

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

CAPE WIND ASSOCIATES, LLC

EPA Permit No. OCS-R1-01

Appeal No. OCS 11-01

CAPE WIND ASSOCIATES, LLC'S MOTION FOR EXPEDITED REVIEW

Cape Wind Associates, LLC ("CWA") respectfully moves this Board for expedited review and resolution of the petition for review challenging the Outer Continental Shelf Air Permit No. OCS-R1-01 ("OCS Permit") issued by the United States Environmental Protection Agency, New England Region 1, to CWA on January 7, 2011. The OCS Permit relates to CWA's proposal to construct and operate a wind energy facility on Horseshoe Shoal in the federal waters of Nantucket Sound. CWA is moving towards construction of the Nation's first offshore wind project in order to take advantage of time-limited federal incentives for large-scale renewable energy projects. In order to qualify for these incentives, CWA must begin construction of the Cape Wind Project (the "Project") without undue delay. Failure to begin construction prior to the expiration of the federal incentives would severely impact the Cape Wind Project and lead to higher costs to Massachusetts ratepayers. Therefore, CWA respectfully requests that the Board proceed on an accelerated timeframe.

FACTUAL BACKGROUND

The Cape Wind Project is a major regional clean energy source that will contribute significantly to improving air quality and reducing New England's needs. The Project involves the construction and operation of an electrical generating facility comprised of 130 wind turbines

arranged in a grid pattern on the shallow-water Horseshoe Shoal area of Nantucket Sound. On October 6, 2010, CWA executed the first offshore renewable energy lease with the Department of the Interior, which grants it the “exclusive right and privilege to conduct activities” described in the lease. The lease became effective on November 1, 2010. Provisions contained within the OCS Permit are stipulated conditions of CWA’s lease.

The OCS Permit regulates the air pollutants emitted from vessels engaged in OCS preconstruction, construction and operation activities of the proposed wind energy facility. It does not regulate operation of the eventual wind turbines themselves, or any other aspect of the Cape Wind Project. CWA must also comply with other authorizations issued by other federal agencies.

Large energy projects require careful planning and lead times, not just for construction but also for finance and integration into regional power systems. The Project has been under review by state and federal agencies for more than ten years. There have been multiple and exhaustive environmental reviews under the National Environmental Policy Act and corresponding state laws, all of which have found that the Project is needed, that any potential impacts associated with the Project will be minimal, and that mitigation can be implemented effectively if needed. CWA has received all the state permits and approvals necessary to begin construction. The U.S. Bureau of Ocean Energy Management, Regulation, and Enforcement is currently reviewing CWA’s Construction and Operations Plan (“COP”). CWA expects the COP to be approved within weeks, which will allow CWA to proceed with pre-construction and construction activities. Prompt review is necessary to enable CWA to stay on schedule.

GROUND FOR RELIEF

The Board generally expedites review of permit appeals where resolution is necessary to allow operations to move forward. *See, e.g., In re Hawaii Elec. Light Co., Inc.*, PSD Appeal

Nos. 01-24 through 01-29, slip op. at 2 (EAB Oct. 18, 2001) (order granting motion to intervene and to expedite). This is so because the Board assigns permit appeals under 40 C.F.R. 124 “involving new source construction the highest priority.” *Id.*; *see also* 40 C.F.R. § 55.6(a)(3) (stating that 40 C.F.R. part 124 applies to the review of an OCS PSD permit). In a similar OCS permit appeal case, the Board stated that:

It is the Board’s general practice to assign petitions for review concerning issues under the Prevention of Significant Deterioration regulations high priority in its docket (relative to other petitions for review where resolution is not a bar to operation or construction).

In re Shell Offshore Inc. Kulluk Drilling Unit, OCS Appeal No. 08-01, 08-02 and 08-03, slip op. at 2 n.3 (EAB Aug. 6, 2008) (Dkt. 9, Order Consolidating Pet. for Review and Granting Leave to Participate); *see also In re ConocoPhillips Co.*, PSD Appeal No. 07-02, slip op. at 2 (EAB Oct. 1, 2007) (stating that PSD appeals receive higher priority on the Board’s docket “relative to other appeals where resolution of the appeal is not a prerequisite to a facility’s construction or operation.”).

Resolution of this appeal is a prerequisite to the commencement of CWA’s construction activities on the OCS and, therefore, consideration of the petition for review should be expedited. The uncertainty created while this petition is pending makes it difficult for CWA to secure the financing needed to commence the Project, and take advantage of time-limited federal incentives for renewable energy. Recognizing the importance of alternative energy to the Nation’s energy future, in the American Recovery and Reinvestment Act of 2009 (“ARRA”) (Pub. L. No. 111-5 123 Stat.115), Congress provided a number of incentives to encourage developers like CWA to build alternative energy facilities. The purpose of the ARRA is to preserve and create jobs, to promote economic recovery in the near term, and to invest in infrastructure that will provide long-term benefits – all things that the Cape Wind Project can help achieve. However, the

federal incentives are time-limited and require that the Project either begin construction or begin operation by a certain date. Further, CWA's Power Purchase Agreement with Massachusetts Electric Company provides for a sharing of the economic benefits of such time-limited federal incentives through reductions in the otherwise applicable pricing, such that delays could lead to higher electricity prices to the public.

Protracted consideration of this petition would cause CWA to suffer real, concrete injury, among other things because regulatory delay would threaten the Project's schedule and eligibility for important incentive measures. A delayed project schedule could compromise the considerable resources CWA has expended in developing the Cape Wind Project, studying renewable energy sources, evaluating offshore wind potential in and around Cape Cod, conducting environmental impact surveys, and gaining regulatory approval for the Cape Wind Project at the local, state, and federal levels, as well as all future benefits from the Project. It also would put at risk CWA's ability to take advantage of time-limited federal incentives for renewable energy projects. Thus, expedited consideration of the petition for review is imperative to preserve the interests of the Cape Wind Project. Because resolution of the appeal is necessary to proceed with Project construction on the OCS, expedited review by the Board is warranted.

The EPA does not object to this motion.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, CWA respectfully requests that the Board expedite review of this matter.

Respectfully submitted,

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This 15th day of March, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2011, a copy of the foregoing Motion for Expedited Review was filed electronically via the Environmental Appeals Board of the U.S. Environmental Protection Agency's Central Data Exchange system.

I further certify that on March 15, 2011, a copy of the foregoing Motion for Expedited Review was served via U.S. Mail on the following counsel:

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