CalWEA

California Wind Energy Association

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Bureau of Ocean Energy Management
Pacific Regional Office, Mail Stop CM 102
760 Paseo Camarillo, Suite 102
Camarillo, California 93010–6002

Submitted via Federal eRulemaking Portal: https://www.regulations.gov/

Re: Docket No. BOEM–2022–0017 – Comments on Proposed Sale Notice for Pacific Wind Lease Sale 1

I. Introduction and Summary

The California Wind Energy Association (CalWEA) is a 22-year-old trade association. CalWEA's members are focused on developing wind energy resources within and directly interconnected to California and off the coast of California, as well as on capturing the related economic and workforce development benefits for California.

CalWEA is pleased to offer comments on the proposed sale notice (PSN) for the sale of commercial wind energy leases on the Outer Continental Shelf in the Humboldt Wind Energy Area (WEA) and Morro Bay WEA offshore California, specifically the multiple-factor bidding protocol that the Bureau of Ocean Energy Management (BOEM) proposes to use to auction the leases.

Our comments recommend ways to foster achievement of the goals expressed in the Biden Administration's Federal-State Offshore Wind Partnership, which seeks to expand "key elements of the supply chain, including manufacturing facilities for offshore wind components, port capabilities, logistics networks needed to install projects, and workforce development to fill good-paying jobs" and to utilize the lease auction process to support these goals.[1] Indeed, CalWEA believes that the bidding protocol will be determinative in whether or not a substantial supply chain will be developed on the West Coast. Without a

[1] See "FACT SHEET: Biden Administration Launches New Federal-State Offshore Wind Partnership to Grow American-Made Clean Energy" available at:

https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/23/fact-sheet-biden-administration-launches-new-federal-state-offshore-wind-partnership-to-grow-american-made-clean-energy/

bidding system that provides substantial credit for a West-Coast-focused supply chain, these developments are highly likely to be almost entirely comprised of components imported from Asia. Moreover, awarding credits for investment commitments that have already been made on the East Coast is likely to greatly reduce competition under Pacific Lease Sale 1.

In summary, therefore, CalWEA recommends that BOEM:

- Increase the bidding credit for workforce training and/or supply chain development to at least 40 percent – but if and only if these credits are expressly tied to the California auction, as explained below.

- Limit bid credits for workforce training and/or supply chain development to investments that directly and verifiably support projects resulting from Pacific Wind Lease Sale 1 or, alternatively, should BOEM determine such a structure is not permissible, incorporate enforcement provisions that ensure additional domestic investments are being made directly due to such credit award.

- Ensure delivery of these benefits through substantial non-compliance penalties.

- Maintain the Wind Energy Area boundaries as currently designated in the PSN, with no reduction in overall size.

- Ensure de-confliction with the proposed Chumash Heritage National Marine Sanctuary.

As explained below, CalWEA believes that BOEM has the statutory and legal ability to fashion credits to increase the odds that project developers will provide benefits to the states and local communities whose support will, in fact, be needed to realize the development of offshore wind projects.

II. Bidding Credits Should Be Increased to Promote Development of a Pacific Supply Chain and Workforce

CalWEA member companies are concerned that, in the absence of a strong multiple-factor bidding system to leverage binding commitments for economic benefits to California and the Western region, the chance to expand the domestic supply chain to this area -- or even nationally -- will be lost. The sheer market reality is that, without appropriate infrastructure, supply chain and workforce development tied specifically to the projects resulting from Pacific Wind Lease Sale 1, those projects are highly likely to rely heavily on imports from East Asia, with few economic benefits flowing to California and affected local communities.

The proposed 20 percent bid credit for bidders with a plan for workforce training and supply chain development is a step in the right direction, but CalWEA believes this credit must be increased to be effective. The intense globalization of the offshore wind supply chain puts California and the nation at a disadvantage against foreign competitors – even for floating platforms production. California's lack of suitable port facilities, its higher costs for steel, cement and labor, and foreign nations' widespread use of financial incentives, all mean that a 20 percent credit will be insufficient to change bidding strategies. A fundamental rule of the market is that developers seeking to win a lease must balance high bids with reductions elsewhere in their project costs. Establishing a West Coast supply chain will require extensive investments; an expanded credit of at least 40 percent is needed to counteract these competitive pressures. However, as explained below, this expansion needs to be accompanied by clear limitations that bind these credits to measurable relevance to the California auction.

