PSC REF#:142316

Public Service Commission of Wisconsin

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Public Service Commission of Wisconsin
RECEIVED: 12/09/10, 3:47:12 PM

The Honorable Jeff Plale, Senate Chairperson
Senate Committee on Commerce, Utilities, Energy and Rail
State Capitol, Room 313 South
Madison, WI 53702

Re: Clearinghouse Rule 10-057
PSC Docket 1-AC-231

Dear Senator Plale:

As you know, the Commission submitted Final Wind Siting Rules to the Legislature on August 31, 2010. The rules, Commission docket 1-AC-231 and Clearinghouse Rule 10-057, were assigned to the Senate Committee on Commerce, Utilities, Energy and Rail and the Assembly Committee on Energy and Utilities for review. The Senate Committee held a hearing on October 13, 2010.[1] The Committee referred the rules back to the Commission on October 29, 2010, requesting modifications. The Commission notified the Committee on November 1, 2010, that it would consider changes to the rule.

At its open meeting of December 9, 2010, the Commission discussed possible modifications and voted unanimously to adopt the modifications described in Attachment 1 to this letter.

The approved revisions are shown in the context of the rule originally sent to the Legislature. The original rule sent to the Legislature may be seen in the Order Adopting Final Rules signed August 31, 2010. (PSC REF#: 137822.) In Attachment 1, deletions from the original rule are shown by strike through and additions to the rule are underlined. The revisions are listed in numeric order corresponding to the original rule. The definitional changes make clear that the provisions continue to apply to combined electric and gas utilities, not only to electric utilities.

The adopted revisions do all of the following:

- Modify Applicability Provisions.
- Add an Agricultural Land Use Provision.
- Modify the Setback Provisions.
- Add Agricultural Mitigation Issues Provisions.
- Modify the Decommissioning Provision.
- Modify the Good Neighbor Payments Provision.

[1] The Assembly Committee on Energy and Utilities notified the Commission on November 4, 2010, that it was cancelling its scheduled hearing regarding the rules. The Assembly Committee Chairperson is also receiving a copy of this submission.

- Add an Aerial Spraying Payment Provision.
- Add the Agricultural Mitigation Issues Provision and the Aerial Spraying Provision to the Exemptions for a Small Wind Energy System.

Also enclosed as Attachment 2 is a revised version of the entire chapter PSC 128 which incorporates all the revisions identified in this letter.

Dated at Madison, Wisconsin, December 9, 2010

By the Commission:

Sandra J. Paske
Secretary to the Commission

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Enclosures
1. Modifications to Wind Siting Rules approved by the PSC on December 9, 2010
2. Revised chapter PSC 128

cc: The Honorable James Soletski, Chair, Assembly Committee on Energy and Utilities

CR 10-057
PSC Docket 1-AC-231
Attachment 1

Modifications to the Wind Siting Rules Approved by the Public Service Commission on December 9, 2010

Applicability

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

PSC 128.02 Applicability. (1) POLITICAL SUBDIVISION APPLICATIONS. (a) Except as provided in par. (b), this chapter applies to a political subdivision's review of a proposed wind energy system or regulation of a wind energy system ~~that does not require review by the commission under either s. 196.49 or 196.491~~ under s. 66.0401, Stats.

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

1. A wind energy system for which construction began before the effective date of this chapter …[LRB inserts date].

2. A wind energy system placed in operation before the effective date of this chapter … [LRB inserts date].

3. A wind energy system approved by a political subdivision before the effective date of this chapter … [LRB inserts date].

4. A wind energy system proposed by an owner in an application filed with a political subdivision before the effective date of this chapter … [LRB inserts date].

(c) Notwithstanding par. (b) 4., if an owner withdraws an application for a proposed wind energy system that is filed with a political subdivision before the effective date of this chapter … [LRB

inserts date], this chapter applies to the wind energy system if the owner re-files the application with the political subdivision on or after the effective date of this chapter … [LRB inserts date].

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

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

Conversion of land from agricultural use

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

PSC 128.12 Existing property uses. (1) LAND USE AND COMMERCIAL ENTERPRISES. An owner shall make reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed wind turbine site if the land use or commercial enterprise exists when the owner gives notice under s. PSC 128.105 (1), or if complete publicly-available plans for construction are on file with a political subdivision within 30 days of the date the owner gives notice under s. PSC 128.105 (1).

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

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Setbacks

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

PSC 128.13 Siting criteria. (1) SETBACK DISTANCE AND HEIGHT REQUIREMENTS. (a) An owner shall design and construct a wind energy system using the wind turbine setback distances shown in Table 1.

Table 1

Setback Description	Setback Distance
Occupied Community Buildings	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Residences	1.1 times the maximum blade tip height
Nonparticipating Residences	The lesser of 1,250 feet or 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
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

Agricultural Mitigation Issues

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

PSC 128.18 Construction and operation.

. . . .

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

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

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

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

Decommissioning

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

PSC 128.19 Decommissioning.

. . . .

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

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

(c) A political subdivision may require an owner to provide the financial assurance under par. (b) in an amount up to the estimated actual and necessary cost to decommission the wind energy

system. If a political subdivision requires an owner to provide financial assurance under par. (b), the political subdivision may do any of the following:

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

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

3. Require an owner to establish financial assurance that places the political subdivision in a secured position, and that any secured funds may only be used for decommissioning the wind energy system until either the political subdivision determines that the wind energy system has been decommissioned under sub. (5) (b), or until the political subdivision has otherwise approved the release of the secured funds, whichever is earlier.

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

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

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

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

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

Good Neighbor Payments

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

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

. . . .

