

**RULES AND REGULATIONS
BOARD OF LAND COMMISSIONERS**

Chapter 6

Wind Energy Leasing

Section 1. Authority

This chapter is promulgated under the authority of W.S. 36-2-107 and W.S. 36-5-114 through W.S. 36-5-116.

Section 2. Definitions

As used in this chapter:

- (a) “Board” means the Board of Land Commissioners.
- (b) “Director” means the Director of the Office of State Lands and Investments.
- (c) “Existing Lease” means a surface or subsurface lease of state land or state minerals approved by the Board and in effect prior to the wind energy lease.
- (d) “Office” means the Office of State Lands and Investments.
- (e) “Surface Impact Payment” means money paid by a wind energy lessee to an existing surface lessee in compensation for potential negative impacts to the leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.
- (f) “Wind Energy Leasing” means leasing of state land for the exclusive right to convert wind energy into electrical energy including collecting and transmitting the electrical energy so converted to the substation from which the electricity will be transmitted from the wind energy development to the interconnection of the transmission grid.

Section 3. Lease Purposes

(a) The Board may lease suitable state land for wind energy development under the provisions of this chapter. The wind (wind resource, wind energy, or wind right) is considered an unseverable interest in the surface estate and the right to use the wind for wind energy development is included in a wind energy lease.

(b) The Board shall determine that the proposed lease does not adversely affect its management goals on the land proposed for lease and on the adjacent state lands during the term of the lease. The Board may instruct the Director to prepare a detailed analysis of the parcel for lease and any adjoining state lands, including:

- (i) An appraisal of the market value of the parcels;
- (ii) The income-generating potential of the parcel, individually and in combination with any adjoining state parcel; and
- (iii) The manageability of the parcel, individually and in combination with any adjoining state parcel.

Section 4. Existing Lease Impairment

- (a) The leased premises of a wind energy lease may coincide with the leased premises of an Existing Lease(s) and is subject to any Existing Lease(s).
- (b) Prior to issuing a wind energy lease, the Board shall determine whether or not the proposed wind energy lease would result in substantive impairment of an Existing Lease(s).
- (c) Upon application, the wind energy lease applicant shall advise the Office of the planned or contemplated improvements to be placed on state land and the Office shall consult with the existing lessee(s) to determine if the existing uses are anticipated to interfere with the contemplated wind energy development.
- (d) The wind energy lease applicant shall notify the existing lessee(s) of the application and such notification shall include a description of the proposed use. If the wind energy lease applicant obtains written consent from the existing lessee(s) to the issuance of a wind energy lease, the wind energy lease shall be deemed to not result in substantive impairment of the Existing Lease(s).
- (e) If the wind energy lease applicant is unable to obtain written consent from the existing lessee(s) to the issuance of the wind energy lease, the Board shall determine whether the issuance of the proposed wind energy lease will substantively impair the Existing Lease(s). The Office shall notify the existing lessee(s) at least twenty (20) days before the proposed wind energy lease is to be considered by the Board.

Section 5. Term of Leases

- (a) Wind energy leases may be for any term, up to seventy-five (75) years, at the discretion of the Board.
- (b) The Board shall set the term of the lease for a period that does not exceed the anticipated economic life of the lessee improvements for wind energy development.
- (c) The Board may extend the lease term if the Board determines that the economic life of the proposed use has not been reached, provided:
 - (i) All of the criteria within this section of the rules are still met; and

(ii) The overall term of the lease does not exceed seventy-five (75) years.

(d) The Board shall include provisions within the wind energy lease that promote development within a reasonable time including, but not limited to, provisions which provide that the lease may be cancelled in whole or in part if development does not occur within a reasonable time.

Section 6. Applications

(a) Forms and Fees. All applications to lease lands for wind energy development shall be made on forms furnished by the Office. Application forms must be completed in full, setting forth the proposed location and estimated value of any and all improvements to be constructed on the leased area. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application. An application fee as determined by the Office must be submitted as indicated on the application form.

(b) Signature. If an application is signed by a party other than the wind energy lease applicant, the legal instrument authorizing such signature, i.e., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) Renewal periods. The wind energy lessee must apply for renewal on forms provided by the Office at least ninety (90) days prior to the expiration of a wind energy lease. In such event, lessee and Office shall negotiate a new wind energy lease agreement evidencing the additional lease term not to exceed seventy-five (75) years from the effective date of the original wind energy lease. Any new wind energy lease agreement shall contain the terms and conditions (including the total rents to be paid under such new lease term) agreed to by Office and lessee, and approved by the Board.

(d) Competitive interest. If two or more applications are filed to lease the same land for wind energy development or if competitive interest exists, the Office shall consider issuing a Request for Proposal (RFP) to solicit competitive wind energy lease offers.

(e) Legal description. All applications for wind energy leases will require a legal description which identifies the property proposed for lease. At the discretion of the Office, a legal survey and plat may be required identifying the location of all proposed improvements.

(f) Planning, zoning, and other laws applicable to state land. The wind energy lease applicant shall include evidence with the application that all proposed uses within the proposed lease are in compliance with all land use planning, zoning, and other laws applicable to state lands in the jurisdiction(s) where the property is located.

Section 7. Rentals

(a) The annual rental for wind energy leases shall be the amount determined by the Board on an individual lease basis.

