These areas have gone through significant review to deconflict issues with ocean users and other stakeholders and should see successful project development. Furthermore, the development of these areas would directly and positively affect the ability for NY and NJ to meet their offshore wind energy targets.

We also urge BOEM, as it has proposed in the PSN, to keep "cash" as the only variable to differentiate bids from participants that are legally, technically, and financially qualified to hold a commercial offshore wind lease. This requirement, of course, must be coupled with full transparency for bidders and bidding entities such that the auction

[5] This is subject to any potential change to the Hudson North lease area, as discussed below.

process is fair and equitable. However, adding non-financial considerations—including but not limited to lease stipulations concerning labor, diversity, and local investment—into the federal leasing process puts new market entrants at a significant disadvantage. Finally, we recommend that BOEM limit winning bidders to a single lease area within the New York Bight WEA, regardless of the number of areas put up for auction.[6]

With the foregoing in mind, BOEM should continue to demonstrate leadership and a commitment to permitting major offshore renewable energy infrastructure by leasing the New York Bight WEAs identified in the PSN in a predictable fashion that has already been fully vetted by stakeholders, and has been proven to deliver results. Delivering cost-competitive offshore wind energy to states and ratepayers—as well as unlocking the significant environmental and economic benefits for the region and the United States as a whole that come from this source of clean energy—requires minimizing regulatory uncertainty. Finally, we encourage BOEM to consider these comments and expeditiously continue the leasing process and to issue an FSN, and subsequently hold a New York Bight WEA auction, in calendar year 2021.

II. Comments

A. Maritime Navigation

Safe vessel navigation is a priority for the offshore wind industry, and we appreciate BOEM's and the U.S. Coast Guard's ("USCG") work in making the New York Bight a safe navigation area for all parties. We note that much of the work has already been done in this area to ensure safe navigation in this area and that the robust deployment of offshore wind is entirely compatible with safe vessel navigation.

In consideration of the current proposed lease areas, we appreciate BOEM's attempts to include discussion of all potential transit lanes and potential fairways ahead of issuing an FSN—as this provides more certainty regarding what parts of the lease areas

[6] We note that not all of ACP's members agree with this approach.

are up for auction. With this end in mind, we strongly believe that the New York and New Jersey Port Access Route Studies ("PARS") currently being conducted in the area should *not* recommend additional encumbrances that might conflict with the Call Areas or with future WEAs. Although we acknowledge any final PARS is beyond the scope of this proceeding, we note the importance of clarity and finality for transit lanes and fairways in facilitating a smooth auction and leasing process. We also urge BOEM to work with USCG to reach an agreement that if and when a final PARS is issued, the recommendations from that PARS will not retroactively apply to areas that have already been leased.

As BOEM noted in the ID Memo, certain navigational concerns may be more appropriately addressed via project-specific Navigation Safety Risk Assessments ("NSRAs") that are incorporated into COPs, which are then subject to federal environmental review and public comment under the National Environmental Policy Act ("NEPA"). We agree that limited additional analysis of traffic concerns and proposed turbine layouts can be conducted on a more project-specific level, to allow for proper mitigation for each project if need be.

Given the above, our comments below focus on the two specific areas of navigational concern on which BOEM requests comment and should be resolved prior to issuing the FSN: (1) vessel transit corridors; and (2) uniform layouts. Overall, we urge BOEM to allow for FSNs and ultimate lease areas that are free of further encroachment. If BOEM determines that spacing between lease areas is necessary—for navigation or any other reason—the lease areas should be designed accordingly and leave the spacing as undesignated ocean areas.

i. Vessel Transit Corridors

In the PSN, BOEM proposes four transit corridors of 2.44 NM, based on the New York State Energy Research and Development Authority ("NYSERDA") and Responsible Offshore Development Alliance ("RODA") report from a March 2019

NYSERDA workshop.[7] If BOEM keeps transit corridors in the FSN, BOEM should work with USCG to properly label transit lanes in terms that will be recognized as internationally acceptable routes or, preferably, simply refrain from designating them as having any specific transit function. Any spacing within lease areas imposed by BOEM is simply that—spacing, or perhaps a separation zone, but not technically a "transit corridor." The separation zones could also serve a useful purpose—apart from transit—of providing non-leased areas for transmission routing, particularly if a regional transmission system is eventually developed. That also would minimize future conflicts. Separation would also allow mariners transiting through one wind farm (*e.g.*, not via a designated "lane") to reorient to a new layout.

