



PERMITTING COUNCIL

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

January 5, 2024

Coastal Virginia Offshore Wind Commercial Project—OCS Air Permit (EPA)

I. Summary

The Coastal Virginia Offshore Wind Commercial Project (Project), sponsored by Dominion Energy Virginia (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 December 6, 2023, BOEM submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to modify the Project’s permitting timetable. Specifically, BOEM seeks to modify 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. This is the second time the Executive Director has granted BOEM authority to modify various actions on the Project’s permitting timetable, including the OCS air permit final completion date that is the subject of this request.¹

For the following reasons, BOEM’s request to modify the permitting timetable is **GRANTED**.

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

¹ See Executive Director Determination dated March 30, 2023, available at: https://www.permits.performance.gov/sites/permits.dot.gov/files/2023-03/2023-03-30%20CVOW%20ED%20Determination%20on%20the%20Record_0.pdf

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)(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 seeks to modify the OCS air permit final completion date as shown in the table immediately below.

Action Agency	Action	Milestone	Original Date	Currently Posted Date	Requested Date
EPA	OCS Air Permit	Issuance of Final Decision/Permit Approval	9/15/2023	2/7/2024	4/30/2024

BOEM and EPA previously extended the OCS air permit final completion date by 146 days and now request an additional 83-day extension. The current request, if approved, will extend the OCS air permit final completion date by a total of 229 days, or approximately 7.5 months, beyond the original final completion date.

EPA deemed the Project Sponsor’s OCS air permit application complete on February 7, 2023; however, on June 29, 2023, EPA requested additional clarifying information. The Project Sponsor submitted a revised application on July 31, 2023. Then on August 17, 2023, EPA identified that the Project Sponsor had used outdated emissions factors as inputs to their modeling.

On September 8, 2023, the Project Sponsor provided updated emissions estimates based on current recommended emission factors. EPA and the Project Sponsor met on September 28 and October 12, 2023, to discuss the emission calculations, and during the October meeting EPA asked the Project Sponsor to submit an updated permit application to reflect the revised emissions estimates, incorporate new modeling based on the new emissions factors, and add language related to vessel flexibility for cable splicing, foundations, and wind turbine generator installation. The Project Sponsor submitted the requested updated application on November 15, 2023. EPA now expects to complete its review and issue a decision on or before April 30, 2024, to accommodate the review of the information in the updated permit application and subsequent steps that must occur before a decision on the issuance of an air permit for the Project.

Consultation with Project Sponsor on Permitting Timetable Modification

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 discussed with EPA its concerns on 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). The Executive Director has confirmed that EPA consulted with the Project Sponsor, and the Project Sponsor raised its concerns with the requested permitting timetable modifications. Additionally, the Project Sponsor indicated that the aspects of construction requiring an OCS air permit are scheduled to commence in approximately October 2024.

IV. Discussion

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. The circumstances leading up to this request to modify the permitting timetable highlight the complex, iterative process between the applicant and EPA during the permit review process which can lead to schedule slippage if not properly managed. Nonetheless, given that the requested extension is not likely to impact the construction schedule for the Project, the Executive Director will authorize the requested modification of the Project's permitting timetable.

V. Determination

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



Eric B. Beightel
Executive Director
Federal Permitting Improvement Steering Council