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August 1, 2022

Ms. Amanda Lefton
Director
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road
VAM-OREP
Sterling, VA 20166

Re: IBEW Comments on California Offshore Wind PSN (Docket No. BOEM-2022-0017)

Dear Ms. Lefton:

The International Brotherhood of Electrical Workers, AFL-CIO, CLC (IBEW) appreciates this opportunity to comment on the Bureau of Ocean Energy Management's (BOEM's) Proposed Sale Notice, *Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California*.¹ The IBEW is a labor organization representing approximately 775,000 active and retired members, including approximately 400,000 members working in the construction industry. The highly skilled and trained professionals of the IBEW routinely build and maintain all types of energy facilities throughout the United States, including offshore wind facilities.

The IBEW submits these comments in response to BOEM's proposal to require lessees to make every reasonable effort to enter a project labor agreement (PLA) covering construction within the leased area.² As explained below, the IBEW believes that this proposal could be strengthened in certain key ways that would assist BOEM in realizing the Outer Continental Shelf Land Act's (OCSLA's) objectives of ensuring safe, expeditious construction projects, carried out by well-trained personnel, and securing fair returns on its investments.³

The rationale for requiring PLAs is well-stated in President Biden's recent Executive Order requiring their use on large federal construction projects.⁴ Requiring PLAs would also respond to the Administration's goals of addressing the

¹ *Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California*, Docket No. BOEM-2022-0017, 87 FR 32443 (May 31, 2022).

² *See id.* at 32454.

³ 43 U.S.C. §§ 1332, 1337(p).

⁴ Executive Order 14063, *Use of Project Labor Agreements for Federal Construction Projects*, 86 FR 7363 (Feb. 4, 2022).





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climate crisis⁵ and advancing equity⁶ by creating well-paying jobs and expanding job opportunities for disadvantaged and marginalized communities in deploying clean energy technologies and building this infrastructure.

In these comments, IBEW will first provide background on PLAs and their historical use on public works projects, as well as their more recent use in the emerging offshore wind industry. IBEW will then explain the various ways that requiring PLAs will satisfy the goals of OCSLA and Executive Orders 13985 and 14008. Finally, IBEW will recommend certain improvements to the proposed lease stipulation, including requiring lessees to “*enter into*” PLAs rather than requiring them to “*make every reasonable effort*” to enter a PLA.

I. Project Labor Agreements

A. Background

A PLA is a comprehensive multi-employer/multi-union unitary collective bargaining agreement designed to cover entire construction project(s). PLAs are generally negotiated by the entity that controls contracting for the project and a council of labor organizations that represent all the trades that will be employed on the project. Through PLAs, the parties set standard work rules, establish various forums for communication and coordination, and prevent work stoppages with no-strike, no-lockout provisions, and speedy dispute-resolution mechanisms. They also set standard pay and benefit rates for each trade and address labor supply issues through provisions that commit the signatory unions to use their job referral procedures to ensure a steady supply of highly skilled workers. Both union and nonunion workers can register for referrals, and typically any contractor – union or nonunion – may bid for work on a covered project, as long as they agree to abide by the agreement and thereby to be held to the same standards.

PLAs are authorized by two sections of the National Labor Relations Act (NLRA) that apply exclusively to the construction industry. First, the NLRA generally requires a union to demonstrate that it has the support of a majority of an employer’s current employees before the employer may recognize it as the employees’ representative and the parties may negotiate a collective bargaining agreement. However, NLRA Section 8(f)⁷ authorizes unions and employers in the construction industry to enter into pre-hire agreements that will apply after the

⁵ Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 FR 7619 (Feb. 1, 2021).

⁶ Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 FR 7009 (Jan. 20, 2021).

⁷ 29 U.S.C. § 158(f).





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employer hires workers and begins construction. Second, although NLRA Section 8(e)⁸ generally prohibits agreements that limit the parties with which an employer may do business, the Section's construction industry proviso permits agreements to limit work on a construction project to entities that agree to be bound by the contract.

Congress enacted these provisions to accommodate the unique characteristics of contracting and employment in the construction industry. First, contractors need predictable costs and a steady supply of skilled labor. Rather than carrying a stable workforce, contractors often hire employees on a short-term basis, making post-hire collective bargaining difficult.⁹ Second, work on a construction job is rarely, if ever, let to a single entity that performs all the work with its own employees. Instead, contracts are commonly let to multiple contractors and subcontractors, each performing part of the job.¹⁰ PLAs address these issues by establishing a single labor relations structure that applies to all contractors, subcontractors and employees operating on the construction project for the project's entire duration.

B. Value of PLAs Recognized by both Public and Private Sector

PLAs have been used in both the public and private sector for decades, and the value of ensuring high labor standards on offshore wind development has been recognized both by governments providing support for these projects and by developers undertaking them.

The Federal Government has used PLAs to systematize labor relations on its large and complex construction projects since at least 1938.¹¹ The Department of Energy has long used PLAs for its construction projects at the Hanford Site in Washington State, the Savannah River Site in South Carolina, the Oak Ridge Reservation in Tennessee, the Nevada Test Site, and the Idaho National Laboratory. And the Federal Acquisition Regulatory Council reported in 2010 that 21 of 25 DOE construction projects were either covered or slated to be covered by PLAs.¹²

⁸ 29 U.S.C. § 158(e).

