

**4310-MR-W**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Ocean Energy Management, Regulation and Enforcement**

**[BOEM-2011-0039]**

**Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf**

**AGENCY:** Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Department of the Interior.

**ACTION:** Request for Comment.

**SUMMARY:** BOEMRE will use Form 0008 to issue commercial renewable energy leases on the Outer Continental Shelf. In the preamble to the April 29, 2009, Final Rule, “Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf,” BOEMRE stated that “we intend to develop a model lease form through a public process that will invite all interested and affected parties for their input” (at p. 19729).

The bureau has developed the form included in this notice, and welcomes comments over the 30 days following publication of this notice. Following the 30-day comment period, BOEMRE will review all submitted comments, and publish a final version of the form in the Federal Register.

**DATE:** Submit written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Maureen A. Bornholdt, Program Manager, Office of Offshore Alternative Energy Programs at (703) 787-1300 for lease questions.

**ADDRESSES:** You may submit comments by either of the following methods listed below.

- Electronically: go to <http://www.regulations.gov>. In the entry titled “Enter Keyword or ID,” enter docket BOEM-2011-0039 then click “search.” Follow the instructions to submit public comments and view supporting and related materials. BOEMRE will post all comments on [www.regulations.gov](http://www.regulations.gov).
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Wright Frank; 381 Elden Street, MS-4090; Herndon, Virginia 20170. Please reference the docket number and title in your comment and include your name and return address.

**PUBLIC COMMENT PROCEDURES:** Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

**AUTHORITY:** 43 U.S.C. 1331 *et seq.*

\_\_\_\_ July 20, 2011 \_\_\_\_  
Dated

\_\_\_\_\_  
Robert P. LaBelle  
Acting Associate Director for Offshore Energy  
and Minerals Management

|   |                                    |                               |
|---|------------------------------------|-------------------------------|
| <p style="text-align: center;">UNITED STATES<br/>DEPARTMENT OF THE INTERIOR<br/>BUREAU OF OCEAN ENERGY<br/>MANAGEMENT, REGULATION<br/>AND ENFORCEMENT</p> <p style="text-align: center;"><b>COMMERCIAL LEASE OF<br/>SUBMERGED LANDS FOR<br/>RENEWABLE ENERGY DEVELOPMENT<br/>ON THE<br/>OUTER CONTINENTAL SHELF</b></p> <p><i>Paperwork Reduction Act of 1995 statement: This form does not constitute an information collection as defined by 44 U.S.C. § 3501 et seq. and therefore does not require approval by the Office of Management and Budget.</i></p> | Office                             | Renewable Energy Lease Number |
|   | Cash Bonus and/or Acquisition Fee: | Resource Type                 |
|   | Effective Date                     | Block Number(s)               |

This lease is effective on the first day of the month following the date it is signed by the Lessor ("Effective Date") and will continue until the lease terminates as set forth in Addendum "B," by and between the United States of America, ("Lessor") acting through the Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEMRE"), its authorized officer, and

| Lessee | Interest Held |
|--------|---------------|
|        |               |

("Lessee"). In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, covenants, and stipulations contained herein and attached hereto, the Lessee and Lessor agree as follows:

**Section 1: Statutes and Regulations.**

This lease is issued pursuant to subsection 8(p) of the Outer Continental Shelf Lands Act ("the Act"); 43 U.S.C. §§ 1331 *et seq.* This lease is subject to the Act and regulations promulgated pursuant to the Act including but not limited to offshore renewable energy and alternate use regulations at 30 C.F.R. Part 285 as well as other applicable statutes and regulations. This lease is also subject to applicable laws hereafter enacted and regulations hereafter promulgated, except to the extent subsequent regulations are inconsistent with an express provision hereof. Lessee's actions that are taken pursuant to this lease, are subject to the terms and conditions of this lease, including all Addenda, and applicable laws and regulations.