(b) At a minimum, the annual rental shall be based on fair market value as determined by the Office for the same or similar use of the land and any improvements owned by the state after an economic analysis is made. In cases where annual rental cannot be established based on fair market value for the same or similar use of the land, the minimum annual rental shall be the greater of one thousand dollars (\$1000.00) or five and one-half percent (5½%) of the appraised land value and any improvements owned by the state.

(c) All rental rates are subject to review and adjustment if specified in the wind energy lease.

(d) All rental payments are due and payable at the Office on the dates specified within the wind energy lease.

Section 8. Board Approval of Assignments

(a) A wind energy lease may not be assigned without prior approval of the Board.

(b) Lessees or their assignees shall request Board approval of proposed assignments on a form provided by the Office.

(c) If a request for Board approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 9. Director Approval of Subleases

(a) The leased premises under a wind energy lease may not be subleased in any manner or made subject to any contract or other agreement of any kind, without prior approval of the Director.

(b) Lessees shall request approval of proposed subleases by submitting a copy of the proposed sublease agreement to the Office.

Section 10. Improvements

(a) Prior to construction, the wind energy lessee shall submit to the Office for approval a detailed description and location of the lessee improvements to be placed on state land.

(b) The Office shall approve the lessee improvements and locations thereof provided:

(i) The wind energy lessee is in compliance with the wind energy lease;

(ii) Substantive impairment to any Existing Lease(s) will not result (unless the existing lessee consents);

(iii) Lessee improvements on state land are necessary for wind energy conversion to electricity on state land; and

(iv) Impacts to state land are minimized.

(c) Once a wind energy lease is approved by the Office, any additional lessee improvements or changes to the approved location of lessee improvements shall require approval of the Office.

(d) Any improvements not approved concurrently with the granting of the wind energy lease may not be constructed without prior approval of the Board.

Section 11. Cancellation

(a) The Office shall investigate any allegation of fraud, deceit or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants.

(b) When grounds for cancellation exist, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 8, of these rules.

Section 12. Surface Impact Payments and Surface Use Agreements

(a) Any wind energy lease applicant desiring to survey the state lands shall contact the existing surface lessee(s) prior to entry and comply with Chapter 16 of the Rules and Regulations of the Board of Land Commissioners.

(b) For all entries on the state land by the wind energy lessee or contactors thereof that occur during the term of the wind energy lease in which there is to be actual or potential negative impacts as defined in Section 2(e) of these rules to the surface leasehold estate, the wind energy lessee and the existing surface lessee(s) shall negotiate a Surface Impact Payment. The wind energy lessee shall remit directly to the existing surface lessee(s) the Surface Impact Payment and provide evidence of such payment to the Office.

(c) If the wind energy lessee is unable to reach an agreement with an existing surface lessee(s) regarding a Surface Impact Payment and having negotiated with the existing surface lessee(s) in good faith for a period of ninety (90) days after having provided sufficient information to the existing surface lessee(s), the wind energy lessee and/or the existing surface lessee(s) may submit evidence to the Office to establish the Surface Impact Payment.

(i) The evidence and any information the Director deems relevant will be analyzed by the Director, whereupon, the Director will enter an order establishing the Surface Impact Payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board establishing the Surface Impact Payment shall constitute final agency action.

(iii) The wind energy lessee may immediately enter the state lands while the Office is establishing and the Board is approving the Surface Impact Payment, upon providing the Office with a deposit for the Surface Impact Payment in an amount determined by the Office. When the Director enters an order establishing the Surface Impact Payment, the Office shall forward the Surface Impact Payment to the existing surface lessee and return any excess money on deposit to the wind energy lessee, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the wind energy lessee and the existing surface lessee(s).

(d) Surface use agreements or any agreement between a wind energy lessee and any existing lessee that defines the rights of the parties as to the use of the leased state land shall be provided to the Office.

(e) The wind energy lease shall provide for an installation/construction fee as compensation to the State for negative impacts to the fee simple interest in the state land.

Section 13. Financial Assurances

(a) The Board shall require financial assurances as a condition of a wind energy lease sufficient to assure compliance with all terms and conditions of the lease including decommissioning and site reclamation.

(b) Financial assurances shall remain in effect even if the Board subsequently approves an assignment of the wind energy lease pursuant to Chapter 6, Section 8, of these rules unless or until assignee provides adequate and sufficient financial assurances.

(c) Additional financial assurances to cover risks not anticipated at the time of the original wind energy lease may be required at any time by the Director, provided the Director first gives the wind energy lessee sixty (60) days written notice stating the reason for and the amount of the additional financial assurance. The Director shall prepare an informational board matter pursuant to Chapter 1 whenever such additional financial assurances are required. The financial assurance will remain in place until the unanticipated risk is diminished.

(d) Financial assurance may be accepted in any of the following forms at the discretion of the Director with consideration of credit worthiness, financial strength, credit history, credit rating, and debt:

(i) Surety bond with a corporate surety registered in Wyoming.

(ii) Certificate of deposit in the name of the “Board of Land Commissioners”, with a state or federally insured financial institution in Wyoming. The wind energy lessee shall be entitled to all interest payments.

(iii) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, security interest in net salvage value, or other forms as may be acceptable to the Director.