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In re:)	
Atlantic Shores Offshore)	
Wind, LLC, for the)	
Atlantic Shores Project 1)	
and Project 2)	Appeal No. OCS 24-01
)	
EPA Permit Number: OCS-EPA-R2 NJ 02)	
)	

The United States Environmental Protection Agency (“EPA” or the “Agency”), Region 2, in consultation with the Administrator’s office, respectfully requests that the Environmental Appeals Board (EAB or Board) remand to Region 2 the Outer Continental Shelf (OCS) air permit issued for the construction and operation of the Atlantic Shores Project 1 and Project 2 (the Project). Region 2 seeks this voluntary remand so that it has the opportunity to reevaluate the Project and its environmental impacts in light of the Presidential memorandum entitled “Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government’s Leasing and Permitting Practices for Wind Projects” (the Presidential Memorandum) issued on January 20, 2025 and published in the Federal Register. *See* 90 Fed. Reg. 8363 (Jan. 29, 2025).

On September 30, 2024, Region 2 issued an OCS air permit (the Permit) for the construction and operation of the Project. Save Long Beach Island, Inc. (Petitioner) filed a

petition for review of this Permit on October 15, 2024 (the Petition), and the EPA filed its response on November 5, 2024. Atlantic Shores Offshore Wind, LLC and Atlantic Shore Offshore Wind Project 1, LLC also filed a permittee response on November 5, 2024. The Petition remains pending before the Board.

In the January 20, 2025 Presidential Memorandum, the President directed the EPA Administrator and heads of other executive agencies to engage in a “comprehensive assessment and review of Federal wind leasing and permitting practices.” Section 2 of the Presidential Memorandum is entitled “Temporary Cessation and Immediate Review of Federal Wind Leasing and Permitting Practices” and directs that EPA not issue permits for offshore wind projects pending the completion of this review. *Id.* Section 2(a) directs that the assessment consider the environmental impact of offshore wind projects upon wildlife, including, but not limited to, birds and marine mammals. *Id.* at 8364. This paragraph of the Presidential Memorandum also expresses concern regarding potential impacts from wind projects on interests such as navigational safety, transportation, national security, and marine mammals. *Id.* The Presidential Memorandum also expresses concern, in Section 1, regarding “the importance of marine life, impacts on ocean currents and wind patterns” as well as the ability of the United States “to maintain a robust fishing industry for future generations.” 90 Fed. Reg. at 8363.

LEGAL BACKGROUND

The EPA regulations governing petitions for review of OCS permits are found in Agency permitting regulations at 40 C.F.R. Part 124. The withdrawal of a permit or portions of a permit by an EPA Regional Administrator is specifically addressed in 40 C.F.R. § 124.19(j), which provides that a Regional Administrator may unilaterally withdraw a permit within 30 days after the Regional Administrator’s response to the petition has been filed.

After the period for unilateral withdrawal has passed, a Regional Administrator may still move for a voluntary remand of a permit so that it may be reconsidered. *See* 40 C.F.R. § 124.19(j). The Agency confirmed this right in the preamble to its final rule that added the 30-day limit on unilateral withdrawals: “This revision will continue to ensure that unilateral withdrawal of a permit will occur before the Board has devoted significant resources to the substantive consideration of an appeal. Nothing in this regulation prevents the Region from seeking to withdraw the permit by motion at any time.” 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013). And the Board has similarly noted the Regional Administrator’s right to seek a voluntary remand outside the 30-day window. *See, e.g., In re City of Nashua, NH*, NPDES Appeal No. 15-06, at 2, 3 (EAB July 16, 2015) (“If the Regional Administrator wishes to withdraw the permit or portions of the permit after the 30-day deadline, it must not do so unilaterally, but must seek leave from the Board.”). Because this permitting action is still under review by the Board, EPA has not completed final agency action on the application. 40 C.F.R. 124.19(l)(2).

