

South Carolina Regulatory Task Force for Coastal Clean Energy

Recommendations to the Wind Energy Production Farms Feasibility Study Committee December 2009

Background:

The Regulatory Task Force for Coastal Clean Energy was established as an objective of a 2008 grant from the U.S. Department of Energy titled: *The South Carolina Roadmap to Gigawatt-Scale Coastal Clean Energy Generation: Transmission, Regulation & Demonstration*. The goal of the grant is to identify and overcome existing barriers for coastal clean energy development for wind, wave and tidal energy projects in South Carolina. Efforts included in the grant include an offshore wind transmission study; a wind, wave & current study; and creation of the Regulatory Task Force.

The mission of the Regulatory Task Force is to foster a regulatory environment conducive to wind, wave and tidal energy development in state waters. The Regulatory Task Force is comprised of the full spectrum of state and federal regulatory and resource protection agencies, universities, private industry and utility companies. The Task Force was established in April 2009 and has held regular meetings since that time.

One of the first tasks undertaken by the Regulatory Task Force was an analysis of how the existing state and federal regulatory framework would apply to a potential offshore wind project in state waters. The Regulatory Task Force first reviewed the Minerals Management Service's *Programmatic Environmental Impact Statement*, which includes a listing of the potential resource impacts from offshore wind projects. The Regulatory Task Force reviewed each resource impact and identified relevant existing regulations and the responsible agency(ies). Then, the group identified lead permitting authorities and timeframes associated with those regulations.

As a result of this analysis, the Regulatory Task Force concluded that no major regulatory gaps currently exist for permitting an offshore wind project in state waters. While recognizing that certain aspects of offshore projects may benefit from new regulation development such as standards and procedures for transmission lines, siting, etc. , the Regulatory Task Force was also able to identify a regulatory path and clarify the timeframes associated with the existing regulatory process. While the Regulatory Task Force concluded that these initial findings provide a strong foundation for possible wind energy developments in state waters, it identified four recommended actions that South Carolina should take in order to facilitate the development of offshore wind energy in the state.

Although the work of the Regulatory Task Force is scheduled to continue through 2011, there was consensus among its members to present the following four preliminary recommended actions to the Wind Energy

Production Farms Feasibility Study Committee for consideration. These recommendations, presented at the September 21st, 2009 meeting of the Study Committee, are summarized below.

Recommendation #1:

South Carolina should establish a policy of support for renewable energy development.

When the Regulatory Task Force began its work, it set out to identify possible hurdles in permitting offshore wind projects in state waters. The Regulatory Task Force quickly concluded that one of the largest hurdles to the successful permitting of an offshore wind project may be dependent more on a strong state policy in support of renewable energy development for South Carolina than on the regulatory process itself. In short, there was consensus that the regulatory process cannot be viewed entirely separate from the policy context. According to research conducted by the American Wind Energy Association, a supportive siting process and consistent public support for renewable energy are essential to the success of offshore wind projects. Strong supportive renewable energy policies can provide the certainty needed for companies to ramp-up investments – especially the large investments that are needed for offshore projects – and minimize risks.

The state has various options for developing policies that support renewable energy development, including actions by the executive branch (e.g., proclamation or executive order signed by the Governor) and legislative branch (passage of resolutions and/or legislation). Further, the adoption of renewable portfolio standards (RPS) can provide additional momentum in support of renewable energy development. In the United States, 24 states have developed renewable portfolio standards and an additional five states have established nonbinding goals for renewable energy. Of the eight states currently with active offshore wind initiatives, six are states that have established renewable portfolio standards. An additional five states have some type of non-binding goals for the adoption of renewable energy goals.

The consensus of the Regulatory Task Force is that state-level support for renewable energy development through the establishment of supportive statewide policies or the pursuit of renewable portfolio standards is critically important to renewable energy development in South Carolina. Otherwise, South Carolina may miss out on the opportunity to attract renewable energy investors, new renewable energy industry and related jobs and the academic/private sector development that goes along with it.

Recommendation #2:

South Carolina should establish a leasing framework for offshore coastal ocean activities in state waters.

