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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2016-0045]

Atlantic Wind Lease Sale 7 (ATLW-7) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore North Carolina (Kitty Hawk)—Proposed Sale Notice and Request for Interest

MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM or “the Bureau”), Interior.

ACTION: Proposed Sale Notice and Request for Interest for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore North Carolina (Kitty Hawk).

SUMMARY: This is the Proposed Sale Notice (PSN) for the sale of one commercial wind energy lease on the Outer Continental Shelf (OCS) offshore Kitty Hawk, North Carolina, pursuant to 30 CFR 585.216. BOEM proposes to offer Lease OCS-A 0508 for sale using an ascending-bid auction. In this PSN, you will find information pertaining to the area available for leasing, proposed lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. BOEM invites public comment during a 60-day comment period following publication of this notice. The issuance of the proposed lease resulting from this sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by the auction winner, would be subject to subsequent environmental and technical reviews prior to a decision to proceed with development. This document is also a Request for Interest (RFI), pursuant to 30 CFR 585.212, to assess if there has been a change in competitive interest in the area encompassing proposed lease OCS-A 0508 since the publication of

the North Carolina Call for Information and Nominations (Call) (77 FR 74204) on December 13, 2012. If BOEM determines that competitive interest in the proposed lease area (OCS-A 0508) still exists, BOEM will proceed with the competitive process set forth in 30 CFR 585.211 through 585.225. If BOEM determines competitive interest in the proposed lease area (OCS-A 0508) no longer exists because only one potential lessee is interested in the area, BOEM may proceed with the non-competitive process set forth in 30 CFR 585.231(d)-(i) following the receipt of the acquisition fee specified in 30 CFR 585.502(a).

DATES: Comments should be submitted electronically or postmarked no later than [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. All comments received or postmarked during the comment period will be made available to the public and considered prior to publication of the Final Sale Notice (FSN).

Everyone wishing to participate as a bidder in the proposed Kitty Hawk lease sale must respond to this notice by the end of the 60-day comment period. Prospective bidders whom BOEM has already determined are qualified to hold an OCS lease for commercial wind energy development offshore North Carolina must submit a response to this notice affirming their continued interest in the proposed lease area. Those who are not yet qualified, but wish to participate as bidders in the proposed lease sale, must submit qualification materials by the end of the 60-day comment period. All qualification materials must be postmarked no later than [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

ADDRESSES: Potential auction participants, Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the PSN in one of the following ways:

1. Electronically: [http:// www.regulations.gov](http://www.regulations.gov). In the entry entitled, “Enter Keyword or ID,” enter BOEM–2016–0045 then click “search.” Follow the instructions to submit public comments.
2. Written Comments: In written form, delivered by hand or by mail, enclosed in an envelope labeled, “Comments on North Carolina PSN” to: BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1320.
3. Qualifications Materials: Those submitting qualifications materials should contact William Waskes, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787–1320, or Will.Waskes@boem.gov. If you wish to protect the confidentiality of your qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption “Contains Confidential Information” and consider submitting such information as a separate enclosure. Treatment of confidential information is addressed in the section of this PSN entitled “Protection of Privileged or Confidential Information.” Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.
4. Interest Affirmation Materials: Potential bidders who submitted nominations in the response to the Call, have been qualified for this sale, and wish to participate in the sale should contact William Waskes, BOEM Office of Renewable Energy

Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1320, or Will.Waskes@boem.gov. If you wish to protect the confidentiality of your materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption “Contains Confidential Information” and consider submitting such information as a separate enclosure. Treatment of confidential information is addressed in the section of this PSN entitled “Protection of Privileged or Confidential Information.” Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Will Waskes, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1320 or Will.Waskes@boem.gov.

AUTHORITY: This PSN and RFI is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (OCSLA), as amended by section 388 of the Energy Policy Act of 2005 (EPAAct), and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211, 585.212, and 585.216.

BACKGROUND:

Area for Proposed Leasing

The area described for leasing in this PSN, the Kitty Hawk Leasing Area (LA), is the same as the Kitty Hawk Wind Energy Area (WEA) that BOEM announced on August 11, 2014. The Area Identification announcement is available at:

<http://www.boem.gov/North-Carolina/>.