(3) MONETARY COMPENSATION. Require an owner of a wind energy system to offer an agreement that includes annual monetary compensation to the owner of a nonparticipating residence, if the residence is located within 0.5 mile of a constructed wind turbine ~~site~~. ~~If a political subdivision requires a wind energy system owner to offer such an~~

~~agreement, the political subdivision may not require the total annual payment offered to any owner of a nonparticipating residence to exceed 25 percent of the amount paid by the wind energy system owner to any owner of a turbine host property receiving payment under a wind energy system lease for one wind turbine.~~ For one turbine located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $600. For two turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $800. For three or more turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $1,000. The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, the initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer Price Index, as described in s. 196.374 (5) (bm) 2. b., Stats., from the previous year. An agreement offered under this subsection shall specify in writing any waiver of a requirement or right under this chapter and whether the landowner's acceptance of payment establishes the landowner's property as a participating property under this chapter.

Aerial Spraying

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

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

. . . .

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

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

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

Small Wind Energy Systems.

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

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

This provision updates a cross-reference due to the adoption of subsection (2) to s. PSC 128.12.

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

. . .

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

(end)

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CR 10-057
PSC Docket 1-AC-231
Attachment 2

Complete Chapter PSC 128 Incorporating Revisions to the Wind Siting Rules Adopted by the Public Service Commission on December 9, 2010

TEXT OF THE RULES

SECTION 1. Item vm., Table 3. of chapter PSC 4 is created to read:

PSC 4 Item vm., Table 3. A docket opened to review a petition under s. PSC 128.41.

SECTION 2. Chapter PSC 128 is created to read:

CHAPTER PSC 128

WIND ENERGY SYSTEMS

Subchapter I – General

Subchapter II – Owner Requirements

Subchapter III – Political Subdivision Procedure

Subchapter IV – Complaints

Subchapter V – Commission Procedure

Subchapter VI – Small Wind Energy Systems

Subchapter I – General

PSC 128.01 Definitions. In this chapter:

(1) "Commercial communications" includes communications used by government and military entities for emergency purposes, licensed amateur radio service, and non-emergency communications used by agricultural, business, government, and military entities including aviation radar, commercial mobile radio service, fixed wireless service, global positioning,

line-of-sight, microwave, personal communications service, weather radar, and wireless internet service.

(2) "Commission" means the public service commission.

(4) "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 the following:

1. Underground collector circuit facilities.

2. Those portions of concrete structures 4 feet or more below grade.

(5) "DNR" means the Wisconsin department of natural resources.

(6) "Maximum blade tip height" means the nominal hub height plus the nominal blade length of a wind turbine, 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 of a wind energy system, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

(8) "Nonparticipating property" means real property that is not a participating property.

(9) "Nonparticipating residence" means a residence located on nonparticipating property.

(10) "Occupied community building" means a school, church or similar place of worship, daycare facility or public library.

(12) "Owner" means:

(a) A person with a direct ownership interest in a wind energy system, regardless of whether the person was involved in acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system.

(b) At the time a wind energy system is being developed, a person who is acting as a wind energy system developer by acquiring the necessary rights, permits and approvals for or by planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system.

(13) "Participating property" means any of the following:

(a) A turbine host property.

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

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

2. Specifies in writing any waiver of a requirement or right under this chapter and that the landowner's acceptance of payment establishes the landowner's property as a participating property.

(14) "Participating residence" means a residence located on participating property.

(15) "Personal communications" includes wireless telecommunications, personal communications service, radio, television, wireless internet service, and other systems used for personal use purposes.

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

(17) "Residence" means an occupied primary or secondary personal residence including a manufactured home as defined in s. 101.91 (2), Stats., a hospital, community-based residential facility, residential care apartment complex or similar facility, or a nursing home. "Residence"

includes a temporarily unoccupied primary or secondary personal residence. "Residence" does not include any of the following:

(a) A recreational vehicle as defined in s. 340.01 (48r), Stats., notwithstanding the length of the vehicle.

(b) A camping trailer as defined in s. 340.01 (6m), Stats.

(c) A permanently abandoned personal residence.

(19) "Shadow flicker" means a pattern of moving shadows cast on a residence or an occupied community building caused by sunlight shining through moving wind turbine blades resulting in alternating changes in light intensity.

(20) "Small wind energy system" means 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.

(21) "Turbine host property" means real property on which at least one wind turbine is located.

(22) "Wind access easement" means a written document that creates a legal interest in real property that restricts the use of the property to avoid interference with the wind resource on another property.

(23) "Wind energy system" has the meaning given in s. 66.0403 (1) (m), Stats., and is used to convert wind energy to electrical energy.

(24) "Wind energy system easement" means a written document that creates a legal interest in real property that permits an owner to place, construct or operate a wind turbine or other wind energy system facility on the property.

(25) "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 or a natural event that causes damage to wind energy system facilities.

(26) "Wind energy system facility" means any component of a wind energy system, such as a wind turbine, collector circuit, access road, electric system interconnection facility or operation and maintenance facility.

(27) "Wind energy system lease" means a written agreement between a landowner and an owner that establishes the terms and conditions associated with the placement, construction or operation of a wind turbine or other wind energy system facility on a landowner's property.

PSC 128.02 Applicability. (1) POLITICAL SUBDIVISION APPLICATIONS. (a) Except as provided in par. (b), this chapter applies to a political subdivision's review of a proposed wind energy system or regulation of a wind energy system under s. 66.0401, Stats.

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

1. A wind energy system for which construction began before the effective date of this chapter ...[LRB inserts date].

2. A wind energy system placed in operation before the effective date of this chapter ... [LRB inserts date].

3. A wind energy system approved by a political subdivision before the effective date of this chapter ... [LRB inserts date].

4. A wind energy system proposed by an owner in an application filed with a political subdivision before the effective date of this chapter ... [LRB inserts date].

(c) Notwithstanding par. (b) 4., if an owner withdraws an application for a proposed wind energy system that is filed with a political subdivision before the effective date of this chapter ... [LRB

inserts date], this chapter applies to the wind energy system if the owner re-files the application with the political subdivision on or after the effective date of this chapter ... [LRB inserts date].

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

(4) INDIVIDUAL CONSIDERATION. 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.

PSC 128.03 Political subdivision authority. A political subdivision may not place any restriction, either directly or in effect, on the installation or use of a wind energy system except by adopting an ordinance that complies with this chapter and s. 66.0401, Stats., and is not more restrictive than this chapter.

