

Catching Wind

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Siting Rule Suspension Rocks Wind Industry

In a move that sent shock waves through the wind industry in Wisconsin, a joint legislative panel voted on March 1 to suspend the wind siting rule promulgated by the Public Service Commission in December 2010. The action taken by the 10-member Joint Committee for the Review of Administrative Rules (JCRAR) suspended the wind siting rule, known as PSC 128, on the very day it took effect. By itself, a JCRAR vote to suspend a rule lasts 30 days. To continue the rule suspension beyond 30 days, JCRAR voted in late March to introduce a bill to repeal PSC 128 and direct the Public Service Commission (PSC) to promulgate a new rule regulating wind energy systems no more than six months after the repeal date. The bill must clear one house of the Legislature in order to become effective.

JCRAR's bill does not attempt to influence the content of any successor rule to PSC 128, nor has the legislative leadership issued any statement regarding the timeline of the bill's passage. The Legislature could potentially wait until the last day of the biennial session before passing this bill. However, if the Legislature does not repeal PSC 128 by the end of the current session, PSC 128 will take effect as promulgated.

JCRAR's actions capped a tumultuous three-month period starting with the unveiling of Governor Scott Walker's bill (SS SB9) to strip the PSC of its authority to regulate setback distances and mandate a minimum distance of 1,800 feet between separating wind turbines and property lines. In contrast, PSC 128 specifies setback distances of 3.1 times total turbine height from neighboring residences, capped at 1,250 feet.

Though Walker's proposal did not advance in the special session, the legislative leadership gave wind opponents a tempting avenue for disabling wind development by referring PSC 128 to JCRAR. The suspension vote was taken after JCRAR held a hearing February 9th at the State Capitol that lasted nearly eight hours.

Developer reaction to JCRAR's suspension vote was swift. Chicago-based Invenergy, LLC, which had proposed building a 100-turbine, 150-megawatt (MW) windpower installation in southern Brown County, notified the PSC on March 21 of its decision to terminate that project. "The absence of regulatory stability has made it imprudent for Invenergy to proceed with investments in a project which unknown regulations might make infeasible," Invenergy's letter states. Invenergy's application for permission to build the Ledge Wind project had been filed in October 2009. Invenergy is the owner and operator of the 129 MW Forward Energy Center, now in its third year of operation.

The following week, another Chicago-based wind developer, Midwest Wind Energy, LLC, announced its decision to suspend work on its 98-MW Stony Brook project in Calumet County and a second Wisconsin prospect. Stony Brook had been in Midwest Wind's development pipeline since 2005.

"It doesn't make sense to devote significant dollars to a state that is cre-

ating unreasonable roadblocks for wind development," stated Midwest Wind president Stefan Noe in a March 30 press release. An early entrant to the Wisconsin wind development scene, Midwest Wind secured permits for the Cedar Ridge and Butler Ridge installations, which, like Forward, are also in their third year of operation.

According to Midwest Wind's figures, a Stony-Brook-sized project would require a capital investment of \$230 million. In addition to creating 130 construction jobs and supporting ten permanent high-tech jobs, such a facility in Wisconsin would yield annual flows of nearly \$400,000 to local governments hosting the turbines and more than \$500,000 to participating landowners.

New PSC Chair Named

Assuming the repeal bill is passed, the new PSC Chair, Phil Montgomery, will play an instrumental role in shaping a successor rule. A former legislator from Green Bay, Montgomery was a member of the Assembly Energy and Utilities Committee, and chaired that committee from 2005 to 2009. Montgomery was a co-sponsor of 2009 Act 40, the law that directed the PSC to establish uniform permitting standards for wind energy systems. Montgomery was also a co-author of Wisconsin's renewable energy standard (2005 Act 141).

Glenmore Wind Survives Raucous Opposition

In a dramatic about-face that elicited loud cries of disapproval from local wind opponents, a Brown County town board granted on March 16 building permits enabling CEnergy, a subsidiary of CG Power Solutions,

to erect a seven-turbine wind project. Two Glenmore board members voted in favor of allowing construction to begin, while the third voted against.

The March 16 approval came one week after another stormy meeting in

Continued on reverse

Rule Suspension

Continued from page 1

which the town supervisors initially approved CEnergy's application, also on a 2-1 vote, but then adjourned the meeting when the crowd of more than 100 people erupted with disapproval, chanting "Change your vote!" The crowd's angry reaction prompted Town Chairman Don Kittell to call the police. When several officers arrived at the Glenmore Community Center 15 minutes later, the crowd quieted down enough for the board to reconvene the meeting. A motion was entertained to table the earlier vote for 60 days. The motion passed unanimously.