The Wilmington East and Wilmington West WEAs, which were also announced on August 11, 2014, have been realigned with the planning and leasing process for the

South Carolina Call Areas. BOEM believes that by realigning the leasing process for these areas, a number of existing issues can be addressed in a holistic manner. For example, the entire Wilmington West WEA, a portion of the Wilmington East WEA, and the South Carolina Grand Strand Call Area (80 FR 73818) are all located within the newly expanded North Atlantic right whale (NARW) critical habitat (81 FR 4838). Further, the State of North Carolina and a number of coastal localities in southern North Carolina have expressed concerns regarding potential visual impacts that could result from wind development offshore North Carolina. Many of these communities have requested that BOEM remove from leasing consideration all areas within 24 nautical miles (nm) of their respective locations, which would include all of Wilmington West, a portion of Wilmington East, and a portion of the Grand Strand Call Area. This is in contrast to South Carolina, where coastal localities such as the City of North Myrtle Beach have indicated that they are in favor of offshore wind development even if it would be located close to shore. Finally, because the Wilmington West WEA is contiguous with the Grand Strand Call Area, wake effects could impact the productivity and viability of multiple offshore wind developments within these areas.

Environmental Reviews

On January 23, 2015, BOEM published a Notice of Availability (NOA) of an Environmental Assessment (EA) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore North Carolina with a 30-day public comment period (80 FR 3621). In response to the NOA, BOEM received 195 comments, which are available at <http://www.regulations.gov>, Docket No. BOEM-2015-0001. Many of the comments focused on mitigation measures to protect wildlife, specifically marine mammals. Based on the comments received in response to the EA, public outreach,

information meetings, and new information received, BOEM decided to make revisions to the EA originally published in January 2015. As a result of the analysis in the revised EA, BOEM issued a Finding of No Significant Impact (FONSI) on September 18, 2015 (80 FR 56494). The revised EA and FONSI can be found at:

<http://www.boem.gov/North-Carolina/>.

BOEM also considered the comments received when developing mitigation measures that will be enforced through the terms, conditions, and stipulations in Addendum C of the proposed lease (OCS-A 0508). These mitigation measures are designed to reduce or eliminate impacts from survey activities. They are based on the best available science and BOEM's Endangered Species Act (ESA) consultation with the National Marine Fisheries Service (NMFS). Additional mitigation measures related to the installation and operation of meteorological towers and/or buoys will be included as terms and conditions of the lessee's Site Assessment Plan (SAP) approval. BOEM will continue to work with interested stakeholders and reassess mitigation measures as research and data become available.

In addition, BOEM has concluded consultations under the ESA and the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) covering the proposed lease sale, associated site characterization surveys, and subsequent site assessment activities. BOEM will initiate consultations with the States of North Carolina and Virginia under the Coastal Zone Management Act (CZMA) concurrent with the publication of this PSN.

In order to guide its consultation under section 106 of the National Historic Preservation Act (NHPA) for renewable energy activities offshore North Carolina, BOEM executed a programmatic agreement (PA) with the State Historic Preservation

Officer of North Carolina and the Advisory Council on Historic Preservation. The PA provides for consultation to continue throughout BOEM's commercial leasing process and the decisionmaking process regarding the approval, approval with modification, or disapproval of a lessees' SAP, Construction and Operations Plan (COP), or other plan. In addition, the PA allows for phased identification and evaluation of historic properties. The PA can be found at: <http://www.boem.gov/South-Atlantic-Renewable-Energy-Activities/>.

On May 7, 2015, BOEM completed its section 106 review for the undertaking of issuing commercial leases within the North Carolina WEAs and published a Finding of No Historic Properties Affected For the Issuance of Commercial Leases within the Kitty Hawk, Wilmington East and Wilmington West Wind Energy Areas For Wind Energy Development on the Outer Continental Shelf Offshore North Carolina. The Finding can be found at: <http://www.boem.gov/NC-WEAs-Lease-Issuance/>.

Additional environmental reviews and consultations will be conducted upon receipt of the Lessee's SAP and COP.

ADDITIONAL PARTICIPATION IN THE PROPOSED LEASE SALE:

Any parties wishing to participate in the proposed Kitty Hawk lease sale that have not already been legally, financially, and technically qualified to hold a lease for commercial wind development offshore North Carolina must submit the required qualification materials by the end of the 60-day comment period for this notice.

