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Georgeann Smale  
Office of Regulations  
Bureau of Ocean Energy Management  
Department of Interior  
45600 Woodland Road, Mailstop: DIR-BOEM  
Sterling, VA 20166

Via Federal eRulemaking Portal: <http://www.regulations.gov>

**Subject: BP America Inc. Comments on the Bureau of Ocean Energy Management’s Renewable Energy Modernization Rule, Docket No. BOEM-2023-0005, (RIN) 1010-AE04**

Dear Ms. Smale:

BP America Inc. is pleased to submit comments on the U.S. Bureau of Ocean Energy Management’s (“BOEM”) notice of proposed rulemaking on the Renewable Energy Modernization Rule, a proposed rule to facilitate the development of the outer continental shelf (OCS) renewable energy. We support efforts to streamline and better define the auction and development process and we believe that some additional clarifications would be helpful.

**I. Introduction**

bp welcomes the proposed rule and appreciates BOEM’s efforts to modernize regulations, streamline overly complex and burdensome processes, clarify ambiguous provisions, enhance compliance provisions, and correct technical inconsistencies. We believe these changes will help to facilitate the efficient development of offshore wind in a safe and environmentally sound manner.

bp supports the eight major components of the proposed rule and believes there are opportunities for BOEM to make additional clarifications and/or changes to provide greater certainty, visibility and regulatory flexibility to create a durable and appropriate process for offshore wind development. In the comments below, we highlight those points as well as areas we believe are particularly important as BOEM modernizes the renewable energy regulations.

## **II. bp's Renewable Energy Projects and Ambitions in the United States**

bp is a global integrated energy company with a significant footprint in the U.S. In the U.S., bp employs 13,000 people and supports about 240,000 jobs. Since 2005, bp has invested more than \$140 billion in the U.S.; and in 2022 alone, our operations contributed more than \$70 billion to the U.S. economy. We have a larger economic footprint in the U.S. than anywhere else in the world.

We're transforming bp so we can deliver the secure, affordable, lower carbon energy the world increasingly wants and needs. Our ambition is to be a net zero company by 2050 or sooner, and to help the world get to net zero. A key part of bp's strategy is low carbon electricity and energy. By 2030, bp aims to have developed around 50 gigawatts (GW) of net renewable generating capacity globally.

bp has a growing offshore wind portfolio in the U.S. and internationally. In January 2021, bp and Equinor agreed to develop together up to 4.4 GW of wind generation through two projects – Empire Wind and Beacon Wind, two major lease areas located in federal waters off New York and Massachusetts.

## **III. Comments**

### **Flexibility is needed in the permitting process**

bp supports the regulatory changes that will allow for additional flexibility in the planning and design stages of projects including the proposed changes for site assessment plan (SAP) submittal requirements, providing project information using a Project Design Envelope (PDE), and having the option to submit Facility Design Report (FDR) and Fabrication and Installation Report (FIR) by component. These revisions will help optimize development timelines and align the permitting process with the practice of procuring distinct packages of components at different stages.

Allowing developers to deploy meteorological buoys before a SAP approval is a critical step which will allow more flexibility and faster data collection. The meteorological data gathered is key to progressing energy yield estimates which ultimately underpin project feasibility decisions. Additionally, access to actual site data reduces uncertainties which can hinder project development.

Adding the ability to use a PDE will enable timely submission of the required permit applications while still allowing for design maturation and optimization. Because timely issuance of permits is necessary to allow projects to proceed, these proposed changes will significantly improve project development timelines.

bp supports the ability to submit FDRs and FIRs by component. This is a pragmatic solution to align the permitting process with project development milestones where distinct packages of components (e.g., wind turbines, offshore substation, and cables) are procured at different stages. Procurement of items and off-site fabrication before approvals is a necessary step to keep project development timelines reasonable.

