

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

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Wind Siting Rules

Docket No. 1-AC-231

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**COMMENTS AND SUGGESTED MODIFICATIONS TO PROPOSED  
WIND SITING RULES**

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Pursuant to the Notice of Hearing issued on May 18, 2010, NextEra Energy Resources, LLC ("NextEra") submits the following comments and suggested modifications to the proposed wind siting rules.

**INTRODUCTION**

NextEra is a wholesale developer, owner and operator of energy generation systems, using fuels such as wind, solar, hydroelectric, natural gas, and nuclear. NextEra operates over 18,000 MW of generating facilities throughout the United States and in Canada.

NextEra is North America's largest producer of wind energy with 77 wind facilities in operation in 17 states, and Canada. Currently, NextEra's North America wind portfolio exceeds 7,600 MW.

NextEra currently provides over 1,000 MW of emission-free, clean energy to Wisconsin utilities. Through affiliates, NextEra presently owns and operates three power plants in Wisconsin. The Point Beach Nuclear Plant is an approximately 1,030 MW nuclear facility located in Two Creeks, Wisconsin. The Montfort Wind Energy Center, located in Iowa County, consists of 20 turbines

with a maximum capability of approximately 30 MW. Butler Ridge, another wind energy facility, consists of 36 turbines with a maximum capability of approximately 54 MW, and is located in Dodge County. NextEra's existing facilities in Wisconsin represent over 800 permanent jobs to the state and an investment in Wisconsin exceeding \$1 billion.

NextEra's substantial experience in developing wind projects throughout the country and its strong presence in Wisconsin enable it to provide informed comments to the Commission on the draft wind siting rules.

### **COMMENTS**

NextEra believes that there are a number of important principles which should guide consideration of the draft wind siting rules in order to implement the goals established by the legislature. These principles include:

1. Ensuring that sufficient renewable energy is available in Wisconsin to meet the state's Renewable Portfolio Standard requirements.
2. Ensuring that developers of renewable energy are presented with the proper circumstances to allow them to pursue renewable projects in the state.
3. Ensuring that the rules are focused on the matters identified in the enabling legislation.

While the Commission is authorized to promulgate certain rules under Wis. Stat. §§ 66.0401(1m) and 196.378(4g)(b), those rules must comply with the terms of the enabling statute. The regulations cannot exceed the statutory authority provided to the Commission by the legislature. The Commission's goal in issuing

these rules should be to create a set of regulations which implement the legislative goals and requirements by ensuring the establishment of wind energy systems in the state without hampering the continued development of wind technologies and business activities which are desired by Wisconsin residents.

NextEra believes that these principles require the following modifications be made to the draft rules.

**I. THE RULES MUST BE FOCUSED ON THE PUBLIC HEALTH AND SAFETY, COST AND EFFICIENCY CONDITIONS IDENTIFIED IN § 66.0401 WIS. STATS.**

The authorization to promulgate these wind siting rules is set forth in Wis. Stat. § 196.378(4g)(b). That statute provides as follows:

The commission shall, with the advice of the wind siting council, promulgate rules that specify the restrictions a political subdivision may impose on the installation or use of a wind energy system *consistent with the conditions specified in s. 66.0401 (1m) (a) to (c)....* (Emphasis added).

Although that section proceeds to identify certain subject matters of the rules, all of those subject matters are limited by the "conditions specified in s. 66.0401(1m)(a) to (c)."

Wis. Stat. § 66.0401(1m), limits the authority of local governments to restrict wind energy systems in the state:

(1m) **AUTHORITY TO RESTRICT SYSTEMS LIMITED.** No political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission under s. 196.378(4g)(b). No political

subdivision may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48(2)(h) 1.g, or a wind energy system, unless the restriction satisfies one of the following conditions:

(a) Serves to preserve or protect the public health and safety.

(b) Does not significantly increase the cost of the system or significantly decrease its efficiency.

(c) Allows for an alternative system of comparable cost and efficiency.

The Wisconsin Court of Appeals has confirmed these limitations on the authority of local governing bodies over wind energy systems. In *State ex rel. Numrich v. City of Mequon*, 2001 WI App. 88, 242 Wis. 2d 677, 626 N.W.2d 366, the court determined that the statute<sup>1</sup>

represents a legislative restriction on the ability of local governments to regulate solar and wind energy systems. Local restrictions are permitted only if they serve the public health or safety, do not significantly increase the cost or decrease the efficiency of the system, or allow for an alternative system of comparable cost and efficiency. Beyond those, no other restrictions are allowed. The statute is not trumped, qualified or limited by § [66.0403] or by a municipality's zoning and conditional use powers.

*Numrich*, 2001 WI App 88, ¶ 17.

The court recognized that, in order to address concerns regarding the diminishing supplies of nonrenewable energy sources and encourage the use of

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<sup>1</sup> The statute reviewed by the court was Wis. Stat. § 66.031, which has since been renumbered as Wis. Stat. § 66.0401.

renewable sources of energy, "the legislature resolved to remove legal impediments to such systems...." *Id.* The court went on to find that the city "was duty bound to confine its consideration of the conditional use applications *in light of the restrictions placed on local regulations pursuant to § [66.0401].*" *Numrich*, 2001 WI App 88, ¶ 23 (emphasis in original).

In *Ecker Bros. v. Calumet County*, 2009 WI App 112, 321 Wis. 2d 51, 772 N.W.2d 240, *pet. denied* (Nov. 12, 2009), the Court of Appeals specifically interpreted the restrictions of Wis. Stat. § 66.0401 on the ability of a local government to regulate wind energy systems. The Court of Appeals stated:

*We read the Wisconsin statutes to say that our legislature favors alternative energy systems, such as the proposed wind energy system at issue in this case. We also read the statutes to disfavor wholesale local control which circumvents this policy. Instead, localities may restrict a wind energy system only where necessary to preserve or protect the public health or safety, or where the restriction does not significantly increase the cost of the system or significantly decrease its efficiency, or where the locality allows for an alternative system of comparable cost and efficiency.*

*Ecker Bros.*, 2009 WI App 112, ¶ 1 (emphasis added).

