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The Inflation Reduction Act: How Will Its Provisions Impact Offshore Wind Development?

The Inflation Reduction Act of 2022 (IRA or the act) was signed into law on August 16, 2022. Among the hundreds of pages of this legislation, the IRA contains some significant provisions geared toward the development of clean energy, including from offshore wind. In this advisory, we focus on four main areas of the IRA that could impact the development of offshore wind: (1) planning for the transmission infrastructure needed for the development of offshore wind; (2) support for state siting and other permitting authorities to do their review and approval work in siting offshore wind transmission, including through potentially more certainty in the timing of such approvals; (3) expansion of the potential lease areas for offshore wind offered by the Bureau of Ocean Energy Management (BOEM); and (4) beneficial changes to the tax credits available for renewable energy developers, including offshore wind developers.

Regional transmission planning: funding to study transmission solutions

Part 5 of the IRA relates to electric transmission. In particular, §§ 50152 and 50153 provide funding in various forms for activities related to the development of offshore wind transmission. Section 50153 specifically appropriates $100 million for expenses associated with planning, modeling and analysis regarding interregional electric transmission and, particularly, transmission of electricity generated by offshore wind. The studies conducted pursuant to § 50153(b)(2) must specifically take into account the local, regional, and national economic, reliability, resilience, security, public policy and environmental benefits of, among other things, transmission of electricity generated by offshore wind.

Potential impact: The issuance of funds to convene stakeholders to discuss interregional and offshore wind transmission and perform studies on interregional and offshore wind transmission planning could move needed transmission infrastructure development forward. This initiative will dovetail with efforts already underway at the state level, with the Regional Transmission Organizations and Independent System Operators, and at the Federal Energy Regulatory Commission (FERC) to plan and build the transmission needed to support the clean energy grid. These efforts, collectively, could significantly improve the ability of the large amounts of offshore wind generation being developed to be interconnected and transmitted to populous load centers.

Several states have recently recognized the need to build out the regional and interregional transmission grid to accommodate large energy injections from offshore wind into the grid. Most recently, in August 2022, Massachusetts enacted An Act Driving Clean Energy and Offshore Wind, which allows Massachusetts state agencies to competitively solicit and procure proposals for offshore wind energy transmission to be made available for one or more offshore wind generation projects. The Massachusetts legislation also highlights the importance of working at a regional level to develop transmission solutions that will serve to bring the valuable energy generated off the coast of Massachusetts to the entire New England region. In New Jersey, the New Jersey Board of Public Utilities has been using the State Agreement Approach provided for in the PJM Interconnection Tariff to competitively solicit offshore wind transmission solutions to bring the renewable energy generated off the coast of New Jersey to the regional PJM electric grid.

Further, on the federal side, in 2021, FERC created the Joint Federal-State Task Force on Electric Transmission to convene state utility commissioners and FERC commissioners to discuss relevant topics for interregional transmission planning that will have an impact on state regulation. The creation of the task force is a recognition by FERC that renewable energy policy and the proliferation of renewable energy generation projects are largely driven by state public policy requirements related to reduction of greenhouse gas emissions and increase of renewable clean energy supply. Although the traditional lines of FERC's jurisdiction leave interstate transmission planning to the commission, given the public policy requirements driving the need for such interstate (and offshore) transmission development, FERC has recognized the need to include the states in

transmission policy development. Further, FERC has recently issued two important Notices of Proposed Rulemaking on transmission planning, cost allocation and generator interconnection that recognize the need to transition to the grid of the future. The funds provided for in the IRA, combined with state and regional activities as well as FERC's new rulemakings and the Joint Federal-State Task Force, will likely improve the policies, rules, studies and information available to integrate offshore wind into the regional and interregional grids.

