



## **Input on Offshore Wind Energy Legislation**

March 3, 2010

***Prepared by***  
The Great Lakes Wind Council

***Submitted to***  
Governor Jennifer M. Granholm  
and  
The Michigan Legislature



## EXECUTIVE ORDER

Executive order 2009-46 charged the Great Lakes Wind Council with the responsibility to “provide input on proposed and new Great Lakes Wind development legislation and rulemaking as appropriate.” The recommendations included in the two attachments to this summary were developed to fulfill that charge.

## PURPOSE

The council made every attempt to identify potential issues and reach consensus on future siting and regulatory processes that may be necessary to develop offshore wind energy in Michigan’s Great Lakes. The council, in its advisory role, recognizes that its work product is provided to the governor and the legislature only as a series of draft concepts and recommendations to help inform ongoing dialogue, and expects that the content will be refined and change as it is incorporated into introduced legislation and reviewed by the stakeholders throughout the legislative process.

## SITING AND REGULATING OFFSHORE WIND ENERGY FACILITIES

The first attachment includes a process that the council recommends for inclusion in any bill introduced to regulate offshore wind energy development in the Great Lakes. Key provisions of this document include:

- An acknowledgement that the existing Part 325 (Great Lakes Submerged Lands Act) does not regulate offshore wind energy facilities
- A process for identifying potential sites for offshore wind energy development
- An auction process for assigning development rights to the identified sites
- A detailed set of requirements for site assessment plans, development plans, construction plans, operation plans, and decommissioning plans
- A process for public involvement in decision making, including notice and comment opportunities throughout the auction, site assessment, and development process
- A framework for collecting lease payments and operation royalties and a scheme for redistributing those funds to administer the regulatory program, foster renewable energy and energy efficiency, and to monitor the impacts of offshore wind facilities and offset any impacts through habitat protection and improvement in the Great Lakes

## SITING RELATED TRANSMISSION

The second attachment includes recommendations for changes to transmission siting laws when the transmission relates to service of an offshore wind energy development. Key provisions of this document include:

- An acknowledgement that transmission infrastructure sited on the bottomlands of the Great Lakes will continue to be regulated under Part 325.
- A process for siting transmission infrastructure on land to serve offshore wind energy facilities.



# **Attachment A:**

## *Siting and Regulation of Offshore Wind Energy Facilities*

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## ***Section 1: Definitions***

“Aquatic environment” means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the aquatic ecosystem of the Great Lakes.

"Bonus " means a payment by the lessee to the lessor at the time of sale as part of the consideration for acquisition of a site assessment lease.

"Bottomland" means lands in the Great Lakes, and bays and harbors thereof, lying below and lakeward of the natural ordinary high water mark.

“Cable” or “Line” as used in this Act does not include transmission lines and related equipment used to transfer electricity from an offshore wind energy facility at system bulk supply voltage of 100 kilovolts or more.

“Commercial activities” mean all activities associated with the generation, storage, or transmission of electricity or other energy product from an offshore wind energy lease on Great Lakes public trust bottomlands and waters, and for which such electricity or other energy product is intended for distribution, sale, or other commercial use. This term also includes activities associated with all stages of development, including initial site assessment, facility construction, and project decommissioning.

Decommissioning” means removing approved structures and returning the site of the lease to a condition as required by the department

“Department” means the Michigan Department of Natural Resources and Environment.

"Direct lease" means a lease issued as the result of individual negotiations with the department.

"Financial Assurance" means a surety to guarantee that the lessee and the lessee's heirs, executors, administrators, successors, and assigns shall faithfully perform the covenants, conditions, and requirements specified in the lease and the laws and rules of the state of Michigan.

“Great Lakes” means Lake Superior, Lake Michigan, Lake Huron, and Lake Erie, and includes Lake St. Clair.

“Grid cell” means an area bounded by lines of one minute intervals of latitude and longitude;

“Gross Revenue” means the sum of (i) the total amount of money or other consideration received by lessee or any affiliated party from the sale of wind-generated electricity or byproducts from the leased premises before deductions; and (ii) the total amount of consideration received by Lessee or an affiliated party in connection with any agreement, settlement, or judgment relating to the sale, use, or other disposition of electricity generated or capable of being generated at the leased premises.

“Lessee” means the holder of a lease, a department-approved assignee, and, when describing the conduct required of parties engaged in activities on the lease, it also refers to the operator

and all persons authorized by the holder of the lease or operator to conduct activities on the leasehold area.

"Lessor" means the department.

"Miles" mean statute miles, as opposed to nautical miles.

"Offshore Wind Energy Lease" means a grant of unpatented Great Lakes public trust bottomlands from the State of Michigan which conveys a leasehold interest for the described purpose.

"Offshore Wind Energy Facility" means any electrical energy producing wind powered turbines and supporting infrastructure connected to the power grid via transmission lines that are permanently or temporarily attached to the public trust bottomlands of the Great Lakes. Facilities include any structures, devices, appurtenances, gathering, transmission and distribution cables or pipelines and permanently moored vessels. Any group of said installations that includes a central or primary installation with one or more satellite or secondary installations is a single facility. The department may decide that the complexity of the installations justifies their classification as separate facilities. The term Offshore Wind Energy Facility does not include transmission lines and related equipment used to transfer electricity from an offshore wind energy facility at system bulk supply voltage of 100 kilovolts or more.

"Operator" means the legal entity having control or management of activities on a lease under this part. The operator may be a lessee, lease holder, or a contractor designated by the lessee under this part.

"Other materials" means any man-made structure or installed device or facility extending over or placed on bottomlands below the natural ordinary high water mark or extending over or placed into the waters of the Great Lakes associated with an offshore wind energy facility.

"Person" means any individual, partnership, corporation, association, political subdivision, the state, the department, an instrumentality or agency of the state, a political subdivision of an instrumentality or agency of the state, a department or other instrumentality or agency of the federal government, or other legal entity.

"Sale unit" means the land description or descriptions as numbered on the lease sale notice.

"Site assessment activities" mean those initial activities conducted to characterize a site on Great Lakes bottomlands, such as resource assessment surveys (e.g., limnological, meteorological and geophysical) or technology testing, that may involve the installation of structures and other materials in or on bottomlands.

## ***Section 2: Legislative findings***

The legislature finds the following:

- (1) The Great Lakes bottomlands are a magnificent natural resource endowment that provides significant economic, scientific, geological, scenic, recreational, biological, educational, historical, archaeological, and ecological benefits to the people of Michigan;

- (2) The State of Michigan has a solemn, perpetual, fiduciary responsibility to preserve and protect the Great Lakes bottomlands, waters and associated resources in public trust for the citizens of Michigan;
- (3) The development of offshore wind resources in the waters of the Great Lakes is in the public interest and for a proper public trust purpose;
- (4) The development of offshore wind resources in the Great Lakes will provide new opportunities for job creation and retention by utilizing Michigan's strengths in advanced manufacturing and engineering, supply chain development and tool and die technology; supported by Michigan's unparalleled universities and colleges;
- (5) Offshore wind development will make a significant contribution to achievement of the state's renewable energy and greenhouse gas reduction objectives, while enhancing and diversifying Michigan's energy resources;
- (6) Formal processes for the engagement and meaningful participation of coastal communities must be established to ensure that all public concerns and benefits are identified and addressed;
- (7) Michigan owns 38,000 square miles of Great Lakes bottomlands. Strong winds over the lakes are a world-class clean energy resource that, if carefully developed, can help meet Michigan's future electrical generation needs and provide power regionally for the benefit of Michigan and its economy;
- (8) Because of the significant costs of transporting large utility-scale wind turbines, Michigan's deep water ports are uniquely suited to support regional, national and international shipping and deployment of wind turbines;
- (9) Due to the challenges regarding site selection and site assessment, financing, construction and logistics, prospective offshore wind developers need a clearly defined process for obtaining necessary permits and authorizations.

### ***Section 3: Scope***

- (1) Except as otherwise provided in this section, the Department of Natural Resources and Environment (the Department) may enter into leases of unpatented submerged lands pertaining to the site assessment, construction, operation, and decommissioning of offshore wind energy facilities or to deploy necessary structures to research the feasibility of such facilities after approval of the state administrative board. Leases covering unpatented lands may be issued or entered into by the department with qualified parties, and shall contain such terms, conditions, and requirements as the department determines to be just and equitable and in conformance with the public trust.

