

ENHANCING RENEWABLE ENERGY POTENTIAL:
STREAMLINING ENVIRONMENTAL REVIEW

Statement of Dennis J. Duffy,

Vice President

Cape Wind Associates, LLC

before the

U.S. House Committee on the Judiciary,

Subcommittee on Regulatory Reform

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1. Introduction

I appreciate this opportunity to address the Committee. My name is Dennis J. Duffy, Vice President and Counsel of Cape Wind Associates, LLC (“Cape Wind”). For the last twelve years, Cape Wind has been developing the Nation’s first offshore wind generation project. The project’s nearest point to land will be approximately 5 miles off the on the coast of Massachusetts. Most of the turbines will be 6 – 10 miles from the nearest shore. It would generate 468 MW of clean and renewable energy, with no fuel requirements and no air emissions, and would produce at its peak during the daylight hours of greatest consumer demand. This amount would represent approximately 75% of the annual electricity needs of Cape Cod and the Islands of Martha’s Vineyard and Nantucket. The Cape Wind project would be located on a shoal that is outside of the shipping lanes and would impose no restrictions on current uses of the area. Cape Wind enjoys strong support of environmental, consumer advocacy and labor groups and the overwhelming majority of Massachusetts voters. However, it has drawn opposition funded primarily by a few wealthy landowners who may be able, on clear days, to see the project off on the horizon.

The principals of our company have been in the business of developing and operating energy infrastructure projects for more than thirty years. We have developed and operated some of the most efficient natural gas-fired plants operating in the United States, as well as the nation’s two largest biomass plants and New England’s largest solar generation project. We are intimately familiar with federal and state licensing processes for electric power plants. In direct response to mandates of the New England States for renewable energy, we are now focusing upon offshore wind energy

development, which is uniquely well-situated to serve the population centers of the East coast. Offshore wind energy technology has now advanced to the point where it is both proven and reliable and can play a much more meaningful role in our National supply mix. A study commissioned by the Department of Energy entitled “A National Offshore Wind Study” estimates that America’s offshore wind could generate 4,150 GW, approximately four times the current generating capacity of the Nation. However, if we are to realize the potential of new energy sources, we need to ensure that our National energy and environmental policies are implemented in a consistent and timely manner. We know that this technology works. Although Cape Wind will be the first offshore wind farm proposed in the United States, 55 projects are operating successfully in Europe, and the Chinese, after starting much later than us, have already now deployed their first offshore project.

2. Federal Regulatory Process

The Federal and state regulatory processes for offshore renewable energy are thorough and comprehensive, but often not coordinated. One fundamental challenge is the lack any limitation on the duration of the Federal review periods. As a result, with no required end point, opponents can use regulatory stalling and delay tactics to try to financially cripple even a project that meets all statutory standards and serves Federal and State policy objectives. Indeed, the Chairman of our opponents’ group recently admitted in the press that his strategy is one of “delay, delay, delay.”

Cape Wind submitted its Federal permit application to the U.S. Army Corps of Engineers (“USACE”) in November of 2001, pursuant to section 10 of the Rivers and Harbors Act, which governs the placement of structures in Federal waters.

The Corps considered the project for several years and issued a favorable Draft EIS in November, 2004. However, pursuant to the Energy Policy Act of 2005, The Department of the Interior (MMS, now BOEMRE) became the lead federal agency and essentially the process had to begin anew. BOEMRE conducted its own multi-year review process and issued a highly positive Environmental Impact Statement in January of 2009 and its Record of Decision was issued 15 months later, in April of 2010. Secretary Salazar then issued the first lease for OCS renewable energy to Cape Wind in October of 2010 and BOEMRE approved our Construction and Operation Plan (the “COP”) in April 2011. The project thus has been undergoing extensive regulatory and public scrutiny for more than 12 years, and has now received all major permits and approvals. It has also now entered into two long-term contracts with major utilities, which have been approved by the MDPU as “cost-effective” and in the public interest.

The environmental review of Cape Wind’s application was a process that has included the active participation of 17 Federal and State participating agencies and afforded exceptional opportunities for public involvement. During this process, an exhaustive analysis of all potential impacts of the project was conducted, including studies of issues including potential impacts upon existing uses, environmental issues, including potential impacts to fish, birds threatened species and marine mammals, protection of Native American rights, project aesthetics, cost implications and the energy needs of the public.