In our review, we have not found any supporting documentation that explains how BOEM arrived at the 2.44nm value. Several members of our members have performed calculations but have been unable to reach anything near this value. For instance, USCG arrived at 1nm being acceptable in their MARIPARS assessment for fishing vessels within the lease areas. The MARIPARS report used a 144 ft. vessel which, according to member data collected in the New York Bight areas, is within the limits of New York Bight as well. If these transit lanes/corridors are to remain, we believe that BOEM should provide additional detail about how the 2.44 NM spacing was selected and potentially recalculate these lanes so to provide a more appropriate baseline value (e.g., in the range of 1-2 nm).

ii. Uniform Layout

BOEM has indicated that it is considering prescribing uniform and aligned turbine layouts for Lease Areas, especially in the Hudson South WEA, and requests comments on whether the establishment of uniform turbine layouts negates the need for established transit corridors. While a uniform layout (*i.e.*, 1 x 1 NM) rather than transit corridors may

[7] Available at https://www.nyftwg.com/wp-content/uploads/2020/06/NY-Bight-Transit-Lanes-Workshop-and-Outreach-Summary_-Final-Draft.pdf.

work in some situations, we believe that prescribing any type of uniform layout in the New York Bight WEA is premature, and that developers should be able to optimize and submit the layout that best suits the technology being utilized. Developing a consensus layout will require extensive discussion and analysis of data that has not yet been collected; as a result, this requirement could delay the auction. ACP members prefer flexibility for later project design and permitting, allowing a site-by-site approach to address any stakeholder concerns. We also note that Hudson South is not large enough for a one-size fits all approach to work.

