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Executive Director Determination on Request to Extend FAST-41 Final Completion Date by More Than 30 Days

May 10, 2023

New England Wind Project—NEPA (BOEM), COP (BOEM), Section 106 (BOEM), Section 10/404 (USACE), OCS Air Permit (EPA)

I. SUMMARY

The New England Wind Project (Project), sponsored by Park City Wind, LLC, a wholly owned subsidiary of Avangrid Renewables, LLC (Project Sponsor), is a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.* The Department of the Interior, Bureau of Ocean Energy Management (BOEM), has principal responsibility for an environmental review for the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, which makes BOEM the lead agency for both NEPA and FAST-41.

On April 11, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend interim and final completion dates for multiple Federal actions on the Project’s permitting timetable. BOEM’s request includes extensions for its NEPA action; Construction and Operations Plan (COP) decision; and consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. BOEM also requests an extension of the final completion date for the United States Army Corps of Engineers (USACE) permit decisions under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (Section 10/404). Finally, BOEM seeks an extension of the final completion date for the Environmental Protection Agency’s (EPA) Outer Continental Shelf (OCS) air permit decision under Section 328 of the Clean Air Act, 42 U.S.C. § 7627.¹

¹ This Executive Director Determination does not address modifications for four additional actions referenced in BOEM’s request because the Executive Director did not receive BOEM’s request with enough time to make a decision more than 30 days in advance of the completion dates for the four actions. *See* 42 U.S.C. § 4370m-2(c)(2)(D)(ii) (a completion date may not be modified within 30 days of the completion date). The actions to which this applies include consultation under the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, consultation on essential fish habitat (EFH) pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, and incidental take authorization (ITA) under the Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.* If the agencies responsible for these actions are unable to meet the completion dates currently posted on the Federal Permitting Dashboard, they will need to establish alternative completion dates and adhere to the statutory procedures required by 42 U.S.C. § 4370m-2(c)(2)(F) until they take final action on their respective actions.

For the following reasons, BOEM’s extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

II. LEGAL STANDARD

Pursuant to 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(II) & (IV), a lead agency may extend a final completion date by more than 30 days beyond the original final completion date only after consulting with the project sponsor and obtaining Executive Director approval. After receiving an extension request, the Executive Director must consult with the project sponsor and make a determination on the record whether to grant the requested date change. The Executive Director’s determination is based on consideration of “relevant factors,” including, but not limited to:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

42 U.S.C. §§ 4370m-2(c)(2)(B) and 4370m-2(c)(2)(D)(i)(IV). Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) are not subject to judicial review.

42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).

III. BACKGROUND

BOEM submitted a request to change the interim and final completion dates shown in the table immediately below. BOEM’s justification for the extension requests for each action are detailed thereafter.

Action Agency	Action	Milestone	Original Date	Requested Date
BOEM	EIS	Official Notice of Availability of a Final Environmental Impact Statement (EIS) published in the Federal Register	9/22/2023	11/24/2023
BOEM	EIS	Issuance of Record of Decision (ROD)	7/23/2023	12/26/2023
BOEM	COP	Issuance of decision for permit/approval	10/1/2023	3/25/2024
BOEM	Section 106	Section 106 Consultation Concluded	6/23/2023	12/26/2023
USACE	Section 10/404	Section 10/404 Final Verification/Permit Decision Rendered	10/1/2023	3/25/2024
EPA	OCS air permit	Issuance of Final Decision for Permit/Approval	10/1/2023	2/13/2024

NEPA (action agency: BOEM)

BOEM requests an extension of completion dates for its NEPA action based on the following: (1) the Project Sponsor made an early design change that required re-scoping; (2) alternatives discussions between the lead and cooperating agencies; and (3) delays related to ESA and EFH consultations, which is relevant because BOEM includes information from those consultations in the final EIS.

- 1) Early design change. After BOEM issued a Notice of Intent to prepare an environmental impact statement on June 30, 2021, initiating a 30-day scoping period, the Project Sponsor added two new cable route variants to the Project. Accordingly, on November 22, 2021, BOEM initiated another 30-day NEPA scoping period. As a result of the project

design changes and need for re-scoping, in late 2021 BOEM and the Project Sponsor agreed to a 60-day NEPA schedule delay.