The Court of Appeals described Wis. Stat. § 66.0401 as a "state legislative restriction that expressly forbids political subdivisions from regulating solar and wind energy systems. *State ex rel. Numrich v. City of Mequon Bd. of Zoning Appeals*, 2001 WI App 88, ¶ 17, 242 Wis. 2d 677, 626 N.W.2d 366." *Ecker Bros.*, 2009 WI App 112, ¶ 10.

The Court of Appeals determined that "Here, the legislature already made the policy decision that it favors wind energy systems." *Id.*, ¶ 19. In explaining its view of Wis. Stat. § 66.0401, the Court of Appeals stated:

We are unconvinced that just because the legislature provided for three conditions under which political subdivisions can restrict a wind energy system, that it granted political subdivisions the authority to determine as a matter of legislative fact a "cart before the horse" method of local control.

\* \* \*

*The conditions listed in § 66.0401(1)(a)-(c) are the standards circumscribing the power of political subdivisions, not openings for them to make policy that is contrary to the State's expressed policy.*

*Id.*, ¶¶ 20 and 21 (emphasis supplied).

In reaching the conclusion that the County's ordinance was void the Court of Appeals stated:

These strategies indicate that the legislature determined it appropriate to give political subdivisions the power to assist in the creation of renewable energy systems and thus become an integral and effective factor in the State's renewable energy goal. But, this history does not indicate that the State intended to delegate the power of policymaking. *Instead, the evidence is that the State delegated the authority to execute and administer its established policy of favoring wind energy systems, and the statutory scheme was intended to create avenues for political subdivisions to assist the State.* If the County and other similarly situated localities believe that localities should be able to decide for themselves whether and to what extent wind systems are welcome in their geographical area, their argument is best made to the legislature.

*Ecker Bros.*, 2009 WI App 112, ¶ 23 (emphasis added).

The recent amendments to Wis. Stat. §§ 66.0401 and 196.378 providing for creation of wind siting rules by the Commission, are consistent with the Court of Appeals decision in *Ecker Bros.* While the legislature provided authority to the Commission to consider certain issues in the rules, the legislature specifically did not alter the restrictions on local governments concerning wind energy systems, which previously existed in § 66.0401 and which restrictions have been enforced by the Wisconsin appellate courts. Moreover, the legislature has required that these rules must be "consistent with the conditions specified in s. 66.0401(1m)(a) to (c)." See § 196.378(4g)(b).

NextEra has provided suggested redline modifications to the draft wind siting rules focused on whether a draft rule (1) protects the public health or safety; (2) does not significantly increase the cost or decrease the efficiency of the system; or, (3) allows for a comparable alternative system. NextEra believes that is the appropriate process to follow under the existing legal requirements and we believe the Commission should follow the same analysis. The legislature and the appellate courts have already spoken in favor of encouraging wind energy development in Wisconsin. These rules should be consistent with those legislative and judicial directives.

For example, § 66.0401(1m) (a) would allow a restriction only where it "[s]erves to preserve or protect the public health and safety." There is no legitimate basis to suggest that additional setback distances to those identified in

the redlined version of the rules are necessary to protect the public health and safety. The setback distances proposed by wind energy opponents are designed to serve aesthetic or other purposes, not public health and safety. The court in *Numrich* expressly rejected a determination by the City of Mequon Zoning Board which "alluded to the negative impact of the energy systems on the property values of the neighboring properties and on the aesthetics of the neighborhood." *Numrich*, 2001 WI App 88, ¶ 22.

Section § 66.0401(1m)(b) would allow a restriction only where it "does not significantly increase the cost of the system or significantly decrease its efficiency." Paragraph (b) does not permit the imposition of setbacks which prevent the construction of wind energy systems. Decreasing the number of turbines because of setback distances obviously would significantly downgrade the capacity of the facility, reduce the efficiency of the facility and increase the cost per MW of the remaining power generated.

Section 66.0401(1m)(c) would permit a restriction only where it "allows for an alternative system of comparable cost and efficiency." Paragraph (c) does not allow setbacks which prevent the construction of wind energy systems because there would be no allowance for an alternative system of comparable cost and efficiency. In fact, an alternative system of comparable cost and efficiency would not be available because the setback restrictions would eliminate turbines, downgrade the capacity of the facility, reduce the efficiency of the facility, and increase the cost per MW of the remaining power generated.



## **SUGGESTED MODIFICATIONS TO WIND SITING RULES**

Consistent with the identified legislative and juridical directives, NextEra has included a redline version of the proposed rules incorporating suggested amendments as Attachment A to these comments.

For the reasons stated, NextEra requests that the positions and modifications provided in these comments and redline suggested modifications be incorporated into the wind siting rules.

Dated this 7th day of July, 2010.

NEXTERA ENERGY RESOURCES, LLC

*/s/ Jose Medina*

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Jose Medina  
Regulatory & Governmental Affairs  
NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach FL 33408  
561-304-5702  
Jose.Medina@nexteraenergy.com

and

Julie A. Voeck  
Director Regulatory Affairs  
NextEra Energy Resources, LLC  
Suite 101  
200 South Executive Drive  
Brookfield, WI 53005  
262-814-2639  
julie.voeck@nexteraenergy.com

# ATTACHMENT A

**PSC Chapter 128  
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1 **TEXT OF PROPOSED RULE**

2

3 SECTION 1. Chapter PSC 128 is created to read:

4 **CHAPTER PSC 128**

5 **WIND ENERGY SYSTEMS**

6

7 **Subchapter I General**

8 **Subchapter II Developer Requirements**

9 **Subchapter III Political Subdivision Procedure**

10 **Subchapter IV Commission Procedure**

11

12 **Subchapter I**

13 **General**

14 **PSC 128.01 Definitions.** In this chapter:

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

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

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

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- 1 (a) The above ground portion of a wind energy system, including wind turbines and related facilities,  
2 except for access roads if removal has been waived by the property owner.
- 3 (b) All below ground facilities, except for underground collector circuit facilities, and concrete  
4 structures four feet or more below grade.
- 5 (4) “DNR” means the Wisconsin department of natural resources.
- 6 (5) “Large wind energy system” means a wind energy system with an installed nameplate capacity of  
7 greater than 100 kilowatts.
- 8 (6) “Maximum blade tip height” means the nominal hub height plus the nominal blade length, as  
9 listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in  
10 the wind turbine specifications, “maximum blade tip height” means the actual hub height plus the  
11 blade length.
- 12 (7) “Nameplate capacity” means the nominal generating capacity, as listed in the wind turbine  
13 specifications provided by the wind turbine manufacturer.
- 14 (8) “Nonparticipating property” means real property for which there is no agreement between the  
15 landowner and developer that permits the construction of any part of a wind energy system on the  
16 property.
- 17 (9) “Nonparticipating residence” means an occupied permanent residence located on a  
18 nonparticipating property.
- 19 (10) “Occupied community building” means a school, church, daycare facility or public library.
- 20 (11) “Operator” means the person responsible for the operation and maintenance of a wind energy  
21 system.

