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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Commerce, Utilities, Energy, & Rail (SC-CUER)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

To Senate Committee on Commerce, Utilities, Energy, and Rail
From: Douglas Zweizig, Ph.D., Vice Chair, Wind Siting Council
Re: Clearinghouse Rule #10-057; PSC Wind Siting Rules proposed Chapter 128
Date: October 13, 2010

Good afternoon. My name is Douglas Zweizig. I am retired from teaching at the UW—Madison School of Library and Information Studies where I taught in the areas of management and research methods. I am also a member of the Town of Union (Rock County) Plan Commission, and I chaired that Plan Commission through a sixteen-month process as it developed a licensing ordinance for wind energy systems. I am an advocate for alternative energy use and have installed geothermal and solar photovoltaic systems at my home. I am speaking today from my experience as Vice Chair of the Public Service Commission-appointed Wind Siting Council. At the formation of the Wind Siting Council, I was hopeful that this broadly representative group could work together to recommend responsible uniform rules for the siting of wind turbines, but I came to see that the process being followed was flawed, and I was one of the authors of the Council's minority report.

It seems appropriate for your committee to be holding a hearing on the Public Service Commission-proposed rules as there is considerable evidence that the Public Service Commission did not take seriously the directives in Act 40, the legislation that directed the PSC to appoint the Council and that instructed it in the work that the Council was to carry out. I know that there were a lot of statements made in support of the legislation about the intentions for the Wind Siting Council, and there are descriptions in the Council report of the working of the Wind Siting Council that sound like it worked the way it should have, but the behaviors do not fit that description.

Others will present concerns with the substance of the rules proposed by the Public Service Commission. I want, as a member and Vice-Chair of the Wind Siting Council to report to you on the process of the Council and the ways in which that process did not match the requirements of Act 40.

When the members appointed to the Council were announced, there was widespread objection to the appointments. The minority report of the Wind Siting Council (selection appended on pages 9-14) details some of these concerns, but in brief, even though Act 40 was clear in specifying a balance of interests in the Council, the appointments heavily favored persons with financial interests in the development of large wind energy systems in Wisconsin. I am aware that the Commissioners believe that the legislature desires increased development of wind energy systems, but I don't believe that the legislature desired a bias in the Council that would pre-determine rules favorable to the wind industry and harmful to the health and home values of Wisconsin residents.

I'm going to touch on several aspects of what Act 40 called for the PSC to do with the Wind Siting Council and report on what, in my view, happened. For example, in Act 40, you clearly specified the make-up of this critical committee, the Wind Siting Council. You asked for a balanced Council that would address the concerns of the various parties and that would provide recommendations that accommodated those concerns to the degree possible. What you got was a Council front-loaded in support of wind development, that contained an imbalance of those with financial interests in the development of wind energy systems, and that did not seek to evolve creative solutions to the tensions, only to override any opposition. In choosing a Chair for the Council, the Public Service Commission could have used its opportunity of appointing two public members to appoint someone with stature, skills, and neutrality who could serve as Chair—someone who could help the different interests in the Council listen to each other and craft recommendations that the Public Service Commission and you could move forward with. The appointments of public members that the PSC made squandered that opportunity. Instead, the PSC put forth as Chair someone who was an executive with an electric utility, who had previously issued permits for wind farms as a PSC chair, and who was chair of CREWE (Clean, Responsible Energy for Wisconsin's Economy), an organization even at that time lobbying for an extended and increased Renewable Portfolio Standard.

While the Chair did make some efforts to urge members to work toward solutions, there was no effort made by the wind industry block to negotiate solutions that would have begun to adequately address non-industry concerns.

Even though you sought a Council that would contain knowledge and experience from a variety of perspectives, this knowledge and experience was either missing or for the most part unused and sometimes misused. Fortunately, there is an almost complete record of the over 30 hours of Wind Siting Council meetings, from observers' videos and, from midway through the process, on Wisconsin Eye (wiseye.org), so observations about the conduct of the Council can be verified.

Here are some examples of how the knowledge and professionalism of Council members was neglected.

- The two realtors on the Council, previously little acquainted with the particular issues regarding siting of wind turbines, were concerned to find that unlicensed and unregulated agents were signing up landowners to long-term leases on their land and then requiring them to sign a confidentiality clause so that the nature of the transaction would remain secret. They became aware that a property's proximity to large wind turbines was negatively affecting property values to a severe degree. Their concerns were waved aside.
- The two representatives of environmental groups spoke most often to the **business** environment of wind energy companies and were unconcerned about the living environments of wind farm neighbors.
- The one Council member who actually lived in a wind farm, Larry Wunsch, fully communicated his experience to the Council, but was largely ignored and not allowed to bring in a recording to a meeting so that the Council could hear what he was talking about. The Council Chair, when he was PSC Chair, had permitted the wind farm in which Larry lives. He repeatedly apologized to Larry for what was done then, but Chaired a Council that recommended standards that were essentially unchanged from existing PSC practice. I should mention that the other person, who was **supposed** to live "adjacent to

or in the vicinity of a wind energy system," actually lives 3,700 feet from a turbine—this setback distance is much further than was ever discussed by the Council, was one that could actually be acceptable, and is half a mile further from a turbine than the rule put forth by the PSC.

- The representatives of the energy industry neglected to use their own expertise. When a wind developer claimed that he could decommission a 400 foot turbine—that is, bring in special trucks and a crane to take away the turbine tower, nacelle and its 120 foot blades, then remove the tons of reinforced concrete foundation to a level of four feet below grade, and restore the soil and roads to their original condition—that he could do all of this for \$21,000, none of the Council members with knowledge of what this would entail objected. They sat silent. It took one of the realtors to reveal this estimate's absurdity by reading out from a report of actual decommissioning costs.

One would only have to look at a randomly-selected hour of video of a meeting to see the lack of critical thinking that was operating, and this is the process that produced the recommendations of the Council.

You also directed the Council to inform itself about local government regulations, about health impacts, and about regulation in other states and countries. For example, you asked in Act 40 that there be "one member representing towns and one member representing counties," (15.797 (1) (b) 2.) and said that "the initial member of the wind siting council [appointed as a town or county representative] shall represent a town or county that has in effect . . . an ordinance regulating wind energy systems." (Section 14 (2) (b).) It seems clear from this requirement that you wanted the Council to consider and benefit from the local ordinances that had been developed for the regulation of wind siting. Since the major argument made for the need for state-level uniform standards for wind turbine siting was the existing "patchwork" or "hodgepodge" of local ordinances and since the statute stipulated that a member of the Wind Siting Council should have direct experience with such an ordinance, it may be surprising to you that no examination or consideration of

these local ordinances occurred. I had provided copies of my Town of Union's ordinance to members of the Council, but it was never taken up in a meeting. While it was easy for frustrated wind developers to rail against having to understand and comply with local government concerns, the fact is that local governments spent considerable time and resources to carry out their responsibilities to their constituents. In the case of my small township, sixteen months and an estimated \$40,000. was spent preparing a licensing ordinance for wind energy systems. We did not take this task lightly, and we believe that our investigations and work resulted in an ordinance that would allow wind development in our township while being protective of our citizens, but our experience and the experience of other local jurisdictions were not considered as anything other than impediments.

The Wind Siting Council ignored the work that had been done by local governments across the state because it seems the focus of the Council was on the needs of the wind industry and not on the equally legitimate concerns of local jurisdictions.

In a specific case, when I tried to address the issue of complaint resolution and provided language from our ordinance that described our approach (appended pages 15-17), it was not taken as a motion or seriously discussed. Instead, the Chair repeatedly asserted that the approach used by WE Energies should be taken as a model to be used throughout the state.

You asked that "one member who is a University of Wisconsin System faculty member with expertise regarding the health impacts of wind energy systems" (15.797 (1) (b) 8.) be on the Council.

It is pretty clear that you were asking for the best qualified person to be found in public higher education in Wisconsin to inform the recommendations of the Wind Siting Council on this issue of central concern. We now have hundreds of Wisconsin families who are living adjacent to large wind turbines, we have reports of serious health concerns and suspected consequences among these families, we have households abandoning their unlivable homes in order to avoid the effects of wind turbines—it is important to be as sure as we can be that policy decisions on wind turbine siting will not result in compromising the health of wind farm hosts or

neighbors. This is why you specified clearly that you wanted to be guided by the highest quality of information.

What you got was not a University of Wisconsin System faculty member but someone who had been hired to teach a course in the medical school, someone whose highest research qualification is a masters degree, someone who had begun to investigate the literature on the "health impacts of wind energy systems" just a few months before being appointed to the Wind Siting Council, and someone who had done no independent investigation of the health impacts of exposure to wind energy systems. It is difficult to understand how this appointment came about, but it is clear that the Public Service Commission did not, as was asked for, look throughout the UW System, but only at the UW—Madison and then, finally, in the Wisconsin Department of Health Services.

To further underscore your concern with health impacts, you specified that the Wind Siting Council "shall survey the peer-reviewed scientific research regarding the health impacts of wind energy systems" (Section 12, (e).)

The Wind Siting Council did not conduct any such survey. One member of the Wind Siting Council, having a masters degree in Public Health and working for a state agency that had already taken a position denying the health impacts of wind energy systems, was asked to prepare a presentation to be given to the Wind Siting Council. Immediately following the PowerPoint-assisted presentation, there was a limited time for questions. The written text of the presentation was initially promised to be provided, but then was withheld. It is now taking a Freedom of Information Act request to obtain a copy of this paper prepared by a state employee as part of his work. Without this text, the basis for the presentation cannot be evaluated. The Wind Siting Council was not provided access to any of the research studies by either copies or links, and the section on Noise in the report of the Wind Siting Council cites studies that were not part of the presentation and that were unknown to the Council. This critical part of your direction was simply not carried out.

In addition, you required that the Wind Siting Council "shall . . . study state and

national regulatory developments regarding the siting of wind energy systems." (Section 12, (e).) How did that go? I don't believe that state or national regulations ever appeared on an agenda for the Wind Siting Council. There were no briefing materials prepared or provided to WSC members. When I provided information on New Zealand's reconfirmed and revised noise standard of 5 decibels over background sound levels (appended pages 18-19), a standard that they have found workable and that is supported by both the government and the industry-based New Zealand Wind Energy Association, consideration of it was dismissed by a wind developer by saying that we should not consider any standards from other countries. The Chair, and other industry supporters, thought that was an adequate response.

The only report on regulation from any other states that I have seen from the PSC was appended to the Rules sent to you at the end of August as Attachment A1, "Comparison with Similar Rules in Surrounding States." This information was **not** provided to the Wind Siting Council. So, for example, we never learned that Michigan PSC has recommended that "setback requirements and noise limitations should continue to be decided at the local level where feasible so that the needs of local citizens can be appropriately considered." We never learned about the Michigan PSC's recommendation that the noise standard should be measured from the property line, not the residence. We never learned that in Minnesota "a county may adopt standards for large wind systems that are more stringent than those in Minnesota PUC rules or permit standards." And given these differences found in neighboring states, there is a good chance that we could learn a great deal from an unbiased survey of state and national regulatory siting regulation, but that survey was apparently never conducted or at least was not shared with the Council.

While I have been impressed with the professionalism and diligence of the PSC staff, it is clear that the PSC-directed process of the Wind Siting Council has failed to comply with the requirements you included in Act 40

- in making appointments to the Council,
- in learning from local government experiences with regulation of wind

energy systems,

- in responsibly investigating the concerns with health impacts, and
- in incorporating state and national regulatory developments in wind siting.

This outcome is not what Chairman Callisto promised this committee in May of last year when he said, "I pledge to you a rule-making process that will be open and inclusive. I have no desire to send you a rule that gives you heartburn. My job is to get the rule done right the first time."

I think that you and I would agree that the health and property of Wisconsin citizens and the energy future of the state are all important issues and deserve better attention than they received in the Wind Siting Council. It is sad that the Public Service Commission was not able to make better use of the opportunity provided by Act 40 to develop rules that would promote sustainable wind development for Wisconsin, that would be fair to all parties, that would be workable, and that would promote community acceptance of wind energy systems.

I respectfully request that the rules be sent back to the Public Service Commission to improve the Council membership and process and to carry out the charge contained in Act 40.

Thank you for this opportunity to report to you. I would be glad to respond if you have any questions at this or any other time.

Douglas Zweizig
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Evansville, WI 53536
(608) 882-4335
dougzweizig@hotmail.com

FROM THE MINORITY REPORT (APPENDIX E) OF THE WIND SITING COUNCIL'S FINAL RECOMMENDATIONS TO THE PUBLIC SERVICE COMMISSION, AUGUST 9, 2010

Wind Siting Council Membership

Wind turbine siting has been a contentious issue in this state—separating families, communities and abandoning Wisconsin residents to their fate. Recognizing this state of affairs, the legislature in Act 40 designated appointments to a Wind Siting Council that were intended to produce an evenly-balanced composition. Unfortunately, the appointments made were heavily weighted on the side of members having a direct or indirect financial interest in promoting wind development in the state.

It may have been more appropriate to have had all three Commissioners discuss these appointments at one of their open meetings. In future, there may be need for some legislative committee oversight in future Wind Siting Council member selection, since these decisions ultimately promote outcomes that could unnecessarily burden Wisconsin citizens in the name of “the greater good.”

The following is the language in the statute that prescribed the composition of the Wind Siting Council:

2009 WISCONSIN ACT 40

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.797 of the statutes is created to read:

15.797 Same; council. (1) WIND SITING COUNCIL.

(a) In this subsection, “wind energy system” has the meaning given in s. 66.0403 (1) (m).