⁹ *Building and Construction Trades Council v. Ass'd Builders and Contractors*, 507 U.S. 218, 231 (1993) (“*Boston Harbor*”).

¹⁰ *See Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 657 (1982).

¹¹ *See, e.g.*, U.S. Gen. Accounting Office, *Project Labor Agreements: The Extent of the Use and Related Information* at 4, Pub. No. GAO/GGD-98082 (1998) (tracing the use of PLAs on federal and other publicly funded projects back to the construction of the Grand Coulee Dam in Washington State in 1938 and the Shasta Dam in California in 1940).

¹² “Use of Project Labor Agreements for Federal Construction Projects,” 75 Fed. Reg. 19168, 19169-70 (Apr. 13, 2010) (FAR Final Rule implementing President Obama’s Executive Order 13502).





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The Tennessee Valley Authority has also long had a PLA in place for all its construction across its vast site. And during the Obama Administration, the Naval Facilities Engineering Command used a PLA for its P-990 Explosive Handling Wharf 2 project at Naval Base Kitsap at Bangor Trident Base in Silverdale, Washington; the Army, Navy, Coast Guard, and Air Force used PLAs for a series of housing projects in Hawaii; and the GSA used PLAs on a number of its projects, including the A.J. Celebrezze Federal Building in Cleveland, Ohio, the Lafayette Building Modernization project in Washington, D.C., and a portion of the \$4 billion Department of Homeland Security Headquarters Campus in Washington, D.C., which the GSA describes as the largest construction project in the agency's history.

The U.S. Department of Labor has described the first Federal PLAs as designed to “meet[] the needs of massive projects such as the construction of the St. Lawrence Seaway [and] the Alaska Pipe Line, which last for several years, pose special problems of manning and work rules, and involve huge sums of money, a consortium of several contractors, and a great deal of public interest and . . . public funds.”¹³ Development of wind facilities on the OCS will pose precisely these challenges, making the use of PLAs particularly appropriate: PLAs can help ensure that these projects, which will pose special problems and are being undertaken with considerable “public interest and . . . public funds,” enjoy a steady supply of skilled tradespersons, all working under a common and well-articulated set of rules.

Three states, including California, have passed legislation conditioning approval of offshore development on commitments by the developers to use PLAs or, at the very least, to adhere to the kinds of labor standards commonly embodied in these agreements.

In 2021, California enacted legislation that requires the State's Energy Commission to evaluate and quantify the maximum feasible capacity of offshore wind to achieve certain benefits, including employment, reliability and decarbonization benefits, and to establish offshore wind planning goals – several of which can be accomplished by using a PLA. The legislation requires the Energy Commission to work with stakeholders, including labor organizations, state, local, and federal agencies, and the offshore wind energy industry to identify suitable wind energy areas in federal waters sufficient to accommodate the state's offshore wind planning goals.¹⁴ In doing so, the Energy Commission is required to consider twelve factors, including “the need to develop a skilled and trained offshore wind workforce”¹⁵ and “the need for reliable renewable energy that accommodates

¹³ U.S. Dept. of Labor, Labor Management Services Administration, *The Bargaining Structure in Construction: Problems and Prospects* at 14 (1980).

¹⁴ Cal. Pub. Res. Code §§ 25991-25991.8.

¹⁵ *Id.* at § 25991.1(b)(2).





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California’s shifting peak load.”¹⁶ The Energy Commission is also required to develop a plan to improve waterfront facilities to support a range of floating offshore wind development activities, including construction and staging of foundations, manufacturing of components, final assembly, and long-term operations and maintenance facilities.¹⁷ In developing the waterfront facilities improvement plan, the Energy Commission is required to consult with “representatives of key labor organizations and apprenticeship programs that would be involved in dispatching and training the construction workforce...”¹⁸ This plan must also include “an analysis of the workforce development needs of the California offshore wind energy industry, including occupational safety requirements, the need to require the use of a skilled and trained workforce to perform all work...” and “recommendations for workforce standards for offshore wind facilities and associated infrastructure, including, but not limited to, prevailing wage, skilled and trained workforce, apprenticeship, local hiring, and targeting hiring standards, that ensure sustained and equitable economic development benefits.”¹⁹

Maryland’s Clean Energy Jobs Act of 2019 provides wind farm developers with financial support in the form of Offshore Wind Renewable Energy Credits. Developers applying for the credits must commit to entering into a “Community Benefit Agreement,” a form of PLA, that facilitates access to highly skilled craft workers, commits to paying wages at least at the prevailing wage rate set by the State, requires 80% of the workforce to have received OSHA-10 training, and promotes outreach and career training opportunities in the construction industry for local residents, veterans, women and minorities.²⁰ Maryland’s legislation also requires the Public Service Commission to evaluate applicants according to a series of criteria, many of which can easily be accomplished by using a PLA. These include the extent to which a project provides for the use of skilled labor through various means, including referral systems affiliated with registered apprenticeship programs; ensures the use of skilled labor to promote the project’s prompt, efficient, and safe completion; and ensures payment of prevailing wages.²¹

¹⁶ *Id.* at § 25991.1(b)(4).

¹⁷ *Id.* at § 25991.3(a).

¹⁸ *Id.* at § 25991.3(c).