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- 1 (12) “Owner” means a person with an ownership interest in a wind energy system.
- 2 (13) “Participating property” means any of the following:
- 3 (a) Real property which is subject to an agreement between the landowner and the developer, owner,
- 4 or operator for the construction of any portion of a wind energy system on the property.
- 5 (b) Real property that is the subject of an agreement that includes all of the following items:
- 6 1. Provides for the payment of monetary compensation to the landowner from the developer, owner
- 7 or operator regardless of whether any part of a wind energy system is constructed on the property.
- 8 ~~2. Specifies in writing that the landowner’s acceptance of payment establishes the landowner’s~~
- 9 ~~property as a participating property.~~
- 10 (14) “Political subdivision” has the meaning given in s. 66.0401 (1e) (c), Stats.
- 11 (15) “Residence” includes a permanent occupied personal residence, hospital, community-based
- 12 residential facility, residential care apartment complex or similar facility, and nursing home.
- 13 (16) “Regulation” includes any ordinance or resolution adopted by the governing body of a political
- 14 subdivision relating to a wind energy system and any contract or agreement entered into by a
- 15 political subdivision and a developer relating to a wind energy system.
- 16 (17) “Shadow flicker” means a pattern of changes in light intensity resulting from the shadow of
- 17 rotating wind turbine blades being cast on a residence or occupied community building.
- 18 (18) “Small wind energy system” means a wind energy system that has an installed nameplate
- 19 capacity of 100 kilowatts or less.
- 20 (19) “Turbine host property” means real property which is subject to an agreement between a
- 21 landowner and a developer, owner, or operator for the construction of one or more wind turbines.

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

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

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

8

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

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

12 1. A wind energy system for which a certificate of public convenience and necessity application has  
13 been filed with the commission before the effective date of this chapter...[LRB inserts date].

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

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

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

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

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

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

11

12

## Subchapter II

13

### Developer Requirements

14

**PSC 128.10 Development of a wind energy system; Notice requirements. (1) GENERAL**

15

NOTIFICATION REQUIREMENTS. (a) ~~At least 270 days before a developer files an~~

16

~~application to construct a wind energy system, or 180 days before the planned start of construction of~~

17

~~a wind energy system, whichever is earlier, Upon filing an application to construct a wind energy~~

18

system a developer shall concurrently provide written notice of the planned wind energy system to

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landowners within one mile of the planned wind energy system and to all political subdivisions

20

within which the wind energy system may be located. For a large wind energy system, a developer

21

shall file a copy of the notice with the commission.

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- 1 (b) The developer shall include all of the following in the notice under par. (a):
- 2 1. A ~~complete~~ description of the wind energy system, including the number and size of the wind
  - 3 turbines.
  - 4 2. A map showing the planned location of the wind energy system.
  - 5 3. Contact information for the developer.
  - 6 4. A list of all potential permits or approvals the developer anticipates may be necessary for
  - 7 construction of the wind energy system.
  - 8 5. Whether the developer is requesting a joint application review process under s. PSC 128.30(7) and
  - 9 the names of any other political subdivision that may participate in the joint review process.
- 10 (2) DNR NOTIFICATION. (a) Upon filing an application to construct a wind energy system ~~or 120~~
- 11 ~~days before the start of construction if no application process is required by the political subdivision,~~
- 12 the developer shall notify the DNR of the proposed wind energy system and the proposed location of
- 13 all wind energy system facilities. A developer shall consult with the DNR and incorporate
- 14 appropriate DNR permitting considerations into wind energy system plans prior to construction ~~siting~~
- 15 ~~decisions required permitting considerations for wetlands, waterways, construction site erosion~~
- 16 ~~control, and threatened or endangered resources.~~
- 17 (3) TRANSPORTATION NOTIFICATIONS. (a) Upon filing an application to construct a wind
- 18 energy system ~~At least 90 days before a developer files an application to construct a wind energy~~
- 19 ~~system, or 120 days before the start of construction if no application process is required by the~~
- 20 ~~political subdivision,~~ the developer shall notify the Wisconsin Department of Transportation of the
- 21 proposed wind energy system and the proposed location of all wind energy system facilities located



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1 | within the Wisconsin Department of Transportation jurisdiction. The developer shall also notify the  
2 | highway department of any political subdivision within which the wind energy system may be  
3 | located.

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

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

15 | 1. Emergency first responders including fire, police, ambulance and air ambulance services serving  
16 | the proposed wind energy system location.

17 | 2. Emergency first responders of a political subdivision within which the wind energy system may be  
18 | located.

19 | (b) For a large wind energy system, the developer shall consult and coordinate with local first  
20 | responders and air ambulance services regarding ~~the development of an emergency evacuation plan,~~  
21 | ~~including the locations of alternate landing zones for emergency services aircraft~~ likely scenarios and

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1 appropriate responses to those scenarios. The developer shall file the final plan with the political  
2 subdivision, using confidential filing procedures if necessary.

