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# PUBLIC SERVICE COMMISSION OF WISCONSIN

## Memorandum

December 1, 2010

### FOR COMMISSION AGENDA

TO: The Commission

FROM: Robert Norcross, Administrator *RNW*  
Dan Sage, Assistant Administrator *DS*  
Deborah Erwin, Docket Coordinator *DEE*

RE: Wind Siting Rules

1-AC-231

Suggested Minute: The Commission modified the Wind Siting Rules and directed Commission staff to prepare documents consistent with its discussion for submission to the Legislature. If the legislative review period expires without further comment, or the Legislature approves the rules without change, the rules may be promulgated as final rules without further Commission action.

The Commission submitted Final Wind Siting Rules to the Legislature on August 31, 2010. The rules, Clearinghouse Rule 10-057, were assigned to the Senate Committee on Commerce, Utilities, Energy and Rail and the Assembly Committee on Energy and Utilities for review. The Senate committee held a hearing on October 13, 2010.<sup>1</sup> The Committee referred the rules back to the Commission on October 29, 2010, requesting modifications. The Commission notified the Committee on November 1, 2010, that it would consider changes to the rule.

This memorandum identifies several possible revisions to the Wind Siting Rules. The revisions are shown in the context of the rule originally sent to the Legislature. The original rule may be seen in the Order Adopting Final Rules signed August 31, 2010. (PSC REF#: 137822.) In this memorandum, proposed deletions to the original rule are shown by strike through and

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<sup>1</sup> The Assembly Committee on Energy and Utilities notified the Commission on November 4, 2010, that it was cancelling its scheduled hearing regarding the rules. Both committees will receive and may review any revisions the Commission submits.

proposed additions are underlined. The possible revisions are listed in numeric order corresponding to the original rule.

This memorandum includes proposed revisions to all of the following:

- Modifies Applicability Provisions.
- Adds an Agricultural Land Use Provision.
- Modifies the Setback Provisions.
- Adds Agricultural Mitigation Issues Provisions.
- Modifies the Decommissioning Provision.
- Modifies the Good Neighbor Payments Provision.
- Adds an Aerial Spraying Payment Provision.
- Adds the Agricultural Mitigation Issues Provision and Aerial Spraying Provision to  
X the list of exemptions for a Small Wind Energy System.

The Commission may adopt, or modify and adopt any of the proposed revisions or may adopt other germane revisions to the Wind Siting Rules. If any revisions are adopted, the modified rules may be resubmitted to the Legislature for review by the appropriate standing committees.

### **Applicability**

This revision clarifies that the rules apply to a political subdivision whenever it may review a proposed wind energy system or regulate a wind energy system. A provision is also added to clarify when the rules apply if an application for a wind energy system is withdrawn and resubmitted to a political subdivision.

**PSC 128.02 Applicability. (1) POLITICAL SUBDIVISION APPLICATIONS.** (a) Except as provided in par. (b), this chapter applies to a political subdivision's review of a proposed wind

~~energy system or regulation of a wind energy system that does not require review by the commission under either s. 196.49 or 196.491~~ under s. 66.0401, Stats.

(b) This chapter does not apply to any of the following:

1. A wind energy system for which construction began before the effective date of this chapter ... [LRB inserts date].
2. A wind energy system placed in operation before the effective date of this chapter ... [LRB inserts date].
3. A wind energy system approved by a political subdivision before the effective date of this chapter ... [LRB inserts date].
4. A wind energy system proposed by an owner in an application filed with a political subdivision before the effective date of this chapter ... [LRB inserts date].

(c) Notwithstanding par. (b) 4., if an owner withdraws an application for a proposed wind energy system that is filed with a political subdivision before the effective date of this chapter ... [LRB inserts date], this chapter applies to the wind energy system if the owner re-files the application with the political subdivision on or after the effective date of this chapter ... [LRB inserts date].

(3) COMMISSION APPLICATIONS. (a) The commission shall consider whether the installation or use of a wind energy system is consistent with the standards specified in this chapter when reviewing an application under s. 196.491(3) (d), Stats., filed on or after the effective date of this chapter... [LRB inserts date].

~~(b) The commission may consider whether the installation or use of a wind energy system is consistent with the standards specified in this chapter when reviewing an application under s. 196.49, Stats., filed on or after the effective date of this chapter... [LRB inserts date].~~

## **Conversion of Land From Agricultural Use**

This provision adds language directing an owner to design a proposed wind energy system to minimize the conversion of land from agricultural use.

