TO: Department of Natural Resources, Office of Mineral Resources
FROM: The Southeastern Wind Coalition, Greater New Orleans, Inc., Taproot Earth, and Healthy Gulf
DATE: June 12, 2023
RE: Rulemaking Amending LAC 43:V.Chapter 7, 707, 711-717, and 725-733- Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy

I. Introduction

We appreciate the opportunity to provide comments on this Notice of Intent ("NOI"). First, we wish to impress upon the Office of Mineral Resources ("OMR") that wind leases near shore are rare worldwide. Louisiana will be leading the charge in this area, and maximizing the potential for offshore wind energy is beneficial for both the state and the industry to ensure the market develops with certainty. We believe that the Office of Mineral Resources should seek to increase regulatory certainty in the leasing process, ensure that industry standards are considered as a baseline, and embrace a holistic approach to leasing in state waters.

II. OMR Should Increase Regulatory Certainty in Developing Leasing Rules

As a threshold issue, Louisiana's process for leasing as outlined in the NOI is uncommon. In the federal leasing process executed by the Bureau of Ocean Energy Management ("BOEM"), potential locations for wind leases are determined through a stakeholder engagement process designed to narrow down to areas that BOEM deems to be the most suitable for leasing, accounting for both commercial viability and avoidance of conflicts. Louisiana's leasing process works in reverse - all potential sites are on the table, even those that may have obviously conflicting uses, and the burden is on the nominating party to demonstrate a lack of environmental impacts and recommend mitigation techniques[1]. Without additional environmental review by the state prior to granting a lease, the state is relying solely on bidders who are not experts on Louisiana or environmental issues to point out potential problems, dramatically increasing the risk to the state.

There does appear to be a threshold level of environmental review before the granting of a lease. §713.B provides that the Secretary of the Department of Natural Resources shall evaluate wind leases pursuant to R.S. 41:1733. "*In evaluating the proposed lease, the secretary of the Department of Natural Resources shall consider the capability of the lease proposal to fulfill the intent of this Chapter*[2]*,* ***the environmental impact of the placement of wind turbines***

[1] §711.D.7 of the NOI requires nominators to produce "a summary of the environmental issues including, but not limited to, avian and baseline noise levels, the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development and production of wind energy, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation" in their bidding packet.
[2] The stated intent of the law authorizing state wind leases is to "ensure the viability of the state's natural resources, to provide a continuing energy source for the citizens and businesses of Louisiana, to promote economic development through job retention and creation in Louisiana, and to promote a clean and lasting environment." La. R.S. § 41:1731.

and other equipment necessary for the exploration, development, or production of energy from wind*, the impact of the proposed lease on any other leases, including leases for the exploration or production of subsurface deems appropriate.*" (La. R.S. 41:1733) (emphasis added) We request more clarity on how the environmental review by the Secretary will be conducted, whether it will be limited to the summary statement, and what independent evaluations will ensure that the information in the submission packet is correct.

Additionally, offshore wind differs from oil and gas development in that many environmental issues can be avoided, minimized, or mitigated with proper siting. We would encourage adequate consultation before the issuance of a lease to ensure that siting is conducted in an efficient and environmentally protective manner. Under this framework, the permitting process itself will not happen until after a lease is issued and the potential exists for significant issues to not be discovered until well after the lease is granted. Greater transparency throughout the process of area identification would be beneficial both to the state and potential bidders. Public disclosure of the nominating memorandum would ensure that the siting process has been adequately considered and validated by the state.

We also encourage OMR to consider the larger structure of the wind industry and how its process might best benefit the long-term development of offshore wind in Louisiana – carrying with it tremendous economic potential for both local labor and heavy-industry. The BOEM process provides lessees with regulatory certainty regarding potential locations and ensures that preliminary issues are discovered before significant time and investments are made by potential lessees and associated contractors. Louisiana's proposed process would allow for an outcome wherein a lessee makes significant investment towards their lease, but ultimately cannot develop the area. More closely following the BOEM process would provide more certainty both for bidders and for the state that time and resources are well spent and advance each party's objectives.