3 [JM2]

4 ~~PSC 128.11 Real property provisions. (1) WIND EASEMENT. (a) A property owner may grant~~  
5 ~~another person a wind easement in the same manner and with the same effect as a conveyance of an~~  
6 ~~interest in real property. A wind easement shall be in writing and shall be filed with the register of~~  
7 ~~deeds for the county in which the property is located.~~

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

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

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

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

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

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- 1 ~~(d) Permit the property owner to rescind an executed wind lease within 3 business days of signing the~~  
2 ~~wind lease.~~
- 3 ~~(3) WIND LEASE PROHIBITIONS. A wind lease may not include provisions that require any of~~  
4 ~~the following:~~
- 5 ~~(a) Require the parties to maintain the confidentiality of any terms of a proposed wind lease except~~  
6 ~~that the parties may include a confidentiality agreement regarding the compensation terms contained~~  
7 ~~in the final signed wind lease.~~
- 8 ~~(b) Make the property owner liable for any property tax associated with the wind energy system or~~  
9 ~~other equipment related to the production of electricity by the wind energy system.~~
- 10 ~~(c) Make the property owner liable for any violation of federal, state or local laws and regulations by~~  
11 ~~the developer, owner or operator of the wind energy system.~~
- 12 ~~(d) Make the property owner liable for any damages caused by the wind energy system or the~~  
13 ~~operation of the wind energy system, including liability or damage to the property owner or to third~~  
14 ~~parties.~~
- 15 (4) MITIGATION AGREEMENTS. A developer, owner or operator may not, as a condition of  
16 accepting any benefit to settle a noisesound, signal interference, stray voltage or shadow flicker  
17 mitigation issue, ~~require a property owner to keep the settlement confidential or~~ require the property  
18 owner to waive any right to make a future claim about an unrelated issue.
- 19 **PSC 128.12 Existing property uses.** A developer shall make reasonable efforts to ascertain ~~and~~  
20 ~~accommodate and not impede~~ existing land uses and commercial enterprises located on  
21 nonparticipating properties within one mile of a proposed wind turbine site.

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

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<b>Table 1</b>	
<b>Setback Description</b>	<b>Setback Distance</b>
Occupied Community Buildings	3.1 times the maximum blade tip height
Participating Residences	1.5 times the maximum blade tip height
Nonparticipating Residences	3.1 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.1 times the maximum blade tip height
Public Road Right-of-Way	1.1 times the maximum blade tip height
Wetlands; Ordinary High Water Mark of Lakes and Waterways <b>(DNR Requirements)</b>	<del>1.1 times the maximum blade tip height</del> <u>Refer to existing DNR requirements</u>
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

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

4 [[JM3]

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

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

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

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

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

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

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

9 ~~12M41~~ (3) LINE-OF-SIGHT COMMUNICATION TECHNOLOGIES STANDARD. The developer,  
10 owner or operator may not construct wind energy system facilities within the path of existing line-of-  
11 sight communication technologies. A political subdivision may require a developer to provide  
12 information showing that wind turbines and other wind energy system facilities will not be placed  
13 within the path of existing line-of-sight technologies.

14

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

17 (2) NOISESOUND STANDARD. (a) Compliance with noisesound limits shall be measured or  
18 otherwise evaluated at the outside wall of the nonparticipating residence or occupied community  
19 building. If sound level measurements are used to evaluate compliance, those measurements shall be  
20 made at the outside wall nearest to the closest wind turbine, ~~or at an alternate wall as specified by the~~

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1 ~~resident~~. The developer may take additional measurements to evaluate compliance in addition to  
2 those specified by this section.

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

7 (3) MITIGATION. (a) Upon complaint by a nonparticipating resident, Aa developer, owner or  
8 operator shall upon further investigation, and in partnership with complainant, determine whether a  
9 compliance test should be performed unless a comparable test has already been conducted to prove  
10 compliance. If such a test for compliance concludes with the \_noisesound limits upon complaint by a  
11 nonparticipating resident. If the complaint relates to noise produced by the wind energy system  
12 during nighttime hours exceeds 50 dba, the noisesound limit for those areas related to the complaint  
13 and stemming from the wind energy system shall be reduced to 45 dBA during nighttime hours and  
14 the developer, owner or operator shall ensure the seasonally-reduced nighttime noisesound limit is  
15 met. For purposes of this paragraph, nighttime hours are the hours between 10:00 p.m. to 6:00 a.m.  
16 daily, from April 1 to September 30.

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

19 (c) A developer shall provide notification of the requirements of this section to properties adjacent to  
20 participating owners ~~potentially affected owners of nonparticipating residences~~ and occupied



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1 | community buildings adjacent to participating owners before the initial operation of the wind energy  
2 | system.

3 | ~~[(1M6)] (d) In the event audible noise due to wind energy system operations contains a steady pure tone,  
4 | such as a whine, whistle, screech, or hum, the developer, owner or operator shall promptly take  
5 | corrective action to eliminate the cause of the steady pure tone. Operational curtailment of a wind  
6 | turbine during nighttime hours may be used to comply with this paragraph until the cause of the  
7 | steady pure tone can be permanently eliminated. This paragraph does not apply to rhythmic sound  
8 | that may be generated by the rotation of wind turbine blades.~~

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

13 | (f) The commission shall establish a noisesound measurement protocol, which shall contain  
14 | minimum requirements for pre- and post-construction noisesound studies. The commission may  
15 | revise the noisesound measurement protocol as necessary. The commission shall make the  
16 | noisesound measurement protocol available to the public on the commission's website and shall  
17 | provide opportunity for public comment and make the proposed protocol open to revision prior to  
18 | approval.

19 | (g) An owner of an affected residence may relieve the developer of the requirement to meet any of  
20 | the noisesound requirements in this section at the affected residence by written contract with the  
21 | developer. Unless otherwise provided in a contract signed by an owner of an affected residence, a

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1 waiver by an owner of an affected residence is not an encumbrance on the real property and runs  
2 with the land until the wind energy system is decommissioned.

3

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

10 (2) STANDARD. The developer shall design a wind energy system so that computer modeling  
11 indicates that ~~no~~ nonparticipating residences ~~s~~ would-do not experience more than 30 hours per year of  
12 shadow flicker.

