

Legislative, Permitting and Leasing Work Group Update

June 23, 2010

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 council developed suggestions for a regulatory framework to fulfill that charge. The framework is available online at www.michiganlowcouncil.org/Offshore%20Wind%20Legislative%20Recommendations_03032010.pdf

KEY PROVISIONS

The council recommended key provisions for inclusion in any bill introduced to regulate offshore wind energy development in the Great Lakes, as follows:

- 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, to 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

RECOMMENDED PROCESS: ACCESS TO BOTTOMLANDS

Through its recommendations on the regulatory framework, the council outlined a recommended leasing and permitting process for offshore wind development that includes site selection, lease auction, site assessment, and leasing and permitting for construction and operations.

State Site Selection or Nomination by a Prospective Developer

The council recommended two options by which a site may be selected and eventually made available for offshore wind development: selection by the state regulatory authority or identification and nomination by a prospective developer.

State Site Selection

The council recommended that the state agency responsible for regulating offshore wind development should identify Great Lakes bottomlands areas that are most favorable for

offshore wind energy development. The council recommends that these sites should be located in areas where development would not result in substantial impairment scenic vistas or the public use of those lands and waters.

Selection and Nomination by a Prospective Developer

The council recommended that pre-qualified developers may identify and nominate a site for offshore wind development. In this scenario, the developer would nominate a site for the agency's consideration and submit a nomination fee. The agency would approve a nominated parcel for auction if the agency determines that there is a reasonable likelihood that the site will support development of offshore wind energy facilities in accordance with the regulatory program. In making its determination, the agency would consider all available information about the site and relevant scientific data and studies, including the recommendations included in the council's final report.

Competitive Public Auction

Once potential development sites are identified, the council recommended that the agency hold public hearings and conduct fact-finding in the county nearest the selected site before offering the parcels for auction. When that process concludes, if the agency approves the site for auction, the council recommends that the agency publish a proposed lease auction notice, followed by a 60 day period for public comment. If, after the comment period, the agency elects to auction the site, then the agency will publish a final lease auction notice at least 21 days before the auction. The agency will hold in-person, oral auctions where qualified bidders may win the lease.

Initial Site Assessment

The council recommended that all leases initially be for a three-year period and may be extended by two one-year increments. Activities under the initial lease would be limited to site assessment.

Within six months of receiving a site assessment lease and prior to conducting any site assessment activities, the council envisions that the lessee would submit a site assessment plan (SAP) to the agency for approval. The SAP would describe all site assessment activities that are planned. The approved SAP would be the basis for a site assessment permit which would run concurrently with the site assessment lease term. Further, the council recommended that the permittee submit a progress report on November 1 of each year that summarizes site assessment activities for the previous year.

Lease and Permit for Construction and Operation

The council recommended that after site assessment activities are complete, the developer should submit an application for a construction and operation permit that would include construction, operation, and conceptual decommissioning plans for all planned structures at the site. The agency would issue a notice for public comment on the construction and operation permit and lease and hold at least one public hearing in the county nearest the site. The agency would collect public comment for 30 days after the public hearing. When a construction and operation permit application is approved, the agency will convert the site assessment lease to a construction and operation lease. The construction

and operation lease would initially be established for a 25-year period, and may be extended by 10-year increments as long as the facility is still operating in compliance with its permit.

RECOMMENDED COMPENSATION TO THE PUBLIC

The council was charged with recommending “options for how the public could be compensated for bottomland leasing and wind rights for wind energy systems.” To that end, the council provided recommendations in its input to the legislature that relate to rent and royalties that could be collected from developers of offshore wind. The council also recommended a mechanism to direct the royalties to benefit the public, through the establishment of a Great Lakes Wind Energy Trust Fund.

Rent

The council recommended that the agency collect rent from all lessees of Great Lakes bottomlands in the amount of \$3 per acre per year. Rent would be collected starting at the execution of the site assessment lease and would continue to be collected until all decommissioning and removal activities have been completed.

Royalties

The council recommended that the agency collect annual royalty payments from the operators of the offshore wind energy project. The council recommended that the royalty should be determined by the Michigan Public Service Commission and should not be less than 3 percent of the gross revenue of the project each year.

Great Lakes Wind Energy Trust Fund

The council recommended the establishment of a Great Lakes Wind Energy Trust Fund that would be funded, at least in part, by royalty payments from offshore wind energy project operations. The council envisioned that the trust fund would be used to (1) research, monitor, and address any impacts of offshore wind development; (2) foster the use of renewable energy or energy efficiency; and (3) administer the offshore wind regulatory program.

CURRENT STATUS

The council submitted its recommendations to the legislature in March 2010. Since then, a bipartisan, bicameral group of interested legislators has been reviewing and discussing the recommendations.