### ***Section 4: Regulatory assistance***

- (1) The Michigan Economic Development Corporation (MEDC) shall be available to serve as the entry point for prospective offshore wind developers, working with regulatory agencies throughout state government to identify and facilitate necessary permits. MEDC shall coordinate rapid response teams within relevant state agencies to facilitate timely response to offshore wind developers. When rapid response teams are engaged they will provide to the MEDC within 5 business days a plan of action including, but not limited to, identification of: necessary permits; process for obtaining such permits;

anticipated timeline to issue such permits; issues of concern to the agency and required information to ensure resolution; and fees. Rapid response teams may be engaged by the MEDC for all aspects of the development, permitting, testing, leasing and construction of offshore wind energy facilities.

- (2) The MEDC, in consultation with other relevant state agencies, shall be available to provide to prospective offshore wind developers a checklist of information that must be provided by an offshore wind development applicant, timeline information for providing such information, and to which state agencies such information must be provided.
- (3) The department shall make all reasonable efforts to create and administer a permitting process which complements the federal permitting process in place for Great Lakes wind development. The department shall develop timelines and documentation requirements that to the extent possible minimize delay and duplication by using the same reports and analysis required by federal agencies while addressing the unique management concerns of the state.

### ***Section 5: Prohibition; exception; permit; qualifications of applicant***

- (1) A person shall not conduct site assessment activities or construct and operate an offshore wind energy facility in the Great Lakes except as described in this part.
- (2) A person may only construct and operate an offshore wind energy facility pursuant to a lease and permit issued under this part.
- (3) The department may accept a lease application under this part from a person, whether or not the person is a riparian landowner, and may enter into a lease for the use of lands and waters described in Part 325, section 32502 on which an offshore wind energy facility may be authorized.
- (4) Only one offshore wind energy facility shall be included in each application for a permit and lease.

### ***Section 6: Standards for approval***

- (1) The department shall issue a lease or permit for an offshore wind energy facility upon demonstration of the following:
  - (a) The proposed offshore wind energy facility will meet the requirements of this part.
  - (b) The proposed offshore wind energy facility is consistent with protection of the public trust in the waters and bottomlands of the Great Lakes.
  - (c) There will be benefits from the proposed offshore wind energy facility to the public consistent with the protection of the public health, safety, and welfare.
  - (d) The effects to the natural and cultural resources and public trust in the waters and bottomlands of the Great Lakes will not result in significant adverse impacts and will be mitigated to the extent reasonable and practicable. In deciding whether adverse affects are acceptable, the department must balance the potential adverse affect against benefits accruing to the public.
- (2) In reviewing an application for a permit or lease for site assessment or construction and operation or decommissioning of an offshore wind energy facility, the department shall

require sufficient information to determine that the use of those lands and waters will not result in significant adverse impacts to the public use of those lands and waters for fishing, swimming, pleasure boating, or navigation. The department may request specific additional information if it is determined that the information provided is not sufficient to complete the review process. The department may impose reasonable terms and conditions in all leases and permits as it determines necessary pursuant to this part and to protect the natural resources and public trust in the waters and bottomlands of the Great Lakes.

- (3) All financial assurance requirements are met as set forth in Section 24.
- (4) The department shall issue a responsiveness summary detailing public comment received and considered during the public comment periods of the permitting and leasing process.

### **Section 7: Requirements**

- (1) The wind turbine rotor sweep height shall be no less than 75 feet above the water surface.
- (2) Each structure in an offshore wind energy facility shall display lighting to minimize the potential adverse impacts on wildlife and the potential adverse visual impacts to shoreline communities. This lighting scheme shall be determined in consultation with the department and other appropriate agencies.
- (3) A permittee shall employ methods to locate any submerged cable from the nearshore area under the shoreline to avoid impacts to environmentally sensitive areas.
- (4) A permittee shall file an annual report with the department describing the monitoring results and any recommendations for modifying the generating facilities or other project elements, or commencing the approved project removal plan, if necessary to minimize adverse effects on natural resources identified pursuant to plans required under this section.

### **Section 8: Qualification of parties to nominate, bid and lease**

- (1) Bidders, lessees, assignees, operators, or holders of a lease under this part or those nominating parcels for development, *must demonstrate that they have the technical and financial capabilities* to conduct the activities authorized by the lease. To satisfy this requirement, parties must qualify as a bidder, lessee, assignee, or operator by completing the following:
  - (a) Parties must demonstrate their technical and financial capability to construct, operate, maintain, and terminate/decommission projects for which they are requesting authorization. Documentation can include:
    - (i) Descriptions of international or domestic experience with renewable energy projects or other types of electric-energy-related projects; and
    - (ii) Information establishing the ability to raise capital sufficient to carry out a site assessment plan as set forth in section 15 of this part.
  - (b) A corporation or association must submit evidence acceptable to the department that it is:

- (i) qualified to hold leases or grants under this part;
  - (ii) authorized to conduct business under the laws of the State;
  - (iii) authorized to hold leases under the operating rules of its business; and
  - (iv) the persons signing are authorized to bind the corporation or association when conducting business with the State.
- (2) Lease applicants shall provide documentation, including certificates of insurance, that the applicant has or can obtain and will maintain a current general liability policy for the project that covers bodily injury, property damages and environmental damages in an amount considered reasonable by the department in consideration of the scope, scale and location of the project subject to limitations as set forth in section 24.
- (3) In addition, the lease applicant shall demonstrate the ability to obtain and maintain a financial assurance bond pursuant to Section 24 of this part.
- (4) Prospective bidders are encouraged to file their complete set of qualification documents with the department as far in advance of anticipated transactions as possible, and documents must be received at least 30 days prior to any lease sale. The department will assign a unique company code to each entity upon acceptance of its qualification statement and will acknowledge the sufficiency of the submittal by letter.

### ***Section 9: Methods for identifying wind energy lease parcels***

- (1) The department shall use the following two methods for identifying parcels for offshore wind energy facilities:
- (a) State selection or
  - (b) Nomination by a qualified party as defined in Section 8(1).

### ***Section 10: State selection for public auction***

- (1) The department shall identify Great Lakes bottomlands areas most favorable for offshore wind energy development, called offshore wind resource planning areas, and offer certain parcels of Great Lakes bottomlands within those wind resource planning areas at a public auction as soon as practicable following enactment of this part.
- (2) Prior to offering parcels for lease, the department shall hold a public hearing and conduct fact-finding in the county nearest to the wind resource area or proposed offshore wind development parcel(s)
- (3) The department shall not offer any parcels for auction or enter into any leases if it determines prior to field studies and site assessment activities that the use of those lands and waters will substantially impair scenic vistas or the public use of those lands and waters for fishing, swimming, pleasure boating, or navigation or that the public trust in the waters or natural or cultural resources of the state, including fish and wildlife, will be impaired by a lease.

## ***Section 11: Nomination of potential sites by qualified party***

- (1) The department shall consider unsolicited nominations of a parcel for lease on a case-by-case basis. The department shall not consider an unsolicited request for a lease under this part that is proposed in an area of Great Lakes bottomlands that is already scheduled for a lease sale under this part.
- (2) A nomination under this subsection shall be accompanied by a fee of \$0.25 per acre.
- (3) A nomination shall include a detailed description of the area of interest based upon a grid cell map produced by the department
- (4) Upon receipt and approval of nomination for a parcel per section 10 (3), the department shall publish a public notice of auction for the proposed parcel not less than 60 days before the scheduled auction.
- (5) The department shall approve a nominated parcel for auction if the department determines that said parcel has a reasonable likelihood of ultimately obtaining a facility permit hereunder. In making said determination, the department shall consider the requirements of this part, prevailing scientific data and other relevant studies, including, without limitation, the determinations of the GLOW Council.