¹⁹ *Id.* at § 25991.3(b)(2)-(3).

²⁰ Md. Code, Pub. Util. § 7-704.1(e).

²¹ *Id.* § 7-704.1(d)(viii), (ix), (x).





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Legislation in New York also conditions the State’s support for renewable energy projects on certain labor standards: Any renewable energy project fully or partially supported by public funds or procured by a public entity through renewable energy credits must either perform its construction work under a PLA or conform to the state’s prevailing wage requirements.²² This legislation comes on the heels of the New York State Energy Research and Development Authority’s (NYSERDA) decision to use PLAs on the State’s first two offshore wind farms. In 2019, NYSERDA executed contracts for two massive projects: one with Sunrise Wind LLC, a partnership between Ørsted North America, Inc. and Eversource for the 880 MW Sunrise Wind Project; and one with Equinor Wind US LLC for the 816 MW Empire Wind Project. The solicitation for bids for these projects specified that the selected project would be required to negotiate a PLA for its construction work, subject to the agency’s approval. As NYSERDA explained in reporting on Phase 1 of the project, PLAs “have become increasingly common in the emerging U.S. offshore wind sector because of their propensity to reduce costs and schedule risks,” and the agency elected to require them on these projects because their “timely completion . . . is essential to reducing NYSERDA’s long-term costs over the course of the phased procurement.”²³ As discussed below, private industry has similarly recognized the value of using PLAs on offshore projects.

C. Value of PLAs Recognized by Offshore Wind Industry

The Block Island Wind Farm (BIWF), a pilot project consisting of 5 turbines, was the first offshore wind farm built off the United States’ coast. Deepwater Wind, its owner, determined at the outset to enter into PLAs with the Rhode Island Building and Construction Trades Council (RIBCTC) for construction of both an onshore turbine fabrication facility and the offshore wind farm. Jeffrey Grybowski, who served as Deepwater Wind’s CEO during BIWF’s planning and construction, explained the company’s reasons for entering into the PLA in a letter touting the project’s success:

As the BIWF was the first commercial offshore wind farm in the United States, there was no precedent to follow in constructing this project. Its challenges were unique and complex. It was therefore very important that we used the highest skilled craftsmen and women in the industry. Moreover, since our project was being completed in the Atlantic Ocean over 15 miles from the mainland coast, safety of the workforce was paramount.

²² NYS Labor Law §§ 224-a and 224-d.

²³ NYSERDA, *Launching New York’s Offshore Wind Industry: Phase 1 Report*, Rep. No. 19-41 at 32 (Oct. 2019, rev’d).





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After a thorough analysis of the marketplace, we decided that the best way to safely and timely complete this project was to utilize local union craftsmen and women. As a consequence, we implemented a PLA [which . . .] contractually bound the local trade unions to provide skilled labor in a timely and non- discriminatory basis; had mechanisms to expedite any potential disputes, and avoid work stoppages; and, included provisions that synchronize work schedules that overrode inconsistent or inefficient provisions of the trades' collective bargaining agreements.

These foregoing benefits of our PLAs ensured the cost, schedule, and time certainty challenges of our project were met. Moreover, it was essential to having our project completed safely, and within budget. Accordingly, these PLAs were essential tools in ensuring that Rhode Island had the first commercial offshore wind farm in the United States.²⁴

Soon after BIWF was complete, the IBEW joined the Business Network for Offshore Wind, a nonprofit that connects groups looking to work in the offshore wind industry with some of the primary developers in this space. In 2021, Ørsted (which acquired Deepwater Wind in 2019 and now operates BIWF) entered into a PLA with the RIBCTC for construction of a facility at the Port of Providence, intended to fabricate and assemble platforms for wind farms throughout the Northeast.²⁵

In May 2021, BOEM approved the first commercial-scale offshore wind farm to be built in the U.S. and permitted in federal waters. The 800 MW project will be located 15 miles off the coast of Martha's Vineyard, Massachusetts. The owner, Vineyard Wind, has entered into a PLA with the Southeastern Massachusetts Building and Construction Trades Council, which, like the BIWF PLAs, is designed to ensure the timely and successful completion of the project by establishing standardized working conditions tailored to offshore work; mechanisms for resolving disputes; commitments to avoid work stoppages; and systems to ensure consistent access to skilled workers. The agreement also commits Vineyard Wind to make substantial investments in training a workforce to perform turbine work and in pre-apprenticeship training and recruitment to provide low-

²⁴ January 31, 2020, Letter from Jeffrey Grybowski to Michael F. Sabitoni, President, Rhode Island Building & Construction Trades Council (Attachment to Comments filed by North America's Building Trades Unions [NABTU] on BOEM's NY Bight PSN, <https://www.regulations.gov/comment/BOEM-2021-0033-0074>).

²⁵ Alex Kuffner, *Offshore Wind Developers Announce ProvPort Facility*, The Providence Journal, (Apr. 14, 2021), <https://www.providencejournal.com/story/news/2021/04/14/offshore-wind-developers-announce-24-million-facility-provport/7220559002/>.





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income residents with the opportunity for employment on the project and a career in the construction industry.

