

Clearinghouse Rule 10-057

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Wind Siting Rules

1-AC-231

NOTICE OF HEARINGS

Hearing Date: Monday, June 28, 2010, 1:00 p.m. and 6:00 p.m.

Hearing Location: City Hall, Legislative Chambers, 160 S. Macy St.,
Fond du Lac, WI

Hearing Date: Tuesday, June 29, 2010, 1:00 p.m. and 6:00 p.m.

Hearing Location: Holiday Inn, 1017 E. McCoy Blvd., Tomah, WI

Hearing Date: Wednesday, June 30, 2010, 1:00 p.m. and 6:00 p.m.

Hearing Location: Public Service Commission, 610 North Whitney Way,
Madison, WI

Comments Due:

Wednesday, July 7, 2010 – Noon

FAX Due:

Tuesday, July 6, 2010 – Noon

Address Comments To:

Sandra J. Paske, Secretary to the Commission
Public Service Commission

P.O. Box 7854

Madison, WI 53707-7854

FAX (608) 266-3957

The Public Service Commission of Wisconsin proposes an order to create Wis. Admin. Code ch. PSC 128 relating to the siting of wind energy systems.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The analysis is included as Attachment A.

TEXT OF PROPOSED RULE

The text of the proposed rule is included as Attachment B.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

It is possible that this proposed rule may have an effect on small business, as defined in Wis. Stat. § 227.114 (1). The business entities this rule may affect are wind energy system developers, owners, or operators. The Commission cannot estimate how many of these entities qualify as a small business.

Small businesses are more likely to be constructing small wind energy systems than other businesses. The rule establishes lesser requirements for small wind energy systems, defined as a system that produces up to 100 kilowatts of electricity. These requirements are described in the analysis, as well as the reporting, bookkeeping, and procedures applicable to a small business. The proposed rule does not impose any additional professional skill requirements.

FISCAL ESTIMATE

Fiscal information is included as Attachment C.

NOTICE OF HEARINGS

NOTICE IS GIVEN that pursuant to Wis. Stat. § 227.16(2)(b), the Commission will hold a public hearing on these proposed rules in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on **June 30, 2010, at 1:00 p.m. and 6:00 p.m.** This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building. 2009 Wisconsin Act 40 requires that hearings regarding these rules also be held in Monroe County and a county other than Dane or Monroe, where developers have proposed wind energy systems. The Commission will also hold public hearings on these proposed rules at City Hall, Legislative Chambers, 160 West Macy Street, Fond du Lac, Wisconsin, **June 28, 2010, at 1:00 p.m. and 6:00 p.m.** and the Holiday Inn, 1017 East McCoy Boulevard, Tomah, Wisconsin, on **June 29, 2010, at 1:00 p.m. and 6:00 p.m.**

WRITTEN COMMENTS

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until **Wednesday, July 7, 2010**, at noon (**Tuesday, July 6, 2010**, at noon, if filed by fax). All written comments must include a reference on the filing to docket 1-AC-231. File by one mode only.

Industry:

Docket 1-AC-231

File comments using the Electronic Regulatory Filing (ERF) system. This may be accessed from the Commission's website <http://psc.wi.gov>.

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the Commission's website at <http://psc.wi.gov>.

If filing by mail, courier, or hand delivery: Address as shown in the box on page 1.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing *cover* sheet MUST state "Official Filing," the docket number 1-AC-231, and the number of pages (limited to 25 pages for fax comments).

CONTACT PERSONS

Questions regarding this matter should be directed to docket coordinator Deborah Erwin at (608) 266-3905 or deborah.erwin@wisconsin.gov. Small business questions may be directed to Anne Vandervort at (608) 266-5814 or anne.vandervort@wisconsin.gov. Media questions should be directed to Teresa Weidemann-Smith, Communications Specialist, Governmental and Public Affairs, at (608) 266-9600. Hearing or speech-impaired individuals may also use the Commission's TTY number; if calling from Wisconsin (800) 251-8345, if calling from outside Wisconsin (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this docket or who needs to get this document in a different format should contact the docket coordinator, as indicated in the previous paragraph, as soon as possible.

Dated at Madison, Wisconsin May 14, 2010

For the Commission:

/s/ Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

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**ANAYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

A. Statutory Authority and Explanation of Authority

This rule is authorized under ss. 196.02 (1) and (3), 196.378 (4g) (b) to (d), and 227.11.

Section 227.11 authorizes agencies to promulgate administrative rules. Section 196.02 (1) authorizes the Commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3) grants the Commission specific authority to promulgate rules. Sections 196.378 (4g) (b) to (d) grants the Commission specific authority to promulgate rules dealing with the siting of wind energy systems.

B. Statute Interpreted

This rule interprets ss. 66.0401 (3) to (6) and 196.378 (4g), Stats. These statutes deal with wind energy system site suitability testing, local processes for wind energy system applications for approval, commission review process, the applicability of wind siting ordinances, and the role of the Commission and the Wind Siting Council.

C. Related Statutes or Rules

Section 196.491 is related because, although these rules specify the restrictions a political subdivision may impose on the construction and operation of a wind farm with an operating capacity of less than 100 megawatts, the Commission is required to consider these requirements when determining whether to grant a certificate of public convenience and necessity (CPCN) to a wind energy system with an operating capacity of 100 megawatts or more.

D. Brief Summary of Rule

2009 Wisconsin Act 40 (Act 40) establishes statewide criteria for the installation or use of a wind energy system with a nominal operating capacity of less than 100 megawatts, and helps ensure consistent local procedures for the review and approval of such systems. Act 40 requires the Commission to promulgate a variety of rules that specify the conditions a city, village, town, or county (political subdivision) may impose on such a system. If a political subdivision chooses to regulate such systems, its ordinances may not be more restrictive than the Commission's rules. Appeals regarding the rules and their application may be made to the Commission.

Currently, an electric generating facility with a nominal operating capacity of 100 megawatts or more may not be constructed unless the Commission grants a certificate of public convenience and necessity. Act 40 requires the Commission to consider the restrictions specified in these rules when determining whether to grant a certificate of public convenience and necessity.

The rule is broken down into three general categories: developer responsibilities, political subdivision procedure and commission procedure.

DEVELOPER RESPONSIBILITIES

Before filing an application to construct a wind energy system, a developer must provide notice to landowners within one mile of the system, all political subdivisions within which the system may be located, the Wisconsin department of natural resources, Wisconsin department of transportation (DOT), and emergency first responders in the area. If the system has a capacity of 100 kilowatts or larger (large system), notice must be filed with the commission. A transportation plan including plans for mitigating and repairing road damage must be prepared in consultation with DOT, and an emergency response plan must be prepared in consultation with first responders.

Any wind easement or lease that is entered into must be in writing and wind easements must be filed with the county register of deeds. In this way, anyone wanting to buy the property will be aware of the wind easement. Certain provisions are required and others prohibited in wind leases.

A developer must consider existing land uses and commercial enterprises on nonparticipating land within one mile of the proposed system site and must meet certain setback requirements described in the rule.

A political subdivision may not set height or distance requirements that are more stringent than in this rule or certain requirements already in existence, such as Federal Aviation Administration (FAA) standards for public use airports. A wind energy system may not be built in the path of existing line-of-sight communications technologies.

The rule sets noise, shadow flicker, and television/radio and cell telephone interference criteria and provides for mitigation efforts. It also provides for stray voltage testing. Construction, electrical, operation and maintenance standards are set. A complaint process and requirements for decommissioning are established, including requirements for site restoration and demonstrating financial responsibility to complete decommissioning.

POLITICAL SUBDIVISION PROCEDURE

The rule specifies information that must be included in an application for approval by a political subdivision and provides procedures if the application is found to be incomplete. The rule allows for a joint application review process for projects proposed in more than one political subdivision. A reasonable application fee may be charged. On the same day an application is filed, detailed notice must be sent to property owners and residents within one-half mile of participating properties. The rule requires that political subdivisions hold at least one public hearing and provide for written comments concerning the project. A political subdivision must issue a written decision and keep a written record of its decision-making.

The rule also specifies certain things that may, and may not, be included in a local ordinance or as a condition for project approval. It allows for modifications to approved systems and a monitoring committee to examine complaints and compliance.

COMMISSION PROCEDURE

This section specifies the process for commission review of political subdivision decisions and enforcement actions. It identifies what must be in a request for review and what the political subdivision must provide to the commission. Notice of the appeal must be provided, depending on the situation, to the political subdivision or the energy system developer, owner or operator. The Commission may hold a hearing on the matter. Finally, the rule establishes timeframes for action if the Commission remands the decision to the political subdivision.

