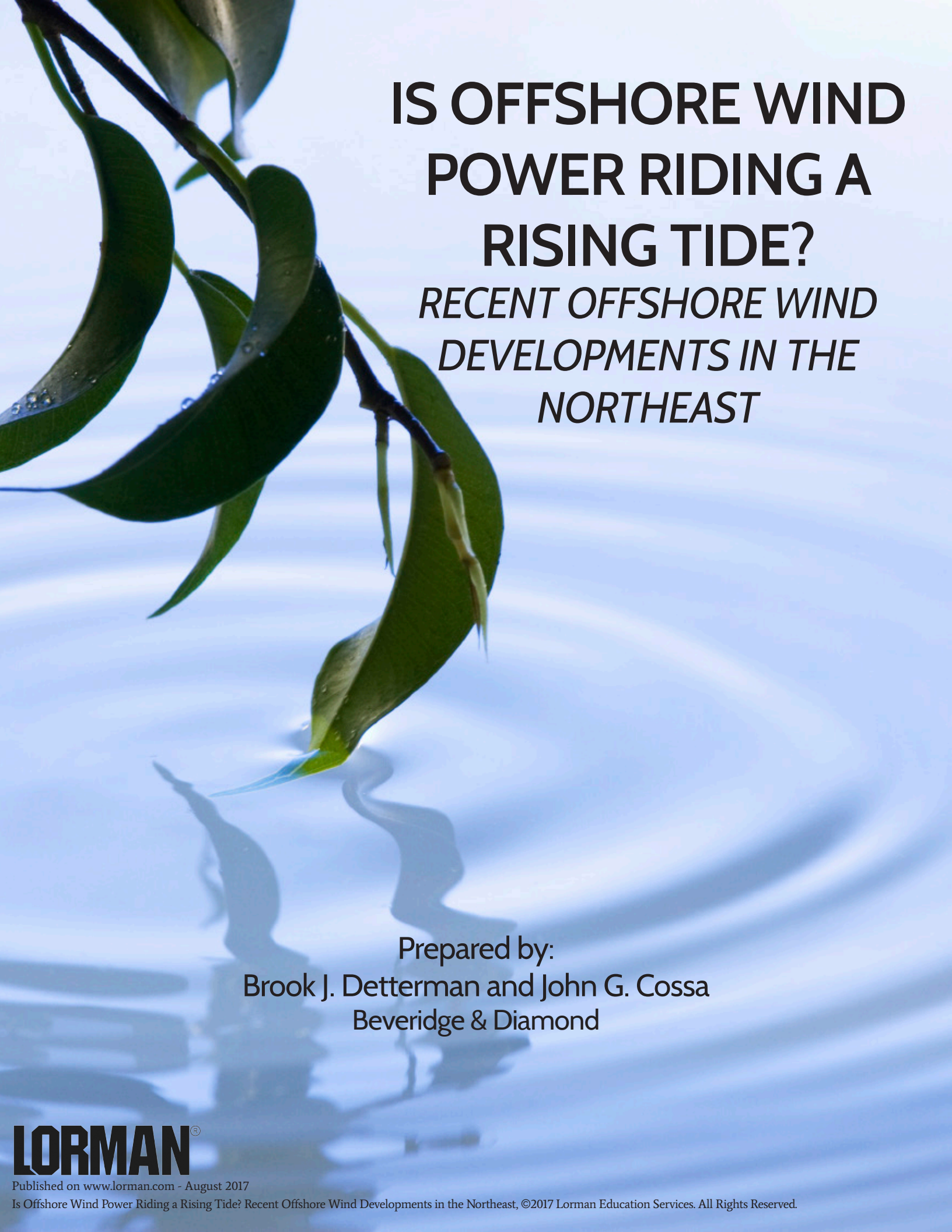

IS OFFSHORE WIND POWER RIDING A RISING TIDE?

RECENT OFFSHORE WIND DEVELOPMENTS IN THE NORTHEAST

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Is Offshore Wind Power Riding a Rising Tide?