## ***Section 12: Lease bidding and award process***

- (1) Prior to offering parcels for auction, the department shall hold a public hearing and conduct fact-finding in the county nearest to the wind resource area or proposed offshore wind development parcel(s)
- (2) Whether a parcel is identified by the state or nominated by a developer, the department shall hold auctions to award offshore wind energy leases by oral auctions by cash bonus. Only one designated representative per qualified party shall participate in an auction.
- (3) The department shall screen prospective bidders to identify those qualified to apply for lease permits, pursuant to section 8.
- (4) An applicant shall submit deposit to cover the bid for each lease area, according to the terms specified in the Final Lease Notice.
- (5) The department shall specify minimum bids in the Final Lease Notice.
- (6) In the Final Lease Notice, the department may reserve the right to accept the winning bid solely based on its being the highest bid submitted by a qualified bidder.
- (7) After each auction, the department shall send a written notice its decision to award a lease to all participating bidders whose deposits the department holds.
- (8) The winning bidder shall be subject to final confirmation.
- (9) The full amount of the bonus bid shall be paid on the same date on which the lease rights are bid. The bonus bid shall be paid in cash or by certified check or money order. All remittances shall be made payable to the State of Michigan. The bonus bid should be directed to the Great Lakes Wind Energy Trust Fund.
- (10) Failure of the successful bidder to pay the total bid at the time of lease shall result in the forfeiture of the bonus bid and the lease rights to the unit or units involved.

- (11) If the department accepts a bid, the department shall send the successful bidder a notice with three copies of the lease form.
- (a) Within 21 business days after the successful bidder receives the lease copies, the bidder must:
    - (i) Execute the lease;
    - (ii) File financial assurance as required pursuant to section 24.
  - (b) Pay the first year's rent within 45 days upon receipt of the lease copies.
  - (c) Upon receipt of the three signed copies from the lessee, the department shall execute the lease and send lessee one fully executed copy
  - (d) Lessee shall forfeit deposit if the lease is not executed and returned to the department within 21 business days of receipt, or otherwise fails to comply with applicable regulations or terms of the Final Sale Notice.
  - (e) The department may extend the 21 business day time period for executing and returning the lease if the department determines the prospective lessee has demonstrated sufficient cause for the delay.
  - (f) The department reserves the right to withdraw an offshore wind energy area in which the department has held a lease sale before lessee and department execute the lease in that area. If the department exercises this right, the department shall refund bid deposit, without interest.
  - (g) If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder must submit, along with the executed lease, written evidence that the agent is authorized to act on behalf of the bidder.
  - (h) The department shall consider the highest submitted qualified bid to be the winning bid. The department shall refund the deposit on all other bids.
  - (i) If the department rejects a bid, the department shall provide a written statement of the reasons and refund any money deposited without interest.

### ***Section 13: Notice of Intent to Issue a Lease***

- (1) For each lease, the department shall publish a Proposed Lease Auction Notice and a Final Lease Notice. The comment period following issuance of a Proposed Lease Auction Notice shall be 60 days. In the Proposed Lease Auction Notice, the department shall solicit public comment on the items listed in this section. The final terms and conditions shall be published in the Final Lease Notice. The Proposed Lease Auction Notice and Final Lease Notice shall include, or describe the availability of, information pertaining to:
- (a) The area available for leasing.
  - (b) Proposed and final lease provisions and conditions, including, but not limited to:
    - (i) Lease size;
    - (ii) Lease term;
    - (iii) Payment requirements;
    - (iv) Performance requirements; and
    - (v) Site-specific lease stipulations.
  - (c) Auction details, including:

- (i) Bidding procedures and systems;
  - (ii) Minimum bid;
  - (iii) Deposit amount;
  - (iv) Lease award method; and
  - (v) Bidding or application instructions.
- (d) The official department lease form to be used or a reference to that form.
  - (e) Criteria the department shall use to evaluate competing bids or applications and how the criteria shall be used in decision-making for awarding a lease.
  - (f) Award procedures, including how and when the department shall award leases and how department shall handle unsuccessful bids or applications.
- (2) The department shall publish the Final Lease Notice at least 21 days before the date of the lease.

### ***Section 14: Site assessment lease***

- (1) The lease shall include a lease payment as set forth in section 23.
- (2) The site assessment lease will be for a period not to exceed three years and shall be automatically extended for two subsequent one-year periods if the department determines that significant progress is being made to complete the site assessment. Progress shall include the installation of monitoring equipment or substantial progress on studies required for approval under section 15.
- (3) The lease shall include a clause that states that the lease is for site assessment purposes, subject to conversion to a construction and operation lease under section 18(1).
- (4) The site assessment lease shall include a clause that allows for the conversion of the lease to an offshore wind energy construction and operation lease upon issuance of the construction and operation lease and permit set forth in section 20.

### ***Section 15: Site assessment plan requirements***

- (1) An applicant under this part shall submit a site assessment plan (SAP) fee of \$5,000. The applicant must submit a site assessment plan within 6 months of site assessment lease issuance and prior to conducting any site assessment plan activities. The site assessment plan shall demonstrate that the applicant is prepared to use the best available technology, best management practices and properly trained personnel. Unless otherwise required, the applicant shall include two paper copies and one electronic copy of all plans, applications, reports or notices required by this part.
- (2) A site assessment plan shall describe the activities planned to conduct a resource assessment or for technology testing. The applicant shall include the following information, or the plans for collecting the information for all of the following:
  - (a) The surface location (global positioning systems coordinates or successor technology) and estimated water depth for all proposed and existing structures, facilities, and appurtenances located on the bottomlands.
  - (b) Baseline physical characterization surveys (e.g., geological and geophysical surveys or hazards surveys) to identify bottom type (mud/sand/silt/bedrock, rock

- outcroppings etc) at each tower site, transformer platform piling site and all other materials and along all cable routes; sediment transport study, etc.
- (c) Baseline environmental surveys (e.g., biological and archaeological surveys) using radar, side-scan sonar, sub bottom profiler, magnetometer or other means as required by the department to identify existing bat and bird migration routes, threatened and endangered species and associated habitat, aquatic environment, benthic communities, vegetation, prehistoric and historic submerged cultural resources such as shipwrecks in the lease area in general and specifically in the proposed locations of any structure and/or cable route.
  - (d) General structural and project design, fabrication, and installation: information for each type of facility associated with the project, including the location of the offshore wind energy facility on the most recent nautical chart issued by the national oceanographic and atmospheric administration, United States Department of Commerce or grid cell map as produced by the department.
  - (e) Competing use surveys to identify the current uses in the vicinity of proposed offshore wind energy facility and associated structures including, but not limited to, commercial, treaty and recreational fishing, water intakes/outfalls, cables, pipelines, military uses, shipping lanes, recreational boating courses, designated refuges, bottomland preserves, special management areas and other uses.
  - (f) Preliminary wind energy surveys using existing meteorological data, and plans detailing how and what equipment will be installed in the subject lease area.
  - (g) The site assessment or technology testing concept: A discussion of the objectives; description of the proposed activities, including the technology to be used; and proposed schedule from start to completion.
  - (h) Deployment activities: A description of the safety, prevention, and environmental protection features or measures proposed.
  - (i) The proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts: A description of the measures to avoid or minimize adverse effects and any potential incidental take, before activities are conducted on the lease, and how environmental impacts from the proposed activities will be mitigated including a description of the measures. Protection of cultural and archaeological sites will be evaluated using the National Register of Historic Places Criteria of Significance.
  - (j) Decommissioning and site clearance procedures: A discussion of methodologies.
  - (k) A listing of all Federal, State, and local authorizations or approvals required to conduct site assessment activities on the lease: A statement indicating whether such authorization or approval has been applied for or obtained.
  - (l) Designation of operator, if applicable.
  - (m) Contact information: The name, address, e-mail address, and phone number of an authorized representative.
  - (n) Financial assurance information. Statements attesting that the activities and facilities proposed in the site assessment plan are or will be covered by an appropriate bond or other approved financial instrument.
- (3) After receipt of an otherwise complete SAP, the department may request specific additional information if it is determined that the information provided is not sufficient to complete the review process. If the applicant fails to provide the requested information within 90 days, the application shall be denied without prejudice; the applicant may reapply. Application fees will not be refunded. If the applicant can show sufficient cause for requiring additional time to provide the requested information the Department shall extend the duration of the response period.

