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Re: Comments of Massachusetts Attorney General Maura Healey on the Supplement to the Draft EIS for the Vineyard Wind 1 Proposed Offshore Wind Facility, *Vineyard Wind 1 Construction and Operation Plan Supplement to the Draft EIS*, Docket No. BOEM–2020–0005.

The Office of Massachusetts Attorney General Maura Healey (AGO) is pleased to submit comments on the Bureau of Ocean Energy Management’s (BOEM) Supplement to the Draft Environmental Impact Statement (SEIS) prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370f, for the proposed Vineyard Wind Phase 1 offshore wind energy project (Vineyard Wind 1 or Project).¹ The Project is an important component of Massachusetts’ clean energy future that is expected to provide substantial energy cost-savings to ratepayers. The SEIS will help facilitate and benefit NEPA review for subsequent wind energy facility projects, including those in development in Massachusetts and New England. In these comments, the AGO urges BOEM to approve the Project, moving forward expeditiously and maintaining current Project timelines.

Background

Vineyard Wind LLC proposes to construct, operate, maintain, and eventually decommission an 800-megawatt wind energy facility on the Outer Continental Shelf (OCS) Lease Area OCS-A 0501 off the Massachusetts coast, south of Martha’s Vineyard and Nantucket Islands (Project). The Project would be the first commercial-scale wind energy facility constructed in the OCS lease area.

In December 2018, BOEM prepared the draft Environmental Impact Statement (Draft EIS) for Vineyard Wind’s Construction and Operation Plan. In accordance with BOEM’s 2018 Project timeline, the Record of Decision (ROD) was expected to issue by July 19, 2019, with the final federal permits required to begin Project construction to be issued thereafter, within 90 days.

In 2019, however, BOEM announced that the ROD would be delayed while it prepared the SEIS.² In the SEIS, BOEM expanded the Draft EIS’s analysis to evaluate cumulative impacts of the Project and other reasonably foreseeable offshore wind energy facility projects in

¹ See Notice of Availability of a Supplement to the Draft Environmental Impact Statement for Vineyard Wind LLC’s Proposed Wind Energy Facility Offshore Massachusetts, Docket No. BOEM–2020–0005, 85 Fed. Reg. 35952-54 (June 12, 2020).

² See 40 C.F.R. 1502.9(c).

Atlantic OCS lease areas, forecasting 22,000 megawatts of wind development up and down the East Coast.

The SEIS also expanded the alternatives analysis to evaluate a new vessel transit lane alternative in addition to the no action alternative and five of the fifteen action alternatives initially evaluated in the Draft EIS. The SEIS further considered new commercial fishing information and changes to Vineyard Wind’s Construction and Operations Plan subsequent to the issuance of the Draft EIS.

Under BOEM’s revised Project schedule,³ the ROD is expected to issue on December 18, 2020, with the remaining federal permits to issue within 90 days. Following the public comment period ending July 27, 2020, BOEM will address received comments and incorporate the SEIS analysis into the Final EIS for the Project, before issuing the ROD either approving, approving with modifications, or disapproving the proposed Project. *See* SEIS at ES-1.

The Project Is an Important Component of Massachusetts’ Clean Energy Future.

The AGO is committed to a clean energy future in Massachusetts built around cleaner, renewable energy sources that allow Massachusetts to achieve state emission reduction requirements and regional climate goals. The Project is critically important to the Commonwealth meeting the greenhouse gas emission reductions mandated by the Massachusetts Global Warming Solutions Act (GWSA).⁴ Thus, Massachusetts law requires the state’s utilities to solicit a combined total of 3,200 megawatts of offshore wind capacity by 2035.⁵ The state’s utilities have already committed to buy the Project’s 800 megawatts of wind generated power, the first project to be awarded such a contract. The Project is also fundamentally important to expanding Massachusetts’ renewable energy portfolio, as directed by the Green Communities Act.⁶

³ *See* Vineyard Wind Offshore Wind Facility Permitting Timeline, Revisions, February 7, 2020, <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Vineyard-Wind-SEIS-Permitting-Timetable.pdf>

⁴ Global Warming Solutions Act, St. 2008, c. 298. *See* Massachusetts General Law (Mass. Gen. Laws) c. 21N, §§ 1-9. The GWSA requires the state to reduce economy-wide greenhouse gas emissions 25 percent below 1990 levels by 2020, and 80 percent by 2050. *See id.* §§ 3(b) & 4(a); *see also* 310 Mass. Code Regs §§ 7.72–7.75 & 60.05–60.06 (regulations directed at achieving reductions from multiple greenhouse gas emission source categories to comply with GWSA mandates).

