

Gouvernement du Québec

**O.C. 928-2005, 12 October 2005**

An Act respecting the Ministère des Ressources naturelles, de la Faune et des Parcs (R.S.Q., c. M-25.2)

Approval of the Program for the awarding of lands in the domain of the State for the installation of wind turbines

WHEREAS, under section 17.13 of the Act respecting the Ministère des Ressources naturelles, de la Faune et des Parcs (R.S.Q., c. M-25.2), the Minister may, with the approval of the Government, prepare programs for the development of lands or forest resources in the domain of the State that are under the Minister's authority in order to encourage regional development or implement any other governmental policy;

WHEREAS, under the second paragraph of section 17.14 of the Act, the Minister may, for the purposes of such programs, in addition to exercising in respect of a forest in the domain of the State that is covered by a program all the powers devolving on the Minister under the Forest Act (R.S.Q., c. F-4.1), apply any measure the Minister considers necessary for the purpose of fostering sustainable forest development, including a measure granting, for that purpose, any right other than a right under that Act to a legal person the Minister designates;

WHEREAS, under the first paragraph of section 17.15 of the Act, the Minister may, to the extent specified in a program, exempt land and property made subject by the Minister to a program from the application of all or part of the Act respecting the lands in the domain of the State (R.S.Q., c. T-8.1), or exempt a forest in the domain of the State made subject by the Minister to a program from the application of all or part of the Forest Act;

WHEREAS the Government approved, by Order in Council 28-2004 dated 14 January 2004, the Program for the awarding of lands in the domain of the State for the installation of wind turbines;

WHEREAS Order in Council 926-2005 dated 12 October 2005 made the Regulation respecting the second block of wind energy;

WHEREAS the Regulation respecting the sale, lease and granting of immovable rights on lands in the domain of the State, made by Order in Council 231-89 dated 22 February 1989, provides that the lease of such land must be awarded to the first applicant;

WHEREAS it is expedient to replace the Program for the awarding of lands in the domain of the State for the installation of wind turbines by a new program that gives priority to the awarding of land rights on lands in the domain of the State for wind power projects that follow tender solicitations by Hydro-Québec;

IT IS ORDERED, therefore, on the recommendation of the Minister of Natural Resources and Wildlife:

THAT the Program for the awarding of lands in the domain of the State for the installation of wind turbines, approved by Order in Council 28-2004 dated 14 January 2004, be revoked;

THAT the Program for the awarding of lands in the domain of the State for the installation of wind turbines, attached to this Order in Council, be approved;

THAT the administration of the Program be entrusted to the Minister of Natural Resources and Wildlife.

ANDRÉ DICAIRE,  
*Clerk of the Conseil exécutif*

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**PROGRAM FOR THE AWARDING OF LANDS  
IN THE DOMAIN OF THE STATE FOR THE  
INSTALLATION OF WIND TURBINES**

**DIVISION I  
DECLARATORY AND INTERPRETATIVE  
PROVISIONS**

**1. PURPOSE OF THE PROGRAM**

The purpose of the Program is to make accessible and reserve lands in the domain of the State for the development of the wind industry and to provide a framework for the granting of land rights for the use of those lands for that purpose. More specifically, the aims of the Program are

— to allow the establishment of wind farms on lands in the domain of the State following tender solicitations by Hydro-Québec to increase wind energy production;

— to set the terms and conditions of awards of land rights for the installation of wind power facilities on lands in the domain of the State;

— to fix the rent for land in the domain of the State for wind power facilities on the basis of market prices for comparable installations; and

— to allow bidders on Hydro-Québec tender solicitations to submit projects for the installation of wind power facilities on lands in the domain of the State.

## 2. DEFINITIONS

For the purposes of this Program, unless the context indicates otherwise,

“electrical power supplier” means any person who produces or supplies electrical power; (*fournisseur d’électricité*)

“experimentation” means the production of electricity for scientific research purposes by wind power facilities that are not part of a commercial or industrial wind farm and are not intended to become part of such a farm; (*expérimentation*)

“land right” means a lease or other right on land in the domain of the State granted by the Minister of Natural Resources and Wildlife under the Act respecting the lands in the domain of the State (R.S.Q., c. T-8.1) or this Program; (*droit foncier*)

