

WIND ENERGY POTENTIAL IN
ENVIRONMENTAL AND ENERGY POLICY

Statement of James S. Gordon,
President
Cape Wind Associates, LLC
before the
U.S. House Committee on Natural Resources

June 1, 2011

1. Introduction

I appreciate this opportunity to address the Committee. My name is James S. Gordon, President of Cape Wind Associates, LLC (“Cape Wind”). For the last eleven years, Cape Wind has been developing the Nation’s first offshore wind generation project. The project’s nearest point of land will be approximately 5 miles off the coast of Massachusetts. Most of the turbines will be 6 – 10 miles from the nearest shore. It would generate 468 MW of clean and renewable energy, with no fuel requirements and no air emissions. This amount would represent approximately 75% of the annual electricity needs of Cape Cod and the Islands of Martha’s Vineyard and Nantucket. The Cape Wind project would be located on a shoal that is outside of the shipping lanes and would impose no restrictions on current uses of the area. Cape Wind enjoys strong support of environmental, consumer advocacy and labor groups and the overwhelming majority of Massachusetts voters, and has a grass-roots support organization with over 4,000 members. However, it has drawn the opposition of a few wealthy landowners who will be able to see it in the distance.

The principals of our company have been in the energy business for more than thirty years. We have developed and operated some of the most efficient gas-fired plants operating in the United States and we are intimately familiar with federal and state licensing processes for electric power plants. In direct response to mandates of the New England States for renewable energy, we are now focusing upon offshore wind energy development, which is uniquely well-situated to serve the population centers of the East coast. Offshore wind energy technology has now advanced to the point where it is both proven and reliable and can play a much more meaningful role in our National

supply mix. A study commissioned by the Department of Energy entitled “A National Offshore Wind Strategy” estimates that America’s offshore wind could generate 4,150 GW, approximately four times the current generating capacity of the Nation. However, if we are to realize the potential of offshore wind energy, we need to ensure that our National energy and environmental policies are implemented in a consistent and timely manner. We know that this technology works. Although Cape Wind will be the first offshore wind farm proposed in the United States, many projects are operating successfully in Europe, and the Chinese, after starting much later than us, have already now deployed their first offshore project.

2. Federal Regulatory Process

The Federal and state regulatory process for offshore renewable energy is thorough and comprehensive, but often not coordinated. One fundamental defect is that it lacks any legal requirements that would limit the duration of the review period. As a result, with no required end point, opponents can use regulatory stalling and delay tactics to try to financially cripple even a project that meets all statutory standards and serves Federal and State policy objectives.

Cape Wind submitted its Federal permit application to the U.S. Army Corps of Engineers (“USACE”) in November of 2001, pursuant to section 10 of the Rivers and Harbors Act, which governs the placement of structures in Federal waters. The Corps considered the project for several years and issued a Draft EIS in November, 2004. However, pursuant to the Energy Policy Act of 2005, The Department of the Interior, (MMS now BOEMRE) became the lead federal agency and essentially the process had to begin anew. BOEMRE conducted its own multi-year extensive review

processes and issued a highly positive Environmental Impact Statement in January of 2009. The Record of Decision was not issued by DOI for another 15 months, in April 2010. Secretary Salazar then issued the first lease for OCS renewable energy to Cape Wind in October of 2010 and BOEMRE approved our Construction and Operation Plan (the “COP”) in April 2011. The project thus has been undergoing extensive regulatory and public scrutiny for 10 years, and has now received all major permits and approvals.

The review of Cape Wind’s application was a process that has included the active participation of 17 Federal and State participating agencies and afforded exceptional opportunities for public involvement. During this process, an exhaustive analysis of all potential impacts of the project was conducted, including studies of issues including potential impacts upon existing uses, environmental issues, including potential impacts to fish, birds threatened species and marine mammals, protection of Native American rights, project aesthetics, cost implications and the energy needs of the public.