13 (3) MITIGATION. (a) A developer, owner and operator shall work with an owner of a residence to  
14 ~~mitigate the effects of shadow flicker. The developer shall~~ provide commercially reasonable shadow  
15 flicker mitigation for a residence experiencing ~~25-30~~ [JM7] hours per year or more of shadow flicker  
16 proven to be caused by the wind energy system. The developer shall model shadow flicker and a  
17 residence is eligible for mitigation if computer modeling shows that shadow flicker exceeds ~~25-30~~  
18 hours per year at the residence. The owner of the residence is not required to document the actual  
19 hours per year of shadow flicker if modeling indicates the residence is eligible for mitigation. A  
20 residence that exceeds ~~25-30~~ hours per year of shadow flicker based on reliable records kept by the  
21 resident shall also be eligible for mitigation.

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- 1 (b) A developer, owner or operator may provide shadow flicker mitigation for residences  
2 experiencing less than ~~25-30~~ hours per year of shadow flicker.
- 3 (c) The requirement under par. (a) to mitigate shadow flicker at an eligible residence is triggered  
4 when the developer, owner or operator receives a complaint regarding shadow flicker, and  
5 subsequently that complaint is proven to be caused by the wind energy system through computer  
6 modeling. If shadow flicker mitigation is required, the developer, owner or operator shall allow the  
7 owner of the residence to choose a preferred reasonable mitigation technique, ~~including installation~~  
8 ~~of blinds or plantings~~ at the developer, owner or operator's expense.
- 9 (d) A developer, owner or operator shall provide notification of the provisions of this section before  
10 initial operation of the wind energy system to all owners identified as impacted in the computer  
11 modeling study ~~of potentially affected residences of the provisions of this section before initial~~  
12 ~~operation of the wind energy system~~.
- 13 (e) An owner of a ~~n-affected~~ residence identified as impacted in the computer modeling study may by  
14 written contract waive the developer, owner or operator's requirement to provide shadow flicker  
15 mitigation. A waiver by an owner of an affected residence is an encumbrance on the real property  
16 and runs with the land until the wind energy system is decommissioned.
- 17 **PSC 128.16 Signal interference.** (1) PLANNING. A developer shall consider radio, television and  
18 cellular telephone signal interference in wind turbine siting decisions and shall use reasonable efforts  
19 to avoid causing such interference to the extent practicable and shown to be caused by the  
20 developer's wind farm. ~~A political subdivision may establish reasonable standards regarding radio,~~  
21 ~~television, and cellular telephone interference.~~

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1  
2 (2) RADIO AND TELEVISION INTERFERENCE MITIGATION. A developer, owner or operator  
3 shall use reasonable efforts to mitigate radio and television signal interference to the extent  
4 practicable and shown to be caused by the developer's wind farm. ~~Before implementing remedial~~  
5 ~~measures, the developer, owner or operator shall consult with regarding the preferred reasonable~~  
6 ~~mitigation solutions for radio and television interference problems. A developer, owner or operator~~  
7 ~~shall mitigate radio and television interference by making a resident's preferred reasonable~~  
8 ~~mitigation solution permanent.~~

9  
10 (3) CELLULAR TELEPHONE INTERFERENCE MITIGATION. A developer, owner or operator  
11 shall use reasonable efforts to mitigate cellular telephone signal interference to the extent practicable  
12 and shown to be caused by the developer's wind farm. ~~The developer, owner or operator shall work~~  
13 ~~with affected cellular providers to provide adequate coverage in the affected area. Acceptable~~  
14 ~~mitigation techniques for lost or weakened cellular telephone communications include installing an~~  
15 ~~additional micro cell, cell, or base station facility to fill in the affected area. The micro cell, cell, or~~  
16 ~~base station may be installed on a structure within the wind energy system.~~

17  
18 **PSC 128.17 Stray voltage. (1) STRAY VOLTAGE TESTING REQUIRED.** Developer, owner or  
19 operator shall work with the local electric distribution companies to test for stray voltage at all ~~dairy~~  
20 ~~and confined animal operations~~ dairy and confined animal operations within one-half mile of the  
21 portion of the ~~any~~ wind energy system facility that could be a potential source of stray voltage,

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1 before any construction that may interfere with testing commences and again after construction of the  
2 wind energy system is completed. Before any testing, a developer, owner or operator shall work with  
3 commission staff to determine the manner in which stray voltage measurements will be conducted  
4 and on which properties.

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

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

10

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

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

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

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

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

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

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

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

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

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

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1 (3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS. (a) A developer,  
2 owner or operator shall construct, operate, repair, maintain and replace wind energy system facilities  
3 as needed to keep the wind energy system in good repair and operating condition.

4 (b) Except for the area occupied by the wind energy system and related facilities, including  
5 permanent access roads, a developer shall restore ~~the topography, soils and vegetation of~~ the project  
6 area to ~~original~~ its pre-construction condition after construction is complete unless the area will be  
7 returned to farm use in which case it will be restored to a state that accommodates reasonable farm  
8 use or as specified by particular easement agreements.

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

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

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

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

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- 1 1. Learn the responsibility and resources of each government organization or first responder entity
- 2 that would respond to a wind energy system emergency.
- 3 2. Acquaint the political subdivision and fire, police and other appropriate first responders serving
- 4 within one-half mile of the wind energy system with the owner and operator's abilities to respond to
- 5 a wind energy system emergency and provide annual training for appropriate officials regarding
- 6 responding to a wind energy system emergency until the wind energy system has been
- 7 decommissioned.
- 8 3. Identify the types of wind energy system emergencies subject to notification under par. (b).
- 9 4. Plan how the owner or operator and fire, police, and other first responders can engage in mutual
- 10 assistance to minimize hazards to life and property.
- 11 (d) An owner or operator of a large wind energy system shall establish written procedures that
- 12 provide for shutting down the wind energy system or a portion of the system, as appropriate, in the
- 13 event of wind energy system emergency. The procedures shall provide for all of the following:
- 14 1. Establishing and maintaining adequate means of communication with a political subdivision and
- 15 with fire, police, and other appropriate first responders.
- 16 2. Advising an affected political subdivision of a wind energy system emergency.
- 17 3. Prompt and effective response to a notice of any of the following types of emergencies:
- 18 a. Mechanical failure of wind turbine facilities.
- 19 b. Fire associated with a wind turbine or associated facilities.
- 20 c. Emergency situations requiring the evacuation of a person or persons from the wind energy
- 21 system.



