# Chapter 382: WIND ENERGY ACT STANDARDS

**Summary**: This chapter outlines requirements for the review of wind energy developments for impacts related to scenic character, shadow flicker, public safety, tangible benefits, and decommissioning under the *Maine Wind Energy Act*, 35-A M.R.S. §§ 3401 – 3459, as incorporated into applications under the *Site Location of Development Act* (Site Law), 38 M.R.S. §§ 481 – 489-E and the *Natural Resources Protection Act* (NRPA), 38 M.R.S. §§ 480-A – 480-JJ. Wind energy developments may also be subject to review under other regulations pursuant to the Site Law or the NRPA.

**1. Applicability.** This chapter applies to any and all portions of a proposed grid scale wind energy development that are proposed for location within an expedited permitting area pursuant to the *Maine Wind Energy Act* (WEA). Any portions of such a proposed development that are not located within an expedited permitting area will be reviewed under standards established pursuant to the *Site Location of Development Act*, the *Natural Resources Protection Act*, and other standards as appropriate. The Scenic Character, Shadow Flicker, Public Safety, and Decommissioning Standards herein also apply to small-scale wind energy developments pursuant to 35-A M.R.S. §3456 and 38 M.R.S. §480-II.

**2. Definitions.** As used in this chapter, unless the context indicates otherwise, the following terms have the meanings set forth below. Other terms used in this chapter have the meanings set forth in 35-A M.R.S. §3451.

**A. Decommissioning.** “Decommissioning” means the physical removal of all components of a wind energy development, including but not limited to: generating facilities and associated foundations to a depth of at least 24 inches; and other structures, buildings, roads, cabling, electrical components, and any other associated facilities and foundations to a depth of at least 24 inches, to the extent they are not otherwise in or proposed to be placed in productive use. Decommissioning also includes the grading and revegetation of all earth disturbed during construction and decommissioning, except for areas already restored.

**B. Horizontal View Angle.** “Horizontal View Angle” (HVA) means the angle of view, measured horizontally in degrees from a particular viewpoint, between the two outermost visible points of proposed or existing generating facilities.

**C. Occupied Building. “**Occupied Building” means a residence, school, hospital, house of worship, public library, or other building that is occupied or in use as a residence or is customarily frequented by the public at the time the permit application is submitted.

**D. Shadow Flicker.** “Shadow Flicker” means alternating changes in light intensity caused by rotating wind turbine blades casting shadows on the ground or a stationary object. Shadow flicker occurs as the shadows of the blades move past the observation point, when the rotor is directly between the observer and the sun, and the rotor is spinning.

**3. Impacts to Scenic Character.** A wind energy development must not significantly compromise views from a Scenic Resource of State or National Significance (SRSNS) as defined in 35-A M.R.S. §3451(9) such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the SRSNS. When evaluating potential impacts to scenic character, the Department will take into consideration all relevant evidence, including but not limited to user intercept surveys and/or systematic field observations conducted and recorded using generally accepted professional standards, written public comments submitted by users of the SRSNS or other interested persons, oral statements made at Department public meetings held pursuant to 38 M.R.S. §345-A(5), and sworn testimony at public hearings held pursuant to Chapter 3 of the Department’s Rules.

**A. Review of scenic impacts of associated facilities.** Impacts to scenic character from a wind energy development’s associated facilities are generally evaluated in the manner set forth in the WEA, 35-A M.R.S. §3452 (1) & (3). However, if the Department determines that application of the WEA evaluation criteria to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities, scenic impacts of the development’s associated facilities will be evaluated solely under the standards of the *Site Location of Development Act*, 38 M.R.S. §484(3) or other applicable standards in the manner provided for evaluation of scenic impacts from development other than wind energy development. If an interested person wishes to submit information regarding the determination of which standards should be applied, that information must be received by the Department within 20 days of acceptance of the permit application as complete for processing. If the Department finds that it is necessary to apply the standards of the *Site Location of Development Act* or other applicable standards to the scenic impacts of the associated facilities, it shall make that determination within 30 days of its acceptance of the application as complete for processing (35‑A M.R.S. §3452(2)).

**B. Significance of a potentially affected SRSNS.** When evaluating whether a proposed development would significantly compromise views from a SRSNS such that the development would have an unreasonable adverse effect on scenic character or existing uses related to scenic character of an SRSNS, the Department will take into consideration all relevant evidence in the record regarding the significance of the SRSNS. In this assessment, the Department will be guided by considerations including but not limited to the following.