(b) There is created in the public service commission a wind siting council that consists of the following members appointed by the public service commission for 3-year terms:

1. Two members representing wind energy system developers (Developer Members)
2. One member representing towns (Towns Member) and one member representing counties (Counties Member)
3. Two members representing the energy industry (Energy Members)
4. Two members representing environmental groups (Environmental Members)
5. Two members representing realtors (Realtor Members)
6. Two members who are landowners living adjacent to or in the vicinity of a wind energy system and who have not received compensation by or on behalf of owners, operators, or developers of wind energy systems (Landowners)
7. Two public members (Public Members)
8. One member who is a University of Wisconsin System faculty member with expertise regarding the health impacts of wind energy systems (UW Faculty Member)

The Table following indicates the degree of compliance with the legislation and identifies those with direct or indirect financial or organizational interests in the promotion of wind energy systems in the state. Commentary is found on the pages following the table:

**Membership on the Wind Siting Council called for in 2009 Wisconsin Act 40
As appointed by the Public Service Commission
a check with the legislative language and
identification of financial or organizational interests in the promotion of wind energy
systems**

SECTION 1. (b) There is created in the Public Service Commission a wind siting council that consists of the following members appointed by the Public Service Commission for 3-year terms:

FINANCIAL PROMOTION OF WIND ENERGY SYSTEMS?	NAME	AFFILIATION	APPOINTMENT MATCHES LEGISLATIVE	INDEPENDENT OF OR ORGANIZATIONAL INTEREST IN THE LANGUAGE?
1. Two members representing wind energy systems developers.				
	Tom Green	Wind Capitol Group	YES	NO
	Bill Rakocy	Emerging Energies of Wisconsin, LLC; CREWE Member	YES	NO
2. One member representing towns and one member representing counties.				
	Doug Zweizig	Town of Union (Rock Co.) (Town wrote an ordinance)	YES	YES
	Lloyd Lueschow	Green County (no industrial wind activity)	YES	YES
3. Two members representing the energy industry.				
	Andy Hesselbach,	WE Energies; CREWE Member	YES	NO
	Dan Ebert,	WPPI Energy; CREWE Chair	YES	NO
4. Two members representing environmental groups.				
	Michael Vickerman	RENEW Wisconsin	YES	NO
	Ryan Schryver	Clean Wisconsin	YES	NO
5. Two members representing realtors.				
	George Krause Jr.	Choice Residential LLC	YES	YES
	Tom Meyer	Restaino & Associates	YES	YES
6. Two members who are landowners living adjacent to or in the vicinity of a wind energy system and who have not received compensation by or on behalf of owners, operators, or developers of wind energy systems.				
	Dwight Sattler	Landowner 3,700 feet from a turbine	YES	YES
	Larry Wunsch	Landowner 1,100 feet from a turbine	YES	YES
7. Two public members.				
	David Gilles	Godfrey & Kahn former WPSC General Council	NO	?
	Jennifer Heinzen	Lakeshore Technical College, Pres. RENEW WI	NO	NO
8. One member who is a University of Wisconsin System faculty member with expertise regarding the health impacts of wind energy systems.				
	Jevon McFadden	Assigned to the Wisconsin Department of Health Services. Employed by the Federal CDC. Admitted non-expert on this subject.	NO	?
Number of members not matching the legislative language			3	
Number of members independent of financial or organizational interest				6

Commentary on the composition of the Wind Siting Council:

- Three of the members of the Wind Siting Council were also members of the Coalition for Clean, Responsible Energy for Wisconsin's Economy (CREWE), having a history of working in concert on the wind siting issue. "CREWE is a coalition group that formed to advocate meaningful energy policy change consistent with the Governor's Global Warming Task Force final report, which will have a positive impact on Wisconsin's economic development and security and foster job creation. CREWE's membership consists of Alliant Energy, EcoEnergy, Johnson Controls, Xcel Energy, C5•6 Technologies, Madison Gas and Electric, Orion Energy Systems, Forest County Potawatomi Community, Wisconsin Energy Corp., Emerging Energies of Wisconsin, MillerCoors, American Transmission Co. and WPPI Energy."
<http://wicrewe.com/>
- The legislation called for two "public members," presumably, in the simplest term, persons who represent the best interests of the public. The definition of "general public" found at [allwords.com](http://www.allwords.com) (<http://www.allwords.com/word-general+public.html>) would be:
 1. *Those members of the public who have no special role in a specific public area, such as an airport, hospital or railway station; there will typically be restrictions on their access.*
 2. *Members of the public not in the attentive public of any given issue; laypersons.*

The two people appointed were far from laypersons on the issue of wind energy systems in Wisconsin:

David J. Gilles is a shareholder and a member of the environmental and energy law practice group in the Madison office and has expertise in energy regulatory law matters. He also works with the antitrust, consumer protection and government practice team.

Prior to joining the [Godfrey & Kahn] firm, Dave served as General Counsel to the Public Service Commission of Wisconsin (2003-2007). The Commission is an independent regulatory agency, responsible for overseeing public utilities providing electric, gas, water and telecommunications services to the public. As General Counsel, Dave was responsible for all legal matters affecting the agency. Dave supervised and directed legal representation in state and federal courts and before the Federal Energy Regulatory Commission and Federal Communications Commission. While at the agency, legislation streamlining procedures for approval of energy facilities was enacted (2003 Wisconsin Act 89). In addition, legislation setting renewable resource portfolio standards for energy providers became law (2005 Wisconsin Act 141)." (http://www.gklaw.com/attorney.cfm?attorney_id=300)

Jennifer Heinzen is the President of RENEW Wisconsin. For an example of her advocacy for increased use of wind energy systems in Wisconsin, see her response to perceived anti-wind comments of State Representative Bob Ziegelbauer
<http://renewmediacenter.blogspot.com/2009/01/response-to-comments-of-state-rep-bob.html>

- Probably the most problematic appointment to the Wind Siting Council was the person appointed to serve as the “University of Wisconsin System faculty member with expertise regarding the health impacts of wind energy systems.” The person appointed is an employee of the Wisconsin Department of Health Services, an agency that has taken a position on the issue of wind turbines and health: “the information currently available to the Division of Public Health does not support the conclusion that existing setback criteria would result in adverse health impacts to the public.” (Letter from Seth Foldy, State Health Officer and Administrator, Division of Public Health to Kendall Schneider, Chair, Town of Union (Rock County) Town Board, September 4, 2009) This carefully worded conclusion is strikingly similar to McFadden’s conclusion in his presentation to the Wind Siting Council on May 17, 2010: “Evidence does not support the conclusion that wind turbines *cause* or are *associated with* adverse health outcomes.” As an employee of the Bureau of Environmental and Occupational Health, McFadden is presumably subordinate to Foldy and therefore constrained in his conclusions to those of his agency.

Act 40 called for an independent researcher, a faculty member in the University of Wisconsin system. The person appointed is not a faculty member, but an adjunct assistant professor:

Definitions are found in the **Wisconsin Administrative Code: UWS 1.04 Faculty**. “Faculty” means persons who hold the rank of professor, associate professor, assistant professor, or instructor in an academic department or its functional equivalent in an institution.

and the **Faculty Policies and Procedures University of Wisconsin—Madison** (As approved by the Faculty Senate on 15 May 1978, with subsequent amendments as of 4 May 2009)

1.02. UNIVERSITY FACULTY. A. The university faculty consists of all persons who hold the rank of professor, associate professor, assistant professor, or instructor with at least a one-half time appointment in UW-Madison, or with a full-time appointment jointly between UW-Madison and UW-Extension.)

Directory search at the University of Wisconsin—Madison:

1 match

Name JEVON MCFADDEN

E-mail

Phone

Title ADJUNCT ASST PROF

Division SCHOOL OF MEDICINE AND PUBLIC HEALTH

Department POPULATION HEALTH SCIENCES

Adjunct professors, as can be learned from Wikipedia, are "Typically part-time non-salaried, non-tenure track faculty members who are paid for each class they teach. This position does not always require a completed PhD."

(http://en.wikipedia.org/wiki/Professor#United_States_and_Canada)

Therefore the Wind Siting Council did not have the quality of instruction in the peer-reviewed literature on the health impacts of wind energy systems envisioned by the legislators. Instead of a researcher who is accountable to the University and the community of scholars for the quality of assessment on this question, the Council had a member who only looked like a faculty member, who has not published any investigation into such questions, and acknowledged that he had only informed himself in the relevant literature for a few years.

We want to be clear that our concerns about the composition of the Wind Siting Council are not criticisms of the individuals appointed. In each case, these individuals were appropriate representatives of their roles and organizations. They were hard-working and conscientious members of the Council. Our critique is with the effect that these appointments had on the process of the Council's deliberations and with the pre-determination of the recommendations contained in the Council report.

The legislatively-desired diversity of the Council was clearly distorted in the appointment process, and the consequences of that act can be seen in the conduct and product of the Council. At the first meeting, Council members are described in the Council report as sharing "his or her background, experience and thoughts on wind development." However, none of the three members of CREWE mentioned that part of their experience, even though they had been working together to advance that organization's agenda at that time. It is clear that those expecting regulation from the Commission's rules and those Council members associated with them would have a strong voice in the recommendations for those regulations.

The Council Chair repeatedly urged the Council to work toward a consensus and even suggested specific ways in which opposing positions might be accommodated, but the majority operated to deflect information or proposals that might interfere with the agenda of ensuring that local jurisdictions would not be able to restrict wind farm development. The imbalance in favor of increased ability to site wind farms resulted in

- an inadequate and biased review of the scientific literature,
- little review of state and national regulations,
- no examination of the ordinances passed in Wisconsin by local jurisdictions (even though these ordinances were frequently cited as the rationale for the Council), and
- a series of majority votes in favor of relaxed regulation of wind energy systems.

The pattern of voting by this block of members can be seen in the *Wind Siting Council Straw Proposal Amendment Ballot: Data Tabulation* distributed on July 9, 2010.

Had the Commissioners vetted the Wind Siting Council applicants as a group in an open meeting, perhaps the council would have been a more diverse group applying equal consideration for the promotion of wind development and minimizing burdens for the residents of Wisconsin.

To: Wind Siting Council
From: Doug Zweizig, member
Date: May 20, 2010

I would like to propose that we explore an alternate approach to handling complaints from residents regarding the operation of wind turbines in their vicinity.

The present approach in the draft rules—having complaints handled by the wind farm operator (see p.21 line 3 and following of the "Proposed Draft Rule (5.14.10))—puts one of the parties to a dispute in control of the outcome. In order to see how this might work, I have reviewed the record that we have of the complaint procedures at Marshfield (found at <http://townmarshfield.com/wind-tower-concerns/>). The process there is limited in the concerns it will address, appears to take excessive time to resolve complaints, and provides resolutions arbitrarily determined by the operator.

An equitable process would be overseen by a neutral third party administering well-established criteria for performance and resolution of complaints and following an efficient process. The party granting the license or permit to the wind system operator would be the handiest arbiter for such complaints. That party is the one that set the requirements for the permit or license and would have the interest and responsibility to see that the requirements are being adhered to. I am proposing this approach as a concept that I hope others on the Council will evaluate and improve. One of the issues that would have to be addressed is how this activity would be financed.

As one example of how this might be drafted, I am providing the section from the TOWN OF UNION, ROCK COUNTY, WISCONSIN ORDINANCE NO.2008-06, WIND ENERGY SYSTEMS LICENSING ORDINANCE that was previously provided to the Council. It can be found at <http://www.tn.union.wi.gov/docview.asp?docid=4904&locid=173>.

I am not proposing this language for adoption by the Council, but to illustrate how such a provision might read and to stimulate suggestions for an improved process that is efficient and equitable. It is hard to see the process in the draft rules as either efficient or equitable.

1. 20.01 VIOLATIONS AND PENALTIES; COMPLAINTS AND MODIFICATION, SUSPENSION OR REVOCATION OF LICENSE

- a. (a) Violations of This Ordinance. It shall be unlawful to construct or operate any WESF or part thereof in violation of any provision of this Ordinance, a WESF License, or a WESF License Agreement. Any person who violates or fails to comply with any provision of this Ordinance, a WESF License or a WESF License Agreement shall, upon conviction thereof, be subject to forfeitures of not less than \$250.00 and not more than \$700.00, and shall pay all costs and expenses of enforcement, including attorney and other fees incurred by the Town. Each day a violation exists or continues shall constitute a separate offense.

- (b) Complaints and Modification. Revocation or Suspension. The Town Board shall retain continuing jurisdiction to modify, suspend or revoke all WESF Licenses in accordance with this section. Such authority shall be in addition to the Town's authority to prosecute violations and take other enforcement action.
1. In this section, "violation" means a violation of this Ordinance, or a violation of a WESF License issued under this Ordinance, or a violation of a WESF License Agreement entered into under this Ordinance.
 2. Any resident of the Town or Town official may file a written complaint with the Town Clerk alleging that a WESF Licensee has committed or is committing a violation. Such complaints shall be forwarded to the Town Plan Commission.
 3. The Town Plan Commission shall preliminarily review the complaint. In connection with its preliminary review, the Town Plan Commission may require the Town building inspector, engineer, attorney or other person or persons to conduct such investigations and make such reports as the Town Plan Commission may direct. The Plan Commission may request information from the holder of a WESF License, the complainant, and any other person or entity to assist with its preliminary review.
 4. Following its preliminary review, the Town Plan Commission may:
 - a. Dismiss the complaint;
 - b. Refer the complaint to the Town attorney for prosecution; or
 - c. Conduct a hearing to determine whether the alleged violation(s) have occurred, and what remedial action should be taken. Prior to such hearing, notice of the hearing shall be given to the holder of the WESF Licensee and the complainant, and in accordance with the Open Meeting Law. The holder of the WESF License and the complainant, and any other person, may appear at the hearing and may offer testimony and other relevant evidence, and may be represented by any attorney. If the Plan Commission concludes that violations have occurred, the Plan Commission may:
 - (1) Impose conditions on the WESF License to the extent reasonably necessary to discontinue the violation(s) or avoid any recurrence thereof; or
 - (2) Suspend the WESF License until such time as the WESF License holder presents a plan, satisfactory to the Plan Commission. that will discontinue the violation(s) or prevent any recurrence thereof, and on such further conditions as the Town Plan Commission deems appropriate to discontinue and prevent further violations; or
 - (3) Revoke the WESF License and direct decommissioning of the WESF, if the Town Plan Commission concludes that no reasonable modification can be made to the WESF to discontinue or prevent violations; or
 - (4) Refer the matter to the Town attorney for prosecution, subject to Town Board approval; or
 - (5) Take no action, if the Town Plan commission concludes that no

further action is needed to discontinue or prevent violations,
and that prosecution is unwarranted.

d. Following any such hearing, the Plan Commission's written decision shall be furnished to the WESF License holder and to the complainant. An appeal from a decision of the Town Plan Commission may be taken to the Town Board as provided in this section.

e. An appeal from the decision of the Town Plan Commission may be taken to the Town Board by the WESF License holder or a complainant. Such appeal must be in writing and must specify the grounds thereof, and must be filed with the Town Clerk within ten days after the final action of the Town Plan Commission. The Town Clerk shall provide any appeal to the Town Board. The Town Board shall fix a reasonable time for the hearing of the appeal, and shall give public notice thereof as well as due notice to the WESF Licensee and the complainant. The action of the Town Plan Commission shall be sustained unless the Town Board, by a favorable vote of the majority of all members of the Town Board, reverses or modifies the Town Plan Commission's determination. An appeal from a decision of the Town Board shall be by certiorari review, which shall be commenced within 30 days after the decision of the Town Board.

The New Zealand Wind Farm Noise Standard

There are a number of New Zealand Standards that deal with the management of environmental noise. Some deal with sound in general (NZS 6801 and NZS 6802), while others deal with particular sources of sound, such as construction (NZS 6803), airports (NZS 6805), heliports (NZS 6807) and ports (NZS 6809).

NZS 6808 is the New Zealand Standard that recommends limits on noise from wind farms. The 2010 edition replaces the earlier edition published in 1998.

WHY IS A SPECIFIC STANDARD NEEDED FOR WIND FARM NOISE?

General acoustics standards such as NZS 6801 are designed for measurements in wind speeds below 5 metres per second (m/s), which is relatively calm. However, wind turbines operate in wind speeds typically from 4 m/s to 25 m/s and their sound levels vary with wind speed. High wind speed conditions also create increased environmental sound from vegetation and can affect the microphones used to measure the sound.

For these reasons, to accurately assess and measure sound from wind turbines a specific method is needed that enables sound to be measured and assessed in windy conditions. The Wind Farm Noise Standard provides this.

The 1998 version of the Wind Farm Noise Standard was written prior to significant wind farm development in New Zealand. The basic methodology of the 1998 Standard was robust, but experience and research in intervening years had highlighted the need for refinements and enhancements. The Energy Efficiency and Conservation Authority (EECA) and the New Zealand Wind Energy Association (NZWEA), the industry association representing companies involved in New Zealand's wind energy sector, co-funded Standards New Zealand to undertake an independent revision of the 1998 Standard to incorporate this research and experience.

WHAT DOES THE STANDARD DO?

NZS 6808:2010 provides suitable methods for the prediction, measurement and assessment of sound from wind farms that takes into account

the factors that are specific to that sound. It also recommends limits on the level of sound that can be heard from locations near wind farms. It will be used by wind farm developers, acoustics specialists, councils and others involved in setting and monitoring wind farm noise limits in resource consent conditions.

The noise limits recommended in the Standard are intended to provide protection against sleep disturbance and maintain a reasonable amenity at locations surrounding a wind farm.

People living near a wind farm may still hear the wind farm at times, but if the limits recommended in the Standard are properly applied the level of sound will not be unreasonable or out of place with other sounds in the environment. This approach is consistent with how sound from other sources is managed, such as from ports and airports.