### **Expand definitions for professional engineers**

Current regulations require lessees to use a certified verification agent (CVA) to provide independent third-party review of a project's FDR and FIR, and to monitor fabrication and installation activities. We believe having the ability to use multiple CVAs allows the developer to secure specific expertise for the component package in question and is aligned with the submission of individual FDRs and FIRs by component. Flexibility for the CVA nomination timeline should significantly benefit efficient development of offshore wind projects. bp recommends that BOEM change the term "registered professional engineer" to "licensed professional engineer". In the U.S. the more commonly used term for engineer credentials is "licensed." However, outside of the U.S., "registered" or other terms may be more commonly used to indicate equivalent qualifications. bp recommends that BOEM also include "or recognized international equivalent" to allow for the use of properly credentialed international engineers.

### **Visibility and certainty are needed in the leasing process**

bp supports BOEM's efforts to codify greater structure and transparency in future leasing with the proposed regulations requiring a 5-year renewable energy leasing schedule to be published at least once every two years. The increased certainty and transparency provided by the schedule will enable developers to plan long-term, focus resources, and enhance the overall efficiency of the development process. We note the renewable energy leasing schedule published in October 2021 has achieved these aims by providing enhanced certainty and transparency. Below are bp's recommendations to further provide greater transparency and certainty to developers in the leasing process, which would support BOEM's objective of orderly development on the OCS.

#### **1. Include planning milestones and provide timing updates**

BOEM has solicited comments on the content and the timing of the schedule updates, as well as on how best to provide a schedule to improve transparency of renewable energy development. We recommend that BOEM provide additional detail in the schedule than what is currently proposed in subpart B, Section 585.150. Specifically, we recommend that the schedule include the calendar year and quarter in which each lease sale, and the sale notice issuances in advance of it, are projected to occur. While we support the cadence of a biennial publication of the renewable energy leasing schedule, we recommend that BOEM provide updates on the timing of the respective lease sales within the schedule on a biannual basis (e.g., were a lease sale to move from Q1 to Q3 within a year). We recommend that the schedule and associated updates be provided in an aggregated, accessible format (e.g., dedicated page on BOEM website). This information will help developers better understand the planning process and to streamline efforts.

2. **Providing more information at the Call for Information stage**  
Related to the proposed Section 585.211, we recommend that the Call for Information and Nominations include an indication of the target capacity and/or acreage that may be offered for sale in the area as well as preliminary information on the auction format, such as the type and value of bidding credit/s to be included (if applicable). While recognizing that this information may evolve through the leasing process as BOEM gathers stakeholder feedback, an early indication of this information will enable developers to prepare and focus their planning efficiently in support of orderly development on the OCS.
3. **Providing more time between the Final Sale Notice (FSN) and Auction**  
Related to the proposed Section 585.214(a), we recommend that BOEM allow at least 60 calendar days in between the issuance of the FSN and the monetary auction date, representing an increase of the current regulations requiring at least 30 calendar days between the two milestones. While bp appreciates BOEM's efforts to ensure that the leasing process is effective, efficient, and timely, developers should have adequate time to consider any changes to the lease areas or auction format announced in the FSN and complete all instructions outlined in the FSN required in advance of the auction. We believe that 60 days strikes the right balance between efficiency in the auction schedule and orderly development.
4. **Clarifying the interaction with other regulatory requirements**  
Related to the proposed Section 585.225(a), we recommend that BOEM clarify how the timing of lease issuance and payment may be impacted by other regulatory requirements such as BOEM's requirements under the Inflation Reduction Act (e.g. if BOEM has conducted an auction and accepted a bid, but an OCS oil and gas lease sale has not been held during the 1-year period ending on the date of the issuance of the wind lease).

**Bidding credits are an important tool to achieve policy objectives and should be included with fair and reasonable requirements**

We support BOEM's proposed changes to simplify and clarify the regulations regarding auction formats as well as the proposal to continue to implement multiple factor auctions and bidding credits. The use of bidding credits can support important investments in workforce development, domestic supply chains and communities. We believe that the following principles are of particular importance with respect to bidding credits and will ensure further meaningful investment in programs that will advance the identified goals and public policies that the regulations intend to incentivize.

