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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2016-0027; MMAA104000]

Atlantic Wind Lease Sale 6 (ATLW-6) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New York—Proposed Sale Notice

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

ACTION: Proposed Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New York.

SUMMARY: This document is the Proposed Sale Notice (PSN) for the sale of one commercial wind energy lease on the Outer Continental Shelf (OCS) offshore New York, pursuant to 30 CFR 585.216. BOEM proposes to offer Lease OCS-A 0512 for sale using an ascending bidding auction format. 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 a lease resulting from this proposed sale would not constitute an approval of project-specific plans to develop offshore wind energy resources. Such plans, expected to be submitted by the auction winner, will be subject to subsequent environmental and technical reviews prior to a decision to proceed with development.

DATES: Comments should be submitted electronically or postmarked no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION 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).

All entities interested in participating in the lease sale who have not previously been qualified by BOEM to participate in this lease sale must submit the required qualification materials by the end of the 60-day comment period for this notice. All qualification materials must be postmarked no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Entities that have already been qualified to participate in this lease sale are not required to take any additional action to affirm their interest.

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–2016–0027 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 New York 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 Erin C. Trager, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia, 20166, (703) 787–1320, or Erin.Trager@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 attachment. 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: Erin C. Trager, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia, 20166, (703) 787-1320 or Erin.Trager@boem.gov.

Authority: This PSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (OCSLA) and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211 and 585.216.

Background: The area described for leasing in this PSN is the same as the area described in the New York Call for Information and Nominations (79 FR 30645) and announced as the New York Wind Energy Area (WEA) on March 16, 2016. This Area Identification (Area ID) announcement is available at: <http://www.boem.gov/New-York/>. Detailed information regarding the lease area is provided in the section entitled, “Proposed Area for Leasing.”

Call for Information and Nominations

On May 28, 2014, BOEM published a Call for Information and Nominations (Call) to seek additional nominations from companies interested in commercial wind energy leases within the Call Area offshore New York. BOEM also sought public input on the potential for wind development in the Call Area, including comments on site conditions, resources, and existing uses of the area that would be relevant to BOEM’s

wind energy development authorization process. In response to the Call, BOEM received three expressions of interest and 27 comment submissions, links to which are available at <http://www.boem.gov/New-York/>. Topics addressed in the comments included mitigation measures to protect wildlife and habitat; support for offshore wind's potential for job creation and as mitigation for climate change; concern about the potential impact of future development on maritime navigation, regional fisheries, and other competing uses; and desire for analysis at the leasing stage of potential environmental impacts of construction and operation of a wind facility, rather than just site assessment and characterization. BOEM considered these comments carefully during the Area ID process. To date, seven entities have expressed commercial interest in developing all or parts of the New York WEA.

Environmental Reviews

On May 28, 2014, BOEM published a Notice of Intent (NOI) to Prepare an Environmental Assessment (EA) for commercial wind lease issuance and approval of site assessment activities on the Atlantic OCS offshore New York with a 45-day public comment period (79 FR 30643). In response to the NOI, BOEM received 32 comment submissions, a link to which is available at <http://www.boem.gov/New-York/>. The comments addressed the same general topic categories as those addressed in the comment submissions in response to the Call. BOEM considered these comments in determining the scope of issues and alternatives analyzed in the EA.

Concurrent with the publication of this notice, BOEM is publishing the EA for public comment. The EA is available at: <http://www.boem.gov/New-York/>.

For the issuance of a commercial lease, BOEM considers the environmental consequences of associated site characterization activities (e.g., biological, archeological,

geological and geophysical surveys, and core samples) and site assessment activities (i.e., installation of a meteorological tower and/or buoy on the lease). Mitigation measures designed to reduce or eliminate impacts from survey activities are included as the terms, conditions, and stipulations in Addendum “C” of the proposed lease (OCS-A 0512). Given ongoing development of the EA and associated consultations described below, the terms and conditions included in Addendum “C” are primarily based on the best available science and BOEM’s prior consultations, and may be amended or revised and/or additional stipulations may be included as a result of our ongoing environmental review and consultations. Additional mitigation measures related to the installation and operation of meteorological towers and/or buoys will be included as terms and conditions of the eventual lessee’s Site Assessment Plan (SAP) approval. BOEM will continue to work with affected stakeholders and assess ongoing and future research relating to potential survey and site assessment impacts, including possible mitigation measures.

BOEM will complete consultations for lease issuance under the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) to inform the New York lease sale prior to publishing the FSN. BOEM will initiate consultations with the States of New York and New Jersey under the Coastal Zone Management Act (CZMA) concurrent with the publication of this PSN.