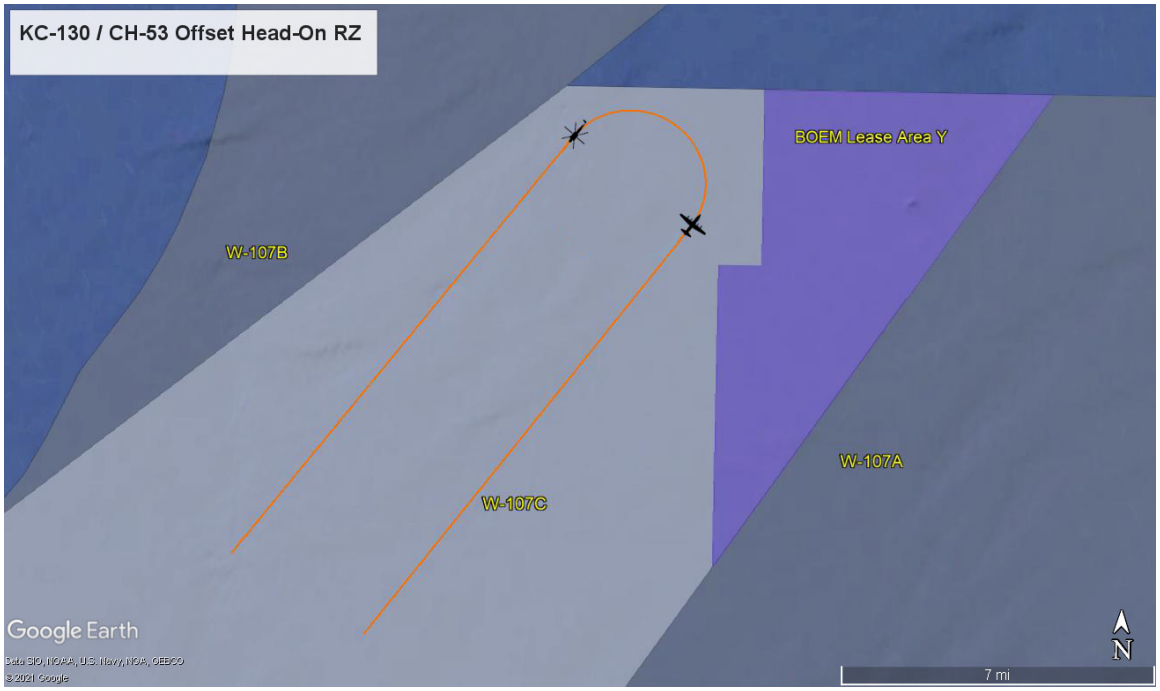
B. DoD Activities

When issuing leases, BOEM should take into account what has already been removed from the areas in the lease areas to reduce conflict with DoD activities, including with respect to the July 16, 2021, leasing update. Previously, we indicated to BOEM that most potential military radar issues appropriate for identification and the associated conflicts have already been addressed. As such, there should be few, if any, further instances where lease areas are required to be removed.

Nonetheless, BOEM, in conjunction with DOD, has indicated that a substantial portion of the Hudson South A lease area—"Y", equivalent to 25,778 acres or about 30% of the total Hudson South A lease area—will be removed from leasing altogether as a "Wind Exclusion" area due to potential conflict with Marine Corps CH-53E Helicopter mid-air refueling exercises. As BOEM noted in the Area ID memo, such exercises occur between 800-5,000 feet in elevation, and portions of this training area could overlap with the potential rotor sweep zone of an offshore wind turbine.

A review of publicly available information about Special Use Airspace and aerial refueling procedures suggests this "Wind Exclusion" may be unnecessary. Special Use Airspace, including the offshore Warning Areas, was charted decades ago, before GPS, based on bearings and distances from terrestrial navigation aids. As such, there are often acute angles that render some of that airspace unusable simply due to aircraft turn radii.

Lease Area Y is largely situated beneath such unusable airspace at the northeast corner of W-107C that is used for helicopter air refueling. A review of specific helicopter refueling procedures further demonstrates that all "rendezvous" types and turns during refueling could be accomplished without any significant impact,[8] as shown here:



Due to transmission and other engineering costs, excluding 25,778 acres from the center of OCS-A 0543 would likely render the entire lease block unviable. We therefore urge BOEM to table DoD's request to exclude the acreage and attempt to resolve, to the fullest extent possible, all remaining conflicts within the recommended WEAs during the process of identifying lease areas for a PSN. BOEM should therefore continue to work with DoD to mitigate potential impacts as the leasing process moves forward. BOEM can then develop and implement site-specific stipulations after identification of the WEAs to address any potential concerns. As BOEM correctly noted in the Area ID memo, many site-specific impacts and concerns can be better addressed through coordination with

[8] NATO Pamphlet ATP-56A, available at http://www.japcc.org/wp-content/uploads/ATP-3.3.4.2_Ed_C_Ver_1_Air-to-Air_Refuelling.pdf .

DoD, FAA, and NOAA during the COP review stage, which will consider mitigation techniques at the site-specific level. There are many years between a lease issuance and a COP approval, and it may be premature to attempt to mitigate such potential impacts at this early stage.

C. Treatment of Hudson North

In the PSN, BOEM notes it is seeking feedback on the proposed number, size, orientation, and location on lease areas and welcomes comments on which, if any, should be prioritized for inclusion, or exclusion, from a lease sale or future lease sales. The July 2021 NPRM for NY PARS suggests that the Hudson North WEA could be compromised, in which case a major portion of the Hudson North WEA will not be able to be developed. The potential conflict injects uncertainty for potential bidders. In particular, it risks diminishing the attractiveness of the Hudson North WEA, and the corresponding return to taxpayers from the lease.

We recommend that BOEM and the USCG work to agree upon, and definitively determine, the scope of any alternative uses under the NY PARS prior to any FSN, so that bidders will have all necessary information on its scope. This would be the optimal solution, as long as it allows for the timely leasing of the Hudson North WEA. As a potential alternative solution, BOEM should consider shifting the Hudson North lease area to the east but ensure that this does not delay leasing for Hudson North or other areas. This would keep the lease area's footprint within the New York Bight Call Area but would remove the prospect of conflict with fairways still under consideration. However, if these conflicts with Hudson North cannot be materially reduced in a timely manner (*i.e.*, would not delay the issuance of the FSN), we recommend that it be postponed and not included in the forthcoming New York Bight auction.

