

## **Vineyard Gazette:4/21/06 Wind Farm Is Favored in Bill**

### *Special Interest Language Was Quietly Placed in Energy Act That Exempts Cape Wind From Public Bidding*

By JULIA WELLS

The hotly debated Cape Wind project - its backers now basking in the role of wounded underdog over a recent amendment to the U.S. Coast Guard authorization bill - was the direct beneficiary of a special interest provision slipped quietly into the federal Energy Policy Act before it was signed into law last year.

Carefully crafted and written in seamless legislative language, the provision exempted the Cape Wind project from competitive bidding requirements that would apply to all other projects like it, once the bill became law. The special interest language, which was added to the bill after it had been approved by the House but before it was voted on by the Senate, saw no public hearings and virtually no debate. The amendment was authored by Sen. Pete V. Domenici, chairman of the Senate Natural Resources and Energy Committee.

Last week Senator Domenici made headlines when he publicly blasted Sen. Ted Stevens of Alaska for his amendment to a Coast Guard bill that would hand veto power over the Cape Wind project to the Massachusetts governor. Senator Domenici openly criticized Senator Stevens for introducing the amendment behind closed doors with no public debate.

But the ranking senator from New Mexico had done something quite similar last June when he inserted language into the Energy Policy Act that was a huge boost for developer Jim Gordon, who wants to build the nation's first offshore wind farm on Horseshoe Shoal in Nantucket Sound. Exempting Cape Wind from public bidding requirements knocked down a high hurdle for Mr. Gordon and his project. Offshore energy leases with private companies are generally required to go out to bid.

The Minerals Management Service, a branch of the U.S. Department of the Interior which assumed regulatory oversight of the Cape Wind project from the U.S. Army Corps of Engineers last year and which was deeply involved in the writing of the Energy Policy Act, had no hand in the language that was written for Cape Wind. A top official at minerals management admitted in a recent e-mail that he was somewhat blindsided by it.

"The exemption from competitive bidding seems clear," wrote Walter Cruikshank, deputy director of the Minerals Management Service, responding to an inquiry from a legislative aide about the language in the bill. "MMS did not propose the language - it was shared with us by committee staff after they received it. I don't know who wrote it."

A chronology prepared by the Congressional Research Service, an independent panel of attorneys and policy experts that provides research services to the legislature, shows that the amendment to the bill was introduced by Senator Domenici on June 14, 2005. An earlier version of the bill that did not contain Senator Domenici's language was approved by the House on April 18, 2005. In that version of the bill, the section that addresses alternate energy uses on the outer continental shelf contained a "savings provision" that would allow pending projects to avoid the need to resubmit documents or receive approval for activities that had already been permitted. Two months later, Senator Domenici's substitute version of the bill

contained new language that elucidated a key exception: "Except with respect to projects that meet the [terms of the savings provision, appearing in a subsequent section], the Secretary [of the Interior] shall issue a lease, easement or right-of-way . . . on a competitive basis."

It was well known at the time that Cape Wind was the only project that met the criteria in the savings provision, but the addition of later language had the effect of grandfathering the Cape Wind project in a completely different way - by exempting it from competitive bidding.

Longtime legislative observers say the special provision crafted for Cape Wind developers was a sophisticated job, intended to avoid public scrutiny.

Signed into law in September 2005, the Energy Policy Act is considered a key legislative measure that will shape the future for the development of energy on the domestic front, including alternative energy.

The Cape Wind project comes at a time when the oceans are like the wild west of the budding alternative energy industry; as offshore wind developers ramp up business plans, lawmakers are scrambling to catch up and develop sensible policies and rules for use and development of the public seabeds in state and federal waters.

Meanwhile, on another legislative front, the amendment to the Coast Guard authorization bill granting veto power over Cape Wind to the governor of the commonwealth has caused a small public uproar in recent weeks, and Cape Wind developers have seized the moment as a public relations haymaker. "This backroom amendment pushed by special interests would unfairly target Cape Wind and undermine America's quest for energy independence . . . the amendment would also deal a setback to legislative transparency," declared a news advisory that went out this week announcing the formation of a new coalition backing Cape Wind. The coalition held a press conference yesterday with Mr. Gordon included on the list of speakers.

Back-room politics aside, supporters of the Coast Guard amendment say there are in fact real issues surrounding safety, navigation and possible radar interference, both in the air and on the sea, that bear close examination and are a sound basis for handing some control to the commonwealth.

As the high-decibel debate continues, with plenty of posturing and finger-pointing on all sides, it is also now known that much money is at stake.

An analysis prepared by the Congressional Research Service and obtained by the Gazette shows that the Cape Wind project, if it is approved and built as now planned, would stand to benefit from some \$100 million in state and federal tax credits and incentives annually.

The arm's length analysis was prepared using current policies, regulations and cost of power as a basis.

Cape Wind, as planned with 130 turbines and a maximum capacity of 428 megawatts, would produce 1.491 million kilowatt hours per year, the analysis found. The Internal Revenue Service is offering a federal renewable energy production tax credit of 1.9 cents per kilowatt hour this year. Using this number, at peak capacity, Cape Wind would qualify for about \$28.3 million in federal tax credits, the research service concluded.

In Massachusetts the principal regulatory benchmark for wind projects is the Massachusetts Renewable Energy Portfolio Standard, a complicated formula that sets a minimum requirement for electricity production from renewable energy sources, or through the purchase of credits that represent an equivalent amount of production. Currently in Massachusetts, each retail electricity supplier is required to use renewable energy sources for two and a half per cent of its power supply. Suppliers can meet the requirement in a variety of ways, including providing the power, buying the power or making payments in lieu of compliance.

Cape Wind plans to sell electricity to retail suppliers who need to satisfy their two and a half per cent requirement. Under current conditions and at full capacity of 428 megawatts, Cape Wind would have the ability to negotiate a sale price with suppliers that could reach nearly \$82 million a year, the research service found.

Congressional researchers cautioned that their estimates are the ceiling, and could change, especially at the state level, where a variety of factors including total electricity production, the cost of power and a complicated web of regulations are constantly changing. Also, it likely would take several years for Cape Wind to reach peak capacity, researchers said.

Cape Wind officials have declined to discuss the financial details of the project, although they have said that they have invested more than \$20 million in the project to date.