



PERMITTING COUNCIL

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

November 22, 2023

New England Wind Project — Section 106

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. 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, which makes BOEM the lead agency for both NEPA and FAST-41.

On November 6, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend the final completion date for consultation under Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. This is BOEM's second request to extend various completion dates, including the Section 106 final completion date, on the Project's permitting timetable.¹

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:

¹ The previous Executive Director Determination for the Project is available here:

https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-05/2023-05-10%20New%20England%20Wind%20ED%20Determination_0.pdf

- (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

On November 6, 2023, BOEM submitted a request to change the final completion date for Section 106 consultation from December 26, 2023, to March 1, 2024. BOEM is requesting this extension because two Tribes have requested additional consultation to incorporate their feedback and comments prior to finalizing the Section 106 Memorandum of Agreement (MOA) for signature by consulting parties. The requested date affords time to hold the requested government-to-government consultations for the two Tribes and, thereafter, to hold a fifth consulting party meeting in early January 2024 on the final Section 106 MOA.

The proposed Section 106 completion date is not anticipated to delay the overall project schedule, which is currently under review. BOEM is requesting to move the Section 106 date now, in advance of other permitting action completion date changes under consideration, to ensure the Section 106 date is modified in advance of the statutory 30-day lockout period.²

This is the second time that BOEM has requested an extension for the conclusion of Section 106 consultation. BOEM previously moved the Section 106 completion date from June 23, 2023 to December 26, 2023.³ The previous schedule change was necessary due to changes in the NEPA completion date resulting from a variety of factors, including project design changes made by the Project Sponsor.

² 42 U.S.C. § 4370m-2(c)(2)(D)(ii) (prohibiting the modification of completion dates within 30 days of the completion date).

³https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-05/2023-05-10%20New%20England%20Wind%20ED%20Determination_0.pdf

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 notes that the Project Sponsor expressed concerns with modifying the Section 106 final completion date. The Project Sponsor feels the Section 106 MOA could be finalized in December 2023 and prefers to retain the completion date currently posted on the permitting timetable.

The Executive Director also has consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The Executive Director confirmed that the Project Sponsor prefers that the current completion date be maintained, but the Project Sponsor also understands the lead agency's extension of the completion date to accommodate additional tribal consultation meetings, particularly given that extending the Section 106 completion date will not extend the overall Project permitting timetable.

IV. DISCUSSION

The FAST-41 statute expressly identifies the sensitivity of the natural or historic resources that may be affected by the Project as a relevant factor to consider when modifying the permitting timetable. The Executive Director appreciates BOEM's efforts to afford the Tribes the opportunity to engage meaningfully in the environmental review and authorization process for the Project. Tribal engagement for FAST-41 covered projects is critical to identifying and protecting natural, archeological, and cultural resources as well as locations of historic and religious significance in the project area. Moreover, BOEM is able to accomplish this additional Tribal engagement within the context of Section 106 consultation without extending the overall Project permitting timetable. Given these circumstances, modifying the final completion date for the Section 106 consultation is warranted.

V. DETERMINATION

BOEM's extension request is **GRANTED**, and the permitting timetable shall be revised as requested.



Eric B. Beightel
Executive Director
Federal Permitting Improvement Steering Council