### **PSC 128.12 Existing property uses. (1) LAND USE AND COMMERCIAL ENTERPRISES.**

An owner shall make reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed wind turbine site if the land use or commercial enterprise exists when the owner gives notice under s. PSC 128.105 (1), or if complete publicly-available plans for construction are on file with a political subdivision within 30 days of the date the owner gives notice under s. PSC 128.105 (1).

**(2) AGRICULTURAL USE. An owner shall design a wind energy system to reasonably minimize the conversion of land from agricultural use.**

### **Setbacks**

This provision revises the setback distance from Occupied Community Buildings and Nonparticipating Residences to be the lesser of 1,250 feet or 3.1 times the maximum blade tip height.

### **PSC 128.13 Siting criteria. (1) SETBACK DISTANCE AND HEIGHT REQUIREMENTS.**

(a) An owner shall design and construct a wind energy system using the wind turbine setback distances shown in Table 1.

<b>Table 1</b>	
<b>Setback Description</b>	<b>Setback Distance</b>
<b>Occupied Community Buildings</b>	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
<b>Participating Residences</b>	1.1 times the maximum blade tip height
<b>Nonparticipating Residences</b>	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
<b>Participating Property Lines</b>	None
<b>Nonparticipating Property Lines</b>	1.1 times the maximum blade tip height
<b>Public Road Right-of-Way</b>	1.1 times the maximum blade tip height
<b>Overhead Communication and Electric Transmission or Distribution Lines</b> - Not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height
<b>Overhead Utility Service Lines</b> - Lines to individual houses or outbuildings	None

**Agricultural Mitigation Issues**

This addition directs an owner to minimize soil compaction, soil layer mixing, and damage to drainage systems when constructing or decommissioning a wind energy system.

**PSC 128.18 Construction and operation.**

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**(3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS.** (a) An owner shall construct, operate, repair, maintain and replace wind energy system facilities as needed to keep the wind energy system in good repair and operating condition and in a manner that protects individuals from injury.

(am) An owner shall minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land during the construction or decommissioning of the wind energy system. A political subdivision may establish reasonable requirements designed to minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land.

(b) Except for the area physically occupied by the wind energy system facilities, an owner shall restore the topography, soils and vegetation of the project area to original condition after construction is complete, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.

(c) An owner shall carry general liability insurance relating to claims for property damage or bodily injury arising from the construction, operation or decommissioning of the wind energy system and shall include turbine host property owners as additional insured persons on the policy.

### **Decommissioning**

This revision clarifies that the owner may determine the appropriate financial assurances for the owner to use to ensure decommissioning of a wind energy system.

### **PSC 128.19 Decommissioning.**

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(3) FINANCIAL RESPONSIBILITY. (a) The owner of a wind energy system with a nameplate capacity of one megawatt or larger shall maintain proof of the owner's ability to fund the actual and necessary cost to decommission the wind energy system and shall ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

(b) A political subdivision may require an owner of a wind energy system with a nameplate capacity of one megawatt or larger to provide financial assurance of the owner's ability to pay for the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities such as blasting or foundation construction at the wind energy system site. An owner may comply with this paragraph by ~~providing~~ choosing to provide a bond, deposit, escrow account, irrevocable letter of credit, or some combination of these financial assurances, that will ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

(c) A political subdivision may require an owner to provide the financial assurance under par. (b) in an amount up to the estimated actual and necessary cost to decommission the wind energy system. If a political subdivision requires an owner to provide financial assurance under par. (b), the political subdivision may do any of the following:

1. Require the owner to provide the political subdivision with up to 3 cost estimates of the actual and necessary cost to decommission the wind energy system ~~developed~~ that are prepared by third parties agreeable to the owner and the political subdivision.

- ~~2. Require an owner to maintain an external trust account for the purpose of funding the actual and necessary cost to decommission the wind energy system controlled by an independent fiduciary trustee throughout the expected life of the wind energy system and through to completion of the decommissioning activities.~~

3. Require an owner to establish financial assurance that places the political subdivision in a secured position, and that any secured funds may only be used for decommissioning the wind energy system until either the political subdivision determines that the wind energy system has

been decommissioned under sub. (5) (b), or until the political subdivision has otherwise approved the release of the secured funds, whichever is earlier.

4. Require an owner to establish financial assurance that allows the political subdivision to access funds for the purpose of decommissioning the wind energy system if the owner does not decommission the wind energy system when decommissioning is required.