⁵ In 2016, legislation was enacted that required the state’s utilities to procure a combined total of 1,600 megawatts of offshore wind capacity by 2027. *See* Section 83D of chapter 169 of the Acts of 2008, as amended by chapter 188 of the Acts of 2016, An Act to Promote Energy Diversity (the “Energy Diversity Act”). This increased to 3,200 megawatts by 2035 at the Massachusetts Department of Energy Resources’ direction, as authorized by legislation in 2018. *See* St. 2018, c. 227, section 21.

⁶ *See* Mass. Gen. Laws c. 25A, § 11F, the Massachusetts Renewable Energy Portfolio Standard for Retail Electricity Suppliers.

Indeed, when evaluating the bid, the electric distribution companies found that the Project will reduce greenhouse gas emissions by 4.92 MMT CO₂ equivalent from 2019 to 2040 versus the base case.⁷ The Project will also reduce emissions of harmful pollutants. Air pollution disproportionately impacts Massachusetts communities of color, in part because energy and industrial facilities are heavily concentrated in low-income communities and communities of color.⁸ As the AGO recently explored, the environmental factors which exacerbated the unequal impact of the COVID-19 pandemic on these communities could be minimized through investment in and development of clean energy generation like this Project.⁹ Moreover, as the Project is anticipated to kickstart a regional industry, its success is anticipated to contribute towards other New England States' meeting their state-law renewable energy requirements.

The Project Is Expected to Result in Ratepayer Cost Savings over the Life of the Contracts.

As the Commonwealth's Ratepayer Advocate, the AGO is keenly attuned to the financial costs and benefits of utility clean energy procurements relative to conventional market purchases. In this instance, the Vineyard Wind I Project will result in savings for ratepayers in connection with their energy and renewable energy credit costs as compared to 20-year forecasts without the Project. Indeed, the Massachusetts Department of Public Utilities estimates that the Project will yield ratepayer savings of \$1.289 billion (nominal).¹⁰

The Project Should Move Forward Expeditiously, Maintaining the Current Timeline.

BOEM's decision to expand the cumulative impact analysis and consider a new vessel transit corridor alternative will ultimately delay Project construction by at least eighteen months. Any additional delay could threaten the Project's financial viability and ultimate construction. Further delay of the Project's commercial operation date also jeopardizes the achievement of Massachusetts' clean energy and climate goals and the promise of substantial ratepayer cost savings. For this reason, the AGO strongly urges BOEM to expeditiously proceed with and maintain the current Project schedule by issuing the ROD no later than December 18, 2020, with all remaining federal permits issuing within 90 days thereafter.

⁷ D.P.U. 18-76/18-77/18-78, Petitions of Eversource Energy, National Grid, and Fitchburg Gas and Electric Light Company for Approval of Long-Term Contracts for Offshore Wind Generation, Joint Testimony of Waltman/Brennan/Glover, at 34 (July 31, 2018).

⁸ See Rosofsky, Anna, Jonathan I. Levy, *et al.*, "Temporal Trends In Air Pollution Exposure Inequality In Massachusetts," *Environ Res.* 2018 February; 161: 76–86. See also Rosofsky, Levy, *et al.*, "The Impact Of Air Exchange Rate On Ambient Air Pollution Exposure And Inequalities Across All Residential Parcels In Massachusetts," *J Exp Sci Environ Epidemiol* 29: 520-530 (2019).

⁹ Office of Massachusetts Attorney General Maura Healey, COVID-19's Unequal Effects in Massachusetts: Remediating the Legacy Of Environmental Injustice and Building Climate Resilience , May 2020, <https://www.mass.gov/doc/covid-19s-unequal-effects-in-massachusetts/download>.

¹⁰ D.P.U. 18-76/18-77/18-78, at 48 (April 12, 2019).

The Expanded Cumulative Impacts Analysis Will Benefit Subsequent Project Review.

The AGO advocates for robust, comprehensive environmental reviews under NEPA, including thorough analysis of indirect and cumulative impacts of energy infrastructure projects and, where appropriate, analysis on a programmatic or regional basis, together with a regional assessment of project need, as in the case of proposed natural gas pipeline projects.¹¹ Programmatic and regional analyses provide a basis for standardized, consistent, and coordinated indirect and cumulative impacts assessments under NEPA review of subsequent project proposals.¹²

Here, BOEM’s expanded analysis evaluating cumulative impacts of the Project and other already proposed or reasonably foreseeable offshore wind energy facility projects can be used in the NEPA reviews of subsequent projects. This will help facilitate timely review of upcoming projects, including those in development for the benefit of Massachusetts and New England residents.

Incorporation of the Vessel Lane Alternative Intersecting with the Project Could Hinder Massachusetts’ Ability to Meet All of its Clean Energy Future Goals.