“legal person” means an entity constituted in accordance with article 299 of the Civil Code of Québec or a limited partnership constituted in accordance with article 2236 of the Civil Code of Québec; (*personne morale*)

“market rent” means the amount of rent derived from an analysis of rents usually paid for comparable spaces; (*loyer paritaire*)

“Minister” means the Minister of Natural Resources and Wildlife; (*Ministre*)

“Program” means this Program prepared under sections 17.13, 17.14 and 17.15 of the Act respecting the Ministère des Ressources naturelles, de la Faune et des Parcs (R.S.Q., c. M-25.2); (*programme*)

“self-generation” means natural or legal persons who, secondary to their core activities, produce electricity from wind power facilities intended entirely for their own use; (*autoproduction*)

“wind power facilities” means any work, appliance or equipment used to generate electric power by means of wind energy and to deliver the electric power, as well as any related work, appliance, facility or equipment, except for wind measurement instruments. (*installations éoliennes*)

## 3. TERRITORY OF APPLICATION

The Program applies to lands in the domain of the State, with the exception of lands that have already been the subject of a delegation of management in favour of regional county municipalities or municipalities under a program relating to such a delegation, except if the territory management agreement signed between the parties expressly provides for the application of this Program or if an application to that effect is made by the regional county municipality or the municipality and approved by the Minister.

## DIVISION II WIND POWER PROJECTS FOLLOWING HYDRO-QUÉBEC TENDER SOLICITATIONS

### 4. LETTER OF INTENT

A person wishing to tender in connection with a tender solicitation by Hydro-Québec for a wind power project located in whole or in part on lands in the domain of the State must file an application with the Minister for a letter of intent describing the proposed land. The Minister may issue or refuse to issue such a letter of intent, at the Minister’s discretion.

The letter of intent states that the Minister may grant the applicant the land rights required for the installation of wind power facilities on the lands in the domain of the State described in the letter, subject to the signing of a contract with Hydro-Québec for the purchase of wind energy, to obtaining all the permits and certificates required under an Act or a regulation then in force, and compliance with the requirements of the Program and the conditions to be specified by the Minister.

The Minister may issue a letter of intent to more than one applicant for the same land in the domain of the State.

### 5. EFFECT OF THE LETTER OF INTENT

The Minister may refuse to grant any land right on land in the domain of the State in respect of which an application for a letter of intent was made so as to protect its potential for the installation of a wind power facility.

The Minister may reserve to the State, in accordance with section 304 of the Mining Act (R.S.Q., c. M-13.1), any land in the domain of the State in respect of which an application for a letter of intent was made.

The holder of a letter of intent may not transfer the entitlement to a third party without prior authorization from the Minister. The Minister may notify Hydro-Québec of any modification relating to a letter of intent.

#### 6. DURATION OF VALIDITY OF THE LETTER OF INTENT

A letter of intent that awards land in the domain of the State is valid for 24 months. Subject to the payment of the required fees, the Minister may extend the duration of the validity. However, the Minister may also cancel a letter of intent following a 30-day notice to the holder. A copy of the notice is to be sent to Hydro-Québec.

All letters of intent issued following tender solicitations by Hydro-Québec are null and void and without effect 60 days after all the contracts to purchase wind power have been signed with Hydro-Québec following these tenders.

#### 7. MINIMUM PERIOD

A minimum period of 60 days of examination and analysis applies to an application for a letter of intent. The Minister may issue or refuse to issue a letter of intent before the expiry of the 60-day period, at the Minister's discretion.

#### 8. DOCUMENTS TO BE SUBMITTED

The application must include a site plan showing the location of the lands in the domain of the State concerned to a scale of 1:20 000 or greater, the proposed number of wind turbines, the proposed megawatts (MW), the area of land to be occupied by each wind turbine and the access roads, as well as any other document or information that the Minister may consider appropriate to require for examination of the application.

#### 9. FEES PAYABLE

Processing fees are \$25 and the fees payable for the examination of an application for a letter of intent in respect of a group of wind power facilities located in the same sector or for a request by the applicant to modify a letter of intent are \$500.

The fees payable for the issue and renewal of a letter of intent are \$4,000.

### DIVISION III RESERVED LAND AREA

#### 10. APPLICATION FOR RESERVED LAND AREA

The bidder selected following tender solicitations by Hydro-Québec who holds a letter of intent must, before the letter of intent expires, apply to obtain a reserved land area in respect of the lands in the domain of the State stated in the wind power project in accordance with this Division.

