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Stronger Winds Blowing Off the Atlantic Coast

*By Joan M. Bondareff and Jonathan K. Waldron**

A convergence of time, closure of coal-powered plants, falling offshore wind prices, the entry of European developers, Trump administration support, and new gubernatorial policies and state laws has brought us to the point where offshore wind is becoming a reality in the United States. The authors of this article provide an update on the status of wind energy projects off the Atlantic Seaboard.

We are seeing strong signs of a burgeoning offshore wind industry off the Atlantic Seaboard. While modest, the first offshore wind project, Deepwater Wind, is fully operational in Rhode Island state waters, bringing low-cost renewable energy to the residents of Block Island. In addition, new projects in Massachusetts and Rhode Island, described further below, are setting the stage for the construction of much larger offshore wind farms in federal waters. From Maine to North Carolina, governors and states are lining up to be a part of the offshore wind revolution. This is good news for developers, suppliers, consumers, and the environment.

WHY THIS IS HAPPENING NOW

There are several reasons why offshore wind is taking off now. In the first place, the price of offshore wind is coming down—largely based on Europe’s experience with offshore wind and bringing this experience to the United States as lessees, partners, and contractors, as well as the development of improved and more efficient turbines and other related technologies. Indeed, European developers and contractors are now looking to partner with U.S. interests. In addition, companies are finding ways to work within the framework of the Jones Act, as discussed in more detail below.

Second, states and governors are declaring their support for renewable energy, including offshore wind, with new ambitious goals both in policies and laws. Additionally, consumers are demanding more green energy, and offshore wind can help fulfill this demand for greener energy. The same governors that support offshore wind are also staking their vocal opposition to oil and gas leasing off their coasts.

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Furthermore, it is now clear that the Trump administration fully supports offshore wind as part of its efforts for an “all of the above” energy strategy, in an effort to make the United States energy independent and dominant. This goal was expressed at a recent conference in Princeton, New Jersey, by Secretary of the Interior Ryan Zinke.

The Department of the Interior’s support for offshore wind includes its recent proposal to expand lease areas off the entire Atlantic Seaboard (comments were due by July 5, 2018) and calls for the establishment of four new wind energy areas off Long Island, specifically. Secretary Zinke has also called for the expedited permitting of wind projects, including the completion of environmental review requirements within one year.

The Atlantic Outer Continental Shelf where most of the leasing and development is taking place not only has the most abundant wind, but it is also close to population centers on the East Coast that need more supplies of energy, especially in light of the closure of coal-powered plants.

For the most part, labor and industry have welcomed the prospect of new, high-paying wind jobs. Maritime organizations and ports have also mostly welcomed offshore wind, but their concerns for crowded shipping lanes must be taken into account. The same is true for fishermen who fear losing their fishing grounds and have filed a suit against the Bureau of Ocean Energy Management (“BOEM”) to stop wind activities off Long Island.

The production tax credit is still in place for two more years, albeit with a phasedown of the credit on an 80-60-40 schedule, causing some developers to move up their timelines for putting steel in the water.

Finally, the threat of climate change has prompted states and governors to look at new sources of renewable energy, including offshore wind.

RECENT DEVELOPMENTS

The most encouraging news has come from Massachusetts and Rhode Island. Pursuant to 2016 Massachusetts legislation calling for 1600 MW of offshore wind energy in the next decade, Vineyard Wind—composed of Avangrid Renewables and Copenhagen Infrastructure Partners—was selected on May 24, 2018, by Massachusetts Electric Distribution Companies and the Massachusetts Department of Energy Resources to be the first supplier of offshore wind to Massachusetts utilities. Vineyard Wind plans to build an 800 MW wind farm approximately 15 miles south of Martha’s Vineyard, with construction expected to begin in 2019 and operations to begin in 2021. This wind farm is expected to supply renewable energy for up to 750,000 homes. In the same competition, Rhode Island selected Deepwater Wind’s Revolution Wind to construct a new 400MW offshore wind farm to supply offshore wind to Rhode

Island. Revolution Wind will be ten times the size of the Deepwater Wind farm in state waters. Although there are still contracts to be negotiated and environmental documents to be completed, the selection of Vineyard Wind and Deepwater Wind for these new megaprojects is exciting and forecasts major offshore wind projects that will bring renewable energy to both Massachusetts and Rhode Island residents in the near future.