- 2) Alternatives discussions. The lead and cooperating agencies had extensive alternatives discussions for this Project prior to issuing the draft EIS. BOEM could not complete the draft EIS until the agencies agreed upon the range of alternatives to be included in the NEPA review.
- 3) ESA and EFH consultations. The timing of the ESA and EFH consultations with the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) is relevant to the schedule for the NEPA process. The date for the final EIS typically occurs after the NMFS actions conclude to allow BOEM to incorporate measures from the final consultation documents into the final EIS. Three factors resulted in an approximately six-month delay in the ESA and EFH consultations, including:
 - a) Timing of initial consultation request package submittals: BOEM submitted the consultation request packages to NMFS later than originally anticipated because the consultation packages had to incorporate, among other things, the Project Sponsor's design changes (item 1, above) and the agreed-upon alternatives (item 2, above). Hence, items 1 and 2 above not only impact the overall timing of NEPA completion, but also they have a direct impact on timing of the NMFS consultations by delaying preparation of the consultation packages.
 - b) South Coast cable variant: the lead and cooperating agencies took time reaching agreement on whether to include the South Coast cable variant (the Project Sponsor's least preferred route and for which there was not complete design information available) in the consultation packages.
 - c) Comment and response time: after BOEM submitted the initial consultation request packages, NMFS needed time to comment on the submissions and the Project Sponsor needed time to provide information responding to those comments.

Together, factors (a)-(c) caused the date for NMFS to deem the ESA and EFH consultation packages complete to shift from November 22, 2022, to May 9, 2023 (ESA) and May 24, 2023 (EFH). Because the final completion dates ESA and EFH consultation are correspondingly shifted, BOEM requests that the date for the final EIS be modified so that it occurs after the NMFS actions conclude.

COP and Section 106 (action agency: BOEM)

The COP final completion date and Section 106 completion dates are dependent upon the final completion date of BOEM's NEPA action. BOEM requests that the COP final completion date be extended 90 days beyond the final completion date for a ROD. Because BOEM is meeting its Section 106 consultation obligations through the Section 106 NEPA substitution process, the Section 106 consultation will conclude simultaneously with issuance of the ROD for NEPA.

Section 10/404 (action agency: USACE)

The Section 10/404 final completion date is also dependent upon the final completion date of BOEM's NEPA action. USACE requests a review of 90 days between issuance of the ROD and issuance of USACE's Section 10/404 decision, and therefore, an extension of the Section 10/404 final completion date is requested based upon the extension of the NEPA completion date.

OCS Air Permit (action agency: EPA)

BOEM requests an extension of the final completion date for the OCS air permit based on a one-year statutory deadline provided by the Clean Air Act for EPA to reach an OCS air permitting decision, following their determination that a project sponsor has submitted a complete application. Here, EPA deemed the Project Sponsor's OCS air permit application complete on February 13, 2023, after spending about four months engaging with the Project Sponsor on deficiencies EPA found in the Project Sponsor's initial application submission. Accordingly, the requested final completion date for the OCS air permit action is February 13, 2024.

Consultation with Project Sponsor on Extension Requests

Prior to submitting its extension request to the Executive Director, BOEM consulted with the project sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) and represents that the Project Sponsor has no objection to the proposed permitting timetable extension.

The Executive Director also has consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and the Executive Director has confirmed the Project Sponsor does not object to the requested permitting timetable modifications.

IV. DISCUSSION

For this Project, one factor impacting the overall permitting schedule was the interplay between the NEPA process and the consultations with NMFS. The Executive Director appreciates that BOEM and NMFS have already implemented reforms to better align and improve coordination. For instance, in this Project the alternatives discussion factored into schedule delays for NEPA and consultations with NMFS because the consultation request packages needed to incorporate the agreed-upon range of alternatives. Subsequently, the agencies developed screening criteria to identify the range of alternatives to be analyzed, thus streamlining identification of alternatives for future projects.

The Executive Director notes that early elevation of novel or complex issues could prevent the permitting process from getting stalled for the duration of negotiations among agency staff. For example, early elevation of the question of whether BOEM would include the South Coast cable variant in its consultation request packages may have shortened the time between BOEM's initial consultation request and NMFS deeming BOEM's consultation packages complete. Going forward, the Executive Working Group stood up by BOEM should help address and resolve such issues in a more timely manner.

The Executive Director also highlights the value of having BOEM and cooperating agencies meet jointly with project sponsors—particularly where consultations are concerned. Although the consultation is between BOEM and the cooperating agency, project sponsors possess the most detailed knowledge about the project and thus are uniquely situated to provide details and data in a manner that can resolve cooperating agencies' questions quickly. In contrast, if questions and comments have to flow from the cooperating agency through BOEM to a project sponsor, it will take longer and may lead to miscommunication as questions and responses are passed through BOEM as an intermediary.

V. DETERMINATION

Given the facts as described above, extending all the completion dates addressed in this Executive Director Determination are warranted. BOEM's extension request is **GRANTED** for the NEPA, COP, Section 106, Sections 10/404, and OCS air permit actions, and the permitting timetable shall be revised accordingly.



Christine Harada
Executive Director
Federal Permitting Improvement Steering Council