The original NZS 6808:1998 was used as the basis for conditions for all wind farms granted consent since its release. The new version is likely to be the basis for consent conditions for all newly consented wind farms in New Zealand. It has been specifically written with such application under the Resource Management Act (RMA) in mind.

The Standard includes model consent conditions designed to ensure correct implementation. These conditions will provide local councils with practical enforcement measures when included in a consent or designation.

WHAT LIMIT DOES THE NEW STANDARD RECOMMEND?

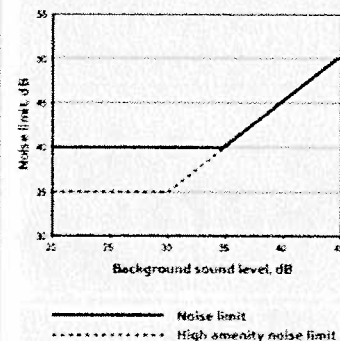
The 2010 version retains the recommended noise limits in the 1998 version, which is that the level of sound from a wind farm should not exceed the background sound level by more than 5 decibels (dB), or a level of 40 dB (L_{Aeq10min}), whichever is the greater.

40 dB is typical of a quiet residential area with only light traffic and natural sounds such as the wind in the trees. In contrast, sound levels alongside an urban road would be around 60 to 70 dB during the day and about 50 to 60 dB at night.

There are some locations that are particularly quiet at times and so the recommended limit of 40 dB would be considered to be unreasonable.

In recognition of this the 2010 Standard introduces the provision for a lower, more stringent limit where a local authority has identified in its district plan the need to provide a higher degree of protection of acoustic amenity. The Standard recommends that when particular conditions are met, the sound from the wind farm during the evening and night time should not exceed the background sound level by more than 5 dB or a level of 35 dB (L_{Aeq10min}), whichever is the greater.

Figure 1 – Relationship between background sound level and recommended noise limits



HOW ELSE DOES THE 2010 VERSION DIFFER FROM THE 1998 VERSION?

In addition to the provision for a lower, more stringent limit in special circumstances, a number of technical changes have been made and additional guidance added to the Standard that reflects the knowledge and experience gained from the use of the original edition of the Standard.

The measure of sound levels has changed from L₉₅ to L₉₀¹ to bring the Standard into line with the L₉₀ descriptor used in other updated New Zealand Standards.

1. The A-frequency-weighted L₉₀ (noise level expressed as L₉₀ (A)) is the metric used in the Standard for wind farm sound. This metric avoids sound measurements being dominated by sound levels only present for a small part of the time and reduces contamination by the sound of wind on the microphones when levels are being measured.

2. Meaning the sound level (A-weighted) exceeded for 90% of the time.

The new Standard provides better protection for communities by explicitly addressing issues such as:

- cumulative effects from multiple wind farms or wind farms developed in stages
- forewarning prospective residents of an area already affected or permitted to be affected by wind farm sound (reverse sensitivity)
- specific audible characteristics (amplitude modulation).

The prediction and measurement methods have both been tightened up. The prediction method now requires more refined calculations, with consideration of a wider range of factors affecting sound propagation, including different frequency components. The measurement method is now more robust with numerous refinements, including wind speed reference at the turbine hub-height to avoid errors from wind shear estimation.

WHY DOES THE STANDARD RECOMMEND A LIMIT THAT IS RELATIVE TO THE BACKGROUND SOUND LEVEL?

Both the 1998 and new 2010 versions of the standard recommend a relative noise limit of the 'background sound level plus 5 dB', to provide a reasonable level of protection for noise sensitive activities while acknowledging the variable effects of wind on background sound levels.

In many instances when the wind is blowing the background sound may be over 40 dB. Restricting the operation of wind farms to 40 dB when the background sound is louder – and so likely to mask sound from a wind farm – provides no benefit to nearby residents and would prevent verification of the wind farm's sound level.

WOULDN'T IT BE SIMPLER JUST TO KEEP WIND TURBINES A MINIMUM PHYSICAL DISTANCE AWAY FROM HOMES?

A number of factors influence the level of wind farm sound heard at any given location, including:

- the shape of the land and its ground cover
- speed and direction of the wind
- ambient (or background) sound levels
- acoustic characteristics of the sound itself
- the number, size and type of turbines in the wind farm.

For this reason a set physical distance would not be sufficient to ensure residents were protected from unreasonable noise, unless that distance was made so large as to prevent reasonable wind farm development. The Standard provides a way of determining the actual noise effects of a wind farm that takes into account all of these factors, and so ensures

that nearby residents are not exposed to unreasonable sound levels. This approach is consistent with the Resource Management Act.

WHO WAS INVOLVED IN THE DEVELOPMENT OF THE 2010 STANDARD?

The Standards New Zealand committee that developed the Standard included representatives of local authority and community interests, engineering and scientific experts in acoustics, practitioners in planning, resource management and environmental health and wind farm developers.

They were nominated by:

- Energy Efficiency and Conservation Authority
- Executive of Community Boards
- Local Government New Zealand
- Massey University
- Ministry for the Environment
- Ministry of Health
- New Zealand Acoustical Society
- New Zealand Institute of Environmental Health Inc.
- New Zealand Wind Energy Association
- Resource Management Law Association
- University of Auckland.

Each nominating organisation had one vote on the committee.

When preparing the revised Standard, the committee combined their extensive practical experience of wind farm sound with the reviewed literature. Where there was an area of debate, the committee turned back to the scientific evidence and analysed and tested that evidence to determine the appropriate resolution.

The committee began its work in July 2008 and produced a draft Standard for public comment in February 2009. The public comment period lasted two months. A total of over 600 comments were received from a wide range of submitters. Each comment was reviewed by the committee and, where appropriate, changes were made to the draft before the committee reached consensus on the final published version of the Standard.

This Standard represents the best efforts of the committee members to find a solution to all issues raised. The consensus view of the committee is that the Standard provides a reasonable way of protecting health and amenity of nearby noise sensitive locations, without unreasonably restricting the development of wind farms.

WHAT THOUGHT DID THE COMMITTEE GIVE TO THE ALLEGED HEALTH EFFECTS OF WIND TURBINES?

When drafting the Standard the committee considered a wide range of published material on the effects of wind farm noise on people's health, including the effects of low frequency sound. The committee determined that, based on available evidence at the time the Standard was drafted, the noise limits in the Standard provide protection against adverse health effects.

Recommendations in both the 1998 and new 2010 versions of NZS 6808 are based on the World Health Organisation's guideline noise limit of 30 dB L_{Aeq} inside bedrooms to prevent sleep disturbance. This equates to the noise limit in the Standard of 40 dB L_{Aeq} (10 m) outside, as sound attenuates – or becomes quieter – as it travels through walls and windows.

WILL THE STANDARD APPLY TO ALL SIZES OF WIND TURBINE?

The Standard generally applies to wind turbines with a swept rotor area greater than 200 m² (for example, individual blade lengths greater than approximately eight metres). Wind turbines with a smaller swept area are generally covered by the provisions of Standards relating to general environmental noise (NZS 6801 and NZS 6802), although they may require special measurement procedures to account for the effects of wind noise.

Local authorities may choose to apply the Standard, in whole or in part, to small wind turbines.

More Information

Find out more about wind energy and wind farms in New Zealand at www.windenergy.org.nz. NZS 6808 can be purchased from www.standards.co.nz

NZ Wind Energy Association

PO Box 553, Wellington 6140, New Zealand

The New Zealand Wind Energy Association (NZWEA) is an industry association that works towards the development of wind as a reliable, sustainable, clean and commercially viable energy source. We aim to fairly represent wind energy to the public, government and the energy sector. Our members include 80 companies involved in New Zealand's wind energy sector, including electricity generators, wind farm developers, lines companies, turbine manufacturers, consulting firms, researchers and law firms.



February 2010



CL Rule 10-057?

Lynda Barry-Kawula
Testimony for Wind Siting Rules Hearing
October 13, 2010

My name is Lynda Barry-Kawula and I live in the Town of Spring Valley in Rock County. I'm a writer and a cartoonist. I've written 17 books and my last one received the Wisconsin Library Association's 2009 Book of the year award. I am currently working on a book about residents of wind farms in Wisconsin.

My interest began right here, at a hearing like this about two years ago. That's where I first saw wind farm residents testify about the problems they were having with shadow flicker and nighttime turbine noise. They were asking for help, asking for someone to just come and spend the night in their homes to experience what they were going through.

After the hearing I went up to a few residents and said, "I'll come stay at your house."

And they said, "Who are you?"

I said, "Um, I'm a cartoonist?"

It must have been like someone calling for an ambulance and then a clown car shows up. But they were so desperate that a clown car was fine.

I've spent about ten nights in three homes in two different wind farms in Fond du Lac County and I've interviewed people from 20 households and have been following their stories over the last two years.

I now can tell you from first hand experience, no family should have to live with the nighttime noise, vibration and shadow flicker these families live with. These rules are nearly the same as the ones used to site those projects. They don't fix the problem. They don't even acknowledge a problem exists.

The standards in this rule are deemed safe based on a review of available medical literature that finds no direct link to negative health effects.

But how can the literature identify a problem unless someone talks to the people who are living with turbines. So far no one in the state is willing to do that. Not the health department, not the PSC, not even the doctor appointed to the wind-siting council. Dr. Jevon McFadden said he would not speak to wind farm residents. He said self-reported complaints and symptoms are not reliable and speaking to these people could bias his findings. He also refused to provide anyone with a written copy of the report he prepared and read to the council. Why?

His report found, not surprisingly, that the current literature indicates there are no problems.

To me this is like walking past someone who has been beaten and robbed on the side of the road and they are asking you for help and you say, "Don't worry, I've done a thorough review of the literature and it indicates there is no crime on this road, so the good news is you're fine."

Dr. McFadden did not explain why his recommendation for nighttime noise limits is louder than the standards of the World Health Organization.

The World Health organization has also reviewed the literature, and their conclusion is 40dbA is the top nighttime noise limit for healthy sleep.

McFadden's recommendation for rural Wisconsin is 50% louder.

Why?

I mean, bless his heart, but Dr. McFadden just graduated from medical school a year ago and he openly admits he is not an expert on wind turbine noise. Yet the PSC is taking his recommendation over that of the World Health Organization.

Why?

I was bothered that during council meetings Dr. McFadden had no questions for council member Larry Wunsch, who lives with a wind turbine 1100 feet from his door. I was bothered that the majority of the council expressed no interest in what Mr. Wunsch has to say about his first hand experience and ignored his recommendations. I was especially bothered that the council would not allow Mr. Wunsch to play a recording he made of the turbine noise outside his door at 4AM.

Why?

I am very concerned that while we are all in the middle of this rule making, there are Wisconsin wind farm families who are suffering right now because of poor siting and they are getting no help. They are told by the state to go to the wind company for relief and the wind company tells them state standards allow the noise and shadow flicker.

The new rules say the same thing: If you have a problem, call the wind company, talk to their answering machine. Make an appointment and take time off of work so they can come to your house and tell you that according to state standards you have no problem.

Over the past two years I've seen families whose general health is declining because of lack of sleep. There is more stress in the home, more worry about loss of property value, and no way to get out because of homes that won't sell. And there is an increasing feeling of bitterness and anger. These rules will make

for more of the same.

You know, the beginning of these hearings feel like a big wind power parade. At the front is the brass band: The PSC, the utility guys, wind developers, lobbyists, union guys, construction guys all saying rah rah jobs power money rah rah, wind power is the best! That's the front of the parade. And I feel like I'm following behind it, seeing the mess that's left behind-- sort of like—what do you call it, the honey bucket crew? The guy that follows at the end the parade with the pail and shovel? I've seen what's left behind.

I've seen the damage done by siting standards like these and my hope is not only you all back up and take another look at this, but you'll find a way to send help to the wind farm families who are suffering right now because of standards like these. They are in this situation through no fault of their own and they deserve whole lot more than a clown car.

WISCONSIN turbine related
2nd
But RU highest
in North America

LYNDA BARRY-KAWULA





Office of the County Executive

Bob Ziegelbauer, County Executive
Manitowoc County Courthouse • 1010 S. 8th Street • Manitowoc WI 54220
Office: 920.683.5107 • Cell: 920.323.7497
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Senate Committee on Commerce, Utilities, Energy, and Rail Senator Jeff Plale, Chair

Wednesday, October 13, 2010, 11:00 AM
411 South, State Capitol

RE: Opposition to Clearinghouse Rule 10-057, relating to the siting of wind energy systems.

Dear Senator Plale & Committee Members:

As I testified at the public hearing held over a year ago on SB 185/AB 256, I was opposed to the wind siting bills then, and am opposed to Clearinghouse Rule 10-057 now. I continue to strongly support that the siting of wind towers must be made by the local units of government where wind towers will be located. I strongly encourage the Committee to send the rule back to require local input and decisions.

In the Manitowoc County area we are very interested in efficient new energy technologies. We host two valuable highly efficient nuclear plants (and if you're really serious about producing low cost electricity for a long time we would love to put one more between those two). Our workers manufacture the towers that support the wind turbines. And, the City of Manitowoc operates a new clean coal power plant in the middle of town, a block from my house, three blocks from the Courthouse.

We are "all in" on the energy economy.

The issue here is actually a fairly simple one. "Do you trust people in their local communities to make serious land use decisions on important issues?"

Nearly five years ago when it became clear that the demand for wind power sites would include our area, Town and County government embarked on the intense process of trying to make the difficult land use policy decisions contemplated under existing state law. After a failed first attempt to create a suitable county wind power ordinance, the County Board took a "time out" by declaring a moratorium on projects while it convened a special study committee to write a new ordinance. That committee, **a balanced mix of citizen and elected officials encompassing all the principal points of view, took significant public input and agonized over the implications of making wind tower siting decisions.**

- over -

After more than a year of serious deliberation their work product, a comprehensive wind power ordinance was overwhelmingly passed into law by the Manitowoc County Board in 2006. That both sides of the debate came away from the process a little unhappy with the results speaks highly of the quality of the work they did. It continues to be tested, defined, and refined according to the appropriate due process that is available at the local level for these issues. This would throw all that work away.

I encourage you to stand up for those local officials and the process of making local decisions throughout the State. Their work and the work of similar groups of local officials, who took their responsibilities seriously and in good faith waded in to try address controversial issues in their communities should stand; not be washed away because “Monday morning quarterbacks” from 150 miles away don’t like the result.

This proposal tells local people to get out of the way, tells local officials to dodge the tough issues, and because people in Madison know better, you’ll decide.

I urge you to not support the rule and send it back for modifications.

###



C-Rule 10-057?

10-13-2010

Jenn Eubank - Brown County - Town of Monroeville

BCCRWE a member of but speaking for myself
I live in the proposed Inverenergy Industrial Develop-
ment. I am opposed to the current PSC proposals

A pet peeve of mine is the use of Windmill &
Wind Farm. These are warm & fuzzy terms used by
the wind energy companies to lull people to sleep and
gives a wrong minds eye picture to people.

I would like to see a 2 mile setback from a property
line of a nonparticipating property owner. The
current siting applications from a non-participating
property owners residence is ridiculous. I cannot
put up a building on my property using my
neighbors land. A 2 mile setback would take
care of health safety & property value

I don't want any payment. It wouldn't be
sufficient for my ~~loss~~ health safety & prop value.
It rips communities apart - the relationship between
my brother & I ~~will~~ ^{may} never be the same whichever
way this development goes.

If the Industrial Wind Turbine project is put
up, decommissioning cost should be guaranteed
by whatever means possible because the main
owners and these projects are listed are LLC's
which could let the main ~~po~~ body of the company,
such as Inverenergy, walk away from a wind
development, leaving the community to deal with
the abandoned turbines. To many wind turbines
are already abandoned in the U.S. Everything is

is to much about money.

