

Cape Wind Fact Sheet

The Massachusetts Role in Reviewing Cape Wind

May 3, 2006

Introduction

Opponents of the Cape Wind project are pushing an anti-Cape Wind provision in the Coast Guard Reauthorization Act that would give unprecedented veto power to the Governor of Massachusetts. Cape Wind opponents have been under intense scrutiny and criticism over their backroom tactics to get this provision adopted in a 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 defend their provision by inaccurately stating that the State of Massachusetts has little or no role in reviewing the Cape Wind project in an emotional appeal to give the Governor unprecedented veto power. These Cape Wind opponents are also making misleading statements about Massachusetts Ocean Sanctuaries regarding the proposed Cape Wind site of Horseshoe Shoal in Nantucket Sound.

Power Plant Permitting in Massachusetts and the roles of the Governor, State Legislature and the Massachusetts Energy Facilities Siting Board

The Governor of Massachusetts has no direct authority to approve or to veto power plant developments in Massachusetts of any kind. The Massachusetts Legislature does have authority to license power plants, however, the Legislature has largely delegated this authority to an entity it created to insulate critical energy infrastructure decisions from political pressure called the Massachusetts Energy Facilities Siting Board (MEFSB). The MEFSB is charged by the Massachusetts Legislature with ensuring a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. The MEFSB's primary function is to license the construction of major energy infrastructure in Massachusetts, including large power plants and electric transmission lines. Other Massachusetts regulatory agencies are also involved in reviewing proposed power plants.

Massachusetts' Role in the Cape Wind Permitting Process

Massachusetts Energy Facilities Siting Board

On May 10, 2005, the Massachusetts Energy Facilities Siting Board (MEFSB) voted to **approve** Cape Wind's transmission lines following a 32-month adjudicatory review process that considered the wind farm as well as the cables. Their process included a review of 932 exhibits and testimony from expert witnesses from all sides whose statements produced 2,900 pages of written transcripts.

Extracts of MEFSB Final Decision approving Cape Wind’s application, May 11, 2005:

- “The Siting Board therefore finds that there is a need for the capacity provided by the wind farm beginning in 2007 for reliability purposes.” (p.147)
- “The record shows that the wind farm would act as a hedge against risks associated with the availability of natural gas and other fossil fuels.” (p.150)
- “Consequently the Siting Board finds that there will be a need for the renewable resources provided by the wind farm to meet regional RPS [Renewable Portfolio Standards] requirements beginning in 2006.” (p.155-156)
- “The record shows that the wind farm will tend to reduce market clearing prices for electricity... The savings... would accrue to electric customers, and are estimated to be \$25 million per year for New England customers, including \$10 million annually for Massachusetts customers over the first five years of operation.” (p.162)
- “The record clearly documents significant and lasting air quality benefits resulting from the wind farm’s displacement of other, primarily fossil-fueled, generators.” (p.188)
- “Overall, the Siting Board concludes that the air quality benefits of the wind farm are significant, and important for Massachusetts and New England.” (p. 189)

Massachusetts Coastal Zone Management (MCZM)

Massachusetts’ primary authority under federal law to review impacts, including navigational impacts, of federally permitted activities on the Outer Continental Shelf arises pursuant to the “consistency review” provisions of the Coastal Zone Management Act. This review requires that any federal activity “within or outside the coastal zone that affects any land or water use or natural resource of the [3-mile] coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” The MCZM continues to be in active review and discussion with the project and will need to make its consistency determination before a federal decision is made.

Massachusetts Environmental Policy Act Review

Massachusetts is also conducting a comprehensive review of the project, including navigational issues in both state and federal waters, as part of the Environmental Impact Report (EIR) being prepared pursuant to the Massachusetts Environmental Policy Act (MEPA). The resulting draft EIR issued in November of 2004 includes a detailed discussion (Section 5.12, “Transportation and Navigation”) of navigational studies regarding potential impact in both state and federal waters, as well as mitigation measures, and also includes as Appendix 5.12 B to the draft EIR a 90-page Navigational Risk Assessment. Upon review of the draft EIR, the MEOEA Secretary on March 3, 2005, issued a Certificate of Adequacy of the draft report, authorizing the preparation a final EIR, subject to further analysis of specifically stated issues, which include navigation. All navigation and other issues are undergoing further responsive analysis and, in consultation with both federal and state agencies, will be fully addressed in the final reports.

Ongoing participation of Massachusetts citizens in Cape Wind review process

Thousands of Massachusetts citizens have submitted written or verbal comments at various stages of the Federal and State permitting review process since 2001. Public agencies have held a dozen public hearings on the Cape Wind project in the State of Massachusetts. In addition to the permitting process, in 2002-2003 the Massachusetts Technology Council

convened a public stakeholder process on Cape Cod to bring together representatives of all stakeholder groups and the general public to hear from independent experts to learn how to maximize the public's participation in the permitting process.

Cape Wind has significant support among the leadership of the Massachusetts Legislature and among Massachusetts Citizens

The Chairs of five Committees of the Massachusetts Legislature, including House and Senate Energy, have written to Congress to strongly oppose the anti-Cape Wind amendment, based in part upon the adequacy of the current review process, under which the state's decisional authority does not rest with the Governor. The Chairs stated that "the Massachusetts Energy Facility Siting Board (the Massachusetts entity with the statutory authority over the Commonwealth's energy facility decisions) found that the project is needed to meet the energy needs of the public to help lower electric prices, and to meet the Commonwealth's renewable energy requirements."

The latest independent opinion survey conducted by the University of Massachusetts and the University of New Hampshire finds that Cape Wind is favored by more than a 6-to-1 margin among Massachusetts residents. It cannot be credibly argued that the amendment to block Cape Wind is either necessary or consistent with the interests and concerns of the citizens of the Commonwealth.

Cape Wind Opponents are providing misleading information about Massachusetts Ocean Sanctuaries and Cape Wind

Recent statements by Cape Wind opponents, desperately trying to defend the need for a Governor's veto of Cape Wind, have suggested, variously, that either all of Nantucket Sound is part of a Massachusetts Ocean Sanctuary, or, that it might as well be since Massachusetts filed such an application twenty-five years ago.

In fact, the United States Supreme Court settled any remaining jurisdiction questions in 1986 by finding that the boundary between Massachusetts and the Federal Government extends 3-miles offshore in Nantucket Sound, leaving a substantial area of the central portions of Nantucket Sound (including Horseshoe Shoal) in Federal waters and outside of any Massachusetts Ocean Sanctuary.

Even before the Supreme Court fully resolved the jurisdiction issue, there is ample evidence to suggest that Massachusetts' prior application to make all of Nantucket Sound an Ocean Sanctuary had also been found lacking on the merits. *NEWSLINES*, a newsletter of the Massachusetts Coastal Zone Management Program dated December 28, 1981, under the headline, "*Nantucket Sound Marine Sanctuary Update*", contains this passage:

"After almost nine months of public comment, inter-agency consultation and state-federal discussions, the [US] Office of Coastal Zone Management has declined to advance Governor King's nomination of the central portion of Nantucket Sound to "Active Candidate" status for a federal Marine Sanctuary designation. This administrative step almost certainly means the end of the line for the nomination. In a letter dated 27 November 1981, OCZM states that the central Sound area "does not adequately meet site selection criteria for consideration." They further note that "adequate resources exist in Nantucket Sound, however, they majority of these resources are more readily definable in state waters and not in the central area of the Sound."