In order to ensure regulatory and financial certainty, we also encourage OMR to coordinate with BOEM regarding its own leasing in federal waters. It is anticipated that federal leases for offshore wind will be auctioned later this year. These leases will also require right-of-ways for cable landings and transmission equipment, and early coordination to ensure projects are able to co-exist will ensure to potential bidders that their projects will be successful. Additionally, coordination could have benefits such as sharing costs for shared transmission of electricity or green hydrogen.

III. OMR Should Restrict Nomination and Bidding Eligibility to Prospective Leaseholders in Compliance With All Aspects of §707

§707 lays out the requirements to register as a Prospective Leaseholder. The leaseholder registration form requires a certificate of good standing from the Secretary of State for corporations and LLCs but only requires a certificate of "existence" for partnerships. To be in good standing (or to be certified to exist) requires annual reports, and governing documents and

amendments be filed with the Secretary of State. Those are ongoing duties, and a partnership certificate will not ensure the same level of historical compliance.

§707A only requires that applicants be in good standing or exist on the day they file and is explicitly described as a “one-time basis”. §707A.1 requires annual renewal on January 31. These provisions seem in conflict. Further, failure to renew does not seem to impact eligibility to apply for and receive a lease (the one time provision seeming to control). The only consequence for failing to renew or to remain in good standing seems to be the $100 per day liquidated damages set out in §707 A.1.b. We suggest that OMR require a current certificate of good standing to accompany each lease application, and a representation and warranty that there have been no changes in ownership or status since the certificate was issued. Failure to comply with all aspects should also make the lease application voidable by the state or a competing bidder.

Additionally, §711.B does not require ongoing compliance with §707A to nominate an area for leasing. This is an example of how the one time only registration could pose problems. We suggest that the state should restrict eligibility to persons registered and compliant with all aspects of §707A.

IV. OMR Should Consider Industry Standard Practices in Developing Leasing Requirements

§713.A provides that if OMR determines that the nomination complies with all legal, procedural, and technical requirements, as well as "current policies and practices" it shall place the tract nomination with the Mineral Board. We request more information on these current policies and practices, as well as how compliance will be determined. The word “shall” does not indicate the state has a choice to then place the tract nomination at the board, so compliance with “current policies and practices” is an integral requirement.

§715.B.18 provides that “any and all wind data collected by the state wind lessee during the primary term of the lease shall become public record at the end of the primary term.” This type of requirement is uncommon in the industry and, if required, is usually done in coordination with an academic institution or research project. We encourage OMR to consider that this may deter developers for fear that proprietary information may be disclosed. An alternative would be to have the data remain proprietary for a period of time before being publicly disclosed. Granular wind speed data is the wind equivalent to proprietary oil and gas research, and leaseholders will want to protect their data.

§715.B.21 provides that the lessee and operator “will be required to take measures to reduce risk to the state, including but not limited to, effecting compliance with any and all wind energy standards established by the American National Standards Institute (ANSI), the American Wind Energy Association (AWEA), the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards. Standards for wind energy development/operations include, but are not limited to: a) wind

turbine safety and design; b) power performance; c) noise/acoustic measurement; d) mechanical load measurements; e) blade structural testing; f) power quality; and g) siting." We offer several comments on this requirement. As an initial matter, ANSI accredits standards development organizations (SDOs), but does not develop standards themselves. We suggest language requiring "ANSI-accredited standards, including the American Wind Energy Association (AWEA), American Clean Power Association (ACP, formerly AWEA), the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards." We recommend reconsidering the enumerated standards for wind energy development, as some elements may not have specific standards, those standards may be specific for land-based wind, some standards may be international and need revisions to work in the United States, and to account for additional standards that may not yet be foreseeable. It is also unclear who will determine compliance with §715.B.21, though we suggest the state follow BOEM and BSEE's leads and allow developers to use independent third-party Certified Verification Agents to ensure compliance with the most updated standards.