BOEM has determined that the issuance of a commercial lease and subsequent approval, approval with modification, or disapproval of a lessee’s plans constitute undertakings subject to review under Section 106 of the National Historic Preservation Act. BOEM is currently in consultation with the State Historic Preservation Officers of New York and New Jersey, the Advisory Council on Historic Preservation, the Shinnecock Indian Nation, and the National Park Service to draft and execute a

Programmatic Agreement (PA) to fulfill the bureau's obligations under Section 106 for renewable energy activities offshore New Jersey and New York. This PA will provide for consultation to continue throughout BOEM's staged decision-making process, and will establish the process to determine and document the area of potential effects for each undertaking; identify historic properties within the area of potential effects; assess potential adverse effects; and avoid, reduce, or mitigate any such effects through the process set forth in the agreement.

As the effort to execute the PA is ongoing and BOEM has not yet initiated consultation for the issuance of a commercial lease, the draft lease stipulations included in Addendum "C" of the proposed lease (OCS-A 0512) may be amended or revised and/or additional stipulations may be included as a result of this consultation. BOEM will continue to consult with affected tribes government to government.

Once BOEM has completed the EA and associated consultations, and if the EA concludes that the proposed action will not cause significant environmental impacts, BOEM will publish a Finding of No Significant Impact (FONSI) and may proceed with a FSN. If BOEM concludes that the proposed action would cause significant environmental impacts to the human environment, then BOEM will prepare an Environmental Impact Statement (EIS) before proceeding with a FSN. If a lease is issued, BOEM will prepare additional environmental reviews upon receipt of the lessee's SAP and Construction and Operations Plan (COP).

Additional Participation in The Lease Sale: Any parties that have not already been legally, financially and technically qualified to hold a lease for commercial wind development offshore New York must submit the required qualification materials by the end of the 60-day comment period for this notice if they wish to participate in the

proposed New York lease sale. Guidelines to prospective lessees on meeting 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/National-and-Regional-Guidelines-for-Renewable-Energy-Activities/>. Any submitted documentation 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, whom BOEM has not determined to be qualified before the FSN is published, will not be allowed to participate in the sale.

Deadlines and Milestones for Bidders: This section describes the major deadlines and milestones in the auction process from publication of this PSN to lease execution, should BOEM decide to proceed with a sale for Lease OCS-A 0512. 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 DATE OF PUBLICATION 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/New-York/>. 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 DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This includes materials sufficient to establish a company's legal, technical, and financial qualifications pursuant to 30 CFR 585.106 and 107.

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 prior to the publication of the FSN. The final list of eligible bidders will be published in the FSN.
- **Prepare the FSN:** If BOEM continues with the lease sale, BOEM will prepare the FSN, and will update information contained in the PSN where necessary.
- **Publish FSN:** If BOEM continues with the 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/New-York/>. 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 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 as to why the bidder did not win.
- *Department of Justice (DOJ) Review:* The Department of Justice (DOJ) has 30 days 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 0512. The proposed New York lease area consists of approximately 81,130 acres. A description of the proposed New York 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/New-York/>.

Map of the Area Offered for Leasing:

A map of the proposed New York lease area, 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/New-York/>.

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.

Potential Mitigation Measures and Restrictions on Development

During the Area ID process, BOEM analyzed three potential concerns associated with development of the New York WEA: (1) navigational safety, (2) commercial fishing, and (3) visual impacts to historic properties. Although BOEM did not remove any areas from leasing consideration during Area ID, potential bidders should be aware that future analysis of these issues could result in required mitigation measures and/or development restrictions within the proposed New York lease area. In addition, mitigation measures and/or development restrictions could result from future BOEM environmental reviews and consultations (e.g., future consultations under the Section 106 of the National Historic Preservation Act or future government-to-government

consultations with federally recognized tribes). It is possible that some mitigation measures/development restrictions could have the same effect as removal of areas from leasing.

Navigational Safety:

Potential bidders should note that future mitigation measures may be applied to development within all or portions of the New York proposed lease area to ensure navigation safety and the U.S. Coast Guard's ability to maintain mission readiness.

The New York proposed lease area has been delineated to accommodate a setback of 1 nautical mile (nmi) from the adjacent Traffic Separation Schemes (TSSs) for the Port of New York and New Jersey. This setback is consistent with BOEM's delineation of other lease areas that are in close proximity to TSSs (e.g., the areas offshore Massachusetts, Rhode Island/Massachusetts, Delaware, and Maryland; and the Wilmington West area offshore North Carolina), and is based on input provided by the U.S. Coast Guard (USCG) as a member of the BOEM New York Renewable Energy Task Force during development of the 2013 Request for Interest (RFI). As noted in the RFI, the proposed lease area includes aliquots that are transected by the 1 nmi setback line, and BOEM will require that no structures be installed on portions of those aliquots located within the setback.