Once a development is installed, nothing can
be reversed.

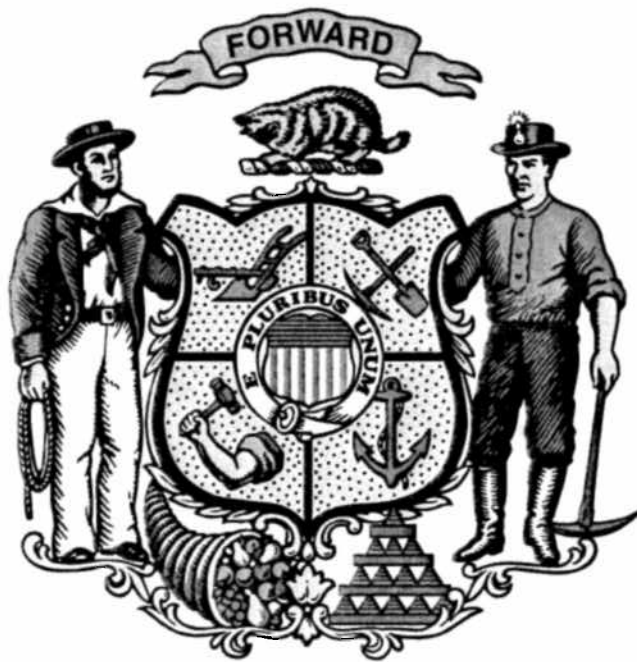
Thank you

JAMES EICHHORST

7561 County Hwy W

GREENLEAF, WI 54126

920-864-2831





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TO: Senate Committee on Commerce, Utilities, Energy and Rail

FM: Bill McClenahan, Martin Schreiber & Associates

DT: October 13, 2010

RE: *Invenergy Wind LLC testimony opposing CR 10-057 (proposed wind siting rules)*

Thank you, Mr. Chairman and committee members, for the opportunity to testify today. I'm Bill McClenahan. I am here today to testify on behalf of Invenergy Wind LLC in opposition to the PSC's proposed wind siting rules.

Invenergy is the largest non-utility U.S. developer of wind projects. Invenergy owns and operates the Forward Wind Energy Center, the first large scale wind facility permitted and constructed in Wisconsin and one of the state's largest wind farms at 129 MW. The renewable energy from Forward is purchased under long-term contracts by Wisconsin utilities.

Invenergy is also seeking approval for an up to 100-turbine, 150 MW wind project in southern Brown County called the Ledge Wind Energy Center. That is enough power for approximately 40,000 homes. The project will prevent the emission of 480,000 tons of carbon dioxide, 1,350 tons of sulfur dioxide and 600 tons of nitrogen oxide every year.

The Ledge project would represent an investment of more than \$300 million in Wisconsin. The project would provide approximately 150 construction jobs. It would also provide utility shared revenue payments of \$600,000 per year to the local towns and to Brown County. In addition, direct payments to landowners will total more than \$750,000 per year.

These are the kinds of jobs, payments to government and payments to landowners that the Legislature wants to keep here in Wisconsin. Attracting projects like Forward and Ledge to Wisconsin keeps those projects from being developed in other states or countries. The need to keep our energy dollars at home was one of the main reasons for enacting Act 40, the wind siting reform law.

Unfortunately, the rules proposed by the PSC do not align with the intent of Act 40 and instead will force developers to move wind development to states which, though their regulatory schemes, seek to encourage the development of renewable wind projects – specifically wind. Such regulations allow for more efficient and cost-effective wind project development. In light of the proposed

rules drafted by the PSC, there are many other states in which it will be easier to develop than Wisconsin.

The PSC rules are not just contrary to the Legislature's intent; they are outside the agency's statutory authority. Act 40 authorized the PSC to promulgate rules that limit the restrictions that local governments may impose on wind developments¹. Under the Act, the rules are limited by Section 66.0401(1m)(a) to (c)², which prohibits restrictions unless they are needed to protect public health or safety, and don't increase the cost or reduce the efficiency of a wind system.

However, a number of provisions in the draft PSC rules contain provisions that have nothing to do with health or safety, and significantly increase costs and reduce efficiencies. Nothing in Act 40 and nothing in previous law gives the PSC or local governments the ability to include these provisions in the rules.

An example is the provision that establishes a safety setback of 1.1 times the height of the turbine for participating residences, which is understandable and justifiable. However, the rule also creates a setback of 3.1 times the turbine height from nonparticipating residences. Why is 1.1 times a safe distance for one type of residence but not another? Clearly, this provision violates the restrictions of Section 66.0401 and sets up a regulatory structure filled with uncertainty.

Another example is the requirement of good neighbor payments. Although such payments may be a good business practice and common among many wind developers, they increase costs and have nothing to do with health and safety. As such, the PSC has no authority to include such provisions in the rules. In addition, there is no policy reason to include such payments for only one type of generation – wind – while having no such comparable requirement in the development of other energy facilities – for coal plants, for instance.

Additionally, the PSC rules contemplate significant restrictions on sound levels and shadow flicker. However, Dr. Jevon McFadden, an epidemiologic intelligence service officer with the Centers for Disease Control, told the PSC's wind siting council that, "Evidence does not support the conclusion that wind turbines cause or are associated with adverse health outcomes."³ Despite that fact, the proposed rules set very strict standards for both sound levels and shadow flicker. Shadow flicker, for instance, is limited to 30 hours per year, but must be mitigated at 20 hours. The result is that developers will see this as a 20 hour limit, which is the lowest we have seen.

¹ "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)..." Section 196.378(4g)(b), Wis. Stats.

² "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) l. g., or a wind energy system, unless the restriction satisfies one of the following conditions:

(a) Serves to preserve or protect the public health or 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." Section 66.0401(1m), Wis. Stats.

³ http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=132106

Other provisions with statutory authority problems will be noted by other speakers.

As I noted, the proposed rules are inconsistent with the legislative intent of Act 40. The purpose of the law was to encourage wind development in Wisconsin by removing obstacles created by local governments. The proposed rules, however, discourage wind development by creating some of the most burdensome regulations in the country. Developers will choose to invest in states with more reasonable regulations instead of Wisconsin. Projects in other states will be more cost-effective and efficient than projects in Wisconsin, and our energy dollars will continue to be sent out of our state.

In summary, then, we object to the proposed rules, both for lack of statutory authority and for being the opposite of what the Legislature intended. We ask that the rules be modified to correct those problems.

Thank you for the opportunity to testify.



Dean Anhalt
P.O. Box 272
Mishicot WI 54228
920-755-4128

C-Rule 10-057?

10-13-10

My name is Dean Anhalt. I am a Supervisor with the Town of Mishicot in Manitowoc County. I have been dealing with wind turbine issues since 2004 when 2 wind farm developers came to my area. Unfortunately, here I am again at a public hearing trying to protect the rights and health and safety of the people I represent.

When the state started talking about renewable, rules were made for wind turbines allowing only local restrictions that were for health and safety.

So Manitowoc County spent over a year to research, learn, and develop an ordinance to protect people in our county from turbine issues.

Noise limits for turbines were set not to exceed 5 decibels over the ambient noise level in the area. With ambient levels changing from day to night and location to location this is the only way to protect people from obtrusive noise. A flat rate will never fairly and properly manage turbine noise.

Shadow flicker was not allowed on neighboring properties.

Although setbacks from turbines were only at 1000 feet, the setback was to property lines giving people safety at all parts of their property from blade and debris throw and all the other issues.

But unfortunately local control was taken away. I consider this bad news as we had good rules backed by sound evidence.

But it is good news for people with a financial stake in wind development.

They don't want to ask for permission for property rights or properly compensate.

They just want to take.

Now they are lobbying the state to do the taking for them.

Your proposed wind siting rules will accomplish this.

I like many others live on land adjacent to or in a wind farm. As currently zoned my land is subdividable and build able anywhere With the lot line set back proposed, here are the issues I will face

An unsafe zone of hundreds of feet will be cast over my property

My property values and ability to use the land will be affected.

Wind will be used over my property for turbines sited on the neighboring property. The developer will gain wind rights over my land and by state statutes will control what I do on my land such as planting trees or erecting buildings.

The latest wind developer to our area has guidelines to be followed.

My ability to site turbines on my lands is greatly diminished because winds are being used and rights are being controlled by someone other than me for my property.

I will be subjected to the health and safety issues such as excessive noise on my land.

I live near Lake Michigan. There are 2 nuclear reactors 3 miles away and 1 reactor that is 10 miles away providing base load power to our state day in and day out. The plants provide good jobs to our area. These people spent money locally and have built homes adding to our local tax base.

I believe that new nuclear expansion in Wisconsin would find the easiest acceptance here.

We have 200 MW of wind power proposed for our area.

If this project is built, 200 MW of space will have to be reserved on the grid for this wind farm, though most days only a fraction will be used.

Is this going to fill the grid in our area not allowing for nuclear expansion without spending millions of dollars to upgrade transmission lines?

Is wind more important than a base load energy provider like nuclear?

We need to consider these issues.

We need economical power, especially in this day and age.

Conservation and efficiency are very important.

Do we actually need more power production in the state?

Are we siting wind turbines solely to meet state renewable requirements?

According to the developer in our area this is what allows them to build their project.

According to the recent Strategic Energy Assessment prepared by the Wisconsin Public Service Commission, Wisconsin has a very significant and potentially expensive excess capacity.

Are we going to stop using production facilities we currently have?

I want our leaders to make fiscally responsible decisions and use common sense when addressing our energy needs.

I want health and safety and property rights to be protected.

We need to make changes to the wind siting rules.

Dean Anhalt

Submitted to: PUBLIC SERVICE COMMISSION OF WISCONSIN
Docket no. 1-AC-231 Draft Chapter 128 - Wind Energy Systems

Comments by the Towns of Mishicot, Two Creeks, Two Rivers,
Manitowoc County, Wisconsin, and the
Towns of Carlton and West Kewaunee,
Kewaunee County Wisconsin

The towns of Mishicot, Two Creeks, Two Rivers, Manitowoc County and the towns of Carlton and West Kewaunee, Kewaunee County respectfully submit our comments and concerns in regard to the May 14, 2010, draft of the Chapter 128 rules for wind energy systems.

The towns concur and endorse the concerns set forth by the Towns of Morrison, Wrightstown and Glenmore, Brown County, Wisconsin - Ref. PSC REF# 133746.

We submit the following for consideration by the PSCW when developing rules for Wind Energy Systems so that public safety and health are preserved.

Setbacks should be taken from the property line of the adjoining non-participants.

Setbacks should be large enough so as not to create shadow flicker or excessive ambient noise on adjacent property.

Setbacks should be large enough not to create a loss of wind or property rights for the adjoining property.

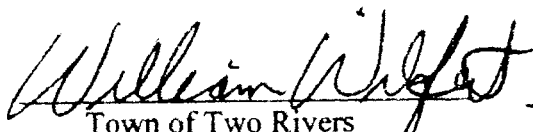
Decommissioning expenses should be backed by a Bond Fund from the developer.

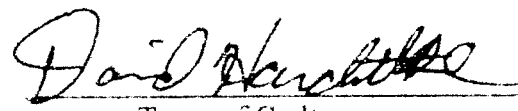
Transportation should also include damage caused to roads from the decommissioning of the wind turbines.

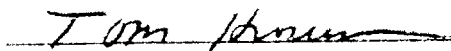
EMS - Emergency Communication Interference caused by Wind Turbines should be corrected by the developer in conjunction with the political sub-divisions within a year.


Town of Mishicot


Town of Two Creeks


Town of Two Rivers


Town of Carlton


Town of West Kewaunee

Public Service Commission of Wisconsin (PSC)

Submitted: 6/24/2010 11:08:34

COMMENTS FILED ELECTRONICALLY IN

Wind Siting Rules

1-AC-231

Commentor Information:

Name: Glen R. Schwalbach, P.E. for towns of Morrison, Wrightstown, and Glenmore
Address: 1090 Moonriver Dr
City: De Pere State:WI Zip:54115
E-mail: glenschwalbach@netzero.com
Phone: 920-680-2436

Comment:

Submitted to: Public Service Commission of Wisconsin
Docket No. 1-AC-231 Draft Chapter 128--Wind Energy Systems

Request by the Towns of Morrison, Wrightstown and Glenmore
Brown County, Wisconsin
June 23, 2010

Issue: Request to delay issuing the PSCW wind siting standards until epidemiological studies of health complaints from Wisconsin's current wind farms are thoroughly completed.

The towns of Morrison, Wrightstown, and Glenmore in Brown County are very concerned about the mounting evidence that there are serious negative impacts on human and animal health caused by wind turbines. It appears it is not only reasonable to delay the issuance of wind siting standards but it would be irresponsible to not do so in light of new studies and ongoing complaints of residents in and near Wisconsin's existing wind farms.

In general, scientifically and statistically relevant studies have been limited. But, a very important report was published March 2010 by the World Health Organization (WHO) entitled "Night Noise Guidelines for Europe" (available at euro.who.int/en/what-we-publish/abstracts/night-noise-guidelines-for-europe).

The report is based on a six-year evaluation of scientific evidence by thirty-five scientists from medical and acoustical disciplines. WHO indicated that now governments have justifications to regulate noise exposure at night. WHO sets the limit for annual average exposure to not exceed 40 decibels (dB) outside of a residence.

WHO stated, "Recent research clearly links exposure to night noise with harm to health. Sleep disturbance and annoyance are the first effects of night noise and can lead to mental disorders. Just like air pollution and toxic chemicals, noise is an environmental hazard to health". WHO stated that they hope their new report will prompt governments to invest effort and money in protecting health from this growing hazard.

Our towns ask the PSCW to acquire the WHO report and evaluate its application to setting appropriate sound levels for wind turbines.

The PSCW's draft rules do not address low frequency noise levels. It is not known whether the WHO report addresses this issue but other studies have described the likely effects. This is another area where epidemiological studies are needed before wind turbine setbacks can be reasonably proposed.

Besides sleep disturbance, there are complaints of other physiological problems. It is not acceptable to ignore or minimize the significance of these impacts as just quirks of human imagination.

Also, there is evidence that existing wind farms in Wisconsin are negatively affecting farm animals. Whether it is noise or some other physical phenomena, studies and testing should be done before setting siting standards.

At a public meeting of the Brown County Health Department and the Brown County Human Services Committee, reputable medical and health experts stressed the importance of epidemiological studies to determine the true nature of health impacts of wind turbines.

The State Board of Health pointed out that the lack of funding is a hurdle. But a conviction to do the right thing should prompt the PSCW to make a case to pursue the money issue with state legislators as well as our U.S. senators and representatives. Certainly, our towns would help in this endeavor. That said, it is even more appropriate for the wind developers and their associations to offer funding for independent studies since such studies should reduce future litigation. Electric utilities should have a stake in this effort as well. This is an opportunity to involve the University of Wisconsin research capabilities in both human health and animal health.