Most important, the PSN's bid credit system would award credit for benefits "in the United States," with no requirement that these investments support the California projects resulting from Pacific Wind Lease Sale 1. This means that bidders that have already won East Coast offshore wind leases could gain credit for investments that have already been made to support their East Coast projects even if these investments have no relevance to California. Here are a few examples:

- If a bidder has invested in port infrastructure or a Jones Act compliant offshore wind vessel on the East Coast, but that port and/or vessel has no binding contractual commitment to supply California projects, that investment would qualify for California credits.

- A bidder's investment in a monopile factory on the East Coast would also qualify for California credits, even though that factory is likely to be booked solid with East Coast orders for the next two decades and is unlikely to be available to supply West Coast projects.

- If a bidder has trained offshore oil workers in the Gulf of Mexico in the skills that are cited in the PSN as relevant for offshore wind, those expenditures also would qualify for the company's bid in the California auction even if the bidder cannot demonstrate that those workers will realistically be available for employment in California offshore wind projects.

Such windfall benefits for existing BOEM leaseholders on the East Coast and Gulf Coast would reduce competition under Pacific Wind Lease Sale 1, would fail to create new economic benefits for the nation or California, and thus would not be in the public interest.

For these reasons, we urge BOEM to use its statutory authority to maximize the economic and social benefits from Pacific Wind Lease Sale 1. The Final Sale Notice should restrict workforce and supply chain credits to investments that directly and verifiably support the projects resulting from the California auction. Alternatively, should BOEM determine such a structure is not permissible, bidders should be required to demonstrate that additional, verifiable domestic investments are being made directly due to the credit award.

III. BOEM Has Legal Leeway to Fashion Multiple-Factor Bidding to Ensure Benefits to the State and Local Communities

While the PSN's 2.5 percent bid credit for Community Benefits Agreements is expressly tied to "the geographic use of the Lease Area," its 20 percent credit for workforce and supply chain is national in scope. When questioned about this incongruity, BOEM staff have indicated that they understand their statutory authority requires that bidding credits for workforce and supply chain be national rather than regional in scope. To the contrary, we believe that a close reading of relevant regulations and laws shows that no such limitation exists and that BOEM has statutory authority to require benefits for state and local areas.

Federal code § 585.220-224, which authorizes BOEM to use multiple-factor bidding in its auctions, gives the agency wide latitude to require benefits for states and local jurisdictions. The scope is described in § 585.220 (a)(4): "Factors may include, but are not limited to … public benefits, compatibility with State and local needs." No further limitations are stipulated, so BOEM effectively is given significant discretion to design bidding terms for economic and social benefits.

BOEM's overall legal authority in this matter is similarly broad.

The Outer Continental Shelf Lands Act (43 U.S.C. Sec. 1331 et seq., hereinafter "Act" or "OCSLA") provides for the "expeditious and orderly development, subject to environmental safeguards of minerals and energy in the Outer Continental Shelf, in a manner which is consistent with the maintenance of competition and other national needs." [2] The Act is similarly clear that BOEM's development of those lands should offset the "significant impacts on coastal and non-coastal areas of the coastal States"[3], and that "such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts."[4] The Act provides for some payments to the States but in no way limits its support of States to those payments.

The Act's provisions for leases and rights of way for energy-related purposes are found in Section 8 of the Act, 43 U.S.C. Sec. 1337(p)(1)(C), and subsection 1337(p)(4) echoes the policy statements in Section 1332 by requiring the Secretary in those leases to balance factors that include protecting the environment and natural resources as well as achieving a "fair return" to the United States. A "fair return" to the United States is not defined.

There is no provision of OCSLA which limits the total amount of these credits or requires that they be considered on a national basis. Nor would the Miscellaneous Receipts Act[5]

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[2] 43 U.S.C. Sec. 1132 (3).

[3] 43 U.S.C. Sec. 1132 (4).

[4] Id.

[5] 32 U.S.C. Sec. 3302.