- (4) The department may approve, disapprove, or approve the site assessment plan with modifications.
- (5) If approved, the department will specify terms and conditions to be incorporated into the site assessment plan.
- (6) If disapproved, the department will inform the applicant in writing of the reasons and allow the applicant an opportunity to submit in writing a revised plan making the necessary corrections, and may suspend the term of the lease, as appropriate, to allow this to occur. The applicant shall submit the necessary corrections within 60 days of notification from the department. If the applicant can show sufficient cause for requiring additional time to provide the corrections to the Department shall extend the duration of the response period.
- (7) The permittee may begin conducting activities under the approved site assessment plan upon written approval by the department.
- (8) The permittee shall notify the department in writing within 30 days of completing installation activities approved in the site assessment plan.
- (9) The permittee must prepare and submit to the department a report on November 1 of each year that summarizes the site assessment activities and the results of those activities. The report shall include a statement identifying and describing any mitigation measures and monitoring methods and their effectiveness. If mitigation measures that were identified that were not effective, the permittee shall include recommendations for new mitigation measures or monitoring methods.
- (10) If submerged cultural resources are discovered while conducting site plan activities, lessee shall immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to the department and the Office of State Archaeologist within 72 hours. Within 60 days or within 60 days of winter waters becoming navigable, the Office of State Archaeologist will provide information on how to conduct investigations to determine if the resource is significant and how to protect it. Lessee shall keep the location of the discovery confidential and must not take any action that may adversely affect the submerged cultural resources until an evaluation is conducted.

### ***Section 16: Site assessment plan modifications***

- (1) The permittee may request a revision of the site assessment plan by notifying the department in writing before conducting any activities not described in the approved site assessment plan, describing in detail the change in activities proposed. The department shall determine whether the activities proposed are authorized by the existing site assessment plan or require a revision to the site assessment plan. The department may request additional information to make this determination. A fee of \$500 shall be submitted with the written site assessment plan revision request.
- (2) Activities for which a proposed revision to the site assessment plan will likely be necessary include but are not limited to:
  - (a) Activities not described in the approved site assessment plan;
  - (b) Modifications to the size or type of facility or equipment to be used;
  - (c) Changes in the surface location of a facility or structure;

- (d) Addition of a facility or structure not contemplated in the approved site assessment plan;
- (e) Changes in the location of bottom disturbances (anchors, chains, etc.) from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision.

### ***Section 17: Public engagement; site assessment plan approval***

- (1) Before a site assessment plan will be approved an applicant shall demonstrate that it has held at least one informational meeting on the proposed site assessment plan, at the expense of the applicant, in the county nearest the proposed offshore wind development site(s). The informational meeting shall be widely noticed and open to local, Tribal, state and federal officials and the general public. The meeting shall provide some mechanism to solicit public input.
- (2) The state public engagement provisions for permitting and conveyance of Great Lakes bottomlands and any other regulatory review or approval processes for specific offshore wind development site proposals and related infrastructure shall be coordinated and, where practical, concurrent with those of other state and federal agencies including, but not limited to, the Michigan Public Service Commission, the Federal Aviation Administration, the Federal Communications Commission, the U.S. Coast Guard, the U.S. Department of Homeland Security, the U.S. Army Corps of Engineers.
- (3) Before lease issuance, the department shall notice for public comment a draft permit and lease. The draft permit and lease shall contain the terms and conditions under which site assessment activities are to be conducted and the results thereof, as well as information relative to any compensation to the state for the use and occupation of the bottomlands. The department shall hold at least one public hearing in the county nearest the proposed offshore wind development site(s). The comment period on any proposed lease and permit shall extend 30 days beyond date of the public hearing.

### ***Section 18: Construction and operation permit***

- (1) If a site assessment lessee elects to proceed with the construction and operation phase of an offshore wind energy facility project, the lessee shall first obtain a construction and operation permit, and will convert its site assessment lease to a construction and operation lease pursuant to section 20. Lessee will be entitled to such conversion if it meets the standards in this act evaluated pursuant to Section 6.
- (2) An applicant for a construction and operations permit and lease under this part shall submit an application on a form provided by the department along with a fee of \$10,000. The applicant shall submit a construction and operations permit and lease application at least 180 days before the expiration of the site assessment lease.
- (3) The construction and operations permit and lease application shall include construction, operations, and conceptual decommissioning plans for all planned structures and operations and shall incorporate the information and data collected in the site assessment permit for the proposed construction activities.

- (4) Lessee must receive department approval of the construction and operations permit and lease application and all necessary easements for the wind energy facility project shall be secured before any of the proposed activities begin.
- (5) The construction and operations permit application shall demonstrate that the lessee is prepared to use the best commercially reasonable available technology, best management practices and properly trained personnel. The lessee shall submit two paper copies and one electronic version of the plans, applications, reports or notices required by this part. The department may require the submission of additional information in order to review and approve the application.
- (6) The application shall include all of the following:
  - (a) Scaled drawings that include the following elements:
    - (i) Cross sectional and plan view drawing prepared by a professional land surveyor or professional engineer of the entire project area that shows, with geographic positioning system coordinates, the proposed location and estimated water depths of the all structures including but not limited to all submerged utility lines, meteorological towers, wind turbine towers, generating facilities and all other project elements.
    - (ii) A plan view drawing showing the proposed location of each wind turbine in relation to any other offshore wind energy facility within 10 miles of the proposed project area and written verification that the project will not interfere with the operation of any such previously approved project; and
    - (iii) A plan, to scale, that shows the outside limits of the permit and lease area, and the general location of all above water structures in relation to the adjacent shoreline and nearby towns/cities, parks, roads and other physical features.
  - (b) A narrative description of the proposed activities and methods for proposed construction and operation including discussion of the objectives, the proposed activities, tentative schedule from start to completion, and plans for any phased development. The description shall include an anticipated schedule of construction activity showing significant milestones leading to the commencement of commercial operations.
  - (c) Information describing each type of structure associated with the project.
  - (d) A report, prepared following consultation with the department, based on the information and data collected in the site assessment permit studies that:
    - (i) Describes existing information including, but not limited to, commercial, treaty, and recreational fishing, water intakes/outfalls, cables, pipelines, military uses, shipping lanes, ferry routes, recreational boating courses, resources, designated refuges, preserves, special management areas and other uses within the proposed lease area.
    - (ii) Describes the aquatic environment, including benthic communities, in the waters and on the submerged lands and immediately adjacent areas in, on or over which the applicant proposes to locate any mooring, anchoring system, meteorological tower, submerged utility line or other materials that is secured to the lakebed or located in the water column;

- (iii) Describes the archeological, historic and cultural sites within the project area.
  - (iv) Describes the results of all fish and wildlife monitoring studies conducted during the site assessment permit studies and plans for conducting monitoring, as required by the department during construction and throughout the term of the construction and operations permit, of the behavior, interaction and predicted impacts on the species studied, including: fish species, avian species, passerines, raptors, shorebirds, water birds and waterfowl; bats; and other aquatic resources identified in subsection (b)(ii), including but not limited to the generating facilities and mooring or anchoring systems employed, and identifying potential adverse effects.
- (e) A fish and wildlife protection plan that contains, at a minimum, the following:
- (i) A detailed description of the methods and equipment that will be used for monitoring fish and wildlife behavior and activity in the vicinity of the project;
  - (ii) A detailed description of how the fish and wildlife monitoring data will be analyzed and provided to the department in electronic format, with specific criteria by which to evaluate adverse effects;
  - (iii) A detailed implementation schedule, including the frequency and timing of data recovery, maintenance of the monitoring equipment and quarterly reporting to the department;
  - (iv) A detailed monitoring schedule that considers lake conditions, seasonal variations in species' presence or absence and other pertinent biological factors;
  - (v) Provisions for identifying and implementing remedial measures if monitoring identifies any adverse changes in fish or wildlife behavior or use of lake habitats;
- (f) A detailed description of the methods and equipment that will be used to determine and monitor ambient noise levels, electromagnetic fields and noise associated with project construction and subsequent operations and the effectiveness of any devices that are proposed to avoid and minimize the potential for related foreseeable adverse effects, if any; and
- (g) A navigation safety plan to protect the public and project facilities from such events as: collisions between commercial and recreational vessels and project facilities; entanglement of fishing gear, anchors, dredging equipment or other underwater devices that may damage or become entangled with project transmission, anchoring and mooring lines; release of or damage to the project's submerged utility line, anchoring system or other project elements in, on or over the bottomlands; and electrocution. The plan must, at a minimum, consider the need and provide for as appropriate:
- (h) A boundary defining an effective exclusion zone around the proposed generating facilities, anchoring system, submerged utility lines and other project elements, if any, in which specified types of navigation and underwater activities incompatible with project operations may not be conducted. Any such exclusion zone must be specified with global positioning system coordinates;

