

PUBLIC SERVICE COMMISSION OF WISCONSIN

STATEMENT OF SCOPE

Wind Siting Rules

Docket 1-AC-231 (PSC 128)

A. Objective of the Rule:

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

B. Existing Relevant Policies, New Policies Proposed, and Analysis of Alternatives:

Act 40 identifies several areas that these rules must cover and several areas that they may cover. It requires that the rules include provisions dealing with the decommissioning of wind energy systems, including restoration of the site, and setback requirements that reasonably protect against health effects that are associated with wind energy systems.

Act 40 also requires rules that specify the information and documentation to be provided in an application for approval, the procedure to be followed by a political subdivision in reviewing the application, the information and documentation to be kept in a political subdivision's record of its decision, as well as the requirements and procedures for enforcing restrictions included in the rule. The rules must also require the owner of a wind energy system with a nominal operating capacity of at least one megawatt to maintain proof of financial responsibility ensuring the availability of funds for decommissioning the system.

The rules may also include provisions dealing with issues such as visual appearance, electrical connections to the power grid, interference with radio, telephone or television signals, maximum audible sound levels, and lighting.

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

require the Commission to consider the conditions specified in these rules when determining whether to grant a public utility a certificate of authority for a wind farm smaller than 100 megawatts.

Act 40 also creates a 15-person Wind Siting Council that will, among other things, advise the Commission in the drafting of these rules.

C. Summary and Comparison of Federal Regulation in This Area:

There are a number of federal laws that interact with the issues in this rulemaking, although the Commission is not aware of any that deal with the substance of them; that is, the minimum requirements that a political subdivision may impose. A few of the federal laws that may inter-relate include the National Environmental Policy Act, 42 USC 4321 *et. seq.*, the Endangered Species Act, 16 USC 1531–1544, and 14 CFR Pt. 77, which requires a Federal Aviation Administration airspace study before constructing certain types of projects.

D. Statutory Authority:

This rule is authorized under ss. 196.02 (1) and (3), 227.11 and newly-created s. 196.378 (4g), Stats.

E. Time Estimates for Rule Development:

The Commission estimates that approximately 800 hours of Commission staff time will be required in this rulemaking.

F. Entities That May Be Affected:

Affected entities include cities; villages; towns; counties; persons and entities that own, want to construct, or want to host wind energy systems; and landowners near such proposed wind energy systems.