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Despite Lease Approval, Future of Cape Wind Remains Up in the Air

By CHRISTA MARSHALL of

Cape Wind is riding on a string of recent victories, but it could still get blown off course.

Supporters cheered last week when Interior Secretary Ken Salazar signed a lease for the 130-turbine project planned off the shores of Cape Cod, Mass.

But one of the biggest hurdles lies ahead. By mid-November, state regulators are expected to make a decision about a contract between the utility National Grid and Cape Wind to buy half the wind farm's power.

Without a yes verdict, it could be the end of the proposed \$2 billion project.

"If the contract isn't approved, we would have to go back to the drawing board," said Mark Rodgers, a spokesman for Cape Wind. "It's not clear that the project could move forward in that case."

And even if the proposal gets a thumbs-up from the state Department of Public Utilities (DPU) commission considering the contract, hurdles still exist, including pending lawsuits and hostility from candidates running for governor.

"As Yogi Berra would say, 'It ain't over till it's over,'" said Patrick Parenteau, a law professor at Vermont Law School.

Measuring cost-effectiveness

Cape Wind envisions turbines, each taller than the Statue of Liberty, stretching 25 miles in an area of Nantucket Sound called Horseshoe Shoal. The project, which would be about 5 miles off the coastline, could supply 75 percent of the electricity needs of Cape Cod and nearby islands. It obtained a federal permit from the Interior Department in April, setting it up to be the nation's

first offshore wind farm.

Under the 15-year contract being considered, Cape Wind would sell 50 percent of the farm's power to National Grid at 18.7 cents per kilowatt-hour in 2013, followed by annual price increases of 3.5 percent. Approval of the agreement is considered pivotal to attract investors, as well as to gain federal incentives such as tax credits or loan guarantees.

On Friday, the three state commissioners determining the contract's fate accepted briefs from all parties in the case, following weeks of technical hearings and legal arguments in Boston.

Their decision hinges on whether the project is "cost-effective" and "reasonable" under a 2008 Massachusetts law called the Green Communities Act. And those phrases are open to interpretation.

According to Cape Wind Associates President Jim Gordon, the answer to the cost-effective question is a resounding "yes," since it's impossible to measure the price of fossil fuels in the future. Because Cape Wind has a set price for the next 15 years, it could be cheaper than power from fuels such as natural gas with unpredictable prices in coming years, he said.

The 18.7 cents figure also does not include "offsetting" costs not available to fossil fuel such as the price of renewable energy credits that will be deducted from the cost, he said. "If you only look at the short-term price of brown power -- or fossil fuel power -- you are comparing apples to oranges," he said.

Then there is the benefit of not having to pay for health costs associated with burning carbon-intensive fuels, he said.

"Childhood asthma doesn't show up on our electric bill," Gordon said. "With renewable energy, we don't pay that kind of external cost," he said. He blamed fossil fuel interests for providing funding to anti-Cape Wind groups.

Opposition remains strong

Opponents of the project, though, contend that 18.7 cents is roughly double what Massachusetts citizens currently pay for electricity.

"Massachusetts has significant amounts of lower-cost onshore wind and biomass, so why aren't we doing that first?" said Jonathan Lesser, an economist who testified at the recent hearings on behalf of the Alliance to Protect Nantucket Sound, an anti-Cape Wind group.

In official testimony to the DPU, TransCanada's Michael Hachey said that Cape Wind "is one of the highest-priced contracts ever signed by a Massachusetts utility." The company is not opposed to the project, but to the contract.

National Grid should have received bids from out-of-state projects in a formal procurement process, Hachey said. Originally, state law restricted long-term renewable contracts to in-state generators, but was later changed. His company runs a Maine wind facility offering power at an estimated 11 cents a kilowatt-hour that could have offered lower prices for renewable power than Cape Wind, he said.

But National Grid Deputy General Counsel Ron Gerwatowski said that his utility looked at renewable resources across New England and concluded that Cape Wind was the best option to meet Massachusetts' renewable standard. That standard requires utilities in the state to obtain 15 percent of their power from renewable sources by 2020.

"There's a renewable resources gap in meeting the law that cannot be met unless we add a large-scale project," he said.

Cape Wind is the only large-scale option available in the immediate future to satisfy the law's requirements, he said. That conclusion holds after the company examined out-of-state bids received last week from renewable companies, he said. Those bids came in after the National Grid contract was finalized.

Bidding disputes complicate the discussion

To critics complaining about cost, he said Cape Wind will provide roughly 3.5 percent of the utility's power in Massachusetts, and its price will be blended with other generators. National Grid estimates that the average consumer cost is about \$1.25 monthly, he added.

"TransCanada is simply a disgruntled competitor of Cape Wind," said Gerwatowski.

TransCanada countered in its brief filed Friday that "out-of-state generators have not yet received a full and fair opportunity to compete." The company claims the lack of out-of-state bidding in the beginning violated the Commerce Clause of the U.S. Constitution.

Many analysts say that the DPU is likely to approve the contract, considering that its three commissioners were appointed by the administration of Gov. Deval Patrick (D), a supporter of Cape Wind.

The DPU is an independent agency, however, and will be conducting a "fair, impartial proceeding," said Lisa Capone, a spokeswoman for the Massachusetts Executive Office of Energy and Environmental Affairs. The agency has ruled against the Patrick administration several times before, including in the Cape Wind case, Capone said.

Yet even some opponents like Lesser say it's "likely" that the contract will go through because of the makeup of the DPU. That raises the question of whether Cape Wind is a done deal if it gets a "yes" vote.

The project could still be built if a buyer for the second half of the power is not found, although the rate in 2013 would jump from 18.7 cents to 19.3 cents, [according](#) to the state attorney general. The project could be downsized to fewer than 130 turbines in such a case, Rodgers said.

Legal challenges around the corner

Cape Wind also needs to line up a contractor to install undersea cables and other equipment. Additionally, the U.S. Army Corps of Engineers must issue another permit for the project.

Gordon said he was confident that another buyer and a contractor would be found. "This will get built," he said.

All of the leading candidates running for governor are opposed to the project, though, except Patrick. In a September interview with the Cape Cod Times, Republican gubernatorial candidate Charlie Baker said he would do everything in his power to block the project and predicted that the DPU might not make its decision before the elections.

"But even if it does, there are enough lawsuits in place to give" me a chance to block the project, he said to the paper.

According to one legal expert, one way that could happen is if opponents appealed the DPU decision to the Massachusetts Supreme Judicial Court and convinced it that the original proceeding was flawed and had to be redone. If that happened, two of the commissioners hearing the case would be appointed by the incoming administration, which could be more hostile to the project.

"That scenario is a real long shot, but possible," the source said.

Most of the other lawsuits are federal challenges to permits from the Interior Department and the

Federal Aviation Administration under statutes such as the Endangered Species Act. The outcome of those cases is pending, but is unlikely to "stop the project cold," said Parenteau.

Opponents such as Lesser contend that an anti-Cape Wind governor like Baker also would have an impact through the bully pulpit by sending a negative message to potential Cape Wind investors.

Supporters say they have fought challenges from various parties, including wealthy landowners and Indian tribes, for a decade and have proved the opposing arguments wrong one by one. It is not different this time, they say.

"The decision ... places the Commonwealth of Massachusetts in a position to either take a monumental and courageous step forward on the path to a clean energy future, or a giant step backward that would set back the offshore wind industry in the state, the region, and in the country," National Grid said in its brief filed Friday.

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