Guidelines to prospective lessees on BOEM's requirements to qualify for and hold a renewable energy lease on the OCS and the type of information that should be submitted to demonstrate your legal, technical, and financial qualifications can be found at:

<http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/>

QualificationGuidelines-pdf.aspx. Documentation you submit must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a storage media device to be an acceptable format for submitting an electronic copy. Please note that it may take a number of weeks for BOEM to assess a potential bidder's legal, technical, and financial qualifications. BOEM advises potential bidders who plan to participate in a sale to establish their qualifications promptly. It is not uncommon for BOEM to request additional materials establishing qualifications following an initial review of the qualifications package. BOEM cannot determine a potential bidder to be qualified without a complete qualification package. Potential bidders who BOEM has not determined to be qualified before the FSN is published will not be allowed to participate in the proposed sale.

REQUEST FOR INTEREST:

Affirmation of Interest Received in Response to the North Carolina Call for Information and Nominations of Interest for the Kitty Hawk WEA

Legally, technically, and financially qualified entities who submitted a nomination in response to the North Carolina Call must respond to this notice and indicate whether: (1) they wish to continue with their Call nomination for the Kitty Hawk WEA; or (2) they wish to withdraw their Call nomination from further consideration. If such entities do not respond by the comment period deadline associated with this notice, BOEM will deem their nominations submitted in response to the North Carolina Call to be withdrawn, and they will not be able to participate in the proposed lease sale. BOEM is issuing this Request for Interest due to the large amount of time that has elapsed since its initial solicitation of commercial interest through its Call in December 2012 and the experience of past lease sales, in which a significant number of companies that expressed

competitive interest in response to the Call choose not to submit a Bidder's Financial Form (BFFs) or Bid Deposits.

DEADLINES AND MILESTONES FOR BIDDERS: This section describes the major deadlines and milestones in the auction process from publication of this PSN to execution of the lease pursuant to this proposed sale. This process is organized into five stages: (1) the PSN comment period; (2) from the end of PSN comment period to publication of the FSN; (3) the FSN waiting period; (4) conducting the auction; and (5) from the auction to Lease Execution.

The PSN Comment Period.

- *Submit Comments:* The public is invited to submit comments during this 60-day period, which will expire on [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].
- *Public Seminar:* BOEM will host a public seminar to discuss the lease sale process and the auction format. The time and place of the seminar will be announced by BOEM and published on the BOEM website at <http://www.boem.gov/North-Carolina/>. No registration or RSVP is required to attend.
- *Submit Qualifications Materials:* All qualifications materials must be received by BOEM by the end of the 60-day PSN comment period, [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. This includes materials sufficient to establish a company's legal, technical, and financial qualifications pursuant to 30 CFR 585.106 - 107.

- *Submit Interest Affirmation Materials:* In order to participate in the proposed Kitty Hawk lease sale, potential bidders whom BOEM has determined to be legally, technically, and financially qualified to hold an OCS lease for commercial wind energy development offshore North Carolina, must submit a response to this notice affirming their continued interest in participating in the proposed lease sale by the end of the 60-day comment period, [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

End of PSN Comment Period to FSN Publication.

- *Review Comments:* BOEM will review all comments submitted in response to the PSN during the comment period.
- *Finalize Qualifications Reviews:* BOEM will complete any outstanding reviews of bidder qualifications materials submitted during the PSN comment period and requested by BOEM prior to the publication of the FSN. The final list of eligible bidders will be published in the FSN.
- *Prepare the FSN:* Should BOEM determine that competitive interest still exists in leasing the Kitty Hawk WEA, and BOEM decides to move forward with a lease sale, BOEM will prepare the FSN by updating information contained in the PSN where appropriate.
- *Publish FSN:* If BOEM decides to move forward with a lease sale, BOEM will publish the FSN in the Federal Register.

FSN Waiting Period. During this period, qualified bidders must take several steps before participating in the auction.