- (i) Marking the extreme corners of the exclusion zone, specified pursuant to subparagraph (1), with lights, buoys or other indicators sufficient to warn vessels of the above-water and underwater project elements and the boundaries of the exclusion zone during both day and night;
  - (ii) Marking the generating facilities with fog signals, low-intensity navigation lights, hazard marking lights or other aids to navigation and painting and lighting the generating facilities in a way that considers the aesthetic resources of the project area as well as the safety of the public and project facilities and meets applicable Federal Aviation Administration guidelines and United States Coast Guard requirements;
  - (iii) Procedures to ensure the safety of the public near the project area; and
  - (iv) A description of monitoring for and actions the applicant will take to prevent and address an emergency that specifies: procedures the applicant will take during an emergency, including but not limited to immediate shutdown; a protocol for coordination with and reporting an emergency to local, state and federal agencies; contingency measures to modify operations to address reasonably foreseeable emergency conditions; and a schedule for annual testing of emergency equipment, including the project's emergency shutdown system;
- (h) Contact information. The name, address, e-mail address, and phone number of an authorized representative.
  - (i) Designation of operator, if applicable
  - (j) Commercial lease stipulations and compliance: A description of the measures lessee took, or will take, to satisfy the conditions of any lease stipulations related to the proposed activities.
  - (k) A description of the deployment protocols, including site safety, accident prevention, and environmental protection features or measures that lessee will use.
  - (l) A list of chemical products used; the volume stored on location; their treatment, discharge, or disposal methods used; and the name and location of the onshore waste receiving, treatment, and/or disposal facility. A description of how these products would be brought onsite, the number of transfers that may take place, and the quantity that that will be transferred each time.
  - (m) A description of any vessels, vehicles, and aircraft lessee will use to support the activities: An estimate of the frequency and duration of vessel/vehicle/aircraft traffic.
  - (n) A project decommissioning and removal plan prepared by a licensed professional engineer that the applicant will, at its expense, initiate beginning within 60 days of the expiration or termination of a permit granted pursuant to this section and that provides for:
    - (i) An implementation schedule that provides for all removal and restoration activities to be completed within one year of the expiration date of the general permit;
    - (ii) Removal of the project in its entirety from all project lands and waters, except for any part of the project regarding which the applicant provides

the department substantial evidence of plans for continued beneficial use, including but not limited to an executed lease of state-owned submerged lands, as applicable, or for partial removal or other modification adequate to avoid foreseeable adverse effects on natural resources and existing uses;

- (iii) Minimizing lakebed disturbances and suspended sediments during removal of any underwater facilities;
  - (iv) Monitoring the effects of the removal activities on aquatic marine resources both during and subsequent to completion of removal activities;
  - (v) An estimate of the total project removal cost, without regard to salvage value of the equipment, and the net project removal cost, prepared by a licensed professional engineer; and
  - (vi) Written evidence and certification that the applicant has posted and will maintain funds for project removal in an amount equal to the net project removal cost as set forth in section 24.
- (o) A listing of all Federal, State, and local authorizations, approvals, or permits that are required to conduct the proposed activities, including commercial operations. A statement indicating whether the lessee has applied for or obtained such authorization, approval, or permit.
  - (p) A description of the measures lessee will use to avoid or minimize adverse effects and any potential incidental take before lessee conduct activities on the lease, and how lessee will mitigate environmental impacts from the proposed activities, including a description of the measures lessee will use. The description shall include a pollution prevention plan for oils, greases, lubricants and other chemical products used in the offshore wind energy facility including an analysis of the use of non-toxic alternatives.
  - (q) Information incorporated by reference: A listing of the documents referenced.
  - (r) Financial assurance: attesting that the activities and facilities proposed in the construction and operations plan are or will be covered by an appropriate bond or security, as required.
  - (s) Consultant contact information
  - (t) Other information as required by the department.
- (7) As appropriate, the department will coordinate and consult with relevant Federal, State, and local agencies and affected Indian tribes, and provide to them relevant nonproprietary data and information pertaining to the proposed activities.
  - (8) After receipt of an otherwise complete application, the department may request additional information if it determines that the information provided is not sufficient to complete the review process. If the applicant fails to provide the requested information within 60 days, the application will be denied without prejudice and the file closed. The Department may make reasonable extensions of the duration of the response period if the applicant can show sufficient cause for requiring additional time to provide the requested information.
  - (9) The department may approve, disapprove, or approve with modifications the construction and operations permit.

- (a) If approved, the department shall specify terms and conditions to be incorporated into the construction and operations permit.
  - (b) If disapproved, the department will inform the lessee in writing of the reasons and allow the lessee an opportunity to submit in writing a revised plan making the necessary corrections, and may suspend the term of the lease, as appropriate, to allow this to occur. The applicant shall submit the necessary corrections within 90 days of notification from the department.
- (10) After approval of the construction and operations permit by the department, the permittee shall commence construction by the date given in the construction schedule included as a part of the approved construction and operations permit, unless the department approves a deviation from the schedule.
  - (11) The permittee shall notify the department in writing within 30 days of completing installation activities approved in the construction and operations permit.
  - (12) The permittee must prepare and submit to the department a report on November 1 of each year that summarizes the construction and operation activities and the results of those activities. The report shall include a statement identifying and describing any mitigation measures and monitoring methods and their effectiveness. If mitigation measures that were identified that were not effective, the lessee shall include recommendations for new mitigation measures or monitoring methods.
  - (13) The permittee shall notify the department in writing, within 5 business days, any time commercial operations are ceased, without an approved suspension, under the approved construction and operations permit. If commercial operations are ceased for an indefinite period which extends longer than 6 months, the department may cancel the lease and lessee shall initiate the decommissioning process, as set forth in this part.
  - (14) The permittee shall initiate the decommissioning process as required in this part upon completion of the commercial operations as authorized in the lease.
  - (15) To the extent possible, the department will design the application process to take advantage of any environmental impact statement process that the applicant must complete to secure federal authorization [40 CFR 1500-1508] for the project and avoid duplication of materials and extension of timelines whenever possible.
  - (16) If submerged cultural resources are discovered while conducting construction and operation activities, lessee shall immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to the department and the Office of State Archaeologist within 72 hours. Within 60 days or within 60 days of winter waters becoming navigable, the Office of the State Archaeologist will provide information on how to conduct investigations to determine if the resource is significant and how to protect it. Lessee shall keep the location of the discovery confidential and must not take any action that may adversely affect the submerged cultural resources until an evaluation is conducted.

### ***Section 19: Construction and operations permit modifications***

- (1) The permittee may request a revision of the construction and operations permit by notifying the department in writing before conducting any activities not described in the approved construction and operations permit, describing in detail the type of activities proposed. The department will determine whether the activities proposed are authorized

by the existing construction and operations permit or require a revision to the construction and operations permit. The department may request additional information to make this determination. A fee of \$500 shall be submitted with the written construction and operation permit revision request.

- (2) Activities for which a proposed revision to the construction and operations permit will likely be necessary Include but are not limited to:
- (a) Activities not described in the approved construction and operations permit;
  - (b) Modifications to the size or type of facility or equipment to be used;
  - (c) Changes in the surface location of a facility or structure;
  - (d) Addition of a facility or structure not contemplated in the approved construction and operations permit;
  - (e) Changes in the location of bottom disturbances (anchors, chains, etc.) from the approved locations. If a specific anchor pattern was approved as a mitigation measure to avoid contact with bottom features, any change in the proposed bottom disturbances would likely trigger the need for a revision;
  - (f) Structural failure of one or more facilities;
  - (g) Changes to any other activity specified by the department.

### ***Section 20: Construction and operation lease***

- (1) If the state approves a construction and operation permit, it shall convert the lease to a construction and operation lease. The lease shall include, at a minimum, the following provisions:
- (a) Requirement for lease payment pursuant to subsection 23.
  - (b) The construction and operation lease will be for an initial period of twenty-five years, shall be extended for additional 10 year periods subject to continued adherence to permit requirements, and continued operation of the facility.
  - (c) Lessee shall commence the work authorized in the construction and operation permit within 2 years of issuance of the permit, and shall be operational within 4 years of the issuance of the permit, or the department shall terminate the lease, unless a permit modification is approved. Additional extensions shall be automatically given if substantial progress has been made or if factors beyond the control of the lessee have delayed the progress.