State Regulatory Process

In addition, there have been extensive state regulatory proceedings. In September of 2002, Cape Wind petitioned the Massachusetts Energy Facilities Siting

Board (“MEFSB”) for authorization of its facilities located within Massachusetts. After an exhaustive review, including 20 days of expert testimony, on May 10, 2005, the MEFSB approved Cape Wind’s petition based upon its findings that Cape Wind’s energy is needed (i) to reliably meet the growing need for power in the region; (ii) to stabilize prices to electric rate payers; and (iii) to offset air emissions from fossil generators. Moreover, in 2009 the MEFSB issued a Certificate of Environmental Impact and Public Interest to Cape Wind and such grant has been upheld on appeal by the Massachusetts Supreme Judicial Court. In addition, the Massachusetts Department of Public Utilities has approved Cape Wind’s long-term power sales agreements with National Grid and Northeast Utilities, finding that “it is abundantly clear that the Cape Wind facility offers significant benefits that are not currently available from any other renewable resource” and that the “benefits outweigh the costs of the project.” D.P.U. 10-54.

3. Judicial Appeals.

Along the way, opponents sought to appeal regulatory decisions to the federal or state courts, and Cape Wind has prevailed in 13 cases to date. Notwithstanding this extensive review and the appeals we have already won, the project still faces appeals of its federal approvals brought by well-funded special interest groups that have sought to delay the review process at every turn. In light of our experiences on this project, we offer the following three policy suggestions for your consideration.

4. Policy Recommendations

A. Limit Time Periods of Agency Review.

First, national policy objectives would be far better served if the environmental review of proposed renewable energy facilities were conducted in a

timelier manner, pursuant to specific statutory timeframes that prevent delay tactics from financially crippling important and worthy projects. We recognize and applaud the progress that has been made by BOEMRE (including its “Smart from the Start” initiative), but firm deadlines applicable to all federal agencies would provide greater certainty to the review schedule. We reference as an example for consideration the energy facility siting acts that have been enacted by many of the New England states, which provide that a thorough and consolidated environmental review of major energy facilities is to be conducted within a statutorily-limited time frame, which is limited by the Massachusetts Energy Facilities Siting Act to 12 months from the date of filing of the application. M.G.L. c. 164, sec. 69J. The Massachusetts Act was adopted in 1973 and has withstood the test of time.

B. Consolidate and Expedite Judicial Review.

Second, renewable energy projects often require multiple federal approvals, each of which is subject to judicial review, processes which can consume additional years and substantial funds. Renewable energy projects that require multiple federal approvals could be expedited significantly if all such reviews were consolidated into a single appellate proceeding brought directly before the Court of Appeals.

There is ample precedent for such a provision in recent Federal energy legislation. The Alaska Natural Gas Pipeline Act of 2003 at section 720e provides for expedited consideration and exclusive review in the D.C. Circuit of any order or action of a federal agency or any challenge under NEPA related to the authorities in the Act.

Similarly, the Energy Policy Act of 2005, section 313, provides for development of a

single consolidated record and for exclusive jurisdiction and expedited consideration by the D.C. Circuit Court of Appeals relating to construction of certain natural gas facilities.

The Massachusetts Energy Facilities Siting Act similarly provides for appeal of Siting Board decisions directly to the Commonwealth's highest court, which appeals must be brought within 20 days, so as expedite final resolution. The Act further provides for the Siting Board to grant a consolidated approval, in lieu of any other state or local approvals that would otherwise be required, in which case the project would face only one consolidated appeal, taken directly to the state's highest court.

If the Nation is to encourage the development of new energy resources, streamlining the judicial review process would be a most effective mechanism for getting facilities on line, and could do so without modifying any substantive rights of review by any aggrieved party.

C. Coordinate Permit review Timelines with the Duration of Investment Incentives.

Third, Congress should address the fact that federal investment incentives for long lead-time renewable energy projects (such as offshore wind, geothermal and biomass projects) are typically put in place for time periods far shorter than the time required for permitting and environmental review. For example, current provisions for the Investment tax Credit ("ITC") and the Production Tax Credit ("PTC") are set to expire at the end of 2013 -- a time frame that is too short to allow for the review of many proposed projects.

The result is an untenable situation where investors in proposed projects must proceed without knowing whether crucial incentives will still be in effect when such projects have completed the review process and are able to commence construction.

These incentive durations may be workable for projects that take only one or two years to develop, but they are not workable for types of projects with longer permitting timelines. To be effective, tax and other incentives for long lead-time projects must be in place for longer periods, or for stated volumes of additional projects. We thus suggest a long-term extension of tax incentives for offshore wind and other long lead-time renewable projects to at least 2016 or, as currently proposed in S. 401 and H.R.924, for the first 3,000 MW of offshore wind projects to come on line, a measure which would provide a more certain and dependable signal to the investment community facing long-led time developments.

With these changes, I am certain that America can catch up to the current world leaders in offshore wind development, and achieve the objectives of energy independence, green jobs, reductions in air emissions and diversity of energy supply.

Thank you for your consideration.