C. One Lease Per Bidder[9]

For the upcoming New York Bight auction, we recommend BOEM limit winning bidders to a single lease area within the New York Bight WEA, regardless of the number of areas put up for auction. Project sizes of one gigawatt are generally economically viable and each lease area provides sufficient acreage for projects of at least that scale. Based on our understanding of market interest and the number of prequalified bidders, we believe it is reasonable to limit each winning bidder to one lease area and to include at least eight leases in the auction.

D. Lease Stipulations

As noted above, we generally support the lease stipulations in the PSN that have already appeared in other leases and have been fully vetted by industry. We also support BOEM's goals of building opportunities for underserved communities, developing the supply chain, ensuring a robust labor force, and other considerations. However, we encourage BOEM to ensure any such stipulations will only be implemented *after* a lease auction. Inserting such stipulations as a part of the lease auction could hurt competition, and most importantly, could impose undue burdens on stakeholders and local organizations prior to the lease auction as they will have to coordinate with a large array of prospective bidders—some of which will not ultimately be successful in their bids. Furthermore, many such stipulations are already a part of state procurement requirements, and in many cases are better suited to state coordination. We therefore encourage BOEM to continue working with states to ensure local investments and commitments to building the workforce, supply chain, and underserved communities are accounted for but not required as part of the lease auction.

[9] We note that not all of ACP's members agree with this approach.

While domestic supply chain investments, workforce development, and environmental justice considerations are all important parts of offshore wind's value proposition, they do carry associated costs and (depending on how they are implemented) can raise the overall price of electricity that a project can deliver. The large number of states successfully adopting market-making offshore wind policies can, in part, be attributed to the flexibility state governments have to emphasize the benefits of offshore wind that matter most to their communities. Some states have set their policies to target the lowest possible cost of clean electricity from offshore wind, while placing fewer requirements on local economic development. Other states have chosen the opposite tack, guaranteeing local investment even if projects must bid into solicitations at higher prices to achieve those mandates.

Industry has been responsive to varying state requirements across that spectrum, but new federal requirements centered on supply chain, labor, or underserved communities would risk stripping states of their ability to emphasize the benefits that matter most to their residents. If BOEM ultimately decides to pursue qualitative lease stipulations centered on those issues, the stipulations should be positioned as incentives rather than mandates, and BOEM should recognize and reward compliance with state policies seeking similar goals.

i. Fisheries Communication Plan Timing

We enthusiastically support early and frequent stakeholder engagement in the leasing process, and generally agree with BOEM's lease stipulation that a Fisheries Communication Plan ("FCP") be included in any eventual lease. However, BOEM's proposal that the FCP must include discussions with fisheries stakeholders regarding any planned facilities within 120 days of lease execution is too administratively inflexible. Requiring an FCP within that time period will not improve coordination among stakeholders, and could potentially cause stakeholder fatigue, especially when those stakeholders might potentially be approached by seven or eight potential developers

within that short period. In short, it is unlikely that engagement within the initial 120-day period would result in a meaningful improvement in stakeholder engagement. Given these constraints, BOEM should instead leverage help from states to coordinate efforts with stakeholders and provide flexibility so that, as long as good faith efforts are made to finalize a FCP and engage with other stakeholders, a strict 120-day limit is not required.

If, however, BOEM determines that this timing is necessary, BOEM itself should take the first step. For instance, BOEM could host an initial coordinated engagement effort with developers and stakeholders within a certain period to introduce key stakeholders and hand off the process to developers from there. A BOEM coordinated effort would clarify and ensure a consistent framework for engagement between developers and other stakeholders. This would allow all parties to be aware of who they should engage with and how, reducing the potential for miscommunication and allowing BOEM to maintain direct control of the starting point for engagement.

