



The Sheppard Mullin Six U.S. OFFSHORE WIND

Here are six key items to be aware of today in U.S. Offshore Wind (“OSW”)

1. Worldwide investment in OSW projects has proved resilient despite COVID-19. According to BloombergNEF, the first 6 months of 2020 saw \$35 billion of investment in OSW globally, more than triple the same period the prior year. This growth can largely be attributed to a 67% reduction in levelized costs since 2012, as well as improvements in turbine technology.
2. Bilateral PPAs and OREC transaction structures will continue to be utilized for upcoming procurements of U.S. OSW. Historically, U.S. OSW transactions such as the Cape Wind project utilized bilateral PPAs with state utilities, similar to those for onshore wind and solar transactions. More recent transactions, including the NYSEDA and NJBU procurements, have utilized OSW Renewable Energy Credits (“ORECs”). Under a typical OREC structure, an OSW producer sells ORECs directly or indirectly to local servicing entities at either (i) a fixed price per OREC or (ii) an index OREC price, which is essentially a contract for difference that factors in relevant energy and capacity prices.
3. OSW projects should qualify for an extension of federal tax credits for a 60% production tax credit (“PTC”) or an 18% investment tax credit (“ITC”) for all wind projects that commence construction in 2020 and reach their commercial operation date (“COD”) by 2024. To be eligible, projects must either (i) “commence physical work of a significant nature” either on-site or off-site, or (ii) incur at least 5% of the qualified project costs by the end of 2020. For more on the ITC, please see [this recent webinar](#) co-presented by Sheppard Mullin’s Amit Kalra.
4. OSW projects in U.S. federal waters must obtain a lease from the Bureau of Ocean Energy Management (“BOEM”), which approves site assessments and construction and operation plans and evaluates environmental impacts pursuant to the National Environmental Policy Act (“NEPA”). Onshore components of OSW projects (e.g., transmission cables and interconnection substations) must also comply with state and federal permitting and environmental laws. Additionally, most state OSW solicitations require community engagement plans involving stakeholders (e.g., property owners and shipping, fishing, and boating interests), while NYSEDA’s 2020 solicitation includes environmental justice, minority-owned business, and prevailing wage requirements.
5. There are no Jones Act-qualified wind turbine installation vessels, so OSW developers must either transport building materials and turbine components (e.g., towers, nacelles, and rotor blades) directly from a foreign port to the project site, or rely on a workaround using Jones Act-qualified “feeder barges” to transport these from U.S. ports to foreign installation vessels on-site.
6. On August 31, 2020 U.S. Customs and Border Protection (“USCBP”) issued its first OSW-related Jones Act guidance since 2011, confirming a long-standing interpretation that foreign vessels are permitted to lay cable in U.S. territorial waters without violating the Jones Act. The guidance also confirmed that cable removal and decommissioning within U.S. territorial waters by a foreign vessel does not violate the Jones Act, so long as any cable that has been removed from the seabed is not transported to a U.S. port.

Key Contacts - U.S. Offshore Wind



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Ben helps developers, utilities, infrastructure funds, banks and institutional investors finance, buy and sell infrastructure projects, and advises the companies that develop and own those projects, across the United States. While his experience spans asset classes and transaction types, he focuses on tax credit monetization transactions and renewable energy generation facilities.



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Gail has more than 35 years of experience in all facets of environmental and energy law and policy. Her practice includes permitting and compliance, transactional due diligence, litigation and legislative matters. She works closely with traditional, renewable energy and energy storage developers on environmental and land use matters, including issues relating to climate resiliency, carbon emission reductions and community outreach, and advises on energy transactions, including commodity trading of environmental attributes. Gail also works with a non-profit organization and New York City's Office of Sustainability to advance energy efficiency in existing and new buildings. She sat on Mayor Bloomberg's Energy Task Force for a decade.



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Amit structures and forms partnerships that own and operate alternative energy resources. His experience includes the pricing of partnership investments through the preparation of pro forma economic models that incorporate relevant federal income tax assumptions and constraints to accurately determine the expected after-tax return on a partnership investment. His partnership practice includes all forms of direct investments in partnerships and pass-through entities, including private equity fund formation and investment.



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Mark Sundback represents energy industry participants before federal and state agencies charged with jurisdiction over energy markets and their participants. His representations have focused on the rates, terms and conditions associated with gaining access to regulated energy transmission systems, transactions involving changes in ownership of jurisdictional assets and unbundling matters. With regard to wholesale electric service, he has been involved in proceedings involving unbundling transmission, distribution and generation rates in PJM and ERCOT. Mark has been involved in counseling multiple independent merchants of electric power, and in filings on their behalf with the FERC. His work frequently requires the integration of both transactional and regulatory goals.



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Charles has practiced maritime law for more than 40 years. He specializes in vessel finance, sale and purchase, construction, chartering, and related litigation, arbitration, and bankruptcies. He teaches maritime law as a member of the adjunct faculty at USC Law School, and has lectured and written on topics relating to international law, ocean shipping, air and land transport, satellites, and cross-border leasing. Mr. Donovan has served as chair of the Maritime Finance Subcommittee of the American Bar Association's Commercial Financial Services Committee and as chair of the U.S. Maritime Law Association's Subcommittee on Liens and Mortgages.



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Nick is an associate in the Finance and Bankruptcy Practice Group and a member of the firm's Energy, Infrastructure, and Project Finance Team. Nick has represented clients from the maritime, energy, and aviation industries including lenders and borrowers, issuers, lessors and lessees, sellers and buyers, and equity investors in a range of sale, lease, and financing transactions. Nick previously worked on a range of Jones Act-related transactions and litigation as a law clerk at a leading maritime law firm, and currently serves as the Young Lawyer's Committee liaison to the Maritime Law Association of the United States' Bankruptcy and Insolvency Committee.

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