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Public Service Commission of Wisconsin  
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July 7, 2010

Public Service Commission of Wisconsin  
c/o Sandra J. Paske, Secretary to the Commission  
P.O. Box 7854  
Madison, WI 53707-7854

RE: Wind Energy System Siting Rules, Docket 1-AC-231

Dear Members of the Public Service Commission:

On behalf of its 582 member cities and villages, the League of Wisconsin Municipalities, submits the following comments for Docket 1-AC-231 regarding the proposed Wind Energy System Siting Rules, proposed Chapter PSC 128, Wis. Adm. Code.

Our specific section-by-section comments are as follows:

PSC 128.10(1)(a). The proposed rule does not require general notice to a municipality adjacent to a proposed wind energy system (“WES”) in another municipality. Thus, a city or village whose boundary lies near a large WES in a neighboring town is not entitled to any notice even though it will be clearly impacted by such a facility. The proposed rule would be improved if it is modified to require notice of a proposed large WES site to every first, second or third-class city with any boundary located within three miles of the site and to any fourth-class city or village with any boundary located within one and one-half miles of a proposed site.

PSC 128.10(3)(a). The proposed rule does not require transportation notice to a city or village that is adjacent to a proposed WES site in another municipality. Thus, a city or village whose roads will be used to transport the components of a large WES is not entitled to any transportation notice. The rule would be improved if it is modified to require transportation notice to any city or village or other Chapter 66 municipality whose roads will be used to transport components of a proposed large WES.

PSC 128.13. In general, the siting criteria of the rules (setbacks, noise, etc.) relate exclusively to current land uses. However, cities and villages engage in substantial long range land use planning for areas inside and outside their current municipal boundaries, an activity that is required by the state comprehensive planning law. See Wis. Stat. 66.1001(2)(b). By focusing siting criteria exclusively on current land use activities, the

proposed rules give WES development substantial opportunity to ignore long-range land use planning efforts of cities and villages required by the state legislature by allowing large WES site location in places that have otherwise been planned for wholly incompatible land uses such as residential development. The siting criteria of the rules would be improved and more consistent with Wis. Stat. 66.1001 and long-range municipal planning if they are modified to require developers of large WES projects to affirmatively demonstrate why sites more consistent with existing land use plans of affected cities or villages are not viable.

PSC 128.13(1)(a). The proposed rule provides for a setback distance of 1.1 times the maximum blade tip height from all nonparticipating nonresidential properties, except schools, churches, daycares and libraries which have a 3.1 setback factor. Thus, the rule provides the same setback for a nonparticipating office building property as it does for a nonparticipating junk yard property despite substantial differences in the nature of such land uses and potential impact of a nearby large WES. The proposed rule would be improved if it recognized and reflected relevant distinctions between types of nonresidential land uses.

PSC 128.13(1)(c). The proposed rule provides a minimum setback distance for a large WES to a community building, participating residence or nonparticipating residence of 1.5 times the maximum blade tip height when a more restrictive limit is waived. Utility grade wind turbines have maximum blade tip heights in the range of 300+ feet which yields a minimum setback of 450 feet. Some industry literature reports the typical setback distance for such turbines is 1000 to 1500 feet from residences to meet noise standards. The waiver provisions in the proposed rule for current owners is likely to create long term public policy issues for a local government when dealing with subsequent property owners. The rules would be improved by eliminating the ability of current property owners to waive any setback or other siting requirements.

PSC 128.13(2)(e). The proposed rule prohibits land use planning requirements or practices that result in a total ban on wind energy turbines or systems within the jurisdiction of a city or village. However, it is unclear whether the proposed rule would allow a city or village to adopt requirements or practices that banned specific classes of wind turbines. Accordingly, it is not clear whether a municipality may allow only small WES's or only very small WES's (i.e. 10 KW or less). Given that large wind turbines in urbanized settings are inherently incompatible with urban land use densities, the rule would be improved if it specifically authorized cities and villages to exclude such wind turbines.

PSC 128.15(1). The proposed rule requires a WES developer to consider shadow flicker at schools, churches, daycares, libraries and residences but not at office buildings or other properties with occupants/users that might be significantly impacted by shadow flicker. The rule would be improved by expanding shadow flicker consideration to include office buildings and other properties with occupants/users that might be significantly impacted by shadow flicker.

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PSC 128.18(4)(e)(2). The proposed rule does not require an owner or operator to provide a host or adjacent city or village or general public a copy of records showing compliance with the training requirement established under this rule. The rule would be improved by specifically requiring an owner or operator to provide annual documentation of training compliance to at least the host and any adjoining municipality.

PSC 128.18(4)(e)3. The proposed rule does not require an owner or operator to provide a host or adjacent city or village or general public a copy of the emergency response report or evaluation that an owner or operator must generate under this rule. The rule would be improved by specifically requiring an owner or operator to provide upon request a copy of the required emergency response report to at least the host and any adjoining municipality.

PSC 128.18(5)(b). The proposed rule does not require an owner or operator to provide an adjacent city or village or the general public a copy of the complaint log it is required to keep under this rule. The proposed rule would be improved by requiring an owner or operator to provide upon request an adjacent city or village a copy of the complaint log required under the rule.

PSC 128.19(3). The proposed rule does not specify when proof of financial ability for large system decommissioning must be provided by an owner or operator and/or whether it is an ongoing requirement. The rule also fails to clearly indicate what constitutes sufficient proof of financial ability. While these limitations of 128.19(3) may be addressable under 128.33(1)(i), which gives a city or village authority to impose “reasonable requirements” for demonstrating proof of financial responsibility for decommissioning as well as ongoing maintenance and repair, additional clarity under the rule may be useful.

PSC 128.32(5)(c). The proposed rule requires written notice by a municipality of any intent to charge a permit fee, an estimate of a fee and relevant reimbursement requirements. It is unclear whether this rule is applicable if a city or village adopts a standardized application fee under 128.32(5)(b). Additional clarity of the rule may eliminate this uncertainty.

PSC 128.32(5)(d). The proposed rule sets a maximum fee for WES’s at .01 percent of estimated cost. Accordingly, a proposed WES with an estimated cost of \$10,000 limits the application fee to no more than \$100 even if reasonable administrative costs are significantly higher. Therefore, the proposed rule will require taxpayers to subsidize WES siting costs. The proposed rule would be improved by removing the taxpayer subsidy effect, which can be accomplished by using the general statutory limitation on fees chargeable by cities and villages and other Chapter 66 municipalities found in Wis. Stat. 66.0628(2), which states: “Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed.”

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The League of Wisconsin Municipalities appreciates and thanks the Public Service Commission for the opportunity to comment on the proposed PSC Chapter 128 rules. We think the suggested modifications to the proposed rules will produce important and significant benefits for people who reside and/or work in Wisconsin cities and villages and hope that the Commission will incorporate the suggestions into the final rules.

Sincerely,



Daniel M. Olson  
Assistant Legal Counsel  
League of Wisconsin Municipalities