No fees are charged for processing and examining the application to obtain a reserved land area where it results from a contract to purchase wind power entered into with Hydro-Québec following a tender solicitation.

If several reserved land areas are applied for in respect of the same land in the domain of the State, the Minister may give priority to projects that result from a tender solicitation by Hydro-Québec, whose contracts are subject to the approval of the Régie de l'énergie under section 74.1 of the Act respecting the Régie de l'énergie (R.S.Q., c. R-6.01).

#### 11. DOCUMENTS TO BE SUBMITTED

The application for a reserved land area must include a site plan showing the location of the lands in the domain of the State concerned to a scale of 1:20 000 or greater, the proposed number of wind turbines, the proposed megawatts (MW), the area of land to be occupied by each wind turbine and the access roads, the contracts relating to the purchase of the electricity produced by the wind turbines or the markets concerned by such contracts, a business plan for the financing and carrying out of the project, the work schedule, as well as any other document or information that the Minister may consider appropriate to require for examination of the application.

#### 12. EFFECT OF RESERVED LAND AREA

The reserved land area indicates that the Minister may grant the applicant the land rights required to install wind power facilities on lands in the domain of the State described therein, subject to obtaining all the permits and certificates required under an Act or a regulation then in force, and compliance with the requirements of the Program and the conditions to be specified by the Minister. The Minister may not grant a reserved land area to more than one applicant on the same land in the domain of the State.

The Minister may refuse to grant a land right on land in the domain of the State that is a reserved land area so as to protect its wind power potential until the land rights required for the installation of all the wind power facilities in the project have been granted.

The Minister may reserve to the State, in accordance with section 304 of the Mining Act (R.S.Q., c. M-13.1), any land in the domain of the State that is a reserved land area.

The lands in a reserved land area are subject to registration in the register known as the “Terrier”, referred to in section 26 of the Act respecting the lands in the domain of the State. The holder of a reserved land area must pay the registration fees prescribed by regulation.

The holder of a reserved land area may not transfer the entitlement to a third party without prior authorization from the Minister. The Minister may notify Hydro-Québec of any modification relating to the reserved land area.

### 13. RATE AND DURATION OF VALIDITY OF THE RESERVED LAND AREA

The annual rate for the reserved land area is \$4/ha payable within 30 days of the issue of the letter confirming the reserved land area. This rate is not refundable.

The reserved land area must be renewed annually and kept in force until the land rights required for the installation of the entire wind power facilities in the project have been granted in full.

Failure to pay the rate for the reserved land area releases the Minister from all obligations relating to the granting of land rights for the installation of the entire wind power facilities in the project.

The Minister may cancel a reserved land area following a 30-day notice.

## DIVISION IV AWARDING OF LAND RIGHTS

### 14. AWARDING METHOD

The Minister may award the holder of a reserved land area the land rights required for the installation of wind power facilities, by lease or otherwise, at the Minister’s discretion.

### 15. ELIGIBILITY

To obtain a land right under the Program, the applicant must be a legal person.

### 16. DOCUMENTS TO BE SUBMITTED

The applicant must send the Minister a written application for land rights on land in the domain of the State on which wind power facilities are to be installed.

The application must include a site plan showing the location of the proposed site to a scale of 1:20 000 or greater, a development map showing the location of the proposed equipment and access roads, a work schedule, as well as any other document or information that the Minister may consider appropriate to require for examination of the application.

To obtain the land rights, the applicant must hold all the authorizations required by government authorities, including, in particular, certificates of authorization of the Ministère du Développement durable, de l’Environnement et des Parcs and municipal permits and certificates.

The Minister may issue to the applicant an offer of land rights, on condition that all the permits, certificates and other required documents be obtained.

On the awarding of the land rights, the applicant must have the land surveyed in accordance with the directions of the Minister, at the applicant’s expense.

### 17. TERM OF THE LAND RIGHTS AWARDED

The Minister may award land rights for a maximum term equal to the term of the contract for the purchase of wind power entered into with Hydro-Québec or any other supplier or distributor of electric power, subject to compliance with the conditions stipulated in the lease, except on notice to the contrary from the Minister.