(1) Any assessment of the scenic character of the SRSNS through a formal assessment process such as the *Maine’s Finest Lakes Study*, the *Maine Wildland Lakes Assessment*, a Coastal Scenic Inventory published by DACF, or other federal, state or local government assessment process.

(2) If a property is designated as an SRSNS due to its listing on the National Register of Historic Places, evidence regarding the consideration of the scenic character or uses related to the scenic character of the property as factors in the listing process.

(3) The character, landscape context, unique features, usage patterns, and other relevant characteristics of the SRSNS.

(4) Evidence of the high scenic value of the viewshed from the SRSNS or of the protection of the viewshed through public ownership, conservation easements or other restrictions put in place for purposes specifically including protection of the scenic values of the area. Such evidence may increase the significance of an SRSNS.

(5) Evidence of the degradation of the scenic character of the SRSNS by factors such as incompatible development in the viewshed. Such evidence may decrease the significance of an SRSNS.

**C. Existing character of the surrounding area.** The existing character of the surrounding area will be taken into consideration by the Department when determining whether the proposed development would have an unreasonable adverse effect on scenic character or existing uses related to scenic character of the SRSNS. When evaluating the existing character of the surrounding area, the Department will take into consideration all relevant evidence, including but not limited to the following.

(1) The visible aspects of the natural character of the viewshed of the SRSNS, including but not limited to: landscape scale, vegetation and forest cover types; variations in topography and geology; prominent natural features (cliffs, mountains); and waterbodies.

(2) The type and amount of development in the viewshed of the SRSNS, including but not limited to: roads, buildings and other structures, utility lines, communication towers, and nighttime lighting.

Areas of cutting and removal of trees for commercial logging or forestry management activities in the viewshed of the SRSNS, where the forest will be allowed to regenerate naturally or through silviculture activities, will not generally be considered incompatible development which detracts from the scenic character of the SRSNS for the purposes of this evaluation, but visible roads or permanent structures related to commercial logging or forestry management activities may be generally considered to be development which detracts from the scenic character of the SRSNS. The Department will assess specific evidence on this issue on a case-by-case basis.

**D. Expectations of the typical viewer**. The expectations of the typical viewer will be taken into consideration by the Department when determining whether the proposed development would have an unreasonable adverse effect on scenic character or existing uses related to scenic character of the SRSNS. When evaluating the expectations of the typical viewer, the Department will take into consideration all relevant evidence including but not limited to user intercept surveys, written public comments submitted by users of the SRSNS, oral statements made at Department public meetings held pursuant to 38 M.R.S. §345-A(5), and sworn testimony at public hearings held pursuant to Chapter 3 of the Department’s Rules.

(1) Viewer expectations will be considered to be high at an SRSNS which is valued for its setting in a naturally scenic landscape. Viewer expectations may be considered to be lowered by substantive evidence of degradation of the scenic values of the SRSNS since its designation as a scenic resource, or a lack of scenic value in a particular location.

(2) Viewer expectations will be considered to be low at an SRSNS which qualifies as an SRSNS for reasons not primarily related to its scenic value, e.g. historic sites which are listed on the National Register of Historic Places due to reasons unassociated with their scenic character.

**E. Purpose and context of the proposed activity.** The purpose and context of the proposed wind energy development are taken into consideration by the Department as factors in the assessment of whether the proposed development would have an unreasonable adverse effect on scenic character or existing uses related to scenic character of an SRSNS. Generating energy from a renewable resource is a purpose encouraged in the enactment of the *Wind Energy Act*, and will be considered a factor mitigating some extent of scenic impacts; however, energy production alone will not be considered as a significant mitigating factor. The context of the proposed development will be considered both in the physical sense and in the practical sense. The physical context of the proposed development includes the topography and existing characteristics of the area. The practical context of the proposed development includes factors specific to the location of the proposed development, such as the magnitude and reliability of the wind resource present, and the proximity to transmission infrastructure. When considering the purpose and context of the proposed activity, the Department will take into consideration all relevant evidence, including but not limited to the following.

(1) Data related to the magnitude and reliability of the wind resource at the proposed development site, and the potential energy output expected from the development, as compared with any alternative sites in Maine investigated by the applicant.

(2) The location of the proposed development in relation to existing transmission lines, roads or other infrastructure.

(3) The topography and existing characteristics of the area surrounding the proposed development.