- *Bidder's Financial Form (BFF)*: BOEM must receive each qualified bidder's completed and signed BFF no later than the date listed in the FSN. Typically, this deadline is approximately 14 calendar days after publication of the FSN in the Federal Register. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. Blank BFFs can be found at: <http://www.boem.gov/North-Carolina/>. Once the BFF has been processed, bidders may log into *pay.gov* and submit bid deposits. BOEM will only accept an originally executed paper copy of the BFF, and will not consider for this auction BFFs submitted for previous lease sales. The BFF must be executed by an authorized representative as shown on the bidder's legal qualifications. Each bidder is required to sign the self-certification in the BFF, in accordance with 18 U.S.C. 1001 (Fraud and False Statements).
- *Bid Deposits*: Each qualified bidder must submit a bid deposit of \$450,000 no later than the date listed in the FSN. Typically, this deadline is approximately 30 calendar days after the publication of the FSN. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.
- *Mock Auction*: BOEM will hold an online Mock Auction that is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. Final details of the Mock Auction will be provided in the FSN.

Conduct of the Auction. BOEM, through its contractor, will hold an auction as described in the FSN. The auction will take place no sooner than 30 days following publication of the FSN in Federal Register. The estimated timeframes described in this

PSN assume the auction will take place approximately 45 days after publication of the FSN.

From Auction to Lease Execution. There are several steps between the conclusion of the auction and execution of the lease.

- *Bid Deposit Refund:* BOEM will refund the bid deposit of any bidder that did not win the lease. BOEM will provide a written explanation of why the bidder did not win.
- *Department of Justice (DOJ) Review:* The DOJ has 30 days in which to conduct an antitrust review of the auction in consultation with the Federal Trade Commission, pursuant to 43 U.S.C § 1337(c).
- *Delivery of the Lease:* BOEM will send three lease copies to the winner, with instructions on how to sign the lease. The first year's rent is due 45 days after the winner receives the lease copies for execution.
- *Return the Lease:* Within 10 business days of receiving the lease copies, the auction winner must post financial assurance, pay any outstanding balance of their bonus bid (i.e., winning monetary bid minus bid deposit), and sign and return the three signed lease copies.
- *Execution of the Lease:* Once BOEM has received the lease copies and verified that it has received all other required materials, BOEM will execute the lease if appropriate.

AREA PROPOSED FOR LEASING: The area available for sale will be auctioned as one lease, Lease OCS-A 0508 (Kitty Hawk LA). The Kitty Hawk LA consists of 122,405 acres. A description of the proposed lease area can be found in Addendum A of

the proposed lease, which BOEM has made available with this notice on its website at:
<http://www.boem.gov/North-Carolina/>.

Map of the Area Proposed for Leasing.

A map of the proposed Kitty Hawk LA, GIS spatial files, and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM's website at: <http://www.boem.gov/North-Carolina/>.

A large scale map of the area, showing boundaries of the area with numbered blocks, is available from BOEM upon request at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, Phone: (703) 787-1300, Fax: (703) 787-1708.

WITHDRAWAL OF BLOCKS: BOEM reserves the right to withdraw portions of the proposed lease area prior to its execution of the lease based upon relevant information provided to the Bureau.

LEASE TERMS AND CONDITIONS: BOEM has made available proposed terms, conditions, and stipulations for the OCS commercial wind lease to be offered through this proposed sale. If and when the lease is issued, BOEM reserves the right to require compliance with additional terms and conditions associated with approval of a SAP or COP. The proposed lease is on BOEM's website at: <http://www.boem.gov/North-Carolina/>. The lease includes the following seven attachments:

- Addendum A (Description of Leased Area and Lease Activities)
- Addendum B (Lease Term and Financial Schedule)
- Addendum C (Lease Specific Terms, Conditions, and Stipulations)
- Addendum D (Project Easement)

- Addendum E (Rent Schedule post COP approval)
- Appendix A to Addendum C (Incident Report: Protected Species Injury or Mortality)
- Appendix B to Addendum C (Required Data Elements for Protected Species Observer Reports)

Addenda A, B, and C provide detailed descriptions of lease terms and conditions.

Addendum D will be completed at the time of COP approval or approval with modifications. Addendum E will be completed after COP approval or approval with conditions.

BOEM is soliciting comments on the provisions of Addendum C that require the submission of SAP and COP survey plans. Specifically, BOEM is interested in whether potential lessees and other stakeholders find the timeframes associated with those requirements to be reasonable, and whether those provisions could be written in a manner that better describes the realities associated with offshore wind survey efforts (e.g., referring to “survey mobilizations” instead of “SAP surveys” and “COP surveys” specifically).

Plans. Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 12 months of lease issuance and a COP at least 6 months before the end of the site assessment term of the lease.