## **Section 2: Rights of the Lessee.**

- (a) Lessor hereby grants and leases to Lessee the exclusive right and privilege, subject to the terms and conditions of this lease and applicable regulations, to: (1) submit to Lessor for approval a proposed Site Assessment Plan (SAP) and/or Construction and Operations Plan (COP) for the project identified in Addendum "A" of this lease; and (2) conduct activities in the area identified in Addendum A of this lease ("leased area") that are described in a plan that has been approved by Lessor. This lease does not, by itself, authorize any activity within the leased area.
- (b) The rights granted to the Lessee herein are limited to those activities described in any SAP or COP subsequently approved by Lessor.
- (c) This lease does not authorize the Lessee to conduct activities on the Outer Continental Shelf (OCS) relating to or associated with the exploration for, or development or production of, oil, gas, other seabed minerals, or renewable energy resources other than those renewable energy resources identified in this lease.

## **Section 3: Reservations to Lessor.**

- (a) All rights in the leased area not expressly granted to the Lessee by the Act, applicable regulations, this lease or in any approved plan are hereby reserved to the Lessor.
- (b) Lessor will decide whether to approve a proposed SAP or COP in accordance with the applicable regulations in 30 C.F.R. Part 285. The Lessor retains the right to disapprove a proposed SAP or COP, without liability to the Lessee, based on the Lessor's determination that the proposed activities would have unacceptable environmental consequences, would conflict with one or more of the requirements set forth in subsection 8(p)(4) of the Act (43 U.S.C. § 1337(p)(4)), or for other reasons provided by BOEMRE pursuant to 30 C.F.R. § 285.613(e)(2) or 30 C.F.R. § 285.628(f)(2). The Lessor also retains the right to approve with modifications proposed plans as provided in applicable regulations.
- (c) The Lessor reserves the right to suspend Lessee's operations in accordance with the national security and defense provisions of section 12 of the Act and applicable regulations.
- (d) The Lessor reserves the right to authorize other uses within the leased area that will not unreasonably interfere with activities authorized under this lease.

## **Section 4: Payments.**

- (a) The Lessee must make all rent payments in accordance with applicable regulations in 30 C.F.R. Part 285, unless otherwise specified in Addendum "B".
- (b) The Lessee must make all operating fee payments in accordance with applicable regulations in 30 C.F.R. Part 285, as specified in Addendum "B".

## **Section 5: Plans.**

The Lessee may conduct activities authorized by this lease only in accordance with plans approved by Lessor. The Lessee may not deviate from an approved plan except as provided in applicable regulations in 30 C.F.R. Part 285.

## **Section 6: Associated Project Easements.**

Pursuant to 30 C.F.R. § 285.200(b), the Lessee has the right to one or more project easements without further competition for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease under applicable regulations in 30 C.F.R. Part 285. As part of submitting a proposed COP for approval, Lessee may request that one or more easement(s) be granted by Lessor. Such project easements will be granted by the Lessor in accordance with the Act and applicable regulations in 30 C.F.R. Part 285 upon approval of the COP in which the Lessee has demonstrated a need for such easements. Such easements must be in a location acceptable to Lessor, and subject to such conditions as Lessor may require. The project easement(s) that would be issued in conjunction with an approved plan under this lease is/are described in Addendum "D".

## **Section 7: Conduct of Activities.**

The Lessee must conduct and agrees to conduct all activities in the leased area in accordance with all approved plans, applicable laws and regulations.

The Lessee further agrees that no activities authorized by this lease will be carried out in a manner that:

- (a) could interfere with or endanger other activities or operations carried out under any lease issued or maintained pursuant to the Act, or under any other license or approval from any Federal agency granted before the issuance of this lease, or that could unreasonably interfere with or endanger such activities or operations approved after the issuance of this lease;
- (b) could cause any undue harm or damage to the environment;
- (c) could create hazardous or unsafe conditions; or
- (d) could adversely affect sites, structures, or objects of historical, cultural, or archaeological significance, without notice to and direction from the Lessor on how to proceed.

## **Section 8: Violations, Suspensions, Cancellations, and Remedies.**

If the Lessee fails to comply with (1) any of the applicable provisions of the Act or regulations, (2) the approved plans, or (3) the terms of this lease, including associated Addenda "A", "B", "C", and "D", the Lessor may exercise any of the remedies that are provided under the Act and applicable regulations, including, without limitation, issuance

of cessation of operations orders, suspension or cancellation of the lease, and/or the imposition of penalties.

