

Addendum – June 2, 2021

South Fork Wind

CRMC Staff Recommendation

Federal Consistency – CRMC File 2018-10-082

CRMC staff met with representatives of the South Fork Wind project developer (Ørsted/Eversource) and representatives for the CRMC Fishermen’s Advisory Board (FAB) on June 1st to discuss and negotiate terms of a mitigation agreement. As part of the CRMC mitigation process pursuant to Ocean SAMP enforceable policy § 11.10.1(H) the developer offered compensatory mitigation as part of an overall mitigation proposal, which increased from \$8.5 million to \$12 million over 30 years as of May 13, 2021. There is continuing disagreement between the parties on a pay out over time (i.e., over 30 years, 5 years or a one-time lump sum, etc.), a direct claims process and a proposed claw-back element of the developers mitigation proposal. The developer used a discount rate that showed the present value of \$12 million over 30 years is \$5.2 million when paid in a one-time lump sum. The developer also agreed that the compensatory mitigation could be paid in any manner so long as it was equal to the equivalent of \$12 million paid over 30 years. The end result from the June 1st meeting was that an agreement was only made on the discount rate. While the FAB now accepts the present value discount rate, it still questions the payout schedule, and continues to recommend that the Council object to the SFW consistency certification. The FAB confirmed its recommendation at the May 25 Council meeting, however, that they would settle in this matter if the compensatory mitigation payment was a one-time lump sum payment of \$12 million dollars.

The CRMC staff respectfully disagree with the FAB’s objection recommendation. In our view \$5.2 million in a lump sum payable to the Rhode Island Fishermen’s Viability Trust, which use will be controlled by the fishing industry is the preferred option in this case. The Vineyard Wind 1 project has recently received federal approval for the 800 MW wind farm and it is expected that later this summer Vineyard Wind will begin implementation of its mitigation agreement with the State of Rhode Island, which includes establishment of the Rhode Island Fishermen’s Viability Trust. Once established by the FAB in consultation with CRMC staff the Trust will be a non-profit entity controlled by the fishing industry and independent of the State of Rhode Island. Vineyard Wind will make the first payment into the Trust within 60 days of financial close (expected later this summer).

Therefore, CRMC staff recommend the following:

1. The Council accept the developer’s compensatory mitigation offer of a one-time lump sum payment of \$5.2 million to be payable to the Rhode Island Fishermen’s Viability Trust within 60 days of financial close on the South Fork Wind project. The Council should also require the developer to work with CRMC staff and legal

counsel to enter into a binding agreement to implement this condition and that the agreement be included with the State's federal consistency decision due no later than June 22, 2021.

2. The Council issue a "Conditional Concurrence" pursuant to the federal consistency regulations at 15 C.F.R. § 930.4 that includes the CRMC staff recommended project minimization alternative for a maximum of twelve (12) turbine foundations using the 11 MW turbine generator. The Council must require the developer to file a letter with BOEM modifying its project and agreeing to the State's condition requiring the project minimization alternative pursuant to 15 C.F.R. § 930.4(a)(2) and file same with the CRMC prior to June 22, 2021 so it can be included with the State's federal consistency decision.

Conclusion

It is staff opinion with a reasonable degree of certainty based on the range of estimates for project impacts over the life of the South Fork Wind project, all the facts presented and the materials reviewed in this matter, that with the Council required project minimization alternative of no more than 12 turbine foundations, the compensatory mitigation as recommended herein combined with all other mitigation elements put forth by the developer that the South Fork project meets all of the enforceable policies of the Ocean SAMP.