ii. Domestic Supply Chains

In the PSN, BOEM notes that it is "considering mechanisms such as lease stipulations, auction credits or credits towards rent and operating fee obligations that would incentivize a durable, domestic supply chain conducive to prompt and orderly development of the Lease Area and renewable energy development on the OCS."[10] Our industry has demonstrated its commitment to a domestic manufacturing and supply chain. For example, Orsted and EEW have recently announced investment to create a monopile foundation manufacturing facility at the Paulsboro Marine Terminal in New Jersey[11] and Equinor plans to help develop New York's South Brooklyn Marine Terminal and the Port of Albany into large-scale offshore wind industrial facilities.[12] Many other examples exist, and our members are currently working with federal, state, and local government to usher in additional agreements and investments that could support a robust domestic

[10] PSN, 86 FR at 31527
[11] Available at https://www.nj.gov/governor/news/news/562020/20201222a.shtml.
[12] Available at https://www.equinor.com/en/news/202101-us-offshore-wind.html.

supply chain once the industry is established. We note that BOEM's efforts are mostly duplicative of existing efforts of the states, and that the states are likely better suited to ensure compliance with similar types of requirements, given time gaps between lease issuance and when financial commitments for supply chain are made.

Including incentives or stipulations for a domestic supply chain in the upcoming New York Bight lease auction is premature and should be avoided. Offshore wind is a nascent industry, and any lease stipulations requiring a domestic supply chain creates a "chicken-or-egg" problem where offshore wind projects and manufacturing facilities may not be able to move forward due to increased risk of construction timetable conflicts, manufacturing orders being unfulfilled, or other unforeseen challenges. For example, imagine a hypothetical scenario where an offshore wind developer hires one of the few available construction lift-vessels for a limited amount of time, but delays in the establishment of a domestic tower manufacturing facility results in the viable construction window for using the vessel closing before all the towers can be fabricated.

Similarly, capital-intensive manufacturing facilities require a reasonably clear future pipeline of orders to stay open and avoid layoffs, and it is unclear what level of demand for domestic manufacturing capacity will exist after currently planned facilities open up. To ensure prompt and orderly development of offshore wind, domestic supply chain investments should be left in the hands of the states and the offshore wind developers with concrete project proposals that are developed post-auction.

iii. Underserved Communities

In the PSN, BOEM notes it that it is "considering lease stipulations to direct benefits to underserved communities and to better develop the workforce needed to design, construct, operate, and maintain offshore wind farms."[13] While these are worthy goals, we believe that they can be best achieved on an individual project basis in

[13] PSN 86 FR at 31527

conjunction with the state governments through offshore wind procurement requirements. Even though there are common challenges facing underserved communities, a state and local government-led approach would be most sensitive to each community's unique history and needs—adding new federal stipulations would serve to split attention away from successful existing state programs.

States in the New York Bight region have shown leadership in addressing the needs of underserved communities in the context of offshore wind development. For example, New York's Climate Leadership and Community Protection Act ("CLCPA") created a Climate Justice Working Group with an important advisory role providing strategic advice for incorporating the needs of disadvantaged communities as the state seeks to achieve its goal of 9,000 megawatts of offshore wind by 2035 and makes broader moves toward a carbon neutral economy.[14] The Climate Justice Working Group supports the individual needs of underserved communities statewide and is comprised of representatives from Environmental Justice communities, including three members from New York City communities, three members from rural communities, and three members from urban communities in upstate New York, as well as representatives from the State Departments of Environmental Conservation, Health, Labor, and NYSERDA.

In New Jersey, the second (and most recent) state solicitation for offshore wind capacity featured several project application requirements to address the needs of underserved communities.[15] Specifically, the New Jersey Board of Public Utilities ("NJBPU") required project applications to include the following components focused on traditionally disadvantaged communities:

- "A description of the Applicant's plan to include diversity and inclusion initiatives as part of the training programs and hiring practices."[16]

[14] *See* https://climate.ny.gov/Climate-Justice-Working-Group.
[15] Available at http://njoffshorewind.com/solicitation-documents/Final-Solicitation-Guidance-Document-with-attachments.pdf.
[16] Available at https://www.njoffshorewind.com/solicitation-documents/Final-Solicitation-Guidance-Document.pdf

