

Cape Wind Fact Sheet: The Energy Policy Act of 2005

May 3, 2006

Opponents of the Cape Wind project who are pushing an anti-Cape Wind provision in the Coast Guard Reauthorization Act have been under intense scrutiny and criticism over their backroom tactics to get this provision adopted in Conference Committee without having been previously considered or debated by either Chamber of Congress.

This scrutiny and criticism has prompted these Cape Wind opponents to make a desperate and irresponsible accusation that Cape Wind received an inappropriate provision in a backroom manner that was included in the Energy Policy Act of 2005.

The facts on record do not support this irresponsible and desperate accusation.

When the Energy Bill was first being debated in Congress, Cape Wind put its concerns and recommendations in writing on its letterhead and sent it along to the Energy Committees in an open and transparent manner. In addition to Cape Wind, the American Wind Energy Association and several leading environmental organizations submitted comments expressing concerns that existing offshore wind proposals not be penalized or excessively delayed in receiving a fair, thorough but timely review by government agencies.

Nothing was “slipped” into the 2005 Energy Policy Act on Cape Wind. All provisions relevant to Cape Wind were included in the publicly-posted versions of the Bill throughout the 2005 mark-up sessions of the Senate Energy Committee. Further, in the two weeks of consideration of the Bill by the full Senate in 2005, some 240 amendments were offered, but no objections were raised regarding the offshore renewable energy provisions. Each title of the Bill was then marked-up in open and televised conference sessions, but, again, no objections were raised as to any of the provisions applicable to Cape Wind or offshore renewable energy.

Very recently, staff at the Senate Energy Committee prepared a three-page document, entitled, “*Cape Wind Termination Provision (Section 414) in the Coast Guard Authorization Conference Report*”, that refutes these claims of Cape Wind opponents regarding the Energy Policy Act of 2005.

Below are extracts of the Senate Energy Committee document where emphasis has been added in bold to particular text:

“The offshore wind provisions of Energy Policy Act of 2005 (EPACT) were developed in an **open process**, and were **publicly available**, and amendable from the very beginning of the legislative process in the Committee on Energy and Natural Resources last year. They remained in full public view and subject to amendment through to the conclusion of the House-Senate conference on the bill.”

“...**Consistency and fairness** also dictated a commitment to a **smooth transition** from the previous regulatory system into the more comprehensive one under EPACT 2005. That necessitated some transition provisions for the few existing projects that had started prior to the enactment of EPACT. **The most notable of these was the Cape Wind project. It had particularly made progress towards Federal permitting prior to enactment of EPACT. The Cape Wind developers had permitted, successfully defended in Federal court, constructed, and operated an offshore test facility to qualify the wind resource at the proposed site, at considerable private expense.** The project developers had cooperated with the Army Corps of Engineers in a sufficient amount of planning and analysis to allow the completion of a draft Environmental Impact Statement by the Corps. **The project developers had also cooperated with the Commonwealth of Massachusetts in the State's extensive review of the project. As a result of this review, in May 2005, the Massachusetts Energy Facilities Siting Board issued its final report on the project, approving the transmission facilities associated with the project, over which the Commonwealth of Massachusetts had jurisdiction.**”

“Because of the **substantial financial investment made by Cape Wind under the previous regulatory system**, which did not require competitive bidding prior to initiating project specific regulatory compliance activities (which are quite costly), the Cape Wind project and other projects that could demonstrate the same characteristics (either through construction of offshore test facilities or through responses to requests for proposals by a public authority) **were exempted from the competition requirements that apply to de novo offshore wind development after the date of enactment of EPACT. In addition to being an equitable outcome for projects that had fully complied with the previously existing Federal rules on the OCS, this also prevented the considerable prior public investment by Federal and State governments in analysis and permitting of offshore wind development from being thrown away arbitrarily.**”

“The transition provisions of the offshore energy section of EPACT **do not translate into some sort of "free ride" for Cape Wind** or any other existing project. Under the new regulatory regime under EPACT, **Cape Wind will have to pass muster with MMS, just like every other offshore energy project. The level of scrutiny that will be applied to the project will increase.** MMS currently plans to conduct its own, expanded NEPA analysis of the Cape Wind project, in accordance with the provisions of EPACT that call for a broader review of concerns. There is no guarantee of a positive permitting outcome for Cape Wind at the end of this NEPA process. MMS may issue a permit for the current proposed configuration, may require a changed configuration or other restrictions in order to issue a permit, or may reject the permit application. **If approved, the Cape Wind project will pay the same royalties to the Federal government that MMS will charge to all other offshore wind projects.**”

“The charge that the provisions of section 388 of EPACT 2005 represent some special giveaway to the Cape Wind project or any other existing offshore energy project is **without foundation. The provisions were based on an equitable approach to a difficult problem, were developed in full public view, were appropriately considered noncontroversial at the time of their adoption, and are still appropriately considered as allowing offshore wind development while protecting the public interest.**”