E. Comparison With Existing or Proposed Federal Legislation

There are a number of federal laws that interact with the issues in this rulemaking, although the Commission is not aware of any that deal with the specific requirements that a political subdivision may impose. A few of the federal laws that may interrelate include the National Environmental Policy Act, 42 U.S.C. 4321 *et. seq.*, the Endangered Species Act, 16 U.S.C. 1531–1544, and 14 C.F.R. Pt. 77, which requires a Federal Aviation Administration airspace study before constructing certain types of projects.

F. Comparison With Similar Rules in Surrounding States

ILLINOIS

Illinois statutes provide that a municipality or county may regulate wind farms within its zoning jurisdiction and within the 1.5 mile radius surrounding its zoning jurisdiction. A county or municipality may not require a wind tower or other renewable energy system that is used exclusively by an end-user to be setback more than 1.1 times the height of the system from the end-user's property line. A setback requirement imposed by a municipality on a system may not be more restrictive.

There must be at least one public hearing not more than 30 days prior to a siting decision by the county board. Notice of the hearing must be published in a newspaper of general circulation in the county.

MICHIGAN

Michigan statutes require the Michigan Public Service Commission (Michigan PSC) to designate the area(s) of the state likely to be most productive of wind energy. In making its determination, the Michigan PSC is required to base its decision on the findings of a Wind Energy Resource Zone Board, a cost/benefit analysis and various other factors. At the same time, the Michigan PSC was to report to the legislature about the effect that local setback requirements and noise limitations might have on wind energy development, including any recommendations the

Michigan PSC had for legislation. The Michigan PSC has issued both documents and, in its report to the legislature, recommended that setback requirements and noise limitations should continue to be decided at the local level where feasible so that the needs of local citizens can be appropriately considered. The Michigan PSC has a Renewable Energy Group which it intends to have sponsor periodic meetings to provide needed scientific information to decision-makers.

In 2008 the Energy Office, Michigan Department of Labor and Economic Growth, put out guidelines to help local governments, other than those in urban areas, develop siting guidelines. The guidelines contain recommended zoning language for local governments to use if they amend their zoning ordinance to address wind energy systems. They recommend different requirements for on-site use (generally small) and utility grid (generally large) wind energy systems.

On-site systems are systems designed to primarily serve the needs of a home, farm, or small business with tower heights of 20 meters or less.

For these systems, the guidelines establish a setback designed to protect neighbors in the event of a tower failure. The minimum recommended setback from the landowner's property lines is the height of the turbine, including the top of the blade in its vertical position. It is recommended that all parts of a wind energy system structure, including guy wire anchors, be setback the greater of ten feet or the zoning district setback distance from the landowner's property lines.

It is recommended that sound levels for on-site use systems not exceed 55 dB(A) at the property line closest to the wind energy system, except for short-term events such as utility outages or severe wind storms. It also recommended that if the ambient sound pressure level exceeds 55 dB(A), the standard shall be ambient dB(A) plus 5 dB(A).

Finally, the guidelines recommend that an on-site use wind energy system have both lightning protection, and automatic braking, governing, or a feathering system to prevent uncontrolled rotation or over speeding. If a tower is supported by guy wires, it is recommended that the wires be clearly visible to a height of at least six feet above the guy wire anchors and that the minimum vertical blade tip clearance from grade be 20 feet for a wind energy system employing a horizontal axis rotor.

Utility grid systems are systems designed to provide power to wholesale or retail customers using the electric grid, and on-site systems with tower heights over 20 meters.

For these systems, the guidelines establish a setback designed to protect neighbors in the event of a tower failure. The minimum recommended setback from the landowner's property lines is the greater of local zoning setbacks, road right of way setbacks, or the height of the turbine, including the top of the blade in its vertical position.

It is recommended that sound levels for utility grid systems not exceed 55 dB(A) at the property line closest to the wind energy system, except that this level may be exceeded for up to

three minutes in any hour of the day. It also recommended that if the ambient sound pressure level exceeds 55 dB(A), the standard shall be ambient dB(A) plus 5 dB(A).

During the application process a developer must analyze shadow flicker impact and expected durations of the flicker from sunrise to sunset over the course of a year, as well as mitigation measures to eliminate or minimize these impacts. It must also submit a planning commission approved decommissioning plan and complaint resolution process.

No system can be installed in a way that causes interference unless the applicant provides a replacement signal to at least the pre-installation level. It also cannot be installed within the path of a line-of-sight communication technology unless doing so will produce only insignificant interference.

MINNESOTA

The Minnesota state statute defines a large wind system as 5,000 kilowatts or more. Applications for a permit to site such a system must be filed with the Minnesota Public Utility Commission (Minnesota PUC). The only exception to this general rule is that a county board may assume responsibility for processing permit applications for a large wind system with a capacity of less than 25,000 kilowatts. Under the administrative rule, a local government may establish siting and construction requirements for a small system, meaning under 5,000 kilowatts.

The statutes require that the Minnesota PUC establish general permit standards, including appropriate property line set-backs, governing site permits. These standards apply to permits issued by counties and to permits issued by the Minnesota PUC for large wind systems with a capacity of less than 25,000 kilowatts. The Minnesota PUC or a county may grant a variance from a general permit standard if the variance is found to be in the public interest.

The statute preempts all zoning, building, or land use rules, regulations, or ordinances adopted by local government units. However, a county may adopt standards for large wind systems that are more stringent than those in Minnesota PUC rules or permit standards. The Minnesota PUC, in considering a permit application for system in a county that has adopted more stringent standards, must consider and apply those more stringent standards, unless it finds good cause not to apply those standards.

The administrative rule contains detailed information about what must be in an application, including information about wind conditions at the proposed site, environmental factors, project design, construction and operation details, and decommissioning plans.

Setbacks developed by the Minnesota PUC include:

- Wind Access Buffer (setback from lands and/or wind rights lot under permittee's control) – 3 rotor diameters (RD) (760 - 985 ft) on east-west axis and 5 RD (1280-1640ft) on north-south axis,
- Homes – at least 500 ft and sufficient distance to meet state noise standards, and road rights-of-way - no closer than 250 feet from the edge of public road rights-of-way. Noise standards for residential and similar areas are:

Daytime		Nighttime	
L ₅₀ ¹	L ₁₀ ²	L ₅₀	L ₁₀
60	65	50	55

If disruptions to television, microwave, telecommunication, navigation, or other facilities occur, the permittee must take whatever steps are necessary to correct the problem.

Prior to construction, the permittee must submit procedures for handling complaints. It must also prepare an emergency plan and register with the area 911 system. Finally, it must make arrangements for the use, maintenance and repair of roads that it will use.

Within 15 days after an application is accepted, notice must be provided to the county board, city council, township board, and each landowner within the system site. Notice must also be published in a newspaper of general circulation in the area. The Minnesota PUC must provide notice to those persons it knows are interested in the proposed project.

OHIO

Ohio’s statutes require that a certificate be obtained from the state power siting board before constructing an economically significant wind farm, one with a capacity of 5 megawatts or more, and requires that the application process be identical, to the extent practicable, to the process applicable to certificating major utility facilities. It orders that a rule be written including the following minimum setbacks:

- For the wind farm property - at least 1.1 times the total height of the turbine.
- For the exterior of the nearest habitable residential structure on property adjacent to the wind farm – at least 750 feet measured from the tip of the nearest blade at ninety degrees.

Ohio has an administrative rule with very detailed requirements for applications including project description, project area analysis, financial data, technical data, environmental data, and ecological and social data. Applications must include information such as: potential

¹ L₅₀ means the sound level, expressed in dB(A), which is exceeded 50 percent of the time for a one hour survey, as measured by test procedures approved by the Minnesota PUC.

² L₁₀ means the sound level, expressed in dB(A), which is exceeded ten percent of the time for a one hour survey, as measured by test procedures approved by the Minnesota PUC.

impact from ice throw and blade shear at the nearest property boundary, including plans to minimize it; the potential impact from shadow flicker at adjacent residential structures and primary roads, including plans to minimize it; the potential for interference with radio and television reception and measures that will be taken to minimize it; the anticipated impact to roads and bridges and measures planned for returning them to their prior condition; and a plan for decommissioning, including a discussion of any financial arrangements designed to ensure the requisite financial resources.

WISCONSIN

All of the rules, including Wisconsin's, differentiate between small systems and larger systems.

In Minnesota, applications are generally filed with the Minnesota PUC, although political subdivisions may deal with applications for smaller systems. Political subdivisions can have more stringent requirements, and the Minnesota PUC must apply them unless there is good cause not to do so. In Ohio, applications are filed with a state siting board. In the other states, including Wisconsin, applications are generally filed with a local political subdivision.