1. **Bidding credits should not require that actions be taken in advance, but rather should allow for identification of actions to be taken in alignment with BOEM's goals (public interest).**  
As BOEM has proposed in Section 585.216(b), bidding credits should be tied to bidders identifying a strategy for meeting BOEM's underlying objectives rather

than demonstrating commitments in place prior to the auction. We believe it is essential to allow credits for actions that a successful bidder commits to undertake in the future rather than limiting it to those that are done ahead of the auction.

2. **The bidding credit system should be flexible and allow for changes based on current conditions (both factual and regulatory).**

To meet the goals of the bidding credits, it is crucial that credits are awarded for programs that are feasible and commercially realistic at the time of implementation and that bidders are not penalized for failing to complete investments that are no longer in the public interest. For example, when there are regulatory changes such as the rescission of the availability of renewable energy credits (RECs) or factual development such as local disapproval of a shared transmission project, a holder of a lease should be allowed flexibility to divert the bidding credit amount to other programs that are aligned with the goals for which the bidding credits were intended to incentivize.

We recommend that the proposed Section 585.225(g) be revised to include a provision by which a lessee can meet the commitments of its bidding credits by undertaking alternative actions that advance public policy and facilitate OCS renewable energy development if the lessee has good cause for not meeting its original commitments.

It is also crucial that projects be allowed flexibility with regard to the timing of spending to fulfill bidding credit obligations to ensure that the funds are appropriately allocated to the uses that will best further the public policy objectives for which they are intended. We believe that Section 585.225(g) should be revised to clarify that lessees are only required to repay the value of bidding credits if they do not meet their commitment by the relevant deadline. As per existing practice, we recommend that BOEM not require documentation showing that the lessee has met the commitment and complied with the applicable requirements prior to submission of the project's FDR or the tenth anniversary of lease issuance, with the deadline extendable for good cause. This will ensure that developers can reasonably meet their commitments in coordination with broader development of the project and the range of stakeholders involved.

Additionally in support of the objective to ensure that there is adequate flexibility to the leasing process to achieve public policy goals, in the event multiple bidding credits are selected for an auction, we would recommend providing bidders with flexibility to allocate their investments between each area (subject to an overall cap) rather than being too prescriptive with the required investment amount for each bidding credit. We recommend that BOEM include flexibility in the proposed Section 585.216 to allow a total bidding credit value to be specified, with developers able to select a combination of individual commitments to obtain the total value, rather than needing to specify values of each available bidding credit.

### **Auction format should comprise monetary and non-monetary components**

We believe that BOEM should continue its existing practice of soliciting comments from stakeholders in advance of each upcoming auction regarding the specific format of that auction, including the nature and value of bidding credits. We support bidding credits to advance important public policy priorities but also believe that the monetary component in the auction is crucial for transparency, to avoid speculative bidding, and to achieve BOEM's fundamental policy objectives with respect to the leasing process.

### **Clarification on a definition for affiliated entities is needed**

bp supports the need for transparency regarding affiliations between bidding entities and understands BOEM's desire to limit the number of leases that an entity and its affiliates can win in a single auction. Given the complex nature of the projects and the amount of capital required, it is essential that there be certainty regarding what type of relationship is considered an affiliation in a specific lease auction. bp requests that BOEM include in the regulations a definition for the term "affiliate."