New York and New Jersey also have set ambitious goals for offshore wind. In his 2017 State of the State Address, New York's Governor Cuomo called for 2400 MW of offshore wind power by 2030—enough to power 1.2 million homes. In 2018, he called for at least 800 MW of offshore wind power to be procured in two solicitations—2018 and 2019—to power 400,000 New York homes. The lead agency in New York is the New York State Energy Research and Development Authority (“NYSERDA”), which is currently working with the New York Public Service Commission on wind procurement options. NYSERDA has also published a Master Plan covering 20 topics as well as a document identifying the locations of potential suppliers for the offshore wind industry.

BOEM, which has responsibility for the offshore wind leasing program, has asked for comments on four new sites in the Long Island Bight to address Governor Cuomo's call for more wind energy. The comment deadline was extended through July 30, 2018.

Incoming New Jersey Governor Phil Murphy set the stage for New Jersey to be a part of the offshore wind revolution by immediately signing an executive order calling for 3500 MW of offshore wind energy to be generated by 2030. At the same time, Governor Murphy directed the New Jersey Board of Public Utilities to start the rulemaking process for awarding ocean renewable energy credits (“ORECs”)—a process that had been stymied in the prior administration. And, on May 24, 2018, Governor Murphy signed into law A-3723, which is renewable energy legislation that establishes a new renewable energy standard for New Jersey and codifies his goal of 3500 MW of offshore wind by 2030. Danish developer Ørsted and EDF Renewable Energy have both expressed interest in working with New Jersey on new offshore wind projects.

Coming down the Atlantic Coast, Maryland also made headway in implementing its state renewable energy legislation in 2016 by awarding ORECs worth \$1.8B to two companies: U.S. Wind, a subsidiary of Italian renewable energy giant Renexia, and Skipjack, a division of Deepwater Wind. The ORECs were awarded by the Maryland Public Service Commission at a price of \$131.93/MWh for 20 years, beginning when the plants are operational. The U.S. Wind project consists of 62 turbines that are 12-15 nm offshore, and the Skipjack project consists of 15 turbines that are 17-21 nm offshore. Maryland

also awarded grants in 2018 for workforce development and training, and just announced a new workforce development grant program for 2019. The announcement was open until August 1, 2018.

In North Carolina last year, Avangrid Renewables, part owner of the Vineyard Wind project noted above, won the lease off North Carolina with an auction bid of a little over nine million dollars.

And lastly, Virginia, under Governor Northam's leadership, has passed new legislation declaring that its two-turbine research project—owned by Dominion Energy and managed by Ørsted—is “in the public interest.” On May 22, 2018, Virginia's Department of Mines, Minerals, and Energy issued a Request for Proposals (“RFPs”) seeking qualified contractors to establish how Virginia and Hampton Roads could become the supply and logistics center for offshore wind. Replies to the RFP were due on June 22, 2018.

THE JONES ACT AND OFFSHORE WIND

When offshore wind was still an idea and not a reality in the United States, European developers were asking about the possible implications with the Jones Act. As time has passed, developers have become more comfortable working within the Jones Act framework. This has been accomplished by recognizing that foreign-flag vessels can perform the heavy lift installation, maintenance, and repair work when Jones Act vessels do not have that capability. In addition, by following Customs and Border Protection rulings issued to the oil and gas industry, developers are now complying with the longstanding precedent distinguishing between installation work and the transportation of merchandise by Jones Act vessels to offshore wind farms.

These rulings have recognized that cable-laying and pipe-laying vessels and jack-up barges can be used for installation purposes only, and are not considered the transportation of merchandise subject to the Jones Act.

OPPORTUNITIES FOR THE MARITIME INDUSTRY TO PARTICIPATE IN THE NEW INDUSTRY

While European developers and shipping companies are welcome to participate in the American offshore wind market, we believe that the market provides new opportunities for American workers, shipyards, and ports. In some instances (e.g., Maryland and Massachusetts), a certain percentage of the work must be set aside for U.S. businesses. In other cases, U.S. boat builders are stepping up to the plate and building new offshore supply vessels carrying crew and supplies to offshore wind farms. In addition, U.S. investors and local communities are recognizing that there are real opportunities to create jobs related to wind farms by expanding their terminals and making space available to construct and install the immense components needed to build these large

new farms, and by also developing the necessary logistical network and infrastructure needed to support this fledging industry.

CONCLUSIONS

A convergence of time, closure of coal-powered plants, falling offshore wind prices, the entry of European developers, Trump administration support, and new gubernatorial policies and state laws has brought us to the point where offshore wind is becoming a reality in the United States. This is welcome news for the offshore wind industry, including the developers, their U.S. partners, the maritime industry, maritime labor, and, eventually, consumers.