FINANCIAL TERMS AND CONDITIONS: This section provides an overview of the annual payments required of a lessee that are described in the proposed lease, and the financial assurance requirements that will be associated with the lease if it is awarded.

Rent. Pursuant to 30 CFR 585.224(b) and 585.503, the first year’s rent payment of \$3 per acre is due within 45 days of the date the lessee receives the lease for execution.

Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease (the “Lease Anniversary”). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the lease not authorized for commercial operations, *i.e.*, not generating electricity. However, instead of geographically dividing the lease area into acreage that is “generating” and “non-generating,” the fraction of the lease accruing rent will be based on the fraction of the total nameplate capacity of the project that is not yet in operation. This fraction is calculated by dividing the nameplate capacity not yet authorized for commercial operations at the time payment is due by the anticipated nameplate capacity after full installation of the project (as described in the COP). The annual rent due for a given year is then derived by multiplying this fraction by the amount of rent that would have been due for the lessee’s entire lease area at the rental rate of \$3 per acre.

For example, a 122,405 acre lease (the size of the entire Kitty Hawk LA); will have a rent payment of \$367,215 per year if no portion of the leased area is authorized for commercial operations. If 300 megawatts (MW) of a project’s nameplate capacity is operating (or authorized for operation), and the approved COP specifies a maximum project size of 500 MW, the rent payment will be \$146,886. This payment is based on the 200 MW of nameplate capacity BOEM has not yet authorized for commercial operations. For the above example, this would be calculated as follows:

$$200\text{MW}/500\text{MW} \times (\$3/\text{acre} \times 122,405 \text{ acres}) = \$146,886.$$

If the lessee submits an application for relinquishment of a portion of its lease area within the first 45 calendar days following the date that the lease is received by the lessee for execution, and BOEM approves that application, no rent payment will be due on that relinquished portion of the lease area. Later relinquishments of any portion of the

lease area will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

The lessee also must pay rent for any project easement associated with the lease, commencing on the date that BOEM approves the COP (or modification thereof) that describes the project easement. Annual rent for a project easement that is 200 feet wide and centered on the transmission cable is \$70 per statute mile. For any additional acreage required, the lessee must also pay the greater of \$5 per acre per year or \$450 per year.

Operating Fee.

For purposes of calculating the initial annual operating fee payment and pursuant to 30 CFR 585.506, an operating fee rate is applied to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first twelve months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment is due within 45 days of the commencement of commercial operations. Thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The subsequent annual operating fee payments are calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production for the project. For the purposes of this calculation, the imputed market value is the product of the project's annual nameplate capacity, the total number of hours in the year (8,760), the capacity factor, and the annual average price of electricity derived from a historical regional wholesale power price index. For example, the annual operating fee for a 100 MW wind facility operating at a 40% capacity (i.e.,

capacity factor of 0.4) with a regional wholesale power price of \$40/MWh and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 100\text{MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}} \text{Power Price} \times 0.02 = \$280,320$$

Operating Fee Rate. The operating fee rate is the share of imputed wholesale market value of the projected annual electric power production due to BOEM as an annual operating fee. For the proposed Kitty Hawk LA, BOEM will set the fee rate at 0.02 (i.e., 2 percent) for the entire life of commercial operations.

Nameplate Capacity. Nameplate capacity is the maximum rated electric output, expressed in MW, that the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The lessee will specify in its COP the nameplate capacity available at the start of each year of commercial operations on the lease. For example, if the lessee specifies 20 turbines in its COP, and each is rated by the design manufacturer at 5 MW, the nameplate capacity of the wind facility would be 100 MW.

Capacity Factor. The capacity factor compares the amount of energy delivered to the grid during a period of time to the amount of energy the wind facility would have produced at full capacity. The amount of power delivered will always be less than the theoretical 100 percent capacity, largely because of the variability of wind speeds, transmission line loss, and down time for maintenance or other purposes.