US Wind, which holds a lease to establish offshore wind farms off the Maryland coast, has committed to building its projects with labor union workers and has signed labor agreements with the Baltimore-DC Building and Construction Trades Council, IBEW and other unions.²⁶

On May 5, 2022, Ørsted North America, Inc. and North America's Building Trades Unions (NABTU) signed a National Offshore Wind Agreement (NOWA), a PLA to construct the company's offshore wind farms with an American union workforce.²⁷ The first agreement of its kind, the NOWA "sets industry on a course to build an equitable offshore workforce with family-sustaining careers," "creates apprenticeship and career opportunities for communities most impacted by environmental injustice," and "ensures projects will be built with the safest and best-trained workers in America."²⁸ The NOWA applies to all components of construction connected with any wind farm projects Ørsted undertakes along the Eastern Seaboard, from Florida to Maine. The NOWA built upon prior partnerships with the South Jersey Building and Construction Trades Council, the Rhode Island Building and Construction Trades Council, and the New York Greater Capital Region Council. It is designed to foster a diverse, equitable, and inclusive workforce, while expanding opportunities in offshore wind to frontline communities, and includes provisions for diversity targets, local training programs, and workforce diversity performance monitoring.²⁹

II. BOEM Should Exercise its Wide Discretion to Require Lessees to Enter into PLAs

IBEW recommends that BOEM exercise its wide discretion in weighing the goals of the OCSLA to revise the proposed lease stipulation to require lessees to "enter into" a PLA rather than to "make best reasonable efforts" to enter into a PLA.

²⁶ Lorraine Mirabella, *US Wind moves ahead with Sparrows Point manufacturing hub for offshore wind farms in Ocean City and East Coast*, Baltimore Sun, (Feb. 11, 2022), (<https://www.baltimoresun.com/business/bs-bz-us-wind-progress-offshore-wind-sparrows-point-manufacturing-20220211-kugi3orm5zfs3m7nfce7ngqqxm-story.html>).

²⁷ Press Release, Ørsted, North America's Building Trades Unions and Ørsted Agree to Build an American Offshore Wind Energy Industry with American Labor, (May 5, 2022), <https://us.ored.com/news-archive/2022/05/national-offshore-wind-agreement>.

²⁸ *Id.*

²⁹ *Id.*





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Pursuant to OCSLA subsection 8(p)(l)(C), the Secretary of the Interior, in consultation with relevant Federal agencies, may grant a lease, easement, or right-of-way on the OCS for activities that produce or support production of energy from sources other than oil and gas.³⁰ The Secretary must ensure that activities under this subsection are carried out in a manner that provides for twelve goals, including safety, protection of the environment, and ensuring a fair return on investment to the United States.³¹ The Secretary must balance these goals as there may be conflict or tension among them. The Secretary retains *wide discretion to weigh these goals as an application of her technical expertise and policy judgment*.³²

BOEM has previously concluded that offshore wind projects are large, complex construction efforts that are *well-suited for PLAs* and that the use of PLAs when developing these leases will *facilitate construction* of the projects and *potentially help achieve several of OCSLA's stated goals*.³³

A detailed discussion of the various ways in which PLAs can further the goals of the OCSLA is provided below:

A. *PLAs Can Help BOEM Realize its Proprietary Interest in Ensuring a Fair Return on its Investment*

The OCSLA “vests the federal government with a proprietary interest in the Outer Continental Shelf and establishes a regulatory scheme governing leasing and operations there.”³⁴ BOEM is acting as both landlord and investor when it leases parcels on the OCS, as OCSLA directs the agency to ensure that it secures “a fair return to the United States.”³⁵ OCSLA provides that the government obtains

³⁰ 43 U.S.C. § 1337(p)(l)(C).

³¹ 43 U.S.C. § 1337(p)(4)(A)-(L).

³² See Secretary's Duties under Subsection 8(p)(4) of the Outer Continental Shelf Lands Act When Authorizing Activities on the Outer Continental Shelf (Apr. 9, 2021), <https://www.doi.gov/sites/doi.gov/files/m-37067.pdf>.

³³ See Carolina Long Bay Final Sale Notice Decision Memorandum (Mar. 22, 2022), <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/ATLW-9-FSN-Decision-memo-Final-Signed.pdf>; see also New York Bight Final Sale Notice Decision Memorandum (Dec. 21, 2021), <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/ATLW-8-NY-Bight-Final-Lease-Sale-Decision-Memorandum.pdf>.

³⁴ *Laredo Offshore Constructors, Inc. v. Hunt Oil Co.*, 754 F.2d 1223, 1227 (5th Cir. 1985).

³⁵ 43 U.S.C. § 1337(p)(2)(A) (“The Secretary shall establish . . . fees . . . or other payments to ensure a fair return to the United States for any lease . . .”); *id.* § 1337 (p)(4)(H) (“The Secretary shall ensure that any activity under this subsection is carried out in a manner that provides for . . . a fair return to the United States for any lease . . .”).





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royalties from lessees based on the “amount or value of the production saved, removed, or sold,” and vests in the Secretary the sole authority and responsibility to prescribe rules and regulations as necessary to carry out the OCSLA’s leasing provisions.³⁶

Given its significant proprietary interest and wide discretion in carrying out the OCSLA’s provisions, BOEM has authority to require its lessees to “*enter into*” PLAs.³⁷ Such a requirement will ensure that the agency obtains a maximum return on investment at the earliest possible date, as a PLA will help to avoid costly project delays, strikes or other work stoppages that could interfere with construction or operations of the project.