The scene at the March 16 meeting was no less tempestuous than what transpired a week before, even though sheriff's deputies were on hand to maintain order. Twenty minutes into the meeting, when the board voted to reverse its earlier decision and approve the building permits sought by CEnergy, the crowd reacted angrily, filling the meeting room with cries of "Shame!" and "Judas!" After the meeting, several people in attendance followed CEnergy representatives to their cars outside, peppering them with insults along the way.

According to press accounts of the March 16 meeting, the Glenmore Town Attorney said that questions had arisen about the legality of the board's earlier actions, specifically the decision to reconvene the March 8 meeting moments after adjourning it. The vote to rescind the vote taken during the reconvened meeting passed 2-1.

The company that originally assembled this project, Prelude, LLC, acquired a Conditional Use Permit from the Glenmore Town Board in September 2007 to erect seven utility-scale turbines. In 2010, Prelude sold the prospect to CEnergy. The parent company of CEnergy, CG Power Solutions, is headquartered in Albany, New York.

Publicly available information on the details of CEnergy's venture is sparse. CG Power Solution's web site does not contain any information spe-

cific to this particular project. What is known today is that CEnergy intends to install seven German-made REpower turbines totaling more than 14 megawatts (MW). The project is configured to sell its output directly to Wisconsin Public Service (WPS), the electric utility serving the Green Bay area. However, it is not known whether there is an operative Power Purchase Agreement in place.

The site for CEnergy's project is situated between the newest utility-scale wind project in the state, the Shirley Wind Farm, and the oldest facility of this type, a two-turbine facility owned by WPS. Owned by CH Energy Group of New York and developed by Emerging Energies, Shirley is an eight-turbine, 20 MW project that began commercial operation February this year, 13 years after the WPS's Glenmore project began producing electricity. If the CEnergy project is built and placed in service, Glenmore would have 17 wind turbines with a combined capacity of 35 MW.

Opponents Press Case

Members of the main opposition group in the area, Brown County Citizens for Responsible Wind Energy (BCCRWE), showed up in force at both meetings. As with opposition groups active elsewhere in Wisconsin, BCCRWE strongly believes that wind turbines adversely affect the health of nearby residents and lower property values. Those attending the meetings demanded that the Board hold off on issuing the building permits, even though CEnergy had fulfilled its legal requirements under the terms of its Conditional Use Permit. Their demands were echoed by Sen. Frank Lasee and Rep. Andre Jacque, whose districts include Glenmore township. In addition to opposing this project, Sen. Lasee and Rep. Jacque, both Republicans who received strong backing from the Wisconsin Re-

altors Association, also testified in opposition to the now-suspended wind permitting rule (PSC 128) at a legislative hearing in February.

Had the wind permitting rule taken effect on March 1st, anyone objecting to the Glenmore board's vote could appeal that decision to the Public Service Commission. The decision to suspend that rule effectively disables the appeals process authorized under the enabling legislation (2009 Act 40). However, as long as the Conditional Use Permit remains in effect, the CEnergy project can go forward in the absence of an effective statewide permitting rule.

Extreme Setbacks Sought

BCCRWE is on record as supporting one-half mile setbacks between wind turbines and neighboring residences, a standard that is arguably even more strict than the draconian proposal—1,800 feet from property lines—introduced by Governor Scott Walker earlier this year. That bill did not receive a hearing during the special session, and is now presumed dead.

BCCRWE was formed in opposition to the now-cancelled Ledge Wind Energy Center proposed by Chicago-based Invenergy, LLC. As indicated in its October 2009 application to the PSC, Invenergy envisioned erecting 100 turbines in four southern Brown County townships, including Glenmore. BCCRWE did not exist as a formal entity when Emerging Energies and Prelude were actively prospecting development opportunities in Glenmore. Both developers secured Conditional Use Permits in 2007. Now that Invenergy has decided not to pursue its Ledge project, look for BCCRWE to turn its full attention on CEnergy's project.

Town Chairman Kittell, a supporter of windpower who has served on the Glenmore board for 32 straight years, will step down at the end of his current term in April. With an open seat up for grabs, Glenmore voters could elect a new supervisor hostile to windpower. Such a turn of events could influence the ultimate fate of CEnergy's project. Stay tuned.

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