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- 1 d. Natural disaster.
- 2 e. Police actions, such as a request or order by police or fire officials to interrupt operation of any  
3 wind energy system facility due to an emergency.
- 4 4. Actions directed toward protecting people first and then property.
- 5 5. Making safe any actual or potential hazard to people or property.
- 6 6. Notifying a political subdivision and fire, police, and other appropriate first responders of a wind  
7 energy system emergency and coordinating with planned and actual responses during an emergency.
- 8 (e) An owner or operator of a large wind energy system shall do all of the following:
- 9 1. Furnish its supervisors and employees who are responsible for emergency action a copy of the  
10 latest edition of the emergency procedures established under par. (d) to ensure compliance with those  
11 procedures.
- 12 2. Train the appropriate operating personnel to ensure they have knowledge of the emergency  
13 procedures and verify that the training is effective.
- 14 3. As soon as possible after the end of a wind energy system emergency, the owner, or operator shall  
15 review employee activities to determine whether the procedures were effectively followed.
- 16 **(5) COMPLAINT PROCESS.** (a) Before construction of a wind energy system begins, a developer  
17 shall provide written notice of the process for making complaints and obtaining mitigation measures  
18 to all residents and landowners<sup>[JM8]</sup>, identified with the assistance of the political subdivision, within  
19 one-half mile of the wind energy system. A developer shall include a contact person and telephone  
20 number for complaints or concerns during construction, operation, maintenance and  
21 decommissioning. A developer shall provide a copy of the notice to any political subdivision within

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1 which the wind energy system will be located, and the developer, owner or operator shall keep the  
2 contact person and telephone number up-to-date and on file with the political subdivision.

3 (b) A developer, owner or operator shall maintain a log of all complaints received regarding the wind  
4 energy system. The log shall include the name and address of the complainant, the nature of the  
5 complaint, and the steps taken to resolve the complaint. A developer, owner or operator shall make  
6 copies of this complaint log available, at no cost, to any monitoring committee established under  
7 s. PSC 128.36 by a political subdivision in which the wind energy system is located. If a monitoring  
8 committee has not been established, the developer, owner or operator shall make a complaint log  
9 available to the political subdivision upon request.

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

12

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

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

19 (c) A wind energy system is presumed to be at the end of its useful life if the wind energy system  
20 ~~generates no electricity~~incapable of producing electricity for a continuous ~~6~~12 month period. This  
21 presumption may be rebutted by the owner or operator by submitting to the political subdivision a

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1 | plan outlining the steps and schedule for returning the wind energy system to service within ~~6-12~~  
2 | months after the date the wind energy system is presumed to be at the end of its useful life. Upon  
3 | application by the owner or operator, a political subdivision shall grant an extension of the time  
4 | period for returning the wind energy system to service by an additional ~~6-12~~ month period if the  
5 | owner or operator demonstrates an ongoing good faith effort to return the wind energy system to  
6 | service. A wind energy system that ~~generates no electricity is not capable of producing electricity~~ for  
7 | a continuous ~~18-12~~ month period is irrebuttably presumed to be at the end of its useful life.

8 | (d) When decommissioning is required, ~~the owner or operator shall begin decommissioning within 9~~  
9 | ~~months after the wind energy system has reached the end of its useful life.~~ The owner or operator  
10 | shall complete decommissioning and removal of the wind energy system within ~~18-24~~ months after  
11 | the wind energy system has reached the end of its useful life.

12 | (e) ~~A political subdivision may grant a temporary deferral of the requirement to~~ The requirement to  
13 | ~~decommission shall not apply decommission and remove a wind energy system~~ if it is likely the  
14 | wind energy system will operate again in the future and if any of the following apply:

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

17 | 2. The wind energy system is being used for educational purposes.

18 | 3. The wind energy system has been prevented from operating as a result of an event beyond the  
19 | control of the developer, owner or operator.

20 | 4. The wind energy system is undergoing efforts to repower or otherwise enhance its operations such  
21 | that generation has been temporarily interrupted.

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1

2

3 (2) DECOMMISSIONING REVIEW. A political subdivision may ~~establish~~ choose to a  
4 ~~decommissioning review process to determine~~ review a wind energy system's decommissioning plan  
5 when a wind energy system has reached the end of its useful life.

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

9 (4) SITE RESTORATION. If a large wind energy system was constructed on land owned by a  
10 person other than the owner or operator of the large wind energy system, the owner or operator of the  
11 wind energy system shall ensure that the property is restored so that the topography, soils, and  
12 vegetation are consistent with ~~-pre-construction conditions at their similar to that of immediately~~  
13 ~~adjacent properties at the~~ time of decommissioning ~~||JM9|~~ unless the area will be returned to farm use in  
14 which case it will be restored to a state that accommodates reasonable farm use. If a large wind  
15 energy system was constructed on a brownfield, as defined in s. 560.13 (1) (a), Stats., the owner or  
16 operator shall restore the property to eliminate effects specifically caused by the large wind energy  
17 system.

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

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

3

4

## Subchapter III

5

### Political Subdivision Procedure

6

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

7

approval by a political subdivision is required for a proposed wind energy system or expansion of an

8

existing wind energy system, a developer seeking the political subdivision's approval shall complete

9

and file with the political subdivision an application that includes all of the following:

10

(a) Wind energy system description and maps.

11

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

12

(c) Construction process and timeline.

13

(d) Impact on local infrastructure.

14

(e) Information regarding ~~noise~~sound.

15

(f) Information regarding shadow flicker.

16

(g) Effects on existing land uses within one-half mile of the wind energy system.

17

(h) Effects on air traffic.

18

(i) Effects on line-of-sight communications.