Like some of the other states, the Wisconsin rule requires large system development applicants to address issues such as shadow flicker and possible mitigation, road damage and possible mitigation, signal interference and possible mitigation, and decommissioning. Like others, it requires the establishment of a complaint process. Like Michigan, it does not allow placement in the path of a line-of-sight communications technology, although Michigan allows it if interference would be insignificant.

All of the states except Michigan have some setback and noise requirements. In Michigan there are some guidelines, but not requirements, which are left to political subdivisions. Wisconsin's noise requirement is in the same range as that of other states. Setback requirements in the different states vary somewhat by what the setback is measured from, for example a property line or a residence. Wisconsin's setbacks, other than from certain property lines, is similar to those of other states. This is not surprising as these distances are generally set to ensure that if a turbine or other facilities fell over they would not fall on a residence or other buildings. Wisconsin's setback for the property lines of nonparticipating properties and buildings such as schools is larger than those specified in other states.

Because Minnesota's PUC reviews certain applications, its rules contain more detail about what must be in applications. Ohio also has detailed application requirements, perhaps because the applications are filed with a state siting board. The Wisconsin requirements, while dealing with many of the same topics, are less detailed in the rules. The rules require the Commission to publish detailed siting criteria. The states where a decision is made by a political subdivision rather than a state entity do not have an appeal process like that in the Wisconsin law.

G. Data and Methodology

In creating this rule, the Commission considered information from a wide variety of sources including:

- Advice and suggestions offered by members of the Wind Siting Council.
- Wind-siting regulations and guidelines from a variety of states, including those immediately adjacent to Wisconsin.
- A wide variety of local ordinances and community agreements throughout the state.
- Various white papers and best practices.
- Papers from a conference on wind-siting effects.
- Commission experience and precedent in wind siting decisions.
- Environmental impact statements prepared for wind projects in Wisconsin.
- Technical and scientific research and writing on wind siting.
- Presentations and lectures given on wind siting issues.
- Research by non-profit organizations on wind siting.
- Research by educational institutions on wind siting topics.
- Expert testimony on wind siting issues.
- Other state commissions' investigations and precedent on wind siting.
- Research and writing by other states' health institutions regarding wind siting.
- Consulting professionals with experience in public health in Wisconsin.
- Court cases on wind siting issues and political subdivision jurisdiction in Wisconsin to affect wind siting.
- Joint Development agreements between wind developers and political subdivisions.
- Lease agreements for wind development.
- Complaint resolution documentation from past complaints about wind projects.
- Wisconsin Public Service Commission Noise Measurement Protocols.
- Wisconsin Public Service Commission Stray Voltage Protocols.
- Wisconsin Public Service Commission Application Filing Requirements.
- Code of Federal Regulations regarding example emergency and safety regulations in gas pipeline safety regulations.
- Federal Aviation Administration processes, standards and provisions.
- Other Wisconsin agency processes regarding political subdivision decision-making, such as Department of Agriculture, Trade and Consumer Protection regulations regarding siting concentrated animal feeding operations.
- Research, writing and presentations by the federal government and national energy labs on wind siting issues.
- Public comments received in Commission cases.
- Public comments received by Commission staff outside of Commission cases.

H. Effect on Small Business

The business entities this rule may affect are wind system developers, owners or operators and business owners that may wish to install small wind energy systems. The Commission cannot estimate how many of these qualify as small businesses.

The rule differentiates between large projects and small projects (100 kilowatts or less), in part to make it easier for small businesses to install small systems and in part because it seems likely that a small wind energy development company would not be taking on a very large project. Many of the approval decisions are left in the hands of political subdivisions, although their standards cannot be more restrictive than those in the rule. As a result, some political subdivisions may make additional efforts to ease any burdens on small businesses. Some of the differences contained in this rule for developers of small systems are:

- Lessened notice requirements.
- No advance transportation plan required.
- No advance emergency evacuation plan required.
- The minimum setback despite a landowner waiver is somewhat less.

In addition, a political subdivision may only establish certain requirements for a large system developer. These include:

- An advance written procedure for shutting down in case of a wind energy emergency.
- Proving financial ability to pay for operation, maintenance and decommissioning.
- Providing the political subdivision with a list of tax parcel numbers for property within one mile of the system.
- Specific requirement to cooperate with studies about bat and bird migratory patterns.
- Annual monetary compensation to an owner of a nonparticipating residence within one-half mile of a turbine site.
- Filing an annual operations and maintenance report.

Under certain circumstances, a political subdivision does not have to hold a hearing. Further, the rule allows a political subdivision to set a fee based on the size and complexity of the system.

I. Agency Contact Persons

Questions regarding this rule should be directed to Deborah Erwin, Docket Coordinator, Gas and Energy Division, at (608) 266-3905 or deborah.erwin@wisconsin.gov. Small business questions may be directed to Anne Vandervort, Gas and Energy Division, at (608) 266-5814 or anne.vandervort@wisconsin.gov. Media questions should be directed to Teresa Weidemann-Smith, Governmental and Public Affairs at (608) 266-9600. Hearing or speech-impaired individuals may also use the Commission's TTY number; if calling from Wisconsin use (800) 251-8345, if calling from outside Wisconsin use (608) 267-1479.

J. Comments

Comments on this rule may be submitted as outlined in the Notice of Hearings.

K. Accommodation

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the docket coordinator listed above.

TEXT OF PROPOSED RULE

SECTION 1. Chapter PSC 128 is created to read:

CHAPTER PSC 128

WIND ENERGY SYSTEMS

Subchapter I General

Subchapter II Developer Requirements

Subchapter III Political Subdivision Procedure

Subchapter IV Commission Procedure

Subchapter I

General

PSC 128.01 Definitions. In this chapter:

(1) “Commission” means the public service commission.

(2) “Developer” means a person involved in acquiring the necessary rights, permits and approvals, and otherwise planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system. “Developer” includes, prior to completion of construction of a wind energy system, an owner and an operator.

(3) “Decommissioning” means removal of all of the following:

(a) The above ground portion of a wind energy system, including wind turbines and related facilities, except for access roads if removal has been waived by the property owner.

(b) All below ground facilities, except for underground collector circuit facilities, and concrete structures four feet or more below grade.

(4) “DNR” means the Wisconsin department of natural resources.

(5) “Large wind energy system” means a wind energy system with an installed nameplate capacity of greater than 100 kilowatts.

(6) “Maximum blade tip height” means the nominal hub height plus the nominal blade length, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, “maximum blade tip height” means the actual hub height plus the blade length.

(7) “Nameplate capacity” means the nominal generating capacity, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

(8) “Nonparticipating property” means real property for which there is no agreement between the landowner and developer that permits the construction of any part of a wind energy system on the property.

(9) “Nonparticipating residence” means an occupied permanent residence located on a nonparticipating property.

(10) “Occupied community building” means a school, church, daycare facility or public library.

(11) “Operator” means the person responsible for the operation and maintenance of a wind energy system.

(12) “Owner” means a person with an ownership interest in a wind energy system.

(13) “Participating property” means any of the following:

(a) Real property which is subject to an agreement between the landowner and the developer, owner, or operator for the construction of any portion of a wind energy system on the property.

(b) Real property that is the subject of an agreement that includes all of the following terms:

1. Provides for the payment of monetary compensation to the landowner from the developer, owner or operator regardless of whether any part of a wind energy system is constructed on the property.

2. Specifies in writing that the landowner's acceptance of payment establishes the landowner's property as a participating property.

(14) "Political subdivision" has the meaning given in s. 66.0401 (1e) (c), Stats.

(15) "Residence" includes a permanent occupied personal residence, hospital, community-based residential facility, residential care apartment complex or similar facility, and nursing home.

(16) "Regulation" includes any ordinance or resolution adopted by the governing body of a political subdivision relating to a wind energy system and any contract or agreement entered into by a political subdivision and a developer relating to a wind energy system.

(17) "Shadow flicker" means a pattern of changes in light intensity resulting from the shadow of rotating wind turbine blades being cast on a residence or an occupied community building.

(18) "Small wind energy system" means a wind energy system that has an installed nameplate capacity of 100 kilowatts or less.

(19) "Turbine host property" means real property which is subject to an agreement between a landowner and a developer, owner, or operator for the construction of one or more wind turbines.

(20) “Wind easement” means a written document that creates a legal interest in real property that permits a developer or owner to place and construct a wind turbine or associated facilities on the property.

(21) “Wind energy system” has the meaning given in s. 66.0403 (1) (m), Stats.