The payment structure in the proposed leases consists of two phases: rent, payable until the facility becomes operational, and operating fees, payable once the facility becomes commercially operational. The rent is relatively low: \$3.00 an acre or, using proposed lease OCS-P 0562 as an example, \$207,093 per year for the 69,031 acre parcel.³⁸ As the wind farm becomes commercially operational, the rent is phased out and the lessee begins paying an operating fee based on its electricity output, a fee that is significantly more than the relatively modest rent.³⁹

The expeditious construction of the wind farm, which, as explained above, a PLA can facilitate, will therefore directly serve BOEM’s proprietary interest in receiving a fair return on its lease.

B. PLAs Provide a Mechanism for Facilitating Expeditious and Orderly Development

³⁶ *Total E&P USA, Inc. v. Kerr-McGee Oil & Gas Corp.*, 719 F.3d 424, 429-30 (5th Cir. 2013) (internal citations omitted) (quoting 43 U.S.C. § 1337(a)(1) and 43 U.S.C. § 1334(a)).

³⁷ In *Boston Harbor*, *supra* note 9, 507 U.S. at 227, 233, the Supreme Court held that while the National Labor Relations Act preempts public entities from regulating private sector labor relations, preemption does not apply when a public entity acts in its proprietary capacity, and further, that when a public entity utilizes a PLA on its construction projects, it “*exemplif[ies]*” interests embodied in the NLRA.” In *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1333-34 (D.C. Cir. 1996), the D.C. Circuit held that preemption principles, which define the relationship between federal legislation and state and local action, “*apply equally to federal government behavior that is thought similarly to encroach into the NLRA’s regulatory territory.*” *See also Building Trades v. Allbaugh*, 295 F.3d 28, 34 n* (D.C. Cir. 2002).

³⁸ *See, e.g.*, California Proposed Commercial Lease, OCS-P 0562, Addendum B at B-2 – B-8, https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/CA%20Proposed%20Lease%20OCS-P%200562_20220518.pdf.

³⁹ *Id.*





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In enacting OCSLA, Congress declared a policy of making the OCS “available for expeditious and orderly development, . . . in a manner consistent with competition.”⁴⁰ These are the exact reasons project owners and general contractors choose to use PLAs on complex construction projects.

A recent study found that contractors who are signatories to craft labor agreements are 21 percent less likely to experience delays in project completion times due to worker shortages and 14 percent less likely to have trouble filling craft worker positions. In addition, signatories were 8 percent more likely to add workers over the past year, indicating a stronger ability to staff up and recruit new workers, even in a tight labor market. Conversely, nonunion firms reported greater difficulty in filling craft worker positions: they were 27 percent more likely to report that their local pipeline for supplying well-trained craft workers was “poor” compared to signatory contractors.⁴¹ As explained above, PLAs mitigate the risk of project delays and work stoppages with no-strike, no-lockout, and speedy dispute-resolution provisions.

Ensuring a high level of coordination and cooperation is particularly crucial for wind farm projects on which workers will be operating far offshore. As Mr. Grybowski explained in describing Deepwater Wind’s experience with the BIWF’s PLA, the agreement’s provisions committing the unions to providing labor on a timely and non-discriminatory basis, its dispute resolution mechanisms, the commitments by both labor and management not to engage in work stoppages, and the ability to synchronize work schedules, were all critical to ensuring that the project was completed on time and within budget.

Requiring the successful lessee to negotiate a PLA is also completely consistent with competition. Competition on these projects has been keen: NYSERDA’s procurement for its first wind farm projects, which required prospective lessees to enter into good faith negotiations for a PLA, garnered a total of 18 proposals from four developers, “the most competitive market response to date among all U.S. state offshore wind solicitations.”⁴² Moreover, as already described, major companies engaged in offshore wind farm construction – Ørsted North America, Inc., Equinor, Vineyard Wind, and US Wind -- have either already used, or have committed to use, PLAs on their projects.

⁴⁰ 43 U.S.C. § 1332(3).

⁴¹ Frank Manzo, Larissa Petrucci, and Robert Bruno, *The Union Advantage During the Construction Labor Shortage: Evidence from Surveys of Associated General Contractors of America Member Firms* (May 10, 2022), <https://illinoisepi.files.wordpress.com/2022/02/ilepi-pmcr-construction-labor-shortage-agc-report-final.pdf>.

⁴² *Launching New York's Offshore Wind Industry*, *supra* note 23 at S-2.





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Furthermore, when it comes to contractors and subcontractors, nothing in the PLAs negotiated for offshore work precludes any contractor from bidding for work on a covered project. Anyone qualified to perform the work can bid, as long as they are willing to abide by the agreement's terms – terms the owner or general contractor has determined will best ensure the project's safe and expeditious completion.

C. PLAs Ensure Access to a Well-Trained Workforce

Using PLAs on these projects will also address Congress' policy that operations in the OCS should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent occurrences that may cause damage to the environment or to property or endanger life or health."⁴³ BOEM has previously concluded that PLAs can help achieve this goal, as they "promote the expansion of a workforce of well-trained personnel that is ready to construct offshore wind projects."⁴⁴

The organized sector of the construction industry operates one of the largest post-secondary education programs in the country, with construction unions and contractors jointly operating over 1,600 registered apprenticeship programs that invest \$1.3 billion annually in training programs. These programs have prepared hundreds of thousands of workers for good, middle-class careers. The unions are therefore poised to deploy well-trained, skilled workers to construct the wind farms and their associated facilities.