(4) The existence of any other permitted wind energy development in the viewshed of any affected SRSNS.

(5) Evidence of any mitigation proposals, such as improved access to the affected SRSNS, or improvements to the quality of the resource.

**F. Public use and enjoyment of a potentially affected SRSNS.** The extent, nature, and duration of public use of an SRSNS, and the likely effect of a proposed wind energy development on continued public use and enjoyment of the SRSNS, will be taken into consideration by the Department when determining whether the proposed development would have an unreasonable adverse effect on scenic character or existing uses related to scenic character of the SRSNS. The Department will take into consideration all relevant evidence to that effect, including but not limited to the following.

(1) Evidence of the extent, nature, and duration of existing public uses of the SRSNS where the scenic character of the SRSNS is an important part of the enjoyment of the activity.

(2) Evidence of the extent, nature and duration of existing public uses of the SRSNS where the natural, undeveloped character of the area surrounding the SNSRS is an important part of the enjoyment of the activity. For such uses, low use levels will not necessarily be found to decrease the significance of potential impacts to existing uses related to scenic character.

(3) Evidence of tourism-related businesses or recreational clubs or organizations whose purpose or viability is related to the public use and enjoyment of the SRSNS.

**G. Scope and scale of the potential effect.** When evaluating the scope and scale of the potential effect of views of proposed generating facilities on scenic character or existing uses related to scenic character of an SRSNS, the Department will take into consideration all relevant evidence to that effect, including but not limited to the following.

(1) Evidence of the number of turbines and portions of turbines that would be visible from various viewpoints for users of the SRSNS. When a Visual Impact Assessment (VIA) is required or provided by an applicant, it must identify all areas of the SRSNS from which the project is visible using a bare terrain model, and must include photosimulations of views of the project from the SNSRS. A VIA that considers the screening effect of land cover may also be prepared using a digital surface model that measures the elevation of topographic elements, such as building roofs and forest canopies. A height of 40 feet may be assigned to forest cover in the absence of a true digital surface model.

(2) Evidence of the distance to turbines in the viewshed from viewpoints within the SRSNS.

(a) There is a rebuttable presumption that placement of turbines within three miles of viewpoints within the SRSNS would cause a high impact to the scenic character of the SRSNS. This presumption may be rebutted by evidence showing that views of the turbines would be limited by intervening topographic features, or other mitigating factors.

(b) Turbines beyond eight miles from the SRSNS are considered insignificant in the scenic impact assessment process (35-A M.R.S. §3452(3)).

(3) Evidence of the portion of the SRSNS from which there would be visibility of any of the generating facilities.

(4) Evidence of the horizontal view angle encompassing all visible turbines in the proposed wind energy development from the most affected viewpoints in the SRSNS.

**H. Cumulative scenic impact or effect.** When assessing the potential adverse scenic impact of a proposed wind energy development, the Department will take into consideration the cumulative scenic impact or effect of the proposed development under both daytime and nighttime conditions in conjunction with scenic impacts from other wind energy developments located within eight miles of each SRSNS addressed by the applicant’s VIA, if one has been submitted. The Department will also take into consideration the cumulative impact of the proposed wind energy development on multiple SRSNSs.

(1) When assessing the cumulative scenic impacts of multiple wind energy developments on a single SRSNS, the Department will take into consideration potential and actual scenic impacts from any wind energy developments that are existing, any wind energy developments that have been permitted pursuant to the WEA but not yet constructed, and any proposed wind energy developments for which an application has been determined to be complete for processing by the Department, that are located within eight miles of any portion of any SRSNS addressed by the applicant’s VIA. Existing or permitted small-scale wind energy developments pursuant to 35-A M.R.S. §3456, or small-scale wind energy developments whose applications have been approved for processing by the Department, as well as any other existing nonresidential wind energy developments, will also be included in this assessment. The analysis will take into account the full build-out of any such existing, permitted, and proposed wind energy developments, and will consider impacts from any portion of those developments that is or would be within eight miles of any portion of any SRSNS within eight miles of the proposed development under review.

(2) When multiple SRSNSs are related to each other by common use (i.e., a user of one SRSNS in a group is likely to use one or more other SRSNSs in that group during the same visit), physical connection, or relationship in the landscape, the Department will consider the cumulative impacts of the proposed wind energy development on these SRSNSs as a group, as well as individually, to the extent that the SRSNSs are located within eight miles of the proposed wind energy development.

