



PERMITTING COUNCIL

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

October 19, 2023

Atlantic Shores South Project; OCS Air Permit

I. SUMMARY

The Atlantic Shores South Project (Project), sponsored by Atlantic Shores Offshore Wind, 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 environmental review for the Project under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, which makes BOEM the lead agency for both NEPA and FAST-41.

On September 20, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend 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.

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 final completion date for EPA's OCS air permit decision from December 29, 2023 to August 21, 2024. The requested date accounts for a one-year statutory deadline that the Clean Air Act gives EPA to reach an OCS air permitting decision following EPA's determination that a project sponsor has submitted a complete application.

EPA deemed the OCS air permit application complete in a letter dated August 21, 2023, after engaging with the Project Sponsor on deficiencies EPA found in the Project Sponsor's initial application, which was submitted in September 2022.

The Project Sponsor submitted additional information and analysis at least four times between its initial submission in September 2022 and the submission EPA deemed complete in August 2023. The deficiencies EPA identified in the Project Sponsor's submissions included, among other things, information related to the New Source Review Best Available Control Technology/Lowest Achievable Emission Rate analysis and the Prevention of Significant Deterioration (PSD) analysis. The Atlantic Shores South Project is near the Brigantine Wilderness Area, which is located in Southeastern New Jersey within the Edwin B. Forsythe National Wildlife Refuge. Because the Brigantine Wilderness Area is a Class 1 wilderness area as defined by the Clean Air Act, EPA has indicated that the PSD regulations require modeling of construction and operation and maintenance emissions both over water and on land. Another FAST-41 covered offshore wind project (Ocean Wind 1) is also near the Brigantine Wilderness Area and was similarly required to undergo this modeling. EPA coordinated extensively with the Project Sponsor to ensure the application contains suitable information to allow EPA to initiate its technical review.

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).

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

The Executive Director recognizes the complexity associated with air quality permits associated with Class 1 lands and understands that such complexities inevitably lead to an iterative process to complete an application. Looking forward, agencies and project sponsors should learn from these challenges to adopt new strategies to reduce the iterations where feasible, avoiding costly timeline extensions. The Executive Director is actively working with the EPA to look programmatically at the OCS air permit program for offshore wind with the intent of identifying and implementing solutions to increase predictability in the process and set clear expectations for applicants.

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