Apprenticeships are vital to creating a strong economy and rebuilding the middle class, and are the most effective, time-tested method of training construction workers in an industry replete with physical hazards. In addition, these programs provide a reliable supply of workers that can successfully complete construction projects, thereby ensuring a return on the public investment.

Measures to promote quality training for the next generation of construction workers are critical. In a recent survey of construction firms across the country, over 70 percent of respondents reported that they anticipate a labor shortage to be the biggest hurdle in coming years.⁴⁵ According to the Centers for Disease Control and Prevention, the industry's average age of retirement is 61, and more than one in five construction workers are currently older than 55. Skilled craft labor variability poses major risks to project safety and leads to significantly higher growth in cost

⁴³ 43 U.S.C. § 1332(6).

⁴⁴ See Carolina Long Bay Final Sale Notice Decision Memorandum, *supra* note 29.

⁴⁵ See Associated General Contractors of America, 2020 Construction Outlook Survey.





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overrun, time overrun, and reduced productivity.⁴⁶ These risk factors compound each other. For example, because projects with skilled craft worker shortages face scheduling constraints, workers are frequently scheduled to work overtime, which “can cause physical fatigue on craft workers [and] seriously affect the implementation of construction site safety.”⁴⁷ As such, research has shown a *positive exponential relationship* between increased skilled craft labor recruiting difficulty and Occupational Safety and Health Administration (OSHA) incidents.⁴⁸ Union apprenticeship programs mitigate this risk. Empirical studies have shown that registered apprenticeship requirements on public works projects produce significant benefits for procurement authorities because apprentices always work under the supervision of experienced journey-level workers.⁴⁹ In addition to mitigating the risk factors discussed above, research has shown that apprenticeship requirements generally increase the number of project bidders and reduce bid costs for affected projects.⁵⁰

Union referral systems provide the project’s contractors with easy access to workers whom the unions have screened, according to objective criteria, to ensure they meet the job requirements. While the contractors maintain final say over who they hire, the referral system is designed to quickly bring them qualified applicants. When local workers are in short supply, unions put out the call to their affiliates around the country, whose members have similarly been trained with portable skills.

⁴⁶ Hossein Karimi, *Quantitative Analysis of the Impact of Craft Labor Availability on Construction Project Performance*, University of Kentucky (2017), https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1059&context=ce_etds; see also Allison L. Huang, et al., U.S. Department of Commerce, National Institute of Standards and Technology, Office of Applied Economics, *Metrics and Tools for Measuring Construction Productivity: Technical and Empirical Considerations* (Sept. 2009), https://www.nist.gov/customcf/get_pdf.cfm?pub_id=903603.

⁴⁷ Karimi, *supra* note 46 (internal citations omitted).

⁴⁸ *Id.*

⁴⁹ See Washington State Department of Labor and Industry & Washington State Department of General Administration, *Apprenticeship Utilization 2009 Legislative Update* (Dec. 2009); Washington State Department of Transportation, *Apprenticeship Utilization Advisory Committee Report* (Jan. 2008). See also U.S. Office of Management and Budget, *Task Force on Apprenticeship Expansion: Final Report to the President of the United States* (2018), <https://omb.report/icr/201812-1205-001/doc/88448201> (apprenticeship programs increase productivity and are a “key tool for addressing America’s skills gap.”); U.S. Department of Commerce and Case Western Reserve University, *The Benefits and Costs of Apprenticeship: A Business Perspective* (2016), <https://files.eric.ed.gov/fulltext/ED572260.pdf> (apprenticeship programs are cost-effective due to higher worker productivity, improved safety and project quality, reliable project staffing, and reduction in employee turnover).

⁵⁰ *Id.*





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The unions and companies embarking on these projects are nonetheless cognizant that there are aspects of offshore wind farm construction that present new challenges to even the most skilled of America's tradespersons. To address that reality and prepare for the future, for example, the Vineyard PLA obligates Vineyard Wind to recruit a certain number of workers to be given on-the-job training in offshore turbine construction, and Vineyard Wind and the original equipment manufacturer's prime contractor have each committed to invest \$500,000 to establish a national training center "to accelerate the development of a U.S.-based workforce for future offshore wind projects."⁵¹

D. PLAs Ensure Safe Workplaces

Requiring lessees to use PLAs will assist BOEM in ensuring that the lessees' activity on the OCS "is carried out in a manner that provides for ... safety."⁵² The OCSLA requires leaseholders to maintain all places of employment within the leased area "in compliance with occupational safety and health standards," and free from "recognized hazards to employees of the lease holder [...] or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on [the OCS]."⁵³ BOEM has previously concluded that the use of a PLA can help achieve construction safety on its leased projects on the OCS, as PLAs typically contain provisions directly addressing safety, along with requiring training as to both the substantive aspects of the job and the management of the safety aspects of the job.⁵⁴

PLAs commonly include sophisticated health and safety provisions that dictate overall safety practices, create safety committees and mandate safety trainings to avoid costly delays associated with injuries and poor safety records. Moreover, construction unionization is associated with lower industry and occupational fatality and injury rates.⁵⁵ A Canadian study of institutional, commercial and industrial construction found unionization associated with a 25% lower lost-time injury rate, 23% lower incidence of musculoskeletal lost-time injury

⁵¹ Vineyard Wind PLA, Art. XX.