Recent Offshore Wind Developments in the Northeast

By Brook Detterman and John Cossa

State action in Massachusetts, Rhode Island, and Maryland may help to advance offshore wind projects in those states, while a new federal proposal would extend the investment tax credit for offshore wind through 2025, improving the outlook for offshore wind projects on the eastern seaboard.

Massachusetts

On June 21, 2017, the Massachusetts Department of Public Utilities (DPU) issued an order that approved a request for proposals (RFP) for the solicitation and execution of long-term contracts for offshore wind. At the same time, the DPU ordered electrical distribution companies to shorten the timetable for the solicitation and RFP process. Massachusetts electric distribution companies filed a response on June 28 that revised the RFP timeline in accordance with the DPU's order. The distribution companies issued this final version of the RFP on June 29, 2017. These actions pave the way for solicitation, bids, and eventual development of significant offshore wind projects off the coast of New England. An initial bidder conference was held on July 19, 2017, during which bidding criteria were further clarified to potential bidders, including quantitative and qualitative factors such as pricing, costs, reliability, and mitigation of environmental impacts related to siting. Presentation materials from the bidder conference are available here.

The draft RFP was previously submitted to the DPU for consideration on April 28, 2017. Both the draft and final versions describe the process for

soliciting and approving bids for 400-800 MW of offshore wind power. The RFP represents a step in complying with Massachusetts' Green Communities Act and Chapter 188 of the Acts of 2016, "An Act to Promote Energy Diversity," which requires utilities in Massachusetts to enter into long-term contracts for approximately 1,600 megawatts of offshore wind energy by June 30, 2027.

The RFP solicits procurement of 400 MW of offshore wind capacity while indicating that the utilities would consider procuring up to 800 MW if a larger proposal is "both superior to other proposals . . . and is likely to produce significantly more economic net benefits to ratepayers." The revised timetable shortens the process by three months, as follows:

Event	**Proposed Deadline**	**Revised Deadline**
Issue RFP	June 30, 2017	June 30, 2017 *Anticipated on June 29*
Bidders conference	July 19, 2017	July 19, 2017
Submit notice of intent to bid	July 26, 2017	July 26, 2017
Submission of questions	July 26, 2017	July 26, 2017
Submission of proposals	Dec. 20, 2017	Dec. 20, 2017
Selection of projects for negotiation	May 22, 2018	April 23, 2018
Negotiate and execute contracts	October 3, 2018	July 2, 2018
Submit contracts to DU for approval	November 1, 2018	July 31, 2018

Contracts awarded under the RFP will help to secure an income stream for potential offshore wind energy developers and to facilitate the development of offshore wind energy projects, which currently do not exist offshore Massachusetts. The RFP also contemplates a potential coordination by multiple states, noting that the Commonwealth and the electric distribution companies "will consider the participation of other states as a means to achieve the Commonwealth's Offshore Wind Energy Generation goals if such participation has positive or neutral impact on Massachusetts ratepayers." That could pave the way for "multi-state coordination and contract execution, as well as potential wind energy projects offshore Connecticut and/or Rhode Island.

Connecticut

On June 28, 2017, the Second Circuit upheld Connecticut's program for soliciting renewable energy projects. The program, part of a joint effort by Connecticut, Rhode Island, and Massachusetts to jointly procure renewable energy capacity, was put on hold last fall by the court pending the outcome of the case. Allco Finance, which was a losing bidder in an earlier 2013 procurement process, challenged Connecticut's program and asked the court to invalidate Connecticut's 2013 procurement, arguing that Connecticut lacked the authority to engage in direct solicitations and also that its actions violate the dormant commerce clause.

The Second Circuit rejected Allco's challenge, applying the recent Supreme Court decision in *Hughes v. Talen Energy Marketing* to find that Connecticut's renewable energy RFP does not "compel" utilities to enter into wholesale power purchases (which would violate the Federal Power Act and usurp the Federal Energy Regulatory Commission's exclusive jurisdiction over wholesale power markets). Because the Connecticut law only requires

solicitations and not the execution of a contract, the Second Circuit held that federal law did not preempt Connecticut's renewable energy RFP.[1]

Last fall, New England Clean Energy (a three-state coordinating body representing Connecticut, Rhode Island, and Massachusetts) released the names of winning bidders, which collectively represent 460 MW in new renewable energy capacity. Among the winners is Deepwater Wind, an offshore wind developer. The Second Circuit's ruling will allow that procurement process to proceed, representing a step forward for both offshore wind and other wind and solar development in the northeast.