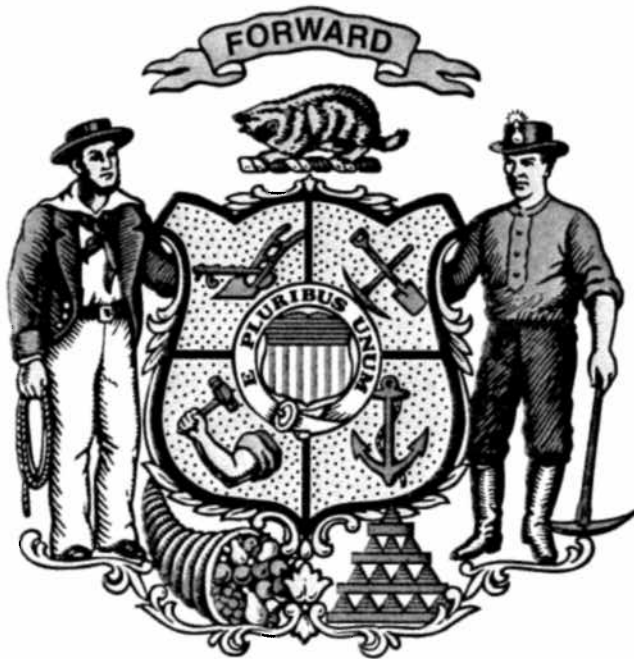
It appears that Act 40 does not set a deadline for completing the siting rules. This week a state senator who was one of the leaders in passing the wind siting law agreed that studies should be done to be sure the rules are adequate. If one or two years were used to study the existing wind farms while delaying any new installations, the developers would still have time to help utilities meet their 15% RPS by 2015. Again, if needed, our towns would help in getting the support of legislators.

Our towns implore the PSCW and the Wind Siting Council to not ignore the evidence of potentially serious health impacts and to not set standards until they have done the obvious and reasonable step of studying the health impacts of existing wind turbine installations in Wisconsin. Professional ethics demands no less. We believe our request aligns with the PSCW's responsibility to protect the citizens of Wisconsin.

Submitted for the towns by Glen R. Schwalbach, P.E.

I affirm that these comments are true and correct to the best of my knowledge and belief.
Glen R. Schwalbach, P.E. for towns of Morrison, Wrightstown, and Glenmore





October 13, 2010

TO: Senate Committee
Commerce, Utilities, Energy, and Rail

SUBJECT: Clearinghouse Rule 10-057
Siting of wind energy systems

Committee Members,

I strongly urge you to veto Clearinghouse Rule 10-057 for the following reasons:

Several of the Council members did not meet the requirements as stated in Act 40

There are currently people adversely affected by wind development pointing to the fact that a 3.1 times turbine height setback is not sufficient. A ½ mile setback would be acceptable

An allowable 45dba level is an arbitrary number. It should be 5dba above ambient

The guidelines are in direct conflict with our Comprehensive Plan

The State would be well advised to conduct a health study on the existing wind developments in Wisconsin

Please vote against Clearinghouse Rule 10-057.

Respectfully,



Mike Luethe
Chairman, Ridgeville Township
22676 County Highway T
Norwalk, WI 54648
608-823-7740

TOWN OF RIDGEVILLE

WIND ENERGY CONVERSION SYSTEMS ORDINANCE

The Town Board of the Town of Ridgeville, County of Monroe, State of Wisconsin, ordains as follows:

I. GENERAL PROVISIONS

A. Title. These regulations shall officially be known, cited and referred to as the Wind Energy Conversion Systems (WECS) Ordinance of the Town of Ridgeville, and hereinafter will be referred to as "The Ordinance."

B. Findings. Under state law, electric generating facilities of less than 100 megawatts ("MW") are subject to regulations enacted by counties and local units of government. The Town of Ridgeville is under the Monroe County Zoning and Wind Energy System Ordinance, which regulates such facilities. However, the Monroe County Zoning and Wind Energy System Ordinance has insufficient standards to protect the public health and safety of the residents and property owners of the Town of Ridgeville. Therefore, this Town of Ridgeville licensing ordinance has been adopted under the Town of Ridgeville's town and village powers and Wis. Stat. § 66.0401. The Town finds that Wind Energy Systems which may be constructed and operated in the Town require special licensing by the Town in addition to any restrictions that may be imposed by Monroe County, in order to protect the public health and safety of Town residents and property owners. In this regard, the Town finds that the report issued by the National Research Council entitled *Environmental Impacts of Wind-Energy Projects*, May 2007 ("2007 NRC Report"), addresses several important public health and safety issues relative to WECS that require regulation by the Town. The Town further finds that the provisions of the "Draft Model Wind Ordinance for Wisconsin," as promoted by the State of Wisconsin's Department of Administration, are inadequate to reasonably protect public health and safety.

C. Purposes and Intent. The purposes and intent of this Ordinance are to protect the public health and safety of the residents and property owners of the Town of Ridgeville who may be affected by the development and operation of WECS. Such purposes and intent shall be accomplished by regulating noise, protecting emergency communications, regulating shadow flicker, ensuring adequate fire protection, establishing adequate setbacks, protecting water quality, preventing soil erosion, regulating visual obstructions, preventing conflicts between incompatible land uses, ensuring proper installation of WECS, and ensuring safe and complete decommissioning of WECS.

II. DEFINITIONS

Ampacity: Means the current carrying capacity of conductors or equipment expressed in Amperes.

Ampere: The basic unit measuring the quantity of electricity.

Anemometer: A device for measuring the speed and direction of the wind.

Applicant: Means the person, firm, corporation, company, limited liability corporation or other entity which applies for approval under this ordinance, as well as the applicant's successor(s), assign(s) and/or transferee(s) as to any approved WECS or testing facility. An applicant must have the legal authority to represent and bind the landowner or lessee who will construct, own, and operate the WECS or testing facility. The duties and obligations regarding any approved WECS or testing facility shall be with the owner of the WECS or testing facility, and jointly and severally with the owner and operator or lessee of the WECS or testing facility. Also known as owner or operator.

Aerodynamic Noise: Means a noise that is caused by the flow of air over and past the blades of a WECU.

Ambient Noise: Means intermittent noise events such as from aircraft flying over, dogs barking, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road are all part of the ambient noise environment, but would not be considered part of the background noise unless they were present for at least 90% of the time.

Background Noise: Sounds that would normally be present at least 90% of the time. Also known as the lull in the ambient noise environment.

Blade Glint: Means the intermittent reflection of the sun off the surface of the blades of a single or multiple WECS.

Board: Means the Town Board for the Town of Ridgeville, Monroe County, Wisconsin.

Broadband Noise: Means the "swishing" or "whooshing" sound emitted as a function of a WECS(s) operation.

Employee: Means any and all Persons, including but not limited to "operators" who work in or at, or render any services directly related to operation of Wind Energy Conversion Systems.

FAA: Means Federal Aviation Administration.

Good Utilities Practice: Means any of the practices, methods and acts with respect to the safe operation of the Wind Energy Conversion System (WECS) engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation, and maintenance of wind turbines during the relevant period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the

decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

High Voltage Electrical Termination: Means connecting of conductors to a device or system where the voltage exceeds 600 volts.

Hub Height: Means the distance to the center of the wind turbine hub as measured from ground level.

Ice Throw: Means accumulated frozen moisture or ice buildup on the rotor and/or blades of a WECU that is or can be thrown during normal spinning or rotation.

Impermissible Interference: Means the blockage of wind from a wind energy conversion unit or system for which a permit has been granted under this ordinance during a use period if such blockage is by any structure or vegetation on property, an owner of which was notified in advance by certified mail or delivered by hand of any property which the applicant proposed to be limited by the permit. Impermissible interference does not include:

1. Blockage by a narrow protrusion, including but not limited to a pole or wire, which does not substantially block the wind from a wind energy conversion unit or system.
2. Blockage by any structure constructed, under construction or for which a building permit has been applied for before the date the last notice was mailed or delivered.
3. Blockage by any vegetation planted before the date the last notice was mailed or delivered.

Impulsive Noise: Means short acoustical impulses or "thumping" sounds, which vary in amplitude and are caused by the interaction of the wind turbine blades with the distributed air flow around the tower of downwind WECU's.

Inoperable: A WECU shall be determined inoperable if it has not generated power within the preceding two calendar quarters equal to at least 60% of the expected production.

Licensee: Means the applicant and/or successor who has received a license under this ordinance.

Livestock Facility: Means a confinement area designed specifically for raising, controlling, feeding, and providing care for livestock. This may include but is not limited to: dairy barns, pastures, feedlots, free stall barns, calf hutches, horse barns, veal barns,

feed storage areas, brooder and laying barns, farrowing and finishing barns, veterinary care.

Low Frequency Noise: Means an ongoing debilitation sound emitted during periods of turbulence as the blades are buffeted by changing winds that can cause structural vibration.

Measurement Point: (MP): Means the location where sound and/or vibration measurements are taken such that no significant obstruction blocks sound and vibration from the site.

Mechanical Noise: Means sound produced as a byproduct of the operation of the mechanical components of a WECU(s). This is also known as "tonal noise." Tonal noises are distinct and tend to be more noticeable at the same relative loudness of other types of noises.

Meteorological Tower: Means a tower used for the measurement of wind speed and direction, also known as MET tower or wind test tower.

NFPA: Means the National Fire Protection Association.

Nacelle: Means the enclosure located at the top of a WECU tower that houses the gearbox, generator and other equipment.

Noise: Means any unwanted sound.

Non-Participating Property Line: Means a continuous line surrounding all contiguous adjacent parcels of property owned by a single individual, company, corporation, partnership or other entity not part of a proposed Wind Energy Conversion System.

Operator: Means the person who is designated on the license application to be the person in charge of daily operation of the premises and who is to be the Wind Energy Conversion System contact person for the Town.

Ownership Property Line: Means a continuous line surrounding all contiguous adjacent parcels of property owned by a single individual, company, corporation, partnership or other entity.

Person: Means an individual, proprietorship, corporation, association, limited liability entity, or other legal entity.

PSCW: Means the Public Service Commission of Wisconsin.

Project Area: Means all the properties within the project boundary and within a one-mile radius beyond the project boundary of a proposed or approved WECS project.

Project Boundary: Means a continuous line, which encompasses all WECU's and related equipment to be used in association with a WECS project.

Property Line: Means the recognized and mapped property parcel boundary line.

Related Equipment: Means transformers, tower, electrical conductors, termination points, switches, fences, substations, and any other related equipment necessary to operate a WECS.

Residences & Other Buildings: Means all private residences and businesses located 2,640 feet, measured from the foundation of an existing residence or business to the outermost edge of the closest of the circular path of the wind turbine rotor blade of a WECS, further providing a non-participating land owner has applied for a building permit on or before a full and complete application is submitted to the Town Board per Section V of this ordinance.

Sensitive Environmental Area: Means an identified habitat for threatened or endangered species, or another designated environmentally significant area as identified by Town, county, state or federal officials.

Sensitive Receptor: Means places that are likely to be more sensitive to the exposure of the noise or vibration generated by WECS(s). This includes but is not limited to: schools, day-care centers, hospitals, parks, residences, residential neighborhoods, places of worship, and elderly care facilities.

Setback: Means the minimum allowable horizontal distance from a given point or line of reference, such as a thoroughfare right-of way, water line, or prospective line to the nearest vertical wall or other element of building or structure.

Setback Area: Means the land base that falls within a specified setback.

Shadow Flicker: Means the effect when the blades of an operating wind energy conversion unit pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

Shadow Flicker and Glade Glint Zone: Means the land area that falls within the setback for shadow flicker or blade glint.

Stray Voltage (Ground Current): Means neutral-to-earth voltage measured from the electrical system neutral and/or any structure bonded to this neutral to earth that adversely affects humans or animals.

Structures: Means residences, livestock facilities, communications towers, commercial businesses, and all sensitive receptors.

Total Height: Means the distance between the ground at normal grade and the highest point of the installed WECS (being the tip of the blade when the blade is in the full vertical position).

Wetland: Means an area of land, which regularly persists in a wet state, or as otherwise defined by the WDNR.

Wind Energy Conversion Unit (WECU): Means a wind driven machine with an output rating greater than 100 kilowatts (kW) and with a total height of greater than 170 feet that converts wind energy into electrical power for the primary purpose of sale, resale, or off-site use. The WECU includes the tower, turbine, footings, and all equipment associated with individual units including the land beneath encompassing the equivalent area of the circumference of the rotors. Also known as a Wind Turbine.

Wind Energy Conversion System (WECS): Means all WECUs, related transformers, electrical conductors substations, and connection points to transmission or distribution lines.

Wind Energy Conversion System Facility or Facility: Means all of the land and equipment used by the wind energy conversion system and its support facilities including the wind turbine, tower, access roads, control facilities, meteorological towers, maintenance and all power collection and transmission systems.

Wind Energy Conversion System Tower: Means any structure that is designed and constructed primarily for the purpose of supporting the Wind Energy Conversion Unit.

Windmill: Means a wind-driven machine that does not produce electricity.

Wind Test Tower: Means the tower on which meteorological equipment is located to measure wind speed, direction, strength, etc., for the purpose of evaluating a potential for WECS siting.

Wind Turbine: Means a wind driven machine that converts wind energy into electrical power, also known as a Wind Energy Conversion Unit (WECU) or turbine.

WDNR: Means the Wisconsin Department of Natural Resources.

III. LICENSING

A. **License Required.** After the effective date of this ordinance, no WECS of 170 feet in height or greater shall be constructed, operated or maintained in the Town without a license issued by the Town of Ridgeville Town Board, pursuant to this ordinance. However, WECS of under 170 feet in height and less than 100 kilowatts are exempt from the licensure requirements of this ordinance.

B. Effect of Other Licenses. The fact that an applicant possesses any other valid license or permit required by law does not exempt the applicant from the requirement of obtaining a WECS license under this ordinance.

C. Non-Assignment. A license issued under this ordinance may not be assigned or transferred to any other Person than the Licensee, without the express prior written consent of the Town. Such consent shall not to be unreasonably withheld within one year after issuance of a license, provided the Licensee and the Person who the license is proposed to be assigned or transferred to shall both submit affidavits to the Town demonstrating the following:

1. The new Person who will hold the license wholly owns the new entity.
2. The new entity is properly formed and authorized to do business in the State of Wisconsin.
3. The written assignment requires the new entity to assume all of the Licensee's rights, duties and obligations under the License including but not limited to the letter of credit requirements and the certificate of insurance requirements.

IV. LICENSE APPLICATION PROCEDURE FOR WECS

A. Application. Any person desiring to secure a WECS license from the Town shall file a complete application, together with two additional copies, with the Town Clerk. The application shall be on a form approved by the Town Board and shall be provided to the applicant by the Town Clerk.

B. Required Information. The following information shall be required of each Applicant and shall be provided with the application. The Person(s) filing the application shall sign it under oath or affirmation as witnessed by a Notary Public:

1. Name, address, and phone number of Applicant(s).
2. If the Applicant is a corporation, partnership, limited liability company, limited liability partnership, or other entity recognized by law, the application shall include: the name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address and home phone numbers of the registered agent(s) where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners, managing members or managers, whichever is applicable for the particular form of business entity.
3. Name and address of any other current or past WECS developed or operated by the Applicant, whether in the State of Wisconsin or any other state or nation.

4. Name, address and phone number of the individual(s) responsible for the day-to-day operation of the proposed WECS, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the Town.
5. Evidence that the Applicant is the owner of the underlying real estate and other property necessary for the WECS project or that the Applicant has the written permission of the owner(s) of such real estate and other property to make such an Application.
6. A signed statement by the underlying landowner(s) acknowledging that the landowner(s) will be financially responsible if the owner/operator fails to reclaim the site as required, and that any removal and reclamation costs incurred by the Town shall become a lien on the real estate and other property and may be collected from the landowner(s) in the same manner as property taxes.
7. A statement that the Applicant is familiar with, and in compliance with, the provisions of this ordinance, including the responsibility to reimburse all reasonable costs and professional fees associated with the processing, examination and analysis of the application for a license and such further expenses associated with monitoring the WECS and enforcing the terms of the license.
8. Proof of continuous liability insurance in the minimum amount of five million dollars (\$5,000,000.00) per occurrence shall be submitted to the Town of Ridgeville indicating coverage for potential damages or injury to landowners, occupants, Town property and Town roads, and other third parties. The Town shall be named as an additional insured on the policy.