19

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

20

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

21

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

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- 1 (m) Information related to the wind energy system requested by the political subdivision.
- 2 (2) ACCURACY OF INFORMATION. The developer shall ensure that information contained in an  
3 application is accurate and internally consistent.
- 4 (3) SMALL WIND ENERGY SYSTEM APPLICATIONS. For a small wind energy system, a  
5 developer is not required to file the information required under sub. (1)(k).
- 6 (4) DUPLICATE COPIES. A political subdivision may specify a reasonable number of copies to be  
7 filed. Each copy shall include all worksheets, maps, and other attachments included in the  
8 application. A political subdivision may permit a developer to file an application electronically.
- 9 (5) NOTICE TO PROPERTY OWNERS. (a) On the same day a developer files an application for a  
10 large wind energy system, the developer shall mail or deliver written notice of the filing of the  
11 application to property owners and residents located within one-half mile of proposed turbine host  
12 properties or any wind energy system facility. The political subdivision shall provide some  
13 assistance to ensure the developer has the appropriate information required to identify property  
14 owners. The notification shall include all of the following:
- 15 1. A complete description of the wind energy system, including the number and size of the wind  
16 turbines.
- 17 2. A map showing the locations of all proposed wind energy system facilities.
- 18 3. The proposed timeline for construction and operation of the wind energy system.
- 19 4. Locations where the application is available for public review.
- 20 5. Developer contact information.

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

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

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

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

15 **(7) JOINT APPLICATION REVIEW PROCESS.** (a) If the wind energy system is proposed to be  
16 located in the jurisdiction of more than one political subdivision, the political subdivisions involved  
17 may conduct a joint application review process on their own motion or upon request. If a developer  
18 requests a joint application review, the developer shall include the request in its notice of intent to  
19 file an application with the political subdivision under s. PSC 128.10(1). If the developer requests a  
20 joint application review process, the political subdivisions involved shall consider this request within  
21 60 days of receipt of the developer's ~~notice of intent to file an~~ application.

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

8

9 **PSC 128.31 Application completeness. (1) INCOMPLETE APPLICATIONS.** A political  
10 subdivision shall determine whether an application is complete applying the detailed application  
11 filing requirements established by the commission under PSC 128.40. The political subdivision shall  
12 notify the developer in writing of the completeness determination no later than 45 days after the day  
13 the application is filed. An application is considered filed the day the developer notifies the political  
14 subdivision in writing that all the application materials have been filed. If a political subdivision  
15 determines that the application is incomplete, the notice shall state the reasons for the determination.  
16 A developer may file a supplement to an application that the political subdivision has determined to  
17 be incomplete. There is no limit to the number of times that the developer may re-file an application.  
18 For incomplete applications, the developer shall provide additional information as specified in the  
19 notice. Subsequent 45-day completeness review periods shall begin the day after the political  
20 subdivision receives responses to all items identified in the notice. If a political subdivision does not



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1 make a completeness determination within the applicable review period, the application is considered  
2 to be complete.

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

8

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

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

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

- 17 1. A wind energy system placed in operation before the effective date of this chapter...[LRB inserts  
18 date].
- 19 2. A wind energy system for which construction began before the effective date of this  
20 chapter...[LRB inserts date].

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

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

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

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

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

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

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

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

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

9 (c) A political subdivision ~~may only charge a fee or require reimbursement if the political subdivision~~  
10 ~~gives written notice to developer of its intent to do so within 60 days of the date the political~~  
11 ~~subdivision receives a notice under s. PSC 128.10(1) and identifies an estimate of the amount of the~~  
12 ~~fee and the relevant reimbursement requirements~~ shall standardize, and publicly publish, its fee or  
13 reimbursement requirements as part of its application process documentation.<sup>[JM10]</sup>

14 <sup>[JM11]</sup>

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

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

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

3

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

7 (a) Require information describing how the developer has incorporated current DNR guidelines for  
8 potential impacts to natural resource features and any project-specific DNR recommendations  
9 regarding natural resources not subject to specific DNR permits.

10 (b) Require a developer, owner or operator of a large wind energy system to cooperate with any  
11 state-wide or regional study of the effects of wind energy systems on bat or migratory bird

12 populations, ~~including providing access to sites for post-construction bird and bat mortality studies.~~

13 JM121

14 (c) For a large wind energy system, may require a developer to include in a transportation plan the  
15 proposed type and period of use of local roads, a proposed process for mitigation of any damage to  
16 local roads related to construction and operation of the large wind energy system, and provision for a  
17 pre- and post-construction review by the political subdivision.

18 ~~(d) For a large wind energy system, may require a developer to offer agreements that include annual~~  
19 ~~monetary compensation to the owner of a nonparticipating residence if the residence is within one-~~  
20 ~~half mile of a planned wind turbine site.~~

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1 ~~If a political subdivision requires a developer to offer such an agreement, the amount of annual~~  
2 ~~monetary compensation shall be calculated by multiplying the number of installed wind turbines in~~  
3 ~~the wind energy system located within one half mile of each nonparticipating residence by a per-~~  
4 ~~wind turbine compensatory amount, with annual payments escalating annually. The total annual~~  
5 ~~payment to any owner of a nonparticipating residence may not exceed the amount paid by the~~  
6 ~~developer, owner or operator to any owner of a turbine host property receiving payment under a wind~~  
7 ~~lease for one wind turbine. An agreement offered under this paragraph shall specify in writing~~  
8 ~~whether the landowner's acceptance of payment establishes the landowner's property as a~~  
9 ~~participating property.~~

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

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

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

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

4 (i) Establish reasonable requirements for the manner in which a developer, owner or operator of a  
5 large wind energy system may demonstrate proof of financial responsibility to ensure the availability  
6 of funds sufficient to keep the wind energy system in good repair and operating condition and to  
7 comply with decommissioning requirements.

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

10 (a) Require a developer, owner or operator to conduct a study of property value impacts.

11 (b) Except as provided in sub. (1)(d), require a developer, owner or operator to provide monetary  
12 compensation to landowners relating to property values.

13 (c) Impose a penalty on an owner or operator of a wind energy system if the owner or operator  
14 satisfies the requirements of this chapter regarding keeping the wind energy system in good operating  
15 condition and the requirements regarding decommissioning.

16 (d) Restrict wind turbine sites based on impacts to aerial spraying on participating properties.

17 (e) Establish structure lighting requirements for a wind energy system that conflict with standards  
18 established by the federal aviation administration.

