

Departments of the Interior and Energy Agree to Coordinate on Offshore Renewable Energy Projects

By Chuck Sensiba, Julia Wood, and Tyson Kade

On June 29, 2010, the U.S. Department of the Interior (DOI) and the U.S. Department of Energy (DOE) announced a Memorandum of Understanding (MOU) for the Coordinated Deployment of Offshore Wind and Marine and Hydrokinetic Energy Technologies on the United States Outer Continental Shelf (OCS). Under the MOU, DOI's newly formed Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) and DOE's Office of Energy Efficiency and Renewable Energy will collaborate to prioritize and facilitate the development and deployment of commercial-scale offshore renewable energy projects.

MEMORANDUM OF UNDERSTANDING

Recognizing that expeditious and environmentally responsible development of commercial-scale renewable energy projects on the OCS is a national priority, DOI and DOE entered into the MOU for the purposes of augmenting their scientific and technical capabilities regarding the deployment of offshore wind and marine and hydrokinetic technologies, and facilitating greater cooperation regarding these technologies. To that end, DOI and DOE agreed to share information, engage stakeholders, undertake research on technical and environmental issues, and develop appropriate standards and guidelines relating to offshore renewable energy development. Specific collaborative activities that DOI and DOE agreed to undertake include:

- Developing attainable deployment goals for offshore renewable energy projects on the OCS;
- Implementing inter-agency measures to harmonize and synchronize the federal and state permitting processes;
- Developing a plan for offshore wind resource measurement and prediction, starting with the Atlantic Coast;
- Developing a plan for marine and hydrokinetic resource measurement and prediction, starting with the Pacific Coast;
- Developing technical standards and identifying best management practices for OCS renewable energy technologies;
- Pursuing priority leasing and efficient regulatory processes for sites with high potential for commercial-scale OCS renewable energy development; and



- Developing environmental monitoring and mitigation protocols and environmental study efforts.

By choosing to start with the Atlantic Coast for assessing offshore wind resources, the MOU builds on a recently signed MOU between DOI and the States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. That agreement created an Atlantic Offshore Wind Energy Consortium to coordinate issues of regional applicability to promote timely, efficient, and environmentally responsible development of the wind resources of the Atlantic OCS. The Pacific Coast, which will be the initial priority for assessing marine and hydrokinetic energy resources under the MOU, has been the focal point for many developers considering marine and hydrokinetic projects.

Under the MOU, a working group to be designated by DOI and DOE will develop an action plan within 30 days that establishes the goals and deliverables associated with these activities.

IMPLICATIONS

This MOU reflects the Administration's continued focus on promoting the development of renewable energy resources, which has received renewed attention in light of the ongoing oil spill crisis in the Gulf of Mexico. The MOU is among the first public actions taken by the newly reorganized and renamed BOEMRE within DOI.

While the MOU signals that DOI and DOE will work together to promote and facilitate the deployment of commercial-scale offshore renewable technologies, it provides little detail as to how DOI and DOE plan to accomplish this goal. Presumably, greater detail will emerge once the designated working group develops and releases its action plan.

One outstanding issue regarding implementation concerns coordination with the Federal Energy Regulatory Commission (FERC), which was not a signatory to the new MOU. FERC has concurrent jurisdiction with BOEMRE over marine and hydrokinetic energy projects—but not wind projects—on the OCS. (FERC has exclusive licensing jurisdiction over such projects in state waters.) In 2009, FERC and BOEMRE's predecessor, the Minerals Management Service, entered into an MOU and issued a guidance document regarding leasing and licensing for marine and hydrokinetic energy projects on the OCS. (For more information, see August 13, 2009 Issue Alert at: <http://www.vnf.com/news-alerts-384.html>.) It is not clear what the interplay will be between the activities under the two MOUs.

FOR ADDITIONAL INFORMATION

Van Ness Feldman provides counsel and representation to utilities and other developers in obtaining permits and licenses from FERC, and leases and other authorizations from DOI. If you would like additional information regarding the regulation of hydrokinetic energy projects, please contact Chuck Sensiba or Julia Wood in our Washington, DC office or Matt Love in our Seattle, WA office, or any other member of the firm's



Hydroelectric practice. For more information regarding non-hydrokinetic offshore renewable energy projects, please contact Jonathan Simon in our Washington, DC office, or a member of our Electricity practice. All of our attorneys can be reached at 202-298-1800.

© 2010 Van Ness Feldman, P.C. All Rights Reserved.

This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.