The capacity factor is expressed as a decimal between zero and one, and represents the share of anticipated generation of the wind facility that is delivered to the interconnection grid (i.e., where the lessee's facility interconnects with the electric grid) relative to the wind facility's generation at continuous full power operation at nameplate capacity. For the proposed lease area, BOEM has set the capacity factor for the year in

which commercial operations commence and the six full years thereafter at 0.4 (i.e., 40 percent). At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

Wholesale Power Price Index. Pursuant to 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the PJM Dominion zone for the most recent year of spot price data available. The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due, based on the Lease Anniversary and using annual implicit price deflators as reported by the U.S. Department of Commerce Bureau of Economic Analysis. BOEM proposes to use the PJM Dominion power price as the price in its operating fee formula. BOEM is soliciting further comments on the merits of other electric power prices, including prices from other hubs within the PJM Virginia Power Company electric region that may be used in lieu of or in combination with the current proposed power price.

Financial Assurance.

Within 10 business days after receiving the lease copies and pursuant to 30 CFR 585.515-516, the provisional winner of the Kitty Hawk LA must provide an initial lease-specific bond or other approved means of meeting the lessor's initial financial assurance requirements. The provisionally winning bidder may meet financial assurance

requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand. BOEM encourages the provisionally winning bidder to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms described above can be found in Addendum B of the proposed lease, which BOEM has made available with this notice on its website at: <http://www.boem.gov/North-Carolina/>.

BID DEPOSIT: A bid deposit is an advance cash payment submitted to BOEM in order to participate in the auction. Each qualified bidder must submit a bid deposit of \$450,000 no later than the deadline provided in the FSN. Any qualified bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction. Bid deposits will be accepted online via *pay.gov*.

Following the auction, bid deposits will be applied against bonus bids or other obligations owed to BOEM. If the bid deposit exceeds a bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund bid deposits to non-winners.

BIDDER FINANCIAL FORM: Each bidder must fill out the BFF referenced in this PSN. BOEM has also made a copy of the form available with this notice on its website at: <http://www.boem.gov/North-Carolina/>. BOEM recommends that each bidder designate an email address in its BFF that the bidder will then use to create an account in

pay.gov (if it has not already done so). Bidders may then use the Bid Deposit Form on the *pay.gov* website to leave a deposit.

BOEM will not consider BFFs submitted by qualified bidders for previous lease sales to satisfy the requirements of the proposed Kitty Hawk lease sale. BOEM will also only consider BFFs submitted after the deadline if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. BOEM will only accept an original, executed paper copy of the BFF. The BFF must be executed by an authorized representative who has been identified in the qualifications package on file with BOEM as authorized to bind the company.

MINIMUM BID: The minimum bid is the lowest price BOEM will accept as a winning bid. BOEM has established a minimum bid per acre of \$2.00 or \$244,810 for the proposed lease sale.

AUCTION PROCEDURES: The following is a summary of the auction procedures that BOEM proposes to use if it proceeds with the proposed Kitty Hawk lease sale.

Summary of Auction Format.

As authorized under 30 CFR 585.220(a)(2) and 585.221(a)(1), BOEM intends to conduct the proposed lease sale using an ascending bidding auction with cash as the bid variable. Using an online bidding system to host the auction, BOEM sets an initial asking price for Lease OCS-A 0508 and increases that price incrementally until no more than one active bidder remains in the auction. A bid submitted at the full asking price for the lease in a particular round is referred to as a live bid. During each round, active bidders may: (1) submit a live bid indicating that they are interested in acquiring the lease at the current round's stated asking price, or (2) submit an exit bid (see below for

discussion of exit bids). All bids are considered binding until BOEM has determined the winning bid.

A bidder remains active in the auction as long as it continues to meet BOEM's asking price in each round. If more than one live bid is received in a round, BOEM increases the asking price incrementally and conducts another auction round. BOEM would raise the asking price following any round in which two or more bidders submitted live bids. The auction concludes at the end of the round in which the number of live bids received falls to one or zero.

Asking price increments are in BOEM's sole discretion. They will be determined round-by-round and based on a number of factors, including, but not necessarily limited to, the number of bidders remaining in the lease sale, the expected time needed to conduct the auction, and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease bidding increments as necessary.

Between rounds, BOEM will disclose to all bidders eligible to bid in the next round: (1) the number of live bids in the previous round of the auction (i.e., the level of demand); and (2) the asking price in the upcoming round of the auction.