(3) An applicant’s VIA must identify any areas of combined, sequential or successive observation, as defined in 35-A M.R.S. §3451, for each SRSNS within eight miles of the proposed wind energy development. When evaluating cumulative scenic impact or effect associated with sequential observation, the department will consider the distance between viewpoints on a linear route and other forms of development along the linear route that affect the expectations of the user of the SRSNS. When evaluating the significance of such impacts, the Department will consider all relevant evidence to that effect, including but not limited to photographic evidence of existing development and photosimulations of proposed development under both daylight and night time conditions.

**I. Unreasonable adverse effect on scenic character.** In evaluating whether the development significantly compromises views from an SRSNS such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the SRSNS, the Department will consider evidence regarding the significance of the SRSNS; the existing character of the area surrounding the SRSNS; and the expectations of the typical user of the SRSNS, to inform a rating of the value of the SRSNS as low, medium, or high.

The Department will also evaluate the evidence regarding the purpose and context of the proposed wind energy development; the extent, nature and duration of public uses of the SRSNS and the potential effect of the proposed development on that public use and enjoyment; the scope and scale of the potential impacts of the proposed development; and any cumulative impacts on the scenic character or existing uses related to scenic character of the SRSNS, to inform a rating of the significance of the impacts as low, medium, or high. In making the final determination of the reasonableness of an impact, the Department will be directed by the following considerations:

(1) **High Value SRSNS**. A Department finding of high or medium scenic impact to an SRSNS with high value will be considered to constitute an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the SRSNS. A Department finding of low scenic impact to an SRSNS with high value will be considered to not constitute an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the SRSNS.

(2) **Medium Value SRSNS**. A Department finding of high scenic impact to an SRSNS with medium value will be considered to constitute an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the SRSNS. A finding of medium scenic impact to an SRSNS with medium value will require further evaluation by the Department of the evidence to make a determination as to whether the proposed impact would be unreasonably adverse. A Department finding of low scenic impact to an SRSNS with medium value will be considered to not constitute an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the SRSNS.

(3) **Low Value SRSNS**. A Department finding of medium or low scenic impact to an SRSNS with low value will be considered to not constitute an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the SRSNS. A Department finding of high scenic impact to an SRSNS with low value will require further evaluation by the Department of the evidence to make a determination as to whether the proposed impact would be unreasonably adverse.

(4) **Highly Visible Feature**. A Department finding of high or medium impact to any SRSNS in accordance with this section will constitute a finding that the generating facilities are more than merely a highly visible feature in the landscape (35-A M.R.S. §3452).

(5) **Multiple Impacts**. When the Department finds that a proposed wind energy development would present multiple impacts in the medium and/or high range to multiple SRSNSs which are rated medium and/or high for value, the Department may combine these individual impacts to increase the total level of impact presented by the proposed development.

(6) **Multiple Resources**. When the Department finds that a proposed wind energy development would present impacts to multiple medium and/or high value SRSNSs that are related to each other by common use, physical connection, or relationship in the landscape, the Department may increase the significance of the SRSNSs as a group.

(7) **Finding on Scenic Character**. A Department finding that a proposed wind energy development would cause an unreasonable adverse effect on scenic character or existing uses related to scenic character on a single SRSNS is sufficient grounds for denial of the proposed wind energy development.

**4. Shadow Flicker.** An applicant must demonstrate that the generating facilities of a proposed wind energy development have been designed to avoid unreasonable adverse shadow flicker effects at any occupied building located on property not owned by the applicant, subject to a lease for a duration at least as long as the anticipated project life, or subject to an easement for shadow flicker in excess of 30 hours per year.

A. An applicant must submit a shadow flicker analysis based on WindPRO, or other modeling software approved by the Department. The analysis must assume that all shadows cast by rotating turbine blades on occupied buildings are unobstructed, and shall not take into account any existing vegetative buffers. The shadow flicker analysis shall model impacts to any occupied building within one mile, measured horizontally, from a proposed turbine.

B. A proposed development may not result in shadow flicker effect occurring at an occupied building for more than 30 hours per calendar year. An applicant may request that this general restriction be waived by showing that 30 hours or less of shadow flicker per year will occur during times when an affected public building is in use, or where an affected private building is used seasonally or intermittently such that occupants will experience 30 hours or less of shadow flicker per year. An applicant may also qualify for a waiver by submitting evidence of agreements or easements with affected property owners in which the property owners state that they do not object to the projected level of shadow flicker.