19

20 **128.34 Record of decision.** (1) RECORDKEEPING. A political subdivision shall keep a complete  
21 written record of its decision-making related to an application for a wind energy system. If a

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1 political subdivision denies an application, the political subdivision shall keep the record for at least  
2 seven years following the year in which it issues the decision. If a political subdivision approves an  
3 application, the political subdivision shall keep the record for at least seven years after the year in  
4 which the wind energy system is decommissioned.

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

6 (a) The approved application and all subsequent additions or amendments to the application.

7 (b) A representative copy of all notices issued under ss. PSC 128.10(1)(a), 128.18(5)(a) and  
8 128.30(5).

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

11 (d) A record of any public hearing related to the application. The record may be an electronic  
12 recording, a transcript prepared from an electronic recording, or a transcript prepared by a court  
13 reporter or stenographer. The record shall include any documents or evidence submitted by hearing  
14 participants.

15 (e) Copies of any correspondence or evidentiary material that the political subdivision considered in  
16 relation to the application, including copies of all written public comments filed under  
17 s. PSC 128.30(6)(b).

18 (f) Minutes of any board or committee meetings held to consider or act on the application.

19 (g) A copy of the written decision under s. PSC 128.32(3)(a).

20 (h) Other materials that the political subdivision prepared to document its decision-making process.

21 (i) A copy of any local ordinance cited in or applicable to the decision.

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1 | (3) POST-CONSTRUCTION FILING REQUIREMENT. Within ~~90~~<sup>180</sup> days of the date a  
2 | wind energy system commences operation, the developer, owner or operator shall file with the  
3 | political subdivision and the commission an as-built description of the wind energy system, an  
4 | accurate map of the wind energy system showing the location of each wind turbine, geographic  
5 | information system information showing the location of each wind turbine and current information  
6 | regarding the developer, owner and operator of the wind energy system.  
7 |

8 | **PSC 128.35 Modifications to an approved wind energy system. (1) MATERIAL CHANGE.** (a) A  
9 | developer may not make a material change in the approved design, location or construction of a wind  
10 | energy system without the prior written approval of the political subdivision that authorized the wind  
11 | energy system.

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

14 | (2) REVIEW LIMITED. A political subdivision that receives an application for a material change to  
15 | a wind energy system may not reopen the merits of the earlier approval but shall consider only those  
16 | issues relevant to the proposed change.  
17 |

18 | **PSC 128.36 Monitoring and mitigation. (1) MONITORING COMMITTEE.** A political  
19 | subdivision may establish a committee to monitor complaints and to monitor compliance by the  
20 | developer, owner or operator with any conditions to an approved large wind energy system or  
21 | monitor compliance with any local agreements. If a monitoring committee is established, the



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1 political subdivision shall include on the monitoring committee<sup>[JM14]</sup> ~~a member~~members ~~who is a~~  
2 ~~local employee of a developer, owner or operator of a wind energy system and at least one~~  
3 ~~nonparticipating landowner residing within one mile of the large wind energy system~~acceptable to  
4 the political subdivision.

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

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

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

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

10 (3) COMPLAINT RESOLUTION. A developer, owner or operator shall use reasonable efforts to

11 resolve complaints. A developer, owner or operator shall make a good faith effort to resolve

12 complaints within ~~45-60~~<sup>[JM15]</sup> days of receiving a complaint. A developer, owner or operator shall

13 notify the political subdivision of complaints that have not been resolved within ~~45-60~~ days of the

14 date the developer, owner or operator received the original complaint. A political subdivision shall

15 establish a process for determining whether the developer, owner or operator has met the

16 requirements of this chapter regarding complaint resolution.

17  
18 **Subchapter IV**

19 **Commission Procedure**

20

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

7

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

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

14 (a) The petitioner's name, address, and telephone number.

15 (b) The name, address, and telephone number of the political subdivision that is the subject of the  
16 petition.

17 (c) A description of the wind energy system that is the subject of the petition.

18 (d) A description of the petitioner's relationship to the wind energy system.

19 (e) The information specified in s. PSC 2.07 (2).

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- 1 **(3) POLITICAL SUBDIVISION FILING REQUIREMENTS.** (a) A political subdivision shall file a  
2 certified copy of the information under s. 66.0401(5)(c), Stats., using the commission's electronic  
3 regulatory filing system.
- 4 (b) The commission may require the political subdivision to file up to 25 paper copies of the record  
5 upon which it based its decision.
- 6 (c) The commission may require the political subdivision to file additional information.
- 7 **(4) SERVICE AND NOTICE.** (a) A developer, owner or operator submitting a petition under  
8 sub. (2)(intro.) shall serve a copy of the petition on the political subdivision and on any other person  
9 specified in s. PSC 2.07 (3).
- 10 (b) Any person other than a developer, owner or operator submitting a petition under sub. (2)(intro.)  
11 shall serve a copy of the petition on the developer, owner or operator, the political subdivision, and  
12 any other person specified in s. PSC 2.07 (3).
- 13 (c) A political subdivision that is subject to a petition under sub. (2) shall make a copy of the petition  
14 available for public inspection and, in the manner in which it is required to publish notice of a public  
15 meeting, publish notice of that petition.
- 16 **(5) COMMISSION HEARING DISCRETIONARY.** The commission may review a petition under  
17 this section with or without a hearing.
- 18 **(6) ENVIRONMENTAL ANALYSIS.** A docket opened to review a petition under this section is  
19 presumed to be a Type III action under s. PSC 4.10(3).
- 20 **(7) STANDARD OF REVIEW.** The commission may reverse or modify a political subdivision's  
21 decision or enforcement action if the decision or enforcement action does not comply with this

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

5 (b) Under this paragraph, a political subdivision may extend the 90-day period if the political  
6 subdivision authorizes the extension in writing. Any combination of the following extensions  
7 may be granted, except that the total amount of time for all extensions granted may not exceed  
8 90 days:

- 9 1. An extension of up to 45 days if the political subdivision needs additional information to  
10 determine issues on remand.
- 11 2. An extension of up to 90 days if a developer makes a material modification to the application  
12 after remand.

13 | ~~§ 128.161 3. An extension of up to 90 days for other good cause.~~

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