If a bidder is not willing to meet the asking price in the upcoming round, the bidder may submit an exit bid and then exit the auction. Bidders exiting the auction are allowed to submit one exit bid at an offer price greater than the asking price in the previous round, but less than the asking price in the current round. Exit bids allow bidders to express precisely the maximum price they are willing to offer while also minimizing the chance of ties. If a bidder does not submit any bid at all in the current round, BOEM will treat the bidder as having submitted an exit bid in the current round at the previous round's asking price. If a bidder exits the auction by placing an exit bid (or

by not submitting any bid at all) in the current round, it will not be allowed to submit bids in any subsequent round. BOEM will not consider exit bids for the purpose of determining whether to increase the asking price or to end the auction.

After the final round of the auction, BOEM will determine the provisionally winning bidder to be the bidder with the highest bid, whether the bid was a live bid or an exit bid. If there is a tie, BOEM will resolve the tie by randomized means. The provisionally winning bidder may be disqualified if it is subsequently found to have violated auction rules or otherwise engaged in conduct detrimental to the integrity of the competitive auction.

The auction winner for the proposed lease sale will have 10 business days from receiving the lease to post financial assurance, pay any outstanding balance of its bonus bid, and sign and return three copies of the lease. BOEM reserves the right not to issue the lease to the provisionally winning bidder if that bidder fails to timely sign and pay for the lease or otherwise fails to comply with applicable regulations or terms of the FSN. In that case, that bidder will forfeit its bid deposit. If a bidder fails to timely pay the full amount due, BOEM may consider this to be an indication that the bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 - 107. If a winning bidder does not sign the lease pursuant to the proposed lease sale, BOEM reserves the right to identify the next highest bid submitted during the proposed lease sale and offer the lease pursuant to this bid.

Additional Information Regarding the Auction Format

Bidder Authentication.

For the proposed online auction, BOEM will require two-factor authentication. Prior to the auction, BOEM will send several bidder authentication packages to the

bidders shortly after BOEM has processed the BFFs. One package will contain digital authentication tokens for each authorized individual. The tokens will be sent to the primary point of contact indicated on the BFF. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. ***Bidders are to ensure that each token is returned within three business days following the auction.*** An addressed, stamped envelope will be provided to facilitate this process. In the event that a bidder fails to submit a bid deposit or does not participate in the proposed auction, BOEM will de-activate that bidder's token and login information, and the bidder will likewise be asked to return its tokens within three business days following the auction.

The second package contains login credentials for authorized bidders. The login credentials will be sent to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703-787-1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the Mock Auction.

Timing of Auction.

The FSN will provide specific information regarding when bidders can enter the auction system and when the proposed auction will start. Once bidders have logged in, they should review the auction schedule, which lists the start, end, and recess times of each round in the auction. Each round is structured as follows:

- Bidding round begins;
- Bidders enter their bids;
- Bidding round ends and the recess begins;

- During the recess, the number of live bids received in the previous round and the next round's asking price are posted;
- Bidders review the previous round results and prepare their next round's bids; and
- Next bidding round begins.

The first round will last about 30 minutes, though subsequent rounds may be shorter. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included in the PSN and FSN are tentative. Bidders should consult the auction schedule on the bidding website just before and during the auction for updated times. BOEM anticipates the proposed auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days if necessary, to resolve the auction.

BOEM and the auction contractor will use the auction platform messaging service to keep bidders informed on issues of interest during the proposed auction. BOEM will use the messaging system for auction schedule changes and other updates during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled ending time to place bids. Bidders should bid according to the procedures described in both the FSN and the Auction System Technical Supplement. No information about bidding during a given round is available until the round has closed and results have been posted, so there is no tactical advantage to placing bids early or late in the round.

The timing of the auction will be elaborated on and clarified in the Auction System Technical Supplement which is available on BOEM's website at:

<http://www.boem.gov/North-Carolina/> if and when the FSN is published in the *Federal Register*. The Auction System Technical Supplement will describe auction procedures that are incorporated by reference into the FSN, except in the unexpected circumstance that any of the information in the Auction System Technical Supplement is inconsistent with the FSN, in which case the provisions of the FSN will take precedence.

Alternate Bidding Procedures.

Alternate Bidding Procedures enable a bidder who is having difficulties accessing the Internet to submit its bid via fax using an Alternate Bidding Form available on BOEM's website at: <http://www.boem.gov/North-Carolina/>.

In order to be authorized to use an Alternative Bidding Form, a bidder must call the help desk number listed in the Auction Manual *before* the end of the round. BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company. The bidder must explain the reasons for which he/she cannot place a bid using the online bidding platform. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using the Alternate Bidding Procedures.