- "Planned in-State spending that will support environmental justice communities by providing jobs, grants, training programs, or environmental benefit projects to address historical and cumulative impacts in economically disadvantaged communities, along with an explanation of the nexus between the spending and the Application."[17]

Both of the resulting winning project proposals, Ocean Wind II[18] and Atlantic Shores Offshore Wind,[19] specifically include plans (and direction from the NJBPU) to invest in workforce development in disadvantaged communities.

iv. Project Labor Agreements

In the draft PSN, BOEM notes that it is proposing the addition of a lease stipulation that would require the lessee to make every reasonable effort to enter into a project labor agreement ("PLA") covering the construction stage of any project proposed for the leased area. As justification for including PLAs as a lease stipulation, BOEM points to Executive Order 14008, "Executive Order on Tackling the Climate Crisis at Home and Abroad,"[20] as well as several sections of the Outer Continental Shelf Lands Act.[21] BOEM indicates that "PLAs may support the achievement of [E.O. 14008's]

[17] Available at https://www.njoffshorewind.com/solicitation-documents/Final-Solicitation-Guidance-Document.pdf
[18] Available at https://www.bpu.state.nj.us/bpu/pdf/boardorders/2021/20210630/ORDER%20Solicitation%202%20Board%20Order%20-%20OW2%20B.pdf.
[19] Available at https://www.bpu.state.nj.us/bpu/pdf/boardorders/2021/20210630/ORDER%20Solicitation%202%20Board%20Order%20-%20ASOW%20C.pdf.
[20] *See* PSN, 86 FR at 31530 ("BOEM is proposing the addition of a lease stipulation which would require the lessee to make every reasonable effort to enter into a project labor agreement (PLA) covering the construction stage of any project proposed for the leased area."), *citing* 86 FR 7619 (Jan. 27, 2021)("EO 14008").
[21] PSN, 86 FR at 31530 (citing "achievement of the following OCS Lands Act Factors: i. Expeditious and orderly development (43 U.S.C. 1332 (3)). ii. Safe operations conducted by well-trained personnel (43 U.S.C. 1332 (6)). iii. Any activity is carried out in a manner that provides for safety (43 U.S.C. 1337(p)(4)(A)). iv. Fair return (43 U.S.C. 1337(p)(2)(A)).").

goals—including expeditious development and potentially more years of receipt of operating fees—by assuring labor stability."[22]

We support the goals of the E.O. pertaining to offshore wind. Specifically, § 207 of the E.O. directs the Secretary of the Interior to conduct activities relating to offshore wind in a manner that "creat[es] good jobs"[23]—an objective that our members enthusiastically embrace. Of the planned offshore wind projects that have submitted COPs, most intend to use PLAs in the construction stage of the project.[24] This shows that offshore wind developers are actively seeking to invest in their communities and regions, and are deeply engaged in developing and retaining a long-term workforce. However, the specifics of each project's PLA (or other labor agreement) are more appropriately determined on a project-by-project basis or at the state level. States have proven fully capable of requiring labor agreements as part of their consideration of offshore wind projects.[25]

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[22] PSN 86 FR at 31530

[23] EO 14008 at Sec. 207, 86 FR at 7624.

[24] *See e.g.* Anastasia E. Lennon, *Vineyard Wind signs labor agreement for offshore wind project; 500 union jobs guaranteed*, South Coast Today (Jul. 21, 2021) ("Vineyard Wind and a regional union organization signed a project labor agreement along the city's waterfront Friday, guaranteeing at least 500 union jobs for the project's construction and installation off the coast of Martha's Vineyard."), https://www.southcoasttoday.com/story/news/environment/2021/07/16/vineyard-wind-signs-labor-agreement-offshore-wind-project-unions/7995278002/; Nadja Skopljak, *Dominion Energy Plans CVOW Project Labor Deal*, Offshorewind.biz (Jan. 30, 2020) (agreement to negotiate Project Labor Agreement with three trade unions), https://www.offshorewind.biz/2020/01/30/dominion-energy-plans-cvow-project-labor-deal/; Revolution Wind, COP Volume I at 18 (Noting "Executed Memorandum of Understandings ("MoUs") with regional labor unions to negotiate in good faith a project labor agreement (PLA) and the development of training programs."), .https://www.boem.gov/revolution-wind-cop-volume-I; *Sunrise Wind Wins Bid for Large-Scale New York Offshore Wind Farm*, (Jul. 18, 2019)("Sunrise Wind will also enter negotiations with New York State contractors and trade labor organizations on a Project Labor Agreement to cover construction activities for the Sunrise Wind project, and is committed to paying prevailing wages."), https://us.orsted.com/news-archive/2019/07/sunrise-wind-wins-bid-for-large-scale-new-york-offshore-wind-farm; Ocean Wind, COP Volume 2 at 267 ("Ocean Wind developed a Memorandum of Understanding (MOU) signed with the South Jersey Building and Construction Trades Council in December, calling for a Project Labor Agreement for offshore wind construction jobs that pay prevailing wage."), https://www.boem.gov/ocw01-cop-volume-ii;