Speeding up the siting process: IRA provisions may not provide significant change

Also in Part 5 of the IRA, § 50152 provides $760 million in funding through September 30, 2029, for the secretary of energy to make grants to state, local or tribal government siting authorities for (1) studies and analyses of transmission projects; (2) examination of alternate siting corridors within which a transmission project could feasibly be sited; (3) participation in regulatory proceedings or negotiations in *another* jurisdiction; (4) participation in proceedings at FERC or a state regulatory commission for determining applicable rates or cost allocation for a particular transmission project; or (5) other measures and actions that may improve the chances of, and shorten the time required for, approval by the siting authority of the application relating to the siting or permitting of the transmission projects. The types of transmission projects for which funds can be disbursed under this section are high-voltage interstate transmission lines rated at a minimum of 275 kilovolt (kV) high-voltage alternating current (HVAC) or high-voltage direct current (HVDC) *or offshore electricity transmission lines* rated at a minimum of 200 kV HVAC or HVDC for which the entity has applied to or informed the siting authority of the entity's intent to apply for regulatory approval (for both interstate and offshore transmission). In order to access the funds under § 50152, the state, local or tribal siting authority must agree, in writing, to reach a final decision on the application relating to the siting or permitting of the applicable transmission project no later than *two years after the date on which such grant is provided*.

Potential impact: For at least two reasons, the granting of funds to state, local and tribal siting authorities might not have significant beneficial impact on speeding up the siting process for offshore wind transmission. First, the provision allows for siting authorities to take part in the siting proceedings of another state and in proceedings at FERC. While this may allow a neighboring state to have input in regional siting proceedings that it otherwise might not have had, it could slow down these processes with more parties, issues and complexity. Siting is often the most difficult part of developing large new energy facilities, and increasing the scope of the parties in a proceeding will only tend to make it more difficult. Second, while the two-year limitation condition does provide some certainty, which developers always welcome, it is somewhat unusual for a state siting proceeding to actually take more than two years from the time when an application is filed to when the decision is issued. Moreover, this "condition" imposed by the IRA is not actually conditioned on a two-year time limit from the time the *application is filed*; rather, it is conditioned on a two-year time limit from when the *grant is provided*, which could be months after an application is filed.

Energy lease areas: new offshore wind access unlocked but existing authority limited

The IRA makes some significant changes to expand the physical areas authorized for offshore wind leasing. In 2020, President Trump withdrew access for offshore wind leases for areas off the coasts of North Carolina, South Carolina, Georgia and Florida until 2032. The act reverses this withdrawal and now allows BOEM to grant leases, easements and rights of way in these areas, unlocking significant offshore wind potential down the East Coast. The same section, 50251, amends the definition of the Outer Continental Shelf to include specified submerged lands adjacent to U.S. territories. The act authorizes the Department of the Interior (DOI) secretary to issue calls for information in offshore wind leasing off the coasts of U.S. territories and would authorize wind lease sales if offshore wind is determined to be feasible in these locations, if there is deemed to be sufficient interest and after consultation with the territorial governor. This includes areas off the coasts of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands. If feasible, this provision would also significantly increase the amount of offshore area available for wind development and could beneficially improve energy security in these areas by including offshore wind in the resource mix.

Although the IRA gives BOEM authority to expand offshore wind lease areas, the legislation also conditions that authority by requiring that BOEM issue rights of way for oil and gas leases in order to do the same for offshore wind. Per § 50265, "Ensuring Energy Security," DOI and BOEM are prohibited from issuing a lease for offshore wind development unless an offshore oil and gas lease sale has been held during the prior year and the sum total of acres offered for lease in offshore oil and gas sales during the prior year is at least 60 million acres. In the act, an offshore oil and gas "lease sale" is defined as a sale held by the secretary of the interior that, if any acceptable bids have been received for any parcel offered in the lease sale, will *result* in the issuance of a lease. Thus, the provision not only requires that DOI and BOEM *offer* the oil and gas

leases, but also that, if acceptable bids are received, the oil and gas leases are issued in order to offer the same for off- and onshore wind.

Potential impact: These siting provisions unlock significant new lease areas and will continue to advance offshore wind as a major part of the future energy supply along the entire East Coast. Further, expanding the lease areas for offshore wind energy generation could provide additional needed energy security, especially in the case of restrictions on other fuel supplies. However, this significant potential for new clean energy generation must be met with equal progress in the areas of regional and interregional transmission planning, expansion and siting.

