

WIND SITING – FREQUENTLY ASKED QUESTIONS

Public Service Commission staff has compiled a list of frequently asked questions about the wind siting rules and has prepared answers to these questions for informational purposes. The answers contained in these FAQ should not be construed as exhaustive or without the possibility of error, nor do they constitute legal advice.

This information is current as of March 16, 2012.

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Process

- Q: Are the wind siting rules in effect? When do they take effect?**

A: The wind siting rules, Wis. Admin. Code Chapter PSC 128, are in effect as of March 16, 2012.

PSC 128 was previously expected to take effect March 1, 2011, after the rules were published in the Wisconsin Administrative Register. The Joint Committee for the Review of Administrative Rules voted to suspend the wind siting rules on March 1, 2011. The Joint Committee introduced a bill in each house of the legislature that would have, if enacted, permanently suspended the wind siting rules. Because neither of these bills were enacted prior to the end of the legislature's general business floor period, the wind siting rules are no longer suspended, and cannot be suspended by the Joint Committee again.

WIND SITING – FREQUENTLY ASKED QUESTIONS

Q: What happens if a local political subdivision (city, village, town, or county) does not have a wind ordinance?

A: Political subdivisions are not required to regulate wind energy systems. If a political subdivision does not have a wind ordinance, when the political subdivision receives an application for a wind energy system, by statute it has a defined period of time to consider and adopt an ordinance if it so chooses.

If the political subdivision does not adopt an ordinance, then there are no substantive wind siting requirements in that jurisdiction. If a city, village or town within a county does not adopt a wind siting ordinance, but the county has a wind siting ordinance, then the terms of the county ordinance will apply.

The wind siting rules do not establish statewide wind siting requirements. The rules establish a level of regulation which local political subdivisions may not be more restrictive than, if the local political subdivision chooses to regulate wind energy systems. Some procedural parts of the wind siting rules do apply regardless of whether a jurisdiction has a wind siting ordinance. These rules include topics such as notices, complaints, appeals, and the decommissioning process.

Q: What happens to an application for a wind energy system that was filed with a political subdivision before the wind siting rules take effect?

A: The wind siting rules do not apply to applications filed before the rules take effect. The state statutes governing local regulation of wind energy systems would still apply to the political subdivision's review of the application. See Wis. Stat. § 66.0401.

An applicant may withdraw an application filed before the rules take effect and subsequently re-file the application. If the application is withdrawn and refilled after the rules take effect, then the rule would apply to the application and the political subdivision's review.

Q: How do I find out if a wind energy system is being planned in my area?

A: The wind siting rules require wind energy system owners to send out several notices to neighboring landowners about a planned wind energy system. Generally, before filing an application with a political subdivision, a wind energy system owner must send out a notice to landowners within one mile of a planned wind turbine host property, as well as to political subdivisions within which the wind energy system will be located. This notice must include a description and map of the planned wind energy system, and contact information for the wind energy system owner. The wind energy system owner must also send out another more detailed notice to landowners within one mile when the application for approval is filed with the political subdivision.

A political subdivision that receives an application for a wind energy system must also publish a notice about the application, the timeline for review, and how to submit public comments on the application.

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Standards

Q: What setbacks do the wind siting rules establish?

A: A political subdivision may establish setback requirements equal to or less restrictive than the setbacks described in Wisconsin Administrative Code § PSC 128.13, or 128.61(3) for small wind energy systems. Under the current rules, generally a political subdivision may require a large wind turbine to be set back up to 1250 feet from a neighboring residence, if that neighbor is not also a wind turbine host.

Additionally, a political subdivision may establish noise and shadow flicker standards that would result in wind turbines being set back from a neighboring residence to achieve the required noise and shadow flicker standards. The noise and shadow flicker standards a political subdivision may impose may result in wind turbines being “set back” farther than the setbacks described in Wis. Admin. Code §§ PSC 128.13 or 128.61(3). For example, a political subdivision may establish a shadow flicker standard that, due to the direction of the proposed wind turbine relative to a particular neighboring residence, causes the wind turbine to need to be placed 1400 feet from the neighboring residence in order to meet the shadow flicker standard.

Q: What noise standards do the wind siting rules establish?