[25] *See e.g.* New Jersey Offshore Wind Solicitation #2 Guidance Document at 21 (Sept. 10, 2020) (requiring applicants to provide "A description of the Applicant's plan to use unionized labor for construction and for O&M, including considerations related to prevailing wages, union neutrality agreements, and participation in community benefit agreements that include commitments to local hiring and skills training for local people"), available at https://njoffshorewind.com/solicitation-documents/Final-Solicitation-Guidance-Document-with-attachments.pdf.

We are concerned that requiring PLAs across the board—despite the track record showing that they are already being used—can increase uncertainty for projects. First, there is the risk of federal requirements that are potentially redundant or in conflict with those of participating states. Second, PLAs may be premature for the FSN stage. As noted above, Vineyard Wind only recently signed its PLA—*after* BOEM issued the Record of Decision on its COP. Meanwhile, other projects (supported by policies of their host states) are engaged in good-faith negotiations with organized labor, often under MOUs or other formal agreements, to ensure that offshore wind creates well-paying local jobs. However, at a stage when factors such as the lease scope and transit areas are not final, a PLA requirement could unintentionally deter development (particularly because some lease areas such as the New York Bight could potentially serve more than one state, which may have different infrastructure and workforces). In some cases, local labor organizations may be hesitant to commit to an MOU or PLA with a project until it becomes "real"—having won a state solicitation. Additionally, ongoing activities in states (increasing targets, scoping regional transmission solutions, etc.) makes it difficult to require PLAs at such an early stage, as conditions will likely change rapidly.

D. Non-Financial Considerations/Credits

Rather than outright stipulations, BOEM notes in the draft PSN that it may offer incentives in the form of auction credits or credits towards rent and operating fee obligations for investment in the aforementioned lease stipulation categories. BOEM suggests these incentives could be in the form of a credit for the amount invested in existing state-run programs with similar goals or the establishment of new programs where appropriate, and requested comment on this approach. We urge BOEM to avoid adding non-financial considerations to the forthcoming lease auction for the New York Bight and to keep cash as the only variable to differentiate bids from participants that are legally, technically, and financially qualified to hold a commercial offshore wind lease pursuant to 30 CFR 585.106 and 107. A cash only auction structure was successfully

employed by BOEM in the most recent Massachusetts lease auction, and that structure will work well to maximize competition in the New York Bight area—although we note that there might exceptions to this approach in the context of other areas.

Adding non-financial considerations into the New York Bight auction—including but not limited to labor, diversity, and local investment—would put new market entrants at a significant disadvantage. It takes considerable time and resources to conduct research, outreach, and build partnerships necessary to achieve these worthy non-financial goals. Companies without a secured offshore wind lease are unlikely to bare the associated risk. As a result, considering non-financial factors at the time of a lease auction for the New York Bight would favor companies with existing leases or other footprints in the region, further diminishing competition and increasing consolidation of federal offshore wind leases into the hands of just a few companies.

In conclusion, while we appreciate that non-financial factors are a significant part of offshore wind's value proposition, the risk of further delay of the auction and the relatively mature energy markets in New York and New Jersey suggest that the auction of the New York Bight WEAs is not the optimal place or time for such considerations. Rather, in this context, non-financial factors are better left to the COP approval stage or to the states. States should, and do, weigh, such considerations when determining the winner of their competitive solicitations for offshore wind capacity.

