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Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

November 16, 2021

Sunrise Wind Farm; Construction and Operations Plan

I. Summary

On November 3, 2021, the Department of the Interior, Bureau of Ocean Energy Management (BOEM), the lead agency for the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) to support Federal permitting decisions for the Sunrise Wind Farm—a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C. §§ 4370m *et seq.*—submitted a request to the Federal Permitting Improvement Steering Council (Permitting Council) Executive Director to extend the final completion date for the BOEM action “Construction and Operations Plan, Issuance of decision for permit/approval” from September 20, 2023, to November 17, 2023. BOEM represents that the current date was entered into the Permitting Dashboard in error. For the reasons stated below, the extension request is **GRANTED**, and the permitting timetable has been revised accordingly.

II. Legal Standard

Pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III), a lead agency may extend a final completion date in a FAST-41 permitting timetable to a date more than 30 days after the final completion date originally established only after requesting and obtaining Executive Director approval. After receiving an extension request from the lead agency, the Executive Director must consult with the project sponsor and make a determination on the record that approves or denies the request 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.

Id. Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III) are not subject to judicial review. 42 U.S.C. § 4370m-2(c)(2)(D)(iv)(I).



III. Background

BOEM represents that the final completion date of September 20, 2023, which originally was established on September 7, 2021, was entered in error by a project manager who was new to the office. BOEM represents that the original completion date that should have been entered was November 17, 2023, which BOEM states would be consistent with BOEM’s established practice for other offshore wind projects, where the “Construction and Operations Plan, Issuance of decision for permit/approval” completion date typically post-dates the final completion date for “Issuance of Lead Agency Record of Decision,” by 90 days.

BOEM’s requested extension would schedule the completion date for the Sunrise Wind Farm “Construction and Operations Plan, Issuance of decision for permit/approval” action 92 days after the completion date for the “Issuance of Lead Agency Record of Decision.” Although there is significant variation in the amount of time between the scheduled completion dates for the “Construction and Operations Plan, Issuance of decision for permit/approval” action, and the “Issuance of Lead Agency Record of Decision” actions among the other BOEM-managed FAST-41 covered wind projects on the Permitting Dashboard (ranging from 70-99 days), the intervals do tend to cluster around 90 days as the agency indicates.

BOEM has consulted with the project sponsor as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I), and represents that the project sponsor has no objection to the extension request. The Permitting Council Executive Director consulted with the project sponsor and confirms that the project sponsor does not object to the extension request.

IV. Determination

Although 42 U.S.C. § 4370m-2(c)(2)(D)(i)(III) does not expressly identify clerical error as grounds for granting extension requests, the Permitting Council Executive Director previously has recognized clerical error as a “relevant factor” for granting agency extension requests to correct the timetable on the public-facing Permitting Dashboard to maintain accuracy and to comport with the agencies’ and the project sponsor’s original intent in establishing and coordinating project-related actions. In this circumstance, authorizing the correction of the Sunrise Wind Farm permitting timetable also will help the agency achieve greater consistency across its offshore wind project portfolio, which promotes predictability in both process and schedule. Importantly, the date correction would not affect any other aspect of the project’s permitting timetable, and the project sponsor has no objection to the date correction.

As previously recognized by the Executive Director, BOEM’s Offshore Renewable Energy Program is responsible for coordinating a Federal environmental review and authorization process for an industry sector that is without administrative or operational precedent in the United States. BOEM continues the process of determining how best to apply its regulatory and permitting regime to over a dozen novel offshore wind projects currently under



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review, and is attempting in earnest to achieve a measure of consistency and predictability in the way these project applications are processed, reviewed, and authorized. Granting the extension request would further BOEM's consistency and predictability objectives.

BOEM has committed to implementing internal process improvements—including increasing the coordination among the various offshore wind project managers, and consolidating Permitting Dashboard management and data entry through a designated Dashboard administrator—that that will mitigate the risk of future Dashboard errors, and provide greater uniformity and predictability in the environmental review and authorization process for all FAST-41 covered offshore wind projects. Accordingly, BOEM's extension request is **GRANTED**, and the completion date for the "Construction and Operations Plan, Issuance of decision for permit/approval" action has been revised accordingly.

Christine Harada
Executive Director
Federal Permitting Improvement
Steering Council