(22) “Wind lease” means a written agreement between a landowner and a developer, owner or operator that establishes terms and conditions associated with the placement or construction of a wind turbine or associated facilities on a landowner’s property.

PSC 128.02 Applicability. (1) (a) Except as provided in par. (b), this chapter applies to wind energy systems.

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

1. A wind energy system for which a certificate of public convenience and necessity application has been filed with the commission before the effective date of this chapter...[LRB inserts date].
2. A wind energy system for which construction began before the effective date of this chapter ...[LRB inserts date].
3. A wind energy system placed in operation before the effective date of this chapter ... [LRB inserts date].
4. A wind energy system approved by a political subdivision before the effective date of this chapter ... [LRB inserts date].
5. A wind energy system proposed by a developer in an application filed before the effective date of the chapter ... [LRB inserts date] with a political subdivision that has an established procedure for review of applications for wind energy systems.

(c) If a developer intends to submit an application for the installation or use of a wind turbine with a maximum blade tip height exceeding 500 feet or for a wind energy system proposed to be located in Lake Michigan or Lake Superior, the developer shall file a petition with the commission for the commission to promulgate rules for the use and installation of such wind energy systems.

(2) Nothing in this chapter shall preclude the commission from giving individual consideration to exceptional or unusual situations and applying requirements to an individual wind energy system that may be lesser, greater, or different from those provided in this chapter.

Subchapter II

Developer Requirements

PSC 128.10 Development of a wind energy system; Notice requirements. (1) GENERAL NOTIFICATION REQUIREMENTS. (a) At least 270 days before a developer files an application to construct a wind energy system, or 180 days before the planned start of construction of a wind energy system, whichever is earlier, a developer shall provide written notice of the planned wind energy system to landowners within one mile of the planned wind energy system and to all political subdivisions within which the wind energy system may be located. For a large wind energy system, a developer shall file a copy of the notice with the commission.

(b) The developer shall include all of the following in the notice under par. (a):

1. A complete description of the wind energy system, including the number and size of the wind turbines.
2. A map showing the planned location of the wind energy system.
3. Contact information for the developer.
4. A list of all potential permits or approvals the developer anticipates may be necessary for construction of the wind energy system.
5. Whether the developer is requesting a joint application review process under s. PSC 128.30(7) and the names of any other political subdivision that may participate in the joint review process.

(2) DNR NOTIFICATION. (a) At least 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if no application process is required by the political subdivision, the developer shall notify the DNR of the proposed wind energy system and the proposed location of all wind energy system facilities. A developer shall consult with the DNR and incorporate into wind energy system siting decisions required permitting considerations for wetlands, waterways, construction site erosion control, and threatened or endangered resources.

(3) TRANSPORTATION NOTIFICATIONS. (a) At least 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if no application process is required by the political subdivision, the developer shall notify the Wisconsin Department of Transportation of the proposed wind energy system and the proposed location of all wind energy system facilities. The developer shall also notify the highway department of any political subdivision within which the wind energy system may be located.

(b) For a large wind energy system, a developer shall prepare a transportation plan, in consultation with the Department of Transportation and affected political subdivisions, that minimizes impacts to existing traffic patterns, adheres to established road weight limits and provides for mitigating, assessing and repairing, at the developer, owner or operator's expense, road damage caused by construction and operation of the wind energy system.

(5) EMERGENCY SERVICE NOTIFICATIONS. (a) At least 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if no application process is required by the political subdivision, the developer shall notify all of the following of the proposed wind energy system:

1. Emergency first responders including fire, police, ambulance and air ambulance services serving the proposed wind energy system location.
2. Emergency first responders of a political subdivision within which the wind energy system may be located.

(b) For a large wind energy system, the developer shall consult and coordinate with local first responders and air ambulance services regarding the development of an emergency evacuation plan, including the locations of alternate landing zones for emergency services aircraft. The developer shall file the final plan with the political subdivision, using confidential filing procedures if necessary.

PSC 128.11 Real property provisions. (1) WIND EASEMENT. (a) A property owner may grant another person a wind easement in the same manner and with the same effect as a

conveyance of an interest in real property. A wind easement shall be in writing and shall be filed with the register of deeds for the county in which the property is located.

(b) A wind easement shall include a legal description of the property subject to the wind easement.

(2) WIND LEASE REQUIREMENTS. A wind lease shall include provisions that require all of the following:

(a) Require the developer, owner and operator of the wind energy system to comply with all federal, state and local laws and regulations applicable to the wind energy system.

(b) Permit the property owner to terminate the wind lease if the portion of the wind energy system located on the property has not operated for a period of at least 18 months unless the property owner receives the normal minimum payments that would have occurred if the wind energy system had been operating during that time. In this paragraph, “normal minimum payments” means the minimum payments as provided in the wind lease, or if not provided for in the wind lease, payments at least equal to the periodic payments received by the property owner in the last full calendar year that the wind energy system was in full operation.

(c) Specify the circumstances under which the developer, owner or operator of the wind energy system may withhold payments from the property owner.

(d) Permit the property owner to rescind an executed wind lease within 3 business days of signing the wind lease.

(3) WIND LEASE PROHIBITIONS. A wind lease may not include provisions that require any of the following:

(a) Require the parties to maintain the confidentiality of any terms of a proposed wind lease except that the parties may include a confidentiality agreement regarding the compensation terms contained in the final signed wind lease.

(b) Make the property owner liable for any property tax associated with the wind energy system or other equipment related to the production of electricity by the wind energy system.

(c) Make the property owner liable for any violation of federal, state or local laws and regulations by the developer, owner or operator of the wind energy system.

(d) Make the property owner liable for any damages caused by the wind energy system or the operation of the wind energy system, including liability or damage to the property owner or to third parties.

(4) MITIGATION AGREEMENTS. A developer, owner or operator may not, as a condition of accepting any benefit to settle a noise, signal interference, stray voltage or shadow flicker mitigation issue, require a property owner to keep the settlement confidential or require the property owner to waive any right to make a future claim about an unrelated issue.

PSC 128.12 Existing property uses. A developer shall make reasonable efforts to ascertain and accommodate existing land uses and commercial enterprises located on nonparticipating properties within one mile of a proposed wind turbine site.

PSC 128.13 Siting criteria. (1) DISTANCE AND HEIGHT REQUIREMENTS. (a) A developer shall design and construct a wind energy system using the wind turbine setbacks shown in Table 1.

Table 1	
Setback Description	Setback Distance
Occupied Community Buildings	3.1 times the maximum blade tip height
Participating Residences	1.5 times the maximum blade tip height
Nonparticipating Residences	3.1 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.1 times the maximum blade tip height
Public Road Right-of-Way	1.1 times the maximum blade tip height
Wetlands; Ordinary High Water Mark of Lakes and Waterways	1.1 times the maximum blade tip height
Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height
Overhead Utility Service Lines - Lines to individual houses or outbuildings	None

(b) Wind turbine setback distances shall be measured as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.

(c) A developer shall work with a political subdivision to site wind turbines to minimize individual hardships.

(d) The owner of a participating residence, occupied community building or nonparticipating residence may waive the wind turbine setbacks in Table 1 for those structures, except that the setback for a large wind energy system may not be less than 1.5 times the maximum blade tip height, and the setback for a small wind energy system may not be less than 1.1 times the maximum blade tip height.

(2) POLITICAL SUBDIVISION CRITERIA. (a) A political subdivision may not establish distance or height requirements different than those in this chapter.

(b) A political subdivision may not set height or distance limitations for a wind turbine near a public use airport or heliport that are more restrictive than existing airport and airport approach protection provisions under ss. 114.135 and 114.136, Stats. If no provisions have been established for public use airports or heliports under ss. 114.135 or 114.136, Stats., the political subdivision may adopt wind turbine height or distance provisions that are based on, but not more restrictive than, the federal aviation administration obstruction standards in CFR title 14, part 77.

(c) A political subdivision may not set height or distance limitations for wind turbines near a private medical facility heliport used for air ambulance service that are more restrictive than federal aviation administration obstruction standards that apply to public use heliports.

(d) A political subdivision may not set height or distance limitations for a wind turbine near a private use airport.

(e) A political subdivision may not establish long-term land use planning requirements or practices that preclude the construction of a wind turbine or a wind energy system within the political subdivision's jurisdiction.

(3) LINE-OF-SIGHT COMMUNICATION TECHNOLOGIES STANDARD. The developer, owner or operator may not construct wind energy system facilities within the path of existing line-of-sight communication technologies. A political subdivision may require a developer to provide information showing that wind turbines and other wind energy system facilities will not be placed within the path of existing line-of-sight technologies.

PSC 128.14 Noise Criteria. (1) PLANNING. A developer shall comply with the noise standards in this section when making wind turbine siting decisions.