C. If the shadow flicker analysis predicts that any occupied building will receive more than 30 hours of shadow flicker per calendar year, the applicant may propose mitigation measures to reduce this impact to 30 hours or less per calendar year.

**5.** **Public Safety.** An applicant must demonstrate that a proposed wind energy development will be constructed with setbacks and other considerations that are adequate to protect public safety.

A. The applicant must submit evidence to the Department that the proposed generating facilities will be constructed with appropriate safety related setbacks from adjacent properties and adjacent existing uses. Such evidence shall be prepared by a licensed professional civil engineer, and must include consideration of any applicable setback recommendations by the manufacturer of the generating facility.

1. To minimize risks associated with ice throw, blade shear, tower collapse, and fire, the minimum setback for generating facilities from abutting property lines is the normal setback requirement for the local zoning classification as dictated by local municipal zoning ordinance or the Land Use Planning Commission, or 1.5 times the sum of the hub height plus the rotor diameter, whichever is greater. The setback distance must be measured to the edge of the generating facility foundation closest to the property line.
2. The Department may reduce the minimum setback down to that required by local zoning to the extent that the applicant has obtained safety easements from all affected landowners. The applicant shall submit any easement documents to the Department in support of any request for a reduced setback. The Department may further reduce the minimum setback in accordance with a waiver of local zoning requirements obtained by the developer upon receipt of evidence of such waiver.
3. The applicant must demonstrate that the design of the turbines for the proposed wind energy development meets acceptable industry safety standards, by submission of certificates of design compliance issued by a professional certifying organization acceptable to the Department.
4. The applicant must demonstrate that the turbines for the proposed wind energy development have been constructed with adequate overspeed controls and related operational safety mechanisms as part of the turbine design.
5. The applicant must submit evidence demonstrating that reasonable measures will be taken to prevent and respond to a fire at the proposed wind energy development, including but not limited to the following:

(1) Information regarding proposed active or passive fire suppression systems, including lightning protection systems.

(2) Operational and maintenance measures used to reduce fire risk.

(3) Descriptions of how proposed turbines are designed to meet applicable national or international design codes or standards or recommended fire protection practices.

(4) A fire protection or fire safety plan, addressing potential ignition sources, fire control procedures, anticipated fire hazards, and proposed fire protection equipment or systems.

(5) Emergency communications and response protocols with local and state emergency response providers.

**6. Tangible Benefits.** An applicant must demonstrate that a proposed wind energy development will establish environmental and economic improvements or benefits to the citizens of Maine attributable to the construction, operation, and maintenance of the proposed development. The evidence submitted in support of this demonstration shall include, but is not limited to, the following.

A. The estimated number of both part-time and full-time jobs to be created statewide and in the host community or communities and affected neighboring communities as a result of the construction, operation and maintenance of the proposed wind energy development. This shall include estimates of the numbers of both permanent and temporary construction-related jobs, and operations and maintenance jobs; and the number of both part-time and full-time jobs in construction, operations and maintenance activities to be filled by trained, qualified and licensed workers pursuant to 32 M.R.S. §1101 *et seq*. and other applicable laws.

B. The estimated annual generation of electricity from wind energy by operation of the proposed wind energy development and the projected impact on electrical rates in the host community or communities. The estimated annual generation of electricity shall be calculated including consideration of the estimated capacity factor for the proposed project, site-specific wind projections, any proposed curtailment measures, and curtailment anticipated to be imposed by the grid operator.

C. The anticipated property tax payments from the project and the projected impact on property tax rates in the host community or communities.

D. Evidence of a power purchase agreement or other evidence demonstrating the intended sale or use of the electrical energy by a person other than the generator for the anticipated life of the project.

E. The projected effect on electrical rates for residents of Maine directly attributable to and expected from the construction, operation and maintenance of the proposed wind energy development.

F. If land or natural resource conservation is proposed as part of a Community Benefits Package, a plan for the proposed conservation.

G. The estimated type and amount of local purchases of materials and services anticipated from the construction, operation and maintenance of the proposed wind energy development.

H. A plan for annual post-construction reporting to the Department of specific tangible benefits realized from the construction, operation and maintenance of the proposed wind energy development.

