

**BOARD OF PUBLIC WORKS
SPECIAL MEETING
MICHAEL E. KOBZA HALL OF JUSTICE
A G E N D A
OCTOBER 25, 2011
3:30 P.M.**

Call To Order.

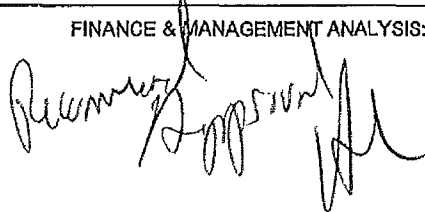

- A. Roll.
- B. Public Comment (on an agenda item).
- C. Item for Consideration:
 - 1. Wind Energy Lease and Easement Agreement with Muskegon Wind, LLC (Gamesa).
- D. Adjourn.

**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 the following:

Muskegon County Administrator's Office
Michael E. Kobza Hall of Justice
Fourth Floor; 990 Terrace Street; Muskegon, MI 49442
(231) 724-6520

REQUEST FOR BOARD CONSIDERATION-COUNTY OF MUSKEGON

COMMITTEE Board of Public Works		BUDGETED <input type="checkbox"/>	NON-BUDGETED <input type="checkbox"/>	PARTIALLY BUDGETED <input type="checkbox"/>
REQUESTING DEPARTMENT Wastewater	COMMITTEE DATE October 25, 2011	REQUESTOR SIGNATURE Mark Eisenbarth		
SUMMARY OF REQUEST (GENERAL DESCRIPTION, FINANCING, OTHER OPERATIONAL IMPACT, POSSIBLE ALTERNATIVES)				
<p>Attached is a summary from Howard & Howard on the Wind Energy Lease and Easement Agreement with Muskegon Wind, LLC (Gamesa). This lease agreement allows Muskegon Wind, LLC to further investigate the potential for wind power development at the Wastewater Metro site. If it proves commercially reasonable, the lease provides the rights and obligations of Muskegon Wind, LLC to develop, construct, and operate a wind-powered electric generating farm on portions of the Wastewater Metro site (see attached map).</p>				
SUGGESTED MOTION (STATE EXACTLY AS IT SHOULD APPEAR IN THE MINUTES)				
<p>I move to authorize the Public Works Board Chairman, contingent upon the receipt of an executed Wind Energy Lease and Easement Agreement from Muskegon Wind, LLC, to sign the Lease and Agreement.</p>				
ADMINISTRATIVE ANALYSIS (AS APPLICABLE)				
HUMAN RESOURCES ANALYSIS:		FINANCE & MANAGEMENT ANALYSIS:		
				
CORPORATE COUNSEL ANALYSIS:		ADMINISTRATOR RECOMMENDATION:		
<p>Concur TW</p>				
AGENDA DATE	AGENDA NO.		PAGE NO.	

SUMMARY OF PROPOSED
WIND ENERGY LEASE AND EASEMENT AGREEMENT
BETWEEN MUSKEGON COUNTY AND MUSKEGON WIND LLC,
(A JOINT VENTURE BETWEEN GAMESA ENERGY USA LLC AND SCANDIA WIND
OFFSHORE LLC, (THE "GRANTEE"))

The Lease covers all approximately 11,000 acres owned by Muskegon County and used by the Muskegon County Wastewater Management System. Some of that land will be occupied and used by the Grantee, if the Grantee decides to build a wind generation facility on the Property, and some of it will not be used but is subject to the Grantee's rights to prevent uses of the Property in a way that would interfere with the wind and wind power production.

The Lease provides that the 11,000-acre Wastewater Property is divided into three types of property as shown on a map attached to the Lease. Classification of specific areas depends on the importance of each area of the Property to the County's wastewater treatment activities. In some places on the Property the Grantee is given a relatively free hand to build wind turbines and supporting facilities, and on other places the Grantee is precluded from using the Property except in ways that the Wastewater Director agrees would not interfere with the County's activities.

The maximum possible length of the Lease is 60 ½ years. That time is divided into three periods, the first of which is the Development Term. During the Development Term, which is 5 years long with two possible 1-year extensions, the Grantee will study the suitability of the Property for development of a wind farm and at the same time pursue other commercial arrangements necessary to make a successful wind project. Those commercial arrangements might include arranging financing, arranging for a long-term contract to sell the power generated on the Property, and obtaining whatever permits may be required to construct and operate a wind farm.

The Development Term will end if the Grantee exercises its option to terminate the Lease, as it may at any time, or if the Grantee elects to begin construction of a wind farm. If the Grantee starts construction, the Construction Term begins. The Construction Term may last for a maximum of 3 ½ years, though ordinarily construction of a wind farm takes less than 1 year. If the Grantee does construct a wind farm on the Property, the Operations Term begins. The Operations Term is 25 years long with an optional extension of an additional 25 years.

During all three periods of the Lease term, the Grantee will pay rent. For the Development Term, Grantee will pay \$5 an acre per year for the 11,000 acres of Property with the first 2 years to be paid in advance within 45 days of the signing of the Lease. The first 2 years' rent is non-refundable, even if the Grantee should decide to terminate the Lease before the end of 2 years. In addition, a payment of approximately \$165,000 is due on the third anniversary of the Lease provided that Grantee has not terminated the Lease before that time. Rents during the Construction Term are also \$5 per acre per year.

At the end of the Construction Term the wind farm will go into commercial operation, and from that time on the County is entitled to rents equal to a percentage share of the value of the electricity generated on the Property. In the first 10 years of the Lease that percentage is 5.5% of the gross revenues from the sale of electricity and other valuable commodities or services from the wind farm. After year 10 the rents will be 6.5% of gross revenues. In the event that there are operational difficulties with the wind farm or miscalculations as to the amount of power that could be generated or the price of electricity, the Lease also provides for a minimum rent in each year of from \$4,000 increasing to more than \$8,000 per MW of generating capacity installed on the Property.

The Lease contains many protections for the County, including the following:

1. A guaranty that Grantee's activities and use of the Property will not cause the Wastewater or the County to have to pay taxes.
2. Grantee will pay for any injury to the Property, crops growing on the Property, the County's equipment, injury to people, or any other loss claim arising out of what the Grantee intends to do with the Property.
3. The Grantee will provide casualty insurance and workers' compensation insurance, and the County will be named as an insured under those policies. Minimum coverage limits are \$3 million escalating with inflation.
4. The Grantee will follow all laws, obtain all necessary permits, keep the Property free of any liens or claims by other people, will abide by certain rules spelled out in the agreement for Grantee's conduct on the Property.

The County, for its part, promises that no other people will be permitted to use any part of the Property for wind farm development and that the County will not do things, build things, or allow things to grow on the Property that would interfere with the wind to any of Grantee's wind turbines. In addition, the County agrees to certain things to facilitate the financing of a potential wind farm by the Grantee. None of those financing activities would create any liability or incur any expense on the part of the County.

Finally, the Lease provides that at the end of the Lease term the Grantee will remove any equipment or facilities it put on the Property and restore the land to its original condition. Beginning in the 12th year of the Lease, the Grantee will establish a fund or provide a bond sufficient to guaranty Grantee's obligations to restore the Property at the end of the Lease.