In September 2015, BOEM received additional input from USCG recommending a larger setback of 2 nmi from the TSSs. USCG's correspondence to BOEM, which explains the recommendation, is available on BOEM's website at <http://www.boem.gov/New-York/>. In addition, on March 22, 2016, USCG released the Final Report for its Atlantic Coast Port Access Route Study (ACPARS), available for review at <http://www.uscg.mil/lantarea/acpars>. The USCG's Marine Planning

Guidelines, included as Enclosure 2 of the ACPARS, are consistent with their September 2015 recommendation to BOEM. Although BOEM did not adopt the USCG's recommendation during Area ID, BOEM may determine at a later stage in the process (e.g., after evaluating a Navigational Safety Risk Assessment that is submitted as a part of a COP) that portions of the proposed lease area would be inappropriate for the installation of wind facilities due to navigational safety concerns.

Commercial Fishing:

Potential bidders should note that future mitigation measures/development restrictions may be applied to development within all or portions of the proposed New York lease area due to the use of the area as a fishery.

BOEM received fishery-related comments in response to the RFI, Call, and NOI from National Marine Fisheries Service (NMFS); New England Fishery Management Council (NEFMC); and the Fisheries Survival Fund (FSF), a group representing members of the sea scallop fishery. BOEM also received comments from commercial squid fishery operators during BOEM's November 2015 fisheries workshops. A meeting summary of BOEM's November 2015 fisheries workshops and comments associated with these workshops are available on BOEM's website at <http://www.boem.gov/New-York/>, along with those comments received in response to BOEM's *Federal Register* notices relating to commercial fishing activities within the proposed New York lease area.

Through a joint study with NMFS, BOEM has also gathered information regarding the use of the lease area as a fishery. This data, specific to the proposed New York lease area, is available on BOEM's website at <http://www.boem.gov/Fishing-Revenue-NY-Call-Area/>. The full dataset is available at

<http://www.boem.gov/Renewable-Energy-GIS-Data/>. Potential bidders should be aware that BOEM will be gathering additional data and may develop plan-specific mitigation measures/development restrictions to mitigate, minimize, or avoid impacts.

In addition, between 2012 and 2016, BOEM collaborated with numerous stakeholders in the fishing and offshore wind industries to develop best management practices (BMPs) in furtherance of its goal of eliminating or minimizing potential multiple use conflicts between offshore renewable energy developers and the fishing industry. As a result of this effort, BOEM recommends that lessees facilitate cooperation with the fishing industry by utilizing a fisheries liaison and fisheries representative during the development of their plans. BOEM has issued guidance to lessees for providing information on fisheries social and economic conditions for renewable energy development on the Atlantic Outer Continental Shelf: <http://www.boem.gov/Social-and-Economic-Conditions-Fishery-Communication-Guidelines/>.

Visual Impacts to Historic Properties:

Potential bidders should note that the National Park Service (NPS) and New York State Historic Preservation Office (NY SHPO) have expressed concern regarding the potential for wind energy development within the New York WEA to cause adverse effects to onshore historic properties. Correspondence outlining these concerns is available for reference on BOEM's website at <http://www.boem.gov/New-York/>.

During the summer and fall of 2015, OREP conducted stakeholder outreach with the NPS, NY SHPO, and the New Jersey State Historic Preservation Office. OREP also completed a study entitled, "Renewable Energy Viewshed Analysis and Visualization Simulation for the New York Outer Continental Shelf Call Area" to assist in this outreach effort and to provide scientific and technical information about visual impacts to inform

the Area ID decision. Results from this study are available under the header “Visual Simulations” at the following link: <http://www.boem.gov/New-York/>.

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 sale. After 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/New-York/>. 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); and
- 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. As discussed above, given ongoing development of the EA and associated consultations, the mitigation measures included in Addendum “C” may be amended or revised, and/or

additional stipulations may be included prior to publication of the FSN. 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 as opposed to “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, an 81,130 acre lease (the size of the entire proposed New York lease area) will have a rent payment of \$243,390 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 \$97,356. 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:

$$200\text{MW}/500\text{MW} \times (\$3/\text{acre} \times 81,130 \text{ acres}) = \$97,356.$$

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 \$50/MWh and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 100\text{MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$50}{\text{MWh}} \text{Power Price} \times 0.02 = \$350,400$$

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 New York lease area, BOEM will set the fee at 0.02 (i.e., 2%) during 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% 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%). 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 NYC Zone J (NYISO) electric region 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 NYC Zone J power price as the price in its operating fee formula due to its geographic proximity to the proposed lease area. BOEM is soliciting further comments on the merits of other electric power prices, including Long Island Zone K, that may be used in lieu of or in combination with the current proposed power price. In particular, BOEM would like to know if and why other electric power prices may be preferred over NYC Zone J.