(d) If a political subdivision requires an owner to provide cost estimates under par. (c) 1., a political subdivision may not require the amount of the financial assurance to exceed the average of the cost estimates provided.

(e) A political subdivision may condition its approval of a wind energy system on the owner's compliance with pars. (b) and (c).

(f) During the useful life of a wind energy system, the political subdivision may periodically request information from the owner regarding the industry costs for decommissioning the wind energy system. If a political subdivision finds that the future anticipated cost to decommission the wind energy system is at least 10 percent more or less than the amount of financial assurance previously provided under par. (b), the political subdivision may correspondingly increase or decrease the amount of financial assurance required for the wind energy system. A political subdivision may not adjust the financial assurance under this paragraph more often than once in a 5-year period.

(g) A political subdivision may require an owner to submit to the political subdivision a substitute financial assurance of the owner's choosing under par. (b) if an event occurs that raises material concerns regarding the viability of the existing financial assurance.

## Good Neighbor Payments

This revision establishes the amount of “good neighbor” payment based on the number of turbines located within one-half mile of a nonparticipating residence. The revision also creates a mechanism for automatically adjusting each year the amount of an initial annual payment.

**PSC 128.33 Political subdivision permitted provisions.** A political subdivision may do any of the following in an ordinance or establish any of the following as a condition for approval of an application to construct a wind energy system:

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(3) **MONETARY COMPENSATION.** Require an owner of a wind energy system to offer an agreement that includes annual monetary compensation to the owner of a nonparticipating residence, if the residence is located within 0.5 mile of a constructed wind turbine site. ~~If a political subdivision requires a wind energy system owner to offer such an agreement, the political subdivision may not require the total annual payment offered to any owner of a nonparticipating residence to exceed 25 percent of the amount paid by the wind energy system owner to any owner of a turbine host property receiving payment under a wind energy system lease for one wind turbine.~~ For one turbine located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$600. For two turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$800. For three or more turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$1,000. The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, the initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer

Price Index, as described in s. 196.374 (5) (bm) 2. b., Stats., from the previous year. An agreement offered under this subsection shall specify in writing any waiver of a requirement or right under this chapter and whether the landowner's acceptance of payment establishes the landowner's property as a participating property under this chapter.

### **Aerial Spraying**

This provision allows a political subdivision to require an owner of a wind energy system to offer monetary compensation to a farm operator if the operator is materially impacted by an inability to use aerial spraying on certain crops.

**PSC 128.33 Political subdivision permitted provisions.** A political subdivision may do any of the following in an ordinance or establish any of the following as a condition for approval of an application to construct a wind energy system:

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(3m) AERIAL SPRAYING. Require an owner of a wind energy system to offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located within 0.5 mile of a constructed wind turbine if the farm operator demonstrates all of the following:

(a) Substantial evidence of a history, before the wind energy system owner gives notice under s. PSC 128.105 (1), of using aerial spraying for pest control or disease prevention for growing potatoes, peas, snap beans or sweet corn on all or part of a farm field located within 0.5 mile of a constructed wind turbine.

(b) A material reduction in potato, pea, snap bean or sweet corn production or a material increase in application costs on all or part of a farm field located within 0.5 mile of a constructed wind turbine as a result of the wind energy system's effect on aerial spraying practices.

### **Small Wind Energy Systems**

This provision adds the new aerial spraying provision and the new soil compaction, top soil mixing and drain tile damage provision to the list of exemptions for a small wind energy system.

**PSC 128.60 Exemptions from this chapter.** All of the provisions in this chapter apply to a small wind energy system except ss. PSC 128.14 (4) (d) and (6) (b), 128.15 (1) (c), (3) (b) to (e) and (5), 128.16 (2) to (4), 128.18 (1) (g), (2) (b) and (c), (3) (am), (b) and (c), and (4) (b) to (f), 128.19 (1) (c) to (e), (3) and (4), 128.30 (2) (L) and (m), 128.33 (1) to ~~(3)~~ (3m) and (5), 128.34 (3), 128.36, 128.40 (2) (b) to (e), 128.41 and 128.42.

This provision updates a cross-reference if the addition of subsection (2) to s. PSC 128.12 is adopted.

**PSC 128.61 Modifications to this chapter.** The following provisions in this chapter are modified to apply to a small wind energy system as follows:

...

**(2) LAND USE.** Section PSC 128.12 (1) applies only to existing land uses and enterprises that are located on adjacent nonparticipating properties.