40 C.F.R. § 124.19(n) provides that the Board “may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part[.]” The Board has outlined several principles that guide how it uses this authority in its review of such motions. First, the Board has “broad discretion” to grant a voluntary remand. *In re City of Nezperce*, NPDES Appeal No. 19-02, at 2 (EAB Sept. 30, 2019); *see also In re Desert Rock Energy Co.*, 14 E.A.D. 484, 493 (EAB 2009). Second, a voluntary remand “is generally available where the permitting authority has decided to make a substantive change to one or more permit conditions, or otherwise wishes to reconsider some element of the permit decision before reissuing the permit.” *Desert Rock*, 14 E.A.D. at 493 (internal quotation and citation omitted). Third, the Board typically grants a motion for voluntary remand “where the movant

shows good cause for its request and/or granting the motion makes sense from an administrative or judicial efficiency standpoint.” *City of Nezperce*, at 2 (quoting *Desert Rock*, 14 E.A.D. at 497).

The Board has also clearly articulated the policy basis for its approach to motions for voluntary remand. In *Desert Rock*, the Board explained that “allowing for remand requests makes sense in light of the purpose of the administrative appeals process, which is to ensure that the agency fully considers the relevant issues and makes a sound, reasoned final decision,” *id.* at 496, and that “... it would be highly inefficient for the Board to issue a final ruling on a permit when the Agency is contemplating changes to that permit.” *Id.* at 497.

ARGUMENT

The Board should grant Region 2’s Motion for Voluntary Remand of the Permit.

Region 2 seeks this remand so that it may implement the Presidential Memorandum and include this permit application in the comprehensive review of permitting practices called for in the Memorandum. Since EPA has not yet taken final action on the Atlantic Shores permit application, it is appropriate to include this pending permit in that review before further action by the Agency. As part of this review, Region 2 intends to confer with other executive branch agencies regarding further evaluation of various impacts that may result from the Project, including impacts on birds, wildlife, fishing, and other relevant environmental concerns described in the Presidential Memorandum.

Section 2(d) of the Presidential Memorandum allows for the Attorney General of the United States to, as appropriate and consistent with applicable law, provide notice of the Presidential Memorandum to any court with jurisdiction over pending litigation related to any aspect of the Federal permitting of offshore wind projects and seek appropriate relief consistent

with this order, pending the completion of the assessment described in Section 2(a). Although this proceeding before the Board is administrative, the relief requested in this motion is in line with the relief contemplated by the Presidential Memorandum.

RESULTS OF CONSULTATIONS WITH OTHER PARTIES

REGARDING THIS MOTION

In accordance with 40 C.F.R. § 124.19(f)(2), the undersigned counsel for movant Region 2, Sara Froikin, contacted counsel for both the Petitioner and for Atlantic Shores Offshore Wind, LLC and Atlantic Shore Offshore Wind Project 1, LLC, to determine if any of the parties would assent to this motion.

Counsel for the Petitioner indicated that Petitioner does not oppose this motion.

Counsel for Atlantic Shores Offshore Wind, LLC and Atlantic Shore Offshore Wind Project 1, LLC indicated that they object to this motion, and plan to file a response brief providing the grounds for their objection.

CONCLUSION

For all of the foregoing reasons, EPA Region 2 respectfully requests that the Board grant Region 2's motion for voluntary remand.

Date: February 28, 2025

Respectfully submitted,

Sara Froikin
Assistant Regional Counsel

U.S. EPA Region 2
290 Broadway, 16th Floor
New York, New York 10007
Froikin.Sara@epa.gov
212-637-3263

Of Counsel:

Brian Doster
Air and Radiation Law Office
EPA Office of General Counsel (MC 2344A)
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Doster.Brian@epa.gov
202-564-7606

STATEMENT OF COMPLIANCE WITH WORD COUNT

I hereby certify that EPA Region 2's Motion for Voluntary Remand contains 1,283 words, as calculated using Microsoft Word word-processing software.

Sara Froikin

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I hereby certify that a true and correct copy of the foregoing EPA Region 2's Motion for Voluntary Remand was filed electronically with the Clerk of the Environmental Appeals Board using the EAB eFiling System, and were served via electronic mail on:

Attorney for Petitioner

Hayley Fink
Hogan Lovells US LLP
hayley.fink@hoganlovells.com

Attorneys for Atlantic Shores Offshore Wind, LLC

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