Lessor may also cancel this lease for reasons set forth in subsection 5(a)(2) of the Act (43 U.S.C. § 1334(a)(2)), or for other reasons provided by Lessor pursuant to 30 C.F.R. § 285.437.

Non-enforcement by the Lessor of a remedy for any particular violation of the applicable provisions of the Act or regulations, or the terms of this lease shall not prevent the Lessor from exercising any remedy, including cancellation of this lease, for any other violation or for the same violation occurring at any other time.

### **Section 9: Indemnification.**

The Lessee hereby agrees to indemnify the Lessor for, and hold the Lessor harmless from, any claim, including claims for loss or damage to natural resources, or for the release of any petroleum or any Hazardous Materials or other environmental injury of any kind or other damage to property, injury to persons or costs or expenses incurred by the Lessor caused by or resulting from any of Lessee's operation or activities on the leased area or project easements or arising out of any activities conducted by or on behalf of the Lessee or its employees, contractors (including Operator, if applicable), subcontractors, or their employees, under this lease, *provided*, that Lessee shall not be liable for any losses or damages proximately caused by the activities of the Lessor or Lessor's employees, contractors, subcontractors, or their employees. The Lessee shall pay the Lessor for damage, cost, or expense due and pursuant to this section within 90 days after written demand by the Lessor. Nothing in this lease shall be construed to waive any liability or relieve Lessee from any penalties, sanctions, or claims that would otherwise apply by statute, regulation, operation of law, or imposed by the Lessor or other government agency acting under such laws.

"Hazardous Material" means

1. Any substance or material defined as hazardous, a pollutant, or a contaminant under the Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C. §§ 9601(14) and (33);
2. Any regulated substance as defined by the Resource Conservation and Recovery Act ("RCRA") at 42 U.S.C. § 6991, whether or not contained in or released from underground storage tanks, and any hazardous waste regulated under RCRA pursuant to 42 U.S.C. §§ 6921 *et seq.*;
3. Oil, as defined by the Clean Water Act at 33 U.S.C. § 1321(a) and the Oil Pollution Act at 33 U.S.C. § 2701(23); or
4. Other substances that applicable Federal, state, tribal, or local laws define and regulate as "hazardous."

#### **Section 10: Financial Assurance.**

The Lessee must provide and maintain at all times a surety bond(s) or other form(s) of financial assurance approved by the Lessor in the amount specified in Addendum "B". If, at any time during the term of this lease, the Lessor requires additional financial assurance, then the Lessee shall furnish the additional financial assurance required by the Lessor in a form acceptable to Lessor within ninety (90) days after receipt of Lessor's notice of such adjustment.

#### **Section 11: Assignment or Transfer of Lease.**

This lease may not be assigned or transferred in whole or in part without written approval of the Lessor. The Lessor reserves the right, in its sole discretion, to deny approval of the Lessee's application to transfer or assign all or part of this lease. Any assignment will be effective on the date the Lessor approves the Lessee's application. Any assignment made in contravention of this section is void.

#### **Section 12: Relinquishment of Lease.**

The Lessee may relinquish this entire lease or any officially designated subdivision thereof by filing with the appropriate office of the Lessor a written relinquishment application, in accordance with applicable regulations in 30 C.F.R. Part 285. No relinquishment of this lease or any portion thereof will relieve the Lessee or its surety of the obligations accrued hereunder, including but not limited to, the responsibility to remove property and restore the leased area pursuant to section 13 of this Lease and applicable regulations.

#### **Section 13: Removal of Property and Restoration of the Leased Area on Termination of Lease.**

The Lessee must remove or decommission all facilities, projects, cables, pipelines, and obstructions and clear the seafloor of all obstructions created by activities on the leased area, including any project easements within two years following lease termination, whether by expiration, cancellation, contraction, or relinquishment, in accordance with any approved plan and applicable regulations in 30 C.F.R. Part 285.

