



Public Service Commission of Wisconsin

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Public Service Commission of Wisconsin
RECEIVED: 09/01/10, 9:23:27 AM

August 31, 2010

The Honorable Fred Risser
The State Senate
State Capitol, Room 220 South
Madison, WI 53702

The Honorable Michael Sheridan
The State Assembly
State Capitol, Room 211 West
Madison, WI 53702

Re: Wind Siting Rules, Clearinghouse Rule 10-057

Dear Senate President Risser and Speaker Sheridan:

I write to explain my concurrence with the Commission's rule on the siting of certain wind energy systems (Wind Turbines) in Wisconsin. While I support the overall rule because it will promote the development of wind in Wisconsin, the rule fails to provide a much-needed safety net for people whose health declines because of a Wind Turbine located near their home. The safety net I propose would be a minimal burden to wind developers while simultaneously protecting Wisconsin citizens who are sensitive to the noise emitted from Wind Turbines.

Among other things, 2009 Wisconsin Act 40 requires the Commission to develop rules that "provide reasonable protection from any health affects" associated with Wind Turbines. Wis. Stat. § 196.378(4g)(b). There is substantial evidence that noise from Wind Turbines could negatively impact the health of a small percentage of the population. To better ensure compliance with Act 40's mandate, I proposed the following safety net: under limited circumstances, the owner of a Wind Turbine must purchase, at fair market value, the home of someone who can prove that a nearby Wind Turbine is directly causing a significant adverse health outcome.¹

Unfortunately, at this time, we cannot accurately identify the precise line between safe levels of noise from Wind Turbines and those levels that will negatively affect human health. Nor do we know why a small percentage of the population is affected more negatively by Wind Turbines than the rest of the population. As new information becomes available, the Commission can revise this rule. While more study is needed to better understand the full health impacts of Wind Turbines, it is important that we establish some remedy for the people who can prove that their health is being compromised by nearby Wind Turbines before the Commission has an opportunity to revise this rule.

To be clear, this safety net does not include awarding damages to the injured party; instead, it allows the injured party to move quickly from the area, thereby abating health concerns. The safety net would be limited to landowners who provide evidence (in the form of a certification) from a licensed Wisconsin medical doctor that one or more Wind Turbines have directly caused a significant adverse health outcome on the injured party. The only impact to the owner of the Wind Turbine(s) would be

¹ The operation of this safety net proposal is not unprecedented. The Commission recently identified that the purchase of property at fair market value was a potential remedy for two landowners affected by a large wind energy development. Because the two landowners had a significant number of Wind Turbines within view from their homes, the Commission required mitigation, including the possibility that the utility purchase the properties at fair market value. The utility did not object to this potential remedy and has since purchased the properties.

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the need to resell the house. Hence, the proposed safety net would not be an onerous requirement on the Wind Turbine owner and should not hamper wind development in Wisconsin.

The safety net could be structured as follows:

“PSC 128.XX Individual Hardships. If the owner of a nonparticipating residence experiences adverse health outcomes that are shown to be the direct result of the operation of a wind energy system, the owner of the nonparticipating residence may petition the political subdivision for mitigation of the adverse health outcomes. The petition for mitigation shall be referred to the Commission, which may order mitigation of the adverse health outcomes. A medical doctor licensed in the State of Wisconsin shall attest that that one or more wind turbine(s) have caused a significant adverse health outcome on the injured party before any relief may be granted under this section. Mitigation may include requiring the owner of the wind energy system to purchase the nonparticipating residence at fair market value.

Note: The Wind Siting Council may make recommendations with respect to the form and type of information that is required to show that adverse health outcomes are the direct result of the operation of a wind energy system.”

Absent a safety net provision like this, it is unclear how an injured party could obtain mitigation of adverse health outcomes from a Wind Turbine owner. If they are unable to sell their property for fair market value, injured parties would be forced to file suit against the owner of a Wind Turbine. This could require the injured party to incur significant legal costs that are not recoverable in a lawsuit and may dwarf the value of the home. The State of Wisconsin should not place its citizens in this position.

In conclusion, while I concur with the rule as a package, I remain concerned that this rule fails to protect the most vulnerable of our community and, therefore, I must qualify my support of this important rule. When this rule is referred to the appropriate standing committees, please forward a copy of this letter with the rule.

Sincerely,

/ Lauren Azar /

Lauren Azar
Commissioner