### ***Section 21: Public engagement; draft construction and operation permit and lease***

- (1) Before issuance of the construction and operation permit, the department shall notice for public comment a draft permit and lease. The draft permit and lease shall contain the terms and conditions under which the proposed activities are conducted, as well as any compensation to the state for the use and occupation of the bottomlands. The department shall hold at least one public hearing in the county nearest the proposed offshore wind development site(s). The comment period on any proposed lease and permit shall extend 30 days beyond the public hearing.

## ***Section 22: Decommissioning***

- (1) A lessee of a construction and operations lease under this part shall remove or decommission all facilities, projects, cables, pipelines, and other materials from the bottomlands created by activities on the lease, as required by the department.
- (2) The lessee shall update its decommissioning and removal plan included within the construction and operations permit application to reflect state-of-the-art methods for project decommissioning and removal at the time those activities are to commence.
- (3) Lessee shall submit an application on a form provided by the department for an updated decommissioning and removal plan along with a fee of \$5,000. The lessee shall submit a decommissioning application upon the earliest of the following dates:
  - (a) 180 days before the termination of commercial activities.
  - (b) 90 days after cancellation, relinquishment, or other termination of the lease.
- (4) Lessee shall provide two paper copies and one electronic copy of the application.
- (5) The department may authorize facilities to remain in place following termination of a lease. If the department authorizes facilities to remain in place, the lessee under this part remains jointly and severally liable for decommissioning the facility unless satisfactory evidence is provided to the department showing that the state or another party has assumed that responsibility and has secured adequate financial assurances.
- (6) Lessee shall remove all structures and other materials and return the lease area to the pre-lease condition as determined by the department within 3 years of the issuance of a decommissioning and removal permit.
- (7) The department may impose other conditions as necessary to protect the natural resources and public trust in the Great Lakes and to protect the public health, safety and welfare.
- (8) Within 60 days after lessee removes a facility, cable, or pipeline, lessee shall submit a written report to the department that includes the following:
  - (a) A summary of the removal activities, including the date they were completed;
  - (b) A description of any mitigation measures;
- (9) If submerged cultural resources are discovered while conducting decommissioning and removal activities, lessee shall immediately halt bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to the department and the Office of State Archaeologist within 72 hours. Within 60 days or within 60 days of winter waters becoming navigable, the Office of State Archaeologist will provide information on how to conduct investigations to determine if the resource is significant and how to protect it. Lessee shall keep the location of the discovery confidential and must not take any action that may adversely affect the submerged cultural resources until an evaluation is conducted.

## ***Section 23: Annual rental payments; royalties; penalty for late payments***

- (1) The rent for a site assessment lease and a construction and operation lease shall be \$3 per acre per year for the entire lease area unless otherwise negotiated and established

in the lease. The first rent must be paid within 45 days after the lease is issued and then at the beginning of each subsequent 1-year period.

- (2) Rent payments will continue until all decommissioning and removal activities have been completed pursuant to the terms of the decommissioning and removal permit.
- (3) Past due royalty and annual rental payments shall bear interest from maturity at the rate determined and applied by the Department of Treasury from the due date until the date of payment
- (4) The annual royalty payments that shall be collected from the lessee during commercial operations shall be determined by the MPSC and shall not be less than 3% of gross revenue. Royalties collected under this section shall be deposited in the Great Lakes Wind Energy Trust Fund.
- (5) All application fees, nomination fees, and rent received under this part shall be forwarded to the state treasurer for deposit into the land and water permit fee fund. Upon appropriation, money from the fund shall be expended to implement this part.
- (6) The Great Lakes Wind Energy Trust Fund is created as a separate fund in the state treasury, and it may receive revenue as provided in this part, or revenue from any other source.
  - (a) Money in the Great Lakes Wind Energy Trust Fund shall be appropriated for the following purposes:
    - (i) Not less than 70% of the royalties collected pursuant to subsection 23(4) shall be held in trust by the state and be directed to public use that will research and monitor the impact of offshore wind development and address or offset any negative impacts that may be found. Uses of this fund shall include enhancing or restoring Great Lakes fisheries habitat; protecting and managing bottomlands; and enhancing or restoring Great lakes aquatic and nearshore habitat; and submerged cultural resource management.
    - (ii) Not less than 23% of the royalties collected pursuant to subsection 23(4) shall be held in trust by the state and be directed to fostering the use of renewable energy or energy efficiency related projects by the public.
    - (iii) Not more than 7% of the royalties collected pursuant to subsection 23(4) shall be used by the department to administer the program.

## ***Section 24: Financial assurance***

- (1) A lessee shall maintain financial assurance during operations of the offshore wind energy project and until the department determines that project removal activities have been completed. The financial assurance shall ensure that the applicant will truly and faithfully perform the covenants, conditions, and agreements specified in the lease, and shall further ensure that all structures and other materials be removed upon cancellation or termination of the lease. The amount of the bond shall be determined by the department and shall be commensurate with the cost of removing all facilities, cables and other structures and restoring bottomlands to pre-lease condition as required by the department in accordance with the site assessment plan, and/or approved construction and operating permit and/or decommissioning plan. The bond shall be in effect for the

period of the lease term or until all lease conditions have been fulfilled to the department's satisfaction.

- (2) The financial assurance required under subsection (1) shall apply to all operations subject to the permit and be sufficient to cover the cost to administer, and to hire a third party to implement all necessary environmental protection measures, including potential remediation of any contamination of the air, water, or bottomlands and conduct project removal activities. The financial assurance shall consist of a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other equivalent security, or any combination thereof, covering 100% of the total required amount. In no event shall the magnitude of said financial assurances regarding potential (remediation for possible contamination, etc.) liabilities (as opposed to estimated actual liabilities.) exceed 1% of the cost of the facility
- (3) Every 3 years, or as the department considers necessary, a permittee shall update the statement of financial responsibility required under subsection (2) and shall adjust the conformance performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other security, as applicable, to assure that the financial assurance is sufficient for the purposes of subsection (2).
- (4) Failure to provide financial assurance under this section constitutes grounds for the department to order immediate suspension of activities at the project.

### ***Section 25: Rules***

- (1) The department may promulgate rules necessary to implement this part.

### ***Section 26: Assignment***

- (1) All or part of a lease or permit provided for under this part may be assigned upon department approval. The department shall develop an assignment application. A processing fee of \$500 shall accompany this application. The department shall approve the assignment if the assignee meets all the requirements of this part. The assignor is liable for all obligations that accrued on its lease or grant before the department approves an assignment. The assignee is liable for all obligations once the department has approved the assignment.

### ***Section 27: Permit modification; relocation***

- (1) Following the granting of a construction and operation permit under this section, and upon application of the permit holder, the department may authorize an applicant to move the generating facilities to another location within the same offshore wind energy resource area, as long as the applicant provides an amended site plan that meets the requirements of this part. The department shall notify the applicant in writing within 60 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a permit modification is deemed to have been granted.

### **Section 28: Lease renewal**

- (1) Lessee may request renewal of the operations term of the lease. The department, subject to section 20(c) shall approve a renewal request to conduct substantially similar activities as were originally authorized under the lease.
- (2) Automatic renewals shall be issued for a minimum period of ten years subject to section 20. A renewal term will not exceed the original construction and operations lease term unless a longer term is negotiated by the applicable parties.
- (3) The department shall have the right to review rents and other operating terms of the lease at the time of renewal. Increased charges for rent will not exceed the rate of inflation or some other pre-determined rate.
- (4) For the period the department considers lessee's request for renewal, lessee shall continue to make all payments in accordance with the original terms and conditions of the lease.

### **Section 29: Lease termination**

- (1) The lease terminates on whichever of the following dates occurs first:
  - (a) The expiration of the applicable term of the lease, unless the term is automatically extended, a request for renewal of the lease is pending a decision by the department; or
  - (b) cancellation due to enforcement action.
- (2) Upon lease termination, lessee shall:
  - (a) Make all payments due, including any accrued rentals and deferred bonuses; and
  - (b) Perform any other outstanding obligations under the lease within 6 months.
- (3) Within 3 years following termination of a lease, lessee shall remove or dispose of all facilities, installations, and other devices permanently or temporarily attached to the bottomlands and/or occupying surface waters of the Great Lakes in accordance with a decommissioning and removal permit approved by the department under this part.
- (4) If lessee fails to comply with the approved decommissioning and removal permit:
  - (a) The department may call for the forfeiture of the financial assurance; and
  - (b) Lessee shall remain liable for removal or disposal costs and responsible for accidents or damages that might result from such failure.
  - (c) Provisions shall be made to allow lessee to appeal this decision.