Rhode Island

On March 1, 2017, Rhode Island announced a new "Clean Energy Goal" that seeks to add 900 MW of new clean energy within the state by 2020. Right now, Rhode Island is home to about 100 MW of installed renewable energy capacity. While seeking to add clean energy from "broad portfolio of clean energy resources," the Clean Energy Goal specifically references offshore wind, as well as onshore wind and solar power. Rhode Island is currently home to the nation's first and only offshore wind farm, the Block Island Wind Farm, a 30-MW installation built by Deepwater Wind. Rhode Island's new Clean Energy Goal, which is driven by Governor Gina M. Raimondo, has the potential to expand Rhode Island's offshore wind footprint through supporting new projects and/or projects built in coordination with Massachusetts' ongoing offshore wind procurement process.

Maryland

[1] The Second Circuit also upheld a requirement in Connecticut's renewable portfolio standard (RPS) that requires demonstration of compliance through submission of renewable energy credits (RECs) generated in-state.

On May 11, 2017. the Maryland Public Service Commission issued $1.9 billion in Offshore Wind Renewable Energy Credits (ORECs) to two prospective offshore wind developers, U.S. Wind and Skipjack Offshore Energy (a unit of Deepwater Wind), each of which holds offshore wind energy leases from the federal government. The move ensures a revenue stream for any wind projects that are built in these lease areas, which Maryland and the developers hope will exceed 368 MW total, and which would represent a significant expansion of offshore wind power capacity in the United States (for comparison the Block Island Wind farm has a capacity of 30 MW). Although neither developer has yet sought approval from the federal government to develop their leases, the developers are hopeful that such approval will be forthcoming when their projects are ultimately proposed. In accepting the Maryland OREC award, both developers have agreed to various conditions aimed at local economic development and made commitments to invest $115 million in manufacturing and port facilities located in Maryland. While Maryland's OREC award is only one of many regulatory steps necessary to bring offshore wind energy to the state, it nevertheless signals Maryland's ongoing commitment to offshore wind as an energy source.

Federal

Also on May 11, Senator Edward J. Markey (D-MA) and Senator Sheldon Whitehouse (D-RI) introduced the Offshore Wind Incentives for New Development Act (the "Offshore WIND Act"), which would extend the 30 percent investment tax credit (ITC) under Section 48 of the Internal Revenue Code (Code) for offshore wind through 2025. A companion bill was introduced on the same day by Representative Jim Langevin (D-RI) and is pending in the House of Representatives. Currently, the ITC is available for projects that commence construction before January 1, 2020, but to be

eligible for the full credits, the project must have begun construction by January 1, 2017 – which means that any future offshore wind project would miss out on the full ITC unless the ITC deadline is extended. To further incentivize offshore wind energy, the Offshore WIND Act would extend the full 30 percent ITC to "qualified offshore property" that commences construction before January 1, 2026. Qualified offshore property would include any wind energy facility (other than certain small facilities) located in the United States' coastal waters, exclusive economic zone, or outer continental shelf. While the last extension of the ITC passed Congress with bipartisan support, it is less clear what the prospects are for the Offshore WIND Act because it focuses exclusively on offshore wind and not a broader array of renewable energy sources. A similar bill was introduced in 2016 but failed to pass.

Although these are still early steps in the long road towards constructing large-scale wind energy projects offshore the U.S. east coast, they are critical steps essential to the viability of a future offshore wind industry. While large scale deployment is still years away, with more states actively pursuing and incentivizing offshore wind projects, the future of offshore wind is beginning to look a bit brighter.

Beveridge & Diamond's Natural Resources & Project Development practice counsels clients on renewable energy and outer continental shelf project development, regulatory enforcement, and litigation. For more information on how these developments may impact your business, please contact the authors of this article or your usual Beveridge & Diamond contact.