§717 covers the information required to be submitted in the bidding packet. Much of the information the state is requesting is information that cannot reasonably be ascertained without the developer having access to a large amount of bespoke data on wind speeds and site conditions. Without already having site control, it is generally uneconomical for developers to invest the tens of millions of dollars in surveys (biological, geophysical, geotechnical) and deployment of wind measurement devices required to collect this data. For instance, §717.C requests " [a] summary of the wind development (include plat) proposed on the state lands and water bottoms sought to be leased including layout of wind power and transmission facilities, proposed wind tower information (size, location, number), which towers will be affixed to existing platforms, which towers will necessitate newly constructed platforms, turbine make, type, nameplate power production capacity, and selection criteria used, and supporting infrastructure." It is unrealistic for the state to expect developers to be able to credibly provide such detailed information absent site control. OMR has several potential options to address this concern, including collecting the data themselves and providing it to all bidders, or scaling back the requirements to focus on ensuring that all bidders have the technical experience and financial wherewithal to design, build, and operate an offshore wind farm.

§729.A.2.a instructs that lessees are required to provide updated proof of general liability insurance by January 31 of every year. The only penalty for failing to comply with this provision is $100 dollars a day until such proof is received. The penalties for failing to comply with this provision do not take into account the potential risk and damages to the state. The state should add additional penalties, including termination, for failure to comply with this provision.

§729.A.3 requires financial security in a form acceptable to the State Mineral Board. It also dictates that the "financial security amount for individual turbines shall be equal to the estimated cost to decommission found in the plan required by subsection A.9." Subsection A.9 requires "a decommissioning plan for the end of the proposed facility's expected life or upon circumstances that would require closure of the facility; such plan shall include the estimated

cost of site closure and remediation in accordance with these rules." We suggest the state follow BOEM's Financial Assurance provisions found in the proposed BOEM Modernization Rule, which would allow for decommissioning financial assurance to be provided in a phased manner during the operational term of the project.[3] Additionally, the language in §729.A.3 implies that the financial security will be based on individual turbines. We suggest the bond should be calculated based on the whole plant and not assessed on a turbine-by-turbine basis.

§729.B provides that "At the expiration of the primary term … if the lessee is producing wind generated electric power, the lease shall continue in force so long as production of wind generated electric power continues without lapse of more than 180 days. Any lapse in production of wind generated electric power greater than 180 days shall result in automatic termination of the lease." Given the high cost of wind energy infrastructure and the peculiarities of wind power, we believe this provision is highly restrictive and could have unintended consequences. In 2021, Hurricane Ida provided a stark reminder of how weather events can interrupt business in Louisiana, and repairs after a similar event could take upwards of 180 days. Tying this condition to a lapse in general operations or maintenance could ensure that no wind installations are abandoned and would provide an ability to return to business as usual in such an event. Developers already have significant economic incentives to ensure their lease is active.

§731.D contains the only discussion regarding a termination of leases by the state for noncompliance, and it is triggered only by failing to pay royalties. DNR should establish procedures that allow for termination of a lease for noncompliance with lease terms, operating agreements, or state or federal law.

§733.D instructs that lessees "...shall remove all facilities within one year after the lease terminates unless you receive approval to maintain a facility to conduct other activities." Offshore wind installations are large and require specific equipment to achieve total removal. One year is a short time period to conduct all removal activities. We urge OMR to consider replicating BOEM's proposed facility removal requirement in the Gulf of Mexico, which provides two years for complete removal.[4]

§733.J, which contains decommissioning requirements, provides that OMR "may grant a departure from the requirement to remove a facility by approving partial facility removal or toppling in place for conversion to an artificial reef or other use" if 1) the "structure becomes part of a state artificial reef program, and the responsible state agency acquires a permit from the U.S. Army Corps of Engineers and accepts title and liability for the facility" and 2) satisfies U.S. Coast Guard navigational requirements for the facility. We request more information on potential "other uses" and how they will be determined as valid.

[3]https://www.federalregister.gov/documents/2023/02/06/2023-02398/renewable-energy-modernization-rule-correction

[4]https://www.boem.gov/renewable-energy/state-activities/gom-ren-proposed-lease-ocs-g-37334-lake-charles

V. OMR Should Consider the Market for Electricity Generated by Offshore Wind and Require Consultation with the Public Service Commission