### **Section 30: Project removal**

- (1) Within 60 days of the expiration or termination of a permit and lease, the applicant shall initiate implementation of the project removal plan provided for under section 22. If the applicant fails to begin implementing the plan within this 60-day period, the department may take such measures as it considers necessary to initiate and fully implement the plan by drawing on the financial surety provided pursuant to the project removal plan. The applicant's acceptance of the construction and operation permit constitutes

agreement and consent by the applicant and its heirs, successors and assigns that the department may take such action as necessary to initiate and fully implement the project removal plan. The holder of the project removal funds shall release the project removal funds when the applicant has demonstrated and the department concurs that the project removal plan has been satisfactorily completed or upon written authorization by the department in the event the department implements the plan pursuant to this subsection. Reasonable extensions shall be made to the timeline for cause (e.g., inclement weather).

### ***Section 31: Noncompliance, enforcement action, and cessation orders, remedial action***

- (1) If lessee fails to comply with this part, the department may take appropriate enforcement action under this part if lessee fails to comply with applicable provisions of state law, the regulations in this part, other applicable regulations, the provisions of a lease issued under this part, or the requirements of an approved plan or other approval under this part.
- (2) The department may issue a notice of noncompliance if it determines that there has been a violation of the regulations in this part or any provision of the lease or other approval issued under this part. When issuing a notice of noncompliance, the department will serve lessee at last known address.
- (3) A notice of noncompliance shall inform lessee how lessee failed to comply with this part and/or the provisions of the lease or other approval, and will specify what lessee shall do to correct the noncompliance and the time limits within which lessee shall act.
- (4) Failure of a lessee or operator under this part to take the actions specified in a notice of noncompliance within the time limit specified provides the basis for the department to issue a cessation order.
- (5) If the department determines that any incident of noncompliance poses an imminent threat of serious or irreparable damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance, the department may include with its notice of noncompliance an order directing lessee to take immediate remedial action pursuant to section 33 to alleviate threats and to abate the violation and, when appropriate, a cessation order.
- (6) The department may assess civil penalties, as authorized under this part, if lessee fails to comply with any provision of this part or any term of a lease, grant, or order issued under the authority of this part, after notice of such failure and expiration of any reasonable period allowed for corrective action.
- (7) The department may issue a cessation order during the term of the lease when lessee fails to comply with an applicable law; regulation; order; or provision of a lease, permit, or other department approval under this part. The department will allow lessee a reasonable period of time to correct any noncompliance before issuing an order to cease activities.
- (8) A cessation order will set forth what measures lessee is required to take, including reports lessee is required to prepare and submit to the department, to receive approval to resume activities on the lease.

- (9) Upon receiving a cessation order, lessee shall cease all activities on the lease, as specified in the order. The department may authorize certain activities during the period of the cessation order.
- (10) A cessation order will last for the period specified in the order or as otherwise specified by the department. If the department determines that the circumstances giving rise to the cessation order cannot be resolved within a reasonable time period, the department may initiate cancellation of the lease.
- (11) A cessation order does not extend the term of the lease for the period lessee is prohibited from conducting activities.
- (12) Lessee shall continue to make all required payments on lease during the period a cessation order is in effect.
- (13) If the department determines that there has been a significant, unanticipated adverse effect on a protected natural resource, wildlife, including avian wildlife, bat species, mammals, fish or other water resources or public health or safety, the department shall order the applicant to take remedial action that the department considers feasible and prudent necessary to address that adverse effect.

### ***Section 32: Violation; civil action; remedies; civil fine***

- (1) The department may commence a civil action in Ingham County to restrain or correct a violation of this part or any action not authorized by the permit required by this part or to order the restoration of the affected area to its prior condition.
- (2) In a civil action commenced under this part, the circuit court may, in addition to any other relief granted, assess a civil fine of not more than \$10,000.00 per day for each day of activity in violation of this part and for each day that the violation continues.

### ***Section 33: Force Majeure***

- (1) Neither party shall be liable for any failure or delay in performance under a permit or lease subject to this part (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under a permit or lease under this part, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

### ***Section 34: Appeals***

- (1) A person aggrieved by a decision of the department on an application for a permit or lease under this part may request a hearing under the administrative procedures act, act 306 of the public acts of 1969, sections 24.201 to 24.328 of the Michigan compiled laws.

- (2) A determination, action, or inaction by the department following the hearing is subject to judicial review as provided in act 306 of the public acts of 1969.

***Section 35: Relationship to other laws; Section 401 water quality and consistency certification***

- (1) Notwithstanding any other provision of law to the contrary, an offshore wind energy facility that has been granted a permit under this section is not subject to review by or required to obtain a development permit, rezoning authorization or other approval or authorization from a local unit of government. A municipality may not enact or enforce any land use, zoning or other standard, conditions or requirement regarding an offshore wind energy facility located within the municipality that is stricter than standards, conditions or requirements of this section.
- (2) The issuance of a permit under this part also serves to issue a water quality certificate as required under the Federal Water Pollution Control Act, Section 401, and as a consistency certification as required by the Coastal Zone Management Act.
- (3) The applicant shall apply for a utility easement pursuant to Part 21 General Real Estate Powers, Subpart 9 Easement for Public Utilities for any cable or line to the shoreline located outside of the approved lease area.



# **Attachment B:**

## *Siting Onshore Transmission to Serve Offshore Wind Energy Developments*

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A bill to ensure proper transmission infrastructure is available to deliver wind energy created by wind energy facilities located in the great lakes; to provide for transmission line siting authority; and to provide for condemnation authority. **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

### **Section 1:**

- (1) This act shall be known and may be cited as the “Great Lakes Offshore Transmission Certification Act”.
- (2) The legislature finds and declares that the use of renewable energy sources, including wind energy, is of vital importance to this state’s future. The legislature further finds and declares that transmission infrastructure certified under this act are essential services, and serve an important public purpose, and are of paramount concern in the interest of the health, safety, and general welfare of the citizens of this state.

### **Section 2: Definitions**

As used in this act:

- (1) “Affiliated transmission company” means that term as defined in the electric transmission line certification act, 1995 PA 30, MCL 460.562.
- (2) “Commission” means the Michigan public service commission.
- (3) “Construction” means any substantial action constituting placement or erection of the foundations, trenches, facilities, equipment, or structures supporting a transmission line. Construction does not include preconstruction activity or the addition of circuits to an existing transmission line.
- (4) “Department” means the department of natural resources and environment.
- (5) “Electric utility” means that term as defined in the electric transmission line certification act, 1995 PA 30, MCL 460.562.
- (6) “Federal approval” means approval by the applicable regional transmission organization or other federal-energy-regulatory-commission-approved transmission planning process of a transmission project that includes the transmission line. Federal approval may be evidenced in any of the following manners:
  - (a) The proposed transmission line is part of a transmission project included in the applicable regional transmission organization’s board-approved transmission expansion plan.
  - (b) The applicable regional transmission organization has informed the electric utility, affiliated transmission company, or independent transmission company that a transmission project submitted for an out-of-cycle project review has been

approved by the applicable regional transmission organization, and the approved transmission project includes the proposed transmission line.

- (c) If, after the effective date of this act, the applicable regional transmission organization utilizes another approval process for transmission projects proposed by an electric utility, affiliated transmission company, or independent transmission company, the proposed transmission line is included in a transmission project approved by the applicable regional transmission organization through the approval process developed after the effective date of this act.
  - (d) Any other federal energy regulatory commission approved transmission planning process for a transmission project.
- (7) “Great lakes bottomlands” means all of the unpatented lake bottomlands and unpatented made lands in the great lakes, including the bays and harbors of the great lakes, belonging to the state or held in trust by it, including those lands that have been artificially filled in. It also includes patented lands in the great lakes and the bays and harbors of the great lakes lying below and lakeward of the natural ordinary high-water mark. It also includes all of the waters of the great lakes within the boundaries of the State.
  - (8) “Great lakes transmission siting certificate” means a certificate granted by the commission under this act.
  - (9) “Independent transmission company” means that term as defined in the electric transmission line certification act, 1995 PA 30, MCL 460.562.
  - (10) “Municipality” means a city, township, or village.
  - (11) “Offshore wind resource planning area” means that term as defined in section \_\_\_\_ of the great lakes offshore wind act.
  - (12) “Qualified wind generation facility or facilities” means a renewable energy system that uses 1 or more wind turbines to generate electricity and is constructed or proposed to be constructed within an offshore wind resource planning area, or otherwise permitted by the department to be located on great lakes bottomlands.
  - (13) “Preconstruction activity” means that term as defined in the electric transmission line certification act, 1995 PA 30, MCL 460.562.
  - (14) “Route” means real property, including great lakes bottomlands, on or across which a transmission line is constructed or proposed to be constructed.
  - (15) “Transmission line” means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

### **Section 3:**

This act shall control in any conflict between this act and any other law of this state.

