



HQ H309672

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VES-3-02-OT:RR:BSTC:CCR H309672 AMW

CATEGORY: Carriers

Mr. John Giffin, Esq.
Keesel, Young & Logan
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Long Beach, California 90802

RE: Coastwise Transportation; Wind Turbines; 46 U.S.C. § 55102; 46 U.S.C. § 55103; 19 C.F.R. § 4.80a; 19 C.F.R. § 4.80b.

Dear Mr. Giffin:

This letter is in response to your February 20, 2020 ruling request on behalf of your client Maersk Supply Services (“Maersk”) regarding whether the installation of wind turbine generators by a non-coastwise qualified vessel in U.S. territorial waters, as described below, would violate the coastwise laws.¹ Our decision follows.

FACTS

The following facts are from your February 20, 2020 ruling request and supporting information submitted on May 22, 2020, June 4, 2020, and July 13, 2020. Your client proposes to transport and install wind turbine generator (“WTG”) units for a project organized by Vineyard Wind LLC (“Vineyard Wind”). You state that the subject installation operations will occur at two sites located in U.S. territorial waters off the coast of Rhode Island and Massachusetts. The proposed installation will be conducted by a coastwise-qualified tug and barge (the “Tug and Barge”) and a non-coastwise-qualified, Danish-flagged jack up vessel (the “Jack Up Vessel”).

¹ You have asked this office for confidential treatment of all information contained in brackets. If this office receives a Freedom of Information Act request for your submission, CBP Regulations (19 C.F.R. § 103.35, *et seq.*) regarding the disclosure of business information provide that the submitter of business information will be advised of receipt of a request for such information whenever the business submitter has in good faith designated the information as commercially or financially sensitive information. We accept your request for confidential treatment as a good faith request.

Prior to installation, the Jack Up Vessel and its crew will arrive in U.S. territorial waters from Singapore, secure itself to the seabed at the first installation site, and jack up to installation height. After the Jack Up Vessel establishes itself at the installation site, the Tug and Barge will transport the WTG components from a port in the United States (likely one of Bridgeport, Connecticut; Staten Island, New York; or Coeymans/Albany, New York) to the Jack Up Vessel, which will be grounded in U.S. territorial waters. The WTG components will be secured for transport on board the Barge in a []. Each WTG unit will consist of a tower (in one or more pieces), a nacelle, and three blades. The Jack Up Vessel will not transport WTG components between installation sites, but will carry certain installation tools as outlined below.

Upon arriving at the Jack Up Vessel, the Tug will push the Barge into a “notch” located on the Jack Up Vessel. [] onto its deck. In addition, there will be a second, [] on the deck of the Jack Up Vessel when the Tug and Barge arrive. Once the [] is placed on the deck of the Jack Up Vessel, the Jack Up Vessel will use its crane to lower the [] onto the Barge. The Tug will then pull the Barge clear from the Jack Up Vessel and the Tug and Barge will return to a U.S. port where additional wind turbine components will be placed in [] for delivery to the project site.

After receiving WTG components from the Tug and Barge, personnel onboard the Jack Up Vessel will utilize the vessel’s crane to install the WTG units onto pre-constructed turbine foundations. The Jack Up Vessel will remain stationary on the seabed via retractable legs throughout this process. Once each WTG is installed, the Jack Up Vessel will lower itself into the water and proceed to the next foundation location where it will jack up to installation height and repeat the same process.

To accomplish the installation efforts described above, you state that the Jack Up Vessel will take on a variety of tools and other items, which will be delivered by the Tug and Barge. We note that you have also provided a comprehensive list of the subject installation tools and materials. Other than the wind turbine components, the Tug and Barge will also transport secondary items to the Jack Up Vessel, including: (1) a waste skip for waste generated by daily vessel operations; (2) a container with all parts, materials, and consumables necessary for the mechanical completion and installation of each wind turbine; and (3) provisions and spare parts for the Jack Up Vessel, which will be transported by the Barge in a separate container from [].