⁵² 43 U.S.C. § 1337(p)(4)(A).

⁵³ 43 U.S.C. § 1348(e)(i)(1).

⁵⁴ See Carolina Long Bay Final Sale Notice Decision Memorandum, *supra* note 29.

⁵⁵ Roland Zullo, "Right-to-Work Laws and Fatalities in Construction," 14 THE JOURNAL OF LABOR AND SOCIETY 225, 232 (Jun. 2011), <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/98283/j.1743-4580.2011.00334.x.pdf?sequence=1>.





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claims and 16% lower incidence of critical lost-time injury claims.⁵⁶ A recent report from New York found that of investigated workplace incidents, 78% of construction fatalities in the State and 68% of construction fatalities in New York City were non-union employees. The reasons are numerous, but two are obvious: First, construction firms with union workers are more likely to engage in safety best practices and are more likely to offer or require safety training.⁵⁷ Second, because union members are more likely to come to the workplace after completing a registered apprenticeship program, they are more likely to engage in safe work practices.

This second point is demonstrated by comparing statistics in states with prevailing wage laws with those without, where there are fewer apprenticeship programs. A series of research studies shows that fatal and nonfatal injury rates in construction are substantially lower in states with prevailing wage laws.⁵⁸ For example, one peer-reviewed study found that nonfatal injury rates were up to 10 percent lower in states with a prevailing wage law.⁵⁹ Another found that in addition to increasing construction injury rates by up to 13.1 percent, repeals of state prevailing wage laws were associated with an increase in both the prevalence and severity of injuries, due in part to the lower investment in the kind of safety training provided in apprenticeship programs.⁶⁰

In short, PLAs ensure that employers will follow best practices when working on an organized worksite; that there is a commitment to fund programs to

⁵⁶ Institute for Work & Health, *Updating a Study of the Union Effect on Safety in the ICI Construction Sector* (Jan. 2021), https://www.iwh.on.ca/sites/iwh/files/iwh/reports/iwh_report_union_safety_effect_construction_update_2021.pdf.

⁵⁷ Xuanwen Wang, PhD, Rebecca Katz, MPH, Xiuwen Sue Dong, DrPH, CPWR Data Report: Union Effect on Safety Management and Safety Culture in the Construction Industry (First Quarter 2018) (“The results confirm that labor-management cooperation is a win-win solution for improving safety management and safety culture at workplaces . . . , which benefits not only construction workers, but also construction contractors.”), <https://www.cpwr.com/wp-content/uploads/2018/05/Quarter1-QDR-2018.pdf>.

⁵⁸ Hamid Azari-Rad, *Prevailing Wage Laws and Injury Rates in Construction*, in *The Economics of Prevailing Wage Laws* 169-187 (Hamid Azari-Rad, Peter Philips, and Mark Pruseds, Ashgate Publishing 2005); Allison Dickson Quesada, Frank Manzo, Dale Belman, & Robert Bruno, *A Weakened State: The Economic and Social Impacts of Repeal of the Prevailing Law in Illinois*, Labor Education Program, School of Labor & Employment Relations, Univ. of Illinois at Urbana-Champaign (2013); Zhi Li et al., *The Effect of Prevailing Wage Law Repeals and Enactments on Injuries and Disabilities in the Construction Industry*, Public Works Management & Policy (2019).

⁵⁹ Azari Rad, *supra* note 44.

⁶⁰ Zhi Li, *supra* note 44.





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train workers to perform their work safely; and that those trained workers are referred to the projects in sufficient numbers so work can proceed safely.

III. Requiring Lessees to Enter into PLAs Would Assist BOEM in Fulfilling the Goals of Executive Orders 13985 and 14008

Through Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” President Biden described the Administration’s vision of a government-wide approach to the climate crisis, a vision that looked to infusing attention to the causes and impact of climate change into all aspects of the Federal government’s activities. The Executive Order emphasizes the shift to clean energy, stating a policy of addressing the climate crisis by creating well-paying union jobs in deploying clean energy technologies and building its infrastructure.⁶¹ With particular relevance here, the Order directs the Secretary of the Interior, in increasing renewable energy production in offshore waters, to create good jobs and, “in build[ing] a new American infrastructure and clean energy economy,” to “create opportunities for young people, older workers shifting to new professions, and people from all backgrounds and communities,”⁶² part of the Administration’s “whole-of-government equity agenda” laid out in Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” In addition, the federal government is required to hold the OCS in “the national interest,” including promoting the “social and economic components” of a project’s impact on those affected by it.⁶³

Requiring lessees to enter into PLAs can help BOEM achieve the goals set forth in Executive Orders 14008 and 13985 and simultaneously fulfill its duty to hold the OCS in the national interest and promote positive social and economic impacts of its projects. A principal objective of these project-wide agreements is to ensure that everyone operating on a worksite – regardless of the identity of their employer -- is paid good wages. While prevailing wage projects are often plagued with contractors evading their obligations by either misclassifying workers or simply not complying with the wage rates, contractors operating under a PLA are more likely to pay the negotiated wages, since the unions actively monitor the contractors’ conduct and any disputes can be addressed and resolved through the contractual dispute resolution mechanisms.