E. Timely auction

We understand that it is BOEM's intent to issue a FSN and subsequently hold a New York Bight WEA auction in 2021 and strongly support that timeline—60-90 days from FSN to auction would be preferable. Delay in the New York Bight auctions beyond 2021 would put state offshore wind procurements and state offshore wind energy goals, as well as the President's goals, at risk. Furthermore, it is critical to move forward with a 2021 auction of all eight lease areas identified by BOEM. If the auction for any of the WEAs slips into 2022, it would limit the amount of competition available for upcoming

state offshore wind procurements. For instance, New Jersey plans to issue a third solicitation for 1,200 megawatts of offshore wind capacity by the middle of 2022.[26] Similarly, New York will require additional lease areas at the earliest opportunity to meet its goal of 9,000 megawatts of offshore wind energy by 2035.

Given these offshore wind goals, as well as other ambitious goals maintained by states from Massachusetts to Virginia, the number of viable competitive projects will be extremely curtailed unless additional lease areas are made available. If some WEAs are delayed into a subsequent auction, companies that fail to secure a lease in the first auction would be at a serious disadvantage for any state procurements, including New Jersey's, which is being held during 2022. A lack of competition would ultimately lead to higher costs for consumers.

F. Parallel auction structure

We support a parallel auction of all eight lease areas identified by BOEM in its PSN. The parallel auction should follow an ascending bidding structure as was conducted in the 2018 Atlantic Wind Lease Sale 4A (ATLW-4A), where BOEM started the auction using the minimum bid prices for each lease area and increased those prices incrementally until no more than one active bidder per lease area remained in the auction.

Parallel auctions using fair and transparent practices that prevent collusion will provide more price certainty to developers and are better for ratepayers than sequential auctions. A parallel auction enables participant bidders to consider the maximum amount of information in the auction system concerning the full suite of WEAs up for auction (rather than a subset of WEAs in sequential auctions). Maximizing price discovery in this way creates the best opportunity for prices to converge on the true market value of the WEAs. Furthermore, the site with least perceived value will be sold first and the best site last, better enabling a rational delta between sites to be achieved. Parallel auctions are

[26] N.J. Board of Public Util. & Interagency Task Force for Offshore Wind, *New Jersey Strategic Plan for Offshore Wind*, at 22 (2020).

also the recommended approach of an academic auction expert who was previously commissioned by BOEM to detail frameworks for offshore wind auctions.[27]

Phased auctions introduce several undesired impacts:

- Increasing the uncertainty for bidders during the auction, and then delaying certain bidders' project development and investments in the offshore wind supply chain and local communities;
- Potentially artificially controlling prices for different lease areas, depending on which lease areas are leased in which phase;
- Setting off a potential chain reaction that delays BOEM offshore wind lease auctions for other regions in the US; and
- Lowering interest in the market by international developers, who at the same time will be contemplating participation in other major auctions across Europe and in Asia-Pacific.

G. Calculation of Rent

We support BOEM's proposed change to the calculation of rent and agree that this proposed calculation appears simpler. However, we seek clarification in the FSN and final lease agreements:

- Will rent on non-generating acreage be due after 100% COD? Once the COP-defined MW are installed and commissioned, we would expect that no more rent is due.
- Addendum B in the lease states that the Operating Fee formula may be based on either NYISO NYC-J hourly pricing (simple average), or on aggregated data from

[27] Ausubel & Cramton, *Comparison of Auction Formats for Auctioning Wind Rights,* at 1 (2011).

S&P Global, ABB, etc. Is this at the Lessee's discretion? Couldn't BOEM simply plan to invoice on a planned forecast/schedule, or at least a specific index?

- The PSN only mentions NYISO Zone J; is this still undecided?

IV. Conclusion

ACP and MAREC Action appreciate the opportunity to provide these comments. If you have any questions, please do not hesitate to contact the undersigned at the contact information listed below. We look forward to working with BOEM as it progresses the leases in the New York Bight WEAs and other future lease areas.

Respectfully,

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