You state that a subset of the parts and materials will be transported by the Jack Up Vessel between installation sites and carried onto each WTG site by the installation crew. These materials will include the following:

1. Bolt handling tools (*e.g.*, spanners and sockets, hydraulic hoses and pumps/powerpacks, toolboxes, and bolt grippers);
2. Hand tools (*e.g.*, torque wrenches, sockets, screwdrivers, cordless drills, pliers, clippers);
3. Containers and bags (*e.g.*, cleaning products, lifting bags, lashing straps, waste bags);

4. Personal protection equipment (*e.g.*, gloves, glasses, safety vests, hard hats, first aid equipment, harnesses and fall-protection devices, carabiners and other light connecting devices, ropes, and rope bags);
5. Hand washing material, rags and cleaning clothes, bags for dirty rags, biohazard bags, and other single-use items; and
6. Food and drinks for the installation crew.

Finally, you state that approximately 28 “installation crewmembers” will be transported to the Jack Up Vessel for the purpose of assembling and constructing the WTG units. The installation crew will not arrive in U.S. waters onboard the Jack Up Vessel; rather, these individuals will be transported to the vessel from a U.S. port via either a coastwise-qualified vessel or a U.S. registered, operated and crewed helicopter. You state that each member of the installation crew will remain onboard the vessel for approximately three weeks at a time and that the Jack Up Vessel will not transport members of the installation crew between WTG installation sites. Prior to installing each WTG unit onto the seafloor, the installation crew will work onboard the Jack Up Vessel to prepare the WTG unit for lifting and installation onto its foundation. Once each WTG component is lifted onto its foundation, a small number (approximately four to five individuals) will go onboard the wind turbine via a gangway to complete the installation.

ISSUES

1. Whether the transportation and installation of the subject wind turbine generators from a U.S. port to a stationary Jack Up Vessel located in U.S. territorial waters violates the Jones Act, 46 U.S.C. § 55102?
2. Whether transportation of certain tools and material between coastwise points violates the Jones Act?
3. Whether the transportation of the installation crew between coastwise points violates the Passenger Vessel Services Act, 46 U.S.C. § 55103?

LAW AND ANALYSIS

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” As outlined in your request, we understand that the subject Jack Up Vessel is not coastwise-qualified.

Issue One: Whether the Installation of the Wind Turbines Violates 46 U.S.C. § 55102

First, we consider whether the installation of the WTGs by the non-coastwise-qualified Jack Up Vessel violates the Jones Act, 46 U.S.C. § 55102. The coastwise laws, including the Jones Act, generally apply to points in the territorial sea, which is defined as the belt, three nautical

miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.²

The coastwise law applicable to the transportation of merchandise is found at 46 U.S.C. § 55102,³ and provides in pertinent part:

Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—

- (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and
- (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

CBP has previously held that the use of a non-coastwise-qualified crane vessel to load and unload cargo or to construct or dismantle a marine structure is not coastwise trade and does not violate the coastwise laws, provided any movement of merchandise is effected exclusively by the crane and not by any movement of the vessel, except for necessary movement which is incidental to a lifting operation while it is taking place. *See, e.g.*, HQ 116111 (Jan. 30, 2004) (ruling no transportation occurs where a stationary crane barge moored in place by four anchors picks up boulders from a coastwise-qualified supply barge and places them on the seabed to create a breakwater); HQ 115940 (Apr. 17, 2003) (ruling that a Panamanian-flag crane barge would not violate the Jones Act in using its crane to lift erosion-protection boulders from one barge and place them onto the ocean floor).

In the present matter, we find that the proposed installation of the subject WTGs, as outlined above, does not violate the Jones Act. In the facts you present, the components for each WTG will be laden onboard a coastwise-qualified barge and delivered to that Jack Up Vessel, which will be affixed to the seafloor via its legs. The Jack Up Vessel will then raise the WTG components to its deck and, using its crane, install the WTG onto the seabed. The Jack Up Vessel will remain stationary for the duration of this process. This scenario is analogous to that considered in HQ 116111 (Jan. 30, 2004), in which CBP ruled that a non-coastwise-qualified crane barge moored in a stationary position may lift boulders from a coastwise-qualified vessel and place them onto the seabed. As such, these facts do not constitute coastwise trade within the meaning of 46 U.S.C. § 55102 and 19 C.F.R. § 4.80b(a).