C. Additional Information. Each Application shall be accompanied by:

1. Detailed Site Plan. A site plan which meets all the requirements of this Section and applicable provisions of the County Zoning Code pertaining to Land Use Permits, as well as any additional site specific requirements of the Town in accordance with the technical requirements in this ordinance. Each application shall be accompanied by a site plan showing the location of the proposed WECS Tower Site(s), including:
 - a. Total acreage occupied by the facility;
 - b. A detailed map of the area showing parcel boundaries and individual Wind Turbine locations and their distances to existing structures;
 - c. Existing structures and proposed facilities;
 - d. Location of existing and proposed transmission lines, substations, driveways, access and maintenance roads, etc. All proposed electric transmission and distribution lines shall shown and shall be placed underground;
 - e. Location of meteorological or wind testing towers; and

f. Location of wells, abandoned and active, within a half-mile radius of project boundary.

2. Specific Information. The applicant shall provide specific information on WECS including:

a. The type, size, total installed height, rotor material, rated power output, performance history, safety history, and noise characteristics of each type of WECS, tower and electrical transmission equipment. Identify the length of service of the proposed components.

b. A structural safety certificate shall be provided from a professional engineer stating that the structure is of new construction and not refurbished or rebuilt and has been designed to operate in cold weather conditions and is safe.

c. Photographs or detailed drawings of each wind turbine model including the tower and foundation. Provide design and specifications for all proposed structures and foundations. (Foundation at and around the tower base shall be designed so that no surface water or runoff can access subsurface aquifer at any time during construction, operation or decommissioning.)

d. Detailed computer and photographic simulation(s) overlaid on the existing environment showing the proposed WECS project area fully developed with all proposed wind energy conversion units and related facilities. The format shall be subject to the approval of the Town.

3. Timeline. The applicant shall provide a proposed timeline showing all aspects of construction with a starting and final completion date.

4. Affected Property Owners. The applicant shall submit the name and address of property owners within WECS setback areas. Considering that development rights of adjacent property owners may be forfeited due to these setbacks as per this ordinance, a written agreement for non-development within the specified setback must be obtained and recorded on the affected properties' deeds. Copies of the agreements must be submitted with the application.

5. Impermissible Interference Notification. The applicant shall deliver by certified mail or by hand a notice to the owner of any property, which the applicant proposes to be restricted by the permit. The applicant shall submit to the Town of Ridgeville a copy of a signed receipt for every notice delivered in addition to the following information:

a. The name and address of the applicant, and the address of the land upon which the WECS is or will be located.

- b. That the applicant has filed an application.
- c. That the permit, if granted, may affect the rights of the notified owner to develop his or her property and to plant vegetation.
- d. That any person may request a hearing within 30 days after receipt of the notice, and the address and procedure for filing the request.

6. **Wind Access Agreements.** Evidence (a signed statement from the applicant and countersigned by the landowner) that the applicant has negotiated with adjacent landowners and has obtained written agreements with all landowners whose wind rights may be affected by the WECS or who could otherwise potentially interfere with the applicant's wind access.

7. **Easements, Leases & Property Rights.** The applicant shall submit copies of signed letters of intent to grant easements, long-term leases or other property rights from all involved landowners and any governmental units responsible for right-of-ways for access, construction, electric transmission and distribution lines, etc.

8. **Notifications.** The applicant shall notify the following agencies, via certified mail upon submitting an Application to the Town. Copies verifying proof of delivery shall be provided to the town:

- a. Federal Aviation Administration;
- b. Wisconsin Bureau of Aeronautics;
- c. County Emergency Services Agencies;
- d. Local Fire Departments;
- e. County Planning & Zoning and Land Records Departments;
- f. County Highway Department;
- g. County Sheriff's Department;
- h. Local School Districts;
- i. Local Utilities and Electric Cooperatives;
- j. Wisconsin Public Service Commission;
- k. Wisconsin Department of Natural Resources; and
- l. U.S. Department of Defense facilities located within 50 miles of the proposed WECS.

9. **Wind Study.** A study documenting minimum, maximum, and average wind speeds and prevailing wind directions over the course of one year. Anemometers shall be calibrated regularly to ensure a measurement of error of 1% or less. All anemometers shall be placed at the expected hub height of the proposed wind turbines. Sufficient wind resources, as described by the U.S. Department of Energy, include areas with a wind power class 4 or higher. The town shall retain the services of an independent, recognized expert to review the results of the wind resources study prior to acting on the application. Said study shall indicate the long-term commercial economic viability of the proposed WECS project.

10. **Critical Communications.** The applicant shall provide a critical communication study prepared by a registered professional engineer showing that the proposed WECS will not interfere with emergency (fire, police/sheriff, ambulance) radio two-way communications (base stations, mobile, and hand held radios, including digital), paging, television, telephone (including cellular and digital), microwave, satellite (dish), navigational, internet or radio reception communications to and from neighboring areas. The applicant shall provide a signed affidavit stating that the applicant shall be responsible for the full cost of any removal of WECS facilities and any other remediation necessary to provide correct any problems; including relocation or removal of the WECS facilities and any and all related electric transmission lines, transformers, and other components related thereto. The applicant shall maintain equivalent communications throughout the life of the WECS even as future technologies may change.

11. **Noise Study.** The Applicant shall provide to the Town a pre-construction noise survey within a one mile radius of each proposed Wind Turbine location showing ambient background noise levels over a one year period prior to final layout and construction of the proposed WECS. The noise survey shall be conducted by a qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

12. **Shadow Flicker and Blade Glint.** The applicant shall provide a shadow flicker and blade glint model for any proposed wind energy conversion unit. The study shall be conducted by a qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

13. **Ice Throw Calculations.** A report from a Wisconsin professional engineer that calculates the maximum distance that ice from the turbine blades could be thrown. The basis of the calculation and all assumptions must be disclosed. The report shall be prepared by a qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

14. **Blade Throw Calculations.** A report from a Wisconsin professional engineer that calculates the maximum distance pieces of the turbine blades could be thrown. The report shall be prepared by a qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

15. **Ground Water.** An environmental study specifically indicating the impact the project will have on the groundwater beneath and in the vicinity of the proposed Wind Turbine sites. If a Wind Turbine foundation is proposed in a bedrock area, a baseline of all wells and certified public drinking sources in a half-mile radius shall be established and provided to the Town as part of the application. The study shall be prepared by a

qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

16. **Travel Route.** The applicant shall provide the town, county and state notice of intended travel routes to proposed WECS site. The applicant shall provide, at its expense, a pre-construction inventory of road conditions performed by a certified Wisconsin professional engineer. The applicant shall abide by all town, county and state laws and ordinances that may affect travel and/or ingress or egress to the WECS facilities.

17. **Soils Report.** A geotechnical report that shall at a minimum include the following:

a. Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing;

b. Slope stability analysis;

c. Grading criteria for ground preparation, cuts and fills, soil compaction;
and

d. Certification from a registered geotechnical engineer that the soils can support a WECS.

18. **Site Preparation & Erosion Control.** The applicant shall submit the following:

a. A site preparation plan that has been approved by the County Land Conservation Department. The plan shall show planned storage and retention of topsoil, and all types of subsoil for later site restoration.

b. A construction site erosion plan and storm water runoff control plan that has been approved by the County Land Conservation Department. The plan shall comply with all state statutes and county ordinances. The plan shall be prepared so as to minimize the potential adverse impacts on sinkholes, wetlands, streams and the banks and vegetation along those streams and wetlands, and to minimize erosion or sedimentation.

19. **Hazardous Waste.** A plan shall be submitted showing compliance with all laws applicable to the generation, storage, clean up, transportation and disposal of hazardous wastes generated during any phase of the proposed WECS life.

20. **Fire Prevention, Emergency Rescue Plan.** The applicant shall submit a plan to outline preventative measures, and to identify, train and fund fire and rescue personnel to ensure readiness and appropriate response. This plan shall also identify potential fire, rescue, and hazardous materials scenarios over the life of the WECS.

21. **Stray Voltage Test Results.** The applicant shall perform at least two pre-construction stray voltage tests at all livestock facilities within the proposed project boundary and within a one-mile radius beyond the proposed project boundary. The tests shall be performed by a mutually acceptable Wisconsin certified stray voltage investigator and shall be conducted once in the spring and once in the fall of the year. The tests shall be performed according to the PSCW Phase II Stray Voltage Testing Protocol. A copy of the test results shall be sent to each of the following: property owners, PSCW, local utilities, Wisconsin Public Service Commission, and the Town. The applicant shall obtain written permission from property owners prior to stray voltage testing. If permission is denied, all responsibility for stray voltage problems shall be with the property owner.

22. **Lighting Plan.** The Applicant shall provide a plan showing lighting on and around all WECS and related facilities. Lighting on WECS shall be lit to FAA minimal standards only using red rather than white lights, if possible. Lighting shall be shielded from ground view to FAA maximum standards.

23. **Avian and Bat Impact Study Plan.** The applicant shall submit a plan for monitoring the avian and bat impact of the WECS to the Town for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall submit a quarterly report to the Town which identifies the number of bird and bat fatalities found within 500 feet of all WECS facilities.

24. **Abandonment, Removal and Site Restoration Plan.** The applicant shall submit an abandonment, removal and site restoration plan, along with a cost estimate for removal and site restoration, to the Town with the application. The plan shall identify the specific properties it applies to and shall indicate the timeline and process to be used for removal of all materials above and below ground; road repair costs, if any; and all re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the WECS. The plan shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features at the site. The plan shall reflect any standards set forth in this ordinance and shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.

25. **Application Fees & Security.** The following fees and financial security guarantees shall be paid to the Town by the applicant:

a. **Application, Legal and Consultant Fees.** The applicant shall pay an application fee of \$1,000 to the Town upon filing an application under this ordinance. In addition, within fourteen (14) days of filing an application the applicant shall deposit in a joint escrow account with the Town the sum of \$25,000, as partial payment for the appropriate Town expenses in hiring consultants and experts, as these authorities shall, at their discretion, deem desirable. At any time the balance of this fund shall fall below \$15,000, the applicant shall submit an additional \$15,000 so that the Town's full and actual expenses of examining and verifying the data presented by the applicant shall be

paid in full by the applicant. If at any time the balance of this fund shall fall below \$15,000 for a period of 30 days, the application shall be considered to have been withdrawn. The balance of the escrow account, after all the Town's expenses have been paid, shall be returned to the owner/operator after the decommissioning process is complete.

b. **Road Repair.** An amount to be determined by agreement of the applicant and the Town Board, to be used as security for Town road maintenance and repair, shall be deposited in a joint escrow account with the Town within fourteen (14) days of approval of a license under this ordinance. When determining the amount of such required security, the Town may require an annual escalator or increase based on current construction costs and/or the Federal Consumer Price Index. This security shall be kept in full force and effect during the entire time a WECS is in existence and shall be used to maintain roads during the construction, maintenance and decommissioning of the WECS facility. Such security shall be irrevocable or non-cancelable (except by written consent by both the Town Board and the owner of the WECS) for the life of the approved license. Failure to comply will subject the applicant to revocation of the license.

c. **Site Reclamation.** Advance payment for WECS site reclamation and restoration shall be placed in a joint escrow account or surety bond, the amount to be determined by the Town Board. Said amount shall be sufficient to fully remove the WECS and all components thereof. Such financial security shall be kept in full force and effect during the entire time while a WECS facility exists or is in place. This financial security shall be irrevocable and non-cancelable until such time as the Town Board certifies that reclamation and restoration are complete and release the obligation.

d. **Decommissioning.** An appropriate continuous renewal bond amount shall be established for each Wind Turbine for decommissioning should the Owner/Operator fail to comply with the Ordinance requirements or if a Wind Turbine is inoperable for a period of twelve (12) consecutive months.

V. LICENSING PERMIT PROCEDURE

A. Notice & Procedure. After determining that an application is complete, the Town Board shall conduct a public hearing on the application after a class 2 hearing notice is published in the Town's official newspaper. The public hearing shall be held within ninety (90) days, after the Town Board determines that the application is complete. Within fourteen (14) days after the close of the public hearing, the Town Board shall meet in open session to deliberate and make a decision concerning the application. The deliberation meeting shall be noticed to the applicant and the public at least five (5) days prior to the deliberation meeting. The Town Board may have the assistance of legal counsel at the public hearing and the deliberation meeting.

B. Decision on Application. The Town Board shall approve and application and grant a WECS license if it determines that the requirements of this ordinance have been and shall be met by the applicant, and granting the license will not adversely affect

public health and safety. The Town Board may include conditions in the license which go beyond the minimum regulations set forth herein, if the conditions are reasonably necessary to protect public health and safety; do not significantly increase the cost of the system or significantly decrease its efficiency; or allow for an alternative system of comparable cost and efficiency. In addition to other provisions and standards set forth in this ordinance, the Town Board may consider the following factors when establishing such conditions:

1. The proposed ingress and egress;
2. The proximity to transmission lines to link the system to the electric power grid;
3. The number of wind turbines and their proposed locations;
4. The nature of land use on adjacent and nearby properties;
5. The surrounding topography;
6. The proximity to residential structures, residential zoning districts, and areas identified for future residential use;
7. Design characteristics that may reduce or eliminate visual obtrusiveness and the distraction of motorists on nearby roads;
8. Possible adverse effects on migratory birds, raptors, and other animals and plants;
9. Possible adverse effects of stray voltage, interference with broadcast signals, shadow and flicker effects, and noise;
10. Impacts on the orderly development, property values, and aesthetic conditions of the Town as they may also relate to public health and safety and other factors under Wis. Stat. § 66.0401;
11. Effects on public roads;
12. Recommendations from the town boards of adjacent towns, which may be affected by a WECS;
13. Any other factors which are relevant to the proposed WECS.

C. Request for Waiver of Standards by Applicant. If requested by an applicant, the Town Board may waive or reduce the burden on the applicant of one or more of the standards and requirements of this ordinance, if it concludes that the purpose of this ordinance will be met, that any requested waiver(s) by an applicant are justified based on credible evidence or information submitted to the Town Board by the applicant with the application, and that the requested waiver(s) will not adversely affect public

health and safety. The installation and continued operation of a WECS is otherwise contingent on compliance with all standards of this ordinance and all conditions established by the Town Board relative to the approval or conditional approval of an application and licensing permit.

D. Recording & Notice of Decision. The Town Board's decision to approve, conditionally approve or deny an application, the reason(s) for its decision, and any conditions established by the Town Board relative to a conditional approval of an application and license shall be recorded in the Town Board's minutes. The Town Board and Town Clerk shall issue a license to the applicant or inform the applicant that the application for a licensing permit has been denied within thirty (30) days of the Town Board's final action on the completed application. At the same time, the Town Clerk shall publicly post a notice of the final decision of the Town Board at the Town Hall.

E. Appeal to Circuit Court. The Town Board's final decision on approval, conditional approval or denial of an application may be appealed to Circuit Court by anyone aggrieved by the decision, including but not necessarily limited to the applicant or any aggrieved resident or property owner of the Town, within thirty (30) days of the issuance of the decision, and the posting of public notice of the decision, by the Town Clerk. In addition, any revocation of a license or other enforcement action by the Town Board under this ordinance may be appealed to Circuit Court by the applicant or any other aggrieved party within (30) days of actual notice to the applicant or other aggrieved party of such revocation or enforcement action.