#### **Section 14: Safety Requirements.**

The Lessee must:

- a. maintain all places of employment for activities authorized under this lease in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating under this lease;
- b. maintain all operations within the leased area in compliance with regulations in 30 C.F.R. Part 285 and orders intended to protect persons, property and the environment on the OCS; and

- c. allow prompt access, at the site of any operation or activity that is subject to safety regulations, to any inspector authorized by the BOEMRE or other Federal agency having jurisdiction and must provide any requested documents and records, which are pertinent to occupational or public health, safety, or environmental protection.

**Section 15: Debarment Compliance.**

The Lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations as set forth in 2 C.F.R. Parts 180 and 1400 and must communicate the requirement to comply with these regulations to persons with whom it does business related to this lease by including this requirement in all relevant contracts and transactions.

**Section 16: Notices.**

All notices or reports provided to Lessor by the Lessee under the terms of this lease must be in writing, except as provided herein. Written notices must be delivered to the party's Lease Representative electronically, by hand, by facsimile, or by United States first class mail, adequate postage prepaid, to the specific persons listed in Addendum "A". Either party may notify the other of a change of address by doing so in writing. Until notice of any change of address is delivered as provided in this section, the last recorded address of either party will be deemed the address for all notices required under this lease. For all operational matters, notices must be provided to the party's Operations Representative as well as the Lease Representative.

**Section 17: Severability Clause.**

If any provision of this lease is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this lease will remain in full force and effect.

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Lessee

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(Signature of Authorized Officer)

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(Name of Signatory)

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(Title)

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(Date)

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The United States of America

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Lessor

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(Signature of Authorized Officer)

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(Name of Signatory)

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(Title)

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(Date)

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

**ADDENDUM "A"**

DESCRIPTION OF LEASED AREA AND LEASE ACTIVITIES

Lease Number \_\_\_\_\_

I. Lessor and Lessee Contact Information

Lessee Company Number: \_\_\_\_\_

(a) Lessor's Contact Information

|         | <b>Lease Representative</b> | <b>Operations Representative</b> |
|---------|-----------------------------|----------------------------------|
| Name    |                             |                                  |
| Title   |                             |                                  |
| Address |                             |                                  |
| Phone   |                             |                                  |
| Fax     |                             |                                  |
| Email   |                             |                                  |

(b) Lessee's Contact Information

|         | <b>Lease Representative</b> | <b>Operations Representative</b> |
|---------|-----------------------------|----------------------------------|
| Name    |                             |                                  |
| Title   |                             |                                  |
| Address |                             |                                  |
| Phone   |                             |                                  |
| Fax     |                             |                                  |
| Email   |                             |                                  |

II. Description of Leased Area

The total acreage of the project area is \_\_\_\_\_.

The following blocks or portions of blocks lying within Official Protraction Diagram \_\_\_\_\_, depicted on the map attached and comprising \_\_\_\_\_ acres, more or less.

For the purposes of these calculations, the acreage of a full block is \_\_\_\_\_.

III. Renewable Energy Resource

IV. Description of the Project

V. Description of Project Easement

Once approved, Lessor will incorporate your project easement in your lease as Addendum "D".

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

**ADDENDUM "B"**

LEASE TERM AND FINANCIAL SCHEDULE

Lease Number \_\_\_\_\_

I. Lease Term

The duration of each term of the lease is described below. The terms may be extended or otherwise modified in accordance with applicable regulations in 30 C.F.R. Part 285.

| <b>Lease Term:</b>   | <b>Duration:</b> |
|----------------------|------------------|
| Preliminary Term     |                  |
| Site Assessment Term |                  |
| Operations Term      |                  |

Renewal: Lessee may request renewal of the operations term of this lease, in accordance with applicable regulations in 30 C.F.R. Part 285. Lessor, at its discretion, may approve a renewal request to conduct substantially the same activities as were originally authorized under this lease or in an approved plan. Lessor will not approve a renewal request that involves development of a type of renewable energy not originally authorized in the lease. Lessor may revise or adjust payment terms of the original lease, as a condition of lease renewal.

