MUSKEGON COUNTY BOARD OF COMMISSIONERS
MUSKEGON COUNTY, MICHIGAN

AGENDA

SPECIAL FULL BOARD
Hall of Justice
990 Terrace, Muskegon, MI
May 10, 2012 - 3:30 PM

Kenneth Mahoney, Chair
I. John Snider, II, Vice-Chair

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1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Agenda
6. Public Comment (on an agenda item)
7. Chairman's Report/Committee Liaison Reports
8. Administrator's Report
   - Adopt the Gamesa/Muskegon Wind, LLC Indemnification Letter and Authorize the Board Chair to Sign
9. Old Business
10. New Business
11. Public Comment (on a new topic)
12. Adjournment

Public Comment

Persons may address the Commission during the time set aside for Public Comment or at any time by suspension of the rules. All persons must address the commission and state their name for the record. Comments shall be limited to **two (2) minutes** for each participant, unless time is extended prior to the public comment period by a vote of a majority of the commission.

AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE MUSKEGON COUNTY BOARD OF COMMISSIONERS AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

The County of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting upon 24-hours notice to the County of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the County of Muskegon by writing or calling: Administration, 990 Terrace Street, Muskegon, MI 49442 (231) 724-6520

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE	BUDGETED	NON-BUDGETED	PARTIALLY BUDGETED
Full Board	X	☐	☐

REQUESTING DEPARTMENT	COMMITTEE DATE	REQUESTOR SIGNATURE
Wastewater	May 10, 2012	Mark Eisenbarth

SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)

This Board approved a recommendation to require that Gamesa/Muskegon Wind, LLC provide the County with indemnification as to any claim that may be brought arising out of the lease agreement by Scandia. At the time of the motion, specific language was approved. That language was forwarded to the General Counsel for Gamesa who, while agreeing in principle with the request for indemnification, redrafted the document. The document in principle does provide the County with the protection that was the concern which led to the County's original proposal. It is therefore requested that this version of the indemnification, which is attached to the agenda, be approved.

SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)

I move to adopt the indemnification letter dated April 27, 2012 and authorize the Board Chair to sign.

ADMINISTRATIVE ANALYSIS (AS APPLICABLE)

HUMAN RESOURCES ANALYSIS:	FINANCE & MANAGEMENT ANALYSIS:
CORPORATE COUNSEL ANALYSIS: Concur T. Williams	ADMINISTRATOR RECOMMENDATION:

AGENDA DATE	AGENDA NO.		PAGE NO.

Muskegon Wind, LLC
3001 Broadway St. NE Ste 695
Minneapolis MN 55413
Tel. 612-370-1061 — Fax 612-370-9005

April 27, 2012

Marvin R. Engle, Chairman
Muskegon County Board of Public Works
8301 White Road
Muskegon, MI 49442

Re: Indemnification of Muskegon County Board of Commissioners and Muskegon County Board of Public Works by Muskegon Wind, LLC For Claims by Scandia Offshore, LLC Arising From Wind Energy Lease and Easement Agreement

Dear Mr. Engle:

This letter will serve to memorialize the indemnification agreement between the Muskegon County Board of Commissioners and Muskegon County Board of Public Works (collectively the "County") and Muskegon Wind, LLC ("Muskegon Wind") relative to claims that Scandia Wind Offshore, LLC ("Scandia") may bring against the County arising out of Scandia's participation in the Request for Proposal process ("RFP") and/or the subsequent negotiations with the County that have led to the final execution of the Wind Energy Lease and Easement Agreement between the County and Muskegon Wind (the "Lease"). The County and Muskegon Wind may collectively be referred to as the "Parties."

The Parties intend to execute the Lease, and Muskegon Wind will move forward with development, construction and operation of the Muskegon County Waste Water System Wind Project (the "Project"), a proposed 150 MW wind project to be located in Muskegon, Michigan, as contemplated in the Lease. The County has raised some concern about the potential for litigation by Scandia. Therefore, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Once the Lease has been fully executed, the County and Muskegon Wind will be the sole Parties to the Lease. The Lease generally provides for the evaluation, study and possible development of a wind farm on property owned by the Muskegon County Wastewater System.

2. To the fullest extent permitted by law, Muskegon Wind shall defend, indemnify, and hold harmless the County, its subsidiaries, departments, divisions, and agencies and their respective officials, officers, directors, employees, and agents from and against any and all liability, litigation, causes of action, and claims brought by Scandia, and from and against all damages, costs, expenses, and fees and expenses of attorneys and expert

witnesses resulting therefrom on account of, relating to, or arising out of the exclusion of Scandia from participation in the Lease and/or development of the Project with Muskegon Wind.

3. The County agrees to cooperate fully with Muskegon Wind in the defense of any claim tendered for defense or indemnification under paragraph 2, and will promptly tender any legal claims or notices to Muskegon Wind at:

   Muskegon Wind, LLC
   c/o Gamesa Energy USA, LLC
   Attn: General Counsel
   1801 Market Street, Suite 2700
   Philadelphia, PA 19103

4. The obligations of Muskegon Wind under this letter shall continue for a period of [limitations period for applicable claims] plus one (1) year; provided, if the County receives from Scandia a full release and waiver of any claims arising in connection with the matters identified in paragraph2, then the obligations of Muskegon Wind hereunder shall cease, and upon the request of Muskegon Wind the County shall execute a letter or such other instrument as Muskegon Wind shall reasonably request, terminating the obligations of Muskegon Wind hereunder.

If this Agreement sets forth the understanding of the Parties, please execute the Acknowledgement below.

Very truly yours,

Muskegon Wind, LLC

By: Jiddu Tapia
Its: Chief Development Officer

cc: George Nall
Steven J. Brownell, Esq.

ACKNOWLEDGEMENT AND ACCEPTANCE OF TERMS

By signing below, the Muskegon County Board of Commissioners and the Muskegon County Board of Public Works acknowledge and agree to the terms and conditions set forth above.

Muskegon County Board of Commissioners

Dated: _____

_____
By: Kenneth Mahoney
Its: Board Chair

Muskegon County Board of Public Works

Dated: _____

_____
By: Marvin Eagle
Its: Board Chair

Dated: _____

_____
By: David Fischer
Its: Secretary