PSC 128.04 Enforcement. (1) POLITICAL SUBDIVISIONS. A political subdivision shall be responsible for enforcing its wind energy system ordinance and permit provisions.

(2) COMMISSION. The commission shall enforce its rules and orders under this chapter in the manner prescribed in s. 196.66, Stats., or by such other means as provided in the statutes or administrative code.

Subchapter II – Owner Requirements

PSC 128.10 Incorporating owner requirements into local ordinances. (1) ORDINANCES WITH ALL THE OWNER REQUIREMENTS. A political subdivision may enact an ordinance

that incorporates all the owner requirements specified in this subchapter, but may not enact an ordinance whose requirements on the installation or use of a wind energy system are more restrictive than specified in this subchapter.

(2) ORDINANCES WITH LESS RESTRICTIVE OWNER REQUIREMENTS. Except as provided in sub. (4), a political subdivision may enact an ordinance whose requirements on the installation or use of a wind energy system are less restrictive than specified in this subchapter.

(3) NO ORDINANCE. Except as provided in sub. (4), if a political subdivision does not enact an ordinance establishing requirements on the installation or use of a wind energy system, this subchapter does not apply within the political subdivision.

(4) MANDATORY REQUIREMENTS. (a) Section PSC 128.105 applies to every owner of a wind energy system, regardless of the political subdivision in which the wind energy system is located and regardless of the contents of a political subdivision's ordinance or the lack of an ordinance.

(b) Section PSC 128.13 (2) (a) applies to every political subdivision, regardless of the contents of its ordinance or the lack of an ordinance.

(c) Section PSC 128.19 applies to every owner of a wind energy system of at least one megawatt, regardless of the political subdivision in which the wind energy system is located and regardless of the contents of a political subdivision's ordinance or the lack of an ordinance.

(5) SMALL WIND ENERGY SYSTEMS. For a small wind energy system, this subchapter applies as provided in ss. PSC 128.60 and 128.61.

PSC 128.105 Development of a wind energy system; notice requirements. (1) PRE-APPLICATION NOTICE. At least 90 days before an owner files an application to

construct a wind energy system, an owner shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following:

(a) Landowners within one mile of a planned wind turbine host property.

(b) Political subdivisions within which the wind energy system may be located.

(c) Emergency first responders and air ambulance service providers serving a political subdivision within which the wind energy system may be located.

(d) The Wisconsin department of transportation.

(e) The commission.

(f) The DNR.

(g) The Wisconsin department of agriculture, trade and consumer protection.

(h) The office of the deputy undersecretary of the U.S. department of defense.

(1m) ADDITIONAL PRE-APPLICATION NOTICE TO COMMISSION. At least 180 days before filing an application to construct a wind turbine with a maximum blade tip height exceeding 600 feet, or a wind energy system in those portions of Lake Michigan or Lake Superior that are within the jurisdiction of the state, the owner shall provide written notice of the planned wind energy system to the commission.

(2) PRE-APPLICATION NOTICE REQUIREMENTS. The owner shall include all of the following in a notice under sub. (1) or (1m):

(a) A complete description of the wind energy system, including the number and size of the planned wind turbines.

(b) A map showing the planned location of all wind energy system facilities.

(c) Contact information for the owner.

(d) A list of all potential permits or approvals the owner anticipates may be necessary for construction of the wind energy system.

(e) Whether the owner is requesting a joint application review process under s. PSC 128.30 (7) and the name of each political subdivision that may participate in the joint review process.

PSC 128.11 Real property provisions. (1) EASEMENT RECORDING REQUIRED. A wind energy system easement or wind access easement shall be recorded under ch. 706, Stats. A wind energy system easement or wind access easement shall include the term of the easement and a full legal description of the property subject to the easement.

(2) WIND LEASE AND WAIVER PROVISIONS. A wind energy system lease and any waiver under s. PSC 128.14 (5) or 128.15 (4) shall hold harmless and indemnify the real property owner for all of the following:

(a) Any violation of federal, state or local law by the owner of the wind energy system.

(b) Any damages or bodily injury caused by the construction, operation or decommissioning of the wind energy system.

PSC 128.12 Existing property uses. (1) LAND USE AND COMMERCIAL ENTERPRISES. An owner shall make reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed wind turbine site if the land use or commercial enterprise exists when the owner gives notice under s. PSC 128.105 (1), or if complete publicly-available plans for construction are on file with a political subdivision within 30 days of the date the owner gives notice under s. PSC 128.105 (1).

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

PSC 128.13 Siting criteria. (1) SETBACK DISTANCE AND HEIGHT REQUIREMENTS. (a) An owner shall design and construct a wind energy system using the wind turbine setback distances shown in Table 1.

Table 1

Setback Description	Setback Distance
Occupied Community Buildings	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Residences	1.1 times the maximum blade tip height
Nonparticipating Residences	The lesser of 1,250 feet or 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
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) An owner shall measure wind turbine setback distances 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) An owner shall work with a political subdivision and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.

(d) The owner of a nonparticipating residence or occupied community building may waive the applicable wind turbine setback distances in Table 1 for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a nonparticipating property may waive the applicable wind turbine setback distance in Table 1 from a nonparticipating property line.

(2) POLITICAL SUBDIVISION CRITERIA. (a) A political subdivision may not establish long-term land use planning requirements or practices that preclude the construction of a particular type, or any type, of wind turbine or wind energy system within the political subdivision's jurisdiction, except as provided in s. 66.0401 (4) (f) 2., Stats.

(b) A political subdivision may not set height or setback 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 s. 114.135 or 114.136, Stats., the political subdivision may adopt wind turbine height or setback distance provisions that are based on, but not more restrictive than, the federal aviation administration obstruction standards in 14 CFR Part 77.

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

(d) A political subdivision may not set height or setback distance limitations for a wind turbine near a private use airport or heliport except as provided in par. (c).

