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Attachment 1: Submerged lands leasing

This attachment outlines options regarding aspects of the state submerged leasing program for wind and other ocean energy development and is intended to reflect the subcommittee's discussion at its 9.8.09 meeting. The options outlined below are based on a bifurcated permitting (DEP or LURC) and submerged lands leasing (BPL) approach under which BPL: 1) shall adopt (or may condition its leasing decision on) pertinent findings and conclusions in DEP's Site Law and/or NRPA permit or LURC land use permit, as applicable; and 2) retains authority to require rent and compensation as discussed below.

Application; competitive bid process:

Option 1: For "offshore commercial wind energy development" or tidal power development of 3MW or greater, require (except as otherwise noted below) BPL to publish a 30-day notice on receipt of an application for a submerged lands lease for a wind energy development (to be filed contemporaneously with DEP permit application) and to initiate a competitive bidding process if another developer with demonstrated technical and financial capacity expresses a competing interest in the lease area for offshore wind or tidal power energy development. Create exemption from competitive bidding process for lands covered by lease issued pursuant to a DEP-issued general permit for wind energy demonstration project or tidal power pilot project.

Option 2: Status quo - No competitive bidding process; lease applications addressed as received in coordination with DEP process

Lease term:

Option 1: Status quo - For "offshore commercial wind energy development", allow for 30-year, renewable lease (dating from completion of project construction, with provision for phased development)¹

Option 2: Provide for a 50-year lease (based on maximum term of a renewable federal hydropower license) for an "offshore commercial wind energy development" or tidal power development greater than 3MW to facilitate project financing

Compensation for use of Public Trust lands (state submerged lands)

Require rent and related compensation comprised of the following elements:

Option 1:

- 1) fixed rent based on the submerged land area physically occupied by the development (seafloor supports and cable) and the surface water area effectively

¹ Maine law current allows a 30-year submerged lands lease.

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occupied by the development (polygon formed by connecting the outermost points of proposed turbines, e.g., guy wire or comparable supports plus any cable and turbine-related exclusion areas. (Note: Current fixed rate for a DMR-issued aquaculture lease is \$100/acre/year.);

2) variable rent (royalty) determined based on the projects generating capacity and wholesale energy prices as per MMS rules and due beginning the year in which energy production begins with lesser payments in the initial years to allow repayment of start-up costs (Texas model). BPL directed to adopt royalty rate by rule. (Note: MMS royalty formula is based on a fraction - typically 2% - of imputed income. See page 10 of Jeff Pidot's research paper.) See below; and

3) an amount adequate to cover the administrative costs of BPL and PUC, as applicable. See below.

Option 2: Status quo - 1) fixed rent based on the submerged land area physically occupied by the development (seafloor supports and cable); and 2) potential "public compensation" to provide for mitigation of project-specific adverse effects, such as displacement or adverse effects on navigation, commercial fishing or other existing uses

Option 3: Allow the developer of an "offshore commercial wind energy development", in lieu of cash payment of the amount provided under either Option 1 or 2, above, to enter into a contract for sale or use of project-generated power, negotiated with BPL and PUC (see below), that through reduced rates or otherwise provides commensurate dollar value to the people of the State

Option 4: Define projects that "substantially reduce Maine ratepayer costs" as those that sell more than 50% [?][OETF to determine through consultation with PUC] of power at a favorable rate determined annually by PUC and allow such projects to obtain at submerged lands lease without payment of the variable rent (royalty) component outlined in Option 1(2), above. All other projects may sell all power out of state for REC's and other benefits and are subject to the royalty payment.

Note: For Options 1-4, the terms would apply for the life of the project and any subsequent project permitted for placement in the same footprint so Maine ratepayers/citizens continue to benefit from these facilities located on Maine's submerged lands (provided that a developer could opt in or out of the power as rent option during the life of the project to the extent allowed under any pertinent contract). Options 1, 3 and 4 would phase in royalty payments over time to minimize costs during experimentation, development, and construction (prior to revenue generation). Transmission through any state waters subjects the entire electrical flow to the above-described statutory provisions regarding reasonable lease payment consistent with the Public Trust Doctrine.