If bidders need to submit an Alternate Bidding Form, they are strongly encouraged to do so before the round ends.

REJECTION OR NON-ACCEPTANCE OF BIDS: BOEM reserves the right and authority to reject any and all bids that do not satisfy the requirements and rules of the proposed auction, the FSN, or applicable regulations and statutes.

ANTI-COMPETITIVE REVIEW:

This sale is subject to Federal antitrust laws. Accordingly, following the auction, but before the acceptance of the bid and the issuance of the lease, BOEM will “allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review

the results of the lease sale.” 43 U.S.C. 1337(c). If a provisionally winning bidder is found to have engaged in anti-competitive practices in connection with this sale, BOEM may reject its bid.

Anti-competitive practices may include, but are not limited to:

- An express or tacit agreement among bidders not to bid in an auction, or to bid at a particular price;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the potential to affect the final auction price.

BOEM will decline to award the lease if the Attorney General, in consultation with the Federal Trade Commission, determines that doing so would be inconsistent with the antitrust laws. *See* 43 U.S.C. 1337(c).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see <http://www.justice.gov/atr/public/business-resources.html>, or consult legal counsel.

PROCESS FOR ISSUING THE LEASE: Once all post-auction reviews have been completed to BOEM’s satisfaction, BOEM will issue three unsigned copies of the lease to the provisionally winning bidder. Within 10 business days after receiving the lease copies, the provisionally winning bidder must:

1. Sign and return the lease copies on the bidder’s behalf;
2. File financial assurance, as required under 30 CFR 585.515-537; and
3. Pay by electronic funds transfer (EFT) the balance (if any) of the bonus bid (winning bid less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov*, the website bidders used to submit bid deposits) for payment of the balance of

the bonus bid, following the detailed instructions contained in the “Instructions for Making Electronic Payments” available on BOEM’s website at:

<http://www.boem.gov/North-Carolina/>.

BOEM will not execute a lease until the three requirements above have been satisfied, the provisionally winning bidder’s financial assurance has been accepted pursuant to 30 CFR 585.515, and the provisionally winning bidder’s payment has been processed.

BOEM may extend the 10 business day deadline for executing the lease on the bidder’s behalf, filing the required financial assurance, and/or paying the balance of the bonus bid, but only if BOEM determines the delay was caused by events beyond the provisionally winning bidder’s control.

If the provisionally winning bidder does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right not to issue the lease to that bidder. In such a case, the provisionally winning bidder will forfeit its bid deposit.

Within 45 days of the date that the provisionally winning bidder receives copies of the lease, it must pay the first year’s rent using the *pay.gov* Renewable Energy Initial Rental Payment form available at:

<https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604>.

Subsequent annual rent payments must be made following the detailed instructions contained in the “Instructions for Making Electronic Payments,” available on BOEM’s website at: <http://www.boem.gov/North-Carolina/>.

NON-PROCUREMENT DEBARMENT AND SUSPENSION REGULATIONS:

Pursuant to regulations at 43 CFR Part 42, Subpart C, an OCS renewable energy lessee

must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease, by including this term as a condition in their contracts and other transactions.

FORCE MAJEURE: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction details specified in the FSN, including the date and time, in case of a *force majeure* event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: natural disasters (e.g., earthquakes, hurricanes, floods, blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, or through the BOEM website at: <http://www.boem.gov/Renewable-Energy-Program/index.aspx>. Bidders should call 703-787-1320 if they have concerns.

APPEALS: The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

- (a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons and refund any money deposited with your bid, without interest.
- (b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing final decisions with respect to lease sales are described in 30 CFR 585.118(c).

PROTECTION OF PRIVILEGED OR CONFIDENTIAL INFORMATION:

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to “trade secrets and commercial or financial information that you submit that is privileged or confidential.” 5 U.S.C. 552(b)(4). If you wish to protect the confidentiality of such information, clearly mark it “Contains Privileged or Confidential Information” and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

BOEM will not treat as confidential aggregate summaries of otherwise confidential information or comments not containing such information. Additionally, BOEM will not treat as confidential the legal title of the commenting entity (e.g., the name of your company).

Abigail Ross Hopper
Director, Bureau of Ocean Energy Management
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August 9, 2016_
Date