PSC 128.14 Noise Criteria. **(1)** DEFINITIONS. In this section, nighttime hours are the hours beginning at 10:00 p.m. and ending at 6:00 a.m. daily and daytime hours are the hours beginning at 6:00 a.m. and ending at 10:00 p.m. daily.

(2) PLANNING. (a) The noise limits in this section apply at the outside wall of a nonparticipating residence or occupied community building that exists when the owner gives notice under s. PSC 128.105 (1) or for which complete publicly-available plans for construction are on file with a political subdivision within 30 days of the date on which the owner gives notice under s. PSC 128.105 (1).

(b) An owner shall design the proposed wind energy system to minimize noise at a residence or occupied community building to the extent reasonably practicable.

(c) An owner shall design a wind energy system to comply with the noise standards in this section under planned operating conditions.

(3) NOISE LIMITS. (a) Except as provided in par. (b), sub. (4) (c) and sub. (5), an owner shall operate the wind energy system so that the noise attributable to the wind energy system does not exceed 50 dBA during daytime hours and 45 dBA during nighttime hours.

(b) 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 owner shall promptly take corrective action to permanently eliminate the noise. This paragraph does not apply to sound the wind energy system produces under normal operating conditions.

(4) COMPLIANCE. (a) If an owner uses sound level measurements to evaluate compliance with this section at a nonparticipating residence or occupied community building, those measurements shall be made as near as possible to the outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the owner of the nonparticipating residence or occupied community

building. The owner may take additional measurements to evaluate compliance in addition to those specified by this section.

(b) Upon receipt of a complaint regarding a violation of the noise standards in sub. (3) (a), an owner shall test for compliance with the noise limits in sub. (3) (a). A political subdivision or monitoring committee established under s. PSC 128.41 may not require additional testing to show compliance with sub. (3) (a) if the owner has provided the results of an accurate test conducted within 2 years of the date of the complaint showing that the wind energy system is in compliance with sub. (3) (a) at the location relating to the complaint.

(c) Methods available for the owner to comply with sub. (3) shall include operational curtailment of one or more wind turbines. Upon receipt of a complaint about a noise under sub. (3) (b), the owner shall use operational curtailment to eliminate the noise until the owner permanently corrects the problem.

(d) An owner shall evaluate compliance with sub. (3) (a) as part of pre- and post-construction noise studies. An owner shall conduct pre- and post-construction noise studies under the most current version of the noise measurement protocol as described in s. PSC 128.50 (2).

(5) WAIVER. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the owner of the wind energy system of the requirement to meet any of the noise limits in this section at the affected residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real

property, runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.

(6) NOTIFICATION. (a) Before entering into a contract under sub. (5), an owner of a wind energy system shall provide written notice of the requirements of this section to the owner of an affected nonparticipating residence or occupied community building.

(b) Before the initial operation of the wind energy system, an owner of a wind energy system shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under sub. (5).

PSC 128.15 Shadow flicker. **(1)** PLANNING. (a) The shadow flicker requirements in this section apply to a nonparticipating residence or occupied community building that exists when the owner gives notice under s. PSC 128.105 (1) or for which complete publicly-available plans for construction are on file with a political subdivision within 30 days of the date on which the owner gives notice under s. PSC 128.105 (1).

(b) An owner shall design the proposed wind energy system to minimize shadow flicker at a residence or occupied community building to the extent reasonably practicable.

(c) An owner shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a wind energy system and shall design the wind energy system so that computer modeling indicates that no nonparticipating residence or occupied community building will experience more than 30 hours per year of shadow flicker under planned operating conditions.

(2) SHADOW FLICKER LIMITS. An owner shall operate the wind energy system in a manner that does not cause more than 30 hours per year of shadow flicker at a nonparticipating residence

or occupied community building. If a nonparticipating residence or occupied community building experiences more than 30 hours per year of shadow flicker under the wind energy system's normal operating conditions, the owner shall use operational curtailment to comply with this subsection.

(3) SHADOW FLICKER MITIGATION. (a) An owner of a wind energy system shall work with an owner of a nonparticipating residence or occupied community building to mitigate the effects of shadow flicker to the extent reasonably practicable.

(b) An owner shall provide reasonable shadow flicker mitigation at the owner's expense for a nonparticipating residence or occupied community building experiencing 20 hours or more per year of shadow flicker.

(c) An owner shall model shadow flicker and a nonparticipating residence or occupied community building is eligible for mitigation if computer modeling shows that shadow flicker at the nonparticipating residence or occupied community building will be 20 hours or more per year. An owner of a nonparticipating residence or occupied community building is not required to document the actual hours per year of shadow flicker if modeling indicates the nonparticipating residence or occupied community building is eligible for mitigation. A nonparticipating residence or occupied community building that experiences 20 hours or more per year of shadow flicker based on records kept by the resident of a nonparticipating residence or the occupant of an occupied community building shall also be eligible for mitigation.

(d) An owner may provide shadow flicker mitigation for any residence or occupied community building in addition to the mitigation required under par. (b).

(e) The requirement under par. (b) to mitigate shadow flicker applies when the owner receives a complaint or request for mitigation regarding shadow flicker for an eligible nonparticipating

residence or occupied community building. If shadow flicker mitigation is required, the owner of the wind energy system shall allow the owner of the nonparticipating residence or occupied community building to choose a preferred reasonable mitigation technique, including installation of blinds or plantings at the wind energy system owner's expense.

(4) WAIVER. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the wind energy system owner of a requirement under sub. (2) or (3) (b) at the affected nonparticipating residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.

(5) NOTIFICATION. (a) Before entering into a contract under sub. (4), a wind energy system owner shall provide notice of the requirements of this section to individual owners of an affected nonparticipating residence or occupied community building.

(b) Before the initial operation of the wind energy system, a wind energy system owner shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under sub. (4).

PSC 128.16 Signal interference. (1) PLANNING. (a) Except as provided in sub. (4) (b), the signal interference requirements in this section apply to commercial communications and personal communications in use when the wind energy system begins operation.