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Negotiation of lease fees

Option 1: 1) Direct BPL to consult with and consider the recommendations of the Public Utilities Commission regarding provision of energy as rent (see above) and related permit terms and conditions for a lease for an "offshore commercial wind energy development" (amend 12 M.R.S. §1862); and 2) Clarify that in determining the need for and amount of "public compensation" that may be required under 12 M.R.S. §1862(9) in addition to rent, BPL shall, in consultation with DMR, consider potential adverse effects on the fishing industry, including loss or displacement of existing fishing opportunities and other existing uses

Option 2: Same as Option 1, but address "public compensation" issues through disbursement of lease revenue, i.e., BPL may not require case-by-case payment of an amount in addition to rent to address project-specific impacts

Option 3: Status quo - BPL negotiates the lease terms and rental amount for an offshore wind facility case-by-case

Disbursement of lease revenue:

- Establish a non-lapsing, dedicated fund, the Ocean Renewable Energy Trust Fund, into the following funds will be deposited: 1) rental payments (less portion to cover administrative costs); 2) state share of OCS revenues from alternative energy leasing on the OCS; and 3) "public compensation" required case by case, if any
- Clarify that the Trust's funds will be used to protect and enhance the integrity of Public Trust related resources and uses and, accordingly, will be disbursed as follows:

Option 1:

1) X%: Energy conservation, innovation and infrastructure, administered by the Efficiency Maine program;

2) X%: For field research related to siting issues presented by offshore, tidal, and other ocean renewable energy resources, administered by the Maine Outdoor Heritage Fund;

3) X%: Development, enhancement and maintenance of the Coastal Atlas (map-based information resource to guide public and private decision making), administered by SPO and DMR;

4) X%: Shore and Harbor Management fund for public infrastructure and municipal planning for harbor protection (current use of submerged lands funds), administered by BPL;

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5) X%: Revenue sharing (pro rata) with affected municipalities, meaning those with an upland area, including coastal islands, located within 3 miles of the geographic center of the proposed offshore commercial wind energy development for a development in state waters, or within 15 miles in the case of an OCS development, for coastal resources management and enhancement purposes, including but not limited to fisheries management and related assistance to the fishing industry, administered by Maine Revenue Services; and

6) "Public compensation", if required, would not subject to the shared distribution under items 1-5 above but expended to address the specific impacts for which it was required in accordance with the terms of the pertinent BPL lease decision, e.g., funds expended to support research and management relevant to the adversely affected fishery

Option 2:

1) 60%: development of residential, commercial, industrial infrastructure and innovative technologies to reduce dependence on fossil fuels, reduce GHG emissions, and reduce energy costs for Maine citizens such as geothermal systems, heat pumps, battery, thermal or mechanical electricity storage units, transformation to electrical car/battery based smart grid (funds administered by Efficiency Maine) (Note: Such use of funds would be based on Legislature's articulation that public trust purposes of submerged lands may include alternative energy development.);

2) 20%: Mitigation for wildlife habitat, coastal resource impacts, particularly focused on populations impacted such as seabirds, shorebirds, migratory birds, non-commercial fisheries (funds administered by DIFW); and

3) 20%: Mitigation for commercial fishery impacts, fishery compensation funds (funds administered by DMR).

Rulemaking:

Option 1: Direct BPL, by a date certain (1 year), to amend its rules as necessary to implement the above-noted statutory changes to the submerged lands leasing program for tidal power development, "offshore commercial wind energy development" and other wind energy development, including administrative cost-related rental fee; fixed per acre portion of rent; royalty rate; and notice and competitive bidding process and qualifications, as applicable. In developing such rules, BPL would consider pertinent market rates and leasing rules in other jurisdictions, including Texas and federal OCS (MMS), and establish base and royalty rates that balance state goals of assurance of significant benefits to Maine people and growth and development of an in-state renewable ocean energy industry

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Option 2: Base rate and royalty rate, as applicable, set in statute