Additionally, the requirement that BOEM and DOI engage in lease sales for oil and gas before doing so for offshore wind does impact BOEM's immediate plans for offshore wind. In May 2022, BOEM announced plans to hold an auction for offshore wind lease areas (which may support more than 4 gigawatts of offshore wind generation) off the coast of California in late 2022. If BOEM still wants to go forward with this offshore wind auction on this timeline, it will need to issue and execute oil and gas leases before it executes the offshore wind leases. This requirement is set up to be met for the California auction due to § 50264(b) of the IRA, which requires BOEM to issue and execute the leases for Lease Sale 257 — an oil and gas lease.[1] Thus, given the universe of provisions in the IRA, with BOEM being required to reinstate certain oil and gas leases, the bureau could be in a position to satisfy the IRA's requirement that it execute oil and gas leases prior to the issuance of leases in the California auction and stay on track for this auction in 2022. However, if BOEM wants to ultimately issue fewer offshore oil and gas leases in favor of offshore wind leases, it is prohibited from doing so for at least 10 years, pursuant to the IRA.

Investment and production tax credits: new requirements, new opportunities

The tax credit provisions of the IRA make changes to existing clean energy tax credits and provide new production tax credit (PTC) and investment tax credit (ITC) models as well as a new payment model. First, the bill extends existing clean energy tax credits through 2025. Going forward, the bill provides a base payment for PTC (.6 cent per kilowatt-hour (kWh)) and ITC (6 percent), which can be increased for developers that offer prevailing wages and apprenticeship programs. Including the wage and apprenticeship adjustments, as well as additional bonuses available if developers can certify that they use domestically manufactured products, the maximum PTC would be about 3.1 cents per kWh. For ITC, the rate could increase to 30 percent for developers meeting the wage and apprenticeship requirements and could be as much as 50 percent if developers are able to demonstrate the projects use domestically made materials and are located in low-income or fossil fuel-reliant communities.

Finally, the IRA makes a significant change to the way clean energy tax credits are paid out. Starting in 2025, clean electricity-generating sources (*any* electricity source that does not emit carbon dioxide) will be able to choose between PTCs and ITCs. Further, the IRA allows developers for the first time to be able to monetize their tax credits through contractual transfers to a third party that does not have an equity position in the project.

Potential impact: The tax credit changes in the IRA have the potential to significantly change the funding for and financing of offshore wind projects. The provisions allowing for the transfer of tax credits mean developers will no longer need to find tax equity investors to take an ownership stake in their projects and enter into complex "flip" and "inverted lease" structures to get the benefits of those credits. Developers will, however, still need to find institutions with enough taxable income to purchase those credits. Also, the IRA assumes that a pool of "qualified apprentices" and domestic manufacturing facilities will be developed (presumably spurred on by the demand created by the IRA), but if that is not the case, the tax credits will do less to encourage the development of offshore wind projects.

Overall, what impact will these changes really have?

While some of its provisions are significantly more impactful than others, as discussed herein, the IRA has the potential to impact the entire offshore wind industry. First, the provisions of the act that provide funding for transmission-planning activities related to offshore wind will help respond to the urgent need for transmission infrastructure to interconnect and deliver offshore wind energy to consumers.

Second, while it is helpful that Congress has identified the need for state siting authorities to be involved in other state (or FERC) siting proceedings that may relate to offshore wind, and has provided for some certainty in timing of siting decisions, these provisions may not actually speed up or otherwise improve the siting process to any large degree.

Third, the IRA significantly expands new lease areas available for offshore wind generation development. As noted above, while this could be very impactful for the East Coast, transmission development needs to keep pace.

Finally, the tax credit changes will continue to incent development of renewable clean energy generation, including from offshore wind. The biggest change and potential improvement will be the ability of developers to monetize the tax credits starting in 2025. This change will likely simplify the ownership structures of offshore wind projects, which could enhance the financeability of projects. Longer term, if the labor pool of "qualified apprentices" and the supply chain for domestically manufactured components develop, the IRA could spur development of projects for years to come.

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[1] Lease Sale 257 was held in November 2021 and leased 80.8 million acres for oil and gas development in the Gulf of Mexico. The Record of Decision issued by BOEM for Lease Sale 257 was challenged under the National Environmental Policy Act and the Administrative Procedure Act, and was ultimately struck down and remanded to BOEM by the U.S. Court of Appeals for the D.C. Circuit in early 2022. The IRA effectively overrides the D.C. Circuit's decision, requiring BOEM to award leases to the highest bidders within 30 days after its enactment.

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