Unless otherwise described below, the Preliminary Term begins on the Effective Date of this lease for leases issued competitively. Unless otherwise described below, for noncompetitively issued leases, the Site Assessment Term begins on the Effective Date of this lease. The Operations Term begins on the date that the Lessor approves Lessee's COP.

II. Definitions

III. Payments

(a) **Rent.** The Lessee must pay rent as described below:

- Acres in Project Area: \_\_\_\_\_
- Annual Rental Rate: \$\_\_\_\_\_ per acre or fraction thereof
- Rental Fee for entire project area: \$\_\_\_\_\_ x \_\_\_\_\_ (rounded) = \$\_\_\_\_\_

(1) **Project Easement.**

Rent for any project easement(s) is described in Addendum "D".

(2) **Relinquishment.**

If Lessee submits an application for relinquishment of a portion of the leased area within the first 45 days following the Lease Issuance Date, and the Lessor approves that application, no rent payment will be due on that relinquished portion of the leased area. Later relinquishments of any leased area will reduce the Lessee's rent payments due in the year following the Lessor's approval of the relinquishment.

(b) **Operating Fee.** The Lessee must pay an operating fee as described below:

(1) **Initial Operating Fee Payment.**

(2) **Annual Operating Fee Payment.**

(3) **Final Operating Fee Payment.**

(4) **The formula for calculating the operating fee in year  $t$ .**

|                        |   |                      |   |                  |   |                   |   |               |   |                      |
|------------------------|---|----------------------|---|------------------|---|-------------------|---|---------------|---|----------------------|
| $F_t$                  | = | $M_t$                | * | $H$              | * | $C_p$             | * | $P_t$         | * | $r_t$                |
| (annual operating fee) |   | (nameplate capacity) |   | (hours per year) |   | (capacity factor) |   | (power price) |   | (operating fee rate) |

(c) **Reporting, Validation, Audits, and Late Payments.**

IV. Financial Assurance

The BOEMRE will base the determination for the amounts of all SAP, COP and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations. The BOEMRE determines the amount of supplemental and decommissioning financial assurance requirements on a case-by-case basis. The amount of the financial assurance must be no less than the amount required to meet all lease obligations, including:

- The projected amount of rent and other payments due the Government over the next 12 months;
- Any past due rent and other payments;
- Other monetary obligations; and
- The estimated cost of facility decommissioning.

(a) **Initial Financial Assurance Due Before Lease Issuance Date.**

(b) **Additional Financial Assurance.**

(C) **Adjustments to Financial Assurance Amounts.** The Lessor reserves the right to adjust the amount of any financial assurance requirement (initial, supplemental or decommissioning) associated with this lease and/or reassess Lessee's cumulative lease obligations, including decommissioning obligations, at any time.

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

**ADDENDUM "C"<sup>1</sup>**

LEASE-SPECIFIC TERMS, CONDITIONS, AND STIPULATIONS

Lease Number \_\_\_\_\_

The Lessee's rights to conduct activities on the leased area are subject to the following terms, conditions, and stipulations:

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<sup>1</sup> Note: Stipulations are developed on a case-by-case basis relating to location, technology utilized, and other relevant factors, including site-specific findings from project-specific environmental analyses.

## **ENVIRONMENTAL STIPULATIONS**

The mitigation, monitoring, and reporting requirements listed in this section are adopted as terms and conditions of the lease. Monitoring results and required reports must be submitted to the Lessor as specified below:

**Bureau of Ocean Energy Management, Regulation and Enforcement**  
**Office of Offshore Alternative Energy Programs**  
**381 Elden Street, MS 4090**  
**Herndon, VA 20170**  
**Phone: 703-787-1300**  
**Fax: 703-787-1708**

Lessor may change this address upon notice to the Lessee in accordance with Section 16 of this lease.

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

**ADDENDUM "D"**

PROJECT EASEMENT

Lease Number \_\_\_\_\_

This section includes a description of the Project Easement(s), if any, associated with this lease, and the financial terms associated with it. This section will be updated as necessary.

[FR Doc. 2011-22608 Filed 09/02/2011 at 8:45 am; Publication Date: 09/06/2011]