The agreements also provide solid benefits that often go far beyond what is required under the prevailing wage laws, benefits that are investments in the future

⁶¹ E.O. 14008, § 201.

⁶² *Id.* §§ 207, 212. *See also* § 219 (Agencies are to create well-paying union jobs and turn disadvantaged communities into healthy, thriving communities).

⁶³ 43 U.S.C. § 1332.





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by providing healthcare, pension contributions and training. The apprenticeship programs funded through the PLA and other union agreements in the area provide both classroom and on-the-job training, enabling apprentices to “earn while they learn,” which is particularly important for new entrants from disadvantaged communities.

Numerous studies of Registered Apprenticeship Programs around the country show that these programs can significantly improve diversity and equity in the workforce.⁶⁴ One such study compared union and nonunion construction apprenticeship programs in the Portland, Oregon area, and found that union apprenticeship programs provide significantly better outcomes overall for women and people of color compared to nonunion programs, and that union programs have greater apprenticeship diversity in terms of both gender and race.⁶⁵

The parties to the PLAs and MOUs negotiated for offshore wind farms have fully embraced these programs and the mission to ensure that members of disadvantaged communities share in the opportunities the wind farm projects bring. The Block Island PLA committed the parties to work with Building Futures, which operates an apprenticeship readiness program, to recruit and place low-income applicants from Rhode Island’s urban areas and veterans into both pre-apprenticeship and apprenticeship programs. The parties also established a goal that at least 15% of the labor hours worked under the agreement would be performed by Building Futures graduates, with a particular emphasis on graduates from Providence. NABTU and Ørsted North America, Inc.’s PLA, which encompasses all of Ørsted North America’s offshore wind development, includes provisions regarding the referral of women, minorities, and veterans for the projects.

⁶⁴ See, e.g., Frank Manzo and Robert Bruno, *The Apprenticeship Alternative: Enrollment, Completion Rates, and Earnings in Registered Apprenticeship Programs in Illinois*, Illinois Economic Policy Institute (Jan. 2020), <https://illinoisepi.files.wordpress.com/2020/01/ilepi-pmcr-the-apprenticeship-alternative-final.pdf> (finding that between 2000 and 2016, more than 74,000 construction apprentices (97 percent) were enrolled in joint labor-management programs, compared to less than 2,000 in employer-only programs, with joint programs enrolling 98 percent of all women, 99 percent of all African American apprentices, 98 percent of all Latino apprentices, and 97 percent of all military veterans); Building Trades of Minnesota, “Registered Apprenticeship in the Construction Trades,” <https://mntrades.org/apprenticeship/> (Approximately 5 percent of the total construction workforce were people of color, compared to 20.5 percent of union construction apprentices; apprenticeship completion rates for minority apprentices increased 339 percent between 2012 to 2019); Lawrence Mishel, Economic Policy Institute, *Diversity in the New York City union and nonunion construction sectors* (Mar. 2017), <https://www.epi.org/publication/diversity-in-the-nyc-construction-union-and-nonunion-sectors/>.

⁶⁵ Larissa Petrucci, PhD, *Constructing a Diverse Workforce: Examining Union and Non-Union Construction Apprenticeship Programs and their Outcomes for Women and Workers of Color*, University of Oregon, Labor Education and Research Center (2021), https://cpb-us-e1.wpmucdn.com/blogs.uoregon.edu/dist/a/13513/files/2021/11/Constructing_A_Diverse_Workforce.pdf.





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NABTU's Baltimore-DC Building and Construction Trades Council's agreement with US Wind contains similar commitments to establishing goals for women, minority and veteran participation in the projects and fostering apprenticeship, apprenticeship-readiness, and other training opportunities for these historically neglected groups.

IV. Additional Recommendations

In addition to revising the proposed PLA stipulation to require lessees to enter into a PLA, BOEM should stipulate that lessees must enter into PLAs that cover both contractors *and subcontractors* for the duration of the construction project, including work at staging and layout areas that may be removed from the actual construction site. Finally, BOEM should define "construction" work in the stipulation to include "new construction work and maintenance, expansion, renovation or upgrading work contracted out to a contractor or subcontractor in the construction industry." These revisions will ensure that lessees enter into PLAs with the best chances of achieving the numerous benefits discussed above.

V. Conclusion

The OCSLA and Executive Orders 13985 and 14008 challenge BOEM to ensure that the agency contributes to meeting the climate crisis by leasing parcels of the OCS for wind farm development in a manner that will result in safe and expeditious projects, carried out by a well-trained and diverse workforce. Requiring lessees to enter PLAs on their offshore construction projects is critical to meeting this challenge. IBEW strongly urges BOEM to include the improvements discussed herein in its final sale notice.

Once again, we appreciate this opportunity to comment and look forward to assisting the Bureau of Ocean Energy Management in expanding our nation's offshore wind infrastructure.

Please note that the IBEW's principal point of contact on this matter is Taylor Waites, who can be reached at (202) 728-6046 or by email to Taylor.Waites@ibew.org.

Sincerely yours,

Lonnie R. Stephenson
International President

LRS:efw