In the SEIS, BOEM considered a new vessel transit lane alternative, Alternative F, in response to a proposal by the Responsible Offshore Development Association (RODA), a commercial fishing industry coalition. The proposed corridor is intended to benefit fishing vessel traffic between New Bedford, Massachusetts, and other ports in Southern New England, to fishing areas in Georges Bank. *See* SEIS Figure 2.2-1, 2.2-2, at 2-3, 2-4.

The new Alternative F considered six vessel transit corridors of various widths, one of which passes through portions of the Project’s proposed Wind Development Area (WDA). In this analysis, BOEM considered the impact of the vessel transit lane intersecting with the WDA in widths up to four-nautical miles on all Project action alternatives evaluated in the SEIS,

¹¹ *See* Scoping Comments of Massachusetts Attorney General Maura Healey, Tennessee Gas Pipeline Company, L.L.C., Northeast Energy Direct Project, FERC Docket No. PF 14-22-000 (Oct. 16, 2015). *See also* Comments of The Attorneys General Of Massachusetts, Illinois, Maryland, New Jersey Rhode Island, Washington, and the District of Columbia on the Federal Energy Regulatory Commission’s Notice of Inquiry for comments, *Certification of New Interstate Natural Gas Facilities*, FERC Docket No. PL18-1-000 (July 25, 2018).

¹² Programmatic or regional EISs offer a model for regional assessments, which may in certain circumstances be necessary to fully comply with NEPA. *See* 40 C.F.R. § 1508.25 (agencies “shall” consider “closely related,” cumulative, and similar actions together in an EIS); *id.* § 1502.4(c)(1)–(2) (urging federal agencies to consider undertaking a PEIS when they are considering multiple projects in one region, or where projects share “relevant similarities, such as common timing, impacts, alternatives, [and] methods of implementation”). *Cf. Kleppe v. Sierra Club*, 427 U.S. 390, 409-10 (1976) (“When several proposals for [] actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together.”); *Nat’l Wildlife Fed’n v. Appalachian Reg’l Comm’n*, 677 F.2d 883, 888 (D.C. Cir. 1981).

focusing on the transit lane’s direct and indirect impacts on certain other alternatives. The wind turbines generators (WTGs) displaced by the Alternative F transit lane intersecting with the WDA would be relocated further south in the lease area. *See* SEIS at 2-3 – 2-4.

BOEM’s SEIS concluded that implementation of Alternative F may require additional survey work, which, if significant, “would delay Project construction.” SEIS at 2-5. Relocation of Project WTGs would also result in additional transmission losses from cables lengthened to accommodate the Alternative F transit lanes, which “could translate to technical difficulties and additional unanticipated costs” and may require “cable joints not currently technically possible by cable manufacturers.” *Id.*

Moreover, implementation of all the proposed transit lanes intersecting with the Project WDA would diminish the technical capacity of the Project’s offshore wind power generation. *Id.* While the extent of diminished capacity would vary with width of the incorporated transit lanes between two- and four-nautical miles wide, “less clean energy in the region would be produced” for the Alternative F transit lanes passing through the Project WDA. *Id.* Implementation of all six of the RODA-proposed, four-nautical mile transit lanes “would reduce the technical capacity of the Rhode Island and Massachusetts (RI and MA) Lease Areas by approximately 3,300 megawatts, which is 500 megawatts less than the current state demand for offshore wind in the area.” *Id.* *See also* SEIS Section 3.14.2.4 at 3-122 – 22. Additionally, displacement of Project WTGs further south “could reduce the area available for Vineyard Wind to construct future projects within the lease area.” *Id.* at 2-5.

Under these circumstances, incorporation in the ROD of the Alternative F vessel transit lane intersecting with the WTD could threaten the Project’s financial feasibility. Even if the Project could proceed with the Alternative F vessel transit lane passing through the WTD, implementation of either the two- or four-nautical mile width lane will result in a loss of wind-generated energy delivered from the Project to New England, and as a result, diminish the Project’s clean energy benefits to Massachusetts and New England. As discussed above, these benefits include the Project’s contributions to the state’s progress toward meeting greenhouse gas emission reduction requirements under the GWSA and its renewable energy portfolio standard, as well as the Project’s promised ratepayer savings.

Conclusion

For all the above reasons, the AGO urges BOEM to approve the Vineyard Wind I project according to the current timeline. The AGO very much appreciates this opportunity to comment on BOEM’s SEIS for the Project.

Respectfully Submitted

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Comments of the Massachusetts Attorney General
Vineyard Wind 1 Construction and Operation Plan
Supplement to the Draft EIS, Docket No. BOEM-2020-0005

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