While the Regulatory Task Force has concluded that existing regulations are in place that would allow for the permitting of an offshore wind energy project in state waters, other issues remain. There is consensus among the Regulatory Task Force that permitting alone may not be sufficient to address the entirety of issues that are of interest and concern to the state and to potential investors/energy developers in South Carolina. Relying solely on permits to provide for offshore activities has significant limitations. For the energy operator, permits are typically short-term (less than five years in duration), do not protect permittee investments, do not provide any degree of exclusivity of use, and can be withdrawn with little notice. For the state, permits do not address issues of conflicting uses, do not include provisions for companies to provide compensation for the use of public resources, do not provide the resources necessary for the removal of structures should an operation be

terminated or go out of business, and do not provide additional safeguards that would protect the state's interests in the operation and its resources. The result is uncertainty and risk for both the state and for investors/operators.

A leasing framework could address these issues by including the following provisions that might otherwise be lacking in the standard permitting process:

- *Eligibility* – The eligibility of applicants could be stated. For instance, to be eligible to obtain a lease for a wind energy facility, an applicant may be required to be (a) a United States citizen or a permanent resident 19 years or over; (b) a corporation registered in the state or incorporated under the laws of the United States; (c) a registered partnership; or (d) a non-U.S. citizen who owns the adjacent upland.
- *Scope* – Leasing provisions could include considerations for the “three-dimensional” use (or any subset thereof) of the ocean environment by energy operations: (a) the ocean floor, (b) the water column, and/or (c) the sea surface.
- *Aerial coverage* – Leasing provisions could identify locations in the coastal ocean and establish guidelines (minimum and maximum) for those locations where offshore energy firms could obtain leases.
- *Lease duration* – The term of the lease could provide the firm with enough time to plan, initiate, and establish its wind energy operation and, at the same time, provide the state government with the flexibility to be able to reassign, suspend, or terminate leases for just cause. Criteria for such action could be established.
- *Exclusivity* – Leasing programs for offshore energy could include provisions to require the state government to assess the extent to which the applicant needs exclusive use of the site and, to the maximum extent possible, could reserve to the public the right to use the leased lands for all public trust purposes that will not unreasonably interfere with the offshore energy operation.
- *Performance* - Leasing programs for offshore energy could include minimum performance measures to ensure that the site is being used for its intended purpose and at its highest potential. Performance bonds might be required as well.
- *Compensation* – Provisions to require the lessee to pay for the (semi-)exclusive use of public trust resources associated with the lease could be established in an offshore wind energy leasing program. These payments could take the form of compensation on a per-acre basis, rentals, fees, royalties, and/or other means.

Leases are already required for any proposed wind energy project in federal waters; and the state of Texas has developed a leasing program for their state waters. Both the federal and Texas leasing programs incorporate the above elements.

In light of these considerations, the Regulatory Task Force recommends that South Carolina develop and implement a leasing framework for state offshore waters that could be applied to all potential uses of state waters offshore, including wind energy development. Such a leasing system would provide for the orderly evaluation and development of our offshore resources, minimize use conflicts, reduce risks to the state and to the user, and result in more certainty for the state and investors. It should be noted, however, that the Regulatory Task Force strongly recommends that current offshore wind projects not be delayed for the implementation of leasing. Current work and projects should continue unimpeded under current regulations with provisions to accommodate these under any future leasing plan.

Recommendation #3:

South Carolina should establish a permit facilitation office to coordinate the permitting and leasing (if established) of offshore wind projects.

While the Regulatory Task Force identified and documented the regulations and permits that would be required for an offshore wind project, it also recognized that the regulatory process is complicated, cumbersome, time-consuming and, at times, costly. The Regulatory Task Force concluded that identifying one agency as having a coordinating function would make the process more efficient and potentially less daunting to a prospective applicant. A model for a permit facilitation office already exists in South Carolina, specifically for aquaculture through the establishment in law of the Permit Assistance Office within the S.C. Department of Agriculture (Section 46-51-10). The Regulatory Task Force proposes that a similar permit facilitation office be established to provide the regulatory coordination - a function that could be housed in a non-regulatory agency - and offer assistance to investors as they navigate through the leasing/permitting process. At this early phase in offshore development, it may even be possible to eliminate duplication and develop a highly efficient flow for the permitting process which would be beneficial to both government and industry.

The Regulatory Task Force has looked closely at what other states and the federal government have done so far regarding the regulatory process for offshore wind. For example, the Commonwealth of Virginia concluded in a study released in December 2008 that obstacles to offshore alternative energy development in some states arise from the lack of straightforward path for planning, evaluation and permit coordination. They also recommended that a single administrative process be established that coordinates the development and review of energy facilities in state and federal coastal waters. The state of North Carolina released a study in August 2009 that concluded that a new statute should be enacted that specifically addresses the multitude of issues associated with leasing state-owned submerged lands for wind projects in order to provide a clear, consistent legal framework for investors and developers. The state of Michigan published a report in September of 2009 that included a recommendation that there should be a single agency to facilitate the permitting, leasing, construction and monitoring of offshore wind projects.