(2) NOISE STANDARD. (a) Compliance with noise limits shall be measured or otherwise evaluated at the outside wall of the nonparticipating residence or occupied community building. If sound level measurements are used to evaluate compliance, those measurements shall be made at the outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the resident. The developer may take additional measurements to evaluate compliance in addition to those specified by this section.

(b) Except as provided in sub. (3)(a) and (d), a developer shall operate the wind energy system in a manner that does not exceed 50 dBA at any nonparticipating residence or occupied community building existing on the date of approval of the wind energy system by the political subdivision.

(3) MITIGATION. (a) A developer, owner or operator shall test for compliance with the noise limits upon complaint by a nonparticipating resident. If the complaint relates to noise during nighttime hours, the noise limit for those areas related to the complaint shall be reduced to 45 dBA during nighttime hours and the developer, owner or operator shall ensure the seasonally-reduced nighttime noise limit is met. For purposes of this paragraph, nighttime hours are the hours between 10:00 p.m. to 6:00 a.m. daily, from April 1 to September 30.

(b) Methods available for the developer, owner or operator to comply with noise limits shall include operational curtailment of a wind turbine.

(c) A developer shall provide notification of the requirements of this section to potentially-affected owners of nonparticipating residences and occupied community buildings before the initial operation of the wind energy system.

(d) In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, whistle, screech, or hum, the developer, owner or operator shall promptly take corrective action to eliminate the cause of the steady pure tone. Operational curtailment of a wind turbine during nighttime hours may be used to comply with this paragraph until the cause of the steady pure tone can be permanently eliminated. This paragraph does not apply to rhythmic sound that may be generated by the rotation of wind turbine blades.

(e) A developer shall evaluate compliance with the noise limits as part of pre- and post-construction noise studies. A developer, owner or operator shall conduct pre- and post-construction noise studies as described in the most current version of the noise measurement protocol.

(f) The commission shall establish a noise measurement protocol, which shall contain minimum requirements for pre- and post-construction noise studies. The commission may revise the noise measurement protocol as necessary. The commission shall make the noise measurement protocol available to the public on the commission's website.

(g) An owner of an affected residence may relieve the developer of the requirement to meet any of the noise requirements in this section at the affected residence by written contract with the developer. Unless otherwise provided in a contract signed by an owner of an affected residence, a waiver by an owner of an affected residence is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned.

PSC 128.15 Shadow flicker. (1) **PLANNING.** A developer shall consider shadow flicker in wind turbine siting decisions. A developer shall plan the proposed wind energy system in a manner that minimizes shadow flicker at an occupied community building or participating or nonparticipating residence to the extent reasonably practicable. A developer shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a large wind energy system.

(2) **STANDARD.** The developer shall design a wind energy system so that computer modeling indicates that no nonparticipating residence would experience more than 30 hours per year of shadow flicker.

(3) **MITIGATION.** (a) A developer, owner and operator shall work with an owner of a residence to mitigate the effects of shadow flicker. The developer shall provide shadow flicker mitigation for a residence experiencing 25 hours per year or more of shadow flicker. The developer shall

model shadow flicker and a residence is eligible for mitigation if computer modeling shows that shadow flicker exceeds 25 hours per year at the residence. The owner of the residence is not required to document the actual hours per year of shadow flicker if modeling indicates the residence is eligible for mitigation. A residence that exceeds 25 hours per year of shadow flicker based on records kept by the resident shall also be eligible for mitigation.

(b) A developer, owner or operator may provide shadow flicker mitigation for residences experiencing less than 25 hours per year of shadow flicker.

(c) The requirement under par. (a) to mitigate shadow flicker at an eligible residence is triggered when the developer, owner or operator receives a complaint regarding shadow flicker. If shadow flicker mitigation is required, the developer, owner or operator shall allow the owner of the residence to choose a preferred reasonable mitigation technique, including installation of blinds or plantings at the developer, owner or operator's expense.

(d) A developer, owner or operator shall provide notification to the owners of potentially-affected residences of the provisions of this section before initial operation of the wind energy system.

(e) An owner of an affected residence may by written contract waive the developer, owner or operator's requirement to provide shadow flicker mitigation. A waiver by an owner of an affected residence is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned.

PSC 128.16 Signal interference. (1) PLANNING. A developer shall consider radio, television and cellular telephone signal interference in wind turbine siting decisions and shall use

reasonable efforts to avoid causing such interference to the extent practicable. A political subdivision may establish reasonable standards regarding radio, television, cellular telephone interference.

(2) RADIO AND TELEVISION INTERFERENCE MITIGATION. A developer, owner or operator shall use reasonable efforts to mitigate radio and television signal interference to the extent practicable. Before implementing remedial measures, the developer, owner or operator shall consult with affected residents regarding the preferred reasonable mitigation solutions for radio and television interference problems. A developer, owner or operator shall mitigate radio and television interference by making a resident's preferred reasonable mitigation solution permanent.

(3) CELLULAR TELEPHONE INTERFERENCE MITIGATION. A developer, owner or operator shall use reasonable efforts to mitigate cellular telephone signal interference to the extent practicable. The developer, owner or operator shall work with affected cellular providers to provide adequate coverage in the affected area. Acceptable mitigation techniques for lost or weakened cellular telephone communications include installing an additional micro cell, cell, or base station facility to fill in the affected area. The micro cell, cell, or base station may be installed on a structure within the wind energy system.

PSC 128.17 Stray voltage. (1) STRAY VOLTAGE TESTING REQUIRED. Developer, owner, or operator shall work with the local electric distribution companies to test for stray voltage at all dairy and confined animal operations within one-half mile of any wind energy system facility, before any construction that may interfere with testing commences and again

after construction of the wind energy system is completed. Before any testing, a developer, owner or operator shall work with commission staff to determine the manner in which stray voltage measurements will be conducted and on which properties.

(2) RESULTS OF TESTING. A developer, owner, or operator shall provide to commission staff the results of stray voltage testing.

(3) REQUIREMENT TO RECTIFY PROBLEMS. Developer, owner or operator shall work with the electric distribution utilities and farm owners to rectify any stray voltage problems arising from the construction and operation of the wind energy system.

PSC 128.18 Construction and operation. (1) PHYSICAL CHARACTERISTICS. (a)

A developer, owner or operator may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. A developer, owner or operator may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. A developer, owner or operator may attach a safety feature or wind monitoring device to a wind turbine.

(b) A developer, owner or operator shall ensure that a wind turbine has a neutral finish.

(c) A developer, owner or operator shall install lighting that complies with standards established by the federal aviation administration.

(d) A developer, owner or operator of a wind turbine shall ensure that a wind turbine is not climbable except by authorized personnel.

(e) An owner or operator of a wind energy system shall ensure that all access doors to the wind turbines and electrical equipment are locked when authorized personnel are not present.

(f) A developer, owner or operator of a wind energy system shall place appropriate warning signage on or at the base of each wind turbine.

(g) An owner or operator of a wind energy system shall post and maintain up-to-date signs containing a twenty-four hour emergency contact telephone number, information identifying the owner or operator, and sufficient information to identify the location of the sign within the wind energy system. An owner or operator shall post these signs at every intersection of a wind energy system access road with a public road.

(2) ELECTRICAL STANDARDS. (a) A developer, owner or operator shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and Wis. Admin. Code ch. PSC 114 and shall construct, maintain, and operate all wind energy system facilities in a manner that complies with the national electrical code.

(b) A developer shall construct collector circuit facilities underground to the extent practicable.

(c) A developer, owner or operator shall establish an inspection schedule for all overhead collector circuits to ensure that third-party facilities such as cable television and telecommunications cables are not attached and bonded to overhead collector circuit grounding. If third-party facilities are found attached to the overhead collector facilities, developer shall ensure that the third-party facilities are promptly removed.

(3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS. (a) A developer, owner or operator 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.

(b) Except for the area occupied by the wind energy system and related facilities, including permanent access roads, a developer shall restore the topography, soils and vegetation of the project area to original condition after construction is complete.

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

(4) EMERGENCY PROCEDURES. (a) In this subsection, “wind energy system emergency” means a condition or situation at a wind energy system that presents a significant threat of physical danger to human life or a significant threat to property. “Wind energy system emergency” includes natural events that cause damage to wind energy system facilities.

(b) An owner or operator shall notify a political subdivision within 24 hours of a wind energy system emergency and the nature of the wind energy system emergency.