In the event that the wind energy purchase contract entered into with Hydro-Québec or any other supplier or distributor of electric power ends before the scheduled term, the lease granting land rights also ends on written notice from the Minister.

### 18. RENEWAL

Land rights granted may be renewed subject to the conditions of the Program and any applicable regulation then in force.

## 19. ALLOCATION OF TIMBER VOLUMES

Where the installation of wind power facilities takes place in an area subject to a timber supply and forest management agreement or any other forest management agreement or contract under the Forest Act (R.S.Q., c. F-4.1), the commercial timber harvested in the area must be sent to the wood processing plants holding the forestry rights for those areas.

## 20. SPECIAL CLAUSES

The Minister is authorized to include any special clause in land rights contracts that is conducive to the pursuit of the Program's objectives, in particular, any accession clause or any clause regarding the renunciation of the benefit of accession and any clause authorizing the Minister to acquire the wind power facilities at the end of the term.

## 21. REVOCATION

The land rights may be revoked if the holder has not completed the installation of the wind power facilities in accordance with the development plan within a period of 24 months following the signing of the contract relating to the issuance of the land rights. The Minister reserves the right to extend that period.

Any land right obtained on the basis of erroneous or fraudulent information provided by the applicant may be revoked by the Minister.

## **DIVISION IV** OTHER WIND POWER FACILITIES

### 22. AWARDING METHOD

Despite the provisions of Divisions II, III and IV of the Program, the Minister may award land rights on lands in the domain of the State for the installation of wind power facilities that do not follow tender solicitations by Hydro-Québec under the Regulation respecting the sale, lease and granting of immovable rights on lands in the domain of the State, made by Order in Council 231-89 dated 22 February 1989, as amended, only in the following cases:

- wind power facilities intended for experimentation;
- wind power facilities intended for self-generation;
- wind power facilities of a maximum production capacity of 2 MW, one project of this type authorized per applicant;

— wind power facilities for the development or consolidation of an existing wind farm to a maximum of 50% of the power installed or proposed as of the coming into force of this Program, subject to the condition that the applicant has a purchase contract with Hydro-Québec for the supplementary energy;

- wind measurement instruments.

Except for the wind power facilities specified in this section, the Minister may not grant land rights for wind power facilities that do not follow a Hydro-Québec tender solicitation.

## **DIVISION V** RENT FOR WIND POWER FACILITIES

### 23. LEASE PRICE

The leasing of land in the domain of the State for the installation of wind power facilities is subject to a market-based rent determined by the Minister. The rent is determined on the basis of the market rents for comparable installations and their location.

The rent is payable yearly on the signing of the lease and on each anniversary date of the lease. Despite the term of the lease, the amount of the rent is revised every five years after the signing of the lease on the basis of prevailing market rent.

## **DIVISION VI** TRANSITIONAL AND FINAL

### 24. EXAMINATION OF PREVIOUS APPLICATIONS

Applications made before the Program comes into force are valid from the date of coming into force of the Program and the filing in full of the application.

### 25. REGULATORY PROVISIONS

The regulatory provisions made under the Act respecting the lands in the domain of the State, to the extent that they are consistent with the Program, remain applicable to the terms and conditions of the awarding of land rights for the purposes of wind energy generation within the framework of this Program. The provisions of the Program do not exempt lessees of lands in the domain of the State from complying with the regulations and Acts in force.

## 26. EXCLUSIONS

The Program does not apply to the authorizations and land rights that follow agreements entered into between the government, its mandataries and third parties for the installation of wind power facilities before the coming into force of the Program or to the placing at the disposal of Hydro-Québec of lands in the domain of the State in accordance with section 32 of the Hydro-Québec Act (R.S.Q., c. H-5).

## 27. INDEXATION

As of 1 April 2006, all the fees and rates determined by the Program are to be adjusted and rounded off to the nearest dollar on 1 April each year based on the percentage change in the Average Consumer Price Index for the preceding year using the index established for the whole of Québec by Statistics Canada.

## 28. REPLACEMENT

This Program replaces the Program for the awarding of lands in the domain of the State for the installation of wind turbines made by Order in Council 28-2004 dated 14 January 2004. The authorizations and rights granted under that Program continue to apply in accordance with its provisions until their expiry.

## 29. COMING INTO FORCE

The Program comes into force on the date of its publication in the *Gazette officielle du Québec*.