(b) A owner shall use reasonable efforts to avoid causing interference with commercial communications and personal communications to the extent practicable.

(c) An owner may not construct wind energy system facilities within existing line-of-sight communication paths that are used by government or military entities to provide services essential to protect public safety. A political subdivision may require an owner to provide information showing that wind turbines and other wind energy system facilities will be in compliance with this paragraph.

(2) COMMERCIAL COMMUNICATIONS INTERFERENCE MITIGATION. An owner shall use reasonable and commercially available technology to mitigate interference caused by a wind energy system with commercial communications in use when a wind energy system begins operation. Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for commercial communications interference problems. Except as provided in sub. (4), an owner shall mitigate commercial communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.

(3) PERSONAL COMMUNICATIONS INTERFERENCE MITIGATION. (a) An owner shall use reasonable and commercially available technology to mitigate interference with personal communications in use when a wind energy system begins operation caused by a wind energy system. A political subdivision may require an owner to use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began commercial operation, if a wind energy system is causing the interference and the interference occurs at a location at least 0.5 mile from a wind turbine.

(b) Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for personal communications interference problems. Except as provided in sub. (4), an owner shall mitigate personal communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.

(4) MITIGATION PROTOCOL. A political subdivision may, under a protocol established under s. PSC 128.50 (2), require an owner to implement a new mitigation solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required under sub. (2) or (3) and for which the original mitigation solution implemented is only partially effective.

PSC 128.17 Stray voltage. (1) TESTING REQUIRED. (a) An owner shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within 0.5 mile of a wind energy system facility pursuant to the stray voltage protocol established by the commission before any wind energy system construction activity that may interfere with testing commences and again after construction of the wind energy system is completed, except as otherwise specified by commission staff under par. (b).

(b) Before any testing under par. (a) begins, an owner shall work with commission staff to determine the manner in which stray voltage testing will be conducted and on which properties. The electric distribution company serving a dairy or confined animal operation where testing is required under par. (a) shall conduct or arrange to conduct all required testing at the expense of the owner.

(2) RESULTS OF TESTING. An owner and the electric distribution company shall provide to commission staff the results of all stray voltage testing in writing.

(3) REQUIREMENT TO RECTIFY PROBLEMS. An owner shall work with the electric distribution company and farm owner to rectify any stray voltage problems attributable to the construction and operation of the wind energy system, in compliance with the commission's stray voltage protocol.

PSC 128.18 Construction and operation. (1) PHYSICAL CHARACTERISTICS. (a) An owner may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. An owner may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. An owner may attach a safety feature or wind monitoring device to a wind turbine.

(b) An owner shall ensure that a wind turbine has a conventional or unobtrusive finish.

(c) An owner shall install lighting at a wind energy system that complies with standards established by the federal aviation administration. A political subdivision may not establish lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration. A political subdivision may require use of shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.

(d) An owner shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.

(e) An owner shall ensure that all wind turbine access doors and electrical equipment are locked when authorized personnel are not present.

(f) An owner shall place appropriate warning signage on or at the base of each wind turbine.

(g) An owner shall post and maintain up-to-date signs containing a 24-hour emergency contact telephone number, information identifying the owner, and sufficient information to identify the location of the sign within the wind energy system. An owner shall post these signs at every intersection of a wind energy system access road with a public road and at each wind turbine location.

(h) An owner shall clearly mark guy wires and supports for a wind energy system, meteorological tower or other device for measuring wind speeds so that the wires and supports are visible to low flying aircraft under fair weather conditions.

(2) ELECTRICAL STANDARDS. (a) An owner shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and 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) An owner shall construct collector circuit facilities for a wind energy system underground to the extent practicable.

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

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

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

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

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

(4) EMERGENCY PROCEDURES. (a) An owner shall notify a political subdivision of the occurrence and nature of a wind energy system emergency within 24 hours of the wind energy system emergency.

(b) An owner shall establish and maintain liaison with a political subdivision and with fire, police, and other appropriate first responders serving the wind energy system to create effective emergency plans that include all of the following:

1. A list of the types of wind energy system emergencies that require notification under par. (a).

2. Current emergency contact information for first responders and for the wind energy system owner, including names and phone numbers.

3. Procedures for handling different types of wind energy system emergencies, including written procedures that provide for shutting down the wind energy system or a portion of the system as appropriate.

4. Duties and responsibilities of the owner and of first responders in the event of a wind energy system emergency.

5. An emergency evacuation plan for the area within 0.5 mile of any wind energy system facility, including the location of alternate landing zones for emergency services aircraft.

(c) The owner shall review the emergency plan at least annually in collaboration with fire, police and other appropriate first responders to update and improve the emergency plan as needed.

(d) The owner shall distribute current copies of the emergency plan to the political subdivision and fire, police and other appropriate first responders as identified by the political subdivision.

(e) A political subdivision may require the owner to provide annual training for fire, police and other appropriate first responders regarding responding to a wind energy system emergency until the wind energy system has been decommissioned.

(f) An owner of a wind energy system shall do all of the following:

1. Furnish its operator, supervisors and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this subsection 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, review employee activities to determine whether the procedures were effectively followed.

PSC 128.19 Decommissioning. (1) REQUIREMENT TO DECOMMISSION. (a) An owner of a wind energy system shall decommission and remove the wind energy system when the system is at the end of its useful life.

(b) 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 360-day period. This presumption may be rebutted under par. (c).

(c) Upon application by the owner, and except as provided in par. (d), a political subdivision shall grant an extension of the time period for returning the wind energy system to service by one or more additional 180 day periods if the owner demonstrates it is likely the wind energy system will operate again in the future and any of the following occur:

1. The owner submits a plan to the political subdivision that demonstrates an ongoing good faith effort to return the wind energy system to service and outlines the steps and schedule for returning the wind energy system to service in a reasonable period of time, including by repairing, replacing or repowering the wind energy system facilities as necessary to generate electricity.

2. The owner demonstrates that the wind energy system is part of a prototype or other demonstration project being used for ongoing research or development purposes.