Issue Two: Whether Transportation of the Installation Tools and Material Violates 46 U.S.C. § 55102

Next, we consider whether the transportation of the tools and materials that will be unladen for use at each WTG installation site, which are described in the FACTS above, violates

² 33 U.S.C. § 1362(8).

³ Formerly 46 U.S.C. App. § 883. *See* Pub. L. 109-304 (Oct. 6, 2006).

46 U.S.C. § 55102.⁴ As excerpted above, the Jones Act prohibits the coastwise transportation of “merchandise” by non-coastwise qualified vessels. Pursuant to 46 U.S.C. § 55102: “[m]erchandise includes (1) merchandise owned by the United States Government, a State, or a subdivision of a State; and (2) valueless material.” As such, any cargo, regardless of value, is generally considered merchandise for the purpose of the Jones Act.

CBP has also held, however, that “vessel equipment” is not included within the general meaning of merchandise. “Vessel equipment” has been defined as portable articles, “necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on the board.” Treasury Decision 49815(4) (Mar. 13, 1939). Items considered “necessary and appropriate for the operation of the vessel” are those items that are integral to the function of the vessel and are carried by the vessel. This may include those items that aid in the installation and construction of offshore infrastructure.

In the present matter, the Jack Up Vessel’s explicit function is to install the WTG units onto the seabed. In order to accomplish this purpose, it is necessary for the vessel to carry the tools that the installation crew will use to complete installation operations (*e.g.*, bolting, electrical work). In the present matter, many of the tools you described to CBP (*e.g.*, bolt handling tools and hand tools) will be used by the installation crew in physically installing and commissioning the subject WTG units; as such, these items are integral to the function of the vessel, which is to install and commission the subject WTG units. The remainder of the items (*e.g.*, containers and bags, personal protection equipment, food and drink, and hand washing materials) are necessary for the “comfort and safety” of the crewmembers performing the WTG installation. Accordingly, the tools contained in the abovementioned containers are vessel equipment and not “merchandise” under the Jones Act. As a result, no violation of 46 U.S.C. § 55102 exists if the subject materials outlined in the FACTS section are transported between, and used at, multiple installation sites.

Issue Three: Whether Transportation of the Installation Crew Violates 46 U.S.C. § 55103

Finally, we consider whether the transportation of the installation crew between shore and the Jack Up Vessel constitutes a violation of the Passenger Vessel Services Act (“PVSA”), 46 U.S.C. § 55103.

As with the Jones Act, the PVSA applies to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.⁵ The PVSA provides, in relevant part:

(a) In General. Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not transport passengers between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel-

⁴ This section will not analyze whether [] or the “waste skip” constitute merchandise. As noted above, these items will not be unloaded at multiple installation sites and will therefore not travel between two coastwise points.

⁵ 33 CFR § 2.22(a)(2)(2013).

- (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and
- (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

Furthermore, 19 CFR § 4.80(b)(2) provides:

The penalty imposed for the unlawful transportation of passengers between coastwise points is \$300 for each passenger so transported and landed on or before November 2, 2015, and \$812 for each passenger so transported and landed after November 2, 2015 (46 U.S.C. § 55103, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).⁶

In the present matter, you state the installation crew will be transported between a U.S. port, a coastwise point, and the Jack Up Vessel, which will be attached to the seabed in U.S. territorial waters, another coastwise point. You have also clarified that installation crew will not be transported between installation sites onboard the non-coastwise-qualified Jack Up Vessel. Instead, you state that these individuals will be transported to and from the Jack Up Vessel by either a coastwise-qualified vessel or U.S.-registered helicopter. Because this scenario does not involve transportation by a non-coastwise-qualified vessel, we find that no violation of the PVSA would exist.

HOLDING

The transportation and/or installation of the subject WTG components, equipment, and individuals as described in the FACTS section would not be in violation of 46 U.S.C. §§ 55102 and 55103.

Sincerely,

Lisa L. Burley
Chief/Supervisory Attorney-Advisor
Cargo Security, Carriers and Restricted Merchandise Branch
Office of International Trade, Regulations and Rulings
U.S. Customs and Border Protection

⁶ See 85 Fed. Reg. 36469 at 36471 (June 17, 2020) (updating penalties for 2020).