(c) An owner or operator shall establish and maintain liaison with a political subdivision and with fire, police, and other appropriate first responders serving within one-half mile of the wind energy system to do all of the following:

1. Learn the responsibility and resources of each government organization or first responder entity that would respond to a wind energy system emergency.
2. Acquaint the political subdivision and fire, police and other appropriate first responders serving within one-half mile of the wind energy system with the owner and operator’s abilities to respond to a wind energy system emergency and provide annual training for appropriate officials

regarding responding to a wind energy system emergency until the wind energy system has been decommissioned.

3. Identify the types of wind energy system emergencies subject to notification under par. (b).
4. Plan how the owner or operator and fire, police, and other first responders can engage in mutual assistance to minimize hazards to life and property.

(d) An owner or operator of a large wind energy system shall establish written procedures that provide for shutting down the wind energy system or a portion of the system, as appropriate, in the event of wind energy system emergency. The procedures shall provide for all of the following:

1. Establishing and maintaining adequate means of communication with a political subdivision and with fire, police, and other appropriate first responders.
2. Advising an affected political subdivision of a wind energy system emergency.
3. Prompt and effective response to a notice of any of the following types of emergencies:
 - a. Mechanical failure of wind turbine facilities.
 - b. Fire associated with a wind turbine or associated facilities.
 - c. Emergency situations requiring the evacuation of a person or persons from the wind energy system.
 - d. Natural disaster.
 - e. Police actions, such as a request or order by police or fire officials to interrupt operation of any wind energy system facility due to an emergency.
4. Actions directed toward protecting people first and then property.
5. Making safe any actual or potential hazard to people or property.

6. Notifying a political subdivision and fire, police, and other appropriate first responders of a wind energy system emergency and coordinating with planned and actual responses during an emergency.

(e) An owner or operator of a large wind energy system shall do all of the following:

1. Furnish its supervisors and employees who are responsible for emergency action a copy of the latest edition of the emergency procedures established under par. (d) to ensure compliance with those procedures.

2. Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.

3. As soon as possible after the end of a wind energy system emergency, the owner, or operator shall review employee activities to determine whether the procedures were effectively followed.

(5) COMPLAINT PROCESS. (a) Before construction of a wind energy system begins, a developer shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within one-half mile of the wind energy system. A developer shall include a contact person and telephone number for complaints or concerns during construction, operation, maintenance and decommissioning. A developer shall provide a copy of the notice to any political subdivision within which the wind energy system will be located, and the developer, owner or operator shall keep the contact person and telephone number up-to-date and on file with the political subdivision.

(b) A developer, owner or operator shall maintain a log of all complaints received regarding the wind energy system. The log shall include the name and address of the complainant, the nature of the complaint, and the steps taken to resolve the complaint. A developer, owner or operator

shall make copies of this complaint log available, at no cost, to any monitoring committee established under s. PSC 128.36 by a political subdivision in which the wind energy system is located. If a monitoring committee has not been established, the developer, owner or operator shall make a complaint log available to the political subdivision upon request.

(c) A developer, owner or operator shall make a complaint log available to the commission upon request.

PSC 128.19 Decommissioning. (1) REQUIREMENT TO DECOMMISSION. (a) Except as provided in par. (e), the owner or operator of a wind energy system shall decommission and remove a wind energy system when the system is at the end of its useful life.

(b) A developer shall include in an application to construct a wind energy system a decommissioning and site restoration plan that provides reasonable assurances that the developer, owner or operator will be able to comply with this section.

(c) A wind energy system is presumed to be at the end of its useful life if the wind energy system generates no electricity for a continuous 6 month period. This presumption may be rebutted by the owner or operator by submitting to the political subdivision a plan outlining the steps and schedule for returning the wind energy system to service within 6 months after the date the wind energy system is presumed to be at the end of its useful life. Upon application by the owner or operator, a political subdivision shall grant an extension of the time period for returning the wind energy system to service by an additional 6 month period if the owner or operator demonstrates an ongoing good faith effort to return the wind energy system to service. A wind energy system that generates no electricity for a continuous 18 month period is irrebuttably presumed to be at the end of its useful life.

(d) When decommissioning is required, the owner or operator shall begin decommissioning within 9 months after the wind energy system has reached the end of its useful life. The owner or operator shall complete decommissioning and removal of the wind energy system within 18 months after the wind energy system has reached the end of its useful life.

(e) A political subdivision may grant a temporary deferral of the requirement to decommission and remove a wind energy system if it is likely the wind energy system will operate again in the future and if any of the following apply:

1. The wind energy system is part of a prototype or other demonstration project being used for ongoing research or development purposes.
2. The wind energy system is being used for educational purposes.

(2) DECOMMISSIONING REVIEW. A political subdivision may establish a decommissioning review process to determine when a wind energy system has reached the end of its useful life.

(3) FINANCIAL RESPONSIBILITY. A developer, owner or operator of a large wind energy system shall provide information to the political subdivision that demonstrates proof of the owner's financial ability to comply with requirements regarding decommissioning in sub. (1).

(4) SITE RESTORATION. If a large wind energy system was constructed on land owned by a person other than the owner or operator of the large wind energy system, the owner or operator of the wind energy system shall ensure that the property is restored so that the topography, soils, and vegetation are consistent with or similar to that of immediately adjacent properties at the time of decommissioning. If a large wind energy system was constructed on a brownfield, as defined in s. 560.13 (1) (a), Stats., the owner or operator shall restore the property to eliminate effects caused by the large wind energy system.

(5) DECOMMISSIONING COMPLETION. (a) An owner shall file a notice of decommissioning completion with the political subdivision when a wind energy system approved by the political subdivision has been decommissioned and removed.

(b) Within 12 months of receiving a notice of decommissioning, a political subdivision shall determine whether the wind energy system has satisfied the requirements of subs. (1)(a) and (4).

Subchapter III

Political Subdivision Procedure

PSC 128.30 Application and notice requirements. (1) CONTENTS OF AN APPLICATION.

If approval by a political subdivision is required for a proposed wind energy system or expansion of an existing wind energy system, a developer seeking the political subdivision's approval shall complete and file with the political subdivision an application that includes all of the following:

- (a) Wind energy system description and maps.
- (b) Technical description of wind turbines and wind turbine sites.
- (c) Construction process and timeline.
- (d) Impact on local infrastructure.
- (e) Information regarding noise.
- (f) Information regarding shadow flicker.
- (g) Effects on existing land uses within one-half mile of the wind energy system.
- (h) Effects on air traffic.
- (i) Effects on line-of-sight communications.

(j) A list of all state and federal permits required to construct and operate the wind energy system.

(k) Except as provided in sub. (3), information required under s. PSC 128.40.

(m) Any other information necessary to understand the proposed wind energy system.

(n) Information related to the wind energy system requested by the political subdivision.

(2) ACCURACY OF INFORMATION. The developer shall ensure that information contained in an application is accurate and internally consistent.

(3) SMALL WIND ENERGY SYSTEM APPLICATIONS. For a small wind energy system, a developer is not required to file the information required under sub. (1)(k).

(4) DUPLICATE COPIES. A political subdivision may specify a reasonable number of copies to be filed. Each copy shall include all worksheets, maps, and other attachments included in the application. A political subdivision may permit a developer to file an application electronically.

(5) NOTICE TO PROPERTY OWNERS. (a) On the same day a developer files an application for a large wind energy system, the developer shall mail or deliver written notice of the filing of the application to property owners and residents located within one-half mile of proposed turbine host properties or any wind energy system facility. The notification shall include all of the following:

1. A complete description of the wind energy system, including the number and size of the wind turbines.
2. A map showing the locations of all proposed wind energy system facilities.
3. The proposed timeline for construction and operation of the wind energy system.
4. Locations where the application is available for public review.

5. Developer contact information.

(b) After a political subdivision receives an application for a wind energy system, the notice required to be published by the political subdivision under s. 66.0401 (4) (a) 1., Stats., shall include the method and time period for the submission of public comments to the political subdivision and the approximate schedule for review of the application by the political subdivision.

(6) PUBLIC PARTICIPATION. (a) A political subdivision shall make an application for a wind energy system available for public review at a local library and at the political subdivision's business office or some other publicly-accessible location. A political subdivision may also provide public access to the application electronically.

(b) A political subdivision shall establish a process for accepting and considering written public comments on an application for a wind energy system.

(c) Except as provided in this paragraph, a political subdivision shall hold at least one public meeting to obtain comments on and to inform the public about an application. A political subdivision is not required to hold a public comment meeting on an application to construct a small wind energy system that is to be located entirely on land owned by the developer.

