

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACK FOR WHALES, Inc., *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et al.*,

Defendants,

and

AVANGRID POWER, LLC, *et al.*

Proposed Defendant-Intervenors

Case No. 2:25-cv-1678-JW

Honorable Amir H. Ali

**JOINT UNOPPOSED MOTION TO ENTER BRIEFING SCHEDULE
FOR FEDERAL DEFENDANTS' FORTHCOMING MOTION FOR REMAND
AND TO DEFER FEDERAL DEFENDANTS' RESPONSE TO THE COMPLAINT**

Federal Defendants and Plaintiffs respectfully request that the Court enter a briefing schedule for Federal Defendants' forthcoming motion for voluntary remand. Specifically, the Bureau of Ocean Energy Management's ("BOEM") is in the process of reconsidering its approval of the Construction and Operations Plan (COP) for the offshore wind energy development project known as New England Wind 1 and 2 ("New England Wind"). The Complaint in this case challenges, among other things, BOEM's COP approval. ECF No. 1 ¶ 174. Thus, Federal Defendants are intending to move no later than October 10 to remand and, separately, to vacate BOEM's COP approval. The present motion seeks entry of a briefing schedule for that forthcoming remand motion.

In light of their forthcoming remand motion, Federal Defendants also request that the Court defer their current deadline to respond to Plaintiffs' Complaint. Instead, Plaintiffs and Federal Defendants suggest the parties file a status report 14 days after the Court resolves the Motion for

Remand and propose what, if any, further proceedings in this Court are appropriate. Proposed Defendant-Intervenors Avangrid Power, LLC, Park City Wind LLC, and Commonwealth Wind, LLC (Proposed Defendant-Intervenors) have authorized the undersigned to inform the Court that Proposed Defendant-Intervenors do not oppose this scheduling motion. Plaintiffs and Proposed Defendant-Intervenors reserve the right to oppose remand (with or without vacatur) for any reason they deem fitting, under the schedule proposed below.

In support of this motion, Federal Defendants and Plaintiffs state as follows:

1. On May 27, 2025, Plaintiffs filed this suit alleging violations of numerous statutes and their implementing regulations, including: the Marine Mammal Protection Act, the Endangered Species Act, the Outer Continental Shelf Lands Act, the National Historical Preservation Act, and the Administrative Procedure Act. ECF No. 1.

2. On July 4, 2025, this Court granted Federal Defendants' unopposed motion to extend their deadline to respond to Plaintiffs' Complaint until September 10, 2025.

3. On August 1, 2025, Proposed Defendant-Intervenors filed an unopposed motion to intervene which is pending with the Court. ECF No. 12. Proposed Defendant-Intervenors state that the Federal Defendants' proposed motion for voluntary remand strengthens Proposed Defendant-Intervenor's motion and asks that the Court grant intervention expeditiously. Dkt. 12.

4. Federal Defendants now intend to move for remand and, separately, for vacatur of BOEM's decision to approve the COP and, should the Court grant that relief, to dismiss Plaintiffs' claims as a result. Should the Court grant remand (whether or not the Court also issues an order of vacatur), an answer to the Complaint would be unnecessary. Thus, to conserve the resources of the parties and the Court, the parties respectfully request that the Court defer Federal Defendants' obligation to answer the Complaint until after resolution of

the motion for voluntary remand.¹ Instead, Federal Defendants and Plaintiffs suggest that the parties file a status report suggesting what, if any, further proceedings are necessary within 14 days of the Court's ruling on the forthcoming motion for remand.

5. Plaintiffs and Federal Defendants accordingly request that the Court enter a briefing schedule with the following deadlines:

October 10, 2025: Federal Defendants file motion for voluntary remand;

November 11, 2025: Parties may file any opposition papers;

December 11, 2025: Federal Defendants may file a reply to any opposition.

For all these reasons, Federal Defendants and Plaintiffs respectfully request that the Court enter the above briefing schedule and defer Federal Defendants' obligation to answer Plaintiffs' Complaint.

Dated: September 3, 2025

Respectfully submitted,

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Acting Assistant Attorney General

ROBERT STANDER
Deputy Assistant Attorney General

/s/Peter Kryn Dykema
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Environment and Natural Resources Division
Natural Resources Section

¹ Where, as Interior will do here, an agency seeks remand, allowing that remand is "important for judicial economy because it allows courts to preserve judicial resources." *Friends of Park v. National Park Service*, No. 2:13-cv-3453-DCN, 2014 WL 6969680, at *2 (D.S.C. Dec. 9, 2014) (citing *Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir.1993)).

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion has been served on counsel of record for Proposed-Intervenors *Avangrid Power, LLC, Park City Wind LLC, and Commonwealth Wind, LLC* by electronic mail addressed as follows:

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