Legal and Regulatory Issues Associated with the Development of Offshore Wind Transmission: An Overview

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Existing BOEM Renewable Energy Lease Areas
Applicable Legal / Regulatory Framework

• Outer Continental Shelf: Bureau of Ocean Energy Management
  − OSW Generation Project
    • Competitive / Non-Competitive Lease with Appurtenant Transmission Easements
    • Site Assessment Plan and Construction and Operations Plan for the Project
    • Coordinated Environmental Review of an “Integrated Project”
  − Independent OSW Transmission
    • Competitive / Non-Competitive Right-of-Way Grant
    • General Activities Plan for the Transmission Project
    • Environmental Review of the “Project” (including reasonably foreseeable impacts)

• State Waters
  − Siting Board / PUC “Public Interest” or “Need” Review
  − State “Waterways” License or Lease
  − State OSW Generation Procurement Requirements
Primary Environmental Permitting Requirements

- National Environmental Policy Act
- Endangered Species Act
- Marine Mammal Protection Act
- National Historic Preservation Act
- Clean Water Act
- Rivers and Harbors Act
- Clean Air Act
- Coastal Zone Management Act
- Applicable State Analogues / Independent Requirements
Primary Energy-Regulatory Considerations

• Generator Lead Line (Single or Bundled)
  − FERC Order 807: 5 Year “Safe Harbor” until Open Access Requirements Apply

• Merchant Line (Elective Transmission Upgrade)
  − FERC’s Chinook Test evaluates justness / reasonableness of rates; potential for undue discrimination or preference; and regional reliability and operational efficiency
  − FERC’s Final Policy Statement on the Allocation of Capacity allows developers to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those “anchor” customers to reach agreement on the key rates, terms, and conditions for procuring up to the full amount of capacity, when the developers broadly solicit interest from potential customers

• RTO Transmission Planning Process
  − Project Selection and Cost Recovery through the RTO OATT
  − FERC Order 1000 “Public Policy Transmission Upgrade” Process
  − Interconnection Queue Process / Requirements and “Single Contingency” Limitations
Relevant Stakeholder Considerations

• Minimizing Costs to Ratepayers
  − “All-in” Electricity Price
  − Stranded / Excess Capacity
  − Cost Overruns
  − Damage Payments
• Minimizing Offshore and Onshore Environmental Impacts
• Minimizing Impacts on Navigation / Commercial Fishing
• Ensuring Reliability
• Timely Achieving Carbon Emission Reduction Goals
Relevant Challenges / Questions

• Coordination & Requirements of State Procurement Processes
• Coordination of BOEM /State Leasing Processes
• Coordination of Environmental Review and Permitting Processes
• Coordination of Engineering Designs / Construction Timing
• Project-on-Project Risk / Liability for Failure to Perform / Litigation Risk
• Risk of Excess Capacity, Stranded Costs and Cost Overruns
• RTO Interconnection Queues / “Reservation” of Transmission Capacity
• Identification and Construction of Required On-Shore Upgrades
• Conformance to Existing FERC / RTO Requirements
• Current Ability to Fully Integrate OSW into Wholesale Markets
• Ability /Need to Use Order 1000 Process in Multi-State RTO Context
Questions?

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