In the most recent auctions, BOEM's definition of "affiliate" has focused on the level of control that one bidder has over or with another bidder. bp does not object to this approach to the definition of affiliate but does believe it needs further refinement to clarify that two or more bidding entities are not deemed affiliates simply because the bidding entities and/or their parents have entered into an arrangement with regard to a lease awarded in a separate auction. We also believe that it is essential that there be clear, unambiguous rules that define what constitutes control of one bidding entity over another. We suggest the following provisions be added to Section 585.222:

*(g) A bidder qualified pursuant to Section 585.107 or Section 585.108 may not participate in a lease sale under this Part if another person with whom the bidder is affiliated participates in the same lease sale.*

*(h) For purposes of this Part, an affiliated entity means a bidding entity that controls, is controlled by or is under common control with another bidding entity participating in the same lease auction. BOEM considered bidding entities to be affiliated if:*

- (i) one bidding entity owns or has common ownership of more than 49.0% of the voting security, or instruments of ownership or other forms of ownership in another bidding entity;*
- (ii) one bidding entity is a direct or indirect subsidiary of the same parent company as another bidding entity in the same lease auction; or*
- (iii) one bidding entity has an agreement with another bidding entity pursuant to which it would directly or indirectly economically benefit from the other bidding entity's successful acquisition of a lease in the same auction. For avoidance of doubt, two bidding entities are not deemed affiliates based solely on the fact that they jointly participated in another lease auction, acquired another lease under a separate auction or jointly control an entity which holds a separate lease.*

If BOEM does not adopt the proposed language or continues to rely on definitions for affiliates provided in PSNs for individual auctions, bp requests that BOEM commit to providing, when requested by a bidding entity, a determination on whether two or more bidding entities in an auction are considered to be affiliates at least 30 days prior to the auction date.

#### **Clarify restrictions against anti-competitive behavior**

bp appreciates and supports BOEM's intent for proposing to add sub-section (f) to Section 585.22 to prevent anti-competitive bidder behavior. However, we are concerned that the language as proposed is overly broad and could limit the number of participants in auctions by preventing legitimate and necessary conversations between potential joint-venture participants. The goal of this provision could be met if it were revised to state that the prohibited communications are limited to those between bidders who actually participate in an auction (not precluding conversations between two bidders listed in a FSN where one bidder ultimately does not participate) and involve strategies and valuations related to a specific auction (not precluding discussions about high-level strategies and valuation approaches).

#### **Lease structure should be flexible and maximize project potential**

bp appreciates BOEM's proposals related to lease periods and believes that the following recommendations will provide more certainty and flexibility in the development process.

1. **Increase the operations period to 35 years with flexibility to increase**  
We request that the operations period in Section 585.235(4) be extended from 30 years to 35 years. We are concerned that a 30-year term for the operating period is too short, and that technological advancement will further extend the lifespans of offshore wind projects. We also recommend adding an option to extend the operating period to have it match the underlying asset life, which would maximize the economic benefits derived from the project, rather than risk having to retire the project and prematurely remove renewable energy supply from the market.
2. **Existing lessees should have the option to conform**  
BOEM requested comments on whether the final rule should contain a provision setting forth a process by which existing lessees can request lease amendments to conform their leases to the structure proposed in the amended 585.235. We support including such a provision as it will add certainty to existing projects.
3. **Flexibility in the development process**  
bp supports the several provisions BOEM has proposed aimed at granting a lessee more flexibility throughout the development process, namely expanding the criteria in 585.235(b) for granting extensions of lease periods, proposing a new 585.235(c), clarifying that a lessee may propose an alternative lease period schedule if it chooses to develop its lease in phases and proposing a new

585.235(d), providing that a lessee may seek modification of the default lease schedule in its application to segregate its lease or consolidate two adjacent leases.

#### **IV. Conclusion**

In summary, we appreciate the opportunity to submit these comments. We would welcome the opportunity to meet with BOEM to discuss these issues further as proposed and final rules are promulgated. Please reach out to me at [bree.raum@bp.com](mailto:bree.raum@bp.com) or Elizabeth Komiskey at [elizabeth.komiskey@bp.com](mailto:elizabeth.komiskey@bp.com) if you have any questions.

Respectfully submitted,

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