(7) JOINT APPLICATION REVIEW PROCESS. (a) If the wind energy system is proposed to be located in the jurisdiction of more than one political subdivision, the political subdivisions involved may conduct a joint application review process on their own motion or upon request. If a developer requests a joint application review, the developer shall include the request in its notice of intent to file an application with the political subdivision under s. PSC 128.10(1). If the developer requests a joint application review process, the political subdivisions involved shall

consider this request within 60 days of receipt of the developer's notice of intent to file an application.

(b) If political subdivisions elect to conduct a joint application review process, the process shall be consistent with this chapter and the political subdivisions shall establish the process within 90 days of the date the political subdivisions receive the developer's notice of intent to file an application. A political subdivision may follow the review process of another political subdivision for purposes of conducting a joint application review process concurrently with the other political subdivision. If a joint application review process is adopted, the developer shall file the application with all of the political subdivisions participating in the joint review process.

PSC 128.31 Application completeness. (1) INCOMPLETE APPLICATIONS. A political subdivision shall determine whether an application is complete applying the detailed application filing requirements established by the commission under PSC 128.40. The political subdivision shall notify the developer in writing of the completeness determination no later than 45 days after the day the application is filed. An application is considered filed the day the developer notifies the political subdivision in writing that all the application materials have been filed. If a political subdivision determines that the application is incomplete, the notice shall state the reasons for the determination. A developer may file a supplement to an application that the political subdivision has determined to be incomplete. There is no limit to the number of times that the developer may re-file an application. For incomplete applications, the developer shall provide additional information as specified in the notice. Subsequent 45-day completeness review periods shall begin the day after the political subdivision receives responses to all items

identified in the notice. If a political subdivision does not make a completeness determination within the applicable review period, the application is considered to be complete.

(2) REQUESTS FOR ADDITIONAL INFORMATION. A political subdivision may request additional information after determining that an application is complete. A developer shall provide additional information in response to all reasonable requests. A developer shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete, and accurate manner.

PSC 128.32 Political subdivision review of a wind energy system. (1) APPROVAL BY POLITICAL SUBDIVISION. (a) Except as provided in par. (b), a political subdivision may require a developer to obtain approval from the political subdivision before constructing any of the following:

1. A wind energy system.
2. An expansion of an existing or previously-approved wind energy system.

(b) A political subdivision may not require a developer to obtain approval from the political subdivision under this chapter for any of the following:

1. A wind energy system placed in operation before the effective date of this chapter ... [LRB inserts date].
2. A wind energy system for which construction began before the effective date of this chapter ...[LRB inserts date].
3. A wind energy system approved by the political subdivision before the effective date of this chapter ... [LRB inserts date].

4. A wind energy system proposed by a developer in an application filed before the effective date of the chapter ... [LRB inserts date] with a political subdivision that has an established procedure for review of applications for wind energy systems.

(2) STANDARD FOR APPROVAL. A political subdivision may not unreasonably deny an application for a wind energy system or impose unreasonable conditions.

(3) WRITTEN DECISION. (a) A political subdivision shall issue a written decision to grant or deny an application for a wind energy system. The written decision shall include findings of fact supported by evidence in the record. If an application is denied, the decision shall specify the reason for the denial. An approval may be subject to the conditions in s. PSC 128.33(1).

(b) 1. A political subdivision shall provide its written decision to the developer and to the commission. If a political subdivision approves an application for a wind energy system, the political subdivision shall provide the developer with a duplicate original of the decision.

2. The developer shall file the duplicate original of a decision approving an application with the register of deeds for the county in which the wind energy system is located.

(4) EFFECT OF OWNERSHIP CHANGE ON APPROVAL. Approval by a political subdivision of a wind energy system remains in effect if there is a change in the owner or operator of the wind energy system. A political subdivision may require a developer, owner or operator to provide timely notice of any change in the owner or operator of the wind energy system.

(5) FEES. (a) A political subdivision may charge a reasonable application fee or require a developer to reimburse the political subdivision for reasonable expenses relating to the review of an application for a wind energy system.

(b) A political subdivision's fee or reimbursement requirement shall be based on the actual cost of the review of the wind energy system application, and may include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts. The political subdivision may set standardized application fees based on the size and complexity of a proposed wind energy system.

(c) A political subdivision may only charge a fee or require reimbursement if the political subdivision gives written notice to developer of its intent to do so within 60 days of the date the political subdivision receives a notice under s. PSC 128.10(1) and identifies an estimate of the amount of the fee and the relevant reimbursement requirements.

(d) The total fee or reimbursement permitted under this subsection for a wind energy system may not exceed 0.01 percent of the estimated cost of a small wind energy system; 0.03 percent of the estimated cost of a large wind energy system with an installed nameplate capacity of 20 megawatts or less, and; 0.05 percent of the estimated cost of a large wind energy system with an installed nameplate capacity of greater than 20 megawatts.

(e) A political subdivision may require a developer to submit up to 50 percent of the total fee or total estimated reimbursement under this subsection at the time the application is submitted.

(f) A political subdivision may not charge a developer, owner or operator an annual fee or other recurring fees to operate or maintain a wind energy system.

PSC 128.33 Political subdivision provisions. (1) PERMITTED PROVISIONS. A political subdivision may include any of the following as a regulation or as a condition for approval of an application to construct a wind energy system:

- (a) Require information describing how the developer has incorporated current DNR guidelines for potential impacts to natural resource features and any project-specific DNR recommendations regarding natural resources not subject to specific DNR permits.
- (b) Require a developer, owner or operator of a large wind energy system to cooperate with any state-wide or regional study of the effects of wind energy systems on bat or migratory bird populations, including providing access to sites for post-construction bird and bat mortality studies.
- (c) For a large wind energy system, may require a developer to include in a transportation plan the proposed type and period of use of local roads, a proposed process for mitigation of any damage to local roads related to construction and operation of the large wind energy system, and provision for a pre- and post-construction review by the political subdivision.
- (d) For a large wind energy system, may require a developer to offer agreements that include annual monetary compensation to the owner of a nonparticipating residence if the residence is within one-half mile of a planned wind turbine site. If a political subdivision requires a developer to offer such an agreement, the amount of annual monetary compensation shall be calculated by multiplying the number of installed wind turbines in the wind energy system located within one-half mile of each nonparticipating residence by a per-wind turbine compensatory amount, with annual payments escalating annually. The total annual payment to any owner of a nonparticipating residence may not exceed the amount paid by the developer,

owner or operator to any owner of a turbine host property receiving payment under a wind lease for one wind turbine. An agreement offered under this paragraph shall specify in writing whether the landowner's acceptance of payment establishes the landowner's property as a participating property.

(e) For a large wind energy system, may require a developer, owner or operator to provide the political subdivision with a list of the tax parcel numbers of tracts of residential real property less than 5 acres in size located within one mile of a wind turbine at the time the wind energy system is constructed. The political subdivision may use this list to track the sale prices of residential real properties of less than 5 acres in size within one mile of a wind turbine.

(f) Specify provisions regarding blasting to protect against groundwater contamination, including notification requirements, timing limitations, plan requirements, and whether blasting may occur within the political subdivision.

(g) May establish a procedure for assessing when wind energy system facilities are not maintained in good repair and operating condition. The procedure may include timelines, provide for payment of fees for conducting an assessment, and provide for notification to the public.

(h) May require the developer, owner or operator of a large wind energy system to file an annual report with the political subdivision documenting the operation and maintenance of the wind energy system during the previous calendar year.

(i) Establish reasonable requirements for the manner in which a developer, owner or operator of a large wind energy system may demonstrate proof of financial responsibility to ensure the

availability of funds sufficient to keep the wind energy system in good repair and operating condition and to comply with decommissioning requirements.

(2) PROHIBITED PROVISIONS. A political subdivision may not include any of the following as a regulation or as a condition for approval of an application to construct a wind energy system:

- (a) Require a developer, owner or operator to conduct a study of property value impacts.
- (b) Except as provided in sub. (1)(d), require a developer, owner or operator to provide monetary compensation to landowners relating to property values.
- (c) Impose a penalty on an owner or operator of a wind energy system if the owner or operator satisfies the requirements of this chapter regarding keeping the wind energy system in good operating condition and the requirements regarding decommissioning.
- (d) Restrict wind turbine sites based on impacts to aerial spraying on participating properties.
- (e) Establish structure lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration.

128.34 Record of decision. **(1) RECORDKEEPING.** A political subdivision shall keep a complete written record of its decision-making related to an application for a wind energy system. If a political subdivision denies an application, the political subdivision shall keep the record for at least seven years following the year in which it issues the decision. If a political subdivision approves an application, the political subdivision shall keep the record for at least seven years after the year in which the wind energy system is decommissioned.