3. The owner demonstrates that the wind energy system is being used for educational purposes.

(d) A political subdivision may deny a request for an extension under par. (c) if the wind energy system has not generated any electricity for a continuous period of 540 days or more and the political subdivision finds that the owner is not capable of returning the wind energy system to service within a reasonable period of time.

(e) A wind energy system is irrebuttably presumed to be at the end of its useful life if the wind energy system generates no electricity for a period of 540 days and any of the following occur:

1. The owner does not request an extension of the time period for returning the wind energy system to service under par. (c).

2. The political subdivision denies a request for an extension under par. (d) and any appeal rights have expired.

(f) When decommissioning is required, the owner shall begin decommissioning within 360 days after the wind energy system has reached the end of its useful life. The owner shall complete decommissioning and removal of the wind energy system within 540 days after the wind energy system has reached the end of its useful life.

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

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

that will ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

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

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

3. Require an owner to establish financial assurance that places the political subdivision in a secured position, and that any secured funds may only be used for decommissioning the wind energy system until either the political subdivision determines that the wind energy system has been decommissioned under sub. (5) (b), or until the political subdivision has otherwise approved the release of the secured funds, whichever is earlier.

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

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

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

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

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

(4) SITE RESTORATION. (a) Except as provided in par. (b), if a wind energy system was constructed on land owned by a person other than the owner of the wind energy system, the owner of the wind energy system shall ensure that the property is restored to preconstruction condition, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.

(b) If a wind energy system was constructed on a brownfield, as defined in s. 560.13 (1) (a), Stats., the owner shall restore the property to eliminate effects caused by the wind energy system, except for the effects of environmental remediation activities, as defined in s. 560.13(1) (d), Stats.

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

(b) Within 360 days of receiving a notice of decommissioning, a political subdivision shall determine whether the owner has satisfied the requirements of subs. (1) (a) and (4).

Subchapter III – Political Subdivision Procedure

PSC 128.30 Application and notice requirements. (1) APPLICATION REQUIRED. An owner shall file an application to construct a wind energy system with all political subdivisions with jurisdiction over the wind energy system.

(2) CONTENTS OF AN APPLICATION. An owner shall complete and file with the political subdivision an application that includes all of the following:

(a) Wind energy system description and maps showing the locations of all proposed wind energy facilities.

(b) Technical description of wind turbines and wind turbine sites.

(c) Timeline and process for constructing the wind energy system.

(d) Information regarding anticipated impact of the wind energy system on local infrastructure.

(e) Information regarding noise anticipated to be attributable to the wind energy system.

(f) Information regarding shadow flicker anticipated to be attributable to the wind energy system.

(g) Information regarding the anticipated effects of the wind energy system on existing land uses within 0.5 mile of the wind energy system.

(h) Information regarding the anticipated effects of the wind energy system on airports and airspace.

(i) Information regarding the anticipated effects of the wind energy system on line-of-sight communications.

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

(k) Information regarding the planned use and modification of roads within the political subdivision during the construction, operation, and decommissioning of the wind energy system, including a process for assessing road damage caused by wind energy system activities and for conducting road repairs at the owner's expense.

(L) A copy of all emergency plans developed in collaboration with appropriate first responders under s. PSC 128.18 (4) (b). An owner may file plans using confidential filing procedures as necessary.

(m) A decommissioning and site restoration plan providing reasonable assurances that the owner will be able to comply with s. PSC 128.19.

(n) A representative copy of all notices issued under sub. (5) and ss. PSC 128.105 (1) (a) and 128.42 (1).

(p) Any other information necessary to understand the construction, operation or decommissioning of the proposed wind energy system.

(3) ACCURACY OF INFORMATION. The owner shall ensure that information contained in an application is accurate.

(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 an owner to file an application electronically.

(5) NOTICE TO PROPERTY OWNERS AND RESIDENTS. (a) On the same day an owner files an application for a wind energy system, the owner shall, under s. 66.0401 (4) (a) 3., Stats., use commercially reasonable methods to provide written notice of the filing of the application to

property owners and residents located within one mile of the proposed location of 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. Owner 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 a brief description of the proposed wind energy system and its proposed location, the locations where the application is available for public review, 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) A political subdivision shall hold at least one public meeting to obtain comments on and to inform the public about a proposed wind energy system.

(7) JOINT APPLICATION REVIEW PROCESS. (a) If the wind energy system is proposed to be located in more than one political subdivision with jurisdiction over the wind energy system, the political subdivisions involved may conduct a joint application review process on their own motion or upon request. If an owner requests a joint application review, the owner shall include the request in its notice of intent to file an application with the political subdivision under s. PSC 128.105 (1). If the owner requests a joint application review process, the political subdivisions involved shall approve or deny this request within 60 days of receipt of the owner's notice of intent to file an application.

(b) Except as provided in s. 66.0401 (4) (a) 2., Stats., 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 owner'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 owner shall file the joint-review process application with all of the political subdivisions participating in the joint review process.

PSC 128.31 Application completeness. (1) COMPLETE APPLICATIONS. (a) An application is complete if it meets the filing requirements under ss. PSC 128.30 (2) and 128.50 (1).

(b) The political subdivision shall determine the completeness of an application, and shall notify the owner 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 owner 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 provided to the owner shall state the reasons for the determination.

(c) An owner 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 an owner may re-file an application. For incomplete applications, the owner shall provide additional information as specified in the notice under par. (b).

(d) An additional 45-day completeness review period shall begin the day after the political subdivision receives responses to all items identified in the notice under par. (b).

(e) 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 necessary to understand the wind energy system after determining that an application is complete. An owner shall provide additional information in response to all reasonable requests. An owner 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. Except as provided in s. PSC 128.02 (1), a political subdivision may require an owner to obtain approval from the political subdivision before constructing any of the following:

(a) A wind energy system.

(b) An expansion of an existing or previously-approved wind energy system.