VI. DEVELOPMENT & PERFORMANCE STANDARDS FOR LICENSING

A. Development & Performance Standards. All WECS and testing structures shall comply with the Development & Performance Standards set forth in this section. It is recognized that the standards herein are neither exclusive, nor exhaustive. In instances where a health or safety concern is identified with regard to any application for a WECS, additional or more restrictive conditions may be included in the license to address such concerns. The Town reserves the right to impose additional standards as circumstances warrant. Such additional and more restrictive standards may include, but are not limited to: a) longer setbacks from nearby property lines, roads, electric transmission and distribution lines, residences, businesses and other inhabited structures; b) more restrictive noise limitations, and c) more restrictive limitations to protect surface water and groundwater.

B. Design. Each Wind Turbine shall consist of a tower, generator(s), nacelle and blades. Each WECS site shall have access roads, underground transmission cabling to connect the generators to a local utility's electric distribution lines, and underground fiber optic lines. The application shall disclose the nature, type, make and model of the proposed Wind Turbines. Detailed product literature, specifications, and safety guidance for maintenance of the turbines shall accompany the application. Each Wind Turbine shall also comply with the following design requirements:

1. Wind Turbines shall be painted a non-reflective, non-obtrusive color.
2. Each WECS site, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the WECS to the natural setting and the existing environment.
3. Wind Turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority; strobe or other intermittent lights are prohibited.
4. Wind Turbines shall not be used for displaying any advertising.
5. Wind Turbines shall not display any name or logo.
6. Electrical controls and control wiring and power-lines must be wireless or not above ground, except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.
7. The clearance between the ground and the Wind Turbine blades shall be at least 75 feet.

C. Aircraft Protection. The wind turbine generator towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the outside of the tower other than as required by the FAA or other applicable authority, or as otherwise agreed in connection with the issuance of the license. Notwithstanding the foregoing, this restriction shall not apply to infrared heating devices used to protect the monitoring equipment. The tower shall be connected to an uninterruptible back-up power source to ensure continuous compliance with FAA regulations. To the extent consistent with FAA regulations, shrouding for the lights shall direct reflection of light up. Aircraft safety and protection shall also be accomplished by establishing sufficient setbacks between all Wind Turbines and adjoining properties in order to allow for safe crop-dusting of agricultural fields, and safe emergency medical aircraft landings on all adjoining properties.

D. Blasting. Licensee shall not undertake any blasting in connection with the construction of the Facility unless Applicant shall have notified the Town and submitted a blasting plan consistent with applicable laws and regulations. The plan must be submitted by the Licensee, reviewed and approved by the Town Board, before any blasting may take place. The plan shall, at a minimum, provide that:

1. Blasts must comply with the State ground vibration limitations.
2. Fly-rock traveling in the air or along the ground must remain in the controlled blasting area site owned or controlled by the applicant.
3. All blasting must be performed by or under the direct supervision of a State-licensed blaster.

4. A blasting log for each blast will be kept on-site at the WECS office for not less than 5 years, and copies of the required blasting log will be promptly submitted to the Town upon its request.

5. A resident call list must be established for the purpose of notifying neighbors at homes in the vicinity of the WECS of eminent blasting activity. This call list must be maintained and utilized on a "request basis only" for all residents in the vicinity of the WECS who asked to be notified prior to any blast.

6. The storage of explosives will be in accordance with Wisconsin law.

E. Communications Interference. WECS shall be sited and operated so that they do not interfere with emergency (fire, police/sheriff, ambulance) radio two way communications (base stations, mobile, and hand held radios, including digital) and/or paging, television, telephone (including cellular and digital), microwave, satellite (dish), navigational, internet or radio reception to neighboring areas. The applicant and/or operator of the facility shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems; including relocation or removal of the facility caused or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto. The applicant shall maintain equivalent communications throughout the life of the WECS even as future technologies may change.

1. The owner/operator of the WECS shall respond within five business days to any request for communications interference investigation by a property owner within the project boundary and a three-mile radius beyond the project boundary. Testing will commence within ten working days of the request. The owner/operator is responsible for mitigating within ten working days from the determination of interference cause attributed to the operation of the WECS.

2. The owner/operator of the WECS shall respond within one business day to any request for communications interference investigation by any emergency agency (fire, police/sheriff, ambulance). Testing will commence within two working days of the request. The owner/operator is responsible for mitigating within two business days from the determination of interference cause attributed to the operation of the WECS.

F. Electromagnetic Interference. WECS shall be sited and operated so that they do not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The applicant and/or operator of the facility shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems; including relocation or removal of the facility, caused or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto. The owner/operator of the WECS shall respond within five business days to any request for a communications interference investigation by a

property owner within the project boundary and a three-mile radius beyond the project boundary. Testing shall commence within ten working days of the request. Owner/operator is responsible for mitigating within ten working days from determination of interference cause attributed to the operation of the WECS.

G. Groundwater Protection. Licensee shall construct and operate the Facility so as not to cause groundwater contamination in violation of applicable law. Nothing contained in the license is intended to authorize or permit any degradation of the quantity or quality of the groundwater in connection with the WECS.

1. No excavations deeper than nine (9) feet below the surface of the soil shall be allowed in the construction of any Wind Energy Facility or Wind Turbine unless the applicant submits evidence of increased cost or design necessity based on actual foundation designs. Any change in foundation design shall maintain the water quality standards of this ordinance.

2. Wells shall not be drilled within the boundaries of a WECS site.

3. The applicant shall complete a plan for managing surface water runoff to prevent pollution of groundwater through sinkholes, wetlands and infiltration through the soil and underlying bedrock within a 1,000-foot radius of each Wind Turbine site and along all access roads and driveways leading to Wind Turbine sites. The plan shall provide for surface water management so that the water flows away from the Wind Turbine sites and known sinkholes rather than toward them.

4. If a Wind Turbine foundation is proposed in a bedrock area, a baseline of all wells and certified public drinking sources in a half-mile radius shall be established and permanent remedies shall be the responsibility of the developer if contamination occurs.

H. Noise.

1. Audible Sound Limit.

a. No Wind Turbine or group of turbines shall be located so as to cause an exceedance of the pre-construction/operation background sound levels by more than 5 dBA or dBC. The background sound levels shall be the L90 dB sound descriptor (both A and C weighting) measured during a pre-construction noise study during the quietest time of evening or night. Measurements shall be for ten (10) minutes or more. L90 results are valid when L10 results are no more than 15 dB above L90 for the same time period. Noise sensitive sites are to be selected based on wind farm's predicted sound emissions (in dBA, dBC and 1/3 octaves to blade passage frequency), which are to be provided by developer.

b. A 5 dB penalty is applied for pure tones or when the sound emissions fluctuate in amplitude or frequency over time in reasonable synchronicity with the blade revolution.

2. In-Audible (e.g., Low Frequency) Sound Limit.
 - a. Not to exceed dBC-dBA greater than 20 dB inside or outside any occupied structure.
3. General Clause.
 - a. Not to exceed 40 dBA or dBC within 100 feet of any occupied structure.
4. Requirements.
 - a. All instruments must meet ANSI Type 1 performance specifications.
 - b. Procedures must meet ANSI S12.9 and other applicable ANSI standards.
 - c. Measurements must be made when ground level winds are 10 mph or less. Background sound measurements are with winds of 5 mph or less. Wind shear in the evening and night often result in low ground level wind speed. At turbine fan heights, the wind is at or above nominal operating wind speeds.

d. IEC 61400 procedures are not suitable for enforcement of these requirements. ANSI standards shall be followed for testing procedures. 5. In the event the noise levels resulting from the WECS exceed the criteria listed above, a waiver to said levels may be granted by the Town Board provided that the following has been accomplished:

- (1) Written consent from the affected property owners has been obtained stating that they are aware of the WECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
- (2) If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement has been recorded in the Office of the County Register of Deeds which describes the benefited and burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.

I. Fire Protection. The applicant shall prepare a plan in consultation with fire department having jurisdiction over the area prior to construction. The plan shall address all activities at the WES and site from the start of construction through the end of power generation and the final removal and restoration of the site, and shall result in a response plan to address all identified potential fire, rescue, hazardous materials scenarios.

1. The owner/operator shall assure that the WECS and site comply with the following control and prevention measures and incurs associated costs.

a. Fire proof or fire resistant building materials and buffers or fire retardant landscaping.

b. Incorporation of a self contained fire protection system to address nacelle fires and approved by NFPA or comparable underwriter.

c. Maintain firebreak areas cleared of vegetation and maintained as a fire/fuel break as long as the WECS is in operation. Firebreaks shall be 30 feet in width around the periphery of the proposed WECS site, 10 feet in width around all transformers, and 30 feet in width around all buildings.

d. Fire fighting and rescue services, including programs and costs associated with equipment and training, for local fire protection and rescue personnel.

e. Any additional fire fighting or rescue personnel, services, materials, and/or vehicles as may be required to address any call related to the WECS or site that is beyond the capabilities of local fire fighting and/or rescue services.

f. The owner/operator shall be responsible for compliance with all laws applicable to the generation, storage, clean up, transportation and disposal of hazardous wastes generated during any phase of the project's life.

J. Public Roads. Licensee shall, prior to the initiation of construction and use of haul roads, consult with the Town Board, County Highway Commissioner, the Wisconsin State Police and the County Sheriff's Office for load paths and restrictions on their respective roads or bridges. At Licensee's expense:

1. Licensee shall provide, the Town Board, a preconstruction evaluation and identification of road surface materials stating the type and amount of surface cover, PASER ratings, and photographic or video documentation of predetermined designated traffic route, performed by a Wisconsin certified professional engineer mutually agreed upon by applicant and municipality.

2. Licensee shall contract with qualified contractors, approved by the town, to repair any damage to the haul roads due to transportation of equipment and Facility components ('Road Repair Obligations').

3. In the event a hazardous road condition exists that is not immediately corrected by Licensee, the Town Board may order emergency road repairs, be performed by qualified contractors. Licensee shall promptly reimburse the Town for reasonable emergency road repair costs.

4. Licensee shall assure funding of the Road Repair Obligations by a letter of credit or guaranty prior to initiation of any construction.

5. Weather permitting, the final Road Repair Obligations shall be completed to the reasonable satisfaction of the Town Board within six (6) months after completion of construction of the Facility, or as soon thereafter as weather conditions permit.

K. Shadow Flicker or Blade Glint. WECS shall be designed such that shadow flicker or blade glint will not fall on or in any existing sensitive receptor. Shadow flicker or blade glint expected to fall on a roadway or a portion of a residential parcel may be acceptable under the following circumstances:

1. The flicker or glint will not exceed 10 hours per year.

2. The flicker or glint will fall more than 100 feet from an existing residence.

3. The traffic volumes are less than 500 vehicles per day on the roadway.

4. The flicker or glint shall not fall onto an intersection.

5. If shadow flicker or blade glint exceeds any of the conditions listed in this section, the source WECS shall be shut down until the flicker or glint problem has been remedied.

L. Setbacks. Setbacks shall be measured from the outermost edge of the closest of the circular path of the wind turbine rotor blade. The Town Board may increase the following minimum setbacks on a case-by-case basis, in order to protect public health and safety.

1. Participating Property Line: 1.1 times the total height of the Wind Turbine from the nearest property line of a participating property owner.

2. Non-Participating Property Line: Five (5) times the rotor diameter but not less than 1,300 feet from the nearest property line of a non-participating property, unless the owner of the non-participating property grants an easement for a lesser setback. The easement must be recorded with the County Register of Deeds and may not provide for a setback that is less than 1.1 times the total height of the Wind Turbine.

3. Public Roads and Highways: 1,300 feet or three (3) times the total height of the Wind Turbine, whichever is greater.

4. Above Ground Power/Telephone Lines: 1,300 feet or three (3) times the total height of the Wind Turbine, whichever is greater, from the nearest above-ground public electric power line or telephone line.

5. Residences & Other Buildings: 2,640 feet from the nearest residence, business, school, daycare facility, church, hospital and other sensitive receptors.

6. Wetlands: 1,000 feet from all sinkholes and wetlands.
7. Water Bodies Setbacks: 1,300 feet from the ordinary high water mark of all navigable water bodies.
8. Parks & Public Property: 2,640 feet from any town, county or state park, property, recreational or rest area.
9. Spacing and Density: Minimum setback distances between turbines shall be (2) times the total height of each WES.

M. Signage and Fencing. Licensee shall provide reasonable signage at the Facility, identifying the Premises as being part of the Facility and providing appropriate safety notices and warnings against trespassing. The no trespassing signs shall be posted around the entire premises at an appropriate distance for posting but no less than 2 conspicuous places for every 40 acre parcel within the Facility. Signs should be sized at a minimum to meet the provisions of Wis. Stat. § 943.013(2).

1. No wind turbine, tower, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. No word or graphic representation, other than appropriate warning signs and owner or landowner identification, may be placed on a wind turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.
2. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waving, fluttering or revolving devices, but not including weather devices.

N. Electrical Standards. All wiring between Wind Turbines and the Wind Energy Facility substation shall be underground. All neutral grounding connectors from Commercial Wind Turbines shall be insulated from the earth and shall be sized to accommodate at least twice the peak load of the highest phase conductor, to absolutely prevent transient ground currents, in order to comply with the National Electric Safety Code and the IEEE Standard 519-1992, approved by the American National Standards Institute, as follows:

1. Grounding of both the electrical transmission lines and the supply lines to the internal electrical systems of the turbines themselves, shall comply with Rule 92D, Current in Ground Conductors: "Ground connector shall be so arranged that under normal circumstances, there will be no objectionable flow of current over the grounding conductor."
2. Rule 215B: [It is not permissible] "to use the earth as a part of a supply circuit."

3. Under no circumstances shall any Wind Turbine be connected directly to the grid; connection must be made through a substation or transformer properly grounded and filtered to keep harmonic distortion within recommended limits.
4. Bare, concentric neutrals are specifically prohibited in buried lines between turbines and in underground transmission lines to substations.
5. Electrical controls and control wiring and power-lines shall be wireless or not above ground except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.

O. Stray Voltage. The Licensee shall respond within (3) three calendar days to any request for a stray voltage investigation by a property owner within the project boundary and a one-mile radius beyond the project boundary. The tests shall be performed by a mutually acceptable Wisconsin certified stray voltage investigator. The tests shall be performed according to PSCW Phase II Stray Voltage Testing Protocol. Testing shall commence within (10) ten working days of the request. If testing cannot be initiated within (10) days, the Wind Turbine(s) in question shall be shut down until the testing can be started. The investigation shall be provided to the property owner at no cost up to a maximum of two investigations within a 12-month period. At no time shall the operation of a WECS increase the measured cow contact voltage (Vcc) or primary neutral to remote voltage (Vpn) on a livestock facility within the project boundary and a one-mile radius beyond the project boundary, above the maximum pre-construction levels. The owner/operator agrees to abide by all rules, procedures, standards, and reporting established by the PSCW for stray voltage and related electrical phenomena. Owner/operator is responsible for mitigating within five working days from determination any net increase in cow contact voltages (Vcc) or primary neutral to remote voltages (Vpn) attributed to the operation of the WECS. If corrections cannot be initiated within (3) three calendar days, the Wind Turbine(s) in question shall be shut down until the voltages in question are mitigated. A copy of the test results shall be sent to the property owner, PSCW Rural Electric Power Services staff, and the Town Board within (30) days of test completion.

P. Reporting and Complaint Resolution Procedure. Licensee shall report to the Town as follows:

1. **Quarterly Power Production Reports:** The Licensee shall submit a quarterly power production report to the Town which shall cover the preceding calendar quarter and include actual power production in kilowatt-hours for each commercial wind energy facility in the Town.
2. **Annual Monitoring Reports.** The Licensee shall submit an annual monitoring report to the Town, containing data on the operations and environmental impacts of the WECS site. Such reports shall describe all safety inspections of the WECS.