State Regulatory Process

In addition, there have been extensive state regulatory proceedings. In September of 2002, Cape Wind petitioned the Massachusetts Energy Facilities Siting Board (“MEFSB”) for authorization of its facilities located within Massachusetts. After an exhaustive review, including 20 days of expert testimony, on May 10, 2005, the MEFSB approved Cape Wind’s petition based upon its findings that Cape Wind’s energy is needed (i) to reliably meet the growing need for power in the region; (ii) to stabilize prices to electric rate payers; and (iii) to offset air emissions from fossil generators. Moreover, in 2009 the MEFSB issued a Certificate of Environmental Impact and Public Interest to Cape Wind and such grant has been upheld on appeal by the Massachusetts

Supreme Judicial Court. Most recently, in November of 2010, the Massachusetts Department of Public Utilities approved Cape Wind's long-term power sales agreement with National Grid, finding that "it is abundantly clear that the Cape Wind facility offers significant benefits that are not currently available from any other renewable resource" and that the "benefits outweigh the costs of the project." D.P.U. 10-54.

3. Judicial Appeals.

Along the way, opponents sought to appeal regulatory decisions to the federal or state courts more than ten times, and Cape Wind has won every case to date. Notwithstanding this extensive review and analysis and the appeals we have already won, the project now faces multiple appeals of its federal approvals brought by the same small, but well-funded, special interest group that has sought to delay the review process at every turn. In light of the past and continuing delays that we have experienced, we offer the following three policy suggestions for your consideration.

4. Policy Recommendations

A. Limit Time Periods of Agency Review.

First, national policy objectives would be far better served if the environmental review of proposed renewable energy facilities were conducted in a more timely manner, perhaps pursuant to specific statutory timeframes that prevent delay tactics from financially crippling important and worthy projects. We recognize and applaud the progress that has been made by BOEMRE (including its "Smart from the state" initiative), but firm deadlines applicable to all federal agencies would provide certainty to the review schedule. We reference for example the energy facility siting acts that have been enacted by many of the New England states, which provide that that a

thorough environmental review of proposed energy facilities is to be conducted within a statutorily limited time frame, which is limited to 12 months by Massachusetts law.

B. Consolidate and Expedite Judicial Review.

Second, renewable energy projects often require multiple federal approvals, each of which is subject to judicial review, processes which can consume additional years and substantial funds. Renewable energy projects that require federal approvals would be expedited significantly if all such reviews were consolidated in a single appellate proceeding in which the court is encouraged to expedite its decision.

There is ample precedent for such a provision in recent energy legislation. The Alaska Natural Gas Pipeline Act of 2003 at section 720e provides for expedited consideration and exclusive review in the D.C. Circuit of any order or action of any federal agency or any challenge under NEPA related to the authorities in the Act. Similarly, the Energy Policy Act of 2005, section 313, provides for development of a single consolidated record and for exclusive jurisdiction and expedited consideration by the D.C. Circuit Court of Appeals to review any Federal agency or state agency actions pursuant to Federal law relating to construction of certain natural gas facilities.

If Congress is serious about encouraging the development of renewable energy resources, streamlining the judicial review process would be a most effective mechanism for getting such facilities on line, and would do so without modifying any substantive rights of review by any aggrieved party.

C. Coordinate Duration of Investment Incentives with Permit Review Timelines.

Third, Congress should address the fact that federal investment incentives for long lead time renewable energy projects (such as offshore wind, geothermal and biomass projects) are typically put in place for time periods far shorter than the time required for permitting, environmental review and construction. For example, current provisions for the Investment tax Credit (“ITC”), the Production Tax Credit (“PTC”) and the Section 1705 Federal loan guarantee program are set to expire in 2012 and 2011, respectively. These time frames are just too short to develop and construct an offshore wind, geothermal or biomass project.

The result is an untenable situation where investors in proposed projects must proceed without knowing whether crucial incentives will still be in effect when such projects are placed in service. These incentive durations may be workable for projects that take only one or two years to develop, but they are not workable for types of projects that take much longer (which, by their nature, provide greater economic stimulus and longer-term employment). To be effective, tax and other incentives for long lead time projects must be in place for at least 5 years. We thus suggest a long-term extension for offshore wind and other long-lead renewable projects, for both the ITC (to at least 2016) and the DOE loan guarantee program, in order to provide a more certain and dependable signal to the investment community.

With these changes, I am certain that America can catch and pass the current world leaders in offshore wind development, with massive reductions in oil imports and emissions.

Thank you for your consideration.