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

(b) For a political subdivision that does not have in effect an ordinance as described in s. PSC 128.03 and s. 66.0401 (4) (g), Stats., an application submitted under s. PSC 128.30 (1) shall be considered automatically approved if any of the following occur:

1. The political subdivision does not enact an ordinance before the first day of the 4th month after the political subdivision receives the application.

2. The political subdivision notifies the applicant in writing that it does not intend to enact an ordinance, as described in s. 66.0401 (4) (a) 2., Stats.

(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. A political subdivision may make its approval subject to the conditions in s. PSC 128.33.

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

2. The owner shall record 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 of the wind energy system. A political subdivision may require an owner to provide timely notice of any change in the owner of the wind energy system.

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

(b) A political subdivision's fee or reimbursement requirement under par. (a) shall be based on the actual and necessary 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 by ordinance set standardized application fees based on the size and complexity of a proposed wind energy system.

(c) A political subdivision may require an owner of a wind energy system to submit up to 50 percent of the total estimated amount of the fee or reimbursement for the wind energy system application under par. (a) before issuing a written decision under sub. (3) (a), if the political subdivision gives written notice to the owner of its intent to do so within 10 days of the date the application is deemed complete and the notice contains an estimate of the amount of the fee and the relevant reimbursement requirements.

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

Note: See also s. 66.0628(2), Stats., which requires any fee imposed by a political subdivision to bear a reasonable relationship to the service for which the fee is imposed.

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

(1) INFORMATION. Require information about whether an owner has consulted with and received any non-binding recommendations for constructing, operating or decommissioning the wind energy system from a state or federal agency, and whether the owner has incorporated such non-binding recommendations into the design of the wind energy system.

(2) STUDIES. Require an owner to cooperate with any study of the effects of wind energy systems coordinated by a state agency.

(3) MONETARY COMPENSATION. Require an owner of a wind energy system to offer an agreement that includes annual monetary compensation to the owner of a nonparticipating residence, if the residence is located within 0.5 mile of a constructed wind turbine. For one turbine located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $600. For two turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $800. For three or more turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $1,000. The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, the initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer Price Index, as described in s. 196.374 (5) (bm) 2. b., Stats., from the previous year. An agreement offered under this subsection shall specify in writing any waiver of a requirement or right under this chapter and whether the landowner's acceptance of payment establishes the landowner's property as a participating property under this chapter.

(3m) AERIAL SPRAYING. Require an owner of a wind energy system to offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property

located within 0.5 mile of a constructed wind turbine if the farm operator demonstrates all of the following:

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

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

(4) PERMITS. Require the owner to submit to the political subdivision copies of all necessary state and federal permits and approvals.

(5) ANNUAL REPORTS. Require the owner to file an annual report with the political subdivision documenting the operation and maintenance of the wind energy system during the previous calendar year.

128.34 Record of decision. (1) RECORDKEEPING. (a) A political subdivision shall keep a complete written record of its decision-making relating to an application for a wind energy system.

(b) If a political subdivision denies an application, the political subdivision shall keep the record for at least 7 years following the year in which it issues the decision.

(c) If a political subdivision approves an application, the political subdivision shall keep the record for at least 7 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 additions or amendments to the application.

(b) A representative copy of all notices issued under ss. PSC 128.105 (1) (a), 128.30 (5) and 128.42 (1).

(c) A copy of any notice or correspondence that the political subdivision issues related to the application.

(d) A record of any public meeting under s. PSC 128.30 (6) (c) and any 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 meeting or 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 political subdivision, board, council 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 political subdivision 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 owner 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 all wind energy system facilities, geographic information system information showing the location of all wind energy system facilities and current information identifying the owner of the wind energy system. An owner shall in the filings

under this subsection label each wind turbine location with a unique identifier consistent with the information posted at the wind turbine location under s. PSC 128.18 (1) (g).

PSC 128.35 Modifications to an approved wind energy system. (1) MATERIAL CHANGE. (a) An owner 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, unless the political subdivision automatically approves the material change by taking either of the steps specified in s. PSC 128.32 (2) (b) 1. or 2.

(b) An owner 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) A political subdivision that receives an application for a material change to a wind energy system under sub. (1) (b) may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

(b) An application for a material change is subject to ss. PSC 128.30 (1), (3) to (5), (6) (a) and (b) and (7) and 128.31 to 128.34.

(c) An application for a material change shall contain information necessary to understand the material change.

(d) A political subdivision may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved wind energy system.

PSC 128.36 Monitoring compliance. (1) MONITORING PROCEDURE. A political subdivision may establish a procedure to monitor compliance by the owner with any condition on an approved wind energy system or to assess when wind energy system facilities are not maintained in good repair and operating condition. The procedure may include timelines,

provide for payment of reasonable fees for conducting an assessment, and provide for notification to the public.

(2) THIRD-PARTY INSPECTOR DURING CONSTRUCTION. A political subdivision may require an owner to pay a reasonable fee for a third-party inspector to monitor and report to the political subdivision regarding the owner's compliance with permit requirements during construction. An inspector monitoring compliance under this subsection shall also report to a state permitting authority upon the state permitting authority's request.

Subchapter IV – Complaints

128.40 Complaint process. (1) MAKING A COMPLAINT. (a) An aggrieved person may make a complaint regarding failure by an owner to comply with an obligation under this chapter or an ordinance adopted under this chapter.

(b) A complaint under par. (a) shall be made first to the owner of the wind energy system pursuant to a complaint resolution process developed by the owner.

(c) A complainant may petition the political subdivision for review of a complaint that is not resolved within 45 days of the day the owner receives the original complaint.

(d) A political subdivision's decision under par. (c) is subject to review under s. 66.0401 (5), Stats.

(2) COMPLAINT RESOLUTION. (a) An owner shall use reasonable efforts to resolve complaints regarding a wind energy system and shall investigate complaints regarding a wind energy system at the owner's expense.

(b) Upon receipt of a complaint, an owner shall provide the complainant with a copy of the notice described in s. PSC 128.42 (1). Within 30 days of receiving a complaint, an owner shall provide an initial response to the complainant.