(2) RECORD CONTENTS. The record of a decision shall include all of the following:

- (a) The approved application and all subsequent additions or amendments to the application.
 - (b) A representative copy of all notices issued under ss. PSC 128.10 (1) (a), 128.18 (5) (a) and 128.30 (5).
 - (c) A copy of any notice or correspondence that the political subdivision issues related to the application.
 - (d) A record of any public hearing related to the application. The record may be an electronic recording, a transcript prepared from an electronic recording, or a transcript prepared by a court reporter or stenographer. The record shall include any documents or evidence submitted by hearing participants.
 - (e) Copies of any correspondence or evidentiary material that the political subdivision considered in relation to the application, including copies of all written public comments filed under s. PSC 128.30(6)(b).
 - (f) Minutes of any board or committee meetings held to consider or act on the application.
 - (g) A copy of the written decision under s. PSC 128.32(3)(a).
 - (h) Other materials that the political subdivision prepared to document its decision-making process.
 - (i) A copy of any local ordinance cited in or applicable to the decision.
- (3) POST-CONSTRUCTION FILING REQUIREMENT.** Within 90 days of the date a wind energy system commences operation, the developer, owner or operator shall file with the political subdivision and the commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of each wind turbine, geographic

information system information showing the location of each wind turbine and current information regarding the developer, owner and operator of the wind energy system.

PSC 128.35 Modifications to an approved wind energy system. (1) MATERIAL CHANGE.

(a) A developer may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the political subdivision that authorized the wind energy system.

(b) A developer shall submit an application for a material change to an approved wind energy system to the political subdivision that authorized the wind energy system.

(2) REVIEW LIMITED. A political subdivision that receives an application for a material change to a wind energy system may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

PSC 128.36 Monitoring and mitigation. (1) MONITORING COMMITTEE. A political subdivision may establish a committee to monitor complaints and to monitor compliance by the developer, owner or operator with any conditions to an approved large wind energy system or to monitor compliance with any local agreements. If a monitoring committee is established, the political subdivision shall include on the monitoring committee a member who is a local employee of a developer, owner or operator of a wind energy system and at least one nonparticipating landowner residing within one mile of the large wind energy system.

(2) DUTIES. A monitoring committee may do all of the following:

(a) Maintain a record of all complaints brought to the monitoring committee.

(b) Require the developer, owner or operator to investigate, at the developer, owner or operator's expense, any complaint forwarded by the committee.

(c) Recommend a reasonable resolution to a complaint based upon the committee's findings.

(3) COMPLAINT RESOLUTION. A developer, owner or operator shall use reasonable efforts to resolve complaints. A developer, owner or operator shall make a good faith effort to resolve complaints within 45 days of receiving a complaint. A developer, owner or operator shall notify the political subdivision of complaints that have not been resolved within 45 days of the date the developer, owner or operator received the original complaint. A political subdivision shall establish a process for determining whether the developer, owner or operator has met the requirements of this chapter regarding complaint resolution.

Subchapter IV

Commission Procedure

PSC 128.40 Detailed application requirements. The commission shall establish detailed application filing requirements for applications filed for political subdivision review of a wind energy system, which shall contain a detailed description of the information required to satisfy the filing requirements for applications under s. PSC 128.30(1)(j). The commission may revise these requirements as necessary. The commission shall make the filing requirements available to the public on the commission's website.

PSC 128.41 Commission review. (1) APPEALS TO THE COMMISSION. An appeal under s. 66.0401 (5) (b), Stats., shall be treated as a petition to open a docket under s. PSC 2.07, except the time provisions of that section do not apply.

(2) PETITIONER FILING REQUIREMENTS. An aggrieved person under s. 66.0401 (5) (a), Stats., may file a petition with the commission. The petition shall be submitted to the commission in writing or filed using the commission's electronic filing system and shall contain all of the following:

- (a) The petitioner's name, address, and telephone number.
- (b) The name, address, and telephone number of the political subdivision that is the subject of the petition.
- (c) A description of the wind energy system that is the subject of the petition.
- (d) A description of the petitioner's relationship to the wind energy system.
- (e) The information specified in s. PSC 2.07 (2).

(3) POLITICAL SUBDIVISION FILING REQUIREMENTS. (a) A political subdivision shall file a certified copy of the information under s. 66.0401 (5) (c) Stats., using the commission's electronic regulatory filing system.

(b) The commission may require the political subdivision to file up to 25 paper copies of the record upon which it based its decision.

(c) The commission may require the political subdivision to file additional information.

(4) SERVICE AND NOTICE. (a) A developer, owner or operator submitting a petition under sub. (2) (intro.) shall serve a copy of the petition on the political subdivision and on any other person specified in s. PSC 2.07 (3).

(b) Any person other than a developer, owner or operator submitting a petition under sub. (2) (intro.) shall serve a copy of the petition on the developer, owner or operator, the political subdivision, and any other person specified in s. PSC 2.07 (3).

(c) A political subdivision that is subject to a petition under sub. (2) shall make a copy of the petition available for public inspection and, in the manner in which it is required to publish notice of a public meeting, publish notice of that petition.

(5) COMMISSION HEARING DESCRETIONARY. The commission may review a petition under this section with or without a hearing.

(6) ENVIRONMENTAL ANALYSIS. A docket opened to review a petition under this section is presumed to be a Type III action under s. PSC 4.10 (3).

(7) STANDARD OF REVIEW. The commission may reverse or modify a political subdivision's decision or enforcement action if the decision or enforcement action does not comply with this chapter or is otherwise unreasonable.

(8) REMAND TO POLITICAL SUBDIVISION. (a) Except as provided in par. (c), if the commission remands any issue to the political subdivision, the political subdivision's review on remand shall be completed no later than 90 days after the day on which the commission issues its decision.

(b) Under this paragraph, a political subdivision may extend the 90-day period if the political subdivision authorizes the extension in writing. Any combination of the following extensions may be granted, except that the total amount of time for all extensions granted may not exceed 90 days:

1. An extension of up to 45 days if the political subdivision needs additional information to determine issues on remand.
2. An extension of up to 90 days if a developer makes a material modification to the application after remand.
3. An extension of up to 90 days for other good cause.

(c) If the commission remands a decision or enforcement action and directs the political subdivision to issue a decision consistent with the commission's decision, the political subdivision shall enter the decision within 20 business days.

G:\Notice\Pending\\1-AC-231

2009-2010 Session

LRB or Bill No./Adm. Rule No.

PSC 128

Amendment No. if Applicable

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE

DOA-2048 N(R10/96)

Subject

Wind Energy Systems Siting Administrative Rule Implementing 2009 Wisconsin Act 40

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.155 (1) (g) and 20.155 (1) (j)

Assumptions Used in Arriving at Fiscal Estimate

State Fiscal Effects

There are potential costs to the Public Service Commission (PSC) under PSC 128. However, these costs are indeterminate and will be absorbed within existing resources.

Potential staff and Intervenor Compensation costs under PSC 128 are related to the potential number of petitions filed with the Commission to appeal a political subdivision's decision approving or denying construction of a wind energy system or decommissioning a wind energy system.

As drafted, PSC 128 minimizes the potential costs per appeal under 2009 Wisconsin Act 40. PSC 128 does not require the Commission to open a docket or hold a hearing to decide an appeal. However, PSC 128 could increase rather than decrease the potential number of appeals.

Under 2009 Wisconsin Act 40, local governments may not be more restrictive in their wind energy systems siting regulations than the statewide set of siting requirements to be established under PSC 128. PSC 128 may result in an increased number of appeals from residents because it excludes local governments from considering certain factors in siting decisions, but allows the PSC to make exceptions to the Rule. PSC 128 could also increase the potential number of appeals from owners, operators or developers if a local government enacts more restrictive siting permit and application requirements, than the political subdivision had previously enacted or considered enacting, because PSC 128 allows the more restrictive approach.

Costs from the potential increase in appeals could be offset by the reduced cost per appeal from the rule's more flexible approach to dockets and hearings. However, the total fiscal effect cannot be accurately projected at this time.

PSC 128 as currently drafted does not increase costs to other state agencies. PSC 128 allows political subdivisions flexibility to maintain current levels of consultation and involvement with state agencies (if the overall consultation is allowable under PSC 128).

Local Fiscal Effects

PSC 128 may increase local governments' permitting process and record retention costs, but it allows local governments to cover these costs with wind siting application fees from owners, operators or developers of wind energy systems. Therefore, PSC 128 does not have a significant local fiscal effect.

Long-Range Fiscal Implications

Indeterminate

Agency/Prepared by: (Name & Phone No.)
 Anne Olson 267-9086

Authorized Signature/Telephone No.
 Anne Olson 267-9086

Date
 5/10/2010