§731.A of the NOI mandates that state wind leases shall contain a provision permitting the state to receive payment in kind of wind generated electric power produced from the leased premises. While oil and gas need to be processed in order to be useful, wind power must be used immediately when generated, or stored. Furthermore, electricity generated by offshore wind is almost always accounted for - in order to offset high costs of construction, lessees must have a buyer to ensure the financial success of the market. Offshore wind leases often operate under Power Purchase Agreements that determine where the electricity will be offloaded. The State being able to demand payment in kind at any time during the lease could create issues for lessees who have already done extensive work to make a project financially feasible. We also believe that additional consideration should also be given to whether payment in kind will also be applicable to hydrogen. We recommend hewing to BOEM's approach to royalties, which provides a predictable formula tied to revenues. Wind isn't a commodity like traditional oil and gas development as developers prefer to lock themselves into long-term contracts to provide predictability, and need to build a predictable royalty structure into their business case.

Additionally, a requirement that potential lessees should consult with the Public Service Commission should be part of the bid submission package. The state cannot determine if a project is in its best economic interest without a plan for ensuring that there will be a buyer of the power and transmission access will be granted. BOEM addresses these cross-agency questions through the creation of a Regional Task Force that includes all relevant parties. A similar Task Force for the state would be beneficial to ensure the state is engaging in the most financially prudent course of action.

VI. Green Hydrogen Considerations

As Louisiana has received significant grant funding for green hydrogen and is currently applying to be a Hydrogen Hub, OMR should include specific requirements for green hydrogen. Much of the language in the lease stipulations refers directly to electricity generation, and green hydrogen is not mentioned in the NOI at all. Green hydrogen installations will likely need to be connected to the grid to operate at full capacity, which could also cause challenges with Public Service Commission approval. Additional safety plans should also be required for green hydrogen production where electrolyzers will be present.

VII. The State Should Conduct Its Own Analysis of §717.C.3.h

This section requires bidders to submit “a summary of how the wind energy project will ensure the viability of the state's natural resources, provide a continuing energy source for the citizens and businesses of Louisiana, promote economic development through job retention and creation in the state of Louisiana, and promote a clean and lasting environment.” This is also the stated intent of the law that allows for wind leasing in state waters. (La. R.S. § 41:1731) We would request clear criteria for how DNR will evaluate what is submitted by the bidder, and how this

summary will be used by the Secretary in determining whether projects ensure the viability of the state's natural resources and promote a clean and lasting environment.

We believe this analysis is best conducted by the state itself. The structure of the state leasing framework in the NOI only allows for a project-by-project consideration, and bidders are not in the best position to speak to the benefits of offshore wind. We believe a programmatic approach to planning for offshore wind will maximize economic benefits to the state. Many other states have developed plans for offshore wind, detailing their opportunities and barriers.[5][6][7] If Louisiana intends to fully realize the economic benefits of a new offshore wind industry, a comprehensive plan would ensure that all decisions work towards a larger goal.

The Louisiana Climate Action Plan[8] also provides a compelling argument for the state to conduct a planning process. Strategy 26[9] asserts that Louisiana should "advance an equitable, efficient, and sustainable siting and permitting process for new energy and infrastructure projects." Action 26.4[10] recommends establishing an interagency working group to review existing siting and permitting procedures, noting that siting decisions are currently made on a permit-by-permit basis without having the benefit of a comprehensive statewide plan or framework.

Conducting a comprehensive analysis of environmental considerations, ports and vessels, commercial and recreation fisheries, supply chain and workforce development, and energy markets and transmission will put the state in the best position to make economically beneficial decisions. Conducting spatial planning, where mapping software is used to identify lowest and highest priority areas for development, factors in numerous environmental considerations, including commercial and recreational fishing, existing uses, wind energy resource, and proximity to environmental justice communities, would provide a guidepost for developers who wish to submit areas for consideration and provide economic certainty to the state regarding nominated areas.

VIII. Conclusion

We appreciate the opportunity to submit these comments and look forward to working with the Office of Mineral Resources in the future.

Sincerely,

[5]https://www.maine.gov/energy/sites/maine.gov.energy/files/inline-files/Maine_Offshore_Wind_Roadmap_February_2023.pdf
[6] https://www.nj.gov/bpu/pdf/Draft_NJ_OWSP_7-13-20_highres.pdf
[7] https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/About-Offshore-Wind/Master-Plan
[8] https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf
[9] *Id.* at 109.
[10] *Id.* at 111.

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