(c) An owner shall make a good faith effort to resolve complaints within 45 days of receiving a complaint. An owner shall notify a political subdivision of complaints that have not been resolved within 45 days of the date the owner received the original complaint.

(d) An owner shall maintain a log of all complaints received regarding the wind energy system. The owner shall include in the log the name and address of each complainant, the nature of each complaint, and the steps taken to resolve each complaint. An owner shall provide a copy of a complaint log monthly, at no cost, either to a monitoring committee established under s. PSC 128.41 or, if a monitoring committee has not been established, to the political subdivision. An owner shall make any complaint log available to the commission upon request.

(e) An owner shall develop a complaint resolution process that is consistent with this subsection.

128.41 Monitoring committee. (1) COMMITTEE. Except as provided in sub. (3), a political subdivision may establish a monitoring committee to oversee resolution of complaints regarding a wind energy system. A monitoring committee shall include on the committee a member who is a local employee of an owner of a wind energy system and, if in existence, at least one nonparticipating landowner residing in the political subdivision within 0.5 mile of a wind turbine that is located in the political subdivision.

(2) DUTIES. A monitoring committee established under sub. (1) may do any of the following:

(a) Maintain a record of all complaints brought to it.

(b) Require the owner to provide the committee with information regarding the owner's response to any complaint forwarded to the owner by the committee.

(c) Recommend to the political subdivision a reasonable resolution to a complaint based upon the information gathered by the committee.

(3) MULTIPLE JURISDICTIONS. If a wind energy system is located in more than one political subdivision with jurisdiction over the wind energy system and multiple political subdivisions decide to establish a monitoring committee, the political subdivisions shall jointly establish a single monitoring committee to oversee resolution of complaints regarding the wind energy system.

128.42 Notice to property owners and residents. (1) NOTICE OF PROCESS FOR MAKING COMPLAINTS. Before construction of a wind energy system begins, an owner shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any wind energy system facility. An owner shall include in the notice the requirements under s. PSC 128.40 (1) for submitting a complaint to the owner, a petition for review to the political subdivision, and an appeal to the commission, and shall include a contact person and telephone number for the owner for receipt of complaints or concerns during construction, operation, maintenance and decommissioning.

(2) NOTICE TO POLITICAL SUBDIVISION. An owner shall provide a copy of the notice under sub. (1) to any political subdivision with jurisdiction over the wind energy system, and the owner shall keep the contact person and telephone number current and on file with the political subdivision.

Subchapter V – Commission Procedure

PSC 128.50 Standards established by the commission. (1) DETAILED APPLICATION FILING 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 (2). The commission may revise these requirements as necessary. The commission shall make the filing requirements available to the public on the commission's website.

(2) COMMISSION PROTOCOLS. (a) The commission may periodically create and revise measurement, compliance, and testing protocols as needed to provide standards for evaluating compliance with this chapter. These protocols may be created and revised to reflect current industry practice, changes in the state of the art, and implementation of new technologies. The commission may make protocols under this subsection available to the public on the commission's website.

(b) The commission may establish protocols in any of the following areas:

1. Noise measurement, compliance and mitigation.

2. Stray voltage testing and remediation.

3. Shadow flicker compliance and mitigation.

4. Communications interference testing and mitigation.

5. Other areas where protocols are appropriate.

PSC 128.51 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 required 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 5 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) An owner 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 an owner submitting a petition under sub. (2) (intro.) shall serve a copy of the petition on the owner, 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 DISCRETIONARY. 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 a Type III action under s. PSC 4.10 (3).

(7) REMAND TO POLITICAL SUBDIVISION. (a) Except as provided in par. (b), if the commission remands any issue to the political subdivision, the political subdivision's review on remand shall be completed in a time frame established by the commission in its remand order. (b) If the commission determines that a political subdivision has not yet reviewed an application that is complete, and the commission remands the application to the political subdivision for review, the political subdivision's review shall be completed within the time frame provided for reviewing a complete application under this chapter and s. 66.0401(4) (d) and (e), Stats., beginning with the day after the day on which the commission issues its remand order.

Subchapter VI – Small Wind Energy Systems

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

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

(1) NOTICE. Under s. PSC 128.105 (1), the notice shall be filed at least 60 days before an owner files an application to construct a small wind energy system and the notice shall be

provided only to adjacent landowners and the political subdivisions with jurisdiction over the small wind energy system.

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

(3) SETBACK DISTANCES. In s. PSC 128.13 (1):

(a) Table 1 is replaced with Table 2.

(b) The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the applicable turbine setback distances in Table 2.

Table 2

Setback Description	Setback Distance
Occupied Community Buildings	1.0 times the maximum blade tip height
Participating Residences	None
Nonparticipating Residences	1.0 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.0 times the maximum blade tip height
Public Road Right-of-Way	None
Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings	1.0 times the maximum blade tip height
Overhead Utility Service Lines - Lines to individual houses or outbuildings	None

(4) NOISE. Under s. PSC 128.14 (6) (b), an owner shall provide notice of the requirements of s. PSC 128.14 only to each adjacent nonparticipating residence or occupied community building before the initial operation of the small wind energy system.

(5) USEFUL LIFE. Under s. PSC 128.19 (1), a small wind energy system is presumed to be at the end of its useful life if it generates no electricity for a continuous 540-day period.

(6) EFFECTS ON LAND USES. Under s. PSC 128.30 (2) (g), the information regarding the anticipated effects of the small wind energy system on existing land uses shall only be for parcels adjacent to the wind energy system.

(7) APPLICATION NOTICE. Under s. PSC 128.30 (5) (a), written notice of the filing of the application shall be provided only to property owners and residents located adjacent to the small wind energy system.

(8) MEETINGS. Under s. PSC 128.30 (6) (c), a political subdivision may hold at least one public meeting to obtain comments on and to inform the public about a proposed small wind energy system.

SECTION 3. EFFECTIVE DATE. This rule takes effect on the later of January 1, 2011, or the first day of the first month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

(End)

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