### **Section 4:**

- (1) To facilitate the transmission of electricity generated by qualified wind generation facilities, the commission may issue a great lakes transmission siting certificate for a

transmission line to an electric utility, affiliated transmission company, or independent transmission company as provided in this act.

- (2) An electric utility, affiliated transmission company, or independent transmission company may apply to the commission for a great lakes transmission siting certificate. An applicant may withdraw an application at any time.
- (3) Before filing an application for a great lakes transmission siting certificate for a proposed transmission line under this act, an electric utility, affiliated transmission company, or independent transmission company must receive federal approval and must have applied for a permit or other agreement from the department seeking authority to place a transmission line on, under, or above the great lakes bottomlands.
- (4) Before applying for a great lakes transmission siting certificate under section 6, an electric utility, affiliated transmission company, or independent transmission company shall plan and carry out a program for the purpose of ensuring public outreach and education. The program shall provide citizens of each municipality through which the line would run objective information regarding the proposed transmission line and its potential effects on public convenience, health, and safety. The program shall provide an opportunity for interested persons to ask questions, raise concerns, submit oral or written comments, and receive meaningful responses to inquiries and requests for additional information. Prior to implementing the program, the electric utility, affiliated transmission company, or independent transmission company shall consult with the commission staff regarding plans for the program and its content.
- (5) At least 60 days before applying for a great lakes transmission siting certificate, the electric utility, affiliated transmission company, or independent transmission company shall offer in writing to meet with the chief elected official of each affected municipality or his or her designee to discuss the utility's affiliated transmission company's, or independent transmission company's desire to build the transmission line and to explore the routes to be considered.
- (6) At least 30 days before seeking federal approval, an electric utility, affiliated transmission company, or independent transmission company must notify the commission in writing that it will seek the approval for a transmission line that might be subject to an application described in subsection (3). The commission may waive this notice period by written notification of such waiver to the electric utility, affiliated transmission company, or independent transmission company.
- (7) The commission shall represent this state's interests in all proceedings for which the commission receives notice under subsection (4).

### **Section 5:**

- (1) An application for a great lakes transmission siting certificate shall contain all of the following:
  - (a) Evidence that the proposed transmission line received federal approval.
  - (b) Evidence that the electric utility, affiliated transmission company, or independent transmission company has filed an application under this act with the department for a permit or other agreement regarding great lakes bottomlands or the area above water over such lands for constructing a portion of the proposed transmission line.

- (c) The planned date of beginning construction of the proposed transmission line.
- (d) A detailed description of the proposed transmission line, its route, and its expected configuration and use.
- (e) Information addressing potential effects of the proposed transmission line on public health and safety for any portion of the proposed transmission line that will not be located on great lakes bottomlands or above water over such lands included in the electric utility, affiliated transmission company, or independent transmission company's application to the department under this act.
- (f) Information indicating that the proposed transmission line will comply with all applicable state and federal environmental standards, laws, and rules.
- (g) A description and evaluation of 1 or more alternate transmission line routes for any portion of the proposed transmission line that will not be located on great lakes bottomlands or above water over such lands included in the electric utility, affiliated transmission company, or independent transmission company's application to the department under this act, and a statement of why the proposed route was selected.
- (h) If a zoning ordinance prohibits or regulates the location or development of any portion of the proposed route, a description of the location and manner in which the zoning ordinance prohibits or regulates the location or construction of the proposed route.
- (i) The estimated overall cost of the proposed transmission line. The requirement of this subdivision may be met by submitting cost information previously developed in conjunction with the regional transmission operator's planning processes used to secure federal approval, together with any additional information that is reasonably necessary to account for subsequent developments.
- (j) A summary of all comments received in the course of the educational program required by Section 5(4) and the applicant's response to those comments.
- (k) Other information reasonably required by commission rules.

## **Section 6:**

- (1) Upon applying for a great lakes transmission siting certificate, an electric utility, affiliated transmission company, or independent transmission company shall give public notice in the manner and form the commission prescribes of an opportunity to comment on and participate in a contested case with respect to the application. Notice shall be published in a newspaper of general circulation in the municipalities through which the proposed transmission line would run within a reasonable time period after an application is provided to the commission, and shall be sent to each affected municipality and each affected landowner on whose property a portion of the proposed transmission line will be constructed. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the electric utility, affiliated transmission company, or independent transmission company and the words "Notice of Intent to Construct a Transmission Line to Serve Wind Generation Facilities in the Great Lakes."
- (2) The commission shall conduct a proceeding on the application for a great lakes transmission siting certificate as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Upon receiving an application for a certificate, each affected municipality and each affected landowner shall be granted full

intervener status as of right in commission proceedings concerning the proposed transmission line.

- (3) The commission shall grant a great lakes transmission siting certificate if it determines that all of the following requirements are met:
  - (a) The proposed transmission line will facilitate transmission of electricity generated by qualified wind generation facilities.
  - (b) The proposed transmission line has received federal approval.
  - (c) The portions of the proposed transmission line not located on Great Lakes bottomlands or above water over such lands covered by the electric utility, affiliated transmission company, or independent transmission company's application to the department seeking authority to place a transmission line on, under, or above the great lakes bottomlands., do not represent an unreasonable threat to the public convenience, health, and safety.
  - (d) The proposed transmission line will be, at a minimum, of appropriate capability to facilitate the transmission of electricity that might be generated by the qualified wind generation facilities it is proposed to serve.
  - (e) The portions of the proposed or alternate route that are not located on great lakes bottomlands or above water over such lands covered by the electric utility, affiliated transmission company, or independent transmission company's application to the department seeking authority to place a transmission line on, under, or above the great lakes bottomlands are feasible and reasonable.
  - (f) The applicant has accepted the conditions contained in the conditional grant.
- (4) Except as otherwise provided in this subsection, if construction of a proposed transmission line has not begun within 5 years of the date a great lakes transmission siting certificate is granted, the certificate is invalid and a new certificate shall be required for the proposed transmission line. Before a certificate expires, extensions of time may be granted by the Commission upon a receipt of a written request from the certificate holder explaining why such an extension is needed.
- (5) If the commission grants a great lakes transmission siting certificate for a transmission line under this act, the certificate takes precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of the transmission line. A zoning ordinance or limitation imposed after an electric utility, affiliated transmission company, or independent transmission company filed for a certificate shall not limit or impair the transmission line's construction, operation, or maintenance.
- (6) The commission has a maximum of 270 days to grant or deny a great lakes transmission siting certificate under this section.

## **Section 7:**

- (1) In an eminent domain or other related proceeding arising out of or related to a transmission line for which a certificate is issued, a certificate issued under this act is conclusive and binding as to the public convenience and necessity for that transmission line and its compatibility with the public health and safety or any zoning or land use requirements in effect when the application was filed.

- (2) In an eminent domain or other related proceeding arising out of or related to a transmission line for which an electric utility, independent transmission company, or affiliated transmission company has applied for a certificate, a certificate that is conditioned upon the electric utility, independent transmission company, or affiliated transmission company obtaining a permit or agreement from the department granting authority to place a transmission line on, under, or above the great lakes bottomlands is conclusive and binding as to the public convenience and necessity for that transmission line and its compatibility with the public health and safety or any zoning or land use requirements in effect when the application was filed, even if the electric utility, independent transmission company, or affiliated transmission company has not yet obtained a permit or agreement from the department under this act.

### ***Section 8:***

- (1) This act does not prohibit an electric utility, affiliated transmission company, or independent transmission company from constructing a transmission line without obtaining a great lakes transmission siting certificate.

### ***Section 9:***

- (1) A commission order relating to any matter provided for under this act is subject to review as provided in section 26 of 1909 PA 300, MCL 462.26.
- (2) In administering this act, the commission have only those powers and duties granted to them under this act.

### ***Section 10:***

- (1) This act does not confer the power of eminent domain.