I. Any other tangible benefits to be provided by the proposed wind energy development.

J. The community benefits package in accordance with 35-A M.R.S. §3454(2).

**7. Decommissioning.** An applicant must demonstrate adequate financial capacity to decommission the proposed wind energy development if required at any time during construction or operation of the development, or upon termination of development operations. This must include a demonstration that this financial capacity will be unaffected by any future changes in the applicant’s financial condition. The obligation to decommission the development must be transferred to any future owner of the development in the event of a transfer of title. The financial capacity demonstrated must be sufficient to fully fund any necessary decommissioning costs commensurate with the wind energy development’s scale, location and other relevant considerations, including but not limited to those associated with site restoration and turbine removal (P.L. 2007, Ch. 661, §B-13(6)).

**A. Decommissioning plan.** The applicant must provide a plan for decommissioning which describes how one or more of the proposed turbines and other components of the proposed development would be dismantled and removed from the site when one or more individual turbines or the generating facility as a whole ceases to generate electricity. Subsurface components must be removed to a minimum of 24 inches below grade, generating facilities must be removed and disturbed areas must be revegetated. Before decommissioning commences, the licensee must submit a plan for the continued beneficial use of any component(s) of the wind energy development proposed to be left on-site to the Department for review and approval.

**B. Trigger for decommissioning.** Decommissioning of one or more individual non-generating turbines in a wind energy development is required if no electricity is generated from such a turbine or turbines for a continuous period of 12 months. Decommissioning of the development as a whole is required if no electricity is generated by the development for a continuous period of 12 months. The licensee may obtain an extension of this period by providing evidence showing that although one or more turbines have not generated electricity for a continuous period of 12 months, the development or turbine(s) has not been abandoned and the decommissioning requirement should not be triggered. The requirement to decommission the wind energy development will be triggered by the expiration of the design life of the development, unless the licensee of the development submits evidence to the Department demonstrating that continued operation of the development will not result in any changes that would increase environmental impacts or other risks associated with the development. When the decommissioning requirement is triggered, the decommissioning of the development, or of any turbines which are no longer generating electricity, must be completed within twelve months. If the licensee fails to decommission the non-generating turbine(s) or the development as required within twelve months of triggering the decommissioning requirement, the state may enter the property and decommission the non-generating turbine(s) or the development, as appropriate, using the funds set aside for that purpose as described below.

**C. Financial assurance.** The applicant shall submit documentation of financial assurance to the Department demonstrating that the decommissioning costs will be fully funded prior to the start of construction. The applicant must establish financial assurance for the decommissioning costs in the form of a performance bond, surety bond, irrevocable letter of credit, or other form of financial assurance acceptable to the Department for the total cost of decommissioning. The financial assurance must be established prior to initiation of construction of the wind energy development. The projected cost of decommissioning the project must be determined by an independent third-party consultant, and may not include salvage value of project components. The licensee must re-evaluate the decommissioning costs at least once every two years throughout the life of the development to account for price fluctuations. The cost estimate for decommissioning the entire development shall also be reevaluated after any decommissioning of one or more individual turbines occurs. The requirements to establish specific costs and to re-evaluate costs may be waived in instances where an acceptable performance bond is submitted.

D. **Notification of turbine failure.** The licensee must notify the Department in writing within two business days of any turbine failure or other incident that the licensee anticipates will result in a turbine being off-line for a period greater than six months.

E. **Extension for turbine repair or replacement.** If one or more turbines are rendered inoperable by unanticipated mechanical or structural failures, or by fire, earthquake, flood, tornado, or other natural disaster; or war, civil strife or other similar violence, and if it will take more than twelve months to repair or replace the inoperable turbine(s), the licensee may request an additional twelve months to accomplish the repair or replacement without triggering the decommissioning requirement. The licensee must request this extension within six months of the event which renders the turbine(s) inoperable. The licensee must submit to the Department, for review and approval, a plan establishing a reasonable assurance that the turbine(s) will be brought back into operation within twenty-four months of the event. If the request is denied, the decommissioning of the inoperable turbine(s) must be initiated within eighteen months of the event.

**8. Terms and conditions.** The department may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed will meet the standards of 35-A M.R.S. §§ 3401 - 3459 and comply with this chapter.

**9. Severability.** Should any provision of these rules be declared invalid or ineffective by court decision, the decision will not invalidate any other provision of these rules.

STATUTORY AUTHORITY:

Public Laws 2007, Chapter 661, Section E-2.

EFFECTIVE DATE:

 April 30, 2018 – filing 2018-069

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