3. **Extraordinary Events.** Within 24 hours of any extraordinary event, Licensee shall notify the Town. "Extraordinary events" shall include but not be limited to tower collapse, catastrophic turbine failure, fires, leakage of hazardous materials, unauthorized entry to the tower base, thrown blade or hub, any injury to a Facility worker or other person that requires emergency medical treatment, or other event that impacts the public health and safety of the Town.

4. **Complaints.** The Licensee shall, at the licensee's expense and in coordination with the Town develop a system for detailed logging and investigation of all complaints related to the operation of the WECS. The Town will select a qualified individual to investigate complaints. The Licensee shall provide this qualified individual with direct phone contact and address information of the licensee representative. The reasonable cost and fees incurred by the Town in retaining said qualified individual shall be reimbursed by the owner of the WECS. After the investigation, if the Town Board reasonably concludes that operational violations or other public or private nuisances have been caused by the WECS, the Town shall require Licensee to use all reasonable efforts to mitigate or eliminate such problems on a case-by-case basis, as required by the Town Board. In order to address such complaints, the Town Board may require planting trees and installing awnings, limiting the hours of Wind Turbine operation, repair of WECS, removal and decommissioning of Wind Turbines.

Q. Emergency Shutdown. The Licensee shall be required to immediately cease operations for the duration of any Emergency. Emergency shall mean a proven condition or situation caused by the Facility or by other conditions that present an imminent physical threat of danger to life or significant threat to property. A WECS that is found to present an imminent physical threat of danger to life or significant threat of damage to property shall be immediately shut down and repaired or otherwise made safe and certified so by a Wisconsin professional engineer prior to resumption of operation. The Town shall have the right to access all WECS to verify conditions and/or repair progress with reasonable notice to the WECS owner/operator. Within 24 hours of an occurrence of a tower collapse, turbine failure, property damage or contamination, fires, thrown blade or hub, collector or feeder line failure, injured WECS worker or private person, the owner/operator shall notify the Town of the occurrence and proposed remedial action.

R. Turbine Decommissioning and Site Restoration Plan. Each Wind Turbine and all related improvements shall be removed in accordance with the Decommissioning and Site Restoration Plan submitted by the applicant and approved by the Town through the licensing process.

1. The owner of a WECS and the underlying property owners shall be jointly liable for the removal of all equipment associated with the WECS at the end of the permit period, the useful life of the facility, or when the facility is abandoned or otherwise out of operation for more than six months, at their expense.

2. Upon removal of a WECS facility, the owner of the facility and the underlying property owners shall be jointly liable for restoration of the site to its original condition at their expense. To protect the environment, removal shall be done by mechanical means. Blasting is not an approved means for removal. The restoration shall include removal of all materials above and below ground; public road repair, if any; and all re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the Wind Energy Facility. All hazardous materials shall be removed from the site and disposed of in accordance with state and federal laws.

3. The owner of a Wind Energy Facility and the underlying property owner shall provide proof of financial responsibility for the removal of the facility and restoration of the site in the form of a bond or an irrevocable standby letter of credit held in trust in favor of the Town, in a form to be approved by the legal counsel for the Town.

VII. INSURANCE AND INDEMNIFICATION

A. Insurance. All Licensees shall maintain the following insurance coverage commencing upon construction of the facility:

1. The owner/operator shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Applicant and Participating Landowners against loss or liability caused by Applicant's occupation and use of the Property under the Lease, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. The Town shall be named as an additional insured on the policy.

2. Worker's compensation coverage in an amount required by Wisconsin law. Applicant shall require subcontractors and others not protected under its insurance to obtain and maintain worker's compensation and employers' liability insurance.

3. Certificates of insurance evidencing compliance with these requirements shall be provided upon request of the Town. The insurer will provide notice to the Town in the event there is a lapse in coverage exceeding thirty (30) days. All policies other than worker's compensation shall be written on an occurrence and not on a claim-made basis.

B. Defense of Land Use Decision and Indemnity. In addition to the indemnification described below, Licensee shall reimburse the Town its reasonable attorneys' fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this ordinance or any portion thereof, or the issuance of a License by the Town pursuant to this ordinance.

1. If the Town seeks reimbursement, it shall notify Licensee in writing promptly upon discovering any claim entitling it to a land use defense reimbursement, but in no event later than 120 days after receiving written notice of any action, lawsuit, proceeding,

investigation or other claim against it which may give rise to a claim for a land use defense reimbursement.

2. Licensee shall not be obligated to reimburse the Town with respect to any such liability, action or claim if the Town fails to notify Licensee thereof in accordance with the provisions of this section in sufficient time including, without limitation, any responsive motion or answer to a complaint, petition, notice, or other legal, equitable action or claim, but only insofar as such knowing failure to notify Licensee has actually resulted in prejudice or damage to Licensee.

3. With respect to any third party action, lawsuit, proceeding, investigation or other claim which is subject to reimbursement under this section, Licensee shall be entitled to assume and control (with counsel of its choice) the defense of such action, lawsuit, proceeding, investigation or other claim at Licensee's expense; provided, however, that the Town shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose (the fees and expenses of such separate counsel to be borne by the Town) and to assert against any third party any and all cross claims and counterclaims the Town may have, subject to Licensee's consent, which consent shall not be unreasonably withheld. If Licensee elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either (i) such settlement provides an unconditional release of the Town, or (ii) Licensee shall obtain the prior written consent of the Town (which consent shall not be unreasonably withheld). If Licensee elects to assume the defense of any claim, the Town shall fully cooperate with Licensee and its counsel in such defense.

4. Licensee shall defend, indemnify and hold harmless the Town and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorneys' fees (such liabilities together known as "Liability") arising out of Licensee's selection, construction, operation and removal of the Wind Turbines and affiliated equipment including, without limitation, Liability for property or personal injury (including death), whether said Liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the Town's other indemnification rights available under law.

VIII. STANDARDS

A. Construction Standards. All WECS shall be constructed in compliance with Good Utility Practice for Wind Turbines. In the event after inspection by a qualified expert in Good Utility Practice, the Town concludes that any of the Wind Turbines were not constructed in compliance with Good Utility Practice or constitutes a danger to persons or property, then upon notice being provided, Licensee shall have 90 days to bring the non-compliant Wind Turbine(s) into compliance with such standards. If 90 days is insufficient time to cure the non-compliance, Licensee shall present a plan to the Town describing the reason for the delay and the time frame for the cure to be put in

place. Failure to bring such non-compliant Wind Turbine(s) into compliance or failure to provide a plan for compliance within 90 days shall constitute grounds for the Town Board to order immediate removal of said Wind Turbine(s) at Licensee's expense.

B. Performance Standards. All WECS shall be operated and maintained consistent with Good Utility Practice for comparable facilities.

C. State and Federal Standards. Construction of WECS and Wind Turbines shall meet or exceed current standards and regulations, if any, of any other agency of the state or federal government with the authority to regulate wind powered generators. If such standards and regulations are changed and retroactive application is required for the change, then Licensee shall bring the Wind Turbine(s) into compliance with such applicable revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is permitted by the controlling state or federal agency or approved by the Town. A Determination of No Hazard for each Wind Turbine must be obtained from the FAA for each Wind Turbine as a condition precedent to the receipt of a license under this ordinance.

D. Wind Turbine Safety Standards. Licensee shall comply with the following safety standards:

1. All wiring between the Wind Turbines and substations shall be installed at least four (4) feet underground.
2. The outside of Wind Turbines shall not be climbable.
3. All access doors to the towers and electrical equipment shall be locked.
4. Appropriate warning signage shall be placed on each tower, all electrical equipment, and all entrances.

E. Repair & Replacement. Licensee shall be authorized to repair and replace the wind turbine generator and associated equipment consistent with Good Utility Practice during the Term of this License as needed to keep the Facility in good repair and operating condition. However, no such repair or replacement shall entitle Licensee to any extension of the Term of this License, even if it extends the useful life of the Facility. If Licensee desires to extend the term of this License in the future, Licensee shall be required to apply for such extension or amendment of this License in accordance with the terms of this ordinance.

IX. PROCEDURES FOR ALTERATION OR REVOCATION OF LICENSE

A. Amendment. Following the granting of a license any licensee who wishes to materially alter any aspect of the licensed premises which was required to be described in the building plan or site plan required under this Section, shall apply to the

Town Board for an amendment to the license. The application shall explain the nature of the alteration and the reasons therefore and include a non-refundable application fee of \$600. The Applicant shall also be required to pay the reasonably necessary engineering expenses, if any, associated with the review. The Town Board shall act on the amendment application consistent with the terms of this ordinance.

B. Revocation of License. An unsafe WECS and an inoperable WECS is hereby declared an unsafe public nuisance, which shall be subject to abatement by repair, rehabilitation, demolition, or removal by the Town Board. An inoperable WECS shall not be considered a public nuisance provided the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within a reasonable time as approved by the Town Board, provided periodic reports on the status of the repairs are provided to the Town Board as requested of the licensee.

1. Each of the following occurrences shall constitute a violation of the terms and conditions of this License (a "Violation") and any such Violation shall be grounds for revocation of this License (whatever the reason for such an event of default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, order or regulation) after the expiration of the notice and cure period and revocation hearing as set forth below:

a. The Licensee abandons the wind turbine generators located on the premises for a period of six months or more.

b. The Licensee fails to observe or perform any material condition or provision of this License for a period of 30 days after it has received written notice of such failure from the Town; provided, however, that a Violation shall not occur if Licensee commenced performance of such obligation within such 30 day period and is diligently proceeding to complete such performance.

c. There is a material failure by Licensee to comply with any statute, regulation, rule, or license administered by any federal, state or county department, agency, or commission directly related to the operation of the wind turbine generator, and if Licensee fails to cure the material failure to comply for a period of 30 days after the date Licensee receives written notice of such failure from the Town or the federal, state or local governmental body or agency with jurisdiction; provided, however, that a Violation shall not occur if Licensee commences performance of such obligation within such 30 day period and is diligently proceeding to complete such performance.

2. Each Wind Turbine and all related improvements shall be removed in accordance with the Decommissioning and Site Restoration Plan submitted by the applicant and approved by the Town through the licensing process.

3. The owner of a WECS and the underlying property owners shall be jointly liable for the removal of all equipment associated with the Wind Energy Facility at the end of the license period, the useful life of the facility, or when the facility is abandoned or

otherwise out of operation for more than six months, at their expense. Upon removal of a Wind Energy Facility, the owner of the facility and the underlying property owners shall be jointly liable for restoration of the site to its original condition at their expense. To protect the environment, removal shall be done by mechanical means. Blasting is not an approved means for removal. The restoration shall include removal of all materials above and below ground; public road repair, if any; and all re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the WECS facilities. All hazardous materials shall be removed from the site and disposed of in accordance with state and federal laws.

C. Hearing. The Town shall not revoke any License without first providing the Licensee a hearing and the right to respond, including the right to present evidence regarding any defenses or extenuating circumstances regarding the alleged violations or public or private nuisance.

X. LICENSE EXPIRATION

A. Expiration. Unless the Town Board authorizes a different term based upon analysis of the useful life of the WECS, every license issued pursuant to this ordinance shall terminate upon the expiration of twenty five years from the date of issuance if construction is commenced within one year of issuance. If construction is not commenced within one year of issuance, the license shall expire one year after the date of issuance and the applicant will be required to reapply if it still intends to develop a WECS project.

XI. FEES AND EXPENSES

A. Tax Hold Harmless. In the event that the shared revenue payments payable to the Town are eliminated by the Legislature, Licensee shall be required to pay the Town an amount not less than \$1,667 per megawatt per year for Wind Turbines actually installed and operating within the Town. Such payments shall be on an annual basis and payable on the 180th day after notice from the Town of Licensee's obligation to pay under this paragraph. Licensee's obligation to make such payments shall cease if the State adopts or implements a new mechanism to replace the shared revenue payments, to the extent that the new payment mechanism produces revenue not less than the revenue payable under the predecessor program. The shared revenue payments referenced above are paid to the Town directly by the State of Wisconsin, not Licensee. Regardless, Licensee shall be required to supplement the Town's annual shared revenue payments actually received, by an amount equal to the annual percentage change of the Consumer Price Index as of January 1 of each calendar year beginning on the first January following the date the Town receives its first payment. For purposes of this escalator clause, the Consumer Price Index means the U.S. Department of Labor, Bureau of Statistics, Consumer Price Index for the United States, All Urban Consumers, all items, unadjusted index.

B. Property Taxes. If the property tax exemption for WECS under current state law is revised or revoked by future Legislatures, Licensee will be responsible for all related assessments and taxes associated with the license and WECS site. Failure to pay such tax obligation shall be considered a non-compliance with this ordinance.

C. Reimbursement of Fees and Costs. Licensee shall reimburse the Town for its actual reasonable fees and costs incurred in the application, negotiation, administration and enforcement of this ordinance, including, without limitation, the Town's attorney fees, engineering and consultant fees, Town Board meeting and hearing fees, and the costs of public notices relative to the review and consideration of each application filed by an applicant under this ordinance. The preceding fees are payable within 30 days of invoice. Unpaid invoices shall bear interest at the rate of 1% per month until paid. The Town may recover all reasonable costs of collection, including attorneys fees.

XII. WESF NEIGHBOR AGREEMENT

A. Neighbor Agreement. Licensee may offer to non-participating landowners the opportunity to enter into a Windpower Facilities Neighbor Agreement, provided:

1. Landowner has not otherwise entered into a Ground Lease, Easement or Setback Waiver Agreement with Licensee;
2. Has a primary residence or private business located within the setbacks provided for under this ordinance; and
3. Owns the property in fee simple and has applied for a building permit on or before the issuance of a license pursuant to this ordinance. A landowner who enters into such an agreement is not a Participating Residence for purposes of this ordinance.

B. Town Approval. The terms and form of such agreements shall be subject to negotiation between the Licensee and non-participating landowners who may be interested in such an agreement. However, such agreements, once signed, shall be subject to review and approval by the Town Board.

XIII. ADMINISTRATION, ENFORCEMENT, PENALTIES, RELATIONSHIP TO OTHER ORDINANCES, SEVERABILITY & EFFECTIVE DATE

A. Administration. This ordinance shall be administered by the Town Board or its designee.

B. Inspections. The Town Board or its designee may enter upon any property for which a licensing permit has been issued under this ordinance to conduct inspections to determine whether the conditions stated in the permit and other standards and requirements of this ordinance are being complied with.

C. Enforcement. The Town Board or its designee may issue orders to abate any violation of this ordinance or any condition attached to a licensing permit approved by the Town Board. The Town Board or its designee may issue a citation for any violation of this ordinance. The Town Board may refer any violation of this ordinance to the Town's legal counsel or to special counsel for enforcement through litigation. Nothing in this ordinance shall be construed to prevent or limit the Town from using any other lawful means of enforcing this ordinance.

D. Penalties. Any person, applicant or licensee who fails to comply with any provision of this ordinance or of any license issued pursuant to this ordinance shall, upon conviction thereof, forfeit at least five-hundred dollars (\$500.00) but not more than one-thousand dollars (\$1,000.00) for each offense. A separate offense shall be deemed committed on each day during which a violation occurs or continues. Any person, applicant or licensee who is in default of payment of a forfeiture or costs may be imprisoned in the county jail until the forfeiture or costs are paid, except that the period of imprisonment may not exceed thirty (30) days.

E. Relationship to Other Ordinances. This ordinance does not abrogate, annul, impair, interfere with, or repeal any existing ordinance of the Town or any other governmental body.

F. Severability. The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

G. Effective Date. This ordinance shall take effect upon passage and posting or publication as provided by law.

Adopted this ____ day of _____ 2008.

Town Chairman

Town Supervisor

Town Supervisor

Attest: Town Clerk

Date Posted: _____

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