A: A political subdivision may establish noise requirements equal to or less restrictive than the noise standards described in Wis. Admin. Code § PSC 128.14. Generally, a political subdivision may require a wind energy system to produce noise no greater than 50 dBA during the day and 45 dBA at night.

Q: What shadow flicker standards do the wind siting rules establish?

A: A political subdivision may establish shadow flicker requirements equal to or less restrictive than the shadow flicker standards described in Wis. Admin. Code § PSC 128.15. Generally, a political subdivision may prohibit a wind energy system from producing shadow flicker more than 30 hours per year, and may require a wind energy system owner to mitigate shadow flicker that occurs 20 or more hours per year.

Q: Are there different rules for small wind energy systems?

A: Yes, some of the wind siting rules are different for or do not apply to small wind energy systems. A small wind energy system is defined as a wind energy system that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts.

For example, while a political subdivision may require most wind energy systems to use computer modeling to forecast shadow flicker, a political subdivision may not require this modeling for a small wind energy system. While a political subdivision may require most wind energy systems to offer compensation to neighboring landowners, a political subdivision may not require small wind energy system owners to offer their neighbors compensation. For a list of the rules that are different or do not apply for small wind energy systems, see Wis. Admin. Code §§ PSC 128.60 and 128.61.

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Q: What kind of payments to neighboring property owners do the rules require?

A: Wis. Admin. Code § PSC 128.33(3) allows a local political subdivision to require a wind energy system owner to offer compensation to certain neighboring property owners that are not wind turbine hosts. Unless and until a local political subdivision imposes such a requirement, there is no requirement for a wind energy system owner to compensate neighboring property owners.

Under the current rules, a political subdivision may generally require a wind energy system owner in 2011 to offer neighbors an annual payment of up to \$600 if one wind turbine will be located within 0.5 mile of their residence; up to \$800 if two wind turbines will be located within 0.5 mile of their residence; and up to \$1,000 if three or more wind turbines will be located within 0.5 mile of their residence.

Complaints

Q: I have a complaint about a wind energy system. Who do I contact?

A: In general, for a wind energy system under 100 megawatts in size, an aggrieved person must first make their complaint to the owner of the wind energy system.

If the complaint is not resolved within 45 days of the day the wind energy system owner receives the complaint, the complainant may petition the local political subdivision for review of the complaint. A local political subdivision's decision on review of a complaint may be appealed to the Public Service Commission. See below for more details on appeals.

If you have a complaint about a wind energy system that is 100 megawatts or more in size, you may file your complaint with the Public Service Commission. More information about filing a complaint with the Public Service Commission is available here:

<http://psc.wi.gov/consumerInfo/complaints/index-complaints.htm>.

Q: What are a wind energy system owner's obligations regarding complaints?

A: A wind energy system owner must use reasonable efforts to resolve complaints and shall investigate complaints regarding the wind energy system at the system owner's expense. A wind energy system owner must also maintain a log of all complaints received regarding the wind energy system, and must establish a complaint resolution process.

Additional wind energy system owner obligations regarding complaints can be found in Wis. Admin. Code § PSC 128.40(2). Exceptions for small wind energy systems are noted in Wis. Admin. Code §§ PSC 128.60 and 128.61.

WIND SITING – FREQUENTLY ASKED QUESTIONS

Appeals

Q: I want to appeal a decision made by my local political subdivision. What do I do?

A: A decision of a political subdivision to determine that an application for a wind energy system is incomplete, or to approve, disapprove, or impose a restriction upon a wind energy system, or an action of a political subdivision to enforce a restriction on a wind energy system, may be appealed through the political subdivision's administrative review process. If the person is still aggrieved after completing the administrative review process, the person may appeal to the Public Service Commission. The appeal shall be filed no later than 30 days after the political subdivision has completed its administrative review process. Wis. Stat. § 66.0401(5)(b)1.

Alternatively, a decision of a political subdivision to determine that an application for a wind energy system is incomplete, or to approve, disapprove, or impose a restriction upon a wind energy system, or an action of a political subdivision to enforce a restriction on a wind energy system may be appealed directly to the Public Service Commission. The appeal shall be filed no later than 30 days after the decision or initiation of the enforcement action. Wis. Stat. § 66.0401(5)(b)2.

Information about how to file an appeal can be found in Wis. Admin. Code § PSC 128.51.