Financial Assurance:

Within 10 business days after receiving the lease copies and pursuant to 30 CFR 585.515-.516, the provisional winner of the New York lease area must provide an initial lease-specific bond or other approved means of meeting the lessor's initial financial assurance requirements. The provisional winner 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 provisional winner 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/New-York/>.

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/New-York/>. 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 BFF 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 New York 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 \$162,260, for the proposed lease sale.

Auction Procedures:

Following is a summary of the auction procedures that BOEM intends to use if it proceeds with the proposed New York 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 format 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 0512 and increases that price incrementally based on the number of active bidders in each round 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, (2) submit an exit bid (see below for discussion of exit bids), or (3) exit the auction. All bids are considering 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 plans to 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, based on a number of factors, including, but not necessarily limited to, 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 and minimize the chance of ties. If a bidder exits the auction by placing an exit bid or by not submitting a live bid in the current round, it will no longer be allowed to submit bids in any subsequent round. If a bidder leaves the auction without submitting an exit bid, BOEM will treat the previous round's asking price as the bidder's exit bid in the current round.

BOEM will not consider exit bids for the purpose of determining whether to increase the asking price or to end 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 provisional winner 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 copies in which 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 to not 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. BOEM may consider failure of a bidder to timely pay the full amount due 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 and 585.107. If a winning bidder does not sign the lease pursuant to the proposed lease sale, BOEM reserves the right to identify the next best bid submitted during the proposed lease sale and offer the lease pursuant to this next highest bid.

Additional Information Regarding the Auction Format

Bidder Authentication

For the proposed online auction, BOEM will require two-factor authentication. Prior to the auction, the Auction Manager 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 allowing access to the auction website. The tokens will be mailed 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 be asked to return its tokens.

The second package contains login credentials for authorized bidders. The login credentials will be mailed 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:

- Round bidding begins;
- Bidders enter their bids;
- Round bidding 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 bids (or exit bids, as applicable);
- Next round bidding 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 auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

BOEM and the auction contractors 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 the 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 available on BOEM's website at: <http://www.boem.gov/New-York/> 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. All bidders are required to comply with any rules or instructions in the Auction System Technical Supplement, 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/New-York/>.

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.

Consideration of Potential Non-Monetary Factor

BOEM has received a request to recognize a non-monetary credit for any bidder who has an executed power purchase agreement (PPA) term sheet with a potential power

purchaser involving offshore wind energy generated from the proposed New York lease area. While a PPA term sheet is not typically a fully binding contract and may differ in that respect from other non-monetary factors that BOEM has credited to date, BOEM is considering whether to add this element to the auction in a fashion similar to prior BOEM offshore wind lease sales (e.g., Maryland, New Jersey). It is BOEM's policy to offer non-monetary credits in an auction only for factors that (1) can be simply and objectively identified, and (2) reflect a true development advantage for the recipient. BOEM is soliciting comments on the merits of adopting a PPA term sheet as a non-monetary credit for this auction, as well as the specific parameters of such an instrument.

In particular, BOEM would like to know what key commercial terms should be included in a qualifying PPA term sheet to qualify for a credit; whether BOEM should only provide a credit for PPA term sheets that are executed with specific types of entities (e.g., electric utility, municipality, government agency); whether the public utility commission of New York or a nearby state should be a party to or otherwise endorse a qualifying PPA term sheet; and whether and to what extent such a qualifying PPA term sheet should be binding on the signatories. BOEM is also soliciting comments on what percentage of the monetary bid would be appropriate for this bidding credit. At this time, should BOEM find it appropriate to add this element to the auction, BOEM would potentially consider offering a 5% credit for a qualifying PPA term sheet. BOEM is interested in receiving feedback on whether a 5% credit would sufficiently reflect the value of an executed PPA term sheet. Based on the comments that BOEM receives, BOEM will decide whether, and in what amount, to provide for this type of non-monetary credit in the FSN.

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 to not 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 the lease 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/New-York/>.

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

If BOEM determines the delay was caused by events beyond the provisional winning bidder's control, BOEM may extend the ten 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.

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 to not 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/New-York/>.

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.