In summary, as evident in the examples of Virginia, North Carolina and Michigan, other states have all grappled with these and issues have come to similar conclusions: that there is a need for a streamlined, straightforward system to facilitate the efficient permitting of offshore wind projects. South Carolina should follow suit and create a “one-stop” permit coordination process for offshore wind developments.

Recommendation #4:

South Carolina should begin to develop a marine spatial plan for its offshore coastal ocean waters.

South Carolina’s economy relies heavily on coastal and ocean-related industries. Coastal tourism, fisheries, and energy production facilities generate (or have the potential to generate) more than 50 percent of our state’s revenues and jobs. Today, there are new and expanding opportunities for ocean-sector industries in South Carolina, so it is critical for the state to begin the process of ocean resource planning and management. Such an effort would lead to reasonable predictability in decision making and protection of existing ocean uses, including tourism, fisheries, sand resources, marine transportation, and military operations, among others.

Comprehensive ocean planning, which relies on high-resolution, integrated mapping of ocean resources and uses, in concert with a state leasing program for use of its coastal ocean waters, would improve our state's capacity to make informed decisions about locating sites for new energy infrastructure and offshore aquaculture operations; identifying available sand resources and how they would be allocated to communities for nourishment projects; sustaining commercial and recreational fisheries; and supporting commerce, marine transportation, and other ocean ecosystem services valued by South Carolina residents and visitors. The development of a South Carolina Ocean Plan would allow our state to actively engage a broad range of stakeholders in developing a comprehensive plan and implement it to proactively manage ocean uses and resources.

Several coastal states have initiated comprehensive ocean planning efforts. Marine spatial planning is now a widely recognized practice that can help states identify the most suitable locations for various ocean activities and uses. To engage in marine spatial planning, a state must invest in several core capacities, including seafloor mapping, data and basemap integration, research and extension, and community-based planning. This clearinghouse of ocean information will require strong partnerships among state and federal agencies, local communities, industry and stakeholders.

Given the considerations discussed above, the Regulatory Task Force suggests that South Carolina initiate a statewide ocean spatial planning effort. The state should appoint a lead agency to coordinate this effort and require other entities and a broad range of stakeholders to provide input into a final adopted plan.

Conclusion:

In summary, while the Regulatory Task Force concluded that a strong foundation for possible wind energy developments in state waters currently exists in South Carolina, they also strongly recommend that the Wind Energy Production Farms Feasibility Study Committee consider the four actions discussed above. Taking these recommended actions would facilitate the development of offshore wind energy in the state and would allow South Carolina to capitalize on this potentially significant energy and economic development opportunity.

Appendix

The above document reflects the final recommendations of the Regulatory Task Force for Coastal Clean Energy. The Regulatory Task Force was sent a draft of these recommendations for review on November 30, 2009 and December 2, 2009. Comments were received from several participants and incorporated into a final document, presented above.

The Regulatory Task Force for Coastal Clean Energy consists of representatives from the following entities:

Federal agencies:

- U.S. Army Corps of Engineers
- U.S. Fish & Wildlife Service
- Minerals Management Service
- National Marine Fisheries Service - National Oceanic and Atmospheric Administration
- Federal Aviation Administration
- Environmental Protection Agency
- Advisory Council on Historic Preservation
- Department of Defense
- U.S. Coast Guard

State agencies:

- Office of Coastal Resource Management, SC Department of Health and Environmental Control
- Bureau of Water, SC Department of Health and Environmental Control
- S.C. Department of Natural Resources
- S.C. Office of Regulatory Staff
- S.C. State Historic Preservation Office, SC Department of Archives and History
- S.C. Sea Grant Consortium

Others:

- S.C. Institute for Energy Studies at Clemson University
- Clemson University Restoration Institute
- S.C. Sea Grant Consortium
- EcoEnergy, LLC
- Coastal Carolina University
- North Carolina State University
- Savannah River National Laboratory
- Santee Cooper
- SCANA
- Research Planning, Incorporated
- Carolina Renewables, LLC
- University of South Carolina – School of the Environment
- University of South Carolina – Marine Science Program