(MRA) limit the amount or location of credits that can be provided, since the MRA requires only that *receipts received* by the federal government be deposited in the U.S. Treasury.[6]

The Act does not require that credits be national in scope. To the contrary, the Act not only says nothing of the kind, but emphasizes repeatedly the need to address individual State and regional impacts. No provision of law limits these credits, and a Fair Return to the United States includes achieving equity for States and local communities.

A fair construction of the Act is to require workforce and supply chain development on a California/Western regional basis, grounded in the economic, labor, and transportation realities of commerce in the West. The mere existence of the Panama Canal demonstrates the issues with moving heavy, large freight from one U.S. coast to another. The development of industrial infrastructure on the West Coast, particularly the fabrication of floating platforms and the integration with turbines, is vital to developing a supply chain on the West Coast. Providing credit for investments already undertaken for developments elsewhere is not relevant to the "expeditious and orderly development" of offshore wind on the West Coast. The same issues apply to workforce development. Training personnel on the East Coast will not result in those personnel easily transferring to the West Coast. California (as well as neighboring states) has a robust and comprehensive system of state-certified, joint employer-union apprenticeships, which can easily be modified to fit the needs of the floating offshore wind industry.

IV. Meaningful Penalties Need to Be Assessed for Non-Compliance

The PSN states that any lessee that fails to fulfill the commitments it made to obtain the bid credits should be obliged to repay the credit plus the ONRR oil and gas rate. However, this rate currently is 5 percent[7] – well below current commercial interest rates. Effectively, charging a below-market rate constitutes a government-subsidized loan for non-compliant bidders, and thus acts as a perverse incentive to all bidders to make unrealistic promises that they cannot comply with. The Final Sale Notice should establish a meaningful non-compliance penalty, up to and including the possible revocation of the lease and re-auction of the parcel.

V. Maintain the Wind Energy Area Boundaries as Currently Designated, with No Reduction in Overall Size

BOEM has already carried out a comprehensive siting analysis of the proposed Morro Bay and Humboldt lease areas, in consultation with other ocean users, and has completely eliminated the Diablo Canyon Call Area from consideration. Any further reduction in the

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[6] It is for this reason that the U.S. Department of Justice allows penalties (which go to the Treasury) to be adjusted by Supplemental Environmental Projects undertaken by a company in lieu of the penalty. See, e.g. https://www.federalregister.gov/documents/2022/05/10/2022-10036/guidelines-and-limitations-for-settlement-agreements-involving-payments-to-non-governmental-third (5/10/22).

[7] See https://www.onrr.gov/reportpay/interest.htm.

WEAs' size would weaken the economic viability of much-needed public and private investments in ports, manufacturing, and transmission, and also would reduce progress toward U.S. and California climate goals. The potential need for corridors, buffers, and other mitigation measures will be thoroughly analyzed and addressed by BOEM and other federal and state agencies in the post-auction regulatory processes for the Site Assessment Plans, Construction and Operations Plans, Design Envelopes, and other environmental and technical reviews, and thus should not be pre-determined now.

VI. Ensure De-Confliction with Chumash Sanctuary

Similarly, the integrity of the Morro Bay WEA must be guaranteed by effective pre-auction coordination between BOEM and NOAA to provide effective assurances that the proposed Chumash Heritage National Marine Sanctuary (CHNMS) will not block transmission cable routes to shore. We strongly urge BOEM to engage with NOAA to ensure that the draft CHNMS regulations, expected to be issued in late 2022, are released prior to the BOEM auction – not afterward – and that they explicitly authorize offshore wind cable routes through the sanctuary.

VII. Conclusion: California and Community Support Will Be Needed to Realize Offshore Wind Projects

The development of the lease areas to be auctioned in Pacific Wind Lease Sale 1 will require public investments in ports and transmission infrastructure and is likely to also require power purchase agreements with higher costs than those of other clean energy options available to California. Unless the state and affected local communities reap some substantial portion of the economic benefits associated with project development, including workforce development and supply chain, the offshore wind projects intended to follow the lease auction may not materialize. By using its statutory authority to reward bidders that maximize benefits to California, local communities and the Western region, BOEM will increase the likelihood that public benefits are created in this process and that the